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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Remuneration and Other Legislation
Amendment Bill 2011**

No. , 2011

(Prime Minister)

**A Bill for 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**

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1 **A Bill for an Act to amend the law relating to the**
2 **remuneration of certain Australian Public Service**
3 **offices and of Members of Parliament, and for**
4 **related purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

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

9 **2 Commencement**

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

1

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.	
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.	
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.	

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Note: This table relates only to the provisions of this Act as originally enacted.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.

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(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.

8

3 Schedule(s)

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

1 **Schedule 1—Australian Public Service offices**

2 **Part 1—Main amendments**

3 *Remuneration Tribunal Act 1973*

4 **1 Subsection 3(1)**

5 Insert:

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

8 **2 Subsection 3(1)**

9 Insert:

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

12 **3 Paragraph 3(4)(k)**

13 Repeal the paragraph, substitute:

14 (k) an office of Departmental Secretary;

15 **4 Subsection 5(2B)**

16 Repeal the subsection, substitute:

17 (2B) An additional function of the Tribunal is:

18 (a) to inquire into, and determine, matters referred to in
19 Division 4; and

20 (b) in connection with determinations made under that Division,
21 to perform such other functions and exercise such other
22 powers as are conferred on the Tribunal by that Division.

23 **5 Subsection 7(7)**

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

25 **6 At the end of Part II**

26 Add:

1 **Division 4—Remuneration etc. for Departmental**
2 **Secretaries**

3 **13 Determination of classification structure etc.**

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

18 **14 Amount of remuneration**

19 *Remuneration for certain Secretaries*

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

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

1 *Remuneration for other Secretaries*

- 2 (3) The Secretary of the Department that is administered by the Prime
3 Minister, in consultation with the President of the Tribunal and the
4 Public Service Commissioner, must, from time to time, assign each
5 Departmental Secretary (other than a Departmental Secretary
6 referred to in subsection (1)) to an amount of remuneration.
- 7 (4) The amount of remuneration to which a Departmental Secretary is
8 assigned under subsection (3) must be consistent with the
9 classification structure determined by the Tribunal under
10 section 13.
- 11 (5) An assignment made under subsection (3):
12 (a) must be in writing; and
13 (b) comes into operation on the date specified in the instrument
14 of assignment.
- 15 (6) The Secretary of the Department that is administered by the Prime
16 Minister must give the Minister a copy of each instrument of
17 assignment made under subsection (3).
- 18 (7) For the purposes of subsection 5(3AB) of the *Superannuation Act*
19 *1976*, an assignment under subsection (3) of this section of a
20 Departmental Secretary to an amount of remuneration is taken to
21 be a determination made under the *Remuneration Tribunal Act*
22 *1973* in respect of the remuneration of the Departmental Secretary.

23 **15 Determination of other terms and conditions**

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

27 **16 Publication of determinations made by the Tribunal under this**
28 **Division**

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

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

Schedule 1 Australian Public Service offices
Part 1 Main amendments

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

1 **Part 2—Related amendments**

2 ***Public Service Act 1999***

3 **7 Section 46**

4 Repeal the section, substitute:

5 **46 Remuneration and other terms and conditions of appointment**

6 *Remuneration and allowances*

7 (1) The Commissioner is to be paid the remuneration that is
8 determined by the Remuneration Tribunal. If no determination of
9 that remuneration by the Tribunal is in operation, the
10 Commissioner is to be paid the remuneration that is prescribed by
11 the regulations.

12 (2) The Commissioner is to be paid the allowances that are prescribed
13 by the regulations.

14 (3) Subsections (1) and (2) have effect subject to the *Remuneration*
15 *Tribunal Act 1973*.

16 *Leave of absence*

17 (4) The Commissioner has the recreation leave entitlements that are
18 determined by the Remuneration Tribunal.

19 (5) The Agency Minister may grant the Commissioner leave of
20 absence, other than recreation leave, on the terms and conditions as
21 to remuneration or otherwise that the Agency Minister determines.

