



Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2021

We, the members of the Remuneration Tribunal, make the following determination.

Dated 15 June 2021

John Conde AO
President

Heather Zampatti
Member

Contents

Part 1—Preliminary	1
1 Name	1
2 Commencement	1
3 When this instrument takes effect	1
4 Authority	1
5 Determination supersedes previous determination	1
6 Schedules	1
7 Definitions	1
8 Administration of this instrument	3
9 Certain AAT members not covered by this instrument	4
Part 2—Judicial officers	5
Division 1—Application of this Part	5
10 Application of this Part	5
Division 2—Salary and allowances of judicial officers	6
11 Base salary	6
12 Additional allowances	6
Division 3—Vehicle allowance	7
13 Vehicle allowance	7
Division 4—Recreation leave and salary packaging for Federal Circuit Court Judges	9
14 Purpose of this Division	9
15 Recreation leave arrangements—general	9
16 Recreation leave arrangement—transitional	10
17 Election by certain Federal Circuit Court Judges to be covered by general recreation leave arrangements	10
18 Salary packaging for Federal Circuit Court Judges	11
Part 3—Full-time office holders	12
Division 1—Application of this Part	12
19 Application of this Part	12
Division 2—Remuneration	13
20 Meaning of <i>total remuneration</i>	13
21 Remuneration and benefits not to be supplemented	13
22 Total remuneration	13
23 Part-time work	14
24 Remuneration packaging	14
Division 3—Superannuation	16
25 Superannuation	16
26 Superannuation salary for the purposes of CSS, PSS, DFRDB and MSBS	17
Division 4—Vehicles and other benefits	19
27 Vehicles	19
28 Vehicle parking	19
29 Business support	19
30 Assistance for Chief Judge Advocates and the Registrar of Military Justice	19
Division 5—Leave of absence	20
31 Leave of absence	20
32 Leave accumulated before commencement of this instrument	20

Part 4—Part-time office holders	21
Division 1—Application of this Part	21
33 Application of this Part	21
Division 2—Daily fees, travel tiers and remuneration packaging	22
34 Payment of daily fee	22
35 Calculation of daily fees for part-day work.....	22
36 Daily fees and travel tiers for Part 4 office holders.....	22
37 Remuneration packaging.....	23
Division 3—Special provisions	24
38 Special provisions—alternative and additional remuneration for Part 4 office holders	24
39 Special provisions—daily fees etc. for part-time AAT members.....	24
40 Special provisions—annual fees for certain part-time AAT members	24
Part 5—Official travel	26
41 Official travel.....	26
Part 6—Arrangements for transitional AAT members	27
42 Application of this Part	27
43 Continued operation of the transitional determination	27
44 Modified remuneration for transitional AAT members	27
45 Additional remuneration for certain part-time transitional AAT members	28
46 Other modifications for transitional AAT members.....	28
Schedule 1—Repeals	30
<i>Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2020</i>	30

Part 1—Preliminary

1 Name

This instrument is the *Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2021.	1 July 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 When this instrument takes effect

This instrument takes effect at the start of 1 July 2021.

4 Authority

This instrument is made under subsections 7(3), (3AA), (4) and (4B) of the *Remuneration Tribunal Act 1973*.

5 Determination supersedes previous determination

This instrument supersedes the *Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2020*.

6 Schedules

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.

7 Definitions

In this instrument:

Section 7

AAT means the Administrative Appeals Tribunal.

AAT Act means the *Administrative Appeals Tribunal Act 1975*.

Act means the *Remuneration Tribunal Act 1973*.

authority means the court, tribunal or other body to which an office holder is attached.

base salary, in relation to a judicial officer, is the amount specified in column 2 of Table 2A for the office that judicial officer holds.

benefit, in relation to a Part 3 office holder, means:

- (a) any non-monetary benefit provided at the authority's expense to or for the benefit of an office holder as a personal benefit, including:
 - (i) a vehicle (see section 27); and
 - (ii) vehicle parking (see section 28); or
- (b) any other benefits received by way of remuneration packaging (see section 24).

CSS (short for Commonwealth Superannuation Scheme) has the same meaning as in the *Superannuation Act 1976*.

DFRDB (short for Defence Force Retirement and Death Benefits) means the scheme established by the *Defence Force Retirement and Death Benefits Act 1973*.

employer superannuation contribution, for a Part 3 office holder, means:

- (a) if the office holder is a member of the CSS, PSS, DFRDB or MSBS—the value attributed to the employer superannuation contribution under subsection 25(1), (2), (3) or (4); or
- (b) if the office holder is a member of the PSSAP—15.4% of ordinary time earnings (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) for the office holder; or
- (c) if the office holder is a member of another superannuation fund—the amount worked out under subsection 25(6).

Note 1: A Part 3 office holder's employer superannuation contribution is part of the office holder's total remuneration (see section 20).

Note 2: Superannuation contributions made as a result of remuneration packaging do not form part of a Part 3 office holder's employer superannuation contribution (see section 24).

Family Court means the Family Court of Australia.

Federal Circuit Court means the Federal Circuit Court of Australia.

Federal Circuit Court Judge means a Judge of the Federal Circuit Court.

