



REMUNERATION TRIBUNAL

Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 3) 2022

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.

Various full-time offices

6. In late 2021 the Tribunal became aware of a possible technical anomaly that may have resulted in several offices not falling automatically into the Tribunal's jurisdiction despite those offices' own establishing legislation requiring the Tribunal to determine remuneration.

7. On 31 March 2022, the Hon Ben Morton MP, Minister for the Public Service wrote to the Tribunal to rectify the anomaly. The Minister advised the offices of Chief Executive Officer (CEO), Australian Digital Health Agency; CEO, Australian Commission on Safety and Quality in Health Care; CEO, Australian Curriculum, Assessment and Reporting Authority; CEO, Australian Pesticides and Veterinary Medicines Authority; CEO, Australian Renewable Energy Agency; CEO, Comcare; CEO, Food Standards Australia New Zealand; CEO, Independent Hospital Pricing Authority; CEO, Infrastructure Australia; CEO, National Disability Insurance Scheme Launch Transition Agency; CEO, National Housing Finance and Investment Corporation; CEO, National Offshore Petroleum Safety and Environmental Management Authority; CEO, National Transport Commission; CEO, Northern Australia Infrastructure Facility; Chief Executive, Murray-Darling Basin Authority; CEO, Torres Strait Regional Authority; Director, Old Parliament House; and CEO, Aboriginal Hostels Limited, are offices to which the provisions of the *Remuneration Tribunal Act 1973* should apply.

8. The Tribunal consulted with the Office of Parliamentary Counsel and the Australian Government Solicitor on this matter.

Australian Curriculum, Assessment and Reporting Authority, Chief Executive Officer

9. On 24 February 2022, the acting Minister for Education and Youth, the Hon Stuart Robert MP, wrote to the Tribunal seeking an extension of a special provision for Mr David de Carvalho, whose appointment as the Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority had been extended to 3 June 2022.

Comcare, Chief Executive Officer

10. On 20 April 2021, the Attorney-General, Senator the Hon Michaelia Cash, wrote to the Tribunal seeking an amendment to the personal remuneration determined for Ms Sue Weston PSM, CEO Comcare. The Minister detailed an error in the information provided to the Tribunal when it was initially asked to make a determination of personal remuneration for Ms Weston. The Tribunal agreed to determine new personal remuneration for Ms Weston and implement a temporary increase to rectify the situation. This amendment restores the previously agreed personal remuneration for the remainder of Ms Weston's appointment.

National Data Commissioner; National Data Advisory Council, Chair and Member

11. On 19 February 2021, the then Minister for Government Services, the Hon Stuart Robert MP, wrote to the Tribunal seeking an indicative determination of remuneration and travel tier for the proposed full-time office of National Data Commissioner and the proposed part-time offices of Chair and Member of the National Data Advisory Council. The accompanying submission outlined the roles and responsibilities of the proposed offices. Their establishing legislation, the *Data Availability and Transparency Act 2022*, came into effect on 1 April 2022.

Advisory Committee on the Environmental Management of Industrial Chemicals, Chair and Member

12. On 23 February 2022, the Tribunal received a letter from the Minister for the Environment, the Hon Sussan Ley MP, seeking a determination of remuneration and travel tier for the new part-time offices of Chair and Member of the Advisory

Committee on the Environmental Management of Industrial Chemicals. The Minister's letter was accompanied by a submission detailing the role and responsibilities of the committee.

Australian Rail Track Corporation, Member

13. On 30 March 2022, the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, the Hon Barnaby Joyce MP, and the Minister for Finance, Senator the Hon Simon Birmingham, wrote to the Tribunal seeking person-specific reduced remuneration for the Hon Katrina Hodgkinson, as a former member of a state parliament in receipt of a parliamentary pension. This reduction will take effect from the start of Ms Hodgkinson's appointment and is in accordance with government policy. The need for this reduction was acknowledged by Ms Hodgkinson prior to accepting the appointment.

