REMUNERATION TRIBUNAL ANNUAL REPORT 2013–14

ISSN 1032 0350



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The document must be attributed as the Remuneration Tribunal annual report 2013–14.



2 October 2014

Senator the Hon. Eric Abetz Minister Assisting the Prime Minister for the Public Service Parliament House Canberra ACT 2600

Dear Minister

We have pleasure in presenting to you the Remuneration Tribunal's annual report for 2013–14. The report covers the activities of the Tribunal during the year ended 30 June 2014.

Subsection 12AA(2) of the *Remuneration Tribunal Act 1973* requires you to cause a copy of this report to be laid before each House of Parliament within 15 sitting days of receipt.

Yours sincerely

John C Conde AO PRESIDENT John B Prescott AC MEMBER

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President's overview

This has been another busy year for the Remuneration Tribunal.

The Tribunal is an agency of government in a broad sense and its independence is paramount to its effectiveness. I acknowledge with appreciation the constructive and harmonious working relationships accorded the Tribunal over the years by government, without which the Tribunal's independence would be more difficult to preserve.

Submissions received from the government of the day will always be a relevant consideration for the Tribunal in its decision-making processes. Accordingly, early in the days of the new Government, the Tribunal met with the Minister Assisting the Prime Minister for the Public Service, Senator the Hon Eric Abetz, and the Special Minister of State, Senator the Hon Michael Ronaldson, to brief them on its operations and work programme.

One early matter that the Tribunal was asked to consider was the impact of the Administrative Arrangements Order which established a new departmental structure, moving some areas of responsibility into new portfolios and abolishing one department. The Tribunal considered the impacts on the roles and responsibilities of several offices of secretary and the remaking of its secretaries' determination to reflect its decisions.

The Government also established a Commission of Audit, which examined the way services are delivered generally. As the Government finalises the process of considering the commission's recommendations and makes consequent legislative or policy changes, there could be a significant effect on the number and type of bodies for which the Tribunal determines remuneration. In May 2014 the Minister for Finance, Senator the Hon Mathias Cormann, released a ministerial paper, titled *Smaller and More Rational Government 2014–15*, detailing the initiatives announced in the federal budget to reduce the total number of Australian Government bodies.

Other parliamentary matters considered by the Tribunal during the period included the reforms to parliamentary entitlements, announced by the Special Minister of State, and the consequences of a number of the initiatives in the 'Strengthening the Rules Governing Parliamentarians' Business Expenses' reforms, announced in November 2013. As its work programme permits, the Tribunal will give further consideration to rationalising parliamentary entitlements to simplify and clarify the numerous complexities in the current arrangements.

One of the Tribunal's major statutory responsibilities, described in the Tribunal's legislation, is to inquire into, and determine, remuneration for most offices in its jurisdiction at periods of 'no more than one year'. That is not to say that remuneration cannot be reviewed more often, or that it has to be adjusted in those reviews – the obligation is to consider it rather than necessarily change it.

Over recent years, in fulfilling the 'no more than one year' obligation, the Tribunal has made a general annual adjustment to the remuneration of offices in its jurisdiction.

Normally, though not invariably, the adjustment has taken effect from 1 July in the relevant year. As mentioned in last year's annual report, an increase of 2.4% applied from 1 July 2013.

At the time, in a statement accompanying that decision, the Tribunal commented that the economic situation was uncertain and that the Tribunal would revisit the matter later in 2013 to ascertain whether any further adjustment was warranted. In the event, the Tribunal did consider the matter again, and decided that, while 2.4% was justifiable in the context of a broader comparison to wage movements in the private and public sectors, there was no compelling evidence to support any significant further adjustment. The Tribunal issued a statement to this effect on 9 December 2013, which is available on the Tribunal's website.

In the first half of 2014 the Tribunal followed its normal practice in relation to its annual review process – to consider data relating to wage movements and the economic and fiscal situation at each formal meeting of the Tribunal from the start of the calendar year. It became clear to the Tribunal that the situation was challenging. By April 2014 the Tribunal had reached the preliminary conclusion that any increase based on economic factors would be difficult to justify.

In May 2014 the Tribunal announced that there would be no general adjustment to remuneration for offices in its jurisdiction from 1 July 2014. The Tribunal's decision included consideration of a submission from the Government, which related to public sector remuneration and the budget situation.

In making its decision not to award an increase generally, the Tribunal noted that it had announced previously that it was providing staged increases to the remuneration of various senior offices, including secretaries of departments, as a result of reviews conducted in prior years. For many of these offices the final step of the increase was to take effect from 1 July 2014. However, the Tribunal decided that it was inappropriate to go ahead with these adjustments at a time when no pay increase generally was being determined.

Consequently, the Tribunal decided to defer until a future date the increases previously scheduled for 1 July 2014, while noting it was not retreating from providing the final step.

During the reporting period, the Tribunal considered the provisions it determines for loss of office. These provisions are usually triggered when an office is abolished before the office holder has served his or her full term. It is appropriate to compensate, in part, the office holder for the fact that he or she has not been able to serve out the full term of the appointment. However, this becomes a more complex issue when the office holder was an Australian Public Service (APS) employee who took leave without pay, or was otherwise seconded, to take up the appointment.

A major piece of Tribunal work – the review of part-time offices, highlighted in last year's annual report – was completed in 2013–14. There is a wide variety of bodies in the public sector where office holders do not work full-time. The Tribunal is

responsible for setting pay for these part-time offices. The term part-time is something of a catch-all phrase covering work schedules which are many and varied, and are not even necessarily predictable within bodies. For example, bodies that review decisions of other bodies can be extremely busy at some times and less so at others. Setting sensible pay structures to accommodate all these variables is complex.

Typically the Tribunal will determine an annual fee for office holders in a body when its work can be estimated reliably. When this is not possible, the Tribunal will set daily fees and, in recent times, some composite arrangements, where an annual fee is set for the predictable core business of an office holder and additional daily fees for other less predictable elements of the job.

Many people on part-time government boards work principally in the private sector. It is a great benefit to the public sector to have access to their skills and insights. Office holders accept that their public sector rates of pay are substantially lower than in the private sector. In determining appropriate pay for part-time offices, the Tribunal balances many factors and has been assisted greatly in its deliberations by submissions from various agencies as well as interviews with a wide range of office holders and other officers.

