



Remuneration and Other Legislation Amendment Bill 2011

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Remuneration and Other Legislation Amendment Bill 2011

Date introduced: 24 March 2011

House: House of Representatives

Portfolio: Prime Minister

Commencement: Sections 1–3 commence on the day the Act receives Royal Assent. Schedule 1 and 2 commence on a day to be fixed by Proclamation, or on the day after six months from Royal Assent, whichever occurs first.

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bill's home page, or through <http://www.aph.gov.au/bills/>. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at <http://www.comlaw.gov.au/>.

Purpose

The primary purpose of the Remuneration and Other Legislation Amendment Bill 2011 (the Bill) is to amend the *Remuneration Tribunal Act 1973* (Remuneration Tribunal Act) to give the Remuneration Tribunal responsibility for determining:

- the base salary for parliamentarians, and
- remuneration amounts for Departmental Secretaries and other offices established under the *Public Service Act 1999* (the Public Service Act).

Background

Remuneration Tribunal

The Remuneration Tribunal (the Tribunal), an independent statutory authority, was established in 1973 to determine the allowances (including salaries) of parliamentarians and ministers and to determine the remuneration of departmental secretaries and statutory office holders.

Since 1999, in particular with the introduction of the Public Service Act and the *Parliamentary Service Act 1999* (Cth), the Tribunal has had only an **advisory** role in determining the salary of members of parliament and departmental secretaries and heads of executive agencies.

All of the Tribunal's determinations and reports relating to Commonwealth offices are matters of public record, and must be given to the Minister and tabled in the Parliament. Currently either

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House of the Parliament has 15 sitting days, from the date of tabling to move a motion for disallowance of those determinations.¹

Legal basis for remuneration of parliamentarians

Members of Parliament receive an annual allowance, an electorate allowance and other entitlements including travel, retirement travel and superannuation.² Relevant to this Bill, the amount of the annual allowance (also known as base salary) is set out in regulations made by the Governor-General in accordance with the *Remuneration and Allowances Act 1990* (Remuneration and Allowances Act) which requires the Governor-General to ‘consider advice from the Remuneration Tribunal about the proposed regulation’.³ Clearly then, it is not the Tribunal which sets the actual base salary for parliamentarians.

The Remuneration and Allowances Act provides that the annual salary for members of parliament is equal to the minimum annual rate of salary payable to an SES employee with a classification of SES Band 2, or if the regulations prescribe a percentage (not more than 100%) of a reference salary—that percentage of the **reference salary**.⁴ In accordance with that provision, the Tribunal determines a classification for the Principal Executive Offices, under which it sets a number of reference salaries, including Reference Salary A.⁵ Parliamentary salary is set as a percentage of Reference Salary A.⁶

For some years until 1 July 2008, the regulations specified 100 per cent of Reference Salary A as the amount of the annual salary for Members of Parliament.⁷ However, by Remuneration and Allowances Amendment Regulations 2008 (No. 1) parliamentary base salary in 2008/09 and future years will be set at an amount equal to the Reference Salary A determined by the Tribunal, less the whole dollar increase to the reference salary determined by the Tribunal for the 2008/09 year. From 1 July 2008, parliamentary salary has been equal to Reference Salary A, as determined by the Tribunal, less \$5470.⁸

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1. Section 42, *Legislative Instruments Act 2003*.
 2. The legislative basis for the payment of annual allowance to members and senators lies in section 48 of the Constitution.
 3. Subclause 1(3) Schedule 3 to the Remuneration and Allowances Act.
 4. Subclause 1(2) Schedule 3 to the Remuneration and Allowances Act.
 5. Remuneration Tribunal, Determination 2005/19- Principal Executive Office— Classification Structure and Terms and Conditions, F2010C00645, <http://www.comlaw.gov.au/Details/F2010C00645>
 6. For further information see L Manthorpe, C Madden and D McKeown, ‘Parliamentary allowances, salaries and entitlements’, Background note, Parliamentary Library, Canberra, February 2011, viewed 9 May 2011, <http://www.aph.gov.au/Library/pubs/BN/pol/parlrem.pdf>
 7. *ibid.*
 8. Remuneration Tribunal, ‘Parliamentarian’ allowances and entitlements, <http://www.remtribunal.gov.au/federalParliamentarians/>

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Australian National Audit Office review and response

On 8 September 2009, the Australian National Audit Office (ANAO) published a report of its review of parliamentary entitlements.⁹ As part of its response, the Government set up an independent panel to review the parliamentary entitlements scheme.¹⁰ The review, chaired by former senior public servant, Barbara Belcher, was to provide advice and recommendations to Government on issues such as:

