



Determination 2018/07: Principal Executive Office - Classification Structure and Terms and Conditions

made under subsection 5(2A) of the

Remuneration Tribunal Act 1973

Compilation No. 1

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About this compilation

This compilation

This is a compilation of the *Determination 2018/07: Principal Executive Office - Classification Structure and Terms and Conditions* that shows the text of the law as amended and in force on 26 August 2018 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

The Remuneration Tribunal has determined a Principal Executive Office (PEO) classification structure of five levels, or Bands, as well as terms and conditions that apply to offices in those Bands.

The Minister responsible for administering the *Remuneration Tribunal Act 1973* may declare an office or appointment to be a PEO, assign a classification to it and declare an Employing Body¹.

Following declaration, the Employing Body of a PEO determines the terms and conditions (including remuneration and allowances) applying to the office². The determination of an Employing Body must be consistent with this Determination, unless the Tribunal has given written consent to an Employing Body to determine terms and conditions that are inconsistent with this Determination³.

In determining a PEO's terms and conditions (including remuneration and allowances) the Employing Body should be fair, flexible and supportive of a high performing Australian Government public sector and be consistent with the Government's workplace relations policy.

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PART 1 – GENERAL

1.1 Authority: The Remuneration Tribunal has made this Determination in accordance with the function in sub-section 5(2A) of the *Remuneration Tribunal Act 1973*.

1.3 Definitions: For the purposes of this Determination, the following definitions apply.

'Agency' means the agency to which the PEO is attached, or the portfolio department, if the PEO is not attached to an agency.

'Benefits' means all non-monetary benefits provided at the employer's expense to or on behalf of a PEO as a personal benefit including:

- the value attributed by the Remuneration Tribunal to the Employer's Superannuation Contribution (refer clause 2.8);
- a vehicle, where provided (refer clause 2.10); and
- any other benefits received by way of remuneration packaging (refer clause 2.6).

'Employing Body' means a specified person, authority or body declared by the Minister responsible for administering the *Remuneration Tribunal Act 1973*, under section 3B of the *Remuneration Tribunal Act 1973*, to be the employing body in respect of a principal executive office.

'PEO' means the holder of a 'principal executive office' as defined in the *Remuneration Tribunal Act 1973*.

¹ Under sections 3A(1), (2) and (6) of the *Remuneration Tribunal Act 1973*, an office may be declared to be a Principal Executive Office and a classification assigned to it, after the advice of the Remuneration Tribunal is taken into account. Under section 3B a person, authority or body may be declared the Employing Body.

² Employing Bodies determine terms and conditions under 12C(1) of the RT Act.

³ Under 12C(2) of the RT Act, an Employing Body must not determine terms and conditions inconsistent with this Determination, unless the Tribunal provides written consent.

'Performance pay' means an amount of at-risk pay awarded on the basis of performance and paid as a lump sum.

'Reference Salary' means the PEO's Total Remuneration, less the amount of the Employer's Superannuation Contribution for the PEO.

'Superannuation Salary' means an amount of salary which is determined under clause 2.7 for the purposes of superannuation laws.

'Employer's Superannuation Contribution' means the amount ascertained in accordance with clause 2.8, representing the employer superannuation liability.

'Total Remuneration' means the total value, calculated at the total cost to the employer, of:

- salary and allowances,
- lump sum payments,
- the Employer's Superannuation Contribution, and
- Benefits;

but does not include:

- Performance Pay, in accordance with clause 2.12,
- Allowances specified in Part 3,
- Travelling allowances and expenditure referred to in Part 4,
- payment in lieu of recreation or long service leave referred to in Part 5, or
- Compensation for early loss of office, specified in Part 6.

- 1.4 Advice to the Tribunal:** Employing Bodies must notify the Tribunal in writing of a PEO's terms and conditions as soon as practicable after any change (including the initial determination), but no later than 4 weeks after the date of the decision by an Employing Body, and at such other times as may reasonably be required by the Tribunal.
- 1.5 Agency Policies:** Employing Bodies may elect to apply to PEOs the same policies and practices as they do for other employees, except where they are not in accordance with this Determination.
- 1.6 Guidelines:** The Tribunal may issue guidance notes from time to time to assist employing bodies in the administration of this Determination.

