



## REMUNERATION TRIBUNAL

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### **Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 4) 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.

### *Australian Technical Advisory Group on Immunisation, Chair and Members*

6. On 28 June 2019, the Tribunal received a submission from the Minister for Health, the Hon Greg Hunt MP, seeking a review of remuneration for the offices of Chair and Member of the Australian Technical Advisory Group on Immunisation. The submission provided details of increases in the responsibilities and workload of the Committee, and of the distribution of work under the Co-Chairing arrangements.

### *Canberra Travelling Allowance for Justices of the High Court of Australia*

7. The allowance for official travel to Canberra is a payment made in lieu of travelling allowance to Justices of the High Court who do not establish a place of residence in Canberra. The Tribunal has adjusted this amount consistent with the Canberra rate of travel specified in Taxation Determination *TD 2019/11: Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2019–20 income year?* (TD 2019/11).
8. There was no consultation on this matter as it is the Tribunal's practice to review, each year, the travel and motor vehicle allowances applicable to office holders for which it determines remuneration. *Remuneration Tribunal (Official Travel) Determination 2019* applies the majority of the Tribunal's decisions arising from its review. This determination implements travel-related decisions of the Tribunal peculiar to judicial offices.
9. Amongst other things TD 2019/11 sets out the amounts that the Commissioner of Taxation considers are reasonable for the substantiation exception in Subdivision 900-B of the *Income Tax Assessment Act 1997* for the 2019–20 income year in relation to claims made by employees for domestic travel expenses and overseas travel expenses.
10. TD 2019/11 (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953* and is available online for free at <https://www.ato.gov.au/law/view/view.htm?docid=%22TXD%2FTD201911%2FNAT%2FATO%2F00001%22>.

### *Data Standards Chair*

11. On 4 July 2019, the Treasurer, the Hon Josh Frydenberg MP, wrote to the Tribunal seeking advice on remuneration for the then proposed office of Chair, Data Standards Board which was to be established by legislation. The letter was accompanied by a detailed submission setting out the roles and responsibilities of this new office. The Bill establishing the office of Data Standards Chair subsequently passed through Parliament and the new Act commenced the day after Royal Assent on 13 August 2019, allowing the Tribunal to proceed with a determination of remuneration for this office.

*National Faster Rail Agency, Chief Executive Officer and Expert Panel*

12. On 18 July 2019, the Minister for Population, Cities and Urban Infrastructure, the Hon Alan Tudge MP, wrote to the Tribunal seeking a determination of remuneration for the office of Chief Executive Officer (CEO) of the National Faster Rail Agency, an Executive Agency established with effect from 1 July 2019, and the offices of Chair and Member of the Expert Panel that will support the CEO. The letter was accompanied by a submission detailing the roles and responsibilities of the offices, the main functions and nature of the Executive Agency, and the essential skills required for appointment to the offices. The Minister Assisting the Prime Minister for the Public Service and Cabinet, the Hon Greg Hunt MP, referred the offices of the Expert Panel into the Tribunal's jurisdiction, at the request of Minister Tudge, with effect from 6 August 2019.

*Australian Postal Corporation, Deputy Chair*

13. In July 2019, the Tribunal received representations from the Chair of the Australian Postal Corporation seeking a specific determination of eligibility for the Deputy Chair to receive additional fees for membership of the Corporation's Audit and Risk Committee. The Tribunal's principal determination, *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2019*, signed on 20 June 2019, made explicit the Tribunal's general policy that chairs and deputy chairs of governing bodies are not eligible for audit committee fees, but the application of that restriction to the Deputy Chair of Australia Post was unintended.

*Wine Australia, Deputy Chair*

14. Following advice in July 2019 from Wine Australia, the Tribunal noted an incorrect entry for the Deputy Chair of Wine Australia in the principal determination issued on 20 June 2019, *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2019*. The annual fee for the office is corrected in this determination, with effect from the date of the principal determination.

*Corporations and Markets Advisory Committee*

15. In July 2019, the Tribunal received advice from the Treasury Department that the Corporations and Markets Advisory Committee had been formally abolished by the *Statute Update (Smaller Government) Act 2018*.

*Future Drought Fund Consultative Committee, Chair and Members*

16. On 20 June 2019, the Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management, the Hon David Littleproud MP, wrote to the Tribunal seeking determination of remuneration for the offices of the Future Drought Fund Consultative Committee. The letter was accompanied by a submission detailing the roles and responsibilities of the offices and the skills required of the office holders. Those details were updated by the portfolio department following amendments to the legislation during its passage.