- developing a single principles-based legislative basis that authorises the provision of specified entitlements, identifies who is eligible to access these entitlements and in what circumstances, and the purposes for which these entitlements may be used and
- recommending framework changes that remove instances of overlap, duplication, inconsistency and gaps in the provision of entitlements.¹¹

The Belcher Review report was given to the Special Minister of State on 9 April 2010 and released publicly by the government on 24 March 2011.¹²

Special Minister of State, Gary Gray on introducing the Bill said that:

... in restoring the Tribunal's power to determine the base salary of parliamentarians the bill will implement the cornerstone recommendation in the report of the Committee of review of Parliamentary Entitlements... [This] will provide more transparency and—importantly— independence in the determination of parliamentary base salaries.¹³

The Belcher Review drew a distinction between remuneration—that is, salary and 'tools of trade'—that is, entitlements, such as office facilities and transport, and recommended that each be dealt with separately. The former will be determined by the Remuneration Tribunal and the latter to be covered by a single piece of legislation to be administered by the Minister.

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9. Australian National Audit Office, *Administration of parliamentarians' entitlements by the Department of Finance and Deregulation*, Audit report no. 3, 2009–10, viewed 6 May 2011, http://www.anao.gov.au/uploads/documents/2009-10_ANAO_Audit_Report_3_.pdf
 10. Senator J Ludwig (Cabinet Secretary, Special Minister of State), *Reform of Parliamentary entitlements*, media release, 8 September 2009, viewed 6 May 2011, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FAKOU6%22>
 11. Committee for the Review of Parliamentary Entitlements, *Committee Report*, Commonwealth of Australia, Canberra, 9 April 2010, p. 22, viewed 6 May 2011, <http://www.finance.gov.au/publications/review-of-parliamentary-entitlements-committee-report/docs/review-of-parliamentary-entitlements-committee-report.pdf>
 12. Ibid.
 13. G Gray (Special Minister of State and Special Minister of State for the Public Service and Integrity), 'Second reading speech: Remuneration and Other Legislation Amendment Bill 2011', House of Representatives, *Debates*, 24 March 2011, viewed 6 May 2011, http://parlinfo.parlInfo/genpdf/chamber/hansardr/2011-03-24/0082/hansard_frag.pdf;fileType=application%2Fpdf

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Remuneration of departmental secretaries

The remuneration of departmental secretaries, along with other terms and conditions, is currently determined by the Prime Minister under section 61 of the Public Service Act. The Prime Minister makes the determination for secretaries' remuneration and other conditions following advice from the Remuneration Tribunal.

The current system for remuneration of departmental secretaries is two-tiered, with the secretaries of the Departments of the Prime Minister and Cabinet, Defence, and the Treasury receiving a higher level of remuneration than the secretaries of other departments.

The Remuneration Tribunal undertook a review of the Office of Secretary in 2010. The first part of the Tribunal's report, dealing with the classification structure, was released in March 2010; the second part, yet to be released, will deal with remuneration.¹⁴ The Tribunal also commissioned work on the work value of the Office of Secretary.¹⁵

In the first part of its report the Tribunal has proposed maintaining a two-tier classification structure for departmental secretaries. The Tribunal would allocate initial Secretary offices between the levels, along with the remuneration of the secretaries of the Departments of the Prime Minister and Cabinet and Treasury. The Tribunal also proposed that the Secretary of the Department of Prime Minister and Cabinet should determine the placement of individual offices within each tier in consultation with the President of the Tribunal.¹⁶

In addition, the Tribunal recommended that, along with the secretaries of the Departments of the Prime Minister and Cabinet, Defence, and Treasury, the secretaries of the departments of Education, Employment and Workplace Relations; Families, Housing, Community Services and Indigenous Affairs; Finance and Deregulation; Foreign Affairs and Trade; and Health and Ageing should be re-classified to the first level. The secretaries of the other departments would be classified to the second level.¹⁷

The Tribunal also expressed the view that current remuneration for secretaries is inadequate, and signalled 'an initial reasonable adjustment of remuneration for existing office-holders' in the second

14. Remuneration Tribunal, *Review of the Office of Secretary, Report—part 1*, Commonwealth of Australia, Canberra, February 2010, viewed 6 May 2011,

<http://www.remtribunal.gov.au/statementsreports/Review%20of%20the%20Office%20of%20Secretary%20-%20Report%20-%20Part%201.pdf>

15. J Egan, *Review of work value for the Office of Secretary: Australian Government Departments of State*, Report for the Commonwealth Remuneration Tribunal, Sydney, August 2009, viewed 6 May 2011,

