



Remuneration Tribunal

Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 4) 2024

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.

Federal Circuit and Family Court of Australia, Judge (Division 2)

6. On 15 January 2024, Chief Justice the Hon William Alstergren AO, Chief Justice of the Federal Circuit and Family Court of Australia, wrote to the Tribunal seeking a review of remuneration and recreation leave for the office of Judge of

Division 2 of the Federal Circuit and Family Court of Australia. The Tribunal also sought the Attorney-General's views on the matters.

Illicit Tobacco and E-cigarette Commissioner

7. On 26 June 2024, the Hon Clare O'Neil MP, then Minister for Home Affairs, wrote to the Tribunal seeking the determination of remuneration and travel tier for the new full-time office of Illicit Tobacco and E-cigarette Commissioner. The accompanying submission outlined the proposed roles and responsibilities of the office.

Office of the Official Secretary to the Governor-General

8. On 24 July 2024, Mr Jeff Barnes, the Deputy Official Secretary to the Governor-General wrote to the Tribunal seeking the determination of a personal superannuation salary for the incoming Official Secretary, Mr Gerard Martin.

Australian Human Rights Commission, President

9. On 1 July 2024, the Hon Mark Dreyfus KC MP, wrote to the Tribunal seeking approval of accommodation and reunion travel assistance for Mr Hugh de Kretser, the new President of the Australian Human Rights Commission.
10. There was no consultation on this matter. This amendment removes a special provision for Emeritus Professor Rosalind Croucher whose appointment as the President of the Australian Human Rights Commission concluded on 29 July 2024.

Infrastructure Australia, Commissioner

11. There was no consultation on this matter. The amendment clarifies the relative status of the office as that of a Member rather than Chair of Infrastructure Australia.

Creative Australia First Nations Board, Chair and Member

12. On 25 June 2024, the Hon Tony Burke MP, Minister for the Arts wrote to the Tribunal seeking a determination of remuneration and travel tier for the new part-time offices of Co-Chair and Member of the Creative Australia First Nations Board. The accompanying submission outlined the proposed roles and responsibilities of the offices.

Family and Injured Workers Advisory Committee, Chair and Member

13. On 26 June 2024, the Hon Tony Burke MP, then Minister for Employment and Workplace Relations wrote to the Tribunal seeking a determination of remuneration and travel tier for the new part-time offices of Co-Chair and Member of the Family and Injured Workers Advisory Committee. The accompanying submission outlined the proposed roles and responsibilities of the offices.

Judicial officers

14. The allowance for official travel to Canberra is a payment made in lieu of travelling allowances to Justices of the High Court who do not establish a place

of residence in Canberra. The Tribunal has adjusted this amount consistent with the Canberra rate of travel specified in Taxation Determination TD2024/3: Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2024–25 income year?

15. The maximum reimbursement for private vehicle running costs for certain judicial officers is adjusted by the movement in the transport component of the Consumer Price Index for the period since the Tribunal's last increase (2023) to March 2024.
16. There was no consultation on this matter as it is the Tribunal's practice to review each year, the travel and motor vehicle allowances applicable to office holders for which it determines remuneration. Remuneration Tribunal (Official Travel) Determination 2024 applies the majority of the Tribunal's decisions arising from its review. This determination implements travel-related decisions of the Tribunal peculiar to judicial offices.
17. Amongst other things, the Australian Taxation Office determination sets out the amounts that the Commission of Taxation considers are reasonable for the substantiation exception in Subdivision 900-B of the *Income Tax Assessment Act 1997* for the 2024–25 income year in relation to claims made by employees for domestic travel expenses and overseas travel expenses.
18. TD2024/3 is a public ruling for the purposes of the Taxation Administration Act 1953 and is available online at:
<https://www.ato.gov.au/law/view/pdf/pbr/td2024-003.pdf>

Updated definitions

19. There was no consultation on this matter. Consultations was considered unnecessary on these amendments, which update the definition of 'official travel determination' in the Tribunal's Judicial and Related Offices, Full-Time and Part-Time Determinations, to refer to the new principal Remuneration Tribunal (Official Travel) Determination 2024.

Retrospectivity

20. 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.
21. With respect to the office of Judge of Division 2 of the Federal Circuit and Family Court of Australia, the retrospective application of these provisions do not disadvantage any person as they provide an entitlement greater than that which previously applied.
22. With respect to the President of the Australian Human Rights Commission, Mr Hugh de Kretser, the retrospective application of these provisions does not disadvantage any person as it provides an entitlement from the date the office holder took office.

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 Act 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, the principal instrument 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

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:

27. Section 1 specifies the name of the instrument.
28. Section 2 specifies when the instrument commences.
29. Section 3 specifies the authority for the instrument.
30. Section 4 outlines the effect of instruments specified in a Schedule to the instrument.
31. Schedule 1 sets out the amendments made to the instruments specified in Schedule 1.

SCHEDULE 1—AMENDMENTS

Part 1 – Main amendments

Remuneration Tribunal (Judicial and Related Offices - Remuneration and Allowances) Determination 2024

32. Item 1 amends the definitions to include a reference to the application and transitional provisions.
33. Item 2 increases the full-time base salary for the office of Judge of Division 2 of the Federal Circuit and Family Court of Australia in Table 2A.
34. Item 3 sets application and transitional provisions for the item dealing with the office of Judge of Division 2 of the Federal Circuit and Family Court of Australia in Table 5A.

Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2024

35. Item 4 removes the reference to the special provision for the office of President of the Australian Human Rights Commission, from Table 2A.
36. Item 5 establishes remuneration and travel tier for the office of Illicit Tobacco and E-cigarette Commissioner in Table 2A.
37. Item 6 removes the special provision for Emeritus Professor Rosalind Croucher in her role as President of the Australian Human Rights Commission, from Table 2B.
38. Item 7 establishes a personal superannuation salary for Mr Gerard Martin, Official Secretary to the Governor-General, in Table 3B.
39. Item 8 establishes accommodation assistance for Mr Hugh de Kretser, President of the Australian Human Rights Commission, in Table 5A.
40. Item 9 establishes reunion travel assistance for Mr Hugh de Kretser, President of the Australian Human Rights Commission, in Table 5B.

Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2024

41. Item 10 repeals the entry for the Commissioner, Infrastructure Australia in column 2 of Table 3A.
42. Item 11 establishes annual fees and a travel tier for the offices of Co-Chair and Member of the Creative Australia First Nations Board in Table 3A.
43. Item 12 re-establishes the office of Commissioner, Infrastructure Australia with the same remuneration and travel tier as previously determined but at a more appropriate location in Table 3A.
44. Item 13 establishes daily fees and a travel tier for the offices of Co-Chair and Member of the Family and Injured Workers Advisory Committee in Table 4A.

Part 2 – Other amendments

Remuneration Tribunal (Judicial and Related Offices - Remuneration and Allowances) Determination 2024

45. Item 14 amends the definition of *official travel determination* in section 7 so that it refers to the 2024 determination.
46. Item 15 increases the reimbursement for private vehicle running costs in paragraph 12(1)(b).
47. Item 16 increases the reimbursement for private vehicle running costs in paragraph 12(2)(b).
48. Item 17 increases the reimbursement for private vehicle running costs in paragraph 12(3)(b).
49. Item 18 increases the value of the allowance in lieu of travelling allowance to Canberra in subsection 40(1).

Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2024

50. Item 19 amends the definition of *official travel determination* in section 7 so that it refers to the 2024 determination.

Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2024

51. Item 20 amends the definition of *official travel determination* in section 8 so that it refers to the 2024 determination.

Authority: Sub-sections 7(3), (3AAA) (4) and (4B)

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 4) 2024

This Disallowable 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 Instrument

This instrument, or determination, amends the principal determinations:

- Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2024
- Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2024
- Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2024.

The instrument establishes remuneration and travel tier for a range of new offices; amends the base salary for one office; establishes temporary accommodation and reunion travel assistance provisions for one office holder; provides a personal superannuation salary for another office holder; and removes a spent provision.

Human rights implications

This instrument engages the right to work in Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the right to the enjoyment of just and favourable conditions of work, primarily contained in Article 7 of ICESCR.

Right to work and to just and favourable conditions of work

Article 6 of the ICESCR recognises ‘... *the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts* ...’. The right to just and favourable conditions of work includes, but is not limited to, ensuring ‘*fair wages and equal remuneration for work of equal value without distinction of any kind*’, and ‘*a decent living for themselves and their families*’ (Article 7(1)(a)).

Consistent with Articles 6 and 7 of the ICESCR, this instrument ensures that individuals appointed to the public offices subject to the determination continue to be fairly remunerated in respect of the work they undertake as public office holders. Specifically, the instrument:

- Increases the base salary for the office of Federal Circuit and Family Court of Australia (Division 2) Judge;
- Increases the maximum reimbursement available for private vehicle running costs for certain members of the Judiciary;
- Increases the value of the annual allowance provided in lieu of travelling allowance to certain Justices of the High Court who do not establish a principal place of residence in Canberra;

- Establishes the remuneration and travel tier for the full-time office of Illicit Tobacco and E-Cigarette Commissioner;
- Establishes the remuneration and travel tier for the following part-time offices:
 - Co-Chair and Member of the Creative Australia First Nations Board;
 - Co-Chair and Member of the Family and Injured Workers Advisory Committee;
- Establishes a personal superannuation salary for Mr Gerard Martin, Official Secretary to the Governor-General;
- Establishes temporary accommodation and reunion travel assistance provisions for Mr Hugh de Kretser, President of the Australian Human Rights Commission;
- Removes the special provision for the former President of the Australian Human Rights Commission, Emeritus Professor Rosalind Croucher, reflecting the expiry of her term of office;
- Clarifies that the office of Commissioner, Infrastructure Australia is more appropriately categorised as Member, rather than Chair, with a reference to the Chair position (Chief Commissioner) being a Full-Time office. This amendment corrects an editorial error in Remuneration Tribunal (Remuneration and Allowances for Holders of Part time Public Office) Determination 2024.

These amendments do not reduce the remuneration of any of the offices. By establishing remuneration, allowances and entitlements based on an assessment of the current work value of the office, the instrument directly promotes the principle of ensuring *'fair wages and equal remuneration for work of equal value'* per Article 7(1)(a) of the ICESCR and more broadly contributes to *'... the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts ...'* per Article 6 of the ICESCR.

Conclusion

This instrument is compatible with human rights because it enhances and promotes the protection of human rights, and in particular, the right to work and to just and favourable conditions of work through maintaining the principle of fair, and current, remuneration for work performed.

The Remuneration Tribunal