Federal Court means the Federal Court of Australia.

fringe benefits tax means fringe benefits tax (within the meaning of the *Fringe Benefits Tax Assessment Act 1986* as it applies of its own force or because of the *Fringe Benefits Tax (Application to the Commonwealth) Act 1986*).

judicial officer: see section 11.

MSBS (short for Military Superannuation and Benefits Scheme) has the same meaning as **Scheme** has in the *Military Superannuation and Benefits Act 1991*.

office holder means a judicial officer, a Part 3 office holder or a Part 4 office holder.

office locality, in relation to a Part 3 office holder, means the geographic locality of the office holder's usual place of work on official business.

official travel determination means the *Remuneration Tribunal (Official Travel) Determination 2019* (or any determination that supersedes that determination).

Part 3 office holder: see section 19.

Part 4 office holder: see section 33.

PSS (short for Public Sector Superannuation Scheme) has the same meaning as **Public Sector Superannuation Scheme** has in the *Superannuation Act 1990*.

PSSAP (short for Public Sector Superannuation Accumulation Plan) has the same meaning as in the *Superannuation Act 2005*.

superannuation salary, for a Part 3 office holder who is a member of the CSS, PSS, DFRDB or MSBS, is the amount worked out under section 26.

Table 2A means the table of base salary for judicial officers in section 11.

Table 3A means the table of total remuneration for Part 3 office holders in section 22.

Table 3B means the table of superannuation salaries for Part 3 office holders in subsection 26(1).

Table 3C means the table of superannuation salaries for specified Part 3 office holders in subsection 26(2).

Table 4A means the table of daily fees and travel tiers for Part 4 office holders in section 36.

Table 4B means the table of daily fees and travel tiers for certain AAT members in subsection 40(2).

total remuneration, in relation to a Part 3 office holder, has the meaning given by section 20.

transitional AAT member: see section 42.

transitional determination: see section 43.

8 Administration of this instrument

An authority administering this instrument:

- (a) is to pay to an office holder any annual amount specified in proportion (pro rata) to the office holder's period of service during a year; and

Section 9

- (b) may issue procedural instructions to assist in the implementation of this instrument; and
- (c) may elect to apply the same instructions (including policies or procedures in relation to the administration of recreation leave) as the authority does for employees, except where those instructions are not in accordance with this instrument.

9 Certain AAT members not covered by this instrument

This instrument does not apply to a member of the AAT to whom item 5 of Schedule 9 to the *Tribunals Amalgamation Act 2015* applies.

Note 1: Under item 5 of Schedule 9 to the *Tribunals Amalgamation Act 2015*, a person who was, immediately before 1 July 2015, a member of the Migration Review Tribunal, the Refugee Review Tribunal or the Social Security Appeals Tribunal is taken to hold office as a member of the AAT for the balance of their term of appointment that remained before that date.

Note 2: For the remuneration and allowances of such members, see the *Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2021* and the *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2021*.

Part 2—Judicial officers

Division 1—Application of this Part

10 Application of this Part

- (1) This Part sets a base level of remuneration and benefits for judicial officers.
- (2) However, additional remuneration and benefits may be provided under the following:
 - (a) a general law of the Commonwealth concerning employment;
 - (b) the law of the Commonwealth that established the office the judicial officer holds;
 - (c) the Constitution, which grants certain executive powers to the Governor-General and to Ministers of State.

Part 2 Judicial officers

Division 2 Salary and allowances of judicial officers

Section 11

Division 2—Salary and allowances of judicial officers

11 Base salary

The following table (*Table 2A*) sets out, for a person (a *judicial officer*) who holds an office specified in column 1:

- (a) the full-time base salary (if any), per year, of the judicial officer; and
- (b) the travel tier (if any) that applies to the judicial officer for the purposes of the official travel determination.

Table 2A—Full-time base salary for judicial officers

Column 1 Office	Column 2 Full-time base salary	Column 3 Travel tier
High Court—Chief Justice	\$608,150	1
High Court—Justice	\$551,880	1
Federal Court—Chief Justice	\$514,980	1
Federal Court—Judge	\$468,020	1
Family Court—Chief Justice	\$514,980	1
Family Court—Deputy Chief Justice	\$481,850	1
Family Court—Judge	\$468,020	1
Federal Circuit Court—Chief Judge	\$468,020	1
Federal Circuit Court—Judge	\$394,980	1
Copyright Tribunal of Australia—President	\$468,020	1
Copyright Tribunal of Australia—Deputy President (Judicial)	Nil	1
Australian Competition Tribunal—President	\$468,020	1
Australian Law Reform Commission—President (Judicial)	\$468,020	1
AAT—President	\$468,020	1
National Native Title Tribunal—President (Judicial)	\$468,020	1
Defence Force Discipline Appeal Tribunal—President	Nil	No travel tier

Note: The reference to a Judge of the Family Court includes a Judge assigned to the Appeal Division of the Family Court and a Senior Judge of the Family Court.

12 Additional allowances

A sitting Judge who also holds any of the following offices on a part-time basis is to be provided with an additional expense allowance of \$2,421 per year:

- (a) Aboriginal Land Commissioner;
- (b) Chairperson of the Australian Electoral Commission;
- (c) Chief Judge of the Supreme Court of Norfolk Island;
- (d) President of the AAT;
- (e) President of the Australian Competition Tribunal;
- (f) President of the Copyright Tribunal of Australia.