As noted in the Tribunal's report on its review of part-time offices,¹ pay structures for part-time office holders had developed in something of an ad hoc fashion over the years, and the Tribunal decided that a full review was necessary. This followed comprehensive reviews that the Tribunal had conducted in recent years of its judicial and parliamentary jurisdictions, as well as departmental secretaries, other full-time offices at the most senior levels and full-time offices generally.

The review was published in October 2013, and the feedback from agencies has been positive.

Appropriate remuneration arrangements are key to the effective operation of any organisation. The Tribunal has an important responsibility to determine remuneration at levels sufficient to enable the Commonwealth to recruit, retain and reward appropriately individuals for the range of Commonwealth public offices which it covers. At the same time the Tribunal remains conscious that it is committing limited public funds.

Tribunal membership

Appointments to the Tribunal itself are part-time; its programme is significant and demanding. The quality of the Tribunal's work and its standing depend heavily on the contributions and commitment of its members and of its Secretariat.

¹ http://www.remtribunal.gov.au/media/documents/2013/reports/remuneration-of-public-offices-part-time-offices-report-october-2013/PT-Review-report-final-30.10.2013.pdf.

It has been my privilege again to have worked closely with Mr John Prescott AC throughout the year and I appreciate greatly his constructive support, his insights and his generous commitment of time well in excess of any reasonable expectation.

For the majority of the year I also had the pleasure of working with Ms Jillian Segal AM. Late in the reporting period Ms Segal accepted another important Commonwealth Government appointment, which required her to resign her membership of the Tribunal. Ms Segal was a member of the Tribunal for over four years, during which time we completed major reviews of parliamentary pay, and remuneration of departmental secretaries, other high-level office holders, and full-time and part-time offices in general. Each one of these reviews constituted a considerable amount of work and required a substantial time commitment, likely well beyond that originally expected by Ms Segal but given generously by her always. Her contribution to each review was significant and valuable. The Tribunal and the Secretariat thank Ms Segal most sincerely for her service.

I also record my grateful appreciation to Mr Patrick Palmer, the Secretary to the Tribunal, and the small Secretariat that he leads. I know Mr Prescott and, prior to her resignation, Ms Segal endorse this expression of thanks. Mr Palmer and the Secretariat research and provide briefings on all the matters that the Tribunal considers, as well as performing all of the administrative tasks needed to support and give effect to the Tribunal's decisions and its various statutory functions.

John C Conde AO President

1 Introduction to the Tribunal

The Remuneration Tribunal is an independent statutory authority established under the *Remuneration Tribunal Act 1973*. The Tribunal is primarily responsible for inquiring into and determining the remuneration and allowances to be paid to holders of public offices (including parliamentary offices). The Tribunal also reports on and provides advice about these matters.

In assessing the remuneration of offices, the Tribunal takes into account the attributes of the office; remuneration of comparable offices; considerations related to complexity, merit and productivity; and indicators of movements in remuneration. The Tribunal aims to develop remuneration arrangements that are flexible and broadly consistent, having regard to the significant diversity of the offices in its jurisdiction.

2 Membership of the Tribunal

The Tribunal normally consists of three part-time members who are appointed by the Governor-General.

Ms Jillian Segal AM was a member of the Tribunal for most of the reporting period. Ms Segal resigned as a member of the Tribunal on 18 June 2014 to allow her to accept another Commonwealth Government appointment.

At the time of finalising this report, a new member had not been appointed to the Tribunal. The current members of the Tribunal are:

Mr John Conde AO, President – reappointed on 19 March 2013 as Member and President for a further five years from 25 June 2013. Mr Conde was first appointed as a member of the Remuneration Tribunal on 18 June 1998. Mr Conde is Chairman of Bupa Australia Health Pty Ltd, Chairman of the Sydney Symphony Orchestra, Chairman of Cooper Energy and Deputy Chairman of Whitehaven Coal Limited. He is a Director of Dexus Property Group and Chairman of the McGrath Foundation Limited.

Mr Conde is also Chairman of the Australian Olympic Committee (NSW) Fundraising Committee and a Director of the Asian Football Confederation Asian Cup 2015 Local Organising Committee.

Positions held previously include Chairman of Destination New South Wales and associated entities, Chairman of Ausgrid (formerly EnergyAustralia), Director of BHP Billiton Limited and Excel Coal Limited, Managing Director of Broadcast Investment Holdings Pty Limited, Director of Lumley Corporation, President of the National Heart Foundation of Australia and member of the Sydney Children's Hospital Network Board.

Mr John B Prescott AC – appointed from 25 February 2010 for five years. Mr Prescott is Chairman of Aurizon Holdings Limited (formerly QR National Limited) and a member of the President's Circle, AustralAsia Centre, Asia Society. He is Global Counsellor of The Conference Board (USA) and is also a member of the Conference Board's Global Advisory Council. Mr Prescott was previously a director of

Newmont Mining Corporation and Chairman of ASC Pty Ltd (formerly Australian Submarine Corporation Pty Ltd) from 2000 to 2009 and was Managing Director and Chief Executive Officer of BHP from 1991 to 1998.

3 The work of the Tribunal

During the year the Tribunal convened on 13 occasions. This included meetings with a range of interested parties and interviews with a cross-section of the offices being reviewed. There was a significant focus on continuing a programme of meetings with a range of part-time office holders to better inform the Tribunal's review of this jurisdiction. The Tribunal expressed its conclusions in 22 determinations. The President also consulted more widely on a range of matters.

Annual adjustments

The Tribunal is required under subsections 7(1), (2), (3) and 8(1) of the Remuneration Tribunal Act to make determinations in respect of remuneration for various offices in its jurisdiction at periods of not more than one year. In fulfilling this obligation, the Tribunal examines remuneration movements in the public sector, and across the private sector more generally, as well as the economic and fiscal environment.

On 12 May 2014 the Tribunal issued a statement advising that the outcome of its annual review was that it would determine no annual adjustment to remuneration for offices in its jurisdiction. The Tribunal noted that:

The Tribunal has been briefed on the Government's recently released Workplace Bargaining Policy for new enterprise agreements in the APS and federal public sector generally. This policy indicates that pay adjustments in that sector will be predicated on clearly defined improvements in productivity.