<http://www.remtribunal.gov.au/statementsreports/Egan%20Associates'%20Report%20-%20Secretaries%20-%20Review%20of%20Work%20Value.pdf>

16. Remuneration Tribunal, *Review of the Office of Secretary, Report—part 1*, op. cit., pp. ii–iii.

17. Ibid.

part of the report together with ‘a longer term remuneration structure entailing levels of remuneration which may be expected to be substantially above the current levels’.¹⁸

Basis of policy commitment

The Government has indicated a strong commitment to reform of the parliamentary entitlements framework. The Special Minister of State, Senator Joe Ludwig, welcomed the ANAO report on the administration of parliamentary entitlements and stated:

The Rudd Government has accepted all of the Auditor-General’s recommendations. I am announcing a raft of reform measures that will reduce cost and increase transparency of the parliamentary entitlements system...

We are committed to reform, openness and transparency to ensure that we maintain the trust and confidence of the Australian people.¹⁹

The reform to departmental secretaries’ remuneration and conditions was announced by the then Opposition in their 2007 policy ‘*Labor’s approach to the Australian public service*’. The policy provided that:

... Labor will move away from a performance pay arrangement for agency heads and departmental secretaries, and restore the jurisdiction of the Remuneration Tribunal to fix pay and conditions of agency heads and secretaries.²⁰

Policy position of non-government parties/independents

The Opposition supports the Bill. The Shadow Special Minister of State, Bronwyn Bishop MP, stated that:

I think the idea that we have a tribunal that is free of political process to make these determinations is a fair way to go, and an improvement on the current system.²¹

Independent Member Tony Windsor supports the intent of the Bill for the Remuneration Tribunal, independent of parliament, having the capacity to determine base parliamentary salary. Windsor sees the Bill as a means of ‘increasing transparency and independence’.²²

18. Ibid.

19. Senator J Ludwig, op. cit.

20. Senator P Wong, *Labor’s approach to the Australian Public Service*, speech to the Institute of Public Administration, 20 September 2007, viewed 6 May 2011, http://parlinfo.parlInfo/download/media/pressrel/OP8W6/upload_binary/op8w60.pdf;fileType=application/pdf#search=%22labor's%20approach%20to%20the%20public%20service%22

21. B Bishop, ‘Second reading speech: Remuneration and Other Legislation Amendment Bill 2011’, House of Representatives, *Debates*, 24 March 2011, viewed 6 May 2011, http://parlinfo.parlInfo/genpdf/chamber/hansardr/2011-03-24/0083/hansard_frag.pdf;fileType=application%2Fpdf

The Greens do not support removing the role of parliament in relation to Tribunal determinations on the grounds that ... 'transparency and accountability demand that the parliament maintain oversight of such matters'.²³

Senator Bob Brown has previously moved a disallowance motion when a Remuneration Tribunal determination relating to remuneration and travel allowances for members of parliament have been tabled.²⁴

Independent Senator Nick Xenophon and Family First Senator Fielding have not indicated a position on the legislation.

Position of major interest groups

The Tribunal made submissions to the Belcher Review calling for the 'remuneration of parliamentarians to be determined independently and by an examination of the roles and responsibilities of a parliamentarian, rather than by the Parliament itself'.²⁵ The Tribunal has indicated that it welcomes the Government's intention to enable the Tribunal to determine the base salary of parliamentarians and the remuneration and other conditions of secretaries of departments.²⁶

Financial implications

According to the Explanatory Memorandum, 'the measures proposed in this Bill have no impact on the budget'.²⁷

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22. T Windsor, 'Second reading speech: Remuneration and Other Legislation Amendment Bill 2011', House of Representatives, *Debates*, 24 March 2011, viewed 6 May 2011, http://parlinfo.parlInfo/genpdf/chamber/hansardr/2011-03-24/0084/hansard_frag.pdf;fileType=application%2Fpdf
 23. A Bandt, 'Second reading speech: Remuneration and Other Legislation Amendment Bill 2011', House of Representatives, *Debates*, 24 March 2011, viewed 6 May 2011, http://parlinfo.parlInfo/genpdf/chamber/hansardr/2011-03-24/0085/hansard_frag.pdf;fileType=application%2Fpdf
 24. B Brown, *Greens say 'wait' on MP's pay rise*, media release, 24 September 2009, viewed 6 May 2011, http://parlinfo.parlInfo/download/media/pressrel/LXRU6/upload_binary/lxru60.pdf;fileType=application/pdf#search=%22brown%20remuneration%22; Remuneration Tribunal determination –proposed disapproval, Australia, Senate, *Journals*, no. 84, 20 August 2009, p. 2363, viewed 6 May 2011, http://parlinfo.parlInfo/download/chamber/journals/20090820_SJ084/toc_pdf/jnlf_084.pdf;fileType=application%2Fpdf#search=%22brown%20remuneration%22;
 25. Remuneration Tribunal, *Submission to the Review of Parliamentary Entitlements*, 17 December 2009, viewed 6 May 2011, http://www.finance.gov.au/parliamentary-services/docs/The_Remuneration_Tribunal.pdf
 26. Remuneration Tribunal, *Amendment of the Remuneration Tribunal Act 1973*, statement, 24 March 2011, viewed 6 May 2011, <http://www.remtribunal.gov.au/statementsreports/Statement%20RTS%2024%20March%202011.pdf>
 27. Explanatory Memorandum, Remuneration and Other Legislation Amendment Bill 2011, p. 1.

