SUBMISSION TO REMUNERATION TRIBUNAL REVIEW OF DEPARTMENTAL SECRETARIES' REMUNERATION

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The Tribunal's review of remuneration arrangements for departmental secretaries, and the planned later review of arrangements for full-time public offices, are important. Wide public confidence in the remuneration of senior public servants needs to be regained while the system must also achieve its fundamental purpose of attracting and retaining the skills and calibre needed.

Current arrangements for departmental secretaries continue to draw on the Tribunal's deeply flawed 2010-11 review. Despite the Tribunal's Consultation Paper's claim that it 'does not use private sector positions as comparators' (p6), current arrangements draw on that review's 'best fit comparators' which explicitly refer to executives in the ASX top 100 ranked companies. There is every reason, therefore, to question whether the current arrangements are appropriate, effective and fit for purpose.

The current arrangements are also not helped by the absence of a clear and consistent framework for the remuneration of deputy secretaries and other senior executives within the Australian Public Service, from whom most departmental secretaries are appointed. It will be important, therefore, for the Tribunal to work closely with the APS Commission to identify remuneration arrangements for senior executives across the APS, including departmental secretaries, that are appropriate, effective and fit for purpose, and operate consistently.

This submission does not include any specific recommendations about the remuneration of secretaries, but addresses the methodology the Tribunal should use. It does so by responding to the five questions listed in the Tribunal's Consultation Paper.

1. **Does the current remuneration framework – including classification structure and total remuneration approach – remain appropriate?**

Classification structure

It is tempting to distinguish between secretaries' responsibilities in terms of their budgets or numbers of employees, but it is evident that Governments apply different criteria when determining portfolio responsibilities through the Administrative Arrangements Order. For example, the Department of Housing and Regional Development established in 1994 was much smaller in terms of its budget and staffing than the former Department of Health and Community Services from which it was mostly drawn, yet its minister was the Deputy Prime Minister who, along with the Cabinet, was determined that the Commonwealth take a leading role in urban and regional development and housing (I was the secretary from 1994 to 1996).

It is also relevant that it is common for secretaries to be transferred between portfolios, particularly when a new AAO is issued or there is a ministerial reshuffle. Such transfers may involve a significant shift in budget or staffing responsibilities, but no fundamental shift in the secretaries' responsibilities in serving Cabinet ministers and managing programs which the Government identified through the AAO as worthy of having Cabinet status. Again, my experience serves as an example as I moved from the small Housing and Regional Development Department to the huge Health and Family Services Department in 1996, continuing in the slightly smaller Department of Health and Aged Care in 1998.

I suggest that most secretaries be classified at the same level of responsibility (and remuneration), based on their having portfolio responsibilities and serving Cabinet ministers. This would also avoid the current complexity of special remuneration arrangements when a secretary is transferred from one portfolio to another with a lower classification. Such an arrangement would also remove the need for the current provision allowing the PM&C Secretary and APS Commissioner to assign pay points within two classification levels, a provision that dilutes the independent role of the Tribunal with a risk of decisions based in part on individual characteristics rather than exclusively on the office concerned.

There is a strong case for a lower classification for a secretary who does not serve a Cabinet minister. That is commonly the case for the Secretary of the Veterans' Affairs Department.

There is also a strong case for the Secretary of the Department of Prime Minister and Cabinet and the Secretary of the Treasury to have a higher classification than other portfolio secretaries given their more extensive whole-of-government responsibilities. I have no strong view on distinguishing between these two top secretaries (ie retaining the current Levels 1 and 2, or merging these into a single level).

Quite a few other secretaries have some whole-of-government responsibilities (eg Finance, Attorney-General) but I do not consider these sufficient to justify a different classification to that of other portfolio secretaries.

There is perhaps a case for distinguishing the responsibilities of the Secretaries of Defence and Foreign Affairs and Trade from those of other portfolios, based on their international roles. That has on occasion been the practice in the past. It is rare for Defence to be headed by someone without extensive experience as a secretary elsewhere. That is not the case for the DFAT Secretary, but DFAT is usually headed by someone with extensive diplomatic experience and often complemented by specialist roles in PM&C.

> **Recommendation1: The classification structure should have most portfolio secretaries at the same level, with a lower level for any secretary without a Cabinet minister; PM&C and Treasury should have a higher classification; consideration could be given to classifying Defence and DFAT above that of other portfolio secretaries but lower than that of PM&C and Treasury.**

Total remuneration

The total remuneration approach adopted by the Tribunal is supported. That involves including benefits such as superannuation and vehicles for personal use, but not any additional benefits aimed to compensate for particular employment costs.

