



Remuneration and Other Legislation Amendment Act 2011

No. 75, 2011

**An Act to amend the law relating to the
remuneration of certain Australian Public Service
offices and of Members of Parliament, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to amend the law relating to the
remuneration of certain Australian Public Service
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related purposes**

[Assented to 25 July 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Remuneration and Other Legislation
Amendment Act 2011*.

2 Commencement

- (1) Each provision of this Act 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
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	25 July 2011
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	5 August 2011 (see F2011L01603)
3. Schedule 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	5 August 2011 (see F2011L01603)

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Australian Public Service offices

Part 1—Main amendments

Remuneration Tribunal Act 1973

1 Subsection 3(1)

Insert:

Departmental Secretary means a Secretary of a Department appointed under the *Public Service Act 1999*.

2 Subsection 3(1)

Insert:

Public Service Commissioner means the Public Service Commissioner appointed under the *Public Service Act 1999*.

3 Paragraph 3(4)(k)

Repeal the paragraph, substitute:

(k) an office of Departmental Secretary;

4 Subsection 5(2B)

Repeal the subsection, substitute:

(2B) An additional function of the Tribunal is:

- (a) to inquire into, and determine, matters referred to in Division 4; and
- (b) in connection with determinations made under that Division, to perform such other functions and exercise such other powers as are conferred on the Tribunal by that Division.

5 Subsection 7(7)

After “ACT office”, insert “or that is made under Division 4”.

6 At the end of Part II

Add:

Division 4—Remuneration etc. for Departmental Secretaries

13 Determination of classification structure etc.

- (1) The Tribunal must determine a classification structure for offices of Departmental Secretary.
- (2) The Tribunal may also determine any matter that is, or is considered by it to be, significantly related to the classification structure determined under subsection (1).
- (3) The Tribunal must, from time to time, determine the classification to which each office of Departmental Secretary is assigned.
- (4) The Tribunal may hold inquiries for the purpose of performing its functions under subsections (1), (2) and (3).
- (5) The Secretary of the Department that is administered by the Prime Minister may, from time to time after the Tribunal has made its first determination under subsection (3), make recommendations to the Tribunal about matters relating to the assignment of a particular office of Departmental Secretary to a particular classification.

14 Amount of remuneration

Remuneration for certain Secretaries

- (1) The Tribunal must, from time to time, determine the amount of remuneration that is to be paid to:
 - (a) the Secretary of the Department that is administered by the Prime Minister; and
 - (b) the Secretary of the Department that is administered by the Treasurer.
- (2) The amount of remuneration determined under subsection (1) must be consistent with the classification structure determined by the Tribunal under section 13.

Note: Determinations made by the Tribunal under subsection (1) must be published in accordance with section 16.

Remuneration for other Secretaries

- (3) The Secretary of the Department that is administered by the Prime Minister, in consultation with the President of the Tribunal and the Public Service Commissioner, must, from time to time, assign each Departmental Secretary (other than a Departmental Secretary referred to in subsection (1)) to an amount of remuneration.
- (4) The amount of remuneration to which a Departmental Secretary is assigned under subsection (3) must be consistent with the classification structure determined by the Tribunal under section 13.
- (5) An assignment made under subsection (3):
 - (a) must be in writing; and
 - (b) comes into operation on the date specified in the instrument of assignment.
- (6) The Secretary of the Department that is administered by the Prime Minister must give the Minister a copy of each instrument of assignment made under subsection (3).
- (7) For the purposes of subsection 5(3AB) of the *Superannuation Act 1976*, an assignment under subsection (3) of this section of a Departmental Secretary to an amount of remuneration is taken to be a determination made under the *Remuneration Tribunal Act 1973* in respect of the remuneration of the Departmental Secretary.

15 Determination of other terms and conditions

The Tribunal must, from time to time, inquire into, and determine, the terms and conditions (other than remuneration) that are to apply to the offices of Departmental Secretary.

16 Publication of determinations made by the Tribunal under this Division

The Tribunal must ensure that a determination made by the Tribunal under this Division is published in the *Gazette*, and on the Tribunal's website, within 14 days after it is made.