Division 3—Vehicle allowance

13 Vehicle allowance

Chief Justice of the High Court

- (1) In addition to a Commonwealth car-with-driver service, the Chief Justice of the High Court is allowed annually:
 - (a) a private plated vehicle, that is generally made available by the Commonwealth for the purpose, and is not a luxury car, leased in accordance with the FVS Policy; or
 - (b) reimbursement for private vehicle running costs incurred by the Chief Justice up to \$11,165.

Judges

- (2) A Judge, other than the Chief Justice of the High Court of Australia, who has elected for the time being to forgo the entitlement, either in the Judge's city of residence or in the city in which the principal registry of the Judge's court is situated, to a regular Commonwealth car-with-driver service, is allowed annually in that city and as the alternatives to that service:
 - (a) a private plated vehicle, that is generally made available by the Commonwealth for the purpose, and is not a luxury car, leased in accordance with the FVS Policy; or
 - (b) reimbursement for private vehicle running costs incurred by the Judge up to \$11,165.

Federal Circuit Court Judges

- (3) A Federal Circuit Court Judge is allowed annually:
 - (a) a private plated vehicle, that is generally made available by the Commonwealth for the purpose, and is not a luxury car, leased in accordance with the FVS Policy; or
 - (b) reimbursement for private vehicle running costs incurred by the Judge up to \$11,165.

Election of vehicle allowance

- (4) During a year, the Chief Justice of the High Court, a Judge or a Federal Circuit Court Judge may elect to vary the officer's election under subsection (1), (2) or (3) to, or from, a Commonwealth leased vehicle from, or to, reimbursement for the running costs of a private vehicle if no additional administrative or other expenses are incurred by the Commonwealth as a result.

No cashing out of vehicle allowance

- (5) The value of the entitlement allowed under subsection (1), (2) or (3) may not be taken as cash, except to the extent that reimbursement is claimed in accordance with paragraph (1)(b), (2)(b) or (3)(b).

Section 13

Definitions

(6) In this section:

Commonwealth car-with-driver service means the arrangements for the use of a Commonwealth car-with-driver established, from time to time, by the Attorney-General with:

- (a) the Chief Justice of the High Court; and
- (b) the Chief Justice of the Federal Court; and
- (c) the Chief Justice of the Family Court;

for Judges of those courts.

FVS Policy (short for Fleet Vehicle Selection Policy) means the Department of Finance's policy on the selection of passenger vehicles for the Australian Government Fleet.

Judge means one of the following:

- (a) a Justice of the High Court;
- (b) a Judge of the Federal Court;
- (c) a Judge of the Family Court.

luxury car means a car the value of which exceeds the luxury car tax threshold (for non-fuel-efficient cars) mentioned in subsection 25-1(3A) of the *A New Tax System (Luxury Car Tax) Act 1999*.

principal registry means:

- (a) in the case of the High Court—the Registry of the Court; or
- (b) in the case of the Federal Court—the Principal Registry of the Court; or
- (c) in the case of the Family Court—the Principal Registry of the Court.

private vehicle running costs does not include expenditure relating to the acquisition, leasing or hire of any vehicle.

Division 4—Recreation leave and salary packaging for Federal Circuit Court Judges

14 Purpose of this Division

This Division is made for the purposes of subsection 7(3AA) of the Act.

15 Recreation leave arrangements—general

- (1) The recreation leave entitlements of the following are to be determined in accordance with this section:
 - (a) a Federal Circuit Court Judge who was appointed on or after 1 January 2018;
 - (b) a Federal Circuit Court Judge who was appointed before 1 January 2018, if an election to be covered by the general recreation leave arrangements is in effect for the Judge.

Note: For elections to be covered by the general recreation leave arrangements, see section 17.

Appointment year

- (2) The Judge, for the year (the **appointment year**) the Judge is appointed in, is entitled to an amount of recreation leave, accruing at the time of the Judge's appointment, of the number of weeks calculated in accordance with the following formula:

$$\frac{\text{Number of days in the appointment year for which the Judge will be appointed}}{\text{Number of days in the appointment year}} = 6 \text{ weeks}$$

Years after appointment year

- (3) The Judge is entitled to 6 weeks of recreation leave accruing on 1 January of each year after the appointment year.

Expiration of recreation leave

- (4) The Judge is entitled to recreation leave accrued under this section only in the year in which the leave accrued.

Payment of unused recreation leave on leaving office

- (5) The Judge is to be paid on leaving office as though the Judge were then to take the balance of the recreation leave to which the Judge is entitled.

Special arrangements for the COVID-19 pandemic

- (6) Despite subsection (4), if, at the end of 2020, the Judge had a balance of recreation leave accrued during 2020, the Judge may retain up to 2 weeks of that balance for use before the end of 2022.

Section 16

16 Recreation leave arrangement—transitional

- (1) This section applies to a Federal Circuit Court Judge if:
 - (a) the Judge was appointed before 1 January 2018; and
 - (b) an election to be covered by the general recreation leave arrangements is not in effect for the Judge.

