



REMUNERATION TRIBUNAL

Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 4) 2022

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.

National Disability Insurance Agency, all public offices

6. There was no consultation on this matter. On 8 April 2022, the National Disability Insurance Scheme Launch Transition Agency was renamed the National Disability Insurance Agency (as per the *National Disability Insurance*

Scheme Amendment (Participant Service Guarantee and Other Amendments) Act 2022).

National Disability Insurance Scheme Quality and Safeguards Commissioner

7. On 1 February 2022, the Tribunal received a letter from the Minister for the National Disability Insurance Scheme, Senator the Hon Linda Reynolds CSC, seeking a determination of personal remuneration for Ms Tracy Mackey, who had recently been appointed to the office of National Disability Insurance Scheme Quality and Safeguards Commissioner. The Tribunal sought further information and clarification from the Minister, with further correspondence received on 18 March and 8 April 2022 detailing Ms Mackey's experience and capabilities to support the level of remuneration being sought.

Infrastructure Australia, Chief Executive Officer

8. On 29 March 2022, the Chair of Infrastructure Australia, Councillor Col Murray wrote to the Tribunal seeking an extension of the personal remuneration determined for the Chief Executive Officer of Infrastructure Australia, Ms Romilly Madew. On 31 March 2022, the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, the Hon Barnaby Joyce MP, wrote to the Tribunal supporting this request and confirming Ms Madew's appointment to the office had been extended to 28 October 2022.

National Data Commissioner

9. On 11 October 2021, the Minister for Employment, Workforce, Skills, Small and Family Business, the Hon Stuart Robert MP wrote to the Tribunal seeking an indicative determination of personal remuneration for the preferred candidate for the office of National Data Commissioner. This would match the preferred candidate's existing remuneration, should they accept the appointment. On 20 April 2022, the Department of the Prime Minister and Cabinet wrote to the Tribunal's Secretariat confirming Ms Gayle Milnes' appointment to the office of National Data Commissioner, with effect 10 April 2022.

Murray-Darling Basin Authority, Chief Executive Officer

10. On 7 April 2022, the Murray-Darling Basin Authority wrote to the Tribunal's Secretariat requesting that the personal superannuation salary for Mr Phillip Glyde be removed from the Tribunal's determination. Mr Glyde resigned from the office of Chief Executive Officer, Murray-Darling Basin Authority with effect from 11 February 2022.

Tuition Protection Service, Director

11. On 8 April 2022, the Acting Minister for Education and Youth, the Hon Stuart Robert MP wrote to the Tribunal seeking a determination of personal superannuation salary for Ms Melinda Hatton, Director, Tuition Protection Service.

Aboriginal and Torres Strait Islander Social Justice Commissioner

12. On 5 April 2022, the Attorney-General, Senator the Hon Michaelia Cash, wrote to the Tribunal seeking an extension and variation to the reunion travel and accommodation assistance determined for Ms June Oscar, the Aboriginal and Torres Strait Islander Social Justice Commissioner.

Registered Organisations Commissioner

13. On 5 April 2022, the Attorney-General, Senator the Hon Michaelia Cash, wrote to the Tribunal seeking an extension and variation to the reunion travel and accommodation assistance determined for Mr Mark Bielecki, the Registered Organisations Commissioner.

Australia Council, Member

14. On 3 March 2022, the Minister for Communications, Urban Infrastructure, Cities and the Arts, the Hon Paul Fletcher MP, wrote to the Tribunal advising a former member of the New South Wales Legislative Council was being considered for appointment as a Member of the Board of the Australia Council and a seeking a determination of revised remuneration for the appointee to take into account their parliamentary pension. On 18 March 2022, the Department of Infrastructure, Transport, Regional Development and Communications confirmed the Hon Don Harwin would be appointed, effective 23 March 2022. The reduction in the annual fee for Mr Harwin will take effect from the date of appointment and is in accordance with government policy. The need for this reduction was acknowledged by Mr Harwin prior to accepting the appointment.

Fishing Industry Policy Council

15. On 21 April 2022, the Department of Agriculture, Water and the Environment wrote to the Tribunal's Secretariat advising the Fishing Industry Policy Council no longer exists and could be removed from the Tribunal's determination.

Hazardous Waste Technical Group

16. On 21 April 2022, the Department of Agriculture, Water and the Environment wrote to the Tribunal's Secretariat advising the Hazardous Waste Technical Group no longer exists and could be removed from the Tribunal's determination.

Defence Industry Study Course

17. On 21 April 2022, the Tribunal's Secretariat received verbal advice from the Department of Defence that the Defence Industry Study Course no longer exists and could be removed from the Tribunal's determination.

Regional and Small Publishers Jobs and Innovation Fund Advisory Committee

18. On 22 April 2022, the Australian Communications and Media Authority wrote to the Tribunal's Secretariat advising the Regional and Small Publishers Jobs and Innovation Fund Advisory Committee no longer exists and could be removed from the Tribunal's determination.

