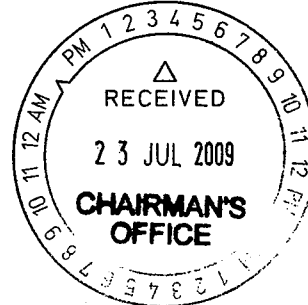




REMUNERATION TRIBUNAL

John C Conde AO  
*President*

Mr Gary Banks AO  
Chairman  
Productivity Commission  
GPO Box 1428  
CANBERRA CITY ACT 2601



Dear Mr Banks

*CB.  
24/7.*

I am writing to you in the context of the Productivity Commission's inquiry into executive remuneration in Australia.

The Tribunal appreciates that the private sector is the primary focus of your inquiry. However, in the Tribunal's view, some aspects of the framework by which the remuneration of senior public offices is fixed may have more general relevance. Specifically, based on a consideration of similarities in roles and responsibilities at the most senior levels of each sector, there is an argument that the remuneration of public offices should be accorded some weight in setting appropriate remuneration for senior private sector positions.

Based on the Tribunal's experience in the public sector, we make the following observations with respect to your inquiry:

1. Appointees to certain offices where there is a clear 'honour', or even overt public service, will accept less financial reward than would otherwise be the case. This doesn't seem to be a feature of private sector appointments where little value seems to be ascribed to 'psychic income'. We believe that the private sector should acknowledge that certain very senior positions involve very considerable aspects of prestige, honour, power and influence, and that the remuneration arrangements for appointees to such positions should accept and reflect this.
2. Performance pay (or short and long term incentive pay) is not a feature of some of the highest public sector offices (see later in this letter). Consideration should be given by the private sector as to the appropriateness, from the perspective of shareholders, of some of the extraordinarily remunerative arrangements enjoyed by senior private sector executives. The public sector experience would suggest that excellence on the job can be achieved without excessive financial reward.

3. Security of tenure in the public sector used to be cited by the private sector as lowering the job and remuneration risk for senior officers in the public sector vis-à-vis the private sector, and therefore supporting much higher levels of remuneration in the private sector for the (riskier) jobs. Security of tenure is no longer a feature of top public sector offices.
4. The role of remuneration consultants needs careful analysis. It seems that in most instances the net effect of these 'independent experts' is to increase executive remuneration. There seems to us to be a danger of systemic salary escalation as companies reach for the upper quartiles of executive remuneration. The Productivity Commission's 'Issues Paper' mentions remuneration consultants and we feel that their influence is very considerable in shaping the remuneration outcomes of senior executives.

### **The Tribunal's Approach**

The Tribunal determines remuneration for a wide range of public offices. Details of all of the Tribunal's Determinations are available on our website – <http://www.remtribunal.gov.au>. The Tribunal's determinative responsibilities include judicial and related offices. Although they would appear to be less relevant to your inquiry, reference is included here because the whole of our Australian work place is dependent on and bounded by our judicial system. As you will note from the current Judicial and Related Offices Determination<sup>1</sup>, compared to the upper levels of corporate executive remuneration, our judges are not highly paid.

The public offices in our jurisdiction most pertinent, we think, to your inquiry are the full-time public offices. Tribunal Determination 2008/08, *Remuneration and Allowances for Holders of Full-Time Public Office*<sup>2</sup>, lists them. The following table shows the highest fifteen offices based on total remuneration level determined by the Tribunal.

<b>Office</b>	<b>Total Remuneration for office</b>
Chair, Australian Prudential Regulation Authority (APRA)	\$603,130
Solicitor-General	\$529,390
Chairperson, Australian Securities and Investments Commission (ASIC)	\$529,830
Chairperson, Australian Competition and Consumer Commission (ACCC)	\$529,830
Deputy Chair, APRA	\$502,660

<sup>1</sup> <http://www.remtribunal.gov.au/determinationsReports/byYear/2009/2009-07%20Determination.pdf>

<sup>2</sup> <http://www.remtribunal.gov.au/determinationsReports/Current%20Principal%20Determinations/2008-08%20Determination%2019.5.09.pdf>

