

Remuneration Tribunal

Guide to the Principal Executive Office (PEO) Structure

1. Purpose

The Guide has been developed by the Tribunal to assist employing bodies in meeting their responsibilities under the Tribunal's determination of the PEO structure. It has been revised and simplified following the Tribunal's 2018 PEO Review.

The Guide outlines key aspects of the PEO structure, including:

- the legislative framework;
- the operation of the PEO Framework, including employing body remuneration discretion, annual remuneration review arrangement and reporting arrangements to the Tribunal;
- consultation arrangements, particularly between the employing body and the PEO, and the involvement of relevant Minister(s); and
- incentive arrangements - the 'at risk' component of remuneration (performance pay).

2. Legislative framework

The *Remuneration Tribunal Act 1973* (the Act) sets out a range of powers in relation to the PEO structure. The key provisions are summarised as follows:

Section 3 sets out the definition of a PEO.

Section 3A sets out the powers of the Minister responsible for the Tribunal to:

- declare an office or appointment is a PEO
- assign the PEO to a specified classification within the classification structure determined by the Tribunal
- declare an assignment to be a temporary assignment
- fix the commencing remuneration for a PEO
- fix temporary commencing remuneration for an office.

For each declaration under section 3A the Minister must consult the Tribunal

Section 3B sets out the power of the Minister responsible for the Tribunal to declare an employing body for a PEO.

Section 5(2A) sets out the Tribunal's power to determine a PEO classification structure.

Section 7(3D) sets out the Tribunal's power to hold inquiries and determine terms and conditions (including remuneration and allowances) for a PEO.

Section 12C sets out the powers of employing bodies to determine terms and conditions (including remuneration and allowances) for a PEO consistent with those determined by the Tribunal.

3. Definition of a PEO

The Act defines a 'principal executive office' to include certain named offices, and 'any other office or appointment declared by the Minister...'. A list of the current PEOs is available on the Tribunal website - www.remtribunal.gov.au

While the Chief Executives of Commonwealth companies are usually PEOs, other public offices may also be declared to be PEOs, for example where the flexibility offered by the PEO arrangements can be managed by a governing board properly, and/or where an incentive arrangement is a necessary feature of remuneration due to market factors.

4. Establishment of a PEO

An office can be designated as a PEO through declarations made by the Minister responsible for the administration of the Act (the Minister).

If a portfolio Minister considers that a new or existing office is suitable for inclusion in the PEO structure, the portfolio Minister seeks the agreement of the Minister, who may declare:

- that a specified office or appointment is a PEO;
- the employing body responsible for the PEO; and
- that the office is assigned to a specified classification within the PEO classification structure determined by the Tribunal.

The Act also provides for the Minister to give notice of the commencing remuneration for the office.

Under the Act the Minister must seek the advice of the Tribunal for each declaration. The Tribunal also advises the Minister on commencing remuneration.

5. The employing body

The employing body will generally be the governing body of the organisation, agency or entity to which the office holder is appointed - for example, a board or council.

The employing body is responsible for managing the employment relationship with the PEO. The employing body determines terms and conditions, including remuneration and allowances, applying to the office under section 12C(1) of the Act. These terms and conditions cannot be inconsistent with the PEO framework determined by the Tribunal.

6. Responsibility to notify the Tribunal

The employing body must notify the Tribunal in writing of a PEO's terms and conditions:

- on a PEO's commencement in the structure;
- when there is any variation to PEO remuneration (including payment of an incentive arrangement, or commencement of a new appointee) with notification to be made within four weeks of such a variation;
- by 1 December each year for the preceding financial year; and
- at such other times as may reasonably be required by the Tribunal.

When advising the Tribunal of revised remuneration arrangements, employing bodies are to use the Tribunal's *pro-forma* 'Notification of Remuneration' (available on the Tribunal's website at www.remtribunal.gov.au).

7. Tribunal reporting of PEO remuneration

The Tribunal does not report publicly on the remuneration of specific PEOs given it does not determine the actual remuneration for the office. Any requests of this nature will usually be referred to the relevant agency. However it is appropriate that Ministers should be able to access information on the remuneration of PEOs in their portfolios. The Tribunal will provide such information to a Minister, on request.

