



Remuneration Tribunal

Remuneration of Public Offices

Specified Statutory Offices

Report

Overview

This Statement sets out the conclusions arising from the Tribunal's review of the Specified Statutory Offices.

It reflects the Tribunal's intended adjustments in the remuneration of each individual Specified Statutory Office. The adjustments, when fully in place, will, in the Tribunal's view, simply establish remuneration arrangements that are appropriate both for each office and relative to that of the employees for which each is responsible.

The Tribunal's intention is to determine the transition path - including the commencement date - with the same date of effect as the determination that it makes in respect of Secretaries.

There are five Specified Statutory Offices (SSOs). Each is singular; each has demanding responsibilities; each is invested with a high degree of autonomy.

In each case individuals of outstanding dedication and ability are required. The functions for which they are responsible are central to effective federal public administration and the consequences for the nation of serious errors of judgement in the exercise of their duties would be severe. Each also is responsible for representing the interests of Australia in their field internationally.

The five SSOs are:

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

Background

The Tribunal has determined remuneration for these public offices, and their predecessors, for many years.

Each has always been amongst the most senior public offices in the federal public sector. In the Tribunal's judgement that standing continues.

The enactment of the *Public Service Act 1999* removed the office of Secretary from the Tribunal's determinative jurisdiction.

The Tribunal, however, continued to be responsible for determining the remuneration of the Specified Statutory Offices.

The Tribunal foreshadowed its intention to review these offices some time ago¹. In view of the broad historical remuneration alignment between the SSO group and Secretaries of Departments, the Tribunal decided that its report on the SSO group should be published contemporaneously with its final report on Secretaries.

The Tribunal published its Part I Report of its Review of the Office of Secretary in March 2010². Part II – which deals with the remuneration of Secretaries – is being published at the same time as the Tribunal issues this Report.

In arriving at its conclusions on appropriate remuneration for each individual SSO, the Tribunal has taken account of the remuneration arrangements, including classification structure, it has foreshadowed for Secretaries.

The Specified Statutory Offices

In brief, the attributes of these offices are as follows:

1. The Chief of the Defence Force (CDF)

The CDF has primary responsibility for the command of the Australian Defence Force; is the principal military adviser to the Minister and provides advice on matters that relate to military activity, including military operations; and commands the 57,700 members of the permanent Defence Force and its 24,600 reserves.

These responsibilities are exercised in the complex circumstances of defence capability management, equipment acquisition and operations. It is fundamentally important to the effectiveness of the defence function that the CDF works closely and effectively with the Secretary of the Department of Defence under the prevailing 'diarchy' arrangements.

¹ Remuneration Tribunal - Annual Report - 2006-07 – Overview.

² Remuneration Tribunal - Review of the Office of Secretary -

<http://www.remtribunal.gov.au/statementsreports/default.asp?menu=Sec8&switch=on>

2. The Commissioner of Taxation

The Commissioner of Taxation administers a wide range of revenue and superannuation legislation and is the chief executive of the Australian Taxation Office (which has some 22,000 staff distributed across Australia). The Commissioner has a separate and distinct role as the Registrar of the Australian Business Register.

The range of legislation administered is extremely wide. As well as income tax, it includes capital gains tax; fringe benefits tax; goods and services tax; wine equalisation tax; luxury car tax; excise duty; petroleum resource rent tax; fuel grants and benefits schemes; aspects of superannuation, including the superannuation guarantee, small superannuation accounts, lost members' register, superannuation co-contribution and self managed superannuation funds; the Australian Business Number and the Australian Business Register; and tax file numbers. To say the least, just as tax arrangements in all manifestations are complex and extensive, so are the Commissioner's responsibilities.

The ATO implements, on average, 100 new legislative measures annually and makes Commonwealth payments in the vicinity of \$70 billion (including income tax refunds; GST input tax credits; tax offsets; as well as fuel tax credits).

In a report in 2008, the Joint Committee of Public Accounts and Audit (JCPAA) stated:

'It could be argued that of all statutory authorities, the ATO has the most significant and wide ranging relationship with the community, involving people both as individuals and also where they may be participants in business or non-profit organisations or as tax professionals.'

3. The Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service

The CEO is responsible for the effective management of the Australian Customs and Border Protection Service. It has over 5000 staff engaged in its functions in offices around Australia and overseas.

Once confined to the customs function, the addition of its border protection responsibilities has extended its role significantly.

This expanded focus is intended to meet the complex border security challenges of the future by providing unified control and direction and a single point of accountability.