Office	Total Remuneration for office
Member, APRA	\$480,060
Deputy Chairperson, ASIC	\$445,050
Director of Public Prosecutions	\$418,510
Chair, Australian Communications and Media Authority (ACMA)	\$385,850
Member, ASIC	\$384,130
Commissioner, Australian Federal Police	\$374,040
Director-General of Security, Australian Security Intelligence Organisation	\$361,370
Director-General, Office of National Assessments	\$361,370
Deputy Chairperson, ACCC	\$344,390
Vice Chief of the Defence Force	\$344,860

Remuneration for each of these offices is determined as a 'total remuneration' amount. This amount presents the value, calculated as the total cost to the employer (including Fringe Benefits Tax) of salary, allowances, lump sum payments, and other elements of personal benefit to the office holder.

The 'total remuneration' amount includes the cost to the employer of membership of a superannuation scheme. This cost is specified as 15.4% of salary for superannuation purposes (specified in the Tribunal's determination is "base salary") which is itself determined, generally, at 73% of the 'total remuneration' amount. The Tribunal accepts that this understates the actual cost to the employer of membership of the defined benefit superannuation schemes. However, as these schemes have been closed to new members for some time, the Tribunal takes the view that the better approach is to specify remuneration in terms appropriate to new appointees to public offices.

The Tribunal also determines the annual leave entitlements of full-time offices. It does not determine long service leave entitlements; they are prescribed by the *Long Service Leave (Commonwealth Employees) Act 1976*.

The Tribunal publishes all its determinations on its website - [www.remtribunal.gov.au](http://www.remtribunal.gov.au). Each is a legislative instrument and is, accordingly, tabled in the Parliament. This means that the remuneration of each individual full-time office for which the Tribunal determines remuneration is known publicly and is readily discernible. Further, the history of the remuneration of each individual office may, with a little effort, be established from the reviews and reports published by the Tribunal since its inception in 1973.

The Tribunal also determines remuneration for the public offices of Chief of the Defence Force; Commissioner of Taxation; Chief Executive Officer of Customs; Auditor-General for Australia; and Australian Statistician. They are referred to, collectively, as the Specified Statutory Officers and their current total remuneration is set out in Tribunal Determination 2008/06<sup>3</sup>. Total remuneration for the Chief of the Defence Force is \$428,560; total remuneration for each of the other Specified Statutory Officers is \$400,960. Each of these offices is also entitled to an annual, non-superannuable, lump sum amount of 14% of total remuneration in lieu of the entitlement to performance pay that had been, until 1 July 2008, a component of the remuneration arrangements of Departmental Secretaries. I note, in this regard, that, under the *Public Service Act 1999*, the Prime Minister determines the remuneration of Departmental Secretaries, on the advice of the Tribunal.

### No Performance Pay

A notable feature of the remuneration arrangements of full-time public offices is that there is no performance-related component. This reflects a common feature of each such office, namely that it is invested with a high degree of independence in the exercise of its responsibilities (generally derived from the statute by which the office itself is established). A performance-related component of remuneration would, in the Tribunal's view, be incompatible with such independence.

### **Attributes of Public Offices**

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. For example:

- the Australian Taxation Office employs some 20,000 full-time, ongoing, staff in a national network of offices; its reach extends to every member of Australia's adult population and all its enterprises; the dimensions of its information technology systems would, at the very least, match those of even the largest Australian business enterprises;
- the Australian Defence Force Permanent Force has more than 50,000 members supporting and using equipment of levels of sophistication (and cost) on a scale unparalleled in the private sector.

Other functions, while less focused on direct management responsibilities, are fundamental to the proper operation of the regulatory infrastructure that underpins nation's economic well-being. For example:

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<sup>3</sup> <http://www.remtribunal.gov.au/determinationsReports/byYear/2008/2008-06Determination.pdf>

- the Australian Prudential Regulation Authority (APRA) is responsible for the prudential supervision of banks, building societies, credit unions, life and general insurance companies, friendly societies and certain superannuation funds. In performing its functions to protect the interest of depositors, policyholders and fund members, APRA is required to balance the objectives of financial safety and efficiency, competition, contestability and competitive neutrality and, in balancing these objectives, is to promote financial system stability in Australia. APRA has failure management and enforcement powers to deal with a distressed institution and will be responsible for administering the Financial Claims Scheme;
- the Australian Securities and Investments Commission (ASIC) is responsible for monitoring, regulating and enforcing corporations and financial services laws, and for promoting market integrity and consumer protection across the financial services sector and the payments system.

