



## REMUNERATION TRIBUNAL

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### **Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 9) 2022**

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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.

#### *Judicial officers*

6. The allowance for official travel to Canberra is a payment made in lieu of travelling allowance to Justices of the High Court who do not establish a place of residence in Canberra. The Tribunal has adjusted this amount consistent with the Canberra rate of travel specified in Taxation Determination TD 2022/10: Income tax: what

are the reasonable travel and overtime meal allowance expense amounts for the 2022–23 income year?

7. The maximum reimbursement for private vehicle running costs for certain judicial officers is adjusted by the movement in the transport component of the Consumer Price Index for the period since the Tribunal's last increase (2019) to March 2022.
8. There was no consultation on this matter as it is the Tribunal's practice to review, each year, the travel and motor vehicle allowances applicable to office holders for which it determines remuneration. Remuneration Tribunal (Official Travel) Determination 2022 applies the majority of the Tribunal's decisions arising from its review. This determination implements travel-related decisions of the Tribunal peculiar to judicial offices.
9. Amongst other things the Australian Taxation Office (ATO) determination sets out the amounts that the Commissioner of Taxation considers are reasonable for the substantiation exception in Subdivision 900-B of the *Income Tax Assessment Act 1997* for the 2022–23 income year in relation to claims made by employees for domestic travel expenses and overseas travel expenses.
10. TD 2022/10 (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953* and is available online at <https://www.ato.gov.au/law/view/pdf/pbr/td2022-010.pdf>
11. The Tribunal identified a minor typographical error in subsection 37(2) which is corrected by this determination. There was no consultation on this matter.

#### *Inspector-General of Water Compliance*

12. On 5 July 2022, the Hon Tanya Plibersek MP, Minister for the Environment and Water, wrote to the Tribunal seeking a determination of remuneration and travel tier for the office of the Inspector-General of Water Compliance. The accompanying submission outlined the responsibilities of the office and the qualities and capabilities required of the office holder.

#### *Infrastructure Australia, Chief Executive Officer*

13. The special provision for Ms Romilly Madew, Chief Executive Officer, Infrastructure Australia has been removed as Ms Madew is no longer appointed to that office. There was no consultation on this matter.

#### *Commonwealth Ombudsman*

14. On 14 July 2022, Ms Katherine Jones PSM, Secretary of the Attorney-General's Department wrote to the Tribunal seeking the determination of a personal superannuation salary for Mr Iain Anderson, the proposed appointee to the office of Commonwealth Ombudsman.

#### *Australia Council, Member*

15. On 15 July 2022, the Chair of the Australia Council, Mr Robert Morgan, wrote to the Tribunal seeking the determination of person-specific remuneration for the Hon Don Harwin in his role as a member of the Australia Council Audit Committee, to take into account Mr Harwin's parliamentary pension.

## **Retrospectivity**

16. 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.
17. With respect to the office of the Inspector-General of Water Compliance, the retrospective application does not disadvantage any person as the provision provides more generous remuneration than otherwise determined.

## **Exemption from sunseting**

18. 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*.
19. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.
20. 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**

21. 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:**

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

## **SCHEDULE 1—AMENDMENTS**

### **Part 1 – Main amendments**

#### ***Remuneration Tribunal (Judicial and Related Offices - Remuneration and Allowances) Determination 2022***

- 27. Item 1 inserts a reference in section 7 to the application and transitional provisions in section 41.
- 28. Item 2 amends the maximum reimbursement amount for private vehicle running costs in paragraphs 12(1)(b), (2)(b) and (3)(b).
- 29. Item 3 corrects a typographical error in subsection 37(2).
- 30. Item 4 amends the value of allowance in lieu of travelling allowance to Canberra in subsection (40)(1).
- 31. Item 5 sets application and transitional provisions for Items 2 and 4.

#### ***Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2022***

- 32. Item 6 inserts a reference in section 7 to the application and transitional provisions in section 23.
- 33. Item 7 removes the reference to a special provision for the office of Chief Executive Officer, Infrastructure Australia in Table 2B.
- 34. Item 8 establishes total remuneration and travel tier for the office of the Inspector-General of Water Compliance in Table 2A. It also inserts a reference to an application and transitional provision in Table 6A.
- 35. Item 9 removes the special provision for the office of Chief Executive Officer, Infrastructure Australia from Table 2B.
- 36. Item 10 sets a person-specific superannuation salary for Mr Iain Anderson, Commonwealth Ombudsman in Table 3B.
- 37. Item 11 sets application and transitional provisions for Item 8.

#### ***Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2022***

- 38. Item 12 amends the reference to special provisions for the offices of the Australia Council in Table 3A.
- 39. Item 13 sets person-specific audit committee fees in Table 3B for the Hon Don Harwin in his role as a member of the Australia Council Audit Committee.

### **Part 2 – Other amendments**

#### ***Remuneration Tribunal (Judicial and Related Offices - Remuneration and Allowances) Determination 2022***

- 40. Item 14 amends the definition of *official travel determination* in section 7 so that it refers to the 2022 determination.

***Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2022***

41. Item 15 amends the definition of *official travel determination* in section 7 so that it refers to the 2022 determination.

***Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2022***

42. Item 16 amends the definition of *official travel determination* in section 8 so that it refers to the 2022 determination.

**Authority:** Sub-sections 7(3), (3AA), (4) and (4B)

*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. 9) 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 (Judicial and Related Offices – Remuneration and Allowances) Determination 2022*;
- *Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2022*; and
- *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2022*.

The determination:

- amends the maximum reimbursement amount for private vehicle running costs for certain judicial officers;
- amends the amount of annual allowance in lieu of travelling allowance to Canberra for certain judicial officers;
- corrects a minor typographical error in the Judicial and Related Offices determination;
- sets remuneration and travel tier of the office of Inspector-General of Water Compliance;
- removes a personal remuneration provision for Ms Romilly Madew, Chief Executive Officer, Infrastructure Australia, who no longer holds that office;
- sets a personal superannuation salary for Mr Iain Anderson, Commonwealth Ombudsman;
- sets a reduced person-specific fee for the Hon Don Harwin in his role on the audit committee of the Australia Council, in accordance with government policy.

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**