



## REMUNERATION TRIBUNAL

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### **Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 2) 2019**

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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.

*First and Second Office of Parliamentary Counsel*

6. In January 2019 the Attorney-General, the Hon Christian Porter MP, wrote to the Tribunal providing his views on the possible movement of the offices First and Second Parliamentary Counsel out of the Principal Executive Office structure. The letter was accompanied by a submission providing updated information on the roles and responsibilities of the offices. In April 2019, at the request of the Attorney-General, and in consultation with the Tribunal, the Minister for Finance and the Public Service, Senator the Hon Mathias Cormann, revoked the Principal Executive Officer status of the offices of the First and Second Parliamentary Counsel. The effect of the revocation is to return the offices to the Tribunal's determinative jurisdiction with effect from the date of revocation, 2 April 2019.

*North Queensland Livestock Industry Recovery Agency, Chief Executive Officer*

7. On 28 February 2019, the Tribunal received a letter from the Prime Minister, the Hon Scott Morrison MP, seeking a determination of remuneration for the office of Chief Executive Officer of the North Queensland Livestock Industry Recovery Agency. The letter was accompanied by a submission detailing the roles and responsibilities of the office, the main functions and nature of the Executive Agency, the essential skills and qualifications of the office holder and information about the proposed appointee to the office.

*Comcare, Chief Executive Officer*

8. On 22 March 2019, the Tribunal received a submission from the Minister for Jobs and Industrial Relations, Senator the Hon Kelly O'Dwyer, seeking person-specific remuneration and superannuation salary for the proposed appointee to the office of Chief Executive Officer, Comcare. On 8 April 2019, the Tribunal was advised of the name of the appointee, Ms Sue Weston. The amendments also remove the person-specific superannuation salary for Ms Jennifer Taylor, the former Chief Executive Officer following her retirement on 21 January 2019.

*Repatriation Commission, Deputy President and Commissioner*

9. In March 2019, at the request of the Minister for Veterans' Affairs, the Hon Darren Chester MP, and in consultation with the Tribunal, the Minister for Finance and the Public Service, Senator the Hon Mathias Cormann, revoked the Principal Executive Office status of the offices of Deputy President and Commissioner of the Repatriation Commission. The effect of the revocation is to return the offices to the Tribunal's determinative jurisdiction with effect from the date of revocation, 2 April 2019.
10. Minister Chester provided a submission with detailed and updated information on the current roles and responsibilities of these offices. Personal remuneration has been set for Major-General Mark Kelly to maintain his remuneration for the duration of his appointment.

*Office of Australian War Graves, Director*

11. In March 2019, at the request of the Minister for Veterans' Affairs, the Hon Darren Chester MP, and in consultation with the Tribunal, the Minister for Finance and the Public Service, Senator the Hon Mathias Cormann, revoked the Principal Executive Office status of the office of Director of the Office of Australian War Graves. The effect of the revocation is to return the office to the Tribunal's determinative jurisdiction with effect from the date of revocation, 2 April 2019. Minister Chester provided a submission with detailed and updated information on the current roles and responsibilities of the office.

*Associate Commissioner, Productivity Commission*

12. In March 2019, at the request of the Chair of the Productivity Commission, Mr Michael Brennan, and in consultation with the Tribunal, the Minister for Finance and the Public Service, Senator the Hon Mathias Cormann, revoked the Principal Executive Office status of the office of Associate Commissioner of the Productivity Commission. The effect of the revocation is to return the office to the Tribunal's determinative jurisdiction with effect from the date of revocation, 25 March 2019. Mr Brennan also wrote to the Tribunal proposing remuneration within the Tribunal's determinative jurisdiction.

*Race Discrimination Commissioner*

13. On 5 March 2019, the Tribunal received a submission from the Attorney-General, the Hon Christian Porter MP, seeking accommodation and reunion fares assistance for the Race Discrimination Commissioner, Mr Chin Tan. The submission provided information on the office holder's circumstances, consistent with the Tribunal's Relocation Assistance Guidelines.

*Solicitor-General*

14. On 15 February 2019, the Tribunal received a letter from the Attorney-General, the Hon Christian Porter MP, seeking a review of the official travel arrangements applicable to the Solicitor-General, Dr Stephen Donaghue QC.

*Independent Hospital Pricing Authority Board, Deputy Chair*

15. In February 2019, the Department of Health notified the Secretariat that the annual fee for the Deputy Chair of the Independent Hospital Pricing Authority Board, had been omitted from the *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2018*. Remuneration for this office was decided by the Tribunal in 2017 following a comprehensive review. There was no consultation given this was an administrative oversight.

*Regional Investment Corporation, Board*

16. There was no consultation on this matter as the amendment removes additional remuneration that was determined for the Board until 29 March 2019.

### *Indigenous Land and Sea Corporation*

17. The *Aboriginal and Torres Strait Islander Amendment (Indigenous Land Corporation) Act 2018*, amends the *Aboriginal and Torres Strait Islander Act 2005*, renaming the Indigenous Land Corporation to the Indigenous Land and Sea Corporation and providing for additional functions in relation to water-related rights.