For some months, noting the Government's policy, it has been evident that any wages movement in the APS and federal public sector will be restrained. Indeed, at its April meeting, the Tribunal's preliminary conclusion was that it would determine no annual review increase for offices in its jurisdiction from 1 July 2014.

This conclusion has been supported by a submission from the Government to the Tribunal on its annual review, received last week in advance of today's scheduled Tribunal meeting. The Government considers that parliamentarians and Commonwealth office holders should lead by example in these matters.

As part of its decision on the annual review, the Tribunal also deferred the final transitional remuneration increases for a number of offices that were due to come into effect on 1 July 2014. The transitional remuneration arrangements for those offices, including secretaries, the specified statutory offices and a small number of full-time offices, had been settled by the Tribunal in its comprehensive reviews of 2011 and 2012. However, the Tribunal concluded:

that it would be unreasonable for it to determine increases for the most senior offices in the public service when those leaders are themselves managing new enterprise agreements pursuant to the Workplace Bargaining Policy. The question of budget stringency should apply to all offices equally.

Nonetheless the Tribunal does not retreat from its assessment of the proper relative remuneration of those most senior offices. The current decision is a temporary pause in the implementation of the conclusions reached by the Tribunal in 2011 and 2012.

The full text of the Tribunal's statement is available on its website at http://remtribunal.gov.au/media/documents/2015/statements/2014-review-of-remuneration-for-holders-of-public-office-12.5.2014/Remuneration-Tribunal-Statements-Annual-Review-2014..pdf.

3.1 Full-time public offices

The framework

Under the Remuneration Tribunal Act, the Tribunal is responsible for inquiring into and determining remuneration and recreation leave for full-time public offices, and for inquiring into and determining other matters that it considers are significantly related to remuneration (s7).

The Tribunal determines full-time office holder remuneration as 'total remuneration' – a figure which covers cash salary and other benefits. The significantly related matters determined for full-time office holders are, principally, travel provisions and also some other allowances in specific cases.

The Remuneration Tribunal Act defines 'public office'. It includes all offices established by a Commonwealth law (also known as statutory offices) and appointments made under a Commonwealth law as well as (but not limited to) appointments made by the Governor-General or a minister of state which are formally referred into the Tribunal's jurisdiction by the Minister Assisting the Prime Minister for the Public Service as the Minister responsible for the Act (s3). The attributes of a 'public office' establish whether appointment to it is made on a full-time, or other, basis.

Most full-time offices are statutory offices.

During the reporting period, the Tribunal received and considered a number of submissions on remuneration, conditions and/or allowances for new and established offices. A list of new full-time public offices for which the Tribunal determined remuneration in the year to 30 June 2014 is included at Appendix 2.

As at 30 June 2014 there were 148 offices specified in the Tribunal's determination for holders of full-time offices (Determination 2014/12, made on 14 May 2014).

During 2013–14 the Tribunal continued to progress transitional remuneration levels for secretaries, the specified statutory offices and the nine full-time offices that the Tribunal considered, in its reviews of 2011 and 2012, merited significant remuneration increases. However, the final step in transition to the remuneration levels the Tribunal considers appropriate for those offices was postponed due, largely, to the current constraints on public sector remuneration. The Tribunal remains committed to its conclusions about the appropriate remuneration for these offices as outlined in its 2011 and 2012 reviews; these final adjustments have been 'paused' rather than abandoned.

A small number of offices have not yet been moved to the full-time office structure decided by the Tribunal in its 2012 review. Those offices may be subject to recommendations of the Government's Commission of Audit, or, in some cases, the Tribunal is awaiting updated information on roles and responsibilities prior to settling its final conclusions on their positioning within the structure.

The Tribunal has noted in previous years the relative remuneration movements for the Senior Executive Service (SES) of the APS. These employees are frequently the direct reports of offices in the Tribunal's jurisdiction, and increases in the remuneration for the SES relative to office holders have, over many years, resulted in the collapsing of pay differentials. The increases awarded by the Tribunal in its 2011 and 2012 reviews were, at least in part, in recognition of the importance of maintaining appropriate relativities between agency heads and their direct reports.

In May 2013 the Government introduced the APS Executive Remuneration Management Policy to assist in maintaining appropriate pay relativity between secretaries and the most senior members of their SES and other staff and to support the Government's workplace relations policy for the APS. Among other things the policy is intended to better reflect the roles and responsibilities of offices in accordance with the Tribunal's rationale in awarding pay increases to secretaries in March 2012.

The Tribunal noted the Australian Public Service Commission's *APS Remuneration Report 2013*, which detailed a lower rate of remuneration increases for SES employees than in the previous year. The increases were generally still above the adjustments awarded by the Tribunal in 2013. The Tribunal will continue to monitor these movements in the context of its annual review considerations.

In 2014 the Tribunal commenced a review of its determination in relation to compensation for loss of office, and sought comments from secretaries of selected agencies on proposed revisions to the determination. Those revisions are intended to reflect more precisely the Tribunal's policy intent in determining when such compensation should be paid. The revisions have a particular focus on office holders who are APS employees with a right of return to APS employment.

Specified statutory offices

The Tribunal is responsible for determining the remuneration of a group of full-time public offices, referred to as the specified statutory offices. These are:

- the Chief of the Defence Force
- the Commissioner of Taxation
- the Auditor-General for Australia
- the Chief Executive Officer of the Australian Customs and Border Protection Service
- the Australian Statistician.

Consistent with the Tribunal's statement of 12 May 2014, the remuneration of these offices remains unchanged with effect from 1 July 2014 (by Determination 2014/07).

At its April 2014 meeting the Tribunal decided that the provision for additional support to office holders in respect of business use of private vehicles should be removed. This decision was consistent with a March 2012 decision that removed this provision for departmental secretaries.

3.2 Part-time public offices

The framework

In addition to statutory offices, part-time offices include appointments made under a Commonwealth law, as well as (but not limited to) appointments made by the Governor-General or a minister of state which are formally referred into the Tribunal's jurisdiction by the Minister responsible for the Remuneration Tribunal Act (s3). Under the Act the Tribunal is responsible for setting the remuneration and some allowances for these public offices.

Appointments to a wide range of public offices are made on a part-time basis. These offices are very diverse and include the chairs and members of boards, councils, committees and administrative tribunals whose work may be regular or intermittent.

