

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Supplementary Budget Estimates 17-20 October 2011

Prime Minister and Cabinet Portfolio

Department/Agency: Department of the Prime Minister and Cabinet

Outcome/Program: 1.1.4 Support Services for Government Operations

Topic: Ken Henry - appointment terms and conditions - differences

Senator: Senator Abetz

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Question:

Ms Leon: Senator, in relation to the question you asked me a moment ago on notice about terms and conditions, I can advise that the determination that sets secretaries' pay and conditions is on the Department of the Prime Minister and Cabinet website.

Senator ABETZ: Yes, and if you can set that out for us and then tell us how the appointment of Dr Henry is not the same. The instrument appointing him says it is the same, and when I tried to take you through the terms and conditions you told me it was not the same. So I want to know what aspects are not the same? like provision of a car, entitlement to a car and all those other terms and conditions.

Senator Chris Evans: We have taken it on notice, Senator.

Answer:

The instrument of appointment provides that the remuneration and other terms and conditions of employment for Dr Henry be the same as those that apply to the person who holds the position of Secretary of the Treasury at the relevant time.

Those terms and conditions are set by the Prime Minister's determination on remuneration and other conditions for departmental secretaries dated 30 June 2011.

A copy of that determination is attached.

Accordingly, those terms and conditions apply to Dr Henry, except those sections that relate directly to employment under the *Public Service Act 1999*, being sections 5 and 6, which deal with loss of office and reappointment under that Act.



COMMONWEALTH OF AUSTRALIA

Public Service Act 1999

Determination under Section 61: Secretaries' remuneration and other conditions

I, JULIA EILEEN GILLARD, Prime Minister, under section 61 of the *Public Service Act 1999*, having taken advice from the Remuneration Tribunal, determine that, from whichever is the latter of 1 July 2011 or the date of this determination, in relation to a person appointed as a Secretary under section 58 of the *Public Service Act 1999*, the remuneration and other conditions of appointment of that person shall be as set out below.

This Determination overrides all previous determinations made under section 61 of the *Public Service Act 1999*, and a Secretary's remuneration and other conditions of appointment are to be exclusively as set out in this Determination unless otherwise indicated.

Dated 30 June 2011

~~Prime Minister~~ -

CONTENTS

PART 1 - INTERPRETATION	1
PART 2 - REMUNERATION	2
<i>Remuneration amounts</i>	2
<i>Total Remuneration</i>	2
<i>Remuneration packaging</i>	3
<i>Superannuation</i>	3
<i>Vehicle and parking</i>	4
<i>Business support</i>	4
PART 3 - OFFICIAL TRAVEL	5
<i>Entitlement to official travel</i>	5
PART 4 - LEAVE	5
<i>Normal duty</i>	5
<i>Recreation leave</i>	5
<i>Personal leave</i>	6
<i>Miscellaneous leave</i>	6
<i>Statutory leave provisions</i>	6
PART 5 - LOSS OF OFFICE	7
PART 6 - NOTICE OF A DECISION NO TO RE-APPOINT	7
PART 7 - REMOVAL AND RELOCATION ASSISTANCE	8
<i>Interpretation</i>	8
<i>Relocation costs and allowances</i>	8
<i>Disturbance allowance</i>	8
<i>Settling out allowance</i>	8
<i>Settling in allowance</i>	9
<i>Costs of sale and purchase of residential housing</i>	9
<i>Accommodation support</i>	10
<i>Reunion travel</i>	10
<i>Dependants education allowance</i>	10
PART 8 - ASSISTANCE FOR TRAINING AND DEVELOPMENT	11
<i>Leave for training and development</i>	11
<i>Costs of training and development</i>	11
PART 9 - DELEGATION	11
SCHEDULE	12

PART 1 - INTERPRETATION

1.1 In this determination:

“**Base Salary**” means the amounts specified under clause 2.1 of this Determination.

“**Benefits**” means non-monetary benefits provided at the Commonwealth's expense.

“**business class**” means a standard of service equivalent to that offered by Qantas Airways Ltd in its Business Class.

