



REMUNERATION TRIBUNAL

Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 1) 2019

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.

Australian Curriculum, Assessment and Reporting Authority, Chief Executive Officer

6. On 14 January 2019, the Tribunal received a letter from the Minister for Education, the Hon Dan Tehan MP, seeking personal remuneration for the proposed appointee to the office of Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority, Mr David de Carvalho. The letter provided detailed information about Mr de Carvalho's in-depth experience of the education sector and suitability for the role.

Tax Practitioners Board, Chair and Member

7. In January 2019, the Tribunal received a received a submission from the Treasurer, the Hon Josh Frydenberg MP, seeking remuneration for the Chair of the Tax Practitioners Board in the part-time office jurisdiction as a result of changes in the role. The submission also sought removal of the cap on daily fees prescribed for the office of Member and its consequential removal from the Determination.

Professional Services Review – Determining Authority, Chair, Non-Practitioner and Medical Practitioner Members

8. On 10 January 2019, the Tribunal received a letter from the Executive Officer and General Counsel of the Professional Services Review with an enclosed letter and submission from the Minister for Health, the Hon Greg Hunt MP. The submission sought additional remuneration for three part-time offices of the Determining Authority, the Chair, non-practitioner Member and medical practitioner Member due to the increasing workload and complexity of cases being considered by these offices.

9. *Australian Astronomical Observatory Advisory Committee*

On 17 January 2019, the Department of Industry, Innovation and Science informed the Tribunal that this office was abolished on 1 July 2018.

Retrospectivity

10. 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

11. 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:

12. Section 1 specifies the name of the instrument.
13. Section 2 specifies when the instrument commences.
14. Section 3 specifies the authority for the instrument.
15. Section 4 outlines the effect of instruments specified in a Schedule to the instrument.
16. Schedule 1 sets out the amendments made to the instruments specified in Schedule 1.

SCHEDULE 1—AMENDMENTS

Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2019

17. Item 1 inserts the date that the principal instrument took effect.
18. Item 2 removes full-time remuneration provisions for the office of Chair of the Tax Practitioners Board.
19. Item 3 specifies the remuneration and sets the commencement date for the matter specified in Item 5 of the instrument.
20. Item 4 removes remuneration provisions for the unused office of full-time Member of the Tax Practitioners Board.
21. Item 5 sets person-specific remuneration for Mr David de Carvalho while he occupies the office of Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority.
22. Item 6 sets a person-specific superannuation salary for Mr David de Carvalho, Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority.
23. Item 7 sets the commencement dates for the matters specified in Items 2 to 6 of the instrument.

Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2019

24. Item 8 inserts the date that the principal instrument took effect.
25. Item 9 inserts new remuneration and travel tier for the office of Chair of the Tax Practitioners Board.
26. Item 10 removes the daily fee provisions for the Chair of the Professional Services Review—Determining Authority, and references the remuneration provisions for this office in Part 6 of the Determination.
27. Item 11 sets the application date for the matter specified in item 13 of the instrument.
28. Item 12 removes all reference to the office of the Australian Astronomical Observatory Advisory Committee.
29. Item 13 removes the cap for the office of Member of the Tax Practitioners' Board.

30. Item 14 inserts the daily fee for the offices of Chair, non-practitioner member and medical practitioner member of the Professional Services Review—Determining Authority in Part 6 of the instrument.
31. Item 15 sets meeting fees for the offices of Chair and Member of the Professional Services Review—Determining Authority.
32. Item 16 specifies that the meeting fees referred to in Item 15 applying to specific offices of the Professional Services Review—Determining Authority, that is, the office of non-practitioner member and the medical practitioner, Professor Aniello Iannuzzi (until 29 May 2020).
33. Item 17 sets the commencement dates for the matters specified in items 9 to 16 of the instrument.

Authority: subsections 7(3) and (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 Amendment Determination (No.1) 2019

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

This determination amends Principal Determinations:

- *Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2018; and*
- *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2018.*

The determination:

- sets new remuneration and travel tier for the office of Chair of the Tax Practitioners Board;
- sets new remuneration and a person-specific superannuation salary for Mr David de Carvalho, Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority; and
- sets additional remuneration for three specified offices of the Professional Services Review—Determining Authority; and
- abolishes the office of the Australian Astronomical Observatory Advisory Committee.

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