Note: For elections to be covered by the general recreation leave arrangements, see section 17.

Accrual of recreation leave

- (2) The Judge is entitled to 4 weeks of recreation leave per year of service accruing on 1 January each year.

Cashing out of recreation leave

- (3) The Judge is eligible to cash out part of the Judge's recreation leave if:
 - (a) the Judge has accrued more than 4 weeks of recreation leave; and
 - (b) the Judge takes an amount of leave equal to or greater than the amount of leave being cashed out; and
 - (c) the Judge cashes out a maximum of 2 weeks' recreation leave in any year.

Additional recreation leave

- (4) The Judge is eligible to elect to purchase 1, 2, 3 or 4 weeks' additional leave per year.
- (5) An amount will be deducted from the base salary of the Judge, dependent on the amount of leave purchased and the Judge's salary, which will be reflected in the Judge's regular salary payments.
- (6) Purchased leave counts as service for all purposes.

Payment of unused recreation leave on leaving office

- (7) The Judge is to be paid on leaving office as though the Judge were then to take the balance of the Judge's recreation leave.

17 Election by certain Federal Circuit Court Judges to be covered by general recreation leave arrangements

Changing to general recreation leave arrangements

- (1) This section applies to a Federal Circuit Court Judge if the Judge was appointed before 1 January 2018.
- (2) At any time, the Judge may elect to be covered by the general recreation leave arrangements instead of the transitional recreation leave arrangements. The election takes effect on 1 January following the election.

Note: For the general recreation leave arrangements, see section 15. For the transitional recreation leave arrangements, see section 16.

- (3) The Judge may make only one election to be covered by the general recreation leave arrangements.
- (4) The Judge retains the balance of the Judge's recreation leave that had accrued immediately before the election took effect but, subject to subsection (6), is entitled to this balance only in accordance with subsection 15(5).

Revoking election

- (5) At any time, the Judge may revoke the election to be covered by the general recreation leave arrangements. The election takes effect on 1 January following the revocation.
- (6) The Judge retains the balance of the Judge's recreation leave mentioned in subsection (4) and is entitled to this balance in accordance with section 16.

Election made under superseded determination

- (7) To avoid doubt, an election to be covered by the general recreation leave arrangements instead of the transitional recreation leave arrangements, or a revocation of such an election, that was made under a superseded determination is to be treated as an election or revocation made under this section.

18 Salary packaging for Federal Circuit Court Judges

A Federal Circuit Court Judge may elect to take benefits in lieu of base salary, in accordance with authority policies and procedures on salary packaging, if:

- (a) the election is consistent with relevant taxation laws and rulings or guidelines applicable to salary packaging schemes issued by the Australian Taxation Office; and
- (b) providing the benefit would not result in a cost to the Commonwealth (including any fringe benefits tax) that would not be incurred if benefits able to be taken as salary were taken as salary.

Part 3—Full-time office holders

Division 1—Application of this Part

19 Application of this Part

This Part applies to a person (a *Part 3 office holder*) who:

- (a) holds an office specified in column 1 of Table 3A; and
- (b) was appointed to that office on a full-time basis.

Division 2—Remuneration

20 Meaning of *total remuneration*

- (1) For the purposes of this instrument, the ***total remuneration*** of a Part 3 office holder is the amount, per year, in column 2 of Table 3A.
- (2) The total remuneration of a Part 3 office holder represents the value, calculated at the total cost to the authority of the office holder (including fringe benefits tax), of the following in relation to the office holder:
 - (a) salary, allowances and lump sum payments;
 - (b) benefits;
 - (c) the employer superannuation contribution.
- (3) However, the total remuneration of a Part 3 office holder does not include the following:
 - (a) the value of facilities provided as business support that are not required to be included in total remuneration under section 29;
 - (b) reimbursement of expenses incurred on geographic relocation following appointment as an office holder, in accordance with authority policies and practices where approved by the authority;
 - (c) assistance for the offices of Chief Judge Advocate and the Registrar of Military Justice (see section 30);
 - (d) travel expenses and allowances under the official travel determination;
 - (e) payment in lieu of recreation leave in accordance with section 31;
 - (f) compensation for early loss of office in accordance with the *Remuneration Tribunal (Compensation for Loss of Office for Holders of Certain Public Offices) Determination 2018* (or any determination that supersedes that determination).

21 Remuneration and benefits not to be supplemented

The amount of total remuneration to a Part 3 office holder under Table 3A is exhaustive of the remuneration and significantly-related benefits payable to a Part 3 office holder, to the extent that the Tribunal is empowered to determine such remuneration and benefits. The amount of total remuneration to which the office holder is entitled under this Division must not be supplemented by an authority other than the Tribunal if to do so would be inconsistent with this instrument.

22 Total remuneration

The following table (***Table 3A***) sets out, for a holder of each office in column 1:

- (a) the total remuneration, per year, of the Part 3 office holder; and
- (b) the travel tier that applies to the Part 3 office holder for the purposes of the official travel determination.