22 *Other terms and conditions*

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

26 **8 Section 53**

27 Repeal the section, substitute:

1 **53 Remuneration and other terms and conditions of appointment**

2 *Remuneration and allowances*

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

12 *Leave of absence*

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

19 *Other terms and conditions*

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

23 **9 Section 61**

24 Repeal the section, substitute:

25 **61 Remuneration and other terms and conditions of appointment**

26 *Remuneration and allowances*

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

1 *Other terms and conditions*

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

5 **10 Section 68**

6 Repeal the section, substitute:

7 **68 Remuneration and other terms and conditions of appointment**

8 *Remuneration and allowances*

- 9 (1) The Head of an Executive Agency is to be paid the remuneration
10 that is determined by the Remuneration Tribunal. If no
11 determination of that remuneration by the Tribunal is in operation,
12 the Head of the Executive Agency is to be paid the remuneration
13 that is prescribed by the regulations.

- 14 (2) The Head of an Executive Agency is to be paid the allowances that
15 are prescribed by the regulations.

- 16 (3) Subsections (1) and (2) have effect subject to the *Remuneration*
17 *Tribunal Act 1973*.

18 *Leave of absence*

- 19 (4) The Head of an Executive Agency has the recreation leave
20 entitlements that are determined by the Remuneration Tribunal.

- 21 (5) The Agency Minister may grant the Head of an Executive Agency
22 leave of absence, other than recreation leave, on the terms and
23 conditions as to remuneration or otherwise that the Agency
24 Minister determines.

25 *Other terms and conditions*

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

1 ***Remuneration Tribunal Act 1973***

2 **11 Section 13**

3 Renumber as section 17.

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1 **Part 3—Transitional**

2 **12 Continuation of existing remuneration determination for**
3 **Public Service Commissioner**

4 (1) This item applies to a determination (the *existing determination*) that
5 was in operation in relation to the Public Service Commissioner under
6 section 46 of the *Public Service Act 1999* immediately before the
7 commencement of the repeals and amendments made by this Schedule.

8 (2) Despite those repeals and amendments, the existing determination
9 continues in operation until such time as a determination of the
10 Remuneration Tribunal, made in accordance with the *Remuneration*
11 *Tribunal Act 1973* (as amended by this Schedule), relating to the
12 remuneration that is to be paid to the Public Service Commissioner
13 comes into operation in substitution for the existing determination.

14 **13 Continuation of existing remuneration determination for**
15 **Merit Protection Commissioner**

16 (1) This item applies to a determination (the *existing determination*) that
17 was in operation in relation to the Merit Protection Commissioner under
18 section 53 of the *Public Service Act 1999* immediately before the
19 commencement of the repeals and amendments made by this Schedule.

20 (2) Despite those repeals and amendments, the existing determination
21 continues in operation until such time as a determination of the
22 Remuneration Tribunal, made in accordance with the *Remuneration*
23 *Tribunal Act 1973* (as amended by this Schedule), relating to the
24 remuneration that is to be paid to the Merit Protection Commissioner
25 comes into operation in substitution for the existing determination.

26 **14 Continuation of existing remuneration determination for**
27 **Departmental Secretaries**

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

32 (2) Despite those repeals and amendments, the existing determination
33 continues in operation until such time as:

- 1 (a) in the case of a Departmental Secretary to whom subitem (3)
2 applies—determinations made under sections 14 and 15 of
3 the *Remuneration Tribunal Act 1973* (as inserted by this
4 Schedule) in relation to that Departmental Secretary come
5 into operation in substitution for the existing determination;
6 and
7 (b) in the case of any other Departmental Secretary—the
8 following instruments come into operation in substitution for
9 the existing determination:
10 (i) an assignment made under subsection 14(3) of the
11 *Remuneration Tribunal Act 1973* (as inserted by this
12 Schedule) in relation to that Departmental Secretary;
13 (ii) a determination made under section 15 of the
14 *Remuneration Tribunal Act 1973* (as inserted by this
15 Schedule) in relation to that Departmental Secretary.
- 16 (3) This subitem applies to the following Departmental Secretaries:
17 (a) the Secretary of the Department that is administered by the
18 Prime Minister;
19 (b) the Secretary of the Department that is administered by the
20 Treasurer.