## **Retrospectivity**

17. 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**

18. 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:**

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

## **SCHEDULE 1—AMENDMENTS**

### **Part 1—Repeal of item that is being replaced**

24. Item 1 removes superseded remuneration provisions for the offices of the Australian Technical Advisory Group on Immunisation.

### **Part 2—Main amendments**

#### ***Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2019***

25. Item 2 updates the reference to official travel determination in the definition in section 7 to that of the new principal official travel determination commencing on 25 August 2019.
26. Item 3 inserts a definition of Table 7A (application and transitional provisions).
27. Item 4 increases the rate of annualised travelling allowance payable to Justices of the High Court who do not establish a place of residence in Canberra.
28. Item 5 inserts Part 7—Application and transition provisions including section 47 which states the purpose of Table 7A. Table 7A is inserted. The table sets the commencement date for the matter specified in Item 4. The application provision is intended to result in 25 August 2019 being the date specified for the purposes of section 7(5C)(a) of the Act.

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

29. Item 6 updates the reference to the official travel determination in the definition in section 7 to that of the new principal official travel determination commencing on 25 August 2019.
30. Item 7 inserts a definition of Table 6A (application and transitional provisions).
31. Item 8 inserts remuneration and travel tier for the office of Data Standards Chair.
32. Item 9 inserts remuneration and travel tier for the office of Chief Executive Officer, National Faster Rail Agency.
33. Item 10 inserts Part 6—Application and transition provisions including section 23 which states the purpose of Table 6A. Table 6A is inserted. The table sets the commencement provisions relating to the provisions specified in Items 8 and 9.

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

34. Item 11 inserts a reference at the end of section 7 to new Part 8.
35. Item 12 updates the reference to official travel determination in the definition in section 7 to that of the new principal official travel determination commencing on 25 August 2019.
36. Item 13 inserts a definition of Table 8A (application and transitional provisions).
37. Item 14 includes a reference to Table 6A in column 5 of Table 3A for the entry for Australia Post.
38. Item 15 adjusts the remuneration for the office of Deputy Chair, Wine Australia.
39. Item 16 removes the remuneration provisions for the offices of the Australian Technical Advisory Group on Immunisation.
40. Item 17 inserts a provision for the payment of additional fees to the Deputy Chair, Australia Post while appointed as Chair or Member of Australia Post's Audit and Risk Committee.
41. Item 18 removes the Co-Chair remuneration provisions for the Australian Technical Advisory Group on Immunisation.
42. Item 19 amends the note in section 21 to include a reference to annual meeting fees.
43. Item 20 removes the entry relating to the Corporations and Markets Advisory Committee which has been abolished.
44. Item 21 inserts the remuneration and travel tier for the offices of the National Faster Rail Agency—Expert Panel.
45. Item 22 inserts remuneration and travel tier for the offices of the Future Drought Fund Consultative Committee.
46. Item 23 inserts new remuneration for the offices of the Australian Technical Advisory Group on Immunisation.
47. Items 24 and 25 insert new remuneration provisions for the office of Chair,

Australian Technical Advisory Group on Immunisation including remuneration provisions to apply when Co-Chairs are appointed.

48. Item 26 inserts Part 8—Application and transitional provisions including sections 46 and 47 which state the purpose of Table 8A. Table 8A is inserted. The table sets the commencement dates for the matters specified in Items 15, 16, 18 and 21 to 25.

**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. 4) 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 2019;*
- *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-Time Public Office) Determination 2019; and*
- *Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2019.*

The determination:

- sets revised remuneration for the offices of Chair and Member of the Australian Technical Advisory Group on Immunisation;
- sets an increased rate of travelling allowance payable to certain Justices of the High Court of Australia when required to sit in Canberra;
- sets remuneration and travel tier for the office of Data Standards Chair;
- sets remuneration and travel tier for the offices of Chief Executive Officer and Expert Panel Chair and Member of the National Faster Rail Agency;
- includes specific provision for the Deputy Chair of the Australian Postal Corporation to receive an additional annual fee for membership of the Board's Audit and Risk Committee;
- corrects the remuneration for the office of Deputy Chair of Wine Australia;
- removes the remuneration entry for the Corporations and Markets Advisory Committee; and
- sets remuneration for the offices of Chair and Member of the Future Drought Fund Consultative 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.

- The reduced remuneration rate for the Deputy Chair of Wine Australia corrects an error identified and brought to the attention of the Tribunal and the office holder shortly after publication of the incorrect rate.

#### **Conclusion**

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

**The Remuneration Tribunal**