Part 3 Full-time office holders

Division 2 Remuneration

Section 23

Table 3A—Total remuneration for Part 3 office holders

Column 1 Office	Column 2 Total remuneration (per year)	Column 3 Travel tier
High Court—Chief Executive and Principal Registrar	\$498,810	1
Federal Court—Chief Executive Officer	\$498,810	1
Federal Court—Assessor (Full-time)	\$281,460	2
Family Court—Chief Executive Officer	\$387,960	1
Federal Circuit Court—Chief Executive Officer	\$387,960	1
Australian Law Reform Commission—President (non-judicial)	\$463,710	1
Australian Law Reform Commission—Commissioner (non-judicial)	\$281,180	2
AAT—Deputy President (non-judicial)	\$496,560	1
AAT—Senior member (level 1)	\$391,940	2
AAT—Senior member (level 2)	\$329,930	2
AAT—Member (level 1)	\$249,420	2
AAT—Member (level 2)	\$221,700	2
AAT—Member (level 3)	\$193,990	2
AAT—Registrar	\$415,680	1
National Native Title Tribunal—President (non-judicial)	\$459,230	1
National Native Title Tribunal—Deputy President	\$417,210	1
National Native Title Tribunal—Member	\$320,360	1
National Native Title Tribunal—Registrar	\$302,820	2
Military Justice System—Chief Judge Advocate	\$435,110	2
Military Justice System—Deputy Chief Judge Advocate	\$413,355	2
Military Justice System—Registrar of Military Justice	\$275,930	2

23 Part-time work

- (1) If a Part 3 office holder’s authority has approved the office holder to perform the duties of the office on a part-time basis, the total remuneration for that office is to be paid on a pro rata basis in accordance with the proportion of full-time hours worked.
- (2) However, if the proposed hours are less than 60% of the full-time hours, prior agreement of the Tribunal is required for the level of remuneration.

24 Remuneration packaging

- (1) Subject to this Part, a Part 3 office holder may elect to receive the benefit of the total remuneration, other than the employer superannuation contribution, as salary or a combination of salary and benefits if:

Section 24

- (a) the election is consistent with relevant taxation laws and rulings or guidelines applicable to salary packaging schemes issued by the Australian Taxation Office; and
 - (b) providing the benefit would not result in a cost to the authority (including any fringe benefits tax) that would not be incurred if the office holder received the remuneration in the form of salary.
- (2) To avoid doubt, a superannuation contribution made as a result of an election by a Part 3 office holder under subsection (1) does not form part of the employer superannuation contribution for the office holder.

Division 3—Superannuation

25 Superannuation

Commonwealth Superannuation Scheme

- (1) For a Part 3 office holder who is a member of the CSS:
 - (a) the office holder's annual rate of salary for the purposes of the CSS is the office holder's superannuation salary; and
 - (b) for the purposes of paragraph (a) of the definition of ***employer superannuation contribution*** in section 7, the value attributed to the employer superannuation contribution for the office holder is an amount equal to 15.4% of the office holder's superannuation salary.

Note: For the definition of ***superannuation salary*** for a Part 3 office holder who is a member of the CSS, see section 26.

Public Sector Superannuation Scheme

- (2) For a Part 3 office holder who is a member of the PSS:
 - (a) the office holder's basic salary for the purposes of the PSS is the office holder's superannuation salary; and
 - (b) the amount of the office holder's recognised allowances for the purposes of the PSS is nil; and
 - (c) for the purposes of paragraph (a) of the definition of ***employer superannuation contribution*** in section 7, the value attributed to the employer superannuation contribution for the office holder is an amount equal to 15.4% of the office holder's superannuation salary.

Note: For the definition of ***superannuation salary*** for a Part 3 office holder who is a member of the PSS, see section 26.

Defence Force Retirement and Death Benefits

- (3) For a Part 3 office holder who is a member of the DFRDB:
 - (a) the office holder's annual rate of salary for the purposes of the DFRDB is the office holder's superannuation salary; and
 - (b) for the purposes of paragraph (a) of the definition of ***employer superannuation contribution*** in section 7, the value attributed to the employer superannuation contribution for the office holder is an amount equal to 15.4% of the office holder's superannuation salary.

Note: For the definition of ***superannuation salary*** for a Part 3 office holder who is a member of the DFRDB, see section 26.

Military Superannuation and Benefits Scheme

- (4) For a Part 3 office holder who is a member of the MSBS:
 - (a) the office holder's annual rate of salary for the purposes of the MSBS is the office holder's superannuation salary; and
 - (b) for the purposes of paragraph (a) of the definition of ***employer superannuation contribution*** in section 7, the value attributed to the

Section 26

employer superannuation contribution for the office holder is an amount equal to 15.4% of the office holder's superannuation salary.

Note: For the definition of *superannuation salary* for a Part 3 office holder who is a member of the MSBS, see section 26.

Public Sector Superannuation Accumulation Plan

- (5) For a Part 3 office holder who is a member of PSSAP, the office holder's superannuation salary for the purposes of the *Superannuation (PSSAP) Trust Deed* is the office holder's ordinary time earnings (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*).

Other superannuation funds

- (6) For a Part 3 office holder who is a member of any other superannuation fund, the employer superannuation contribution is the minimum contribution that would, under section 23 of the *Superannuation Guarantee (Administration) Act 1992*, reduce the charge percentage for that office holder to nil.