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 in the final stages of a review of Departmental Secretaries. As part of that work, the Tribunal commissioned an external adviser with extensive experience in reviewing senior executive roles in both the public and private sectors to assess the similarities and differences between these senior public sector offices and comparable private sector positions.

It is self-evident that public office holders and Departmental Secretaries are not subject to the continual demand of ensuring the ongoing commercial viability of a significant business enterprise in changing market and economic circumstances. As the Tribunal's adviser expressed this point:

- ....the position of Secretary (does) not have comparable accountability to that of a Chief Executive ... where those executives have traditionally been accountable for creating shareholder value with a primary focus on developing and implementing strategies to achieve growth in revenue, assets and profitability, with an increasing international footprint ...

However, the advice to the Tribunal also indicates that defensible parallels may be drawn across the range of responsibilities of the most senior public and private sector executives. For example:

- a Secretary's principal leadership obligations were aligned with the accountabilities of a corporate entity's CEO;
- the responsibilities of Secretaries as CEOs are considerably more complex and demanding than those of the most senior staff executives in the private sector;
- while acknowledging that the traditional role of a major private sector Chief Executive was distinctly different .... the accountability of

a Secretary, particularly those managing substantial workforces and expenditures, were not indicatively replicated in their scope or enterprise scale by either business group chief executives or principal staff executives among Australia's leading corporate entities;

- matters of national and/or regional consequence take on a character and a scale not normally reflective of a significant enterprise's involvements in its national or international workforce adjustments, debt refinancing or asset sales programs. The demands on a nation are fluid and variations in the nature of those demands and scale highlight the challenges for Departments of State and their Secretaries. These are generally not demands observed in the private sector, albeit that the private sector is a key constituent in contributing to the economic wellbeing of the nation.

### **Shaping Advice on Remuneration**

The Tribunal's intent is not to assert that the similarities between the roles and responsibilities of public offices and senior positions in the private sector are such as to justify closer alignment between the remuneration of the former and that of the latter.

Rather, as indicated earlier in this letter, it is the Tribunal's view that the demonstrable similarities in roles and responsibilities at the most senior levels of each sector support an argument that the remuneration of public offices should be accorded weight in assessing appropriate remuneration for senior private sector positions.

The Tribunal's approach to the setting of remuneration for public offices could properly be described as conservative - even cautious.

It has been invariably the case that the remuneration of public offices is not only less than that of comparable jobs in the private sector, but very much less. This is so even after setting aside entirely the excesses in recent years in corporate remuneration that are now, hopefully, being purged.

The Tribunal outlined its approach to setting the remuneration of public offices in its 2005-2006 Annual Report as follows:

*"In determining annual adjustments, the Tribunal takes account of a range of factors. Statistical indicators, such as movements in the labour price index; increases incorporated in Australian Public Service and public sector certified agreements; and increases in agreements generally, provide some guidance.*

*"Movements in senior management remuneration are also relevant, given the nature of many of the offices in the Tribunal's jurisdiction. The Tribunal is not, however, overly influenced by executive remuneration surveys. Although justifiable comparisons can be drawn between senior private and federal public sector*

*jobs, the Tribunal, while mindful of movements indicated by such surveys, regards private sector remuneration practice as being only one of the factors to be taken into account in setting the remuneration of public offices."*

### Remuneration Consultants

Notwithstanding the Tribunal's public expression of its approach, it is not uncommon for public sector agencies to advance an analysis of the public office by remuneration consultants to support increases in remuneration. Typically, such analyses are confined to identified comparisons (generally without weighting) between the roles and responsibilities of the public office concerned, and those of senior offices in private enterprises.

