

EXPLANATORY STATEMENT

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

Remuneration Tribunal Act 1973

Remuneration Tribunal (Miscellaneous Provisions) Amendment (Holders of Judicial Office) Regulations 2024

PURPOSE AND OPERATION OF THE INSTRUMENT

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. The RT Act also prescribes a range of matters relating to the payment of remuneration to office holders within the Tribunal's jurisdiction.

Section 17 of the RT Act provides that the Governor-General may make regulations, not inconsistent with the RT Act, prescribing all matters required or permitted by the RT Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the RT Act.

Subsection 7(12) of the RT Act provides that, except as prescribed, a person is not entitled to be paid any remuneration in respect of their holding, or performing the duties of, a public office if the person holds a judicial office in the service of the Government of a State or of a country other than Australia.

The purpose of the *Remuneration Tribunal (Miscellaneous Provisions) Amendment (Holders of Judicial Office) Regulations 2024* (the Regulations) is to amend the *Remuneration Tribunal (Miscellaneous Provisions) Regulations 2017* (the Principal Regulations) to except members of the Administrative Appeals Tribunal (AAT) and Administrative Review Tribunal (ART) from subsection 7(12) of the RT Act in certain circumstances.

The ART will commence operation on 14 October 2024, in accordance with section 2 of the *Administrative Review Tribunal Act 2024* (ART Act).

The Regulations provide that subsection 7(12) of the RT Act does not apply in circumstances where a person is a member of the AAT or ART and that person also holds a judicial office in the service of the Government of a State or of a country other than Australia, other than on a full-time basis. If these criteria are satisfied, the member of the AAT or ART is entitled to be paid remuneration in respect to their office as a member of the AAT or ART.

Other requirements continue to apply to members of the AAT and ART in relation to holding a concurrent judicial office, consistent with the legislative requirements generally applying to members who also have other paid employment. This includes:

- Full-time AAT members must not engage in paid employment outside the duties of their office without the approval of the President of the AAT (subsection 11(1) of the *Administrative Appeals Tribunal Act 1975* (AAT Act)).

- Part-time AAT members must not engage in any paid employment that, in the President of the AAT's opinion, conflicts or may conflict with the proper performance of their duties (subsection 11(2) of the AAT Act).
- Salaried ART members must not engage in paid work outside the duties of their office without the approval of the President of the ART (subsection 216(1) of the ART Act).
- Sessional ART members must not engage in any paid work that conflicts or could conflict with the proper performance of the member's duties (subsection 216(2) of the ART Act).

The Regulations were required as the existing preclusion, as applied to members of the AAT and ART, has and would continue to result in undesirable outcomes for members of the AAT, ART and the Commonwealth. This includes persons not being entitled to remuneration for undertaking their AAT or ART duties or inadvertently accruing debts to the Commonwealth, even where they are not entitled to remuneration for their State or foreign judicial office and the duties of that office are performed separately to their AAT or ART duties. In addition, members of the AAT and ART with State or foreign judicial appointments and experience would provide benefits to the Commonwealth.

The proposed Regulations would also ensure consistent operation of Item 32 of Schedule 16 of the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* (C&T Act). Item 32 of Schedule 16 of the C&T Act deals with a scenario in which a person is a full-time member of the AAT immediately before the commencement of the ART (transition time) and whose term of appointment to the AAT would have continued past the transition time, but the person is not automatically transferred to the ART, and is not appointed to the ART for a term commencing at, or immediately after, the transition time. The C&T Act provides that the amount of compensation payable is calculated by reference to the person's remuneration immediately before the transition time. In the absence of an exception applicable to full-time members of the AAT, subsection 7(12) of the RT Act would provide that the amount of remuneration (and therefore any compensation) payable to a full-time member of the AAT who holds a State or foreign judicial office immediately before the transition time is zero.

Details of the Regulations are included in [Attachment A](#).

A Statement of Compatibility with Human Rights is included in [Attachment B](#).

COMMENCEMENT

The Regulations commence the day after the instrument is registered on the Federal Register of Legislation.

CONSULTATION

The Department of the Prime Minister and Cabinet consulted the Attorney-General's Department on the development of the Regulations.

REGULATORY IMPACT STATEMENT

An assessment was made under guidelines issued by the Office of Impact Analysis (OIA). The OIA advises that a detailed Impact Analysis is not required (OIA24-08263).

NOTES ON SECTIONS**Section 1 – Name**

This section provides that the name of the instrument is the *Remuneration Tribunal (Miscellaneous Provisions) Amendment (Holders of Judicial Office) Regulations 2024* (the Regulations).

Section 2 – Commencement

This section provides that the Regulations commence as follows:

- Sections 1 to 4 of the instrument commence the day after the instrument is registered
- Part 1 of Schedule 1 of the instrument commences the day after this instrument is registered, and
- Part 2 of Schedule 1 of the instrument commences on 14 October 2024. This is to coincide with the commencement of the *Administrative Review Tribunal Act 2024* (ART Act).