PART 2 – CLASSIFICATION, REMUNERATION AND RELATED MATTERS

- 2.1 Classification Structure:** The Principal Executive Office classification structure is as set out in Table A1 of Schedule A to this Determination.
- 2.2 Remuneration:** An Employing Body must determine the value for the following components of a PEO's remuneration, consistent with this Determination:
- (a) Total Remuneration⁴, including Superannuation Salary;
 - (b) Performance Pay; and
 - (c) any Allowances under Part 3.
- 2.3 Setting Remuneration:** In determining the value of the terms and conditions for a PEO, an Employing Body is expected to exercise prudent business judgement commensurate with the responsibilities and accountabilities of the office. Relevant considerations will include (but are not restricted to):
- (a) the work value, role and responsibilities of the office or appointment;
 - (b) that improvements in pay and conditions should be linked to productivity gains;
 - (c) the ability of an Employing Body to recruit and retain persons with the necessary qualities and skills; and
 - (d) other relevant factors such as adjustments to the remuneration rates for the PEO classification structure.
- 2.4 Adjustment of Remuneration:** Total Remuneration determined by the Employing Body may not be varied, except with the written consent of the Tribunal⁵.
- 2.4.1** Where a variation is consented to, the Total Remuneration determined by an Employing Body must not be outside the range for the relevant classification Band shown in Table A1 of Schedule A.
- 2.5 No Retrospectivity:** An Employing Body may not backdate any variation in remuneration.
- 2.6 Remuneration packaging:** Subject to this Part, a PEO may elect to receive the value of remuneration as salary or as a combination of salary and Benefits. Any election must be consistent with relevant taxation laws and rulings or guidelines applicable to salary packaging schemes issued by the Australian Taxation Office. Any election must not result in a cost to the employer (including in relation to any fringe benefits taxation) additional to the cost which would be incurred if Benefits able to be taken as salary were taken as salary.
- 2.7 Superannuation Salary:** For members of Commonwealth defined benefits superannuation schemes, salary for superannuation purposes will be no more than 73 per cent of the Total Remuneration determined by the Employing Body in accordance with this Determination.
- 2.8 Employer's Superannuation Contribution:** Total Remuneration will be taken to include the Employer's Superannuation Contribution in respect of a PEO, which has the value ascertained under sub-clause 2.8.1 or the amount of contributions actually paid under sub-clause 2.8.2. Contributions made on a salary sacrifice basis do not form part of the Employer's Superannuation Contribution; these are covered by clause 2.6 (Remuneration Packaging).

⁴ Under s.3A(4) the Minister responsible for the RT Act may set the commencing remuneration, upon assigning a PEO classification to an office. The initial Determination by an employing Body needs to be consistent with that rate.

⁵ Under 12C(2) of the RT Act, an Employing Body must not determine terms and conditions inconsistent with this Determination, unless the Tribunal provides written consent. The Tribunal intends to provide written advice to the Employing Body each financial year, setting out the extent to which any pay variations may occur without further consideration by the Tribunal, and provide consent for the Employing Body to act in keeping with that advice.

2.8.1 Defined Benefits Schemes: In the case of a PEO who may be eligible for defined benefits under a Commonwealth superannuation scheme, except as otherwise provided in this subclause, the value of the Employer's Superannuation Contribution will be taken to be 15.4 per cent of Superannuation Salary. Employing bodies may deduct a lesser amount (provided the amount includes the employer productivity component) where the employing body holds an actuarial opinion or documentary evidence from the relevant fund which verifies that the fund only requires the lesser amount of contribution from the employing body.

2.8.2 Other Schemes: In the case of a PEO not covered by sub-clause 2.8.1, the Employer's Superannuation Contribution will be:

- in respect of a member of the Public Sector Superannuation Accumulation Plan, 15.4% of ordinary time earnings (OTE) for the office holder; or
- in respect of a member of any other fund, the minimum level of employer superannuation contributions that would reduce to zero the charge percentage for that office holder under section 23 of the *Superannuation Guaranteed (Administration) Act 1992*.

2.8.3 No cash in lieu: The value attributable by virtue of this clause to the Employer's Superannuation Contribution is a non-salary component of Total Remuneration and may not be the subject of an election to take an equivalent amount of salary instead.

