



## REMUNERATION TRIBUNAL

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### **Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 3) 2023**

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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.

#### *Registered Organisations Commissioner*

6. There was no consultation on this matter. The amendment removes the office of the Registered Organisations Commissioner and the special provisions associated with the former office holder. The Registered Organisations

Commission was abolished with effect from 6 March 2023.

*National Anti-Corruption Commission, Inspector*

7. 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 the office, and the qualities and capabilities required of the office holder. A supplementary submission relating to the office of Inspector was provided on 9 January 2023.

*Independent National Security Legislation Monitor*

8. On 9 February 2023, the Attorney-General, the Hon Mark Dreyfus KC MP wrote to the Tribunal seeking a determination of remuneration for the full-time office of the Independent National Security Legislation Monitor. The accompanying submission outlined the responsibilities of the office, and the qualities and capabilities required of the office holder.

*National Capital Authority, Chief Executive*

9. On 21 February 2023, Mr Jim Betts, Secretary of the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, wrote the Tribunal seeking a review of remuneration for the office of Chief Executive, National Capital Authority. The accompanying submission outlined the responsibilities of the office, and the qualities and capabilities required of the office holder. On 7 March 2023, the Tribunal received a letter of support for a review of remuneration from the Minister for Regional Development Local Government and Territories, the Hon Kristy McBain MP.

*Aboriginal Hostels Limited, Chief Executive Officer*

10. On 15 February 2023, Mr Anthony Ashby, Chairman of the Aboriginal Hostels Limited Board wrote to the Tribunal seeking a determination of accommodation and reunion travel assistance for the Chief Executive Officer of Aboriginal Hostels Limited, Mr David Chalmers. A letter of support for the submission was also received from the Minister for Indigenous Australians, the Hon Linda Burney MP.

*Administrator of Norfolk Island*

11. There was no consultation on this matter. Mr Eric Hutchinson's appointment as the Administrator of Norfolk Island concluded on 31 March 2023.

*Northern Territory Aboriginal Investment Corporation, Grants Committee, Chair and Member*

12. On 25 January 2023, the Minister for Indigenous Australians, the Hon Linda Burney MP, copied the Tribunal into correspondence supporting a submission seeking the determination of remuneration and travel tier for the offices of Chair and Member of the Grants Committee of the Northern Territory Aboriginal Investment Corporation. The accompanying submission outlined the responsibilities of the offices, and the qualities and capabilities required of the office holders.

*Notes in part-time determination*

13. There was no consultation on this matter. At its meeting of 29 March 2023, the Tribunal requested its part-time determination be amended to make clear its position that an individual appointed to multiple part-time offices can only be remunerated once for the same substantive work.

### **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 Aboriginal Hostels Limited, the retrospective application does not disadvantage any person as it establishes more generous entitlements than would otherwise apply.
16. With respect to the offices of Chair and Member of the Northern Territory Aboriginal Investment Corporation Grants Committee, the retrospective application does not disadvantage any person as it provides remuneration for these offices from the date of their 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 2022***

1. Item 1 establishes remuneration and travel tier for the office of National Anti-

Corruption Commissioner in Table 2A.

2. Item 2 establishes remuneration and travel tier for the office of Independent National Security Legislation Monitor in Table 2A.
3. Item 3 removes the office of Registered Organisations Commissioner from Table 2A.
4. Item 4 establishes the remuneration and travel tier for the office of Chief Executive, National Capital Authority in Table 2A, and references a special provision for the office in Table 2B.
5. Item 5 removes a superseded entry for remuneration, travel tier and special provision for the office of Chief Executive, National Capital Authority, from Table 2A.
6. Item 6 amends the special provision for Ms Sally Barnes, Chief Executive, National Capital Authority in Table 2B.
7. Item 7 removes accommodation assistance for Mr Mark Bielecki, Registered Organisations Commissioner and establishes accommodation assistance for Mr David Chalmers, Chief Executive Officer, Aboriginal Hostels Limited in Table 5A.
8. Item 8 removes reunion travel assistance for Mr Mark Bielecki, Registered Organisations Commissioner and establishes reunion travel assistance for Mr David Chalmers, Chief Executive Officer, Aboriginal Hostels Limited in Table 5B.
9. Item 9 removes reunion travel assistance for Mr Eric Hutchinson, Administrator of Norfolk Island in Table 5B.

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

10. Item 10 establishes annual fees and travel tier for the offices of the Northern Territory Aboriginal Investment Corporation Grants Committee in Table 3A.
11. Items 11 and 13 insert notes clarifying the Tribunal's position that an individual appointed to more than one part-time office can only be remunerated once for the same substantive work.
12. Item 12 establishes a daily fee and travel tier for the office of Inspector of the National Anti-Corruption Commission in Table 4A.
13. Item 14 establishes an application provision for Item 10 in Table 8A.

**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.*

### **Remuneration Tribunal Amendment Determination (No.3) 2023**

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:

- removes the office of Registered Organisations Commissioner.
- establishes full-time and part-time remuneration and a travel tier for the office of Inspector of the National Anti-Corruption Commission.
- establishes full-time remuneration and a travel tier for the office of the Independent National Security Legislation Monitor.
- amends the remuneration for the office of Chief Executive, National Capital Authority.
- amends the special provision for Ms Sally Barnes, Chief Executive, National Capital Authority.
- removes accommodation and reunion travel assistance for Mr Mark Bielecki, Registered Organisations Commissioner.
- establishes accommodation and reunion travel assistance for Mr David Chalmers, Chief Executive Officer, Aboriginal Hostels Limited.
- removes reunion travel assistance for Mr Eric Hutchinson, Administrator of Norfolk Island.
- establishes annual fees and a travel tier for the offices of Chair and Member of the Northern Territory Aboriginal Investment Corporation Grants Committee.
- clarifies the Remuneration Tribunal's position regarding the double-payment of fees for the same work.

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**