



REMUNERATION TRIBUNAL

Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 2) 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 (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, Chief Executive Officer

6. On 8 December 2022, the Minister for the National Disability Insurance Scheme, the Hon Bill Shorten MP, wrote to the Tribunal seeking a review of remuneration for the office of Chief Executive Officer (CEO) of the National Disability

Insurance Agency (NDIA). The accompanying submission outlined the responsibilities of the office, and the qualities and capabilities required of the office holder.

Australian Building and Construction Commission, Commissioner and Deputy Commissioner

7. There was no consultation on this matter. The amendment removes the offices of the Australian Building and Construction Commission, which was abolished with effect from 6 February 2023.

High Speed Rail Authority, Chief Executive Officer, Chair and Member

8. On 11 January 2023, the Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Catherine King MP wrote to the Tribunal seeking a determination of remuneration for the new full-time office of Chief Executive Officer of the High Speed Rail Authority and the Chair and Member of the High Speed Rail Authority. The accompanying submission outlined the responsibilities of the offices, and the qualities and capabilities required of the office holders.

Official travel

9. In September 2022, the Tribunal Secretariat became aware of varying interpretations of the Tribunal's provision relating to a part-time office holder's entitlement to daily fees when travelling for work purposes.
10. The Tribunal consulted with the Australian Government Solicitor on this matter.

Financial Services and Credit Panel

11. On 6 December 2022, the Hon Stephen Jones MP, Assistant Treasurer and Minister for Financial Services wrote to Senator the Hon Katy Gallagher, Minister for the Public Service, requesting Minister Gallagher refer the office of Member Financial Services and Credit Panel (FSCP) into the determinative jurisdiction of the Tribunal.
12. On 13 December 2022, Minister Gallagher wrote to the Tribunal President specifying that the office of Member FSCP is an office to which the provisions of the *Remuneration Tribunal Act 1973* should apply.

Torres Strait Regional Authority

13. On 14 December 2022, the Hon Linda Burney MP, Minister for Indigenous Australians wrote to the Tribunal seeking an amendment to a special provision applicable to members of the Torres Strait Regional Authority regarding the calculation of their daily fees.

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 Chief Executive Officer of the National Disability Insurance Agency, the retrospective application does not disadvantage any person as it establishes a more generous remuneration entitlement than would otherwise

apply.

16. With respect to the office of Member, Financial Services and Credit Panel, the retrospective application does not disadvantage any person as it provides remuneration for this office from the date of its establishment.

Exemption from sunseting

17. 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*.
18. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.

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 person specific provision for the CEO NDIA, Ms Rebecca Falkingham in Table 2A.
2. Item 2 removes the office of Commissioner, Australian Building and Construction Commission from Table 2A.
3. Item 3 establishes remuneration and travel tier for the office of Chief Executive Officer, High Speed Rail Authority in Table 2A.
4. Item 4 removes the office of the Deputy Commissioner, Australian Building and Construction Commission in Table 2A.
5. Item 5 establishes personal remuneration for the CEO NDIA, Ms Rebecca Falkingham in Table 2B. .

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

6. Item 6 amends the definition of official travel time in Section 8 by removing the words “It does not include time spent travelling between an office holder’s home and principal place of work”.
7. Item 7 establishes annual fees and travel tier for the offices of Chair and Member of the High Speed Rail Authority in Table 3A.
8. Item 8 sets a daily fee and travel tier for the office of Member Financial Services and Credit Panel in Table 4A.
9. Item 9 amends the special provision for members of the Torres Strait Regional Authority in Table 4B, to official travel time undertaken on a meeting when determining eligibility for payment.

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

The determination:

- establishes personal remuneration for the CEO NDIA, Ms Rebecca Falkingham.
- removes the offices of the Commissioner and Deputy Commissioner of the Australian Building and Construction Commission.
- establishes remuneration and travel tier for the office of CEO High Speed Rail Authority.
- amends the definition of official travel to clarify the Tribunal's intent.
- establishes annual fees and travel tier for the offices of Chair and Member of the High Speed Rail Authority.
- establishes remuneration for the office of Member, Financial Services and Credit Panel.
- amends the special provision for members of the Torres Strait Regional Authority to include official travel time undertaken on a meeting when determining eligibility for payment.

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