It is noted that there is a number of executive remuneration annual reporting requirements under the *Public Governance, Performance and Accountability Act 2013*. Guidelines in relation to the arrangements for Commonwealth entities and Commonwealth companies can be found on the Department of Finance website www.finance.gov.au

The PEO Remuneration Framework

8. Key elements of the framework

Under the Act, the Tribunal determines and maintains the classification structure and the associated terms and conditions for PEOs. The details of the classification structure and associated terms and conditions are set out in the Tribunal's PEO Determination (the Determination). In summary:

- the classification structure comprises five classification Bands, incorporating a degree of salary overlap and providing a sound foundation for the appropriate classification of offices within the PEO structure, based on the relative scale and complexity of a job;
- the Tribunal determines, annually, the amount by which the salary Band limits are adjusted;
- the Minister sets the commencing remuneration of an office, on the advice of the Tribunal;
- the employing body makes subsequent adjustments to remuneration for the office, within the discretionary range consented to by the Tribunal; and
- remuneration is specified on a 'total remuneration' basis, and stipulates both the maximum proportion to be regarded as salary for superannuation purposes and the way superannuation is accounted for in total remuneration.

The latest classification structure can be found at [Attachment A](#).

9. The employing body's discretion

The employing body's discretion to determine remuneration must be exercised within the Tribunal's framework:

- the Tribunal establishes a total remuneration **reference rate** (generally the commencing remuneration agreed by the Minister) for each PEO, which serves as the basis on which an employing body has the Tribunal's consent to exercise discretion in determining adjustments to remuneration;

- the Tribunal adjusts the reference rate for each PEO to reflect the outcome of its annual reviews and advises employing bodies of the new reference rate for each PEO for which the employing body determines remuneration;
- employing bodies have discretion to set remuneration for PEOs within the range from ten per cent below the reference rate to five percent above the reference rate except in the first twelve months of the PEO's appointment when the reference rate must not be exceeded without the Tribunal's express consent.
- notwithstanding this flexibility, the employing body may not set a rate outside the total remuneration range for the relevant classification Band;
- salary for superannuation purposes for members of defined benefits funds may be set by the employing body at a maximum of 73 per cent of total remuneration, unless the Tribunal has specifically consented to a higher proportion. For members of accumulation funds, the Tribunal has determined that ordinary time earnings (OTE) applies;
- other benefits may be included within the total remuneration package determined by the employing body; and
- incentive pay, where available, is in addition to total remuneration. The standard maximum level of 'at risk' pay is:
 - for Bands D and E – 20 per cent of total remuneration; and
 - for Bands A to C – 15 per cent of total remuneration.

Note that some offices do not have access to additional incentive payments; some have consent to higher levels of incentives; and some have other specific arrangements such as limitations on the usual discretionary range. All variations such as these are advised to the employing body in writing.

The 'Notification of Remuneration' advice form has space for special arrangements to be included so that they can be checked against records of Tribunal consent at least once each year.

10. Applying the reference rate and discretionary range

The reference rate set by the Tribunal does not determine the actual remuneration of a PEO. The employing body needs to make a formal determination of total remuneration, consistent with the Tribunal's PEO remuneration framework.

The reference rate anchors the remuneration range within which employing bodies are able to determine remuneration. The Tribunal considers the reference rate to be the point of balance between an inexperienced appointee, on the one hand, and an office holder who, through experience, demonstrated competence and the informed and active exercise of the full and developed scope of the appointment, clearly justifies remuneration above the reference rate. In other words, the Tribunal regards the reference rate established for each office to be the appropriate level of remuneration for an experienced and competent office holder.

Where an employing body proposes to set remuneration either above or below the reference rate, that decision will need to be based on relevant

considerations, including work value and productivity, and be consistent with the discretionary range around the reference rate for the office.

In determining the value of the employment package consistent with the Tribunal's remuneration framework, employing bodies are expected to exercise prudent business judgement, reflecting the responsibilities and accountabilities of the PEO.

Relevant considerations will include (but not necessarily be restricted to):

- the work value, role and responsibilities of the office or appointment;
- that improvements in pay and conditions should be linked to productivity gains (incentive pay, where available, is the appropriate mechanism for rewarding achievement against targets in a particular year or cycle);
- the ability of an employing body to recruit and retain persons with the necessary qualities and skills; and
- other relevant factors such as adjustments to the reference rates set by the Tribunal for the office.