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Main issues

Departmental secretaries

Under the proposed measures the Tribunal would be required to do the following:

- determine the remuneration of two offices of secretary: those of the Departments of Prime Minister and Cabinet and the Treasury, along with the remuneration and leave entitlements of the Public Service Commissioner, Merit Protection Commissioner, and heads of executive agencies
- determine a classification structure for departmental secretaries and would be empowered to determine matters 'significantly related' to that structure
- assign secretaries within the classification structure and
- determine the terms and conditions, other than remuneration, applying to the offices of secretaries.

As noted above, currently the remuneration of departmental secretaries is two-tiered with the Secretaries of the Departments of Prime Minister and Cabinet, Treasury, and Defence being remunerated at one level and other secretaries being remunerated at a lower level. The review of the Office of Secretary conducted by the Tribunal recommended retaining a two-tier classification structure with additions to the top tier. The Tribunal also envisages increasing remuneration for departmental secretaries.

If the Bill is enacted, the Tribunal may implement its proposed two-tier structure in determining a classification structure for secretaries and in assigning secretaries within that structure. As noted above also, the Tribunal has envisaged pay points within the two levels (noted by the Special Minister of State in his second reading speech).²⁸ The pay points system could also become a part of the classification structure determined by the Tribunal.

Under the provisions in the Bill the Secretary of the Department of Prime Minister and Cabinet would, in consultation with the President of the Tribunal and the Public Service Commissioner, be required to assign remuneration amounts to secretaries other than him/herself and the Secretary of the Treasury in accordance with the classification structure set by the Remuneration Tribunal. This would constitute a significant departure from current practice.

The Bill contains transitional provisions which would provide that current determinations for the remuneration of the Public Service Commissioner, the Merit Protection Commissioner, departmental secretaries, and heads of executive agencies would continue to operate until determinations made under the Bill's amendments came into effect. As noted above, the Tribunal has expressed a view that remuneration for secretaries is inadequate and has signalled future increases in secretaries'

28. See footnote 12.

remuneration. Any such increases, while not resulting directly from the Bill itself, would potentially constitute an additional cost on the budget.

Key provisions

Schedule 1

Part 1—Remuneration Tribunal Act

Item 6 of part 1 of Schedule 1 to the Bill inserts **proposed Division 4** into the Remuneration Act. Within Division 4, **new section 13** requires the Tribunal to determine a classification structure for offices of departmental secretaries, and to determine the classification to which each Departmental Secretary is assigned, from time to time. In addition, the Tribunal **may** determine, any matter that is 'significantly related' to the classification structure. **New subsection 13(4)** authorises the Tribunal to hold inquiries for the purpose of carrying out any of these functions. After the initial determination by the Tribunal, the Secretary of the Department of Prime Minister and Cabinet may make recommendations to the Tribunal about the level to which a secretary may be assigned.

Under **new subsections 14(1)–(2)** the Tribunal must determine the remuneration of two of the offices of secretaries: the Secretaries of Department of Prime Minister and Cabinet and the Department of Treasury, consistent with the classification structure. **New subsections 14(3)–(7)** relate to the remuneration of the other secretaries. The Secretary of the Department of Prime Minister and Cabinet would be required to assign each of the other departmental secretaries to an amount of remuneration, from time to time, in consultation with the Public Service Commissioner and the President of the Tribunal. The remuneration must be consistent with the classification structure. The assignment has to be made in writing and comes into operation on a specified date.

New section 15 requires the Tribunal to inquire into and determine terms and conditions, other than remuneration, for departmental secretaries from time to time. **New section 16** would require the Tribunal to publish determinations made under Division 4 in the gazette and on its website within 14 day of it been made.