Section 3 – Authority

This section provides that the Regulations are made under the *Remuneration Tribunal Act 1973* (RT Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments**Part 1 – Amendments commencing day after registration*****Remuneration Tribunal (Miscellaneous Provisions) Regulations 2017***

Item 1 – At the end of the instrument

This item amends the *Remuneration Tribunal (Miscellaneous Provisions) Regulations 2017* by inserting new sections 8 and 9 at the end of the instrument.

Section 8 – Remuneration for some holders of a judicial office

Section 8 provides an exception to subsection 7(12) of the RT Act. This exception provides that subsection 7(12) of the RT Act does not apply to a person who:

- holds, or performs the duties of, the office of a member of the Administrative Appeals Tribunal (AAT), and
- holds a judicial office in the service of the Government of a State or of a country other than Australia, other than on a full-time basis.

If the exception applies, the member of the AAT will be entitled to be paid remuneration for the performance of their duties as a member of the AAT. Other requirements would still apply to members of the AAT in relation to holding a concurrent judicial office, consistent with the legislative requirements generally applying to members who also have other paid employment. This includes:

- Full-time AAT members must not engage in paid employment outside the duties of their office without the approval of the President of the AAT (subsection 11(1) of the *Administrative Appeals Tribunal Act 1975* (AAT Act)).
- Part-time AAT members must not engage in any paid employment that, in the President of the AAT's opinion, conflicts or may conflict with the proper performance of their duties (subsection 11(2) of the AAT Act).

Section 9 – Application provisions–Remuneration Tribunal (Miscellaneous Provisions) Amendment (Holders of Judicial Office) Regulations 2024

Section 9 clarifies the application of new section 8.

Subsection 9(1) provides that the exception to subsection 7(12) of the RT Act applies in relation to working out a person's entitlement to remuneration from the day in which the exception commences.

Subsection 9(2) provides that the exception to subsection 7(12) of the RT Act applies to a member of the AAT regardless of if they become the holder of that office before, on or after the day on which the exception commenced.

Subsection 9(3) provides that the exception to subsection 7(12) of the RT Act applies regardless of whether the person became a holder of the State or overseas judicial office, before, on or after the day on which the exception commenced.

Part 2 – Amendments commencing on 14 October 2024

Remuneration Tribunal (Miscellaneous Provisions) Regulations 2017

Item 2 – Paragraph 8(a)

This item amends subsection 8(a) of the *Remuneration Tribunal (Miscellaneous Provisions) Regulations 2017* upon the commencement of the Administrative Review Tribunal (ART) on 14 October 2024 to omit the words 'Administrative Appeals Tribunal' and substitute 'Administrative Review Tribunal'.

This ensures that the exception to subsection 7(12) of the RT Act applies to ART members from the commencement of the ART.

Other requirements would apply to members of the ART in relation to holding a concurrent judicial office, consistent with the legislative requirements generally applying to members who also have other paid employment. This includes:

- Salaried ART members must not engage in paid work outside the duties of their office without the approval of the President of the ART (subsection 216(1) of the ART Act).
- Sessional ART members must not engage in any paid work that conflicts or could conflict with the proper performance of the member's duties (subsection 216(2) of the ART Act).

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 (Holders of Judicial Office) Regulations 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 Disallowable Legislative Instrument

This Disallowable Legislative Instrument amends the *Remuneration Tribunal (Miscellaneous Provisions) Regulations 2017* (the Principal Regulation) to prescribe an exception to subsection 7(12) of the *Remuneration Tribunal Act 1973* (RT Act).

Subsection 7(12) of the RT Act provides that, except as prescribed, a person is not entitled to be paid any remuneration in respect of their holding, or performing the duties of, a public office if the person holds a judicial office in the service of the Government of a State or of a country other than Australia.

This Disallowable Legislative Instrument entitles members of the Administrative Appeals Tribunal (AAT) and future Administrative Review Tribunal (ART) to be paid remuneration in respect to their office as a member of the AAT or ART while concurrently holding a judicial office in the service of the Government of a State or of a country other than Australia, otherwise than on a full-time basis.

Human rights implications

This Disallowable Legislative Instrument engages the right to the enjoyment of just and favourable conditions of work, which includes a right to fair wages and equal remuneration, in Article 7 of the *International Covenant on Economic, Social and Cultural Rights*. The Disallowable Legislative Instrument promotes the realisation of this right by ensuring the payment of remuneration to members of the AAT and ART for undertaking their AAT or ART duties.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights because it promotes the right to the enjoyment of just and favourable conditions of work. To the extent that the regulations limit any human rights, those limitations are reasonable, necessary and proportionate.