While some remuneration consultants may express the view, in respect of public/private comparisons, that there "... *is little crossover, and at the elite level, incomparable competency sets*"<sup>4</sup>, it seems evident, from the submissions to the Tribunal, that this view is not shared universally.

As acknowledged above, there are differences between senior offices in the public and private sectors. However, in the Tribunal's experience, it seems apparent that remuneration consultants provide advice consistent with the particulars of the commission governing their engagement.

It would not be surprising to the Tribunal were commissions to remuneration consultants from the private sector to be based - implicitly or explicitly - only upon comparisons with positions in the private sector. One unavoidable consequence is that, over time, the remuneration of each position that has been the object of remuneration consultant advice becomes, itself, input to the remuneration survey that shapes the advice provided in respect of another position. Such 'self-referencing' is a recipe for movements in one direction only - upwards - or, even worse, leapfrogging. Another unsatisfactory consequence is that this essentially circular activity produces measures of 'remuneration quartiles' that tend only to increase as successive companies try to position themselves better in the executive job market.

The Tribunal agrees absolutely that remuneration is the principal determinant in attraction and retention of executives. The Tribunal wrestles with this in the public sector all the time and often relies on the non-financial rewards of a particular job to attract and retain officers.

In the Tribunal's view, private sector boards and remuneration consultants should take a broad view of a position based upon the reasonable assumptions that:

- the fundamental responsibilities of all senior executives have demonstrable similarities; and
- the most senior public offices display these responsibilities in publicly demonstrable ways.

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<sup>4</sup> CGI Glass Lewis and Guerdon Associates, "Regulation of Director and Executive Remuneration Australia - Submission to the Productivity Commission", 5 June 2009, p50

On this basis, advice and decisions about appropriate base remuneration will be founded properly on the consideration of the essential management, policy and operational features of a senior position. To the extent that market exposure entails "*incomparable competency sets*", then they can be properly take into account in clearly graduated, and publicly defensible, variable components of remuneration.

### **The Significance of the Prestige of a Senior Position**

*"The prestige associated with appointment to a high public office entails acceptance, on the part of appointees, of less remuneration than might apply to a comparable job in the private sector."*

This quotation from the Tribunal's Annual Report refers to the Tribunal's approach over many years. The reality is, of course, that there is considerable prestige, honour, power and influence associated with many senior positions in the private sector. The Tribunal believes tangible account should be taken by the private sector of these attributes of an office when setting remuneration for it.

For example, it would not be unreasonable to expect the Chief Executive of a listed company ranked, say, between the top 100 and top 200 companies to see appointment as the Chief Executive of a top 50 company in the same industry as being attended by greater 'prestige'. As well as the attributes, mentioned above, being attached in greater degree to such an appointment, there would conceivably be reinforced industry standing, precedence and more ready access to those in a position to shape any of the dimensions of the industry concerned.

In the Tribunal's view, while not having the answer for the private sector, it seems that in progressing from smaller to larger enterprises the rate of increase in remuneration, based on consistent, measurable features, should be tempered by the significant increment in 'prestige'.

That said, the Tribunal has not fully resolved this issue in the federal public sector. We have anomalies and inconsistencies in both full-time and part-time offices within our responsibilities where, clearly, men and women of capacity accept appointment without appropriate financial reward. They accept the appointment because of a genuine desire to serve and a preparedness to balance honour and prestige with simple financial gain. We have commented on these matters in recent Annual Reports and we will continue with our reviews so that, in the medium term, attention is drawn to such difficulties, and, as circumstances permit, they are corrected.



## **Concluding Remarks**

My Tribunal colleagues and I hope that the observations expressed in this letter convey a constructive and helpful perspective for the Productivity Commission's Inquiry into Executive Remuneration.

We would be pleased to elaborate on any aspect which may be of interest.

Yours sincerely

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John C Conde AO  
President  
21 July 2009

### Attachments:

1. Determination 2009/07: Judicial and Related Offices – Remuneration and Allowances
2. Determination 2008/08: Remuneration and Allowances for Holders of Full-Time Public Office
3. Determination 2008/06: Specified Statutory Officers – Remuneration and Allowances