21 **15 Continuation of existing remuneration determinations for** 22 **Heads of Executive Agencies**

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

33 **16 Regulations under the *Remuneration Tribunal Act 1973***

- 34 (1) This item applies to regulations if:
35 (a) the regulations were made under former section 13 of the
36 *Remuneration Tribunal Act 1973*; and

- 1 (b) the regulations were in force immediately before the
2 commencement of this Schedule.
- 3 (2) The regulations continue to have effect, after the commencement of this
4 Schedule, under section 17 of that Act (as renumbered by this
5 Schedule).
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Schedule 2—Members of Parliament

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Parliamentary Contributory Superannuation Act 1948

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

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Repeal the paragraph, substitute:

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(c) an allowance by way of salary under clause 1 of Schedule 3 to the *Remuneration and Allowances Act 1990*:

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(i) as in force before the commencement of Schedule 2 (the *amending Schedule*) to the *Remuneration and Other Legislation Amendment Act 2011*; or

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(ii) as continued in force by item 21 of the amending Schedule; or

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(d) an allowance by way of salary determined under subsection 7(1) of the *Remuneration Tribunal Act 1973*.

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2 Subsection 18(12)

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Repeal the subsection, substitute:

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(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.

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3 Subsection 21B(3B)

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Repeal the subsection, substitute:

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(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.

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4 Subsection 22T(1A)

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Repeal the subsection, substitute:

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

5 **5 Subclause 4(3) of Schedule 1**

6 Repeal the subclause, substitute:

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

13 ***Parliamentary Superannuation Act 2004***

14 **6 Section 3 (definition of *parliamentary allowance*)**

15 Repeal the definition, substitute:

16 ***parliamentary allowance*** means:

- 17 (a) an allowance by way of salary under clause 1 of Schedule 3
18 to the *Remuneration and Allowances Act 1990*:
19 (i) as in force before the commencement of Schedule 2 (the
20 ***amending Schedule***) to the *Remuneration and Other*
21 *Legislation Amendment Act 2011*; or
22 (ii) as continued in force by item 21 of the amending
23 Schedule; or
24 (b) an allowance by way of salary determined under subsection
25 7(1) of the *Remuneration Tribunal Act 1973*.

26 **7 Subsection 8(3)**

27 Repeal the subsection, substitute:

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

1 ***Remuneration and Allowances Act 1990***

2 **8 Subsection 3(2)**

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

4 **9 Section 6**

5 Repeal the section, substitute:

6 **6 Senators and Members of the House of Representatives**

7 Schedule 3 has effect.

8 **10 Part 1 of Schedule 3 (heading)**

9 Repeal the heading, substitute:

10 **Part 1—Salary sacrifice**

11 **11 Division 1 of Part 1 of Schedule 3**

12 Repeal the Division.

13 **12 Division 2 of Part 1 of Schedule 3 (heading)**

14 Repeal the heading.

15 **13 Clause 1A of Schedule 3**

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

17 **14 Clause 1A of Schedule 3 (definition of *parliamentary***
18 ***allowance*)**

19 Repeal the definition, substitute:

20 *parliamentary allowance* means so much of the allowances
21 determined under subsection 7(1) of the *Remuneration Tribunal*
22 *Act 1973* as represents the annual allowance payable for the
23 purposes of section 48 of the Constitution.

24 **15 Subclause 1B(1) of Schedule 3**

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

26 **16 Paragraph 1F(a) of Schedule 3**

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

2 ***Remuneration Tribunal Act 1973***

3 **17 Subsection 5(2C)**

4 Repeal the subsection.

5 **18 Subsection 7(7)**

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

8 **19 After subsection 7(8)**

9 Insert:

10 (8AA) Each of the following determinations is a legislative instrument,
11 but neither subsection (8) of this section, nor section 42
12 (disallowance) of the *Legislative Instruments Act 2003*, applies to
13 the determination:

- 14 (a) a determination under subsection (1) or (2) of this section;
15 (b) a determination under subsection (4) of this section on a
16 matter that is, or is considered by the Tribunal or the Minister
17 to be, significantly related to a matter referred to in
18 subsection (1) or (2) of this section.

19 **20 After section 7**

20 Insert:

21 **7A Reasons for determinations about members of parliament**

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

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

30 **21 Transitional—temporary saving of old law allowances**

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