



## Remuneration Tribunal

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### **Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 5) 2024**

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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 (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.

#### *Administrative Appeals Tribunal, various offices*

6. There was no consultation on this matter. The amendments remove the offices of the Administrative Appeals Tribunal (AAT) which will be replaced by the Administrative Review Tribunal with effect from 14 October 2024.

*Administrative Review Tribunal, various offices*

7. On 6 February 2024, the Attorney-General, the Hon Mark Dreyfus KC MP, wrote to the Tribunal seeking an indicative determination of remuneration and travel tier for the offices of Deputy President (non-judicial), Senior member, General member, and Principal Registrar being established by the Administrative Review Tribunal Bill 2023. The accompanying submission outlined the proposed roles and responsibilities of the offices.
8. On 1 July 2024, the Attorney-General wrote to the Tribunal seeking a determination of remuneration and travel tier for the full-time office of President of the Administrative Review Tribunal. The accompanying submission outlined the role and responsibilities of the office.

*Australian Public Service Commission, Merit Protection Commissioner*

9. On 17 June 2024, Senator the Hon Katy Gallagher, Minister for the Public Service wrote to the Tribunal seeking a review of remuneration for the full-time office of Merit Protection Commissioner, and a personal remuneration and superannuation salary for the proposed appointee to the office of Merit Protection Commissioner.
10. On 2 July 2024, Senator the Hon Katy Gallagher, Minister for the Public Service wrote to the Tribunal providing additional information on this matter, and identifying the proposed appointee, Ms Jamie Lowe.

*Australian Human Rights Commission, Race Discrimination Commissioner, Human Rights Commissioner*

11. On 17 September 2024, the Chief Executive of the Australian Human Rights Commission, Ms Leanne Smith, wrote to the acting Secretary to the Remuneration Tribunal advising the personal circumstances of Mr Giridharan Sivaraman, the Race Discrimination Commissioner, and Ms Lorraine Finlay, the Human Rights Commissioner no longer necessitated the temporary accommodation and reunion travel assistance the Tribunal had determined for those office holders.

*Australian Heritage Council, Chair*

12. On 12 August 2024, Ms Rachel Parry, Deputy Secretary of the Department of Climate Change, Energy, the Environment and Water, wrote to the Tribunal seeking a determination of reduced remuneration for Professor the Hon Bob Carr, Chair of the Australian Heritage Council, in recognition of Professor Carr's parliamentary pension, and in line with government policy. The letter confirmed Professor Carr had agreed to the reduction.

*Cancer Australia Advisory Council, Member*

13. There was no consultation on this matter. This amendment removes a special provision for the Hon Jillian Skinner whose appointment to the Cancer Australia Advisory Council concluded on 12 August 2024.

*Australian Film, Television and Radio School (AFTRS) Council, Deputy Chair*

14. On 3 April 2024, the Acting President of the Tribunal wrote to Ms Rachel Perkins, the Chair of the AFTRS Council, seeking information on the role and responsibilities of the office of Deputy Chair AFTRS, and the Chair's view on whether the work value or time commitment of the office was demonstrably greater than that of other Council Members. In August 2024 the Tribunal's Secretariat received advice from AFTRS that no additional remuneration was required for the office of Deputy Chair at this time.

*National Museum of Australia (NMA) Council, Deputy Chair*

15. On 3 April 2024, the Acting President of the Tribunal wrote to Mr Ben Maguire AM, the Chair of the NMA Council, seeking information on the role and responsibilities of the office of Deputy Chair NMA, and the Chair's view on whether the work value or time commitment of the office was demonstrably greater than that of other Council Members. On 5 April 2024, Mr Maguire wrote to the Acting President confirming the office did not have greater work value or time commitment than other Council Members.

*Australian National Audit Office, Auditor-General*

16. On 26 August 2024, Professor Glyn Davis AC, Secretary of the Department of the Prime Minister and Cabinet, wrote to the Tribunal seeking a determination of accommodation and reunion travel assistance for Dr Caralee McLiesh, the incoming Auditor-General for Australia.

**Retrospectivity**

17. 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.

**Exemption from sunseting**

18. 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*.
19. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.
20. As the Remuneration Tribunal makes new principal determinations annually, the principal instruments 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**

21. 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:**

22. Section 1 specifies the name of the instrument.
23. Section 2 specifies when the instrument commences.
24. Section 3 specifies the authority for the instrument.
25. Section 4 outlines the effect of instruments specified in a Schedule to the instrument.
26. Schedule 1 sets out the amendments made to the instruments specified in Schedule 1.