There are several remuneration models determined for part-time offices. The two principal ones are an annual fee, compensating in one annual figure all work done by the office holder; and a daily fee, where remuneration is paid for each day or part-day worked. The other remuneration models are a combination of the two, with daily fees covering specific activities and an annual fee covering recurring or predictable elements of the office holder's workload. A number of employing bodies have found these two models better suit the nature of their operations. In respect of part-time offices, the principal significantly related matter determined by the Tribunal is travel entitlements.

As outlined in previous annual reports, the Tribunal has been examining the remuneration arrangements and fee levels of part-time offices to assess the current and prospective suitability of those arrangements. The Tribunal's objective is to have a remuneration structure that supports the ongoing effectiveness of these offices through the attraction of people of capacity and standing, and one that reflects the levels of responsibility associated with the offices.

During the year the Tribunal concluded this review. The review proved to be complex, in part due to the differing fee models that apply and the diversity of functions, operations and responsibilities of part-time offices. During 2013 the Tribunal took the opportunity to meet with a range of individual office holders. The input from the office holders was invaluable in assisting the Tribunal to gain an insight into, among other things:

- how the employing body operated in practice
- the expertise, skills and capabilities required to perform the functions
- the time commitment required of office holders
- the motivation of experienced, capable people to accept appointments.

Overwhelmingly the concept of public good was the principal driver of office holders, not the remuneration determined for the office.

As part of the review the Tribunal also considered the part-time remuneration arrangements in place in a number of other public sector jurisdictions, both internationally and within Australia.

Among other things, the Tribunal found that:

- the wide variety of part-time offices does not lend itself to one remuneration model or a discrete set of remuneration principles
- bodies with seemingly similar functions can operate in very different ways
- the existing determination was neither easily understood nor easily applied
- the existing daily fee model was complex
- the remuneration structure provided a multitude of rates, in some cases with little difference between the individual rates
- there was no consistent ratio in fees between chairs and members
- a number of remuneration rates existed for members of audit committees
- the 'unspecified' daily fee rates (used where there is not a specific rate set for a particular office) determined by the Tribunal did not encourage employing bodies to develop submissions on remuneration of some of the offices in the Tribunal's jurisdiction
- there is no routine review of remuneration of part-time offices.

The review report, released in October 2013, set out how the Tribunal conducted the review including the matters taken into consideration in setting remuneration. It described the preliminary conclusions, proposed outcomes and invited comment or further submissions. This invitation recognised that, despite the extensive consultation undertaken, it was simply not possible, given the large number of offices (and even greater number of office holders), for the Tribunal to consult individually with, or to consider in detail, each and every office. As a result of this invitation, 21 responses were received and taken into account in finalising the review's conclusions.

The outcomes, which were implemented from 1 March 2014 (by Determination 2014/03), included:

- new fee structures (resulting in remuneration increases for most offices)
- changes to daily fee calculations
- a new simplified part-time determination.

With effect from 1 July 2014 the Tribunal implemented one 'unspecified' daily fee rate.

During the reporting period, aside from its general review, the Tribunal also considered submissions on remuneration and/or conditions for a number of individual offices. A list of new part-time public offices for which the Tribunal determined remuneration in the year to 30 June 2014 is included at Appendix 2.

As at 30 June 2014, remuneration had been determined for more than 252 bodies (Determination 2014/08, made on 14 May 2014).

3.3 Principal executive offices

The framework

The Remuneration Tribunal Act provides for the Tribunal to determine a classification structure for principal executive offices (s5(2a)) and to determine the terms and conditions applicable to each classification within the classification structure (s7(3D)).

The Minister responsible for the Act has the power to make declarations concerning principal executive offices (PEOs), having taken into account the advice of the Tribunal (s3(a)). The Minister may declare an office to be a PEO, the classification to which the PEO is assigned and the PEO's employing body (ss3(a) and (b)).

The employing body is responsible for determining the terms and conditions applying to a PEO. Any such determination must be consistent with the terms and conditions determined by the Tribunal for the classification of the office concerned (s12C) and the Tribunal's guidelines.

The Tribunal has established a total remuneration reference rate for each PEO as the basis on which an employing body is able to exercise discretion in determining remuneration. Reference rates are generally adjusted annually to reflect the outcome of the Tribunal's annual review. Employing bodies have a discretionary range of 5% above and 10% below the reference rate, although the reference rate must not be exceeded in the first 12 months of a new appointee's term without the prior approval of the Tribunal. PEOs generally also have access to performance pay of up to 15% for Bands A to C and up to 20% for Bands D and E, although in a number of cases performance pay has been absorbed into fixed remuneration, particularly in circumstances in which a Minister is the 'employing body'.

A full list of PEOs can be found on the Tribunal's website at www.remtribunal.gov.au/principalExecutiveOffices/currentDetermination/listPEO.asp.

During 2013–14 the Tribunal considered a number of submissions regarding PEOs, generally relating to reviews of remuneration and/or conditions, or changes to governance arrangements.

The Chief Executive Officer of the Aged Care Standards and Accreditation Agency was removed from the PEO jurisdiction. Remuneration for the Chief Executive Officer of its replacement body, the Australian Aged Care Quality Agency, was included in the Tribunal's determination for holders of full-time offices. One new office was added to the PEO structure – the office of Associate Productivity Commissioner.

As at 30 June 2014, there were 67 listed PEOs. The principal determination in place at that time was Determination 2013/09.

3.4 Secretaries

The framework

Under Division 4 of the Remuneration Tribunal Act, the Tribunal is responsible for setting the classification structure, specifying pay points for the classification structure and assigning each office of secretary to a classification. The Tribunal fixes the amount of remuneration that is to be paid to the Secretary of the Department of the Prime Minister and Cabinet and the Secretary of the Department of the Treasury.

Secretaries of departments other than the departments of the Prime Minister and Cabinet and the Treasury are assigned to pay points by a separate instrument made by the Secretary of the Department of the Prime Minister and Cabinet under s14(3).

The Tribunal must, from time to time, inquire into and determine the terms and conditions (other than remuneration) that are to apply to the offices of departmental secretary.