“**Commonwealth authority**” means

- (a) a body corporate established for a public purpose by or under a law of the Commonwealth or the Australian Capital Territory; or
- (b) a body corporate:
 - (i) incorporated under a law of the Commonwealth or a State or Territory; and
 - (ii) in which the Commonwealth has a controlling interest; or
- (c) an authority or body, not being a body corporate, established for a public purpose by or under a law of the Commonwealth or the Australian Capital Territory.

“**APSC Allowance Subscription Scheme**” means the Australian Public Service Commission (APSC) Allowance Subscription Scheme and any scheme of a similar nature which modifies, replaces or supersedes the APSC Allowance Subscription Scheme.

“**employer’s superannuation contribution**” in respect of a Secretary means payments made by the Commonwealth to or in respect of the Commonwealth Superannuation Scheme or the Public Sector Superannuation Scheme in order to support the provision of benefits under any of those schemes.

“**Executive Vehicle Scheme Guidelines**” means guidelines published from time to time by the APSC in respect of the Executive Vehicle Scheme or such other Department or agency as then has policy responsibility for the scheme, or any guidelines of a similar nature which modify, replace or supersede those guidelines or guidelines to any scheme of a similar nature which modifies, replaces or supersedes the Executive Vehicle Scheme.

“**locality of the Australian Capital Territory**” means the Australian Capital Territory and those parts of New South Wales which fall within a 100 kilometre radius of Canberra.

“**other Total Remuneration elements**” include superannuation contributions made by the Commonwealth and the costs associated with a Commonwealth provided vehicle.

“**Secretary**” means the holder of an office referred to in the definition of “Secretary” in section 7 of the *Public Service Act 1999*.

“**Secretary’s Minister**” in respect of a Secretary means the senior portfolio Minister who administers the Department of which the Secretary has been appointed to the office of Secretary.

1.2 The provisions of this determination are additional and subject to any applicable statutory entitlements or conditions, including those deriving from the following Acts and from regulations and instruments made under those Acts:

- (a) *Financial Management and Accountability Act 1997*;
- (b) *Long Service Leave (Commonwealth Employees) Act 1976*;
- (c) *Occupational Health and Safety Act 1991*;
- (d) *Maternity Leave (Commonwealth Employees) Act 1973*;
- (e) *Public Service Act 1999*;
- (f) *Safety, Rehabilitation and Compensation Act 1988*;
- (g) *Superannuation Act 1976*;
- (h) *Superannuation Act 1990*;
- (i) *Superannuation Act 2005*;
- (j) *Superannuation Benefits (Supervisory Mechanisms) Act 1990*;
- (k) *Superannuation (Productivity Benefit) Act 1988*; and
- (l) *Fair Work Act 2009*.

PART 2 - REMUNERATION

Remuneration amounts

2.1 The holder of an office specified in the first column of the Schedule attached to this Determination is eligible for Base Salary and Total Remuneration in the amounts specified in the Schedule.

Total Remuneration

2.2 Total Remuneration is the value attributed to the remuneration to be paid to a Secretary and includes:

- (a) salary, subject to the packaging provisions of clauses 2.3, 2.4 and 2.5;
- (b) the value, calculated in accordance with this Part, of a fully maintained Commonwealth provided vehicle plus parking and applicable fringe benefits taxation; and
- (c) the value, calculated in accordance with this Part, of the employer’s superannuation contribution specified in clause 2.7 of this Part;

but does not include;

- (d) facilities provided as business support under clauses 2.11 to 2.14;
- (e) travelling allowances and expenditure specified in Part 3;
- (f) compensation for early loss of office specified in Part 5; or
- (g) removal costs, accommodation allowances and reunion airfares specified in Part 7.

Remuneration packaging

- 2.3 Subject to this Part, a Secretary may elect to receive the benefit of the Total Remuneration as salary or a combination of salary and other Benefits.
- 2.4 Any election made in accordance with clause 2.3 shall be consistent with relevant taxation laws and rulings or guidelines issued by the Australian Taxation Office applicable to salary packaging schemes.
- 2.5 Any election made in accordance with clause 2.3 must not result in cost to the Commonwealth (including in relation to any fringe benefits taxation) additional to the cost which would be incurred if other Total Remuneration elements able to be taken as salary were taken as salary.

