



REMUNERATION TRIBUNAL

Replacement Explanatory Statement: Remuneration Tribunal (Remuneration and Allowances for Holders of Full-Time Public Office) Determination 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 (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.

Review of Remuneration for Holders of Public Office

6. The Tribunal's obligations, under sub-sections 7(3) and 8(1)(b) of the Act are to make determinations in respect of remuneration for various offices within its jurisdiction at periods of not more than one year. To meet these obligations, the Tribunal issued determinations on 15 June 2021 and at that time determined no adjustment to remuneration for all offices in its jurisdiction.
7. In complying with its obligations to make new determinations the Tribunal takes the opportunity to consider whether any general increase to remuneration for offices might be warranted. In conducting this review the Tribunal takes account of economic conditions in Australia, past and projected movements in remuneration in the public and private sectors (including the Australian Public Service), as well as the outcomes of reviews of public offices completed by the Tribunal. In order to inform its conclusions the Tribunal draws upon authoritative external sources such as the published material available from the Government, the Reserve Bank of Australia and the Australian Bureau of Statistics as well as trends in public and private sector remuneration. The Tribunal is also obliged by the Act to consider the Annual Wage Reviews of the Fair Work Commission. The Commission's 2021 decision was taken into account, as its 2022 decision was not available at the time the Tribunal concluded its deliberations.
8. The Tribunal did not receive any submissions on this matter.
9. On 13 June 2022 the Tribunal decided to determine a general adjustment of 2.75 per cent to remuneration for public offices in its jurisdiction with effect from 1 July 2022. A statement setting out the Tribunal's reasons for decision is available at www.remtribunal.gov.au.
10. *Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2022* implements the Tribunal's decision for Full-time Public Offices.
11. Consultation on this outcome was considered unnecessary given the matters considered by the Tribunal in making its decision.

Australian Public Service Commissioner

12. As part of its 2022 review of the office of departmental secretary, in the course of which the Tribunal consulted with the former Minister for the Public Service and current and former departmental secretaries, the Tribunal also considered the materially increased responsibilities and changed role of the office of Australian Public Service Commissioner, including in relation to the dual appointment of the officeholder as Parliamentary Service Commissioner.

Domestic, Family and Sexual Violence Commission, Commissioner

13. On 1 March 2022, Senator the Hon Anne Ruston, then Minister for Families and Social Services and Minister for Women's Safety (the Minister), wrote to the Tribunal seeking an indicative determination of remuneration and travel tier for the office of Commissioner, Domestic, Family and Sexual Violence Commission, which would be established as an Executive Agency under the *Public Service Act*

1999 from 1 July 2022. The accompanying submission detailed the role and responsibilities of the office.

14. On 30 March 2022, the Minister wrote to the Tribunal seeking a determination of personal remuneration for the proposed appointee to the office.

Administrative Appeals Tribunal (former member, Migration Review Tribunal (MRT)) and Administrative Appeals Tribunal (former member, Refugee Review Tribunal (RRT))

15. The offices of Administrative Appeals Tribunal (former member, MRT and former member, RRT) and associated special provisions have been removed from the determination, as the transition period applying to these offices has expired. On 1 June 2022, the AAT wrote to the Tribunal's Secretariat confirming it was appropriate to remove these offices from the determination.

Australian Curriculum, Assessment and Reporting Authority, Chief Executive Officer (CEO)

16. Special provision remuneration for Mr David de Carvalho, CEO of the Australian Curriculum, Assessment and Reporting Authority has been removed as provision expired on 3 June 2022. There was no consultation on this matter.

Comcare, Chief Executive Officer (CEO)

17. Special provision remuneration and personal superannuation salary for Ms Sue Weston, CEO, Comcare, have been removed as Ms Weston's appointment concluded on 30 April 2022. There was no consultation on this matter.

National Archives of Australia, Director-General

18. A personal superannuation salary for Mr David Fricker, Director-General, National Archives of Australia, was removed as Mr Fricker's appointment concluded on 31 December 2021. There was no consultation on this matter.

Director of Military Prosecutions

19. The superannuation salary for the office of Director of Military Prosecutions was removed from the determination as the process regularising the rate to bring it in line with the Tribunal's decision to determine a 73% superannuation salary for the lower paid offices in its jurisdiction was complete. There was no consultation on this matter.

Cancer Australia, Chief Executive Officer (CEO)

20. On 31 January 2022, the then Minister for Health and Aged Care, the Hon Greg Hunt MP, wrote to the Tribunal requesting an extension of reunion travel and accommodation assistance for Professor Dorothy Keefe, who was to be reappointed to the office of CEO, Cancer Australia. The submission provided information on Professor Keefe's circumstances, consistent with the Tribunal's Guidelines.

Minor variations to wording and numbering

21. The Tribunal has taken the opportunity to make minor edits to some wording and numbering, for consistency and clarity within the determination. No

consultation occurred on this matter as the amendments make no change to the effect of provisions.

Retrospectivity

22. 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.

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, this principal determination is 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:

PART 1 - PRELIMINARY

27. Part 1 specifies the authority for and the commencement date of the determination and supersedes the previous principal *Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2021* (as amended) applying to the offices covered by this determination. This Part also contains information on schedules and definitions of certain words used in the determination.