On the swearing in of the new Government, the Governor-General signed an Administrative Arrangements Order detailing changes in name, functions and responsibilities of departments of state. The changed departmental functions and responsibilities required the Tribunal to consider any subsequent impacts on its classification of offices of secretary.

The Tribunal has two roles in relation to the placement of the offices of secretary in the classification and pay structure. First, the Tribunal has to determine at which level the various offices of secretary sit within the two-level classification structure. This is a determinative function under the Act. The second role is an advisory one in which the President of the Tribunal is consulted by the Secretary of the Department of the Prime Minister and Cabinet regarding the pay point to which an office of secretary is assigned within the classification structure.

Accordingly, the Tribunal reviewed the assignment of each office of secretary to determine the level at which each new office sat within the classification structure. This required a detailed examination of the arrangements in place in departments of state prior to the election and the functional changes that were made in the Administrative Arrangements Order. The outcome was that the Tribunal determined that the office of the secretaries of the Department of Education and the Department of Employment should be classified at level 2 (the office of secretary of the former Department of Education, Employment and Workplace Relations was classified at level 1).

The determination issued by the Tribunal (Determination 2013/22) reflected this decision as well as the new departmental names of the remaining offices of secretary.

The Tribunal President was consulted by the Secretary of the Department of the Prime Minister and Cabinet regarding the pay point assignment for offices of secretary. The outcome of that process, which also involves consultation with the

Australian Public Service Commissioner, was notified in an instrument of assignment by the Secretary of the Department of the Prime Minister and Cabinet on 13 October 2013.

In accordance with existing determination provisions, appointees to offices affected by decisions to assign the office to a lower a pay point are not impacted during the term of their current appointment.

As part of its 2014 annual review process in which it determined no increase in remuneration of offices in its jurisdiction, the Tribunal decided to pause the final step in implementation of remuneration adjustments decided in its 2011 review of the office of secretary (see Determination 2014/11). Nonetheless, the Tribunal remains concerned to ensure that remuneration for secretaries is determined at the levels supported by the findings of its 2011 review. These offices are among the most demanding of all public offices, and remuneration should be commensurate with those demands. As the Tribunal reported in its *Review of the Office of Secretary Report – Part 1*:

Secretaries are at the very apex of the Australian Public Service. Prime Ministers and Ministers rely on them for the provision of public services and turn to them for strategic advice about the whole spectrum of domestic and foreign activities which define our nation, our security, our stability and our quality of life.

The work of Secretaries extends further than leading and managing the operations of specific departments because of the direct and indirect roles that they and their departments have in recommending and administering frameworks for the legal and regulatory regimes of the nation.

While some Secretaries have demonstrably wider portfolios than their colleagues – the Secretaries of the Department of the Prime Minister and Cabinet and the Department of the Treasury, for example – every Secretary handles a breadth of demands and responsibilities akin to those of the highest executive offices in the private sector.

The Tribunal will also continue to monitor remuneration of the direct reports of secretaries, to ensure there is continuing progress towards the relativities it considers appropriate for those roles. The Tribunal notes the support of the Government in introducing the APS Executive Remuneration Management Policy, which in part supports the Tribunal's view about the remuneration of direct reports of secretaries.

3.5 Judicial and related offices

The framework

The Remuneration Tribunal Act empowers the Tribunal to determine remuneration and associated entitlements for the federal judiciary, administrative tribunals and related offices in those organisations.

The extent of the Tribunal's power varies between offices. Depending on the type of office concerned, remuneration may be expressed as base (annual) salary or as 'total remuneration'. Associated entitlements may include the value attributed to the Commonwealth's superannuation contributions or superannuation support (although the Tribunal has no role in relation to the *Judges' Pensions Act 1968*), travelling allowance, Commonwealth and private vehicle costs, recreation leave, separation benefits, lump-sum payments, other benefits received by way of remuneration packaging, and minimum annual fees for part-time office holders.

The judiciary

The Tribunal determines base (annual) salary and related benefits for the chief justices and justices of the High Court of Australia, the Federal Court of Australia and the Family Court of Australia; the chief judge and other judges of the Federal Circuit Court of Australia; and judges who sit as presidents of administrative tribunals (see below). The Tribunal also determines recreation leave entitlements (but not other leave entitlements) for judges of the Federal Circuit Court of Australia.

In determining remuneration for judges, the Tribunal is mindful of subsection 72(iii) of the Constitution, which prohibits diminution of a judge's remuneration while the judge remains in office.

Administrative tribunals and other bodies

The Tribunal determines remuneration and related benefits for the non-judicial presidents, deputy presidents and members of bodies such as the Administrative Appeals Tribunal, the Australian Competition Tribunal, the Australian Law Reform Commission, the Copyright Tribunal and the National Native Title Tribunal.

Related offices

The Tribunal determines remuneration and related benefits for a range of non-judicial positions in the courts, including the chief executives of the High Court of Australia, the Federal Court of Australia, and the Family Court and Federal Circuit Court.

Remuneration for these offices is generally expressed as 'total remuneration'.

Entitlements outside the Tribunal's determinative powers

The Tribunal does not determine the entire range of employment provisions available for judicial and related offices. They may receive other entitlements outside the Tribunal's determinative powers, for instance under:

- legislation administered by the Commonwealth Attorney-General, including the Judges' Pensions Act 1968, the Judicial and Statutory Officers (Remuneration and Allowances) Act 1984 and the Judges (Long Leave Payments) Act 1979
- general Commonwealth laws concerned with employment, such as the Long Service Leave (Commonwealth Employees) Act 1976
- the authority of the relevant federal court, tribunal or administering government department.

During the year the Tribunal amended the then principal determination (Determination 2013/12) to remove a reference to an office which no longer exists (the Deputy President of the Australian Law Reform Commission) and changed the fee structure for part-time members of the Administrative Appeals Tribunal by setting annual fees for those with set work patterns. The change to the fee structure was at the request of the President of the Administrative Appeals Tribunal to provide greater flexibility to meet the business needs of the organisation.

The Tribunal's decision not to make an adjustment to the remuneration of any offices in its jurisdiction, as outlined above under 'Annual adjustments', was implemented for judicial and related offices via a new principal determination (Determination 2014/09).

Judicial Remuneration Coordination Group

The annual meeting of the Commonwealth/State Judicial Remuneration Coordination Group was held in May 2014.

