



REMUNERATION TRIBUNAL

Replacement Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 6) 2021

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 (for a Principal Executive Office) with responsibility for the relevant office(s). The Tribunal will normally seek the views of the 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 minister or person making the submission.
5. In deliberating on appropriate remuneration for an office, the Tribunal also 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 Renewable Energy Agency (ARENA), Chief Executive Officer (CEO), Chair and Member

6. On 9 September 2021, the Hon Angus Taylor MP, then Minister for Energy and Emissions Reduction, wrote to the Tribunal seeking a review of remuneration for

the full-time office of the CEO of ARENA, and a review of remuneration arrangements for the ARENA Board, including a request for the determination of additional fees for the Board's audit sub-committee. The letter was accompanied by a submission detailing changes to the roles and responsibilities of the office of CEO, rationale for the transition of the Board from daily fees to annual fees, and for establishing fees for the Board's audit sub-committee.

Australian Organ and Tissue Donation and Transplantation Authority (OTA), Chief Executive Officer (CEO), Chair, Deputy Chair and Member

7. On 20 September 2021, the Hon Dr David Gillespie, Minister for Regional Health, wrote to the Tribunal seeking a review of remuneration for the office of CEO of the OTA and a determination of remuneration for the new offices of Chair, Deputy Chair and Member of the OTA Advisory Board. The letter was accompanied by a submission detailing the changed roles and responsibilities of the OTA, including the abolition of the former governance board, as a result of the *Australian Organ and Tissue Donation and Transplantation Authority Amendment (Governance and other measures) Act 2021*.

eSafety Commissioner

8. There was no consultation on this matter. The amendment removes the hyphen in 'e-Safety' for consistency with the Online Safety Act 2021.

Productivity Commissioner, Commissioner

9. There was no consultation on this matter. The amendment removes an accommodation assistance provision for Mr Richard Spencer, Commissioner Productivity Commission, which expired on 26 October 2021.

Australian National Council on Drugs

10. On 3 November 2021, the Department of Health wrote to the Tribunal's Secretariat advising the Australian National Council on Drugs had been abolished, and requesting it be removed from the Determination.

Advisory Committee on Biologicals

11. On 2 September 2021, the Department of Health wrote to the Tribunal's Secretariat advising of a typographical error in the name of this committee and seeking its correction.

Tiwi Land Council (TLC), Deputy Chair and Member

12. In July 2021, the President of the Remuneration Tribunal wrote to the Hon Ken Wyatt AM MP, Minister for Indigenous Australians seeking his views on proposed remuneration arrangements for the offices of Deputy Chair and Member of the TLC and the TLC Management Committee, having had an opportunity to consider these offices as part of a submission dated 19 April 2021 regarding the full-time office of Chair of the TLC and the part-time office of Member of the TLC.
13. On 12 October 2021, Minister Wyatt wrote to the Tribunal providing his views, and the views of the TLC, regarding the Tribunal's proposed remuneration arrangements.

Retrospectivity

14. 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.

15. With respect to remuneration for the offices of CEO, Chair and Member of ARENA the retrospective application does not disadvantage any person, as the amendments provide more generous remuneration than previously determined.
16. With respect to the remuneration of the Australian Organ and Tissue Donation and Transplantation Authority (OTA), the retrospective application does not disadvantage any person, as this body was abolished with effect from 1 November 2021.
17. With respect to the remuneration for the office of CEO of the OTA, the retrospective application does not disadvantage any person as the amendment provides more generous remuneration than previously determined.
18. With respect to the remuneration for the new offices of Chair, Deputy Chair and Member of the OTA Advisory Board, the retrospective application does not disadvantage any person as it provides remuneration for these offices from the date the Advisory Board was established.
19. With respect to accommodation assistance for Mr Richard Spencer, the retrospective application does not disadvantage any person on the basis the provision has expired, and its removal has no material effect.
20. With respect to the remuneration for the office of Member of the TLC, the retrospective application does not disadvantage any person as it provides remuneration for an office which was not previously included in the determination.

Exemption from sunseting

21. 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 *Remuneration Tribunal Act 1973* is exempt from the provisions of paragraph 54(2)(b) of the *Legislation Act 2003*.
22. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.
23. 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

24. 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:

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

SCHEDULE 1—AMENDMENTS

Part 1—Repeal of items that are being replaced

Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2021

1. Item 1 removes the item in Table 2A dealing with the office of CEO, ARENA.
2. Item 2 removes the item in Table 2A dealing with the office of CEO, OTA.

Part 2—Main amendments

Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2021

3. Item 3 sets the remuneration and travel tier for the office of CEO, ARENA.
4. Item 4 removes the hyphen in eSafety Commissioner in Table 2A.
5. Item 5 sets the remuneration and travel tier for the office of CEO, OTA.
6. Item 6 removes the item in Table 5A dealing with accommodation assistance for Mr Richard Spencer, Commissioner, Productivity Commission.
7. Item 7 removes the hyphen in eSafety Commissioner in Table 6A.
8. Item 8 sets the application and transitional provisions for items 3 and 5.

Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2021

9. Item 9 removes the definition of Table 7A, as this category of fees for part-time office holders no longer exists.
10. Item 10 sets the remuneration, travel tier and audit committee fees for the offices of Chair and Member of ARENA.
11. Item 11 removes the offices of Chair, Deputy Chair and Member of the OTA from Table 3A.
12. Item 12 removes the offices of Chair and Member of ARENA from Table 4A.
13. Item 13 removes the offices of the Australian National Council on Drugs from Table 4A.
14. Item 14 sets the remuneration and travel tier for the offices of Chair, Deputy Chair and Member of the OTA Advisory Board.
15. Item 15 corrects a typographical error in Table 4C in the name of the Advisory Committee on Biologicals.

16. Item 16 removes all reference to Table 7A in sections 39 and 40, and removes section 41 in its entirety.
17. Item 17 removes section 45 (including Table 7A) in its entirety.
18. Item 18 sets remuneration for the offices of Deputy Chair and Member of the TLC. Two rates are specified – the first if the office holder is engaged in the functions and duties of the office and the second if the office holder is engaged on business of the Management Committee.
19. Item 19 sets the application and transitional provisions for items 10, 11, 12, 13, 14, and 18.

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.6) 2021

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 2021; and*
- *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2021.*

The determination:

- sets new remuneration for the office of CEO, ARENA.
- sets new remuneration and audit committee fees for the offices of Chair and Member of ARENA.
- sets new remuneration for the office of CEO, OTA.
- removes the offices of Chair, Deputy Chair and Member of the OTA Governance Board.
- establishes remuneration and travel tier for the offices of Chair, Deputy Chair and Member of the OTA Advisory Board.
- corrects stylistic and typographical errors in relation to the eSafety Commissioner and the Advisory Committee on Biologicals.
- removes accommodation assistance for Mr Richard Spencer, Commissioner, Productivity Commission.
- removes the offices of Chair, Deputy Chair and Member of the Australian National Council on Drugs.
- sets new remuneration for the offices of Deputy Chair of the TLC and Member of the TLC (engaged on business of the Management Committee).
- establishes remuneration for the office of Member of the TLC.

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