Superannuation

- 2.6 Regardless of anything else in this Determination, a Secretary's annual rate of salary for the purposes of the Superannuation (CSS) Salary Regulations shall be Base Salary as specified under clause 2.1. (Note: It will therefore be the Secretary's superannuation salary for the purposes of the *Superannuation Act 1976* and the *Superannuation Act 1990*.)
- 2.7 The Total Remuneration of a Secretary shall be taken to include the value of the employer's superannuation contributions made in respect of the Secretary. For this purpose:
 - (a) in the case of a Secretary participating in the Commonwealth Superannuation Scheme or the Public Sector Superannuation Scheme, the value of the employer's superannuation contributions made in respect of the Secretary shall be taken to be:
 - (i) 13% of Base Salary until 30 June 2005; and
 - (ii) 15.4% of Base Salary on and from 1 July 2005
 - (b) in the case of a Secretary participating in any other superannuation scheme, the value of the employer's superannuation contributions made in respect of the Secretary to the superannuation scheme shall reflect the amounts actually made or liable to be made.
- 2.8 The value attributable by virtue of clause 2.7 to the employer's superannuation contribution is referable to a non-salary component of Total Remuneration and may not be the subject of an election to take an equivalent amount of salary instead.

Vehicle and parking

- 2.9.1 Where a Secretary elects to receive a Commonwealth provided vehicle, the Secretary shall have deducted from his or her Total Remuneration, an amount equal to the actual cost (including fringe benefits tax) of the vehicle to the Commonwealth, plus the value of parking, less \$3,750 a year or, where the vehicle is provided for less than a full year, \$3,750 calculated on a *pro rata* basis.
- 2.9.2 The Executive Vehicle Scheme Guidelines issued by the APSC apply to the selection of a vehicle referred to in subclause 2.9.1.
- 2.10.1 Where a Secretary elects not to receive a Commonwealth provided vehicle but instead enters into a salary sacrifice arrangement for the provision of another vehicle or uses his own or her own vehicle, and that vehicle is used for business-related purposes, the Secretary is entitled to an amount of \$3,750 a year, less tax at the applicable rate, or, where the vehicle is provided for less than a full year, that amount calculated on a *pro rata* basis.
- 2.10.2 An amount payable under subclause 2.10.1 shall not be taken as remuneration for any purpose.

Business support

- 2.11 A Secretary is entitled to the provision by his or her Department of communications, information technology and other office facilities necessary for the efficient conduct of the Commonwealth's business, and such provision includes incidental private use of those facilities. Where required, separate telecommunications lines to a Secretary's residence in support of these facilities may be provided at no cost to the Secretary.
- 2.12 A Secretary is entitled to be reimbursed by the Commonwealth for all costs of installation and rental of a telephone line and telephone at his or her residence and for all call charges on that telephone.
- 2.13 If a Secretary maintains two residences, he or she is entitled to be reimbursed by the Commonwealth in the terms of clause 2.12 in relation to a telephone line and telephone at one of his or her residences and, in relation to the other residence, is entitled to be reimbursed only for 50% of the call charges and no other costs.
- 2.14 A Secretary is entitled to two domestic airline lounge memberships at Commonwealth expense.

PART 3 - OFFICIAL TRAVEL

Entitlement to official travel

- 3.1 Secretaries are entitled to the travelling allowances for travel on official business within Australia and internationally in accordance with the conditions, and at the Tier 1 rate, as determined from time to time by the Remuneration Tribunal in relation to full-time public office holders.

PART 4 - LEAVE

Normal duty

- 4.1 A Secretary is to be available for duty when required by his or her Minister and on all days his or her department is open for and conducts normal business.