The agency's primary accountability is to manage the risks to Australia's border through intelligence-led, risk-based interventions that place an increasing emphasis on working proactively as part of a layered approach to border management.

The agency is required to provide leadership by supporting the development of the Australian Government's strategic border management plan. Close working relationships with a range of other agencies underline the significance of cross-agency action and support so as to ensure that the Australian Government's investment in customs and border protection initiatives is optimised.

At the same time, the agency must continue to facilitate legitimate trade and travel; deliver industry assistance including through Australia's anti-dumping and countervailing tariff concession schemes; and collect border-related revenue and statistics.

4. The Auditor-General for Australia

The Auditor-General is an independent officer of the Parliament. The office is principally accountable for making a significant contribution to the system of public accountability.

The Australian National Audit Office (ANAO), of which the Auditor-General is the chief executive, provides the Parliament with an independent assessment of selected areas of public administration, and assurance about public sector financial reporting, administration and accountability.

The ANAO performs the financial statement audits of all Australian Government controlled entities; it expects to issue some 250 financial statement audit opinions each year. Given the diversity and scale of the agencies that comprise the federal public administration, this is a complex and challenging task. However, under the Auditor-General, the ANAO also conducts some fifty independent performance audits and assurance reviews annually to provide information on the administration of government programs to the Parliament and the Executive.

5. The Australian Statistician

The Australian Statistician leads the Australian Bureau of Statistics, Australia's national statistical agency. The fact that s51(xi) of the Constitution refers, specifically, to the Commonwealth's power to legislate with respect to census and statistics indicates that those who framed the Constitution recognised that this function should be ascribed national priority. The *Census and Statistics Act 1905* was one of the early post-Federation enactments; the then Commonwealth Bureau of Census and Statistics was established in December 1905 as a result.

The census and statistics functions have become a critical, albeit often under-appreciated element of federal public administration. That such significant functions should have done so is a credit to the Australian Statistician and the Bureau.

However, in important respects, it understates their significance.

Its indices are relied on by governments, businesses, institutions and individuals. One need only read the regular Statements on Monetary Policy issued by the Reserve Bank of Australia or the economic policy papers of the Australian Treasury to appreciate the reliance of these key agencies - like many others - on the statistics published by the Australian Bureau of Statistics under the auspices of the Australian Statistician. Its readings of various dimensions of the domestic economy - whether it be GDP; CPI; contributions to GDP growth; labour productivity; activity in various sectors of the economy; household consumption growth and household finances; dwelling and population growth; exports and imports - are vital facts upon which conclusions of national significance are drawn.

Not only is the Australian Statistician responsible for federal statistical services; by arrangements with state governments, the Bureau also provides statistical services to them.

Notable developments in the roles and responsibilities of the SSO Group

In significant respects, the foregoing observations, and the assessments compiled by Egan Associates, do not do justice to the range and scale of the matters with which these offices deal and the dynamic circumstances within which they must operate. New and significant developments are a continuous feature of their respective areas of responsibility.

The operational strength of the Australian Defence Force has increased by over 13% since 2000. The significant contribution of the Australian Defence Force to Australia's security and emergency responses has reinforced the criticality of CDF's role in sustaining operations. The Australian Defence Force has had to support significant concurrent deployments in a total 18 overseas and domestic operations, with the associated cultural and security complexities, in a single year.

The recent history of the Australian Taxation Office has been notable for the continuous and significant expansion of its functions. Over the past decade, the ATO has taken up responsibility for administering major aspects of Australia's superannuation system and the Australian Business Register. By 2010 the Commissioner of Taxation had responsibilities under 39 separate Acts of Parliament. Its continuing technological development has allowed online lodgements and registrations, and improved accessibility to rulings and publications. External scrutiny also increased significantly with the appointment of an Inspector-General of Taxation to examine the conduct of the ATO in administering tax laws. More recently the JCPAA stated its intention to become the central monitoring and scrutiny body within Parliament for the ATO

The threat of terrorism has had a significant bearing on Customs. It has taken on an enhanced role in supporting Australia's counter-terrorism and counter-proliferation efforts and has increased its pre-arrival screening of air passengers significantly. In 2008, it became responsible for ensuring a coordinated response to the resurgent threat to Australia's borders from maritime people smuggling. Consistent with its wider responsibilities, the Australian Customs and Border Protection Service provides analysis and intelligence fusion, and coordination of international deterrence and disruption strategies, surveillance and on-water response to maritime people smugglers.