New subsection 5(2B), at **item 4** of Part 1 of Schedule 1 to the Bill is a consequential amendment which would enable the Tribunal to inquire into and determine the remuneration for departmental secretaries and other matters which are included in proposed Division 4.

Similarly, **new subsection 7(7)** at **item 5** of Part 1 of Schedule 1 to the Bill would remove the requirement for the determinations made under the new Division 4 to be tabled in the Parliament and therefore the ability of the Parliament to disallow such determinations.

Part 2—Public Service Act

Item 7 of Part 2 of Schedule 1 to the Bill repeals and replaces section 46 of the Public Service Act which relates to the remuneration of the Public Service Commissioner. The **new section 46** provides for the Public Service Commissioner's remuneration and recreation leave entitlements are to be determined by the Tribunal.²⁹ Notably, **new subsection 46(5)** provides that the Agency Minister may grant the Public Service Commissioner leave of absence. This is consistent with the terms of existing section 48 which allows the Agency Minister to appoint an acting Public Service Commissioner during any period, or during all periods, when the Commissioner is absent from duty.

Item 8 of Part 2 of Schedule 1 to the Bill repeals and replaces section 53 of the Public Service Act which relates to the remuneration of the Merit Protection Commissioner. The **new section 53** is in the same terms as new section 46—that is, it provides that the Merit Protection Commissioner's remuneration and recreation leave entitlements are to be determined by the Tribunal and it makes formal provision for the Merit Protection Commissioner to take leave of absence.³⁰

Item 10 of Part 2 of Schedule 1 to the Bill repeals and replaces section 68 of the Public Service Act which relates to the remuneration of the heads of executive agencies. It is in similar terms to new sections 46 and 53 as outlined above.³¹

Item 9 of Part 2 of Schedule 1 to the Bill repeals and replaces section 61 of the Public Service Act. **New Section 61** provides that remuneration and terms and conditions of secretaries are as provided by Division 4 of the Remuneration Tribunal Act.

Schedule 2—Members of Parliament

As already stated, the Remuneration and Allowances Act provides that the annual salary for Members of Parliament is paid as a percentage of Reference Salary A. The purpose of the amendments in Schedule 2 to the Bill is to give effect to the recommendations in the Belcher Review report.

Specifically, **item 17** repeals subsection 5(2C) of the Remuneration Tribunal Act to remove the Tribunal's power to provide advice about setting the annual allowance for members of parliament.

29. **Item 12** of Part 3 to Schedule 1 to the Bill contains transitional provisions to save the operation of an existing remuneration determination under the Public Service Act in relation to the Public Service Commissioner, until such time as the Tribunal's first determination in respect of that office comes into effect.

30. **Item 13** of Part 3 to Schedule 1 to the Bill contains transitional provisions to save the operation of an existing remuneration determination under the Public Service Act in relation to the Merit Protection Commissioner, until such time as the Tribunal's first determination in respect of that office comes into effect.

31. **Item 14** of Part 3 to Schedule 1 to the Bill contains transitional provisions to save the operation of an existing remuneration determination under the Public Service Act in relation to the Departmental Secretaries, until such time as the Tribunal's first determination in respect of that office comes into effect.

Further, **item 19** inserts **new subsection 7(8AA)** of the Remuneration Tribunal Act to remove the requirement that determinations under subsections 7(1), 7(2) and 7(4) of the Remuneration Tribunal Act, which deal with allowances for members of parliament, ministers of state and related matters, be subject to disallowance under the *Legislative Instruments Act 2003*.

Item 20 of Schedule 2 to the Bill inserts **new section 7A** to require the Tribunal to publish reasons for the determinations under subsections 7(1), 7(2) and 7(4) of the Remuneration Tribunal Act on its website.

The amendments to the *Parliamentary Contributory Superannuation Scheme Act 1948* and the *Parliamentary Superannuation Act 2004* are consequential amendments to ensure that references to the term '**parliamentary allowance**' are consistent with the Remuneration and Allowances Act.

Concluding comments

The focus of attention for this legislation has been on the proposal to provide the Remuneration Tribunal with the authority to set the base salary (annual allowance) for members of parliament. The Tribunal will act as the independent umpire. However, determinations will no longer be subject to parliamentary scrutiny. It is envisaged that by requiring the Tribunal to publish its reasons for a determination, it will reinforce the integrity of the scheme and remove the public disquiet when members of parliament receive a pay rise. Very little interest has focused on the proposed significant changes to how departmental secretaries and heads of executive agencies are remunerated and how their terms and conditions are set. It is in this area that there may be further developments.

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