Recreation leave

- 4.2 A Secretary is entitled to recreation leave at a rate of 20 working days for each completed 12 months of service, or pro rata for lesser periods, to be credited in the same way as recreation leave entitlements are credited to employees generally in the Secretary's department.
- 4.3 A Secretary's recreation leave credit includes any existing recreation leave accrued either through prior service in the Australian Public Service or the ACT Government Service, or through employment in a Commonwealth authority, that in either case ceased not more than two months prior to being appointed as a Secretary.
- 4.4 Application to take recreation leave must be made to the Secretary's Minister and may be for a period up to the Secretary's existing recreation leave credit.
- 4.5 Where a Secretary ceases to be a Secretary, other than by death, and does not carry forward a recreation leave credit to other Commonwealth employment, he or she is entitled to be paid the salary equivalent of:
- (a) any recreation leave credit unused at the time he or she ceased to be a Secretary; and
 - (b) recreation leave accrued since the last 1 January at the rate of one twelfth of a full year's recreation leave accrual for each completed month of service;

but if a Secretary has died, the Prime Minister or his or her delegate may authorise payment of this amount to a dependant of the Secretary or the Secretary's legal personal representative.

- 4.6 A Secretary is entitled to cash out up to half of his or her annual recreation leave entitlement in any year if the Secretary's department has a policy that allows employees generally in that department to cash out up to half of their annual recreation leave entitlements in accordance with the workplace agreements under which they are engaged.

Personal leave

- 4.7 A Secretary is entitled to personal leave which may be accessed at full or half pay to accommodate personal illness or injury, to care for a family member or to meet family responsibilities of an emergency and unscheduled nature.
- 4.8 A Secretary's entitlement to personal leave accrues at the rate of 15 days on the date of appointment plus a further 15 days at the end of each 12 months' service.
- 4.9 A Secretary's absence of three days or more using personal leave must be authorised by the Prime Minister or his or her delegate.
- 4.10 In addition to the personal leave entitlement specified in clause 4.8, a Secretary's sick leave entitlements accrued either through prior service in the Australian Public Service or in the service of an Australian State or Territory Government, or through employment in a Commonwealth authority, that in either case ceased not more than two months prior to being appointed a Secretary will be recognised as if accrued while as a Secretary and will be paid at full pay or half pay as originally accrued.
- 4.11 Neither unused personal leave nor unused sick leave accrued through prior service referred to in clause 4.10 will be paid out where a Secretary ceases for whatever reason to be a Secretary.
- 4.12 The Prime Minister may grant additional personal leave to a Secretary at the Prime Minister's discretion.

Miscellaneous leave

- 4.13 The Prime Minister or his or her delegate may grant leave of absence to a Secretary for a purpose that the Prime Minister or his or her delegate considers to be in the interests of the Commonwealth. Such leave of absence may be with or without pay and subject to conditions at the discretion of the Prime Minister or his or her delegate.

Statutory leave provisions

- 4.14 A Secretary is entitled to long service leave in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* and maternity leave in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973*.

- 4.15 Application to take long service leave or maternity leave must be made to the Secretary's Minister.

PART 5 - LOSS OF OFFICE

- 5.1 Where a Secretary is terminated in accordance with the provisions of sub-section 59(1) of the *Public Service Act 1999* and the Commonwealth has not made the Secretary an offer of suitable alternative employment, the Secretary shall be entitled upon his or her termination to be paid:

- (a) three months' Base Salary; or
- (b) one-third of one month's Base Salary for each full month of the balance of the term not served, subject to a maximum payment of 12 months' Base Salary calculated at the date of his or her termination

whichever is the greater.

- 5.2 In determining whether, for the purpose of clause 5.1, there has been an offer of suitable alternative employment, account is to be taken of any offer of employment with the Commonwealth, the administration of a Territory, or a public statutory corporation referred to in paragraph 3(4)(d) of the *Remuneration Tribunal Act 1973*, or an incorporated company all the stock or shares in the capital of which is or are beneficially owned by the Commonwealth or by a public statutory corporation, or an incorporated company limited by guarantee where the interests and rights of the members in or in relation to the company are beneficially owned by the Commonwealth or by a public statutory corporation.