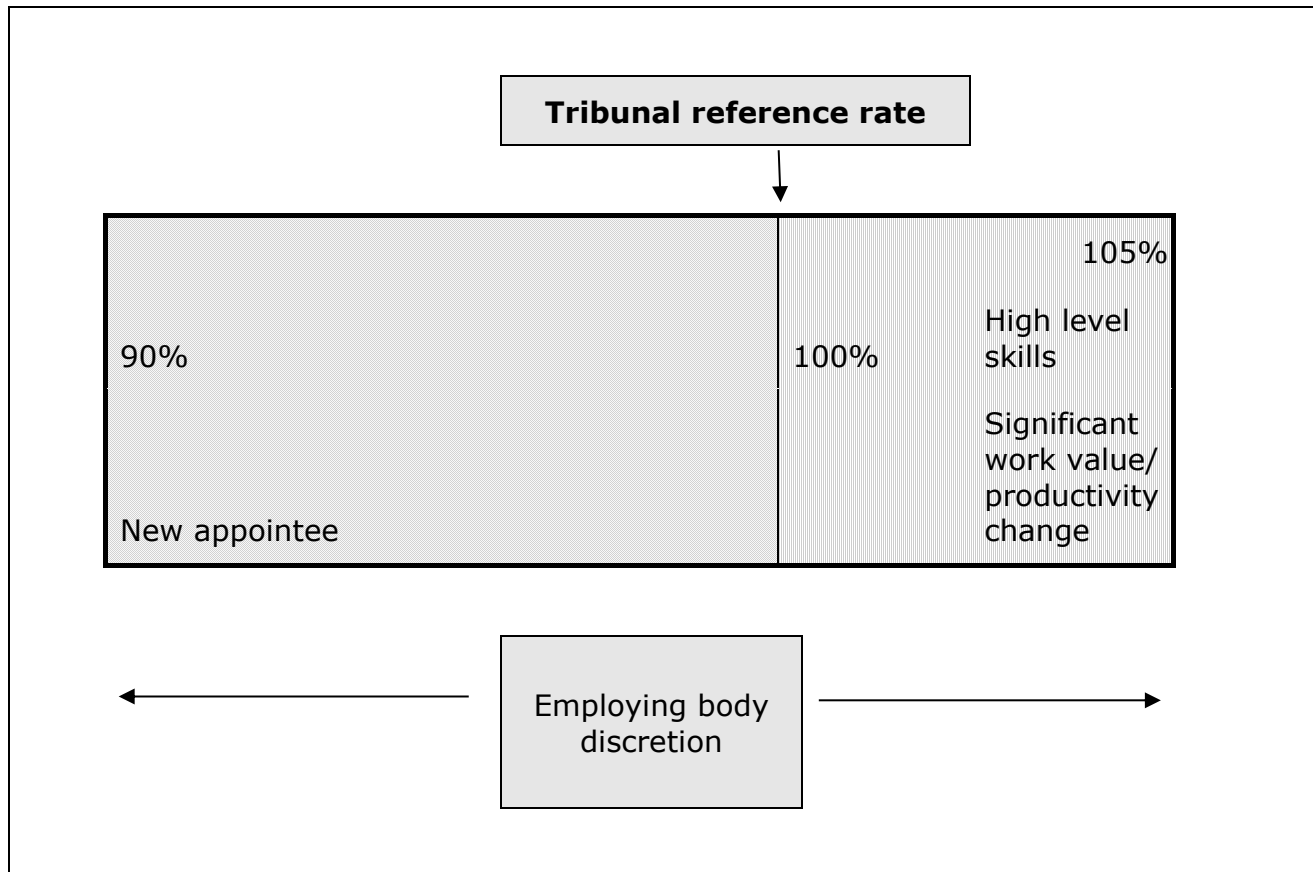
Employing bodies are able to take account of a new appointee's relative lack of familiarity with the responsibilities of a particular office by determining remuneration at up to 10 per cent below the reference rate. For the first twelve months of a new appointee's appointment, remuneration must not exceed the remuneration reference rate.

