



Remuneration Tribunal (Principal Executive Offices—Classification Structure and Terms and Conditions) Determination (No. 2) 2023

We, the members of the Remuneration Tribunal, make the following determination.

Dated 28 August 2023

John Conde AO
President

Heather Zampatti
Member

Stephen Conry AM
Member

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Part 1—Preliminary

1 Name

This instrument is the *Remuneration Tribunal (Principal Executive Offices—Classification Structure and Terms and Conditions) Determination (No. 2) 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2023.	1 July 2023

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 When this instrument takes effect

This instrument takes effect at the start of 1 July 2023.

4 Authority

This instrument is made under subsection 5(2A) of the *Remuneration Tribunal Act 1973*.

5 Determination supersedes previous determination

This instrument supersedes the *Remuneration Tribunal (Principal Executive Offices—Classification Structure and Terms and Conditions) Determination (No. 1) 2023*.

6 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 7

7 Simplified outline of this instrument

This instrument sets out the classification structure for principal executive offices.

A principal executive office is an office or appointment:

- (a) set out in the definition of *principal executive office* in subsection 3(1) of the Act; or
- (b) declared by the Minister to be a principal executive office under subsection 3A(1) of the Act.

The Minister may assign a principal executive office to a classification within the classification structure (see subsection 3A(2) of the Act), may fix the commencing remuneration for a principal executive office (see subsections 3A(4) and (5) of the Act) and may declare an employing body for a principal executive office (see section 3B of the Act).

Under section 12C of the Act, the employing body for a principal executive office may determine the terms and conditions (including remuneration and allowances) that apply to the office. The terms and conditions must not be inconsistent with this instrument, except with the written consent of the Tribunal (see subsection 12C(2) of the Act).

This instrument is set out as follows:

- Part 2 provides for the classification structure and related matters, including the table of bands of remuneration (see Table 2A);
- Part 3 deals with superannuation;
- Part 4 deals with vehicles and vehicle parking;
- Part 5 deals with allowances, including allowances for relocation, accommodation and reunion;
- Part 6 deals with official travel, and applies the official travel determination to PEOs;
- Part 7 deals with leave of absence;
- Part 8 deals with compensation for early loss of office.

8 Definitions

- Note: A number of expressions used in this instrument are defined in the Act, including the following:
- (a) employing body;
 - (b) principal executive office;
 - (c) Tribunal.

In this instrument:

Act means the *Remuneration Tribunal Act 1973*.

agency, of a PEO, means:

- (a) the agency to which the PEO is attached; or
- (b) if the PEO is not attached to an agency—the portfolio Department.

APS employment means employment as an APS employee.

band means a classification set out as a band of total remuneration in an item of Table 2A.

Note: Subsection 3A(2) of the Act provides for the Minister to assign a principal executive office to a classification within the classification structure.

benefit means:

- (a) any non-monetary benefit provided at the employer's expense to or for the benefit of a PEO as a personal benefit, including:
 - (i) a vehicle (see section 22); and
 - (ii) vehicle parking (see section 23); and
- (b) any other benefit received by way of remuneration packaging (see section 18).

CSS (short for Commonwealth Superannuation Scheme) has the same meaning as in the *Superannuation Act 1976*.

DFRDB (short for Defence Force Retirement and Death Benefits) means the scheme established by the *Defence Force Retirement and Death Benefits Act 1973*.

employer superannuation contribution for a PEO means:

- (a) if the PEO is a member of the CSS, PSS, DFRDB or MSBS—the value attributed to the employer superannuation contribution under subsection 21(1), (2), (3) or (4); or
- (b) if the PEO is a member of PSSAP—the amount worked out under paragraph 21(5)(b); or
- (c) if the PEO is a member of another superannuation fund—the amount worked out under subsection 21(6).

Note 1: A PEO's employer superannuation contribution is part of the PEO's total remuneration (see the definition of **total remuneration** in this section).