PART 6 – NOTICE OF A DECISION NOT TO RE-APPOINT

- 6.1 A Secretary who is not given three months' notice that he or she will not be re-appointed to the position at the expiration of his or her term shall be paid three months' Base Salary unless the Commonwealth has made the Secretary an offer of suitable alternative employment.
- 6.2 In determining whether, for the purpose of clause 6.1, an offer of suitable alternative employment has been made, regard is to be had to any offer of employment of the kind described in clause 5.2.

PART 7 - REMOVAL AND RELOCATION ASSISTANCE

Interpretation

7.1 In this Part:

“home locality” means the locality where the Secretary ordinarily lives immediately before the commencement of the term of appointment as Secretary takes place.

“new locality” means the locality of the Australian Capital Territory.

Relocation costs and allowances

7.2 A Secretary is entitled to payment at Commonwealth expense of his or her relocation costs from his or her home locality to the new locality in order to take up his or her appointment as a Secretary.

7.3 For the purposes of clause 7.2, relocation costs include, as applicable:

- (a) transportation of the Secretary and his or her partner and dependants, if any, from the home locality to the new locality, and their return to the home locality when the Secretary ceases to hold office as Secretary for whatever reason;
- (b) the insured removal of the furniture, household effects and domestic animals of the Secretary and his or her partner and dependants from the home locality to the new locality, and their return to the home locality when the Secretary ceases to hold office as Secretary for whatever reason;
- (c) costs of sale and purchase of residential housing under clause 7.10 below; and
- (d) if the Secretary rents accommodation in the new locality, bond money and utility connection deposits, to be repaid to the Commonwealth at the end of the tenancy.

Disturbance allowance

7.4 In addition to removal costs under subclause 7.3(b), a Secretary is entitled to a disturbance allowance of an amount applicable to a member of the Senior Executive Service as advised from time to time under the APSC Allowance Subscription Scheme.

Settling out allowance

7.5 The “settling out period” is the period of 7 days beginning on the day when the furniture and other household effects of the Secretary and his or her dependants, if any, are removed from the residence of the Secretary at the home locality.

- 7.6 During the settling out period, a Secretary is entitled to settling out allowance of:
- (a) in relation to the costs of accommodation – \$1,727 per week; and
 - (b) in relation to meals and incidentals – up to the rate per week applicable to a member of the Senior Executive Service as advised from time to time under the APSC Allowance Subscription Scheme for Temporary Accommodation Allowances.

Settling in allowance

- 7.7 The "settling in period" is the period beginning on the day 7 days before the day when the Secretary begins duty at the new locality and ending on the earlier of:
- (a) the day when suitable accommodation or suitable temporary accommodation becomes available at that locality; or
 - (b) the day 13 weeks after the day when the Secretary begins duty at the locality.
- 7.8 During the settling in period, a Secretary is entitled to settling in allowance of:
- (a) in relation to the costs of accommodation – \$1,727 per week; and
 - (b) in relation to meals and incidentals – up to the rate per week applicable to a member of the Senior Executive Service as advised from time to time under the APSC Allowance Subscription Scheme for Temporary Accommodation Allowances.

Costs of sale and purchase of residential housing

- 7.9 A Secretary is entitled to reimbursement, at Commonwealth expense, of all reasonable costs of:
- (a) sale of a residence which is owned by him or her in the home locality if sold for the purposes of relocating to the new locality in order to take up the office of Secretary;
 - (b) purchase of a residence in the new locality in order to take up the office of Secretary other than the actual purchase price; and
 - (c) sale of a residence which is owned by him or her in the new locality if sold for the purposes of relocating to the home locality when the Secretary ceases to hold office as Secretary for whatever reason.
- 7.10 For the purposes of clauses 7.3 and 7.9, costs of sale and purchase which may be reimbursed comprise, as applicable:
- (a) agent's commission;
 - (b) advertising fees;
 - (c) solicitor's fees;

- (d) stamp duty; and
- (e) auction costs.

Accommodation support

- 7.11 A Secretary who did not live in the locality of the Australian Capital Territory immediately before the commencement of his or her term of appointment as Secretary is entitled to accommodation support of an amount per week equal to \$29,645 per annum for the duration of his or her term and any subsequent term as Secretary if he or she:
- (a) continues to maintain a residence in his or her home locality; and
 - (b) does not buy a property in the locality of the Australian Capital Territory.

Reunion travel

- 7.12 A Secretary who, immediately before the commencement of his or her initial term of appointment as a Secretary, did not ordinarily live in the locality of the Australian Capital Territory and who continues to maintain a residence in his or her home locality during the initial term of appointment as a Secretary and during any successive term of appointment as a Secretary, is entitled in each 12 months of service, at his or her election at the time of appointment or reappointment to:
- (a) 12 business class return airfares between Canberra and the capital city nearest the home locality each year; or
 - (b) travel for the purposes of reunion up to the value of 12 business class return fares between Canberra and the capital city nearest the home locality for each 12 month period.
- 7.13 The travel entitlement provided to a Secretary under clause 7.12 may be used by a Secretary and his or her immediate family members.
- 7.14 Travel provided to a Secretary under clause 7.12 may be exercised only while he or she occupies the office of a Secretary. Any travel not taken by the day a Secretary ceases to occupy the office of a Secretary ceases to be available.
- 7.15 The value of the travel provided to a Secretary under clause 7.12 may not be taken as a cash equivalent or converted to any other use.

Dependants' education allowance

- 7.16 A Secretary who, immediately before the commencement of his or her initial term of appointment as a Secretary, did not ordinarily live in the locality of the Australian Capital Territory, is entitled to reimbursement for boarding and tuition fees for his or her dependent children under 20 years of age undertaking the second last or final year of secondary education on the terms and conditions set out in Part 5 of Chapter 7 of Public Service Determination 1998/5, irrespective of whether or not that

Determination continues in force generally, as if he or she were a prescribed officer under those terms and conditions, and at the rates of allowance and contribution as advised from time to time under the APSC Allowance Subscription Scheme for Education Costs Allowances.

PART 8 - ASSISTANCE FOR TRAINING AND DEVELOPMENT

Leave for training and development

- 8.1 The Prime Minister or his or her delegate may grant leave of absence with pay to a Secretary to enable him or her to pursue training or development activities that the Prime Minister or his or her delegate considers to be in the interests of the Commonwealth. Such leave of absence may be subject to conditions at the discretion of the Prime Minister or his or her delegate.

Costs of training and development

- 8.2 The Prime Minister or his or her delegate may approve reimbursement of costs incurred by a Secretary in connection with training or development activities. Such reimbursement is at the discretion of the Prime Minister or his or her delegate and may be in full or in part and may be subject to conditions.

PART 9 - DELEGATION

- 9.1 The Prime Minister may delegate any of his or her powers under this determination to another Minister under such conditions he or she thinks appropriate.

SCHEDULE

SECRETARY	Base Salary per annum	Total Remuneration per annum
Department of Defence	\$431,670	\$539,580
Department of the Prime Minister and Cabinet	"	"
Department of the Treasury	"	"
Department of Agriculture, Fisheries and Forestry	\$403,850	\$504,810
Attorney-General's Department	"	"
Department of Broadband, Communications and the Digital Economy	"	"
Department of Climate Change and Energy Efficiency	"	"
Department of Education, Employment and Workplace Relations	"	"
Department of Families, Housing, Community Services and Indigenous Affairs	"	"
Department of Finance and Deregulation	"	"
Department of Foreign Affairs and Trade	"	"
Department of Health and Ageing	"	"
Department of Human Services	"	"
Department of Immigration and Citizenship	"	"
Department of Infrastructure and Transport	"	"
Department of Innovation, Industry, Science and Research	"	"
Department of Regional Australia, Regional Development and Local Government	"	"
Department of Resources, Energy and Tourism	"	"
Department of Sustainability, Environment, Water, Population and Communities	"	"
Department of Veterans' Affairs	"	"