The Tribunal expects that after twelve months PEOs would be performing at the level expected for the office and be paid at the reference rate. Performance consistently above those expectations, demonstrating superior skill, experience and development of the role, would support remuneration above the reference rate.

Once the remuneration of a PEO has been determined at the upper range limit, an employing body will subsequently be able to increase it further only by up to the same percentage increase as the Tribunal's annual adjustment of the reference rate for the office. In other words, an employing body will have no further discretion to increase remuneration once it has determined remuneration at the available range limit (that is, 5 per cent above the reference rate) until the reference rate is increased by the Tribunal.

Should an employing body consider that some additional scope for adjusting remuneration for an office is justified, it would need to seek the Tribunal's agreement. Any submission to the Tribunal in this regard will need to specify clearly the factors considered to justify a departure from the remuneration range for the office.

Figure 1: Operating Total Remuneration Range



11. Consultation when remuneration is reviewed

The Tribunal considers it beneficial for employing bodies to discuss remuneration matters with the relevant PEO. Such consultation is consistent with the establishment of more direct relationships on terms and conditions, one of the essential features underpinning the PEO structure.

It is a matter for individual Ministers and employing bodies within their portfolios to consider the extent to which the responsible Minister is to be consulted about remuneration strategy and decisions by the employing body.

However, employing bodies must report to their portfolio ministers at least annually on PEO remuneration, as required by the *Public Governance Performance and Accountability Act 2013* and *Public Governance Performance and Accountability Rule 2014*.

Where changes to the roles and responsibilities of an office result from changes to legislation or policy, the Tribunal should be advised of the changes and where appropriate a submission should be made regarding future remuneration for the office.

If reclassification to a different Band within the structure is proposed, the portfolio Minister will need to seek the approval of the Minister responsible for the Tribunal. The Tribunal should be included in any such proposal and correspondence, as the Minister is required to seek its advice.

Guidelines on submissions to the Tribunal are available on the Tribunal's website and assistance is available from the Tribunal's Secretariat.

12. Incentive pay – *only applicable to those PEOs with access to an 'at risk' component*

Where a PEO is entitled to receive incentive pay, it is to be made available in accordance with these Guidelines.

Performance based remuneration is not a device to provide salary supplementation to office holders. It should not be applied or administered in this way.

The 'at risk' component provides a mechanism to focus executives on achievement of challenging short term targets and strategic initiatives, aligned to business objectives.

In the public sector context, fixed pay is usually a larger proportion of attainable remuneration than in the private sector, and 'at risk' pay is generally limited to short term incentives. Longer term incentives, where used, take the form of deferred short term incentives rather than the shareholder alignment mechanisms available in the private sector. Where the Tribunal has consented to a higher maximum attainable 'at risk' component than the standard rates included in the determination, it may also expect some level of deferred vesting dependent on the achievement of longer term objectives.

In that context, the Tribunal expects employing bodies to establish a robust and transparent incentive arrangement in which both short term targets and sustained performance are recognised and rewarded and retention of high performing executives is encouraged.

Employing bodies should set out their performance expectations clearly, including target and stretch objectives, periods for review and the nature and level of consultation that will take place in the performance assessment processes. Clearly established performance assessment arrangements ensure accountability and transparency of incentive payment decisions.

- The Tribunal expects employing bodies to determine behavioural gateways to be assessed as a pre-condition to participation in the incentive arrangements and also assess the office holder's contribution to: both short and long-term financial and operational outcomes;
- strategic objectives and deliverables identified in government expectations, stakeholder engagement and business planning processes;
- achievement of development and growth outcomes, supporting the longer term goals and objectives of the organisation; and
- meeting any legislative requirements of the office.

They should incorporate, as far as is practicable, verifiable measures for assessing achievement of specified targets, along with qualitative measures of performance. With a balanced scorecard framework and a rigorous assessment process, employing bodies can determine the level of incentive payment to be made within the prescribed limit for the relevant Band.

The employing body is not required to consult with the Tribunal in relation to incentive pay awarded to an office holder, but should notify the Tribunal of decisions relating to incentive payments.

Note that the remuneration used to calculate incentive pay is the total remuneration that applied to the office holder on the last day of the performance assessment period, not that which applies on the day when the incentive pay is approved.