26 Superannuation salary for the purposes of CSS, PSS, DFRDB and MSBS

- (1) Subject to subsection (2), the *superannuation salary* for a Part 3 office holder who is a member of the CSS, PSS, DFRDB or MSBS is worked out in accordance with the following table (*Table 3B*).

Table 3B—Superannuation salary for the purposes of CSS, PSS, DFRDB and MSBS

Item	If the Part 3 office holder's total remuneration is ...	the Part 3 office holder's superannuation salary is ...
1	\$443,390 or more	70% of the office holder's total remuneration (rounded up to the nearest \$10).
2	less than \$443,390	73% of the office holder's total remuneration (rounded up to the nearest \$10).

- (2) If an office or a Part 3 office holder is specified in column 1 of the following table (*Table 3C*), the amount in column 2 is the superannuation salary for the Part 3 office holder who holds that office, or for that Part 3 office holder.

Table 3C—Superannuation salary for the purposes of CSS, PSS, DFRDB and MSBS for specified Part 3 office holders

Item	Column 1 Office or Part 3 office holder	Column 2 Superannuation salary
1	AAT—a Deputy President (non-judicial) who is covered by subsection (3)	\$362,490
2	Military Justice System—Registrar of Military Justice	\$237,300

- (3) A Deputy President (non-judicial) of the AAT is covered by this subsection if:
- before the Deputy President's current term of appointment as Deputy President, the Deputy President had previously been appointed as Deputy President; and

Part 3 Full-time office holders

Division 3 Superannuation

Section 26

- (b) item 4 of Schedule 9 to the *Tribunals Amalgamation Act 2015* applied to the Deputy President on 1 July 2015 during a previous term of appointment.

Division 4—Vehicles and other benefits

27 Vehicles

- (1) If a Part 3 office holder:
 - (a) accepts an offer of a vehicle owned or leased by the office holder’s authority for private use; or
 - (b) has access to a vehicle owned or leased by the office holder’s authority for private use;the actual cost of the vehicle to the authority (including fringe benefits tax), less a reasonable amount (if any) reflecting business usage patterns, is taken to be a benefit.
- (2) For the purposes of subsection (1):
 - (a) if the annual business kilometres are less than 5,000—the business usage amount is to be based on the “cents per kilometre” method; or
 - (b) if the annual business kilometres are 5,000 or more:
 - (i) any business usage amount is to be assessed on log book records for at least a 12 week representative period; and
 - (ii) the percentage of business use to total kilometres travelled per year is to be applied to the total cost of the vehicle.

28 Vehicle parking

If a Part 3 office holder accepts an offer of a car park at Commonwealth expense, the actual cost (including fringe benefits tax) of the car park to the authority is taken to be a benefit.

29 Business support

If a Part 3 office holder is provided with communications, information technology or other office facilities necessary for the efficient conduct of the office holder’s office, incidental private use of those facilities does not require the value of the facilities to be included in total remuneration.

30 Assistance for Chief Judge Advocates and the Registrar of Military Justice

The authority may approve housing, relocation and medical assistance in accordance with authority policy and practices for the offices of Chief Judge Advocate and the Registrar of Military Justice.

Note: Assistance under this section is not included as part of total remuneration: see paragraph 20(3)(c).

Section 31

Division 5—Leave of absence

31 Leave of absence

- (1) A Part 3 office holder is entitled to the following types and amounts of leave of absence:
 - (a) an office holder may be absent without loss of pay on public holidays that are observed by the Australian Public Service in the location in which the office is based;
 - (b) paid recreation leave of 4 weeks per year of service, accruing on a pro rata basis;
 - (c) other paid and unpaid leave, including sick and carers' leave, at the discretion of the Commonwealth.
- (2) A Part 3 office holder may elect:
 - (a) to take recreation leave on a half-pay basis; or
 - (b) to cash out up to one week's recreation leave in a financial year.
- (3) A Part 3 office holder is to be paid the balance of their recreation leave on leaving office, calculated on the basis of the office holder's reference salary.
- (4) The Part 3 office holder's *reference salary* is the office holder's total remuneration, less the amount of total remuneration that reflects the employer superannuation contribution for the office holder.

32 Leave accumulated before commencement of this instrument

Any entitlement to recreation leave accrued by a Part 3 office holder before the commencement of this instrument is taken to have been accrued under this instrument.

Part 4—Part-time office holders

Division 1—Application of this Part

33 Application of this Part

This Part applies to a person (a *Part 4 office holder*) who:

- (a) holds an office specified in column 1 of Table 4A; and
- (b) was appointed to that office on a part-time basis.

Division 2—Daily fees, travel tiers and remuneration packaging

34 Payment of daily fee

- (1) A Part 4 office holder is entitled to be paid the daily fee specified in column 2 of Table 4A for the office held by the office holder.
- (2) The nature, reasonableness and duration of official business by the office holder is to be reviewed prior to the payment of any daily fee to the office holder, according to arrangements established by the authority.
- (3) The maximum amount payable to the office holder for any one day is the daily fee for the office holder.
- (4) Unless the authority determines otherwise, the minimum amount that may be claimed for payment at any one time is one daily fee, except that the final payment to any individual prior to leaving office may be less than one daily fee.