Retrospectivity

19. 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.
20. With respect to the office of National Disability Insurance Scheme Quality and Safeguards Commissioner, the retrospective application does not disadvantage any person as the amendment provides more generous remuneration than previously determined.

21. With respect to the office of National Data Commissioner, the retrospective application does not disadvantage any person as the amendment provides more generous remuneration than previously determined.
22. With respect to the Director, Tuition Protection Service, the retrospective application does not disadvantage any person as the amendment provides more generous superannuation entitlements than previously determined and ensures consistency with relevant superannuation legislation.

Exemption from sunseting

23. 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*.
24. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.
25. 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

26. 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:

27. Section 1 specifies the name of the instrument.
28. Section 2 specifies when the instrument commences.
29. Section 3 specifies the authority for the instrument.
30. Section 4 outlines the effect of instruments specified in a Schedule to the instrument.
31. 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. Items 1 and 5 update the name of the National Disability Insurance Scheme Launch Transition Agency to the National Disability Insurance Agency in Table 2A and Table 2B, respectively.
2. Item 2 inserts a reference to a special provision for the office of National Disability Insurance Scheme Quality and Safeguards Commissioner in Table 2A.

3. Item 3 inserts a reference to a special provision for the National Data Commissioner in Table 2A.
4. Item 4 amends the person-specific remuneration provision for Ms Romilly Madew, Chief Executive Officer, Infrastructure Australia in Table 2B.
5. Item 6 sets person-specific remuneration for Ms Tracy Mackey, National Disability Insurance Scheme Quality and Safeguards Commissioner and Ms Gayle Milnes, National Data Commissioner in Table 2B.
6. Item 7 repeals a personal superannuation salary for Mr Philip Glyde, Chief Executive Officer, Murray-Darling Basin Authority in Table 3B.
7. Item 8 sets a personal superannuation salary for Ms Melinda Hatton, Director, Tuition Protection Service in Table 3B.
8. Item 9 repeals the previous provision and sets an amended rate of accommodation assistance for Ms June Oscar, Aboriginal and Torres Strait Islander Social Justice Commissioner in Table 5A.
9. Item 10 amends the period of entitlement to accommodation assistance for Mr Mark Bielecki, Registered Organisations Commissioner in Table 5A.
10. Item 11 repeals the previous provision and sets an amended rate and period of entitlement to reunion travel assistance for Ms June Oscar, Aboriginal and Torres Strait Islander Social Justice Commissioner in Table 5B.
11. Item 12 repeals the previous provision and sets an amended rate and period of entitlement to reunion travel assistance for Mr Mark Bielecki, Registered Organisations Commissioner in Table 5B.
12. Item 13 sets an application and transitional provision for the office of Director, Tuition Protection Service in Table 6A.

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

1. Items 14, 17 and 20 update the name of the National Disability Insurance Scheme Launch Transition Agency to the National Disability Insurance Agency in Table 3A, Table 3B, and Table 4A respectively.
2. Item 15 amends the references in Table 3A to special provisions applying to the Australia Council.
3. Item 16 removes the Fishing Industry Policy Council from Table 3A.
4. Item 18 sets person-specific remuneration in Table 3B for the Hon Don Harwin in his role as Member of the Australia Council.
5. Item 19 removes the Hazardous Waste Technical Group from Table 4A.
6. Item 21 removes the Defence Industry Study Course from Table 4A.
7. Item 22 removes the Regional and Small Publishers Jobs and Innovation Fund Advisory Committee from Table 4A.

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.

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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:

- updates the name of the National Disability Insurance Scheme Launch Transition Agency to the National Disability Insurance Agency
- extends the provision of person-specific remuneration for Ms Romilly Madew, Chief Executive Officer, Infrastructure Australia
- sets person-specific remuneration for Ms Tracy Mackey, National Disability Insurance Scheme Quality and Safeguards Commissioner
- sets person-specific remuneration for Ms Gayle Milnes, National Data Commissioner
- removes personal superannuation salary for Mr Philip Glyde
- sets personal superannuation salary for Ms Melinda Hatton, Director, Tuition Protection Service
- amends and extends reunion travel and accommodation assistance for Ms June Oscar, Aboriginal and Torres Strait Islander Social Justice Commissioner
- amends and extends reunion travel and accommodation assistance for Mr Mark Bielecki, Registered Organisations Commissioner
- removes the offices of the Fishing Industry Policy Council, the Hazardous Waste Technical Group, the Defence Industry Study Course, and the Regional and Small Publishers Jobs and Innovation Fund Advisory Committee
- sets reduced person-specific remuneration for the Hon Don Harwin, Member of the Australia Council, in accordance with government policy and acknowledged by Mr Harwin in accepting the appointment.

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