13. Transparency of remuneration decisions

Employing bodies are expected to comply with legislated executive remuneration reporting requirements. Employing bodies should anticipate that shareholders and the community will expect executive remuneration arrangements to demonstrate high standards of transparency, reasonableness in levels of remuneration, and incentive arrangements that reflect sustained performance.

14. Notional employer superannuation contribution

Employing bodies are responsible for determining the 'salary for superannuation purposes' for office holders who are members of defined benefit superannuation schemes, up to a maximum of 73 per cent of total remuneration, unless specific consent is given to a higher maximum percentage.

The notional employer superannuation contribution rate, for the purposes of calculating components of total remuneration for an office holder who is a member of a Commonwealth defined benefit scheme, is deemed to be 15.4 per cent of the office holder's superannuation salary. However, employing bodies may deduct a lesser amount where the employing body holds an actuarial opinion or documentary evidence that the relevant defined benefit fund only requires the lesser amount of contribution from the employing body, with the difference able to be returned to the relevant PEO.

For PEOs who are members of accumulation superannuation schemes, the minimum employer superannuation contribution will be the amount required to avoid a charge under the *Superannuation Guarantee (Administration) Act 1992*. The Tribunal has determined that OTE applies to those PEOs. This provides a cap on the level of employer contributions required (the 'maximum contribution base') and PEOs can make additional contributions through salary packing arrangements if they choose to do so.

15. Leave

The Tribunal has determined basic levels of leave entitlements that apply to PEOs. The administration of leave, and determination of leave other than that included in the determination, is a matter for employing bodies. Employing bodies may not grant additional annual leave or long service leave.

16. Travel, loss of office and other matters determined by the Tribunal

Where the Tribunal has determined a matter, or provided specific consent for the employing body to determine a matter, the employing body has no further discretion on that matter.

17. Background

The PEO framework is intended to provide some flexibility in setting the remuneration of office holders, while maintaining broad levels of consistency within the classification structure and terms and conditions set by the Tribunal.

The Government first created the PEO structure when it introduced reform measures for Government Business Enterprises (GBEs) in 1988. The designation of a Chief Executive as a PEO allowed the Board of a GBE to set remuneration for that office. Boards were expected, however, to consult the Tribunal before any remuneration changes were implemented.

The *Public Employment (Consequential and Transitional) Amendment Act 1999* varied the *Remuneration Tribunal Act 1973* (the Act) to make provision for the Tribunal to determine a classification structure for PEOs, and for employing bodies to determine terms and conditions. In December 1999, the Tribunal created the PEO Classification Structure via a Determination. In May 2001 the Act was amended to strengthen the integrity of the PEO Structure, and to ensure that employing bodies were bound to operate within the framework set by the Tribunal, unless there was consent to depart from that framework.

In 2005, following an extensive review, the Tribunal established the framework and discretionary arrangements that have continued since that time.

The Tribunal's 2019 PEO Review confirmed that the structure and associated terms and conditions have been working effectively. Consistent with this, in finalising the review, the Tribunal maintained the five Band structure, and

- continued the linkage between agency productivity improvement, individual achievement and PEO remuneration;
- updated the remuneration ranges for each classification; and
- updated these guidelines.

18. Further Information and Contacts

- PEO Determination (<https://www.remtribunal.gov.au/principalexecutive-offices>).
- [Notification of Remuneration](#).
- Remuneration Tribunal's homepage: <https://www.remtribunal.gov.au/>
- Remuneration Tribunal Secretariat Telephone: (02) 6202 3930.

**Remuneration Tribunal
7 December 2020**

Attachment A

New PEO Band structure

Band	Range	Rationale
E	From \$570,000	The most senior offices, including heads of large agencies with commercial responsibilities
D	\$400,000 - \$650,000	Heads of agencies with significant size and complexity, equating to Austrade, NDIA and Bureau of Meteorology, or requiring significant, high value expertise
C	\$300,000 - \$460,000	Roles with at least the breadth and complexity of responsibilities of a Deputy Secretary, including heads of medium-sized agencies and specialists with high value expertise
B	\$220,000 - \$345,000	Heads of small agencies or agencies with limited scope, specialists operating in limited environments
A	Up to \$240,000	Specialists with specific functions, sometimes operating across jurisdictions but with limited scope