



REMUNERATION TRIBUNAL

Explanatory Statement: Remuneration Tribunal (Remuneration and Allowances for Holders of Full-Time Public Office) Determination 2018

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.

Annual review

6. The Tribunal's obligations, under sub-sections 7(3) and 8(1)(b) of the Act are to make determinations in respect of remuneration for various offices within its jurisdiction at periods of not more than one year. To meet these obligations, the Tribunal issued determinations on 28 June 2017 and at that time included a general adjustment of 2 per cent to remuneration for all offices in its jurisdiction.

7. In complying with its obligations to make new determinations the Tribunal takes the opportunity to consider whether any general increase to remuneration for offices might be warranted. In conducting this review the Tribunal takes account of economic conditions in Australia, past and projected movements in remuneration in the public and private sectors (including the APS), as well as the outcomes of reviews of public offices completed by the Tribunal. In order to inform its conclusions the Tribunal draws upon authoritative external sources such as the published material available from the Government, the Reserve Bank of Australia and the Australian Bureau of Statistics as well as trends in public and private sector remuneration. The Tribunal is also obliged by the Act to consider the Annual Wage Reviews of the Fair Work Commission. The Commission's 2018 decision was released on 1 June 2018.
8. The Tribunal did not receive any submissions on this matter.
9. On 13 June 2018 the Tribunal notified its decision to increase remuneration by 2 per cent for public offices in its jurisdiction with effect from 1 July 2018. A statement setting out the Tribunal's reasons for decision is available at www.remtribunal.gov.au.
10. *Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2018* implements the Tribunal's decision for Full-time Public Offices.
11. Consultation on these amendments was considered unnecessary given the matters considered by the Tribunal in making its decision.

Restructure of Determination

12. As part of its annual review process, the Tribunal has taken the opportunity to review, restructure and reformat its determinations to reflect standard Commonwealth drafting practice and to improve clarity and readability. This has involved the restructuring and removal of certain provisions. The Office of Parliamentary Counsel was engaged to assist in this process.
13. In particular, Parts 5 and 6 of the Tribunal's previous full-time office determination, *Determination 2017/11 Remuneration and Allowances for Holders of Full-Time Public Office*, have been removed from the determination in full as these matters are dealt with in other Remuneration Tribunal determinations. Specific changes are set out below.
14. Recreation leave provisions for the Administrator, Christmas and Cocos (Keeling) Islands and the Administrator, Norfolk Island contained in Part 5 of the previous determination have been removed as they are now contained in *Remuneration Tribunal (Recreation Leave for Holders of Relevant Offices) Determination 2018*.
15. Part 6 (Compensation for Early Loss of Office) of the previous determination has been removed as it is now covered in *Remuneration Tribunal (Compensation for Loss of Office for Holders of Certain Public Offices) Determination 2018*.

National Disability Insurance Scheme Quality and Safeguards Commissioner

16. The Tribunal decided indicative remuneration for this office in August 2017, following a submission from the then Minister for Social Services, the Hon Christian Porter MP. The Tribunal received further submissions from Minister Porter in December 2017 seeking personal remuneration for the preferred candidate, and confirming that the *National Disability Insurance Scheme (Quality and Safeguards) Amendment Act 2017* had received Royal Assent, and that the office will formally be established from 1 July 2018.

Transitional arrangements for certain offices of the Administrative Appeals Tribunal (AAT)

17. The transitional arrangements set for pre-amalgamation appointees to the offices of former Deputy Principal Member and former Senior Member of the Refugee Review Tribunal (RRT) and former Deputy Principal and former Senior Member of the Migration Review Tribunal (MRT) in Part 2 of *Determination 2017/11 Remuneration and Allowances for Holders of Full-time Public Office* have been removed on advice from the AAT that the terms of appointment for those appointed to these offices have now ended.
18. The transitional arrangements set for pre-amalgamation appointees to the offices of former Deputy Principal and former Senior Member of the Social Security Appeals Tribunal (SSAT) in Part 2 of *Determination 2017/11 Remuneration and Allowances for Holders of Full-time Public Office* have been removed, on advice from the AAT that the terms of appointment for those appointed to these offices have now ended.

Retrospectivity

19. 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.

The power to repeal, rescind and revoke, amend and vary

20. 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:

PART 1 - PRELIMINARY

21. Part 1 specifies the authority for and the commencement date of the determination and supersedes the previous principal Determination 2017/11 (as amended) applying to the offices covered by this determination. This Part also contains definitions of certain words used in the determination.

PART 2 – REMUNERATION

22. Part 2 sets out the total remuneration and other related matters (such as special provisions for certain offices) effective from 1 July 2018 unless specified.

PART 3 - SUPERANNUATION

23. Part 3 sets out the superannuation arrangements and other related matters, including superannuation salary for specified office holders.

PART 4 – VEHICLES AND BUSINESS SUPPORT

24. Part 4 sets out the entitlements for vehicles and business support.

PART 5 – TRAVEL AND ACCOMMODATION ASSISTANCE

25. Part 5 sets out the entitlements for travel and accommodation assistance, including accommodation and reunion assistance for specified office holders.

SCHEDULE 1 – REPEALS

26. Schedule 1 specifies instruments which have been amended or repealed.

Authority: Sub-sections 7(3) and 7(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 (Remuneration and Allowance for Holders of Full-time Public Office) Determination 2018

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

The legislative instrument, or determination, applies the Tribunal's 2018 annual review decision of a 2 per cent remuneration increase (rounded as appropriate) to Full-time Public Offices from 1 July 2018.

The determination has been restructured and reformatted to reflect standard Commonwealth drafting practice and to improve clarity and readability.

The determination supersedes the previous *Determination 2017/11 Remuneration and Allowances for Holders of Full-Time Public Office* (as amended).

The changes follow a review of remuneration (and significantly related matters) carried out by the Tribunal consistent with sub-section 7(3) of the *Remuneration Tribunal Act 1973*.

In addition to implementing the Tribunal's 2018 annual review decision the determination:

- sets remuneration for the new office of National Disability Insurance Scheme (NDIS) Quality and Safeguards Commissioner, and person specific remuneration for the NDIS Quality and Safeguards Commissioner, Mr Graeme Head, for the term of his appointment;
- removes recreation leave provisions for the Administrator, Christmas and Cocos (Keeling) Islands and the Administrator, Norfolk Island which are now contained in *Remuneration Tribunal (Recreation Leave for Holders of Relevant Offices) Determination 2018*;
- removes compensation for loss of office provisions which are now contained in *Remuneration Tribunal (Compensation for Loss of Office for Holders of Certain Public Offices) Determination 2018*; and
- removes transitional arrangements for pre-amalgamation appointees to the offices of former Deputy Principal Member and former Senior Member of the Refugee Review Tribunal, former Deputy Principal and former Senior Member of the Migration Review Tribunal and former Deputy Principal and former Senior Member of the Social Security Appeals Tribunal previously contained in Part 2 of *Determination 2017/11 Remuneration and Allowances for Holders of Full-time Public Office as the Administrative Appeals Tribunal* has advised that the offices are no longer required.

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