



## REMUNERATION TRIBUNAL

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### **Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 10) 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.

#### *Correction – Travel determination*

6. A duplicate entry for the town of Mildura in the Tribunal's most recent travel determination was identified. There was no consultation on this matter.

#### *Coordinator-General, National Emergency Management Agency*

7. On 22 August 2022, Senator the Hon Murray Watt, Minister for Emergency Management wrote to the Tribunal seeking a determination of remuneration and travel tier for the new office of Coordinator-General, National Emergency Management Agency. The accompanying submission outlined the responsibilities of the office and the qualities and capabilities required of the office holder.
8. A revised submission including a request for the determination of personal remuneration for the preferred candidate for the office, Mr Brendan Moon AM, was received on 12 September 2022.

#### *Coordinator-General, National Recovery and Resilience Agency*

9. The National Recovery and Resilience Agency was abolished with effect from the end of 2 September 2022. The office of Coordinator-General, National Recovery and Resilience Agency and the special provision for the Hon Shane Stone AC KC as holder of that office have been removed from the determination. There was no consultation on this matter.

#### *Aged Care Pricing Commissioner*

10. On 11 August 2022, the Department of Health wrote to the Tribunal's Secretariat advising the office of the Aged Care Pricing Commissioner had been abolished with effect 12 August 2022, and asking that it be removed from the Tribunal's determination.

#### *Updated post-nominals*

11. With the accession of King Charles III, those barristers previously appointed Queen's Counsel automatically become King's Counsel, with a commensurate change in post-nominals. There was no consultation on this matter.

#### **Retrospectivity**

12. 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.
13. With respect to the office of Coordinator-General, National Emergency Management Agency, the retrospective application does not disadvantage any person as the provision sets remuneration and travel tier from the date the office was established.

#### **Exemption from sunseting**

14. 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*.
15. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.

16. As the Remuneration Tribunal generally makes new principal determinations annually, the 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**

17. 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:**

18. Section 1 specifies the name of the instrument.
19. Section 2 specifies when the instrument commences.
20. Section 3 specifies the authority for the instrument.
21. Section 4 outlines the effect of instruments specified in a Schedule to the instrument.
22. Schedule 1 sets out the amendments made to the instruments specified in Schedule 1.

**SCHEDULE 1—AMENDMENTS**

***Remuneration Tribunal (Official Travel) Determination 2022***

23. Item 1 removes the entry for Mildura in the New South Wales section of Table 6B.

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

24. Item 2 establishes total remuneration and travel tier for the office of Coordinator-General, National Emergency Management Agency in Table 2A. It also inserts references to special provisions for the office and office holder in Table 2B and application and transitional provisions in Table 6A.
25. Item 3 removes the office of Coordinator-General, National Recovery and Resilience Agency, and the reference to a special provision for the office holder from Table 2A.
26. Item 4 removes the office of Aged Care Pricing Commissioner from Table 2A.
27. Item 5 replaces the post-nominal QC with KC at item 2 in Table 2B.
28. Item 6 removes the special provision for the former office holder of the office of Coordinator-General, National Recovery and Resilience Agency from Table 2B and replaces it with two new special provisions for the holder of the office of Coordinator-General, National Emergency Management Agency.
29. Item 7 replaces the post-nominal QC with KC at item 9 in Table 5A.

30. Item 8 replaces the post-nominal QC with KC at item 5 in Table 5B.

31. Item 9 sets application and transitional provisions for Item 2.

**Authority:** Sub-sections 5(2A), 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. 10) 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 (Official Travel) Determination 2022; and*
- *Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2022.*

The determination:

- removes a typographical error in the Official Travel determination;
- sets remuneration and travel tier for the new office of Coordinator-General, National Emergency Management Agency;
- sets special provision remuneration for the office of Coordinator-General, National Emergency Management Agency
- sets a personal remuneration provision for Mr Brendan Moon, Coordinator-General, National Emergency Management Agency
- removes the office of Coordinator-General, National Recovery and Resilience Agency;
- removes a personal remuneration provision for the Hon Shane Stone, Coordinator-General, National Recovery and Resilience Agency;
- removes the office of Aged Care Pricing Commissioner;
- updates relevant post-nominals from QC to KC.

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**