



REMUNERATION TRIBUNAL

Explanatory Statement: Remuneration Tribunal Amendment Determination (No.1) 2023

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.

Official travel – Justices of the High Court

6. In January 2023, the Tribunal Secretariat became aware of inadvertent changes to the effect of official travel provisions for Justices of the High Court, as a result of minor adjustments made to the wording of these provisions in July 2018.
7. The adjustments were made as part of a raft of amendments, designed to make the Tribunal’s determinations consistent with standard Commonwealth drafting.

Retrospectivity

8. 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.
9. With respect to official travel for Justices of the High Court, the retrospective application does not disadvantage any person, as it clarifies a Justice’s broader entitlement to an amount in lieu of travelling allowance, that would otherwise be payable to the Justice under the official travel determination.
10. Specifically, that a Justice’s entitlement to an amount in lieu of travelling allowance is not precluded where the Justice establishes a place of residence in Canberra, provided the Justice does not establish a *principal place* of residence in Canberra.
11. The clarification ensures a broader application of the entitlement, consistent with the Tribunal’s original intent.

Exemption from sunseting

12. 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*.
13. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.
14. 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

15. 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:

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

SCHEDULE 1 – AMENDMENTS

20. Section 1 replaces the words “a place of residence” with “the Justice’s principal place of residence”.
21. Section 2 replaces the words “a place of residence” with “the Justice’s principal place of residence”.
22. Section 3 replaces the words “a place of residence” with “the Justice’s principal place of residence”.
23. Section 4 replaces the words “a place of residence” with “the Justice’s principal place of residence”.
24. Section 5 replaces the words “a place of residence” with “the Justice’s principal place of residence”.
25. Section 6 sets application and transitional provisions for the amendments to the Official travel provisions.

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

Remuneration Tribunal (Judicial and Related Offices – Remuneration and Allowances) Determination 2022

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 determination amends the following principal determinations, immediately after their commencement:

- *Remuneration Tribunal (Judicial and Related Offices - Remuneration and Allowances) Determination 2018;*
- *Remuneration Tribunal (Judicial and Related Offices - Remuneration and Allowances) Determination 2019;*
- *Remuneration Tribunal (Judicial and Related Offices - Remuneration and Allowances) Determination 2020;*
- *Remuneration Tribunal (Judicial and Related Offices - Remuneration and Allowances) Determination 2021;* and
- *Remuneration Tribunal (Judicial and Related Offices - Remuneration and Allowances) Determination 2022.*

The determination replaces various references to “a place of residence” with “the Justice’s principal place of residence” throughout the Official travel provision for Justices of the High Court, consistent with the Tribunal’s original intent.

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