



## Remuneration Tribunal

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### Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 7) 2023

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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.

#### *Jobs and Skills Australia, Commissioner and Ministerial Advisory Board*

6. On 10 May 2023, the Tribunal made an indicative determination of remuneration for the proposed full-time office of the Jobs and Skills Australia Commissioner in response to a request from the Minister for Skills and Training, the

Hon Brendan O'Connor MP. The accompanying submission outlined the role of the office, and the qualities and capabilities required of the office holder.

7. On 23 August 2023, Minister O'Connor, wrote to the Tribunal seeking a determination of remuneration and travel tier for the part-time offices of Chair and Member of the Jobs and Skills Australia Ministerial Advisory Board. The accompanying submission outlined the role of the offices, and the qualities and capabilities required of the advisory board members.
8. On 21 September 2023, the Tribunal was advised the *Jobs and Skills Amendment Act 2023* (the Act) had received royal assent on 17 August 2023. Among other things, the Act abolished the office of Jobs and Skills Australia Director, and established both the office of Jobs and Skills Australia Commissioner, and the Jobs and Skills Australia Ministerial Advisory Board.

*Emissions Reduction Assurance Committee, Chair*

9. On 5 April 2023, the Minister for Climate Change and Energy, the Hon Chris Bowen MP, wrote to the Tribunal seeking a determination of remuneration and travel tier for the full-time office of Chair, Emissions Reduction Assurance Committee. The accompanying submission outlined the skills and responsibilities of the office, as it transitioned from a part-time to full-time role. The *Safeguard Mechanism (Crediting) Amendment Act 2023* which enacted this change was proclaimed with effect from 4 September 2023.

*North Queensland Water Infrastructure Authority, Chief Executive Officer*

10. The North Queensland Water Infrastructure Authority was abolished on 31 August 2023. As a result the office of Chief Executive Officer no longer exists. There was no consultation on this matter.

*Fair Work Ombudsman*

11. On 12 September 2023, the Department of Employment and Workplace Relations advised the Tribunal Secretariat that Ms Sandra Parker is no longer appointed to the office of the Fair Work Ombudsman, and the determination of personal superannuation salary for Ms Parker is no longer required.

*National Disability Insurance Agency, Board*

12. On 25 August 2023, the National Disability Insurance Agency (NDIA) advised the Hon Dr Denis Napthine AO had been appointed to the audit committee of the NDIA Board. In accordance with government policy relating to former state parliamentarians in receipt of a parliamentary pension, the NDIA confirmed Dr Napthine had agreed to have the fee for his membership of the audit committee reduced.

*Australia Council, various offices*

13. 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 replaced the Australia Council as the Australian Government's principal arts investment, development and advisory body with effect from 24 August 2023.

14. Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Office) Determination (No. 2) 2023 applied the Remuneration Tribunal's general adjustment for the offices of the Australia Council and the Australia Council Sector Strategy Panels for the period 1 July 2023 to 23 August 2023. These offices ceased to exist on and from 24 August 2023, and so are removed from the determination.
15. On 28 August 2023, the Office for the Arts advised the Tribunal's secretariat that the Hon Don Harwin was no longer appointed to the Board of the Australia Council. As such, the special provisions implementing the government policy relating to former state parliamentarians in receipt of parliamentary pension were no longer required.

### **Retrospectivity**

16. 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.
17. With respect to the office of Jobs and Skills Australia Commissioner, the retrospective application of this provision does not disadvantage any person as it sets remuneration and travel tier for the office from the date of its establishment.
18. With respect to the full-time office of Chair, Emissions Reduction Assurance Committee, the retrospective application of this provision does not disadvantage any person as it sets remuneration and travel tier for the office from the date it was established as a full-time office.
19. With respect to the offices of Chair and Member of the Jobs and Skills Australia Ministerial Advisory Board, the retrospective application of this provision does not disadvantage any person as it sets remuneration and travel tier for the offices from the date they were established.

### **Exemption from sunseting**

20. 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*.
21. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.
22. As the Remuneration Tribunal makes new principal determinations annually, the principal instrument amended by this determination are unlikely to have any practical effect beyond the usual 10 year sunseting period. As such, the exemption from sunseting will not have a practical impact on parliamentary oversight of the relevant measures.

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

23. 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:**

24. Section 1 specifies the name of the instrument.
25. Section 2 specifies when the instrument commences.
26. Section 3 specifies the authority for the instrument.
27. Section 4 outlines the effect of instruments specified in a Schedule to the instrument.
28. Schedule 1 sets out the amendments made to the instruments specified in Schedule 1.

**SCHEDULE 1—AMENDMENTS**

***Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination (No.2) 2023***

29. Item 1 inserts a reference to the application and transitional provisions in section 23, into the definitions in section 7.
30. Item 2 establishes the remuneration and travel tier for the office of Jobs and Skills Australia Commissioner in Table 2A.
31. Item 3 removes the item relating to the Jobs and Skills Australia Director in Table 2A.
32. Item 4 establishes the remuneration and travel tier for the office of Chair, Emissions Reduction Assurance Committee in Table 2A.
33. Item 5 removes the item dealing with the office of Chief Executive Officer, North Queensland Water Infrastructure Authority in Table 2A.
34. Item 6 removes the item dealing with personal superannuation salary for Ms Sandra Parker, former Fair Work Ombudsman from Table 3B.
35. Item 7 sets application and transitional provisions for items 2 and 4.

***Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination (No.2) 2023***

36. Item 8 inserts a reference to the application and transitional provisions in section 46, into the definitions in section 8.
37. Item 9 amends the references to special provisions associated with the National Disability Insurance Agency Board in Table 3A.
38. Item 10 removes the item dealing with the offices of the Australia Council (until 23 August 2023) from Table 3A.
39. Item 11 amends the references to special provisions associated with the Australia Council Board in Table 3A.

40. Item 12 sets person-specific remuneration in Table 3B for the Hon Dr Denis Naphine AO for his role as a Member of the NDIA Board Audit Committee.
41. Item 13 removes the special provisions associated with the Hon Don Harwin in his roles as a Member of the Australia Council and its Audit Committee from Table 3B.
42. Item 14 removes the item dealing with the Australia Council, Sector Strategy Panels (until 23 August 2023) from Table 4A.
43. Item 15 establishes the remuneration and travel tier for the offices of Chair and Member of the Jobs and Skills Australia Ministerial Advisory Board in Table 4A.
44. Item 16 sets application and transitional provisions for item 15.

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

*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. 7) 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 the principal determinations:

- Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination (No. 2) 2023
- Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination (No. 2) 2023.

The determination:

- sets remuneration and travel tier for the full-time office of Jobs and Skills Australia Commissioner;
- removes the full-time office of Jobs and Skills Australia Director;
- sets remuneration and travel tier for the full-time office of Chair, Emissions Reduction Assurance Committee;
- removes the full-time office of Chief Executive Officer, North Queensland Water Infrastructure Authority;
- removes a person-specific superannuation salary for Ms Sandra Parker, former Fair Work Ombudsman;
- amends the special provisions associated with the National Disability Insurance Agency to set reduced person-specific remuneration for the Hon Dr Denis Napthine AO in his role on the NDIA Audit Committee, in accordance with government policy and as acknowledged by Dr Napthine;
- removes provisions associated with the Australia Council and its Sector Strategy Panels which have expired;
- removes the special provisions associated with the Hon Don Harwin for his former roles on the Australia Council and its Audit Committee;
- sets remuneration and travel tier for the part-time offices of Chair and Member of the Jobs and Skills Australia Ministerial Advisory Board.

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