Note 1: A determination made by the Tribunal under this Division must be in writing and comes into operation on the date specified in the determination: see subsection 7(5).

Schedule 1 Australian Public Service offices
Part 1 Main amendments

Note 2: The Tribunal must give the Minister a copy of each determination made by the Tribunal under this Division: see subsection 7(6).

Part 2—Related amendments

Public Service Act 1999

7 Section 46

Repeal the section, substitute:

46 Remuneration and other terms and conditions of appointment

Remuneration and allowances

- (1) The Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Commissioner is to be paid the remuneration that is prescribed by the regulations.
- (2) The Commissioner is to be paid the allowances that are prescribed by the regulations.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

Leave of absence

- (4) The Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (5) The Agency Minister may grant the Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Agency Minister determines.

Other terms and conditions

- (6) The Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Agency Minister.

8 Section 53

Repeal the section, substitute:

53 Remuneration and other terms and conditions of appointment

Remuneration and allowances

- (1) The Merit Protection Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Merit Protection Commissioner is to be paid the remuneration that is prescribed by the regulations.
- (2) The Merit Protection Commissioner is to be paid the allowances that are prescribed by the regulations.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

Leave of absence

- (4) The Merit Protection Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (5) The Public Service Minister may grant the Merit Protection Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Public Service Minister determines.

Other terms and conditions

- (6) The Merit Protection Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Public Service Minister.

9 Section 61

Repeal the section, substitute:

61 Remuneration and other terms and conditions of appointment

Remuneration and allowances

- (1) The remuneration of a Secretary is as provided by Division 4 of Part II of the *Remuneration Tribunal Act 1973*.

Other terms and conditions

- (2) The other terms and conditions applying to the appointment of a Secretary are as determined by the Remuneration Tribunal under Division 4 of Part II of the *Remuneration Tribunal Act 1973*.

10 Section 68

Repeal the section, substitute:

68 Remuneration and other terms and conditions of appointment

Remuneration and allowances

- (1) The Head of an Executive Agency is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Head of the Executive Agency is to be paid the remuneration that is prescribed by the regulations.
- (2) The Head of an Executive Agency is to be paid the allowances that are prescribed by the regulations.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

Leave of absence

- (4) The Head of an Executive Agency has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (5) The Agency Minister may grant the Head of an Executive Agency leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Agency Minister determines.

Other terms and conditions

- (6) The Head of an Executive Agency holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Agency Minister.

Remuneration Tribunal Act 1973

11 Section 13

Renumber as section 17.

Part 3—Transitional

12 Continuation of existing remuneration determination for Public Service Commissioner

- (1) This item applies to a determination (the *existing determination*) that was in operation in relation to the Public Service Commissioner under section 46 of the *Public Service Act 1999* immediately before the commencement of the repeals and amendments made by this Schedule.
- (2) Despite those repeals and amendments, the existing determination continues in operation until such time as a determination of the Remuneration Tribunal, made in accordance with the *Remuneration Tribunal Act 1973* (as amended by this Schedule), relating to the remuneration that is to be paid to the Public Service Commissioner comes into operation in substitution for the existing determination.

13 Continuation of existing remuneration determination for Merit Protection Commissioner

- (1) This item applies to a determination (the *existing determination*) that was in operation in relation to the Merit Protection Commissioner under section 53 of the *Public Service Act 1999* immediately before the commencement of the repeals and amendments made by this Schedule.
- (2) Despite those repeals and amendments, the existing determination continues in operation until such time as a determination of the Remuneration Tribunal, made in accordance with the *Remuneration Tribunal Act 1973* (as amended by this Schedule), relating to the remuneration that is to be paid to the Merit Protection Commissioner comes into operation in substitution for the existing determination.

14 Continuation of existing remuneration determination for Departmental Secretaries

- (1) This item applies to a determination (the *existing determination*) that was in operation in relation to a Departmental Secretary under section 61 of the *Public Service Act 1999* immediately before the commencement of the repeals and amendments made by this Schedule.