**SCHEDULE 1—AMENDMENTS**

**Part 1—Amendments relating to the Administrative Review Tribunal  
*Remuneration Tribunal (Judicial and Related Offices - Remuneration and Allowances) Determination 2024***

27. Item 1 removes the definitions of AAT and AAT Act from Section 7.
28. Item 2 inserts definitions for the Administrative Review Tribunal and the *Administrative Review Tribunal Act 2024* in Section 7.
29. Item 3 removes the definition of Table 4B from Section 7.
30. Item 4 removes the item dealing with the office of President of the AAT and establishes the full-time base salary and travel tier for the office of ART—President in Table 2A.
31. Item 5 removes the office of President of the AAT from the offices listed in section 11.
32. Items 6 to 12 remove the full-time offices of the AAT from Table 3A.
33. Item 13 establishes remuneration and travel tier for the full-time (salaried) offices of ART—Non-Judicial Deputy President; ART—Senior member; ART—General member; and ART—Principal Registrar in Table 3A. This item has effect subject to sections 30 and 31 of Schedule 16 of the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024*.
34. Items 14 and 15 remove a grandfathered superannuation provision associated with the AAT that no longer applies.
35. Items 16 and 17 update the note at section 34(1) so that it refers to the ART rather than AAT and ceases to refer to section 39.
36. Items 18 to 23 remove the part-time offices of the AAT in receipt of daily fees from Table 4A.
37. Item 24 establishes daily fees, references a special provision and sets the travel tier for the part-time (sessional) offices of ART—Deputy President; ART—Senior member; and ART—General member in Table 4A. This item has effect subject to

sections 30 and 31 of Schedule 16 of the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024*.

38. Items 25 and 26 amend the heading and content of section 38 so that it refers to the ART rather than the AAT.
39. Item 27 amends subsection 38(1) so that it no longer refers to a section being removed from the determination.
40. Item 28 removes the part-time offices of the AAT in receipt of annual fees and the special provisions relevant to those offices from the determination.

## **Part 2—Other amendments**

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

41. Item 29 inserts a reference to a special provision for the Merit Protection Commissioner in Table 2A.
42. Item 30 establishes a personal loading for Ms Jamie Lowe, the Merit Protection Commissioner in Table 2B.
43. Item 31 establishes a personal superannuation salary for Ms Jamie Lowe, the Merit Protection Commissioner in Table 3B.
44. Item 32 removes the provisions for accommodation assistance for Mr Giridharan Sivaraman, the Race Discrimination Commissioner, and Ms Lorraine Finlay, the Human Rights Commissioner from Table 5A.
45. Item 33 removes the provisions for reunion travel assistance for Mr Giridharan Sivaraman, the Race Discrimination Commissioner, and Ms Lorraine Finlay, the Human Rights Commissioner from Table 5B.

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

46. Item 34 inserts a reference to a special provision for the Australian Heritage Council in Table 3A.
47. Item 35 removes the reference to the special provision for the Cancer Australia Advisory Council in Table 3A.
48. Item 36 establishes an annual fee for the office of Deputy Chair of the Australian Film, Television and Radio School Council in Table 3A.
49. Item 37 establishes an annual fee for the office of Deputy Chair of the National Museum of Australia Council in Table 3A.
50. Item 38 removes the special provision for the Hon Jillian Skinner in her role as a Member of the Cancer Australia Advisory Council from Table 3B.
51. Item 39 establishes a special provision for Professor the Hon Bob Carr in his role as Chair of the Australian Heritage Council in Table 3B.

### ***Remuneration Tribunal (Specified Statutory Offices - Remuneration and Allowances) Determination 2024***

52. Item 40 inserts a definition of office locality in Section 7.

53. Item 41 updates the reference to the official travel determination in Section 7 so that it refers to the 2024 determination rather than the 2023 determination.
54. Item 42 inserts references to Tables 5A and 5B in Section 7.
55. Item 43 inserts a paragraph in Section 8 to confirm that accommodation and reunion travel assistance does not form part of total remuneration.
56. Item 44 establishes terms and conditions for travel and accommodation assistance, in the form of a new Part 5 to the determination. Additionally, item 44 establishes accommodation assistance in Table 5A and reunion travel assistance in Table 5B for Dr Caralee McLiesh, Auditor-General for Australia.

**Authority:** Sub-sections 7(3), (3AA) (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 5) 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 (Specified Statutory Offices – Remuneration and Allowances) Determination 2024
- Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2024.

The instrument establishes remuneration and travel tiers for a range of offices and establishes special provisions for three office holders. The instrument removes the remuneration, travel tier, an additional allowance and a grandfathered superannuation salary for various offices which will cease on 14 October 2024. It also removes special provisions which applied on a temporary basis and are no longer required, or applied to a former office holder whose appointment has now ceased.