35 Calculation of daily fees for part-day work

- (1) This section applies to a Part 4 office holder who works for less than a full day.
Note: This section does not apply to a member of the AAT to whom section 39 or 40 applies.
- (2) On a formal meeting or hearing day, the following amounts of the office holder's daily fee are payable to the office holder:
 - (a) for a period of less than 2 hours—40% of the daily fee;
 - (b) for a period of between 2 and 3 hours—60% of the daily fee;
 - (c) for a period of 3 hours or more—100% of the daily fee.
- (3) On any other day, for each period of at least 1 hour spent entirely on authority business, the amount of the office holder's daily fee payable to the office holder is 20% of that daily fee for each hour, up to a maximum of 5 hours on any one day.
- (4) The periods of work mentioned in subsection (2) do not include any normal preparation time for a formal meeting or hearing. There is no additional payment for time spent on normal preparation. However, if extraordinary preparation time is required by the officer for the formal meeting or hearing, the authority may authorise an additional payment in accordance with subsection (3).
- (5) If the office holder is required to work at a location other than the office locality, any reasonable time required to travel between an office holder's home or usual place of work and the other location may be included by the authority in calculating payments under this section. Travel time between the office holder's home and usual place of work is not included for the purpose of calculation of payments.

36 Daily fees and travel tiers for Part 4 office holders

The following table (*Table 4A*) sets out, for a holder of each office in column 1:

- (a) the daily fee for the Part 4 office holder; and

- (b) the special provisions (if any) of this instrument that apply to the Part 4 office holder; and
- (c) the travel tier that applies to the Part 4 office holder for the purposes of the official travel determination.

Table 4A—Daily fees for Part 4 office holders

Column 1 Office	Column 2 Daily fee	Column 3 Special provisions	Column 4 Travel tier
Federal Court—Assessor (Part-time)	\$1,024		1
Copyright Tribunal of Australia—Deputy President (non-Judicial)	\$1,103	Subsection 38(1)	1
Copyright Tribunal of Australia—Member	\$1,103	Subsection 38(1)	1
Australian Competition Tribunal—Member	\$1,024	Subsection 38(2)	1
Australian Law Reform Commission—Member (Part-time)	\$1,024		1
AAT—Deputy President	\$1,950	Sections 39 and 40	1
AAT—Senior member (level 1)	\$1,625	Sections 39 and 40	2
AAT—Senior member (level 2)	\$1,383	Sections 39 and 40	2
AAT—Member (level 1)	\$1,084	Sections 39 and 40	2
AAT—Member (level 2)	\$949	Sections 39 and 40	2
AAT—Member (level 3)	\$813	Sections 39 and 40	2
National Native Title Tribunal—Deputy President	\$1,450	Subsection 38(1)	1
National Native Title Tribunal—Member	\$1,064	Subsection 38(1)	1
Defence Force Discipline Appeal Tribunal—Member	\$876		1
Australian Security Intelligence Organisation—prescribed authority	\$1,545		1
Military Justice System—Judge Advocate General	\$2,500		2
Military Justice System—Deputy Judge Advocate General	\$2,250		2
Military Justice System—Judge Advocate	\$1,823		2
Military Justice System—Defence Force Magistrate	\$1,823		2

37 Remuneration packaging

A Part 4 office holder may elect to take, in lieu of the fee payable to the office holder under this Part, benefits or a combination of fee and benefits if:

- (a) the election is consistent with relevant taxation laws and rulings or guidelines applicable to salary packaging schemes issued by the Australian Taxation Office; and
- (b) providing the benefit would not result in a cost to the authority (including any fringe benefits tax) that would not be incurred if the office holder had received fees instead of the benefit.

Division 3—Special provisions

38 Special provisions—alternative and additional remuneration for Part 4 office holders

- (1) If column 3 of Table 4A mentions this subsection in relation to an office mentioned in column 1, the minimum annual payment to the holder of the office is an amount that is 10 times the daily fee mentioned in column 2 in relation to the office.
- (2) If column 3 of Table 4A mentions this subsection in relation to an office mentioned in column 1, the holder of the office is entitled to an annual payment of \$24,480 in addition to the daily fee mentioned in column 2 in relation to the office.

39 Special provisions—daily fees etc. for part-time AAT members

- (1) This section applies, and section 35 does not apply, to a member of the AAT on a part-time basis who is not covered by section 40.
- (2) A daily fee is payable once a member has undertaken official business of 7 hours duration in aggregate, regardless of the day or days on which that work is done.
- (3) Official business may include a hearing, preparation for a hearing, reading submissions, decision writing and travel time other than for travel between the person's home and principal place of work.
- (4) The member is to be paid a cancellation fee equal to an amount that is 50% of the daily fee if all of a day's work is cancelled with less than 5 working days' notice (this includes the circumstance where a hearing does not proceed on a day on which a member has attended).

40 Special provisions—annual fees for certain part-time AAT members

- (1) This section applies, and sections 35 and 39 do not apply, to a member of the AAT on a part-time basis who is subject to:
 - (a) a direction under section 18B of the AAT Act by the President of the AAT to work a specified number of days each week for a continuous period of 12 months or more; or
 - (b) a direction under section 18B of the AAT Act by the President of the AAT to work a specified number of days each week for a period of less than 12 months if that period ends on the day that the person's appointment as a part-time member expires.
- (2) The following table (*Table 4B*) sets out, for the member who holds an office in column 1, the annual fee to be paid to the member based on the specified number of days each week the President of the AAT has directed the member to work.