While some secretaries are still members of closed defined-benefit superannuation schemes, some formula for calculating the value involved is needed. This is a complex issue and requires expert advice; the calculation should not vary the trade-off individuals considered when offered the choice to retain membership of the defined benefit scheme or transfer to the replacement defined-contribution scheme.

The Tribunal should continue to oppose performance pay for secretaries. I have written about the problems associated with such pay for secretaries[1] particularly the risk of excessive political pressure. This is not to deny the importance of performance management of secretaries led by the APS Commissioner and PM&C Secretary.

> **Recommendation 2: The Tribunal should retain its total remuneration approach, and not suggest the reintroduction of performance pay.**

2. **Do current levels of secretaries' remuneration appropriately reflect the work value, responsibilities, whole-of-government impact and non-financial benefits associated with the role?**

For the most part, the factors listed in the Consultation Paper (p5) which the Tribunal says it takes into account are appropriate. Remuneration must be sufficient to attract and retain people of calibre, but they must also be publicly justifiable.

Work value and responsibilities

'Work value' is a slippery concept. As indicated in the response to the first question, the Government's view of the importance of different Commonwealth functions as indicated by its Administrative Order Arrangements is more important for secretaries than departmental budgets or staffing levels.

In practice, work value is best addressed by examining the responsibilities of secretaries relative to those of their direct reports and those which the secretaries held before being appointed.

A significant problem, however. Is the lack of robust classification and work-level standards applying across the APS, particularly amongst the SES. While the APS Executive Remuneration Management Policy applies a 65% 'notional amount' ceiling to maintain a meaningful gap between SES Band 3 remuneration and the lowest pay point in the Secretary structure, the wide variation that still exists in remuneration at SES Band 3 means that the gap varies. There is little evidence also of coherence between the gaps applying between APS classifications further down (within the SES and between EL2 and SES Band 1) and the gap to secretaries. A 2022 review commissioned by the Secretaries Board and the APS Commission did not help at all[2], suggesting a reduction in classification levels including within the SES that was contrary to previous more substantial investigations of structures and classifications and made no mention of failed experiments[3].

The 65% ceiling might appear to provide a gap of around 54% between the SES Band 3 pay and secretaries' pay but, after taking into account the lack of tenure of secretaries (and the 20% compensation provided for that), the effective gap is around 30% (and of course varies). The APS Commission's 2024 Remuneration Report suggests gaps between EL2, SES Band 1, SES Band 2 and SES Band 3 averaging around 49%, 27% and 35% respectively (the large gap between EL2 and SES

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[1] Podger, Andrew, 2007. 'What Really Happens: Departmental Secretary Appointments, Contracts and Performance Pay in the Australian Public Service', *Australian Journal of Public Administration*, Volume 66 Issue 2, June 2007, pp131-147

[2] APS Hierarchy and Classification Review, APS Commission

[3] See Podger, Andrew. 2022. 'Junk it and start again', *Canberra Times Public Sector Informant*, 29 August 2022

Band 1 is probably driven by the access the SES have to a government car). Gaps between non-SES classifications are generally much smaller.

Another factor the Tribunal (and APS Commission) should consider is the growth in the number of SES positions in recent years, particularly in SES Band 3 positions. This growth seems likely to have diminished the gap in effective responsibilities between the different SES bands and widened the gap between deputies and secretaries.

Looking back over my own career, my judgment would be that the gaps in responsibilities from EL2 to SES Band 3 were about equal between each level, but the gap to secretary was substantially greater as reflected in the provisions concerning secretaries' responsibilities in the Public Service Act and PGPA Act in particular. Gaps from EL2 to SES Band 3 (mostly over 30%) appear to me to be excessive, while a 30% gap between SES Band 3 and Secretary may be about right (leaving aside compensation for loss of tenure).

Non-financial benefits

The Consultation Paper draws attention to the significant non-financial rewards that are not directly replicable in the private sector such as the opportunity to contribute to national policy, influence reform agendas and serve the Australian community. The list of factors on p6 also refers to 'non-financial rewards' including status, profile, influence and professional standing.

Academic literature more commonly – and appropriately in my view - refers to 'public service motivation' (PSM)[4] rather than 'non-financial rewards', emphasising the altruistic interest involved rather than any benefit to the individual. The literature demonstrates the importance of public service motivation not only to attraction and retention but also to the values that drive public servants. It reflects the idea of 'giving' or 'giving back' to the community. And it reinforces the importance of disregarding relativities with the private sector (unless career paths commonly cross between the two).

It is difficult to measure the 'benefits' involved in terms of the extent to which PSM might offset the need for financial remuneration to attract and retain needed skills, but some idea of its possible scale may be gained by careful study of the career patterns of senior public servants, including from before and after the major increases in remuneration of secretaries between 2011 and 2014. The Tribunal might explore this in detail but my impression is that:

- There were few voluntary separations of secretaries before those pay increases.
- Those secretaries who have moved to high-paying private sector positions have done so no less often since 2014 than before, and usually after completing significant terms as secretary.
- Few secretaries are recruited from outside the public sector, and those that are commonly have prior public sector experience and are motivated to contribute again to public service notwithstanding a reduction in pay.

Judgments therefore need to be made. First, remuneration needs to be fair and reasonable given the responsibilities involved. That requires close consideration of relativities with those of secretaries' direct reports (and the SES more generally). It is also important not to exploit the expectation of PSM to the point where there is evidence of adverse impact on attraction and retention. But the

[4] There has been an explosion of literature on public service motivation internationally since the publication of Perry, J. L., & Wise, L. R. (1990). 'The Motivational Bases of Public Service'. *Public Administration Review*, 50(3), 367–373. DOI: 10.2307/976618

community does have an expectation of PSM amongst its public servants and there is unease about excessive self-interest.

While the Consultation Paper highlights the methodological challenges involved in international comparisons, such comparisons may assist judgments about community expectations. The fact that Australia appears to be an outlier in terms of remuneration for top public servants surely contributes to the current unease. The Tribunal should at least present some data on international comparisons, albeit with explanations of the different contexts involved.

> **Recommendation 3: In determining secretaries' remuneration, the Tribunal should give weight to the responsibilities involved relative to those of secretaries' direct reports. The Tribunal should also work closely with the APS Commission to ensure a coherent framework for executive remuneration across the APS reflecting the responsibilities of different levels of executive and firmer work level standards, replacing the current APS Executive Remuneration Management Policy.**
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> **Recommendation 4: The Tribunal should also give more weight to 'public service motivation', reviewing closely the actual career patterns of secretaries and international practice in the setting of remuneration for top public servants, and confirming the inappropriateness of private sector comparisons.**

3. **Do the additional benefits secretaries may receive remain appropriate, or should they be changed?**

The case for accommodation support and reunion travel to differ from the provisions for other full-time offices is not clear. A requirement to demonstrate exceptional circumstances would seem to be reasonable. There can be serious problems when secretaries attempt to work remotely from Canberra and the benefits available should not generally facilitate that.

I have no comments on the settling-in and settling-out allowances.

The loss of office arrangements relate to the term 'contract' arrangements for secretaries introduced in 1994. They complement the 20% pay increase provided since 1994 in compensation for the loss of tenure involved. There is a strong case for reviewing the term 'contract' arrangements and the associated 20% pay increase compensation and loss of office arrangements.

Changes to secretary appointment and termination arrangements were recommended by the 2019 Thodey Review of the APS; these were explicitly endorsed in 2023 by the Robodebt Royal Commission which was concerned about excessive responsiveness to ministers and failure to provide frank and fearless advice. While there were signs in 2023 that the Albanese Government would act on these recommendations[5], no changes have yet been made. My own view is that a more fundamental change should be made, effectively reversing the 1994 measure[6]. This would still allow secretaries to be moved from positions (and such moves to be canvassed at least every five years), but with reasonable steps taken to identify an equivalent position in the event of a move (performance being taken into account). My strong suspicion is that most current secretaries would

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[5] See Senator Gallagher's APS Reform speech in November 2023.

[6] Podger, Andrew, 2024. 'Discussion Paper: Further Reform of the Australian Public Service', Centre for Social Policy Research, Australian National University, July 2024. (https://csrm.cass.anu.edu.au/research/publications/discussion-paper-further-reform-australian-public-service)

prefer such an arrangement, accepting the consequential downward adjustment to their remuneration, but the Tribunal could test that with secretaries.

The Tribunal should indicate how it might adjust the 20% pay increase compensation, and loss of office arrangements, in the event of any modifications to current appointment, termination and tenure arrangements (including less significant changes than my preferred reversal of the 1994 measures). In the event of no change, the current compensation and loss of office arrangements should continue. They differ from those of other full-time offices who, in most cases, have protections constraining termination.

The current salary maintenance provision would not generally be needed if most secretaries were at the same level receiving the same remuneration (as per Recommendation 1 above). Some such arrangement would be needed under my preferred tenure arrangements.

> **Recommendation 5: Accommodation support and reunion travel should be available only when exceptional circumstances have been demonstrated, as required for other full-time offices.**
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> **Recommendation 5: The Tribunal should indicate how it might adjust the 20% pay increase compensation for loss of tenure in the event of changes to secretaries' appointment, termination and tenure arrangements. The Tribunal might also canvass the views of current secretaries, as well as the Government, about such possible changes.**

4. **Are remuneration relativities between secretaries and other senior public sector roles set at an appropriate level? If not, what adjustments should be considered?**

The relativities between secretaries and SES Band 3 are discussed under Question 2. This relativity is of the utmost importance. First, however, there needs to be a consistent APS-wide practice applied to SES remuneration, along with firmer controls on the number of SES positions. A 30% margin between SES Band 3 and secretaries (not including the 20% compensation for loss of tenure) might then be about right. This is probably similar to the current 65% 'notional amount' ceiling but based upon a standard SES Band 3 remuneration level well below what a number of SES Band 3 officers are currently receiving (and lower still if the margins from EL2 to SES Band 3 were reduced).

It is difficult to judge whether the remuneration relativity between secretaries and other Commonwealth public office roles is appropriate particularly in advance of the Tribunal's planned review of the remuneration of those offices. That review will need to address similar issues to those raised in this submission, particularly concerning the role of PSM and relativities with direct reports. There will also be different considerations in many cases given the different career paths often involved.

Where career paths are similar, current differences are hard to explain. For example, it is difficult to explain the difference between the remuneration of the Reserve Bank Governor and the Treasury Secretary. This is not to suggest that the latter's remuneration be increased; equally it may be that the remuneration of the Reserve Bank Governor has not, since the 1980s, taken sufficient account of PSM and has instead drawn inappropriately on private sector comparisons.

Where career paths are different, attraction and retention of the attributes required may demand different, sometimes higher, remuneration for the public offices concerned. In those circumstances it may be tempting to suggest an increase in the relevant secretary's pay because the portfolio secretary's responsibilities are wider and include coordination of those public offices for budget and other purposes. That seems to be the Tribunal's existing approach. But the case is weak being only based upon the notion of 'fairness' across occupations rather than substantial issues of attraction and retention for each occupation (and career path).

More important for secretaries' remuneration are relativities with non-Commonwealth public sector roles from which secretaries are from time to time recruited. Attraction (and retention) requires competitive levels of remuneration. Commonwealth secretary roles have greater national and international responsibilities which may suggest they are broader than those of State and Territory secretaries (or directors-general) though the latter's service delivery responsibilities are generally much greater; at most, a small margin above the latter's remuneration may be justified. There is a problem, however, in that jurisdictions are continually looking to each other to set the lead and the robustness of the processes used is not always clear. The Tribunal will need to consider the processes used as well as the actual remuneration provided when examining relativities with the roles of State and Territory directors-general.

> **Recommendation 6: The Tribunal should not assume that secretaries' remuneration should be no lower than that of public offices within their portfolios, but accept that different career paths may justify different remuneration including in some cases higher remuneration than that of secretaries.**
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> **Recommendation 7: The Tribunal should use State and Territory directors-general as relevant comparators, but be careful to assess the robustness of the processes used to set the comparators' remuneration.**

5. **If changes to secretary remuneration or related entitlements are made, what implementation approach should the Tribunal adopt?**

The Tribunal may need to sequence implementation, particularly to facilitate related changes to APS remuneration. The Tribunal should also seek the view of the Government on secretaries' appointment, termination and tenure arrangements.

More weight given to PSM as suggested in this submission is likely to lead to remuneration below that currently provided to most secretaries. Any such adjustment should apply immediately to new secretary appointees, including current secretaries receiving new appointments.

There is a case, however, for preserving current remuneration for current secretaries until the end of their current appointment terms consistent with the 'contracts' they entered into. If a change in those 'contract' tenure arrangements is involved, the associated change in remuneration should occur immediately.

> **Recommendation 8: The Tribunal should work with the APS Commission on the sequencing of changes to the remuneration of secretaries and the SES.**
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> **Recommendation 9: Any adjustment to secretaries remuneration should apply immediately to new secretary appointees including current secretaries receiving new appointments. In the event the Tribunal reduces remuneration of some or all secretaries, the current remuneration should be preserved for current secretaries until the completion of their appointment term. In the event of a reduction because of changes to tenure arrangements, that should apply immediately to any current secretaries affected.**

Conclusion

The Tribunal's review of secretaries' remuneration provides the opportunity to correct the methodology used by the Tribunal more than a decade ago when it last undertook a major review. In particular, the Tribunal can now meet its own claim of not using private sector comparators.

It is also an opportunity to give closer consideration to public service motivation while also ensuring that remuneration reflects the responsibilities of secretaries and is sufficient to attract and retain the high calibre required. It may also offer the opportunity to re-examine tenure arrangements and associated remuneration reinforcing other recent action to strengthen integrity in the APS.

It is therefore the opportunity to restore public confidence in the appropriateness of the remuneration secretaries receive.

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