Representatives from state and territory judicial remuneration tribunals attended to discuss issues of common interest relating to the remuneration of the judiciary across all jurisdictions.

3.6 Parliamentary

The framework

Parliamentary base salary

Following amendments to the relevant legislation in late 2011 and early 2012, and the making of a determination by the Tribunal in March 2012, the Tribunal determines the base salary of parliamentarians directly. Former methods of setting parliamentary salary are set out in previous annual reports.

Consistent with its responsibilities in relation to most other offices, the Tribunal is required to make new determinations in respect of base salary at periods of no more than 12 months (s8(1)(b) of the Remuneration Tribunal Act). Unlike many other Tribunal determinations, those in relation to parliamentarians are not disallowable by the Parliament. However, the Tribunal has the responsibility of explaining in writing its decisions in relation to parliamentarians. These statements of reasons are published on the Tribunal's website.

Additional salary for ministers and parliamentary office holders

Ministers of state (including the Prime Minister) and parliamentary office holders receive a parliamentary base salary plus an additional amount of salary.

The Tribunal reports annually to the Minister on the additional salary for ministers of state. The wording of the Constitution in relation to this matter means that the Tribunal cannot actually determine ministerial salaries, which are rather a matter for decision by the executive government.

The Tribunal determines the additional salary for more than 50 non-ministerial parliamentary office holders, such as the Leader and Deputy Leader of the Opposition, the presiding officers, whips, shadow ministers, and the chairs and deputy chairs of various parliamentary committees.

Additional salary in all cases is expressed as a percentage of the parliamentary base salary.

Other allowances and entitlements

The Tribunal also determines a range of allowances and entitlements for federal senators and members (including ministers). These include travelling allowance rates and travel-related provisions (for example, travel on scheduled domestic flights and car transport), electorate allowance, severance travel (for those not qualifying for a Life Gold Pass) and certain office facilities.

Entitlements outside the Tribunal's determinative powers

The Tribunal does not determine the entire range of entitlements available for members of Parliament. Matters relating to the provision of support for members of Parliament that are not within the jurisdiction of the Tribunal are decided by the Government, through the Special Minister of State, or the Parliament. The following Acts are relevant in this regard:

- Parliamentary Allowances Act 1952
- Ministers of State Act 1952

- Parliamentary Contributory Superannuation Act 1948 (although the Tribunal determines what constitutes 'parliamentary allowance' for the purposes of that Act)
- Members of Parliament (Staff) Act 1984
- Remuneration and Allowances Act 1990
- Members of Parliament (Life Gold Pass) Act 2002
- Parliamentary Superannuation Act 2004
- Parliamentary Entitlements Act 1990.

Parliamentary base salary

As obliged by its legislation, in May 2014 the Tribunal considered whether a change should be made to base salary with effect from 1 July 2014. In line with the Tribunal's decision not to make a general adjustment to the remuneration of public office holders, the Tribunal decided not to alter the remuneration for parliamentarians. As set out in principal Determination 2014/10, base salary therefore remained at \$195,130.

Additional salary for ministers and parliamentary office holders

On 19 September 2013, the Tribunal made its annual report to the relevant Minister, Senator the Hon Eric Abetz, Minister Assisting the Prime Minister for the Public Service, on whether any alterations to ministerial salaries were desirable. Report Number 1 of 2013, which expressed the additional salaries as a percentage of the parliamentary base salary, recommended no changes to the percentages originally established in 1999.

The effect of expressing additional salaries as a percentage of base salary is that the additional salaries will vary at the same time, and by the same percentage, that the base salary varies.

During the reporting period the Tribunal amended the end date of, and then removed from the principal determination, a transitional provision put in place at the time the Tribunal first set additional salary for shadow ministers. This 2012 provision recognised the larger than usual make-up of the then shadow cabinet, by extending the payment of additional salary to two further shadow ministers.

The Tribunal also increased the additional salary set for the chair and deputy chair of the Joint Standing Committee on Electoral Matters. The Tribunal found that this committee had a workload, and importance to the Australian community, that justified this increase in remuneration.

Allowances and entitlements for senators and members

Parliamentary entitlements are complex, not least arising from the fact that they are provided under multiple heads of power. Tribunal determinations cover some, but not all, parliamentary entitlements. This is to some extent based on constitutional considerations, as that document speaks of ministers and members of Parliament separately, even though ministers are members of Parliament and are thus in both

categories. Ministerial travel, for instance, is covered by the *Parliamentary Entitlements Act 1990*, while parliamentary travel generally is covered in Tribunal determinations.

The Tribunal has continued to consult with the Department of Finance, which has responsibility for most of the entitlements not determined by the Tribunal, with the aim of simplifying the entitlements. This is not in itself a straightforward task.

The principal determination governing parliamentarians' allowances and entitlements (excluding travel) is Determination 2012/04. During the year the Tribunal:

- increased the amount that members of the very largest electorates can spend on charter transport
- limited stopovers by persons travelling for the purpose of family reunion with a senator or member from Western Australia, the Northern Territory or the more remote parts of Queensland, to occasions where there is no same-day connecting flight
- specified that persons travelling to join or accompany a member or senator under family reunion travel provisions must now arrive no more than 24 hours before the senator or member, and depart no more than 24 hours after the senator or member.

Superannuation

The Tribunal's role in relation to parliamentary superannuation is very limited. The Remuneration Tribunal Act enables the Tribunal to determine that a portion of both the base salary and any additional salary, is not salary for superannuation purposes for those parliamentarians covered by the *Parliamentary Contributory Superannuation Act 1948*.

At the commencement of the financial year, the portion of base salary that did not count for 1948 Act superannuation purposes was \$40,730, meaning that a parliamentarian who is a member of the 1948 scheme received \$195,130 as base salary, but his or her notional salary for superannuation purposes was \$154,400. The figure of \$154,400 was also used to calculate the basic pensions of any retired members entitled to a pension under the 1948 Act.

The Tribunal had previously determined that the portion of additional salary that did not count for superannuation purposes was 20%. This meant that if members of the 1948 superannuation scheme were paid 16% additional salary, or \$31,221 per annum, the component of their superannuation salary relating to their additional salary was that figure less 20%, or \$24,977.

These superannuation provision calculations remain unchanged in principal Determination 2014/10.