PART 2 – REMUNERATION

28. Part 2 sets out the total remuneration and other related matters (such as special provisions for certain offices) effective from 1 July 2022 unless specified. It implements the general adjustment described in paragraph 9 of this document.

29. Remuneration for the office of Public Service Commissioner has been amended in Table 2A.

30. Remuneration and travel tier for the office of Commissioner, Domestic, Family and Sexual Violence Commission, has been established in Table 2A.

31. The offices of Administrative Appeals Tribunal (former member, Migration Review Tribunal (MRT)) and Administrative Appeals Tribunal (former member, Refugee Review Tribunal (RRT)) have been removed from Table 2A, as the transition period associated with these offices has expired.
32. Personal remuneration for Ms Catherine Fitzpatrick, Commissioner, Domestic, Family and Sexual Violence Commission, has been established in Table 2B.
33. Personal remuneration for Mr David de Carvalho, CEO, Australian Curriculum, Assessment and Reporting Authority has been removed from Table 2B, as the provision has expired.
34. Personal remuneration for Ms Sue Weston PSM, CEO, Comcare has been removed from Table 2B, as Ms Weston is no longer holds this office.
35. The special provision associated with the offices of Administrative Appeals Tribunal (former member, Migration Review Tribunal (MRT)) and Administrative Appeals Tribunal (former member, Refugee Review Tribunal (RRT)) has been removed from Table 2B, as the transition period associated with this provision has expired.
36. Minor changes have been made to ensure consistency and clarity within the determination, including updating references to special provisions.
37. The provisions in Part 2 otherwise remain unchanged from those contained in Part 2 of the previous determination.

PART 3 – SUPERANNUATION

38. Part 3 sets out the superannuation arrangements and other related matters, including superannuation salary for specified office holders.
39. The superannuation salary for Ms Sue Weston, Chief Executive Officer, Comcare, has been removed from Table 3B, as Ms Weston no longer holds this office.
40. The superannuation salary for Mr David Fricker, Director-General, National Archives of Australia, has been removed from Table 3B, as Mr Fricker no longer holds this office.
41. The superannuation salary for the office of Director of Military Prosecutions has been removed from Table 3B, as the special provision no longer applies to this office.
42. Minor edits have been made to this section, including renumbering to take into account the removed items.
43. The provisions in Part 3 otherwise remain unchanged from those contained in Part 3 of the previous determination.

PART 4 – VEHICLES AND BUSINESS SUPPORT

44. Part 4 sets out the entitlements for vehicle and business support.
45. The provisions of this Part remain unchanged from those contained in Part 4 of the previous determination.

PART 5 – TRAVEL AND ACCOMODATION ASSISTANCE

46. Part 5 sets out the entitlements for travel and accommodation assistance, including accommodation and reunion assistance for specified office holders.
47. Accommodation and reunion travel assistance for Professor Dorothy Keefe, CEO, Cancer Australia, have been extended to 2 July 2025.
48. Minor edits have been made to this section, including renumbering to take into account the removed items.
49. The provisions of this Part otherwise remain unchanged from those contained in Part 5 of the previous determination.

SCHEDULE 1 – REPEALS

50. Schedule 1 specifies instruments which have been amended or repealed.

Authority: Sub-sections 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

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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

The legislative instrument, or determination, formalises the Tribunal's review decision to determine an adjustment of 2.75 per cent to remuneration for Full-time Public Offices from 1 July 2022.

The determination supersedes the previous *Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2021* (as amended).

The decision follows a review of remuneration (and significantly related matters) carried out by the Tribunal consistent with sub-section 7(3) of the *Remuneration Tribunal Act 1973*.

In addition to formalising the Tribunal's review decision, the determination:

- amends total remuneration of the office of Public Service Commissioner;
- establishes total remuneration and travel tier for the office of Commissioner, Domestic, Family and Sexual Violence Commission;
- establishes a fixed annual loading for Ms Catherine Fitzpatrick, for the initial term of her appointment as the Commissioner, Domestic, Family and Sexual Violence Commission;
- removes the offices of Administrative Appeals Tribunal (former member, Migration Review Tribunal (MRT)) and Administrative Appeals Tribunal (former member, Refugee Review Tribunal (RRT)) and the associated special provision as the transition period associated with these offices has expired;
- removes a personal remuneration provision for Mr David de Carvalho, CEO, Australian Curriculum, Assessment and Reporting Authority, as this provision has expired;
- removes a personal remuneration provision for Ms Sue Weston PSM, CEO, Comcare, who no longer holds that office;
- removes a person specific superannuation salary for Ms Sue Weston PSM, CEO, Comcare, who no longer holds that office;
- removes a person specific superannuation salary for Mr David Fricker, Director-General, National Archives of Australia, who no longer holds that office;
- removes an office-specific superannuation salary for the office of Director of Military Prosecutions, as the provision no longer applies;
- extends accommodation and reunion travel assistance for Professor Dorothy Keefe, CEO, Cancer Australia;
- makes minor changes to wording and numbering for consistency and clarity, which have no change to the effect of the provisions.

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