#### 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:

- Establishes remuneration for the part-time offices of
  - Deputy Chair of the Australian Film, Television and Radio School Council; and
  - Deputy Chair of the National Museum of Australia Council;

- Amends the Tribunal’s Judicial and Related Offices determination to reflect the transition of the Administrative Appeals Tribunal to the Administrative Review Tribunal, with effect on and from 14 October 2024. Specifically, the determination:
  - Establishes base salary and travel tier for the full-time office of President, Administrative Review Tribunal, and removes the corresponding provisions for the full-time office of President, Administrative Appeals Tribunal;
  - Establishes remuneration and travel tier for the full-time offices of Deputy President (non-judicial), Senior member, General member, and Principal Registrar of the Administrative Review Tribunal, and removes the corresponding provisions for the full-time offices of Deputy President (non-judicial), Senior member (levels 1 and 2), Member (levels 1, 2 and 3) and Registrar of the Administrative Appeals Tribunal;
  - Establishes daily fees and travel tier for the part-time offices of Deputy President, Senior member, and General member of the Administrative Review Tribunal, and removes the corresponding provisions for the part-time offices of Deputy President, Senior member (levels 1 and 2), Member (levels 1, 2 and 3) and Registrar of the Administrative Appeals Tribunal;
  - Removes the additional annual expense allowance for a sitting judge who was President of the Administrative Appeals Tribunal on a part-time basis;
  - Removes the grandfathered superannuation salary for a Deputy President of the Administrative Appeals Tribunal;
  - Removes the special provisions for the part-time offices of Deputy President, Senior member (levels 1 and 2), Member (levels 1, 2 and 3) of the Administrative Appeals Tribunal in receipt of annual fees.
- Establishes a special provision (temporary accommodation and reunion travel assistance) for Dr Caralee McLiesh, the incoming Auditor-General;
- Establishes two special provisions (an additional temporary fixed loading and a personal superannuation salary) for Ms Jamie Lowe, the Merit Protection Commissioner;
- Establishes terms and conditions for temporary accommodation and reunion travel assistance in the Tribunal’s Specified Statutory Office determination broadly in conformance with those in its full-time office determination;
- Removes the special provisions (temporary accommodation and reunion travel assistance) determined for Mr Giridharan Sivaraman, the Race Discrimination Commissioner and Ms Lorraine Finlay, the Human Rights Commissioner on the basis these are no longer required;
- Establishes a special provision (a reduced annual fee) for Professor the Hon Bob Carr, Chair of the Australian Heritage Council, with consideration to his NSW parliamentary pension and reflecting his agreement;
- Removes the special provision (a reduced annual fee) for the Hon Jillian Skinner, former member of the Cancer Australia Advisory Council, reflecting the expiry of her term of office.

By establishing remuneration, allowances and entitlements based on an assessment of the current work value of each 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.

The instrument prescribes a reduced annual fee than would otherwise be payable to the Hon Bob Carr as Chair of the Australian Heritage Council. This potentially limits the right to fair wages and equal wages for work of equal value per Article 7 of the ICESCR.



Subsection 7(3) of the *Remuneration Tribunal Act 1973* requires the Remuneration Tribunal (the Tribunal) to inquire into, and determine, the remuneration to be paid to the holders of public offices. This provides the Tribunal the discretion to determine a different level of remuneration for a particular holder of a public office, including a lower amount of remuneration than would otherwise be provided, having regard to the individual circumstances of the public office holder. The determination of a reduced annual fee is therefore authorised by law.

Established Government policy aims to ensure fair and consistent treatment of public office holders who are former Commonwealth, State and Territory parliamentarians in receipt of a parliamentary pension – regardless of whether the parliamentary pension is provided under the *Parliamentary Contributory Superannuation Act 1948* (Cth) (PCS Act) or State or Territory legislation. Where possible, this objective is addressed through a reduction to the amount of the parliamentary pension that is payable to the person. The amount is only reduced if the amount of remuneration that is ordinarily payable in respect of the public office exceeds a certain threshold. Where it is not practicable to reduce the pension, the amount of remuneration determined for the person in respect of their appointment to the public office is reduced instead. Prior to appointment to the public office, the former parliamentarian is required to agree to the reduced pension or reduced remuneration.

Professor Carr is the former Premier of New South Wales and is in receipt of a parliamentary pension. The Tribunal has determined the (ordinary) annual fee for the part-time office of Chair of the Australian Heritage Council as \$85,870 (Table 3A, Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2024 refers); but determined Professor Carr’s annual fee of \$61,422 as a special provision, in alignment with the Government’s policy.

Within the broader context of public funding of Professor Carr’s parliamentary pension, the reduced annual fee as Chair of the Australian Heritage Council represents only a limited interference with the right to equal wages. Unlike the PCS Act, the New South Wales legislation under which Professor Carr’s parliamentary pension is provided does not allow for a reduction to the pension where the beneficiary is a public office holder. There is therefore no alternative mechanism to achieve the Government’s policy objective of ensuring equal treatment of former parliamentarians who are public office holders. The amount of the reduced fee is calculated in conformance with the methodology prescribed by the PCS Act. As a former parliamentarian in receipt of a parliamentary pension, Professor Carr does not represent a particularly vulnerable group vis a vis this limitation. Finally, Professor Carr consented to the reduction in annual fee as part of his appointment as the Chair of the Australian Heritage Council. The limitation is therefore reasonable and proportionate.

## **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.

To the extent that the Bill limits human rights, these limitations are lawful, reasonable and proportionate.

## **The Remuneration Tribunal**