



REMUNERATION TRIBUNAL

Explanatory Statement: Determination 2017/17: Remuneration and Allowances for Holders of Public Office and Judicial and Related Offices

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 expenses of key Commonwealth office holders. These include members of parliament, Judges of Federal Courts, most full-time and part-time holders of public offices and principal executive offices.

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.

National Capital Authority, Chief Executive

6. The amendments remove all reference to the person specific remuneration provisions applying to the office of Chief Executive, which ceased to apply from 28 August 2017. The Tribunal received confirmation from the Authority of the office holder's resignation from this date.

National Disability Insurance Scheme Launch Transition Agency, Chief Executive Officer

7. The Tribunal received a submission from the Minister for Social Services, the Hon Christian Porter MP, seeking personal remuneration for Mr Roberto De Luca.

eSafety Commissioner

8. The Tribunal received advice from the Office of the eSafety Commissioner that the *Enhancing Online Safety for Children Amendment Act 2017* renamed the title of the 'Children's eSafety Commissioner' to the 'eSafety Commissioner'.

Foreign Investment Review Board, Member

9. The Tribunal received a request from the Secretary of the Treasury, Mr John Fraser, seeking a person specific member fee for the Hon Cheryl Edwardes AM, as a former member of state parliament in receipt of a superannuation pension.

Western Sydney Airport Corporation Limited (WSA Co), Chair, Deputy Chair and Directors

10. The Tribunal decided indicative remuneration for this office in May 2017 following a submission from the Minister for Finance, Senator the Hon Mathias Cormann, and the Minister for Urban Infrastructure, Hon Paul Fletcher MP. The Tribunal received confirmation from the Secretary, Department of Infrastructure and Regional Development, Mr Mike Mrdak AO that WSA Co was formally incorporated on 7 August 2017.

Judicial and Related Offices – Clause 3.2

11. There was no consultation on this matter as this is part of the Tribunal's Annual Travel Allowance (TA) review, based on rates set by the Australian Taxation Office (Taxation Determination 2017/19: *Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2017-18 income year?*). The adjustment increases the Canberra allowance for the Chief Justice and Justices of the High Court of Australia who do not establish their place of residence in Canberra. The Canberra allowance is in lieu of the TA that would otherwise be payable.

Retrospectivity

12. 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.

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

13. 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:

PART 1 – FULL-TIME OFFICES

14. Clause 1.1 specifies the Principal Determination (Number 11 of 2017 as amended) for the purposes of Part 1 of the Determination.
15. Clauses 1.2 and 1.3 remove all references to person specific remuneration for the Chief Executive, National Capital Authority, following the office holder's resignation.
16. Clauses 1.4 and 1.5 set person specific remuneration for the incoming Chief Executive Officer, National Disability Insurance Scheme Launch Transition Agency, Mr Roberto DeLuca for the initial term of his appointment.
17. Clause 1.6 sets the commencement date of Clause 1.5.

18. Clause 1.7 changes the name of the “Children’s eSafety Commissioner” to the “eSafety Commissioner” consistent with the *Enhancing Online Safety for Children Amendment Act 2017*.

PART 2 – PART-TIME OFFICES

19. Clause 2.1 specifies the Principal Determination (Number 10 of 2017 as amended) for the purposes of Part 2 of the Determination.
20. Clauses 2.2 and 2.3 set person specific remuneration for the incoming Member of the Foreign Investment Review Board, the Hon Cheryl Edwardes AM.
21. Clause 2.4 sets the commencement date of Clause 2.3.
22. Clause 2.5 sets remuneration for the new offices of Chair, Deputy Chair and Directors of the Western Sydney Airport Corporation Limited (WSA Co).
23. Clause 2.6 sets the commencement date of Clause 2.5.

PART 3 – JUDICIAL AND RELATED OFFICES

24. Clause 3.1 specifies the Principal Determination (Number 09 of 2017 as amended) for the purposes of Part 3 of the Determination.
25. Clause 3.2 increases the Canberra allowance for the Chief Justice and Justices of the High Court of Australia who do not establish their place of residence in Canberra. This is in lieu of the TA that would otherwise be payable.
26. Clause 3.3 sets the commencement date of Clause 3.2.

Authority: Subsections 7(3) and 7(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 Determination 2017/17

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 Tribunal Determinations:

2017/11: Remuneration and Allowances for Holders of Full-Time Public Office;

2017/10: Remuneration and Allowances for Holders of Part-Time Public Office;

2017/09: Judicial and Related Offices – Remuneration and Allowances.

The determination sets remuneration for the new offices of the Western Sydney Airport Corporation Limited (WSA Co), Chair, Deputy Chair and Directors.

The determination removes all reference to specific clauses for the National Capital Authority, Chief Executive following the office holder's resignation from the office.

The determination also:

- Sets person specific remuneration for the incoming Chief Executive Officer, National Disability Insurance Scheme Launch Transition Agency;
- Sets a person specific member fee for the Hon Cheryl Edwardes AM, Member, Foreign Investment Review Board, who is a former member of state parliament in receipt of a superannuation pension;
- Changes the name of the "Children's eSafety Commissioner" to the "eSafety Commissioner: consistent with the *Enhancing Online Safety for Children Amendment Act 2017*;
- Increases the Canberra allowance for the Chief Justice and Justices of the High Court of Australia who do not establish their place of residence in Canberra.

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.

Remuneration Tribunal