- (2) Despite those repeals and amendments, the existing determination continues in operation until such time as:
- (a) in the case of a Departmental Secretary to whom subitem (3) applies—determinations made under sections 14 and 15 of the *Remuneration Tribunal Act 1973* (as inserted by this Schedule) in relation to that Departmental Secretary come into operation in substitution for the existing determination; and
 - (b) in the case of any other Departmental Secretary—the following instruments come into operation in substitution for the existing determination:
 - (i) an assignment made under subsection 14(3) of the *Remuneration Tribunal Act 1973* (as inserted by this Schedule) in relation to that Departmental Secretary;
 - (ii) a determination made under section 15 of the *Remuneration Tribunal Act 1973* (as inserted by this Schedule) in relation to that Departmental Secretary.
- (3) This subitem applies to the following Departmental Secretaries:
- (a) the Secretary of the Department that is administered by the Prime Minister;
 - (b) the Secretary of the Department that is administered by the Treasurer.

15 Continuation of existing remuneration determinations for Heads of Executive Agencies

- (1) This item applies to a determination (the *existing determination*) that was in operation in relation to the Head of an Executive Agency under section 68 of the *Public Service Act 1999* immediately before the commencement of the repeals and amendments made by this Schedule.
- (2) Despite those repeals and amendments, the existing determination continues in operation until such time as a determination of the Remuneration Tribunal, made in accordance with the *Remuneration Tribunal Act 1973* (as amended by this Schedule), relating to the remuneration that is to be paid to the Head of the Executive Agency comes into operation in substitution for the existing determination.

16 Regulations under the *Remuneration Tribunal Act 1973*

- (1) This item applies to regulations if:
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- (a) the regulations were made under former section 13 of the *Remuneration Tribunal Act 1973*; and
 - (b) the regulations were in force immediately before the commencement of this Schedule.
- (2) The regulations continue to have effect, after the commencement of this Schedule, under section 17 of that Act (as renumbered by this Schedule).

Schedule 2—Members of Parliament

Parliamentary Contributory Superannuation Act 1948

1 Subsection 4(1) (paragraph (c) of the definition of *parliamentary allowance*)

Repeal the paragraph, substitute:

- (c) an allowance by way of salary under clause 1 of Schedule 3 to the *Remuneration and Allowances Act 1990*:
 - (i) as in force before the commencement of Schedule 2 (the ***amending Schedule***) to the *Remuneration and Other Legislation Amendment Act 2011*; or
 - (ii) as continued in force by item 21 of the amending Schedule; or
- (d) parliamentary base salary (within the meaning of the *Remuneration Tribunal Act 1973*), less any portion determined under subsection 7(1A) of that Act.

2 Subsection 18(12)

Repeal the subsection, substitute:

- (12) For the purpose of references in this section to the rate of parliamentary allowance for the time being payable to a member, any reductions under Part 1 of Schedule 3 to the *Remuneration and Allowances Act 1990* (about salary sacrifice) of a particular member's entitlement to parliamentary allowance are to be disregarded.

3 Subsection 21B(3B)

Repeal the subsection, substitute:

- (3B) For the purpose of the reference in the formula in subsection (3A) to the annual rate of parliamentary allowance, any reductions under Part 1 of Schedule 3 to the *Remuneration and Allowances Act 1990* (about salary sacrifice) of a particular member's entitlement to parliamentary allowance are to be disregarded.

4 Subsection 22T(1A)

Repeal the subsection, substitute:

- (1A) For the purpose of paragraph (1)(a), any reductions under Part 1 of Schedule 3 to the *Remuneration and Allowances Act 1990* (about salary sacrifice) of a particular member's entitlement to parliamentary allowance are to be disregarded.

5 Subclause 4(3) of Schedule 1

Repeal the subclause, substitute:

- (3) For the purpose of the reference in subclause (2) to the rate of parliamentary allowance for the time being payable to a member, any reductions under Part 1 of Schedule 3 to the *Remuneration and Allowances Act 1990* (about salary sacrifice) of a particular member's entitlement to parliamentary allowance are to be disregarded.