2.9 Part-time work: Where approval is given by the employer for a PEO to perform the duties of an Office on a part-time basis, the Superannuation Salary, Total Remuneration and Performance Pay will be calculated on a pro-rata basis in accordance with the proportion of full-time hours worked. Where proposed hours are less than 60 per cent of the full-time rate, prior agreement of the Tribunal is required to the remuneration level.

2.10 Vehicles: Where a PEO accepts an offer of an agency owned or leased vehicle for private use, the following provisions apply. Where a PEO has access to an agency owned or leased vehicle for private use, they will be considered to have accepted an offer of a vehicle for the purposes of this provision.

2.10.1 Deduct total cost: The total actual cost of the vehicle to the agency, including parking and fringe benefits tax, is to be encompassed within the Total Remuneration rate applying to the PEO.

2.10.2 Business use excluded: The total cost of the vehicle calculated under the above subclause may exclude a reasonable amount (if any) that reflects business usage patterns. Any business usage amount is to be assessed on log book records for at least a 12 week representative period. Where the annual business kilometres are less than 5,000 it will be based on the 'cents per kilometre' method. Where business kilometres are 5,000 kilometres or more, the percentage of business use to total kilometres travelled per annum will be applied to the total cost of the vehicle.

2.11 Vehicle parking: Where a PEO accepts an offer of a car park at Commonwealth expense, the actual cost (including fringe benefits tax) of the car park to the Agency will be a Benefit for Total Remuneration purposes.

2.12 Performance Pay: Except in cases where the Tribunal has consented to removal of any entitlement to performance pay, Employing Bodies may establish a performance pay scheme which includes payment of a lump sum based on assessment of the performance of the PEO over a 12 month cycle.

2.12.1 Maximum: The maximum amount available per annum must not exceed 15 per cent of Total Remuneration for offices in Bands A, B or C and 20 per cent for offices in Bands D or E.

2.12.2 Guidelines: Performance pay must operate in accordance with any Guidelines issued by the Remuneration Tribunal from time to time.

PART 3 – ALLOWANCES

- 3.1 Geographic Relocation:** Reimbursement of expenses incurred on geographic relocation following appointment as a PEO, in accordance with agency policies and procedures, may be approved by the Employing Body. Any ongoing allowances must be in accordance with the following clauses.
- 3.2 Accommodation Allowance:** Where the Tribunal provides written consent, an Employing Body may determine that a PEO will be eligible to receive an accommodation allowance (subject to expenditure) following geographic relocation.
- 3.2.1** This amount is to assist the PEO in meeting settling-in and commercial rental accommodation costs (including one-off utility connection costs) in the office location while they also continue to have a property, other than in the office location, as their principal place of residence.
- 3.2.2** The allowance will not be paid for such periods that they live in premises owned by them at the office location.
- 3.2.3** A PEO will not be eligible to access travel allowance entitlements in the home locality or the office locality whilst they remain eligible to receive the accommodation allowance.
- 3.2.4** Where the commercial accommodation does not include cooking facilities, the cost of meals may form part of the payment, within the accommodation cap set for the PEO.
- 3.3 Reunion Travel:** Where the Tribunal provides written consent, an Employing Body may determine that a PEO will be eligible to receive travel costs of up to the determined amount for travel back to their principal place of residence, for the purposes of family reunion, while they continue to occupy the office.
- 3.3.1** Where the Employing Body is satisfied that the workload and responsibilities of the office holder prevent the office holder from travelling to the principal place of residence for the purposes of family reunion, reunion travel by the office holder's partner and/or a child or children of the office holder or partner, whose normal place of residence is the office holder's principal place of residence, can be funded within the financial limits of the allowance. Travel by a person other than the office holder must be at economy class, and only for direct travel between the office holder's principal place of residence and office location.
- 3.4 Remote Localities:** Where the Tribunal provides written consent, an Employing Body may determine that a PEO will be eligible to receive benefits and/or allowances in recognition of the geographic remoteness of the office locality.

PART 4 – OFFICIAL TRAVEL

- 4.1 Official Travel:** The provisions of the *Remuneration Tribunal (Official Travel) Determination 2018* (or any determination that supersedes that determination) apply to offices covered by this Determination, subject to any exclusions or limitations in this Determination.
- 4.2 Travel Tier:** In establishing entitlements under the *Remuneration Tribunal (Official Travel) Determination 2018* (or any determination that supersedes that determination), the Travel Tier for an office is that advised to the Employing Body by the Remuneration Tribunal. If no advice is provided, offices in Bands A, B and C are eligible for Tier 2 travel and Bands D and E are eligible for Tier 1.