3.7 Official travel

The framework

Under the Remuneration Tribunal Act, the Tribunal is responsible for setting travel allowances for office holders within its jurisdiction.

The general provisions for non-parliamentary office holders, including judicial offices, are set out in a single determination, which provides for different tiers of travel entitlement. The various remuneration determinations specify the travel tier applicable to an office and may also contain specific travel-related provisions for an office or a group of offices.

The Tribunal determined revised travelling allowance rates for members of Parliament (by Determination 2013/17) and other public office holders (by Determination 2013/16) with effect from 1 September 2013.

In line with normal Tribunal practice, the rates in these determinations are based on those contained in the Australian Taxation Office's (ATO's) *TD 2013/16 – Income tax:* what are the reasonable travel and overtime meal allowance expense amounts for the 2013–14 income year?

A material departure from the ATO rates applies only to members of Parliament – a single Canberra rate which is lower than the equivalent ATO rates, recognising that parliamentarians tend to make more settled accommodation arrangements in that city.

The determination for members of Parliament also includes daily expense allowances for various purposes and an allowance to be paid to the Prime Minister for each overnight stay in a place other than an official establishment or his or her home base. Changes made by the Tribunal to these allowances were informed by the changes in the ATO rates.

This determination also reflects the Tribunal's decision that when any minister, not just the Deputy Prime Minister, acts as Prime Minister, he or she will be entitled to the same travel allowance arrangements as the Prime Minister.

From 26 February 2014, the Tribunal changed some travel-related provisions for members of Parliament. These changes:

- increased the number of nights for which a member of the House of Representatives serving an electorate of between 100,000 and 999,999 square kilometres in size can claim travelling allowance for travel within his or her electorate
- made it a requirement for all parliamentarians from Western Australia and the Northern Territory, including ministers and parliamentary office holders, who wish to claim travelling allowance when they break a journey during travel to Canberra, to certify that the break in journey was caused by there being no same-day connecting flight

•	removed an unnecessary provision whereby the Second Deputy Speaker in the House of Representatives could claim travelling allowance for travel connected with his or her office.

3.8 Recreation leave

The framework

Under the Remuneration Tribunal Act, the Tribunal is responsible for determining the recreation leave entitlements of full-time holders of relevant offices, including specified statutory offices, principal executive offices and holders of non-judicial offices.

Relevant offices are those in relation to which there is a specific law of the Commonwealth (usually the Act establishing the office) which provides that the office holder has such recreation leave entitlements as are determined by the Remuneration Tribunal.

Judges, parliamentarians and part-time office holders do not have access to the recreation leave entitlements determined by the Tribunal.

There were no changes to the recreation leave entitlements of eligible office holders during the year. Broadly speaking, these office holders remain entitled to four weeks of recreation leave for each year of service.

Principal Determination 2012/11 remains in place.

3.9 Advisory functions

The framework

The Remuneration Tribunal Act requires the Tribunal to provide advice to the presiding officers of each House of Parliament before the presiding officers determine the terms and conditions, including remuneration and allowances, of a number of offices created in the *Parliamentary Service Act 1999*. Agencies also seek the Tribunal's advice on an informal or formal basis from time to time.

During 2013–14, in accordance with the requirements of the *Parliamentary Service Act 1999*, the Tribunal provided advice to the presiding officers in relation to the terms and conditions of the parliamentary librarian and the heads of parliamentary departments.

The Tribunal also advised the Minister for Foreign Affairs on the remuneration of the Director-General of the Australian Secret Intelligence Service, an office for which the Tribunal has an advisory role by virtue of subsection 21(2) of the *Intelligence Services Act 2001*.

4 Financial matters

The Tribunal is supported by a Secretariat staffed by employees of the Australian Public Service Commission (the Commission). Appendix 3 provides contact details for the Secretariat. The Tribunal's financial requirements are met through the Commission's program 1.1. There is no separate form of accounts applicable to the Tribunal.

5 Consultancies

The Commission, on behalf of the Secretariat, has an ongoing contract with Morris Walker Pty Ltd for the provision of media advisory and specialist public relations services to the Tribunal. The contract will expire in November 2015.

6 Legislative requirements

6.1 Work Health and Safety Act 2011

The Tribunal Secretariat is provided by the Commission. It is located in Commission premises and is subject to the Commission's policies and practices in relation to work health and safety. Information about the Commission's policies is available in its annual report.

6.2 Advertising and market research (Commonwealth Electoral Act 1918)

The Tribunal did not undertake any paid advertising or market research activities in the reporting year.

6.3 Environment Protection and Biodiversity Conservation Act 1999

The Tribunal Secretariat is provided by the Commission and is subject to the Commission's policies and practices in relation to meeting the requirements of the *Environment Protection and Biodiversity Conservation Act 1999*. Information about the Commission's policies is available in its annual report.

6.4 Freedom of Information Act 1982

For the purposes of freedom of information, the Remuneration Tribunal is a separate agency. Agencies subject to the *Freedom of Information Act 1982* (FOI Act) are required to publish information to the public as part of the Information Publication Scheme. This requirement is in Part II of the FOI Act and has replaced the former requirement to publish a section 8 statement in an annual report. Each agency must display on its website a plan showing what information it publishes in accordance with the Information Publication Scheme requirements.

6.5 Legislative Instruments Act 2003

Most Tribunal determinations are legislative instruments for the purposes of the *Legislative Instruments Act 2003* (LI Act). The exception is determinations relating to secretaries of departments, made under Division 4 of the Remuneration Tribunal Act. Those determinations are published in the Gazette, and on the Tribunal's website, rather than being registered under the LI Act.

All other Tribunal determinations are legislative instruments, which are provided to the Office of Parliamentary Counsel by the Tribunal for registration on the Federal Register of Legislative Instruments. The LI Act then requires the Office of Parliamentary Counsel to table a copy of the determination in each House of the Parliament within six sitting days of registration.

Subsection 7(8) of the Remuneration Tribunal Act, which provides that either House may pass a resolution disapproving a determination within 15 sitting days after the determination has been tabled, applies to all legislative instruments made by the Tribunal other than those made in relation to parliamentarians. Determinations made in relation to parliamentarians – namely those made under subsections 7(1), (1A), (2) and (2A) of the Remuneration Tribunal Act, and subsection 7(4) insofar as it relates to subsections 7(1) and (2) – are legislative instruments, but the disallowance provisions in the Remuneration Tribunal Act and the LI Act do not apply to them.

