



## REMUNERATION TRIBUNAL

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### **Explanatory Statement: Remuneration Tribunal Amendment Determination (No. 11) 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.

#### *Administrator, Christmas and Cocos (Keeling) Islands*

6. There was no consultation on this matter. The amendments remove reunion travel assistance for Ms Natasha Griggs, who no longer holds the office of Administrator, Christmas and Cocos (Keeling) Islands.

*National Disability Insurance Agency, Member*

7. On 5 October 2022, the Minister for the National Disability Insurance Scheme, the Hon Bill Shorten MP, wrote to the Tribunal advising changