# EXPLANATORY STATEMENT

## Issued by authority of the Assistant Minister to the Minister for the Public Service

 *Remuneration Tribunal Act 1973*

*Remuneration Tribunal (Miscellaneous Provisions) Amendment (Road Transport Advisory Group) Regulations*

The *Remuneration Tribunal Act 1973* (RT 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.

Section 17 of the RT Act  provides that the Governor-General may make regulations for the purposes of the RT Act. Paragraph 3(4)(v) of the RT Act provides for the exclusion of an office or appointment, or class of offices or appointments, prescribed by the regulations from the definition of ‘public office’.

The *Remuneration Tribunal (Miscellaneous Provisions) Amendment (Road Transport Advisory Group) Regulations 2024* (the Regulations) amend the *Remuneration Tribunal (Miscellaneous Provisions) Regulations 2017* (the Principal Regulations) to prescribe that members of the Road Transport Advisory Group (RTAG) and its subcommittees are not a ‘public office’ for the purposes of the RT Act in accordance with paragraph 3(4)(v) of the RT Act. That is, members of RTAG are excised from the jurisdiction of the Tribunal and consequently they will not receive any remuneration or allowances determined by the Tribunal.

The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (the Closing Loopholes No. 2 Act) received Royal Assent on 26 February 2024. Part 16 of Schedule 1 to the Closing Loopholes No. 2 Act amends the *Fair Work Act 2009* (FW Act) to insert new section 40E, which establishes the Road Transport Advisory Group (RTAG) to provide advice to the Fair Work Commission in relation to matters relating to the road transport industry. These amendments commence on 26 August 2024.

The RTAG includes representatives from the road transport industry. It has advisory functions under the FW Act, including under Chapter 3A (in relation to road transport minimum standards), Chapter 3B (in relation to road transport contractual chain orders) and the prioritisation of the Fair Work Commission’s work so far as it relates to the road transport industry. Section 40F provides for Membership of the RTAG. Subsection 40F(6) provides for the appointment of a person to chair the RTAG. Section 40G provides for the establishment of RTAG subcommittees to advise it in relation to matters relevant to the performance of its functions.

The Closing Loopholes No. 2 Act does not make explicit reference to the remuneration of RTAG members. As representatives of an organisation, it was not intended for RTAG members or members of the RTAG subcommittees to receive remuneration from the Commonwealth for their appointment. The Explanatory Memorandum to Fair Work Legislation Amendment (Closing Loopholes) Bill 2023, states at paragraph 1115 that ‘It is not intended that members of the RTAG would be entitled to any remuneration or allowances for their participation’ and at paragraph 1118 that ‘It is not intended that members of the RTAG's subcommittees would be entitled to any remuneration or allowances for their participation’. The Regulations would give effect to the Government’s intention in the Explanatory Memorandum.

The Regulations would be a legislative instrument for the purposes of the *Legislation Act 2003*. The Principal Regulations are subject to sunsetting.

The Regulations commence on the day after registration.

The Office of Impact Analysis has been consulted (OIA24-07831) and agreed that an Impact Analysis is not required.

The Department of Employment and Workplace Relations was consulted on the Regulations.

Details of the Regulations are included in the Attachment.

**ATTACHMENT**

**Details of the *Remuneration Tribunal (Miscellaneous Provisions) Amendment (Road Transport Advisory Group) Regulation 2024***

Section 1 — Name of Regulations

This section specifies that the name of the Regulations is the *Remuneration Tribunal (Miscellaneous Provisions) Amendment (Road Transport Advisory Group) Regulations 2024* (the Regulations).

Section 2 — Commencement

This section provides that the Regulations commence on the day after the instrument is registered.

Section 3 — Authority

This section states that the Regulations are made under the *Remuneration Tribunal Act 1973*.

Section 4 – Schedules

This section specifies that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the Schedule.

Section 5 – Notification of Ministers and Departments they administer

Clause 1 repeals and substitutes section 6 of the *Remuneration Tribunal (Miscellaneous Provisions) Regulations 2017* to prescribe that the following members are not a ‘public office’ for the purposes of subsection 3(4)(v) of the *Remuneration Tribunal Act 1973*:

* A person appointed as a member of the Road Transport Advisory Group (RTAG) under subsection 40F(1) of the *Fair Work Act 2009*;
* A person appointed to chair the RTAG under subsection 40F(6) of the *Fair Work Act 2009*;
* The office of a member of a subcommittee of RTAG, established under section 40G of the *Fair Work Act 2009*; and
* The office of chair of a subcommittee of RTAG, established under 40G of the *Fair Work Act 2009*.

This has the effect of excising RTAG members, the chair, subcommittee members and any subcommittee chairs from the jurisdiction of the Remuneration Tribunal and consequently they will not receive any remuneration or allowances determined by the Remuneration Tribunal.

Section 6 maintains the provision that a person appointed by Letters Patent, as a Commissioner to inquire into and report on matters specified in the Letters Patent is not a ‘public office’ for the purposes of 3(4)(v) of the *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 (Miscellaneous Provisions) Amendment (Road Transport Advisory Group) Regulation 2024**

The *Remuneration Tribunal (Miscellaneous Provisions) Amendment (Road Transport Advisory Group) Regulations 2024* (the Regulations) are 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 Regulations**

The *Remuneration Tribunal Act 1973* (RT 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.

Section 17 of the RT Act provides that the Governor-General may make regulations for the purposes of the RT Act. Paragraph 3(4)(v) of the RT Act provides for the exclusion of an office or appointment, or class of offices or appointments, prescribed by the regulations from the definition of ‘public office’.

The Regulations prescribe that members of the RTAG, its chair and its subcommittees are not a ‘public office’ for the purposes of the RT Act in accordance with section 3(4)(v). That is, members of RTAG and its subcommittees are excised from the jurisdiction of the Remuneration Tribunal and consequently they will not receive any remuneration or allowances determined by the Remuneration Tribunal.

The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (the Closing Loopholes No. 2 Act) received the Royal Assent on 26 February 2024. Part 16 of Schedule 1 to the Closing Loopholes No. 2 Act amends the *Fair Work Act 2009* (FW Act) to insert new section 40E, which establishes the RTAG under section 40E of the *Fair Work Act 2009* (FW Act) to provide advice to the Fair Work Commission in relation to matters relating to the road transport industry.

Members of the RTAG are nominated by an organisation representing the industrial interests of regulated road transport contractors or road transport businesses. The RTAG includes representatives from the road transport industry. It has advisory functions under the FW Act, including Chapter 3A (in relation to road transport minimum standards), Chapter 3B (in relation to road transport contractual chain orders) and the prioritisation of the Fair Work Commission’s work so far as it relates to the road transport industry. Section 40F provides for Membership of the RTAG. Subsection 40F(6) provides for the appointment of a person to chair the RTAG. Section 40G provides for the establishment of RTAG subcommittees to advise it in relation to matters relevant to the performance of its functions.

The Closing Loopholes No. 2 Act does not make explicit reference to the remuneration of RTAG members and its subcommittees. The Explanatory Memorandum to the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023, states at paragraph 1115 that ‘It is not intended that members of the RTAG would be entitled to any remuneration or allowances for their participation’ and at paragraph 1118 that ‘It is not intended that members of the RTAG's subcommittees would be entitled to any remuneration or allowances for their participation’. The Regulations would give effect to the Government’s intention in the Explanatory Memorandum.

**Human rights implications**

The Regulations engage Article 7 of the *International Covenant on Economic, Social and Cultural Rights* ICESCR).

The Regulations mean persons appointed as a member or chair of the RTAG or a member or chair of an RTAG subcommittee (collectively, ‘RTAG participants’) will not be a ‘public office’ and will not receive remuneration or travel expenses and allowances for their appointment. These regulations could be seen to engage the right to just and favourable working conditions on the basis that RTAG participants will not be remunerated by the Commonwealth.

However, the objective of the RTAG is to ensure Fair Work Commission decisions relating to road transport are informed by expert advice from representatives of the road transport industry. This is a direct response to industry concerns about a previous body that made orders setting remuneration for the road transport industry – the Road Safety Remuneration Tribunal. This Tribunal was abolished in 2016 in response to industry concerns that its orders did not take into account the views of road transport industry stakeholders or reflect the commercial realities of the industry. The limitation imposed on rights by ensuring RTAG participants are not a ‘public office’ is rationally connected to the objective of the RTAG provisions as it ensures participants can use their role in the RTAG to share their unique perspectives as road transport industry representatives. If RTAG participants were to be ‘public offices’, this would likely carry an expectation of independence and prevent participants from expressing their views in the manner intended.

Fair Work Commission decisions relating to the road transport industry will have an impact on the performance of work and economic conditions in the industry. It is therefore beneficial for representatives of the road transport industry to participate in the RTAG as they will be able to express their views on behalf of their organisations and provide specialist information and advice drawn from their experience in the industry. From providing this advice, RTAG participants will benefit from ensuring the Fair Work Commission is able to set standards that ensure the industry is safe, sustainable and viable and avoid unreasonable adverse impacts on the industry.

As the purpose of the RTAG is for members to provide advice from their perspective as a road transport industry participant, it is appropriate that any remuneration for their participation is sourced from their primary role as a road transport industry participant, rather than from the Commonwealth. RTAG members must be nominated by an organisation representing the industrial interests of regulated road transport contractors or road transport businesses and would be remunerated by that organisation while they participate on the RTAG. While there are no eligibility requirements for subcommittee members or subcommittee chairs, it is expected a person would participate in a subcommittee in connection with a role they hold in the road transport industry for which they are already being remunerated. Participation in the RTAG or a subcommittee is voluntary, and it would be a matter for the individual to weigh up the benefits of participation.

A person appointed to chair the RTAG may be a member of the Expert Panel for the road transport industry. A member of the Expert Panel is a Fair Work Commission member, which is a public office within the Remuneration Tribunal’s jurisdiction.

These factors demonstrate the limitation of rights in work is reasonable, necessary and proportionate.

**Conclusion**

The Regulations are compatible with human rights. To the extent the Regulations may limit human rights, those limitations are reasonable, necessary and proportionate in pursuit of a legitimate objective.