### *Indigenous Business Australia, Finance, Investment and Products Committee*

18. On 31 January 2019, the Tribunal received a letter from the Chair of Indigenous Business Australia, Mr Eddie Fry, providing information on the change of name and functions of the Indigenous Business Australia Finance, Investments and Products Committee, previously known as the Finance, Investment and Performance Committee.

### *Official travel rates*

19. Following enquiries from agencies regarding the application of 'high cost centre' rates, additional detail has been included to reflect the Tribunal's policy intent. There was no consultation as this is a clarification of the existing provisions.

### **Retrospectivity**

20. 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**

21. 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:**

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

**SCHEDULE 1—AMENDMENTS**

***Remuneration Travel (Official Travel) Determination 2019***

27. Item 1 inserts the date the principal instrument took effect.
28. Item 2 modifies the wording of Paragraph 28(b) to clarify the application of the provision.
29. Item 3 modifies the wording of Paragraph 29(a) to clarify the application of the provision.

***Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2019***

30. Item 4 inserts remuneration and travel tier for the office of First Parliamentary Counsel.
31. Item 5 inserts remuneration and travel tier for the offices of Chief Executive Officer, North Queensland Livestock Recovery Agency, and Second Parliamentary Counsel, and inserts a reference to person-specific remuneration for the Chief Executive Officer, North Queensland Livestock Recovery Agency specified in Item 11 of the instrument.
32. Item 6 inserts reference to person-specific remuneration for the Chief Executive Officer, Comcare, specified in Item 11 of the instrument.
33. Item 7 inserts remuneration and travel tier for the office of Deputy President, Repatriation Commission.
34. Item 8 inserts remuneration and travel tier for the office of Commissioner, Repatriation Commission, and reference to person-specific remuneration for one of the office holders, specified in Item 11 of the instrument.
35. Item 9 inserts remuneration and travel tier for the office of Director, Office of Australian War Graves.
36. Item 10 inserts remuneration and travel tier for the office of Associate Commissioner, Productivity Commission.
37. Item 11 inserts person-specific remuneration for holders of offices specified in Items 5, 6, and 8.

38. Item 12 inserts person-specific superannuation salary for Ms Sue Weston, Chief Executive Officer, Comcare.
39. Item 13 removes the person-specific superannuation salary for the former Chief Executive Officer, Comcare, Ms Jennifer Taylor.
40. Item 14 inserts accommodation assistance for Mr Chin Tan, Race Discrimination Commissioner.
41. Item 15 inserts reunion travel assistance for Dr Stephen Donoghue QC, Solicitor-General.
42. Item 16 inserts reunion travel assistance for Mr Chin Tan, Race Discrimination Commissioner.
43. Item 17 sets the commencement dates for the matters specified in Items 4 to 16 of the instrument.

***Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2019***

44. Items 18 and 19 insert remuneration for the office of Deputy Chair of the Independent Hospital Pricing Authority.
45. Item 20 removes reference to additional remuneration provisions that have expired for the Regional Investment Corporation Board.
46. Items 21 and 22 rename the Indigenous Land Corporation to the Indigenous Land and Sea Corporation.
47. Item 23 renames the Indigenous Business Australia Finance, Investment and Performance Committee to the Finance, Investment and Products Committee.
48. Item 24 removes additional remuneration provisions for the Regional Investment Corporation Board that have expired.
49. Item 25 sets the commencement dates for the matters specified at Items 18 to 22 and Item 24 of the instrument.

**Authority:** subsections 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.2) 2019

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 (Remuneration and Allowances for Holders of Full-Time Public Office) Determination 2018;*
- *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-Time Public Office) Determination 2018;* and
- *Remuneration Tribunal (Official Travel) Determination 2018.*

The determination:

- sets remuneration and travel tier for the offices of First and Second Parliamentary Counsel;
- sets new remuneration and travel tier for the office of Chief Executive Officer of the North Queensland Livestock Recovery Agency, and additional personal remuneration arrangements for the initial appointee to the office, the Hon Shane Stone;
- sets person-specific remuneration and a person-specific superannuation salary for the incoming Chief Executive Officer of Comcare and removes provisions applicable to the former office holder;
- sets remuneration and travel tier for the offices of Deputy President and Commissioner of the Repatriation Commission, and personal remuneration for Major-General Mark Kelly for the remainder of his term of appointment;
- sets remuneration for the Director of the Office of Australian War Graves;
- sets remuneration and travel tier for the office of Associate Commissioner of the Productivity Commission;
- sets accommodation and reunion travel assistance for the Race Discrimination Commissioner, Mr Chin Tan;
- sets reunion travel assistance for the Solicitor-General, Dr Stephen Donoghue QC;
- specifies the remuneration for the office of Deputy Chair of the Independent Hospitals Pricing Authority;
- deletes expired provisions for the Regional Investment Corporation;
- changes the names of the Indigenous Land and Sea Corporation and the Indigenous Business Australia, Finance, Investment and Products Committee; and
- clarifies provisions in the Tribunal's Travel Determination.

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**