The Auditor-General's powers and independence were enhanced significantly by the *Auditor-General Act 1997*. A 2010 JCPAA inquiry into the 1997 Act recommended further expansion of the Auditor-General's role and this proposition has been taken up. An amending Bill recently passed by the Parliament has given the Auditor-General power, in certain circumstances, to audit Commonwealth partners who are in receipt of Commonwealth funds for a particular purpose, and to audit agency key performance indicators.

The Australian Statistician, while overseeing internal improvements to streamline and make more accessible, more quickly, the huge volumes of data accumulated by the Bureau, continues to develop more sophisticated and reliable collection and dissemination methodologies. This year saw the conduct of the 5 yearly

Census of Population and Housing, which represents the largest regular logistical project undertaken in Australia.

The Tribunal's Review

In its review of the SSO group, the Tribunal was mindful of long-standing remuneration relativities between Secretaries and individual SSOs. In this regard, the Tribunal was concerned, first, to reach conclusions for Secretaries about an appropriate classification structure and associated remuneration. It considered that the broad similarities in the roles and responsibilities of the individual SSOs and those of Secretaries would enable it to establish appropriate remuneration arrangements for each SSO.

However, the Tribunal was also concerned to test the underlying hypothesis of continuing broad equivalence between the two groups of offices, bearing in mind the detailed insights it had developed into the roles and responsibilities of Secretaries as an integral part of its review of those offices.

In order to do this, the Tribunal:

- informed itself on the roles of the positions, studied their history and also met with the then current appointee to each Specified Statutory Office so as to inform itself about the particular demands of each office; and
- as in the case of Secretaries of Departments, commissioned Mr John Egan, of Egan Associates, to review the work value of these offices and their remuneration. Having assisted the Tribunal in its review of the office of Secretary and having participated in the interviews with each SSO, Mr Egan was well-placed to make recommendations about remuneration for each.

The Egan Associates' Report

In essence, the Egan Associates' report supported the conclusion that there continued to be broad general equivalence of the roles and responsibilities of the individual SSOs across the remuneration range proposed by the Tribunal for the upper and lower classifications of Secretary.

In this context, in his assessment of the work value of these offices, Mr Egan's report to the Tribunal included the following observations³:

"Given the past general nexus established between SSOs and Secretaries of Commonwealth Departments and following upon a comprehensive review of the work value of Department Secretaries I decided in working with members of the Remuneration Tribunal it would be prudent, if practicable, to develop either a parallel statement of classification levels for SSOs or adopt similar assessment tools to allocate the SSOs to the classifications developed for the Office of Secretary offering suggestions of refinement to the extent relevant.

³ Egan Associates - Review of Work Value and Remuneration for Australian Government Specified Statutory Offices – p5-6

“Following an assessment of the factors which provided input to the work value assessment I formed the view that the positions could be responsibly aligned in work value terms to the majority of Department Secretaries, although the nature of the accountability of the individual Statutory Officeholders in most respects was different from that of a Department Secretary, particularly in relation to the criticality of policy development, the direct stewardship and/or involvement of a Minister or series of Ministers, as well as the nature of representation. It was acknowledged in this context that the Chief of Defence Force, participating in a diarchy with the Secretary for the Department of Defence and given the sensitivity of Australia’s international engagement in theatres of war and peacekeeping initiatives, has a constant liaison with the Minister and is a key advisor to the National Security Committee of Cabinet.

“In considering the relative rank of the positions reviewed, regard was had to the scale of the Specified Statutory Office, including budget, revenue accountability, assets managed, number of staff directed and the geographic spread of deployed staff. Some consideration was given to the diversity and complexity of administered legislation and considerable focus was placed on the relative scope and importance of the demands of the position of SSO in terms of leadership, commercial considerations, policy formulation and advice to Government, entity-specific expertise, its breadth and complexity. The criticality and scope of representation in the diverse array of stakeholder communities, both domestic and international, was a further consideration, as was the scope for independent action, the consequence of error of judgement on behalf of the SSO and the Office’s scrutiny by Parliament or the Cabinet. Having regard to these elements and the factors taken into account in the establishment of the work value levels for the positions of Secretary, each of the SSO roles was ranked and a discussion with members of the Remuneration Tribunal followed as to the alignment of those positions to the classification levels embraced for the Office of Secretary.