National Water Grid Advisory Body; Chair, Member

14. On 29 March 2022, the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, the Hon Barnaby Joyce MP, wrote to the Tribunal advising the National Water Grid Advisory Body had been abolished and requesting it be removed from the Tribunal's determination.

Retrospectivity

15. 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.
16. With respect to the offices referred into the Tribunal's jurisdiction by the Minister for the Public Service, the retrospective application does not disadvantage any person as it establishes remuneration, travel tier and any other provisions from the date the offices were referred into the Tribunal's jurisdiction.
17. With respect to the Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority, the retrospective application does not disadvantage any person as the provision extends a more generous remuneration entitlement than would otherwise apply.
18. With respect to the remuneration and travel tier for the new offices of National Data Commissioner and Chair and Member of the National Data Advisory Council board, the retrospective application does not disadvantage any person as it provides remuneration for these offices from the date they were established.
19. With respect to the remuneration and travel tier for the new offices of the Advisory Committee on the Environmental Management of Industrial Chemicals, the retrospective application does not disadvantage any person, as there were no appointments to this body as of the date of effect.

Exemption from sunseting

20. 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*.

21. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.
22. 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 sunset period. As such, the exemption from sunset will not have a practical impact on parliamentary oversight of the relevant measures.

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

23. 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:

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

SCHEDULE 1—AMENDMENTS

Part 1 – Amendments commencing 1 April 2022

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

1. Item 1 repeals and sets the remuneration and travel tier for the office of Chief Executive Officer, Australian Digital Health Agency in Table 2A.
2. Item 2 repeals and sets the remuneration, travel tier and special provision for the office of Chief Executive Officer, National Disability Insurance Scheme Launch Transition Agency in Table 2A.
3. Item 3 repeals and sets the remuneration and travel tier for the office of Chief Executive Officer, National Housing Finance and Investment Corporation in Table 2A.
4. Item 4 repeals and sets the remuneration and travel tier for the office of Chief Executive Officer, Australian Renewable Energy Agency in Table 2A.
5. Item 5 repeals and sets the remuneration and travel tier for the office of Chief Executive Officer, Independent Hospital Pricing Authority in Table 2A.
6. Item 6 repeals and sets the remuneration and travel tier for the office of Chief Executive Officer, Australian Commission on Safety and Quality in Health Care in Table 2A.

7. Item 7 repeals and sets the remuneration, travel tier and special provision for the office of Chief Executive Officer, Australian Curriculum, Assessment and Reporting Authority in Table 2A.
8. Item 8 repeals and sets the remuneration and travel tier for the office of Chief Executive, Murray-Darling Basin Authority in Table 2A.
9. Item 9 repeals and sets the remuneration and travel tier for the office of Chief Executive Officer, National Offshore Petroleum Safety and Environmental Management Authority in Table 2A.
10. Item 10 repeals and sets the remuneration, travel tier and special provision for the office of Chief Executive Officer, Comcare in Table 2A.
11. Item 11 repeals and sets the remuneration and travel tier for the office of Chief Executive Officer, Australian Pesticides and Veterinary Medicines Authority in Table 2A.
12. Item 12 repeals and sets the remuneration, travel tier and special provision for the office of Chief Executive Officer, Infrastructure Australia in Table 2A.
13. Item 13 repeals and sets the remuneration, travel tier and special provision for the office of Chief Executive Officer, Northern Australia Infrastructure Facility in Table 2A.
14. Item 14 repeals and sets the remuneration and travel tier for the office of Chief Executive Officer, National Transport Commission in Table 2A.
15. Item 15 repeals and sets the remuneration and travel tier for the office of Director, Old Parliament House in Table 2A.
16. Item 16 repeals and sets the remuneration and travel tier for the office of Chief Executive Officer, Aboriginal Hostels Limited in Table 2A.
17. Item 17 repeals and sets the remuneration and travel tier for the office of Chief Executive Officer, Food Standards Australia New Zealand in Table 2A.
18. Item 18 sets the remuneration and travel tier for the office of National Data Commissioner in Table 2A.
19. Item 19 repeals and sets the remuneration and travel tier for the office of Chief Executive Officer, Torres Strait Regional Authority in Table 2A.
20. Item 20 repeals and sets an amended person-specific remuneration provision for Mr David de Carvalho, Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority in Table 2B.
21. Item 21 repeals and sets an amended person-specific remuneration provision for Ms Sue Weston, Chief Executive Officer, Comcare in Table 2B.
22. Item 22 repeals and sets a person-specific remuneration provision for Ms Romilly Madew, Chief Executive Officer, Infrastructure Australia in Table 2B.
23. Item 23 repeals and sets a person-specific remuneration provision for Mr Martin Hoffman, Chief Executive Officer, National Disability Insurance Scheme Launch Transition Agency in Table 2B.
24. Item 24 repeals and sets an office-specific remuneration provision for the office