Note 2: Superannuation contributions made as a result of remuneration packaging do not form part of a PEO's employer superannuation contribution (see section 18).

fringe benefits tax means fringe benefits tax (within the meaning of the *Fringe Benefits Tax Assessment Act 1986* as it applies of its own force or because of the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986*).

MSBS (short for Military Superannuation and Benefits Scheme) has the same meaning as **Scheme** has in the *Military Superannuation and Benefits Act 1991*.

office locality, in relation to a PEO, means the geographic locality of the PEO's usual place of work on official business.

Section 9

official travel determination means the *Remuneration Tribunal (Official Travel) Determination 2022* (or any determination that supersedes that determination).

PEO (short for principal executive officer) means the holder of a principal executive office.

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

PPR locality (short for principal place of residence locality) has the meaning given by subsection 25(1).

PSS (short for Public Sector Superannuation Scheme) has the same meaning as **Public Sector Superannuation Scheme** has in the *Superannuation Act 1990*.

PSSAP (short for Public Sector Superannuation Accumulation Plan) has the same meaning as in the *Superannuation Act 2005*.

reference salary means the PEO's total remuneration, less the amount of the employer superannuation contribution for the PEO.

superannuation salary, for a PEO who is a member of the CSS, PSS, DFRDB or MSBS, is the amount determined under section 20.

Table 2A means the table in section 12 setting out the classification structure for principal executive offices.

total remuneration means the total value, calculated at the total cost to the employer, of:

- (a) salary and allowances; and
- (b) lump sum payments; and
- (c) the employer superannuation contribution; and
- (d) benefits;

but does not include:

- (e) performance pay under section 19; or
- (f) allowances under Part 5; or
- (g) travel expenses and allowances under the official travel determination (see Part 6 of this instrument); or
- (h) payment in lieu of recreation or long service leave under Part 7; or
- (i) compensation for early loss of office under Part 8.

9 Advice to the Tribunal

A PEO's employing body must notify the Tribunal in writing of the 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 the employing body, and at such other times as may reasonably be required by the Tribunal.

10 Agency policies

A PEO's employing body may elect to apply to the PEO the same policies and practices as the body does for other employees, except where they are not in accordance with this instrument.

11 Guidelines

The Tribunal may issue written guidelines from time to time to assist employing bodies in the administration of this instrument.

Section 12

Part 2—Classification and remuneration, and related matters

12 Classification structure

The following table sets out the classification structure for principal executive offices.

Column 1	Column 2
Classification	Total remuneration range
PEO band A	up to \$256,470
PEO band B	\$235,100 to \$368,670
PEO band C	\$320,580 to \$491,560
PEO band D	\$427,440 to \$694,600
PEO band E	from \$609,110

13 Remuneration

A PEO's employing body must determine the value for the following components of the PEO's remuneration, consistently with this instrument:

- (a) total remuneration;
- (b) performance pay;
- (c) any allowances under Part 5.

Note 1: Under subsection 3A(4) of the Act, the Minister may fix the commencing remuneration for a principal executive office by giving a notice to the employing body. The employing body's initial determination of remuneration must be consistent with the notice.

Note 2: Under subsection 12C(2) of the Act, a PEO's employing body must not determine terms and conditions inconsistent with this instrument, unless the Tribunal provides written consent. The Tribunal intends to provide written advice to employing bodies each financial year setting out the extent to which any pay variations may occur without further consideration by the Tribunal, and provide consent for employing bodies to act in keeping with that advice.

14 Setting remuneration

In determining the value of the terms and conditions for a PEO, the PEO's employing body is expected to exercise prudent business judgement commensurate with the responsibilities and accountabilities of the office.

Relevant considerations include (but are not limited to) the following:

- (a) the work value, role and responsibilities of the office;
- (b) that improvements in pay and conditions should be linked to productivity gains;
- (c) the ability of the employing body to recruit and retain persons with the necessary qualities and skills;

-
- (d) other relevant factors such as adjustments to the remuneration rates for the principal executive office classification structure.