“While acknowledging the substantive nature of the accountability of the Chief of Defence Force recognition was also given to the existence of the diarchy where much of the accountability, other than that for the deployment of uniformed members of the Defence Force, was shared with the Department Secretary. In this context its budget approximating \$23 billion was the subject of stewardship under the diarchy. The Tax Office’s budget of approximately \$17 billion was the most proximate to that of the Defence portfolio, with other budgets being more modest, though Customs and Border Protection Services was in excess of \$1 billion, the Bureau of Statistics in excess of \$400 million and the Auditor-General less than \$100 million. I also acknowledged the revenue collection role of the Australian Taxation Office and Customs.

“Staff numbers ranged from less than 500 to more than 50,000 and while the ATO had a highly significant role on behalf of Government in collecting revenue, the strategy for revenue maximisation rested elsewhere, other than to the extent that the control of legislation under the administration of

the ATO was retained primarily by Treasury and the Department of Finance and Deregulation.

"On balance, notwithstanding the current relativities between SSOs, I took the view that the CDF and the Commissioner of Taxation, while occupying roles quite different from those of Department Secretary, were deemed to be broadly aligned to level 1 Secretary positions. The other three SSOs were seen as similarly aligned to level 2 Secretary positions."

The Tribunal endorses these conclusions and the reasoning leading to them.

As a result of its review, however, the Tribunal considers that there are differences between these offices and the office of Secretary notwithstanding the points of broad equivalence.

Attachment 1 to Chapter 9 of the Tribunal's Part I Report of its Review of the Office of Secretary set out the particulars of the terms of appointment and termination of certain of the SSOs. Those arrangements demonstrate that, apart from the evident qualitative differences between an office of Secretary and any of the SSOs, there are material statutory distinctions between these offices and Secretaries.

Moreover, the Tribunal notes that the review has concluded that there are differences in the 'weight' of the roles and responsibilities of each of these offices that are not accommodated adequately by the current pay structure which has only two levels.

The Tribunal's Conclusions

The Tribunal has concluded that adjustments in the remuneration of the individual SSO's are warranted.

The Tribunal, in commissioning Egan Associates, sought advice about appropriate remuneration taking into account the wider market, including comparable private sector positions. As the Tribunal noted in its July 2009 submission to the Productivity Commission's inquiry into executive remuneration in Australia:

"The responsibilities of the most senior full-time office holders, and those of each Specified Statutory Officer, are significant. The management demands, alone, that some office holders must meet are at the very least the equivalent of those of all but the largest private sector enterprises. Other functions, while less focused on direct management responsibilities, are fundamental to the proper operation of the regulatory infrastructure that underpins the nation's economic well-being. The Tribunal wonders if any senior office in any private sector entity exercises comparable responsibilities or is subject to like levels of accountability."

The Tribunal is conscious that the remuneration of public sector offices should not be driven by private sector remuneration practices. Nonetheless, remuneration should be consistent with the responsibilities of the office and sufficient to ensure that government is able to appoint capable people to them.

In addressing the matter of remuneration, Egan Associates expressed the following view:

"The reward levels, while reflective of the accountabilities assumed by each SSO, are in part predicated on reward arrangements in the broader field of public sector employment, among senior executives in professional firms and in industry where there is a degree of commonality in relation to position accountability. It is acknowledged that each of the Specified Statutory Offices reviewed are different in respect of their purpose and the specific attributes which might be called upon by the Government in choosing a candidate to fulfil the role of SSO.

"Notwithstanding the above, and recognising the significant discount to the private sector and a recommendation that the remuneration levels represent total remuneration and are not subject to an annual performance award, it is our view that the pay ranges portrayed should enable the Tribunal to determine appropriate levels of fixed remuneration (TFR) for each of the five SSOs."

The Tribunal, concurs, generally, with this assessment.

However, notwithstanding the "*significant discount to the private sector*" in the remuneration proposals to which the Egan Associates report refers, the Tribunal considers that, in the case of these offices - as in the case of Secretaries of Departments - remuneration should be further tempered.

Consistent with its conclusions in respect of salary for superannuation purposes (Base Salary) for Secretaries, the Tribunal also considers that the salary for superannuation purposes for each of the SSOs should be reduced from the present levels to 70% as part of the transition to the final Total Remuneration (TR) amounts. This will be effected in stages - 'base salary' will be 72% of TR from the date of the initial adjustment; 71% from 1 July 2012; and 70% from 1 January 2013. These reduced percentage salaries for superannuation purposes are shown in the following table as "Base Salary".

The Tribunal intends to determine the following total remuneration amounts and transition arrangements for these offices with the same date of effect as the determination that it makes in respect of Secretaries.