of Chief Executive Officer, Northern Australia Infrastructure Facility in Table 2B.

25. Item 25 repeals and sets a person-specific superannuation salary for Ms Sue Weston, Chief Executive Officer, Comcare in Table 3B.
26. Item 26 repeals and sets a person-specific superannuation salary for Mr Philip Glyde, Chief Executive Officer, Murray-Darling Basin Authority in Table 3B.
27. Item 27 repeals and sets a person-specific superannuation salary for Mr David de Carvalho, Chief Executive Officer, Australian Curriculum, Assessment and Reporting Authority in Table 3B.
28. Item 28 repeals an obsolete application and transitional provision for the office of Chief Executive Officer, Australian Renewable Energy Agency in Table 6A.

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

29. Item 29 sets remuneration and travel tier for the offices of Chair and Member of the National Data Advisory Council in Table 4A.

Part 2 – Other amendments

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

30. Item 30 amends the references in Table 3A to special provisions applying to the Australian Rail Track Corporation.
31. Item 31 removes the National Water Grid Advisory Body from Table 3A.
32. Item 32 sets person-specific remuneration in Table 3B for the Hon Katrina Hodgkinson in her role as Member of the Australian Rail Track Corporation.
33. Item 33 sets remuneration and travel tier for the offices of Chair and Member of the Advisory Committee on the Environmental Management of Industrial Chemicals in Table 4A.
34. Item 34 sets an application and transitional provision for the Advisory Committee on the Environmental Management of Industrial Chemicals in Table 8A.

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.3) 2022

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:

- Repeals and re-establishes remuneration, travel tier and any associated special provisions for the offices of:
 - Chief Executive Officer (CEO), Australian Digital Health Agency;
 - CEO, Australian Commission on Safety and Quality in Health Care;
 - CEO, Australian Curriculum, Assessment and Reporting Authority;
 - CEO, Australian Pesticides and Veterinary Medicines Authority;
 - CEO, Australian Renewable Energy Agency;
 - CEO, Comcare;
 - CEO, Food Standards Australia New Zealand;
 - CEO, Independent Hospital Pricing Authority;
 - CEO, Infrastructure Australia;
 - CEO, National Disability Insurance Scheme Launch Transition Agency;
 - CEO, National Housing Finance and Investment Corporation;
 - CEO, National Offshore Petroleum Safety and Environmental Management Authority;
 - CEO, National Transport Commission;
 - CEO, Northern Australia Infrastructure Facility;
 - Chief Executive, Murray-Darling Basin Authority;
 - CEO, Torres Strait Regional Authority;
 - Director, Old Parliament House; and
 - CEO, Aboriginal Hostels Limited.
- establishes remuneration and travel tier for the office of National Data Commissioner
- establishes remuneration and travel tier for the offices of Chair and Member of the National Data Advisory Council
- extends the provision of person-specific remuneration for Mr David de Carvalho
- amends the person-specific remuneration of Ms Sue Weston
- amends remuneration for the offices of Chair and Member of MSAC
- sets a reduced person-specific member fee for the Hon Katrina Hodgkinson, Member

of the Australian Rail Track Corporation, in accordance with government policy and acknowledged by Ms Hodgkinson in accepting the appointment.

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