15 Adjustment of remuneration

- (1) Total remuneration determined by a PEO's employing body may not be varied, except with the written consent of the Tribunal.
- (2) If a variation is consented to, the total remuneration determined by the employing body must not be outside the range for the PEO's band set out in Table 2A.

16 No retrospectivity

A PEO's employing body may not backdate any variation in the PEO's remuneration.

17 Part-time work

- (1) If a PEO's employer approves the PEO to perform the duties of the office on a part-time basis, the superannuation salary, total remuneration and performance pay are to be calculated on a pro-rata basis in accordance with the proportion of full-time hours worked.
- (2) If the proposed hours are less than 60% of the full-time hours, prior agreement of the Tribunal to the remuneration level is required.

18 Remuneration packaging

- (1) Subject to this Part and Part 3, a PEO may elect to receive the benefit of the PEO's remuneration as salary or a combination of salary and benefits if:
 - (a) the election is consistent with relevant taxation laws and rulings or guidelines applicable to salary packaging schemes issued by the Australian Taxation Office; and
 - (b) providing the benefit would not result in a cost to the employer (including in relation to any fringe benefits tax) that would not be incurred if the PEO received the remuneration in the form of salary.
- (2) To avoid doubt, a superannuation contribution made as a result of an election by a PEO under subsection (1) does not form part of the employer superannuation contribution for the PEO.

19 Performance pay

- (1) Unless the Tribunal has consented to the removal of any entitlement to performance pay, a PEO's employing body may establish a performance pay scheme under which the PEO may be paid a lump sum based on assessment of the performance of the PEO over a 12-month cycle.

Maximum

- (2) The maximum amount available for a 12-month cycle must not exceed:

Section 19

- (a) for an office in band A, B or C—15% of total remuneration; or
- (b) for an office in band D or E—20% of total remuneration.

Guidelines

- (3) Performance pay must operate in accordance with any written guidelines issued by the Tribunal from time to time.

Part 3—Superannuation

20 Superannuation salary

- (1) The *superannuation salary* of a PEO who is a member of the CSS, PSS, DFRDB or MSBS is the amount determined by the PEO's employing body.
- (2) The amount must not be more than 73% of the PEO's total remuneration.

21 Employer superannuation contribution

Commonwealth Superannuation Scheme

- (1) For a PEO who is a member of the CSS:
 - (a) the PEO's annual rate of salary for the purposes of the CSS is the PEO's superannuation salary; and
 - (b) for the purposes of paragraph (a) of the definition of *employer superannuation contribution* in section 8, the value attributed to the employer superannuation contribution for the PEO is an amount equal to 15.4% of the PEO's superannuation salary.

Note: For the *superannuation salary* of a PEO who is a member of the CSS, see section 20.

Public Sector Superannuation Scheme

- (2) For a PEO who is a member of the PSS:
 - (a) the PEO's basic salary for the purposes of the PSS is the PEO's superannuation salary; and
 - (b) the amount of the PEO's recognised allowances for the purposes of the PSS is nil; and
 - (c) for the purposes of paragraph (a) of the definition of *employer superannuation contribution* in section 8, the value attributed to the employer superannuation contribution for the PEO is an amount equal to 15.4% of the PEO's superannuation salary.

Note: For the *superannuation salary* of a PEO who is a member of the PSS, see section 20.

Defence Force Retirement and Death Benefits

- (3) For a PEO who is a member of the DFRDB:
 - (a) the PEO's annual rate of salary for the purposes of the DFRDB is the PEO's superannuation salary; and
 - (b) for the purposes of paragraph (a) of the definition of *employer superannuation contribution* in section 8, the value attributed to the employer superannuation contribution for the PEO is an amount equal to 15.4% of the PEO's superannuation salary.

