



REMUNERATION TRIBUNAL

Replacement Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 7) 2021

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 (for a Principal Executive Office) with responsibility for the relevant office(s). The Tribunal will normally seek the views of the 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 minister or person making the submission.
5. In deliberating on appropriate remuneration for an office, the Tribunal also 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 Radioactive Waste Agency (ARWA), Chief Executive Officer (CEO)

6. On 7 July 2021, the Hon Keith Pitt MP, Minister for Resources and Water, wrote to the Tribunal seeking a determination of personal remuneration for the

preferred candidate for the full-time office of the CEO of ARWA.

Head of the National Suicide Prevention Office

7. On 21 October 2021, the Hon Greg Hunt MP, Minister for Health and Aged Care, wrote to the Hon Ben Morton MP, Minister for the Public Service seeking his agreement to refer the full-time office of the Head of the National Suicide Prevention Office (NSPO) into the Tribunal's jurisdiction. On 4 November 2021, Minister Morton wrote to the Tribunal advising the office of the Head of the NSPO is an office to which the provisions of the *Remuneration Tribunal Act 1973* should apply, with effect from 1 November 2021.
8. On 17 November 2021, the Hon Greg Hunt MP, Minister for Health and Aged Care, wrote to the Tribunal providing his views on the submission from Ms Christine Morgan, Chief Executive Officer of the National Mental Health Commission, seeking a determination of remuneration and travel tier for the new full-time office of Head of the NSPO.

Human Rights Commissioner

9. On 21 October 2021, the Attorney-General, Senator the Hon Michaelia Cash, wrote to the Tribunal seeking a determination of accommodation and reunion travel assistance for Ms Lorraine Finlay, the recently appointed Human Rights Commissioner.

Defence Force Advocate

10. On 7 November 2021, the Hon Andrew Gee MP, Minister for Veterans' Affairs wrote to the Tribunal seeking a variation to the method of calculating daily fees for the part-time office of the Defence Force Advocate.

Chair, Deputy Chair and Member, Commonwealth Scientific and Industrial Research Organisation (CSIRO)

11. On 22 November 2021, the Hon Melissa Price MP, Minister for Science and Technology wrote to the Tribunal providing her views on a proposed adjustment to the remuneration of the part-time offices of Chair, Deputy Chair and Member of the CSIRO.

Central Land Council (CLC), Northern Land Council (NLC), Member

12. In July 2021, the President of the Remuneration Tribunal wrote to the Hon Ken Wyatt AM MP, Minister for Indigenous Australians seeking his views on proposed remuneration arrangements for the part-time offices of Member of the CLC and NLC.
13. On 26 November 2021, Minister Wyatt wrote to the Tribunal confirming his support of proposed changes to remuneration arrangements for Members of the CLC and NLC.

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 accommodation and reunion travel assistance for

Ms Lorraine Finlay, the retrospective application does not disadvantage any person on the basis the provision has effect from the commencement of her appointment.

Exemption from sunseting

16. 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*.
17. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.
18. As the Remuneration Tribunal makes new principal determinations annually, the principal instruments 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

19. 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:

20. Section 1 specifies the name of the instrument.
21. Section 2 specifies when the instrument commences.
22. Section 3 specifies the authority for the instrument.
23. Section 4 outlines the effect of instruments specified in a Schedule to the instrument.
24. 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 2021

1. Item 1 inserts a reference to a special provision for the office of CEO, ARWA.
2. Item 2 sets the remuneration and travel tier for the office of Head, National Suicide Prevention Office.
3. Item 3 sets personal remuneration for Mr Sam Usher, CEO, ARWA.
4. Item 4 sets accommodation assistance for Ms Lorraine Finlay, Human Rights Commissioner.
5. Item 5 reunion travel assistance for Ms Lorraine Finlay, Human Rights Commissioner.

Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2021

6. Item 6 sets new remuneration for the offices of Chair, Deputy Chair and Member of the CSIRO in Table 3A. The existing travel tier and fees for the Audit, People and Safety, and Science Excellence Committees are retained.
7. Item 7 updates the reference to special provisions for the Defence Force Advocate in Table 4A.
8. Item 8 sets a special provision for the Defence Force Advocate in Table 4B. This provision enables daily fees for the Defence Force Advocate to be calculated pro rata on the basis of a 6-hour working day.
9. Item 9 sets new remuneration for the office of Member, Northern Land Council, if engaged on general Council business, in Table 7B.
10. Item 10 sets new remuneration for the office of Member, Central Land Council, if engaged on general Council business, in Table 7B.

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.7) 2021

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 2021; and*
- *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2021.*

The determination:

- establishes remuneration and travel tier for the office of Head of the National Suicide Prevention Office.
- establishes personal remuneration for Mr Sam Usher, CEO, ARWA.
- establishes accommodation and reunion travel assistance for Ms Lorraine Finlay, Human Rights Commissioner.
- sets new remuneration for the offices of Chair, Deputy Chair and Member of the Commonwealth Scientific and Industrial Research Organisation.
- establishes a special provision for the office of Defence Force Advocate regarding the method of calculating fees.
- sets new remuneration for the office of Member of the Northern Land Council (when engaged on general Council business).
- sets new remuneration for the office of Member of the Central Land Council (when engaged on general Council business).

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