Section 40

Table 4B—Annual fees for certain part-time AAT members

Column 1 Office	Column 2 1 day each week	Column 3 2 days each week	Column 4 3 days each week	Column 5 4 days each week
Deputy President	\$84,420	\$168,840	\$253,260	\$337,680
Senior member (level 1)	\$66,630	\$133,260	\$199,890	\$266,520
Senior member (level 2)	\$56,090	\$112,180	\$168,270	\$224,360
Member (level 1)	\$42,410	\$84,820	\$127,230	\$169,640
Member (level 2)	\$37,690	\$75,380	\$113,070	\$150,760
Member (level 3)	\$32,980	\$65,960	\$98,940	\$131,920

- (3) The annual fee payable to the member is payable on a periodic basis throughout each year and covers all activities undertaken by the member in performing the duties of the member's office.
- (4) Part years are paid on a proportionate basis.

Part 5—Official travel

41 Official travel

Justices of the High Court

- (1) A Justice of the High Court (including the Chief Justice) who does not establish a place of residence in Canberra is to be paid \$37,760 a year in lieu of the travelling allowance that would otherwise be payable to the Justice under the official travel determination.

President of the Fair Work Commission

- (2) The President of the Fair Work Commission has the same travel entitlements when travelling within Australia as the Chief Justice of the Federal Court has under the official travel determination.

Part 6—Arrangements for transitional AAT members

42 Application of this Part

This Part applies to a member of the AAT (a *transitional AAT member*) to whom item 4 of Schedule 9 to the *Tribunals Amalgamation Act 2015* applies.

Note: Item 4 of Schedule 9 to the *Tribunals Amalgamation Act 2015* applies to a member of the AAT (other than a Judge) who was a member of the AAT immediately before 1 July 2015.

43 Continued operation of the transitional determination

- (1) Subject to this Part, *Determination 2015/05 – Judicial and Related Offices – Remuneration and Allowances* (the *transitional determination*) continues to apply to a transitional AAT member as if the repeal of that instrument did not happen.
- (2) Apart from this Part, this instrument does not apply to a transitional AAT member.

44 Modified remuneration for transitional AAT members

Full-time transitional AAT members

- (1) Table 3 of the transitional determination has effect as if the amounts for the base salary and total remuneration in that table for a transitional AAT member who is a Deputy President of the AAT were the amounts set out in the following table.

Office	Base salary	Total remuneration
Deputy President	\$362,490	\$496,560

Part-time daily fees for transitional AAT members

- (2) Table 2A of the transitional determination has effect as if the amounts for part-time office daily fees in that table for a transitional AAT member who is:
 - (a) a Deputy President of the AAT; or
 - (b) a Senior member of the AAT; or
 - (c) a member of the AAT;
 were the amounts set out in the following table.

Office	Part-time office daily fee
Deputy President	\$1,675
Senior member	\$1,325

Part 6 Arrangements for transitional AAT members

Section 45

Table 6B—Part-time daily fees for transitional AAT members

Office	Part-time office daily fee
Member	\$1,113

Annual fees for transitional part-time AAT members

- (3) Table 2B of the transitional determination has effect as if the amounts for annual fees in that table for a transitional AAT member who is:
- (a) a Deputy President of the AAT; or
 - (b) a Senior member of the AAT; or
 - (c) a member of the AAT;
- were the amounts set out in the following table.

Table 6C—Annual fees for transitional part-time AAT members

Column 1 Office	Column 2 1 day each week	Column 3 2 days each week	Column 4 3 days each week	Column 5 4 days each week
Deputy President	\$84,420	\$168,840	\$253,260	\$337,680
Senior member	\$66,630	\$133,260	\$199,890	\$266,520
Member	\$56,090	\$112,180	\$168,270	\$224,360

45 Additional remuneration for certain part-time transitional AAT members

- (1) This section applies to a transitional AAT member to whom subsection 44(2) applies.
- (2) The minimum annual payment to the member is 10 times the amount of the daily fee in Table 2A of the transitional determination, as modified by subsection 44(2), that applies to the member.
- (3) Subsection (2) applies to the member, whether the member receives a part-time daily fee or an hourly rate under clause 2.4 of the transitional determination.
- (4) The member is to be paid a cancellation fee equal to an amount that is 50% of the daily fee if all of a day's work is cancelled with less than 5 working days' notice (this includes the circumstance where a hearing does not proceed on a day on which a member has attended).

46 Other modifications for transitional AAT members

Travel tier

- (1) For the purposes of the official travel determination, travel tier 1 applies to a transitional AAT member.
- (2) Subsection (1) applies despite any provision of the transitional determination.

Review of official business before payment

- (3) Despite clause 2.5.4(ii) of the transitional determination, subsection 34(2) of this instrument applies to a transitional AAT member.

Schedule 1—Repeals

Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2020

1 The whole of the instrument

Repeal the instrument.