Note: For the *superannuation salary* of a PEO who is a member of the DFRDB, see section 20.

Section 21

Military Superannuation and Benefits Scheme

- (4) For a PEO who is a member of the MSBS:
- (a) the PEO's annual rate of salary for the purposes of the MSBS is the PEO's superannuation salary; and
 - (b) for the purposes of paragraph (a) of the definition of **employer superannuation contribution** in section 8, the value attributed to the employer superannuation contribution for the PEO is an amount equal to 15.4% of the PEO's superannuation salary.

Note: For the **superannuation salary** of a PEO who is a member of the MSBS, see section 20.

Public Sector Superannuation Accumulation Plan

- (5) For a PEO who is a member of PSSAP:
- (a) the PEO's superannuation salary for the purposes of the *Superannuation (PSSAP) Trust Deed* is the PEO's ordinary time earnings (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*); and
 - (b) for the purposes of paragraph (b) of the definition of **employer superannuation contribution** in section 8, the employer superannuation contribution for the PEO is 15.4% of the PEO's ordinary time earnings (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*).

Other superannuation funds

- (6) For a PEO who is a member of any other superannuation fund, the employer superannuation contribution is the minimum contribution that would, under section 23 of the *Superannuation Guarantee (Administration) Act 1992*, reduce the charge percentage for that PEO to nil.

No cash in lieu

- (7) The value attributed to the employer superannuation contribution under this section is referable to a non-salary component of total remuneration and may not be the subject of an election to take an equivalent amount of salary instead.

Part 4—Vehicles

22 Vehicles

- (1) If a PEO:
 - (a) accepts an offer of a vehicle owned or leased by the PEO’s agency for private use; or
 - (b) has access to a vehicle owned or leased by the PEO’s agency for private use;the actual cost of the vehicle to the agency (including fringe benefits tax), less a reasonable amount (if any) reflecting business usage patterns, is taken to be a benefit.
- (2) For the purposes of subsection (1):
 - (a) if the annual business kilometres are less than 5,000—the business usage amount is to be based on the “cents per kilometre” method; or
 - (b) if the annual business kilometres are 5,000 or more:
 - (i) any business usage amount is to be assessed on log book records for at least a 12 week representative period; and
 - (ii) the percentage of business use to total kilometres travelled per year is to be applied to the total cost of the vehicle.

23 Vehicle parking

If 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 is taken to be a benefit.

Part 5—Allowances

24 Geographic relocation

A PEO's employing body may approve reimbursement of expenses (other than ongoing expenses) incurred by the PEO on geographic relocation following appointment as a PEO, in accordance with agency policies and procedures.

25 Accommodation allowance

- (1) A PEO's employing body may, with the written consent of the Tribunal, determine that the PEO is eligible to receive an accommodation allowance (subject to expenditure and to any conditions specified in the Tribunal's consent) while the PEO has a principal place of residence in a locality (the *PPR locality*) other than the office locality.

Commercial accommodation

- (2) For the purposes of subsection (1), if the PEO is in commercial accommodation in the office locality, the following are qualifying accommodation costs:
 - (a) the costs of the commercial accommodation;
 - (b) settling-in costs (including one-off utility connection costs);
 - (c) if the commercial accommodation does not include cooking facilities—the cost of meals.

Private, non-commercial accommodation

- (3) For the purposes of subsection (1), if the PEO is in private, non-commercial accommodation (such as the home of a family member or friend) in the office locality, the costs of the private, non-commercial accommodation are qualifying accommodation costs.

Exclusions

- (4) Assistance is not payable under this section while the PEO lives in premises owned by the PEO in the office locality.
- (5) A PEO is not eligible to access travel allowance entitlements under the official travel determination in the PPR locality or the office locality while the PEO remains eligible to receive assistance under this section.