No Tribunal determinations were disallowed during the reporting period.

Appendix 1 – List of determinations and reports for 2013–14

During the reporting year, the Tribunal issued the following reports, determinations and statements. No determinations were disallowed during the year.

Copies of these documents can be obtained from:

- the tabling office of the Senate or the House of Representatives
- the Tribunal's website, www.remtribunal.gov.au
- the Federal Register of Legislative Instruments website, www.comlaw.gov.au
- the Gazette for the Secretaries Determination, www.comlaw.gov.au/gazettes.

2014/12*	Remuneration and Allowances for Holders of Full-Time Public Office
2014/11*	Departmental Secretaries – Classification Structure and Terms and Conditions
Statement	Determination 2014/10 – Members of Parliament – Base Salary, Additional Salary for Parliamentary Office Holders, and Related Matters – Reasons for Determination
2014/10*	Members of Parliament – Base Salary, Additional Salary for Parliamentary Office Holders, and Related Matters
2014/09*	Judicial and Related Offices – Remuneration and Allowances
2014/08*	Remuneration and Allowances for Holders of Part-time Public Office
2014/07*	Specified Statutory Offices – Remuneration and Allowances
Statement	2014 Review of Remuneration for Holders of Public Office
2014/06	Remuneration and Allowances for Holders of Public Office
Statement	Determination 2014/05 – Members of Parliament – Base Salary, Additional Salary for Parliamentary Office Holders, and Related Matters – Reasons for Determination
2014/05	Members of Parliament – Additional Salary for Parliamentary Office Holders
2014/04	Remuneration and Allowances for Holders of Public Office including Judicial and Related Offices
Statement	2014 Part-time Office Holder Review Statement – February 2014
2014/03*	Remuneration and Allowances for Holders of Part-Time Public Office
Statement	Determination 2014/02 – Members of Parliament – Travelling Allowance and Entitlements – Reasons for Determinations
2014/02	Members of Parliament – Travelling Allowance and Entitlements

2014/01	Remuneration and Allowances for Holders of Public Office
2013/24	Remuneration and Allowances for Holders of Public Office
2013/23	Remuneration and Allowances for Holders of Public Office
Report	Remuneration of Public Offices – Part-time Offices Report – October 2013
2013/22	Departmental Secretaries – Classification Structure and Terms and Conditions
Report	Report on Ministers of State – Salaries Additional to the Basic Parliamentary Salary (Report Number 1 of 2013)
Statement	Determination 2013/21 – Members of Parliament – Travelling Allowance
2013/21	Members of Parliament – Travelling Allowance
2013/20	Remuneration and Allowances for Holders of Public Office
Statement	Determination 2013/19 – Members of Parliament – Additional Salary for Parliamentary Office Holders – Reasons for Determination
2013/19	Members of Parliament – Additional Salary for Parliamentary Office Holders
2013/18	Remuneration and Allowances for Holders of Public Office
Statement	Determination 2013/17 – Members of Parliament – Travelling Allowance – Reasons for Determination
2013/17*	Members of Parliament – Travelling Allowance
2013/16*	Official Travel by Office Holders
2013/15	Remuneration and Allowances for Holders of Public Office including Judicial and Related Offices
	Remuneration and Allowances for Holders of Public Office including

^{*} These documents are principal determinations.

Appendix 2 – Variation to bodies/offices in 2013–14

Full-time offices

New

Asbestos Safety and Eradication Agency, Chief Executive Officer Aged Care Pricing Commissioner Australian Aged Care Quality Agency, Chief Executive Officer

Renamed

Insolvency and Trustee Service Australia now Australian Financial Security Authority Public Service Commissioner now Australian Public Service Commissioner

No longer appearing in the determination

AusAID, Director-General

Commonwealth Grants Commission, Chair (now included in the part-time determination)

Principal executive offices

New

Associate Productivity Commissioner

No longer in the principal executive offices structure

Aged Care Standards and Accreditation Agency, Chief Executive Officer – replaced by Australian Aged Care Quality Agency, Chief Executive Officer (to full-time office)

Judicial and related offices

No longer appearing in the determination

Australian Law Reform Commission, Deputy President

Part-time offices

New

Asbestos Safety and Eradication Council, Chair and Member
Australian Aged Care Quality Agency, Chair and Member
Australian Grape and Wine Authority Selection Committee, Presiding Member
Australian Institute of Health and Welfare – Ethics Committee, Chair and Member
Commonwealth Grants Commission, Chair (formally an entry in the full-time office determination)

Defence Honours and Award Appeals Tribunal, Chair and Member Prime Ministerial Advisory Council on Veterans' Mental Health, Chair and Member Prime Minister's Indigenous Advisory Council, Chair and Member

Renamed

Frontline Defence Services now Army and Air Force Canteen Service

No longer appearing in the determination

Advisory Panel on the Marketing in Australia of Infant Formula, Chair Aged Care Standards and Accreditation Agency, Chair and Member Australian Social Inclusion Board, Chair and Member Grape and Wine Research and Development Corporation, Chair and Member National Housing Supply Council, Chair Sugar Research and Development Corporation, Chair and Member Tasmanian Freight Equalisation Scheme Review Authority, Chair Wine Australia Corporation, Chair and Member Wine Australia Corporation – Selection Committee, Presiding Member

Appendix 3 – Secretariat

The Tribunal is supported by a Secretariat staffed by employees of the Australian Public Service Commission.

The Secretary to the Tribunal is Mr Patrick Palmer.

The Secretariat can be contacted by writing to:

Secretary

Remuneration Tribunal Secretariat

PO Box 281

Civic Square ACT 2608

Or via:

Telephone: (02) 6202 3930 Fax: (02) 6204 2736

Email: enquiry@remtribunal.gov.au

This annual report is available on the Tribunal's website: www.remtribunal.gov.au.

Media inquiries should be directed to:

Ms Danielle Morris

Morris Walker Pty Ltd

Telephone: (02) 6162 0021 Fax: (02) 6162 0023 Mobile: 0412 181 389

Email: <u>dmorris@morriswalker.com.au</u>