PART 5 – LEAVE

- 5.1 Leave of absence:** A PEO shall be entitled to the following types and amounts of leave of absence:
- (a) PEOs may be absent without loss of pay on public holidays that are observed by the Australian Public Service in the location in which the PEO is based;
 - (b) paid annual leave of 4 weeks per year of full-time service;
 - (c) paid long service leave as prescribed under the *Long Service Leave (Commonwealth Employees) Act 1976*; and
 - (d) other paid and unpaid leave, including sick and carers leave, at the discretion of the Employing Body⁶.
 - (e) The payment in lieu of annual leave and long service leave, on cessation, shall be calculated based on the PEO's Reference Salary.

PART 6 – COMPENSATION FOR EARLY LOSS OF OFFICE

- 6.1 Exclusions:** A PEO is not entitled to separation benefits under clause 6.4 where:
- (a) the person resigns or retires; or
 - (b) the person has served their full term of appointment; or
 - (c) the appointment was terminated prematurely for reasons of misbehaviour or unsatisfactory performance; or
 - (d) the appointment was terminated prematurely on account of mental or physical incapacity; or
 - (e) the person becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (f) the person is offered suitable alternative employment (including in a Commonwealth company or authority) in accordance with clause 6.2.
- 6.2 Alternative employment:** Subject to clause 6.1, where a person's appointment to an office is terminated prematurely, the Commonwealth may elect to offer suitable alternative employment (including in a Commonwealth company or authority).
- 6.3** For the purposes of clause 6.2, an offer of suitable alternative employment is taken to have been made to the person, if the person is on leave without pay or some other form of authorised absence from APS employment and is able to resume that employment following the termination of their appointment.
- 6.4 Compensation:** Where the Commonwealth does not offer suitable alternative employment under Clause 6.2, the Agency will pay the office holder 1/3 of one month of an office holder's Reference Salary per month of service remaining, in lieu of obligations such as provision of notice or payment instead of notice or redundancy pay and subject to:
- (a) a minimum payment of four months of an office holder's Reference Salary; and
 - (b) a maximum payment of one year of an office holder's Reference Salary.
- 6.5 Unexpired Period:** Under clause 6.4, the Employing Body may calculate service remaining by excluding any period of Commonwealth service in alternative employment to be performed during the remaining term of appointment, where the alternative employment commenced immediately after the termination, and may require a PEO to sign a release in return for the payment.
- 6.6 Comprehensive Coverage:** Clauses 6.1 to 6.5 deal comprehensively with the subject of payments related to an office holder ceasing to hold office, regardless of the basis upon which the office holder ceases to hold office.

⁶ PEOs may also be eligible for paid and unpaid leave as prescribed under the *Maternity Leave (Commonwealth Employees) Act 1973*.

Schedule A to the PEO Determination

TABLE A1 – PRINCIPAL EXECUTIVE OFFICE CLASSIFICATION STRUCTURE AND REMUNERATION RANGES Commencing on 1 July 2018

	<i>Total Remuneration Band Range</i>
PEO BAND A	up to \$254,260
PEO BAND B	\$185,460 - \$345,030
PEO BAND C	\$247,260 - \$489,870
PEO BAND D	\$346,150 - \$635,040
PEO BAND E	from \$488,310

Signed on this 25 day of June 2018

Signed
John C Conde AO
PRESIDENT

Signed
Ewen G W Crouch AM
MEMBER

Signed
Heather J Zampatti
MEMBER

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Determination 2018/07: Principal Executive Office - Classification Structure and Terms and Conditions	26 June 2018 (F2018L00890)	1 July 2018 (c 1.2)	—
Remuneration Tribunal Amendment (Official Travel) Determination 2018	20 Aug 2018 (F2018L01143)	Sch 1 (items 1, 2): 26 Aug 2018 (s 2(1) item 1)	—

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
c 1.2.....	rep LA s 48C and s 48D
Part 4	
c 4.1.....	am F2018L01143
c 4.2.....	am F2018L01143