



Remuneration Tribunal

Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 5) 2023

1. The *Remuneration Tribunal Act 1973* (the Act) establishes the Remuneration Tribunal (the Tribunal) as an independent statutory authority responsible for reporting on and determining the remuneration, allowances and entitlements of key Commonwealth office holders. These include Judges of Federal Courts and most full-time and part-time holders of public offices, including Specified Statutory Offices. An additional function of the Tribunal is to determine a classification structure for Principal Executive Offices and the terms and conditions applicable to each classification within the structure.

Consultation

2. Section 11 of the Act advises that in the performance of its functions the Tribunal:
 - may inform itself in such manner as it thinks fit;
 - may receive written or oral statements;
 - is not required to conduct any proceeding in a formal manner; and
 - is not bound by the rules of evidence.
3. The Tribunal normally receives submissions on remuneration from a portfolio minister, or a secretary, program manager or employing body (in respect of a Principal Executive Office) with responsibility for the relevant office(s). The Tribunal will normally seek the views of the relevant portfolio minister prior to determining remuneration for an office.
4. The Tribunal may reach a decision based on the information provided in the submission and other publicly available information such as portfolio budget statements, annual reports, corporate plans, legislation and media releases. On occasion it may wish to meet with relevant parties or seek further information from the relevant minister or person making the submission.
5. Amongst other relevant matters in deliberating on appropriate remuneration for an office the Tribunal informs itself on:
 - the main functions, responsibilities and accountabilities of the office;
 - the organisational structure, budget and workforce;
 - the requisite characteristics, skills or qualifications required of the office holder(s); and
 - the remuneration of similar, comparator, offices within its jurisdiction.

Updated definitions

6. Consultation was considered unnecessary on these amendments, which update the definition of 'official travel determination' in the Tribunal's Judicial and Related Offices, Full-Time and Part-Time Determinations, to refer to the new principal Remuneration Tribunal (Official Travel) Determination 2023.

Creative Australia, various offices

7. On 6 July 2023, the Hon Tony Burke MP, Minister for the Arts, wrote to the Tribunal seeking a determination of remuneration for the offices of Creative Australia. Creative Australia will replace the Australia Council as the Australian Government's principal arts investment, development and advisory body. It is established by the *Creative Australia Act 2023* and associated transitional legislation. The request was accompanied by a submission outlining the roles and responsibilities of each office and the qualities and capabilities required of office holders.
8. In addition to establishing Creative Australia and its offices, the *Creative Australia Act 2023* makes changes to a number of existing Australia Council offices. The offices of Creative Partnerships Australia and the Australia Council Peer Assessment Panels cease to exist.

National Intermodal Corporation Limited, various offices

9. On 24 May 2023, the Chair of National Intermodal Corporation Limited wrote to the Tribunal seeking a review of remuneration for all of the corporation's public offices and seeking a determination of remuneration for the offices of Chair and Member of the corporation's audit committee. The request was accompanied by a submission outlining changes in the roles, responsibilities and demands of the relevant offices.
10. On 27 May 2023, the President of the Tribunal wrote to the Hon Catherine King MP, Minister for Infrastructure, Regional Development and Local Government, and Senator the Hon Katy Gallagher, Minister for Finance, seeking their views on the submission as Shareholder Ministers. The President received their response on 27 June 2023.

Retrospectivity

11. Any retrospective application of this determination is in accordance with subsection 12(2) of the *Legislation Act 2003* as it does not affect the rights of a person (other than the Commonwealth or an authority of the Commonwealth) to that person's disadvantage, nor does it impose any liability on such a person.
12. With respect to the offices of the National Intermodal Corporation Limited, except in the case of the office of Deputy Chair, retrospective application does not disadvantage any person as it establishes more generous remuneration entitlements than would otherwise apply.
13. With respect to the office of Deputy Chair of the National Intermodal Corporation Limited, the retrospective application does not disadvantage any person as the Tribunal Secretariat has confirmed no person is appointed to that office.

Exemption from sunseting

14. Under section 12, item 56 of the Legislation (Exemptions and Other Matters) Regulation 2015, an instrument required to be laid before the Parliament under subsection 7(7) of the *Remuneration Tribunal Act 1973* is exempt from the provisions of paragraph 54(2)(b) of the *Legislation Act 2003*.

15. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.
16. As the Remuneration Tribunal makes new principal determinations annually, the principal instruments amended by this determination are unlikely to have any practical effect beyond the usual 10 year sunset period. As such, the exemption from sunset will not have a practical impact on parliamentary oversight of the relevant measures.

The power to repeal, rescind and revoke, amend and vary

17. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Details of the determination are as follows:

18. Section 1 specifies the name of the instrument.
19. Section 2 specifies when the instrument commences.
20. Section 3 specifies the authority for the instrument.
21. Section 4 outlines the effect of instruments specified in a Schedule to the instrument.
22. Schedule 1 sets out the amendments made to the instruments specified in Schedule 1.

SCHEDULE 1—AMENDMENTS

Part 1 – Amendments relating to the official travel determination

Remuneration Tribunal (Judicial and Related Offices - Remuneration and Allowances) Determination (No. 1) 2023

23. Item 1 amends the definition of *official travel determination* in section 7 so that it refers to the 2023 determination.

Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination (No. 1) 2023

24. Item 2 amends the definition of *official travel determination* in section 7 so that it refers to the 2023 determination.

Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination (No. 1) 2023

25. Item 3 amends the definition of *official travel determination* in section 8 so that it refers to the 2023 determination.

Part 2 – Amendments relating to Creative Australia

Remuneration Tribunal (Remuneration and Allowances for Holders of Part-

time Public Office) Determination (No. 1) 2023

26. Item 4 renames the Australia Council the Australia Council Board in Table 3A.
27. Item 5 establishes the remuneration and travel tier for the offices of Chair and Member of the Creative Workplaces Council in Table 3A.
28. Item 6 removes the item dealing with Creative Partnerships Australia from Table 3A.
29. Item 7 establishes the remuneration and travel tier for the office of Member of the Music Australia Council in Table 3A.
30. Items 8, 9 and 10 update references to the Australia Council with the Australia Council Board in special provisions in Table 3B.
31. Item 11 renames the Australia Council, Sector Strategy Panels the Creative Australia, Sector Strategy Panels in Table 4A.
32. Item 12 removes the item dealing with the Australia Council, Peer Assessment Panel Members in Table 4A.

Part 3 – Other amendments

Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination (No. 1) 2023

33. Item 13 sets new remuneration for the offices of Chair, Deputy Chair and Member of National Intermodal Corporation Limited in Table 3A and establishes remuneration for the Chair and Members of the National Intermodal Corporation Limited audit committee.
34. Item 14 removes the previous entry for the offices of National Intermodal Corporation Limited from Table 3A.
35. Item 15 sets application and transition provisions for item 13.

Authority: Sub-sections 7(3), (3AA), (4) and (4B)

Remuneration Tribunal Act 1973

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Remuneration Tribunal Amendment Determination (No. 5) 2023

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This determination amends principal determinations:

- *Remuneration Tribunal (Judicial and Related Offices – Remuneration and Allowances) Determination (No. 1) 2023*;
- *Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination (No. 1) 2023*; and
- *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination (No. 1) 2023*.

The determination:

- updates the definition of official travel determination in the above principal determinations;
- establishes remuneration and travel tier for the part-time offices of Chair and Member of the Creative Workplaces Council;
- establishes remuneration and travel tier for the part-time office of Member of the Music Australia Council;
- amends various references to the Australia Council with the Australia Council Board;
- removes the part-time offices of Creative Partnerships Australia and the Australia Council, Peer Assessment Panel Members;
- amends the remuneration for the part-time offices of Chair, Deputy Chair and Member of the National Intermodal Corporation Limited; and
- establishes remuneration for the part-time offices of the National Intermodal Corporation Limited audit committee.

The instrument maintains the principle of fair, and current, remuneration for work performed.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Remuneration Tribunal