26 Reunion travel

- (1) A PEO's employing body may, with the written consent of the Tribunal, determine that the PEO may receive travel costs (subject to any conditions specified in the consent) for travel back to the PPR locality for the purpose of family reunion.
- (2) If the employing body is satisfied that the workload and responsibilities of the principal executive office prevent the PEO from travelling to the PPR locality for reunion purposes, the costs of reunion travel by the PEO's partner, or a child or

children of the PEO or of the PEO's partner, who resides at the PEO's principal place of residence, can be funded under subsection (1) (subject to any conditions specified in the Tribunal's consent).

- (3) Travel by a person other than the PEO funded in accordance with subsection (2) must be at economy class, and only for direct travel between the PPR locality and the office locality.

27 Remote localities

If the Tribunal provides written consent, a PEO's employing body may determine that the PEO is eligible to receive benefits or allowances in recognition of the geographic remoteness of the office locality (subject to any conditions specified in the consent).

Part 6—Official travel

28 Official travel

The official travel determination applies to principal executive offices, subject to any exclusions or limitations in this instrument.

29 Travel tier

- (1) For the purposes of the official travel determination, the travel tier for a principal executive office is that advised by the Tribunal to the employing body for the office.
- (2) If no such advice is provided:
 - (a) travel tier 2 applies to offices in bands A, B and C; and
 - (b) travel tier 1 applies to offices in bands D and E.

Part 7—Leave

30 Leave of absence

- (1) A PEO is entitled to the following types and amounts of leave of absence:
 - (a) absence 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*;
 - (d) other paid and unpaid leave, including sick and carers leave, at the discretion of the employing body.

Note: A PEO may also be eligible for paid and unpaid leave under the *Maternity Leave (Commonwealth Employees) Act 1973*.

- (2) The payment in lieu of annual leave and long service leave, on cessation, is to be calculated based on the PEO's reference salary.

Part 8—Compensation for early loss of office

31 Entitlement to compensation for loss of office

- (1) A PEO is entitled to compensation for loss of office if the PEO's appointment is terminated prior to the expiry of the term of the PEO's appointment, unless an exclusion event occurs.
- (2) The compensation payable is calculated on the basis of one-third of 1 month of reference salary for each month of service remaining in the term of the PEO's appointment with:
 - (a) a minimum payment of 4 months of reference salary; and
 - (b) a maximum payment of a year of reference salary.
- (3) The Commonwealth may calculate service remaining by excluding any period of Commonwealth service in alternative employment to be performed during the remaining term of the appointment where the alternative employment commenced immediately after the termination. The Commonwealth may require the PEO to sign a release in return for the payment.

Exclusion event

- (4) An **exclusion event** is any of the following events:
 - (a) the PEO resigns or retires;
 - (b) the PEO serves the PEO's full term of appointment;
 - (c) the PEO's appointment terminates prematurely for reasons of misbehaviour or unsatisfactory performance;
 - (d) the PEO's appointment terminates prematurely because the PEO is not able to perform the duties of the office because of physical or mental incapacity;
 - (e) the PEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the PEO's creditors; or
 - (iv) makes an assignment of the PEO's remuneration for the benefit of the PEO's creditors;
 - (f) the PEO is offered suitable alternative employment (including in a Commonwealth company (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) or Commonwealth entity (within the meaning of that Act)).
- (5) Without limiting paragraph (4)(f), an offer of suitable alternative employment is taken to have been made to the PEO if the PEO is:
 - (a) on leave without pay or some other form of authorised absence from APS employment; and
 - (b) able to resume that employment following the termination of the PEO's appointment.

32 Comprehensive coverage

This Part deals comprehensively with the subject of payments related to a PEO ceasing to hold office, regardless of the basis upon which the PEO ceases to hold office.

Schedule 1—Repeals

Remuneration Tribunal (Principal Executive Offices—Classification Structure and Terms and Conditions) Determination (No. 1) 2023

1 The whole of the instrument

Repeal the instrument.