



REMUNERATION TRIBUNAL

Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 12) 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.

National Anti-Corruption Commission, various offices

6. On 22 September 2022, the Attorney-General, the Hon Mark Dreyfus KC MP wrote to the Tribunal seeking an indicative determination of remuneration and travel tier for the new offices established as part of the National Anti-Corruption

Commission. The accompanying submission outlined the responsibilities of each office and the qualities and capabilities required of each office holder.

Jobs and Skills Australia Director

7. On 7 November 2022, the Hon Brendan O'Connor MP, Minister for Skills and Training wrote to the Tribunal seeking a determination of remuneration and travel for the office of the Jobs and Skills Australia Director. The accompanying submission outlined the responsibilities of the office and the qualities and capabilities required of the office holder.

National Skills Commissioner

8. The office and the special provision for the former office holder, Mr Adam Boyton, have been removed from the determination as the legislation establishing the National Skills Commissioner was repealed on 16 November 2022. There was no consultation on this matter.

National Capital Authority, Chief Executive

9. On 18 November 2022, Mr Jim Betts, Secretary of the Department of Infrastructure, Transport, Regional Development, Communication and the Arts wrote to the Tribunal seeking an extension of the special provision remuneration for Ms Sally Barnes, Chief Executive, National Capital Authority.

Aboriginals Benefit Account Advisory Committee

10. The Aboriginals Benefit Account Advisory Committee was abolished on 15 November 2022. There was no consultation on this matter.

National Emergency Medal Committee

11. On 9 November 2022, the Hon Patrick Gorman MP, Assistant Minister to the Prime Minister wrote to the Tribunal seeking a determination of travel tier for the members of the National Emergency Medal Committee.

Retrospectivity

12. 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

13. 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*.
14. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.
15. As the Remuneration Tribunal generally makes new principal determinations annually, the 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

16. 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:

17. Section 1 specifies the name of the instrument.
18. Section 2 specifies when the instrument commences.
19. Section 3 specifies the authority for the instrument.
20. Section 4 outlines the effect of instruments specified in a Schedule to the instrument.
21. 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 2022

22. Item 1 establishes the total remuneration and travel tier for the office of National Anti-Corruption Commissioner in Table 2A.
23. Item 2 establishes the total remuneration and travel tier for the office of National Anti-Corruption Deputy Commissioner in Table 2A.
24. Item 3 establishes the total remuneration and travel tier for the office of Jobs and Skills Australia Director in Table 2A.
25. Item 4 removes the office of National Skills Commissioner from Table 2A.
26. Item 5 establishes the total remuneration and travel tier for the office of Chief Executive Officer, National Anti-Corruption Commission in Table 2A.
27. Item 6 amends the expiry date of the special provision for Ms Sally Barnes, Chief Executive of the National Capital Authority in Table 2B.
28. Item 7 removes the special provision for Mr Adam Boyton, National Skills Commissioner from Table 2B, as that office has been abolished.

Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2022

29. Item 8 removes the Aboriginals Benefit Account Advisory Committee from Table 4A, as that committee has been abolished.
30. Item 9 establishes the travel tier for the National Emergency Medal Committee in Table 4A.

Authority: Sub-sections 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 2022; and*
- *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2022.*

The determination:

- sets remuneration and travel tier for the offices of the National Anti-Corruption Commissioner, National Anti-Corruption Deputy Commissioner, and Chief Executive Officer, National Anti-Corruption Commission;
- sets remuneration and travel tier for the office of Jobs and Skills Australia Director;
- removes the office of National Skills Commissioner and the special provision for the former office holder, Mr Adam Boyton;
- extends the special provision for Ms Sally Barnes, Chief Executive, National Capital Authority;
- removes the Aboriginals Benefit Account Advisory Committee, as it no longer exists; and
- sets the travel tier for the National Emergency Medal 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.

Conclusion

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

The Remuneration Tribunal