Parliamentary Superannuation Act 2004

6 Section 3 (definition of *parliamentary allowance*)

Repeal the definition, substitute:

parliamentary allowance means:

- (a) an allowance by way of salary under clause 1 of Schedule 3 to the *Remuneration and Allowances Act 1990*:
- (i) as in force before the commencement of Schedule 2 (the ***amending Schedule***) to the *Remuneration and Other Legislation Amendment Act 2011*; or
 - (ii) as continued in force by item 21 of the amending Schedule; or
- (b) parliamentary base salary (within the meaning of the *Remuneration Tribunal Act 1973*).

7 Subsection 8(3)

Repeal the subsection, substitute:

- (3) For the purpose of paragraph (2)(a), any reduction under Part 1 of Schedule 3 to the *Remuneration and Allowances Act 1990* (about salary sacrifice) of the member's entitlement to parliamentary allowance is to be disregarded.

Remuneration and Allowances Act 1990

8 Subsection 3(2)

Omit “(other than clause 1 of Schedule 3)”.

9 Section 6

Repeal the section, substitute:

6 Senators and Members of the House of Representatives

Schedule 3 has effect.

10 Part 1 of Schedule 3 (heading)

Repeal the heading, substitute:

Part 1—Salary sacrifice

11 Division 1 of Part 1 of Schedule 3

Repeal the Division.

12 Division 2 of Part 1 of Schedule 3 (heading)

Repeal the heading.

13 Clause 1A of Schedule 3

Omit “this Division”, substitute “this Part”.

14 Clause 1A of Schedule 3 (definition of *parliamentary allowance*)

Repeal the definition, substitute:

parliamentary allowance means parliamentary base salary (within the meaning of the *Remuneration Tribunal Act 1973*).

15 Subclause 1B(1) of Schedule 3

Omit “this Division”, substitute “this Part”.

16 Paragraph 1F(a) of Schedule 3

Omit “this Division”, substitute “this Part”.

Remuneration Tribunal Act 1973**16A Subsection 3(1)**

Insert:

parliamentary base salary means so much of the allowances determined under subsection 7(1) as:

- (a) represents the annual allowance payable for the purposes of section 48 of the Constitution; and
- (b) is identified in the determination as base salary.

17 Subsection 5(2C)

Repeal the subsection.

17A After subsection 7(1)

Insert:

- (1A) The Tribunal may determine that a portion of parliamentary base salary is not *parliamentary allowance* for the purposes of the *Parliamentary Contributory Superannuation Act 1948*.

18 Subsection 7(7)

After “other than a determination”, insert “that is referred to in subsection (8AA) or”.

19 After subsection 7(8)

Insert:

- (8AA) Each of the following determinations is a legislative instrument, but neither subsection (8) of this section, nor section 42 (disallowance) of the *Legislative Instruments Act 2003*, applies to the determination:
 - (a) a determination under subsection (1), (1A) or (2) of this section;
 - (b) a determination under subsection (4) of this section on a matter that is, or is considered by the Tribunal or the Minister to be, significantly related to a matter referred to in subsection (1) or (2) of this section.

20 After section 7

Insert:

7A Reasons for determinations about members of parliament

The Tribunal must ensure that its reasons for each of the following determinations are published on its website and notified to the Minister:

- (a) a determination under subsection 7(1), (1A) or (2);
- (b) a determination under subsection 7(4) on a matter that is, or is considered by the Tribunal or the Minister to be, significantly related to a matter referred to in subsection 7(1) or (2).

21 Transitional—temporary saving of old law allowances

- (1) This item applies to the following provisions as in force immediately before the commencement of this Schedule:
 - (a) clause 1 of Schedule 3 to the *Remuneration and Allowances Act 1990*;
 - (b) regulations made for the purposes of paragraph 1(2)(b) of that Schedule;
 - (c) the definition of *parliamentary allowance* in clause 1A of that Schedule;
 - (d) subsection 5(2C) of the *Remuneration Tribunal Act 1973*.
- (2) Despite the repeals and amendments made by this Schedule, those provisions continue in force until the coming into force of the first determination:
 - (a) that is made under subsection 7(1) of the *Remuneration Tribunal Act 1973* at or after the commencement of this Schedule; and
 - (b) that determines the annual allowance payable for the purposes of section 48 of the Constitution.

*[Minister's second reading speech made in—
House of Representatives on 24 March 2011
Senate on 25 March 2011]*

(62/11)

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