The Tribunal would not propose to adjust further the remuneration of these offices prior to the application of its 2013 annual adjustment.

The Tribunal intends, in future, to include the individual SSOs in the Tribunal determination specifying remuneration and allowances for holders of full-time public office.

| Dates of Effect | | | | | |
|--|------------|------------|------------|------------|-----------------|
| Initial Adjustment | 1 Jul 2012 | 1 Jan 2013 | 1 Jul 2013 | 1 Jan 2014 | 1 Jul 2014 |
| Chief of the Defence Force | | | | | |
| Transition TR rates | | | | | Final TR |
| 612,500 | 646,000 | 679,500 | 713,000 | 746,500 | 780,000 |
| Base Salary (salary for superannuation purposes) | | | | | |
| Transition Rates | | | | | Final |
| 441,000 | 458,660 | 475,650 | 499,100 | 522,550 | 546,000 |
| Commissioner of Taxation | | | | | |
| Transition TR rates | | | | | Final TR |
| 580,000 | 630,000 | 665,500 | 693,000 | 720,500 | 740,000 |
| Base Salary (salary for superannuation purposes) | | | | | |
| Transition Rates | | | | | Final |
| 417,600 | 447,300 | 465,850 | 485,100 | 504,350 | 518,000 |
| CEO of Australian Customs & Border Protection Service | | | | | |
| Transition TR rates | | | | | Final TR |
| 575,000 | 600,000 | 625,000 | 650,000 | 675,000 | 700,000 |
| Base Salary (salary for superannuation purposes) | | | | | |
| Transition Rates | | | | | Final |
| 414,000 | 426,000 | 437,500 | 455,000 | 472,500 | 490,000 |
| Auditor-General for Australia Australian Statistician | | | | | |
| Transition TR rates | | | | | Final TR |
| 572,500 | 593,000 | 613,500 | 634,000 | 654,500 | 675,000 |
| Base Salary (salary for superannuation purposes) | | | | | |
| Transition Rates | | | | | Final |
| 412,200 | 421,030 | 429,450 | 443,800 | 458,150 | 472,500 |

Remuneration of Senior Executive Service (SES) Employees and Equivalents

The Tribunal does not determine the remuneration of Australian Public Service employees. However, as is evident from previous Tribunal Reports and Statements, the remuneration of the direct reports of the senior public offices in the Tribunal's determinative jurisdiction has been a matter of increasing concern to the Tribunal.

In the Australian Public Service, for example, the Tribunal has written to the Secretary of the Department of the Prime Minister and Cabinet and to the Australian Public Service Commissioner about the remuneration arrangements of SES Band 3 employees (including Associate Secretaries) and the inconsistencies within those arrangements and between them and remuneration arrangements determined by the Tribunal. Amongst other things, this has given rise to shifts in

relativities that are adverse to certain public offices for which the Tribunal determines remuneration.

In the Tribunal's view, in the absence of any material, demonstrable and externally acknowledged extensions in the roles and responsibilities of any of the statutory bodies concerned, any adjustments proposed to be made to the remuneration of an agency's most senior employees should be constrained to ordinary annual adjustments of a magnitude similar to those determined by the Tribunal for public offices.

In the present context, the Tribunal considers that the adjustments intended to be made to each individual Specified Statutory Office will simply re-establish appropriate remuneration for each. Setting aside other statutory offices, it is not intended that these adjustments when made should give rise to any changes in the remuneration of the employees of the agencies concerned. Indeed, to maintain the integrity and efficiency of the remuneration arrangements now proposed for the Specified Statutory Offices, the Tribunal regards it as vital that they do not.

Defence Force Matters

The Tribunal determines remuneration for the statutory offices of Chief of the Defence Force; Vice-Chief of the Defence Force; and the individual Service Chiefs - Chief of Army; Chief of Navy; and Chief of Air Force.

The Tribunal understands, however, that there is scope under the *Defence Act 1903* for a delegate of the Minister for Defence to determine benefits additional to those determined by the Tribunal. The Tribunal also understands that two posts of rank equivalent to those of the Service Chiefs have been created and that the remuneration of those posts mirrors that determined by the Tribunal for each Service Chief.

The Tribunal sees scope for improved coordination on such matters so as to reinforce mutual consistency of approach. It has written to the Minister for Defence, the Hon Stephen Smith MP, seeking his views.

Remuneration Tribunal

15 December 2011

Enquiries

Enquiries may be directed to the Tribunal's Media Adviser on (02) 6162 0021 or through enquiry@remtribunal.gov.au