



Remuneration Tribunal

Explanatory Statement: Remuneration Tribunal Amendment Determination (No.1) 2024

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.

Federal Circuit and Family Court of Australia (FCFC) (Division 2), Recreation Leave

6. There was no consultation on this matter. The amendment removes a special leave provision for Judges of the FCFC (Division 2), which ended on 31 December 2023.

National Capital Authority, Chief Executive

7. There was no consultation on this matter. The amendment removes a special provision for the former Chief Executive of the National Capital Authority, Ms Sally Barnes. Ms Barnes' resigned effective 29 February 2024.

Professional Services Review, Associate Director

8. On 6 November 2023, the Hon Mark Butler MP, Minister for Health and Aged Care wrote to the Tribunal seeking a determination of remuneration for the new office of Associate Director, Professional Services Review. The accompanying submission outlined the roles and responsibilities of the office.

Australian Curriculum, Assessment and Reporting Authority, Chief Executive Officer

9. There was no consultation on this matter. The amendment removes a special provision for the former Chief Executive Officer Australian Curriculum, Assessment and Reporting Authority, Mr David de Carvalho. Mr de Carvalho's appointment ended on 10 November 2023.

Race Discrimination Commissioner

10. On 24 January 2024, the Hon Mark Dreyfus KC MP, Attorney-General, wrote to the Tribunal seeking a determination of accommodation and reunion travel assistance for the Race Discrimination Commissioner, Mr Giridharan Sivaraman.

Aboriginal and Torres Strait Islander Social Justice Commissioner

11. On 21 December 2023, the Hon Mark Dreyfus KC MP, Attorney-General, wrote to the Tribunal seeking an increase to the amount of accommodation and reunion travel assistance determined for the Aboriginal and Torres Strait Islander Social Justice Commissioner, Ms June Oscar.

Inspector General of Live Animal Exports

12. There was no consultation on this matter. The amendment updates the name of the office of 'Inspector General of Live Animal Exports', to the 'Inspector-General of Animal Welfare and Live Animal Exports'. The name of this office was altered by the *Inspector-General of Live Animal Exports Amendment (Animal Welfare) Act 2023*.

Nature Repair Market Committee, Chair and Member

13. On 28 June 2023, the Hon Tanya Plibersek MP, Minister for the Environment and Water, wrote to the Tribunal seeking an indicative determination of remuneration for the part-time offices of Chair and Member of the Nature Repair Market Committee, subject to the passage of the Nature Repair Market Bill 2023. The accompanying submission outlined the roles and responsibilities of the offices. The *Nature Repair Act 2023* came into effect on 14 December 2023.

Retrospectivity

14. 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.

15. With respect to the Race Discrimination Commissioner, Mr Giridharan Sivaraman, the retrospective application of this provision does not disadvantage any person as it provides an entitlement to accommodation and reunion travel assistance from the date of Mr Sivaraman's appointment.
16. With respect to the offices of Chair and Member of the Nature Repair Market Committee, the retrospective application of this provision does not disadvantage any person as it provides remuneration for the offices from the date of the establishing legislation.

Exemption from sunseting

17. 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*.
18. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.
19. 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

20. 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:

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

SCHEDULE 1—AMENDMENTS

Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination (No. 2) 2023

26. Item 1 repeals the special leave arrangement for Judges of the Federal Circuit and Family Court of Australia (Division 2) for the COVID-19 pandemic.

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

27. Item 2 removes the reference to the special provision for the Chief Executive of the National Capital Authority.

28. Item 3 sets remuneration and travel tier for the office of Associate Director, Professional Services Review.

29. Item 4 repeals the fixed loading for the previous Chief Executive of the National Capital Authority, Ms Sally Barnes.

30. Item 5 repeals the special superannuation salary for the previous Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority, Mr David de Carvalho.

31. Item 6 sets accommodation assistance for the Race Discrimination Commissioner, Mr Giridharan Sivaraman.

32. Item 7 increases accommodation assistance for the Aboriginal and Torres Strait Islander Social Justice Commissioner, Ms June Oscar.

33. Item 8 increases reunion travel assistance for the Aboriginal and Torres Strait Islander Social Justice Commissioner, Ms June Oscar.

34. Item 9 sets reunion travel assistance for the Race Discrimination Commissioner, Mr Giridharan Sivaraman.

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

35. Item 10 amends the name of the 'Inspector-General of Live Animal Exports' to the 'Inspector-General of Animal Welfare and Live Animal Exports' in Table 4A.

36. Item 11 sets remuneration and travel tier for the offices of Chair and Member of the Nature Repair Market Committee.

37. Item 12 amends the name of the 'Inspector-General of Live Animal Exports' to the 'Inspector-General of Animal Welfare and Live Animal Exports' in Table 4B.

38. Item 13 sets the date of effect for item 11.

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. 1) 2024

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 (Judicial and Related Offices—Remuneration and Allowances) Determination (No. 2) 2023
- 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:

- repeals the special leave arrangement for Judges of the Federal Circuit and Family Court of Australia (Division 2) for the COVID-19 pandemic;
- sets remuneration and travel tier for the office of Associate Director, Professional Services Review;
- repeals the fixed loading for the previous Chief Executive of the National Capital Authority, Ms Sally Barnes;
- repeals the special superannuation salary for the previous Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority, Mr David de Carvalho;
- sets accommodation and reunion assistance for the Race Discrimination Commissioner, Mr Giridharan Sivaraman;
- increases accommodation and reunion travel assistance for the Aboriginal and Torres Strait Islander Social Justice Commissioner, Ms June Oscar;
- amends the name of the 'Inspector-General of Live Animal Exports' to the 'Inspector-General of Animal Welfare and Live Animal Exports'; and
- sets remuneration and travel tier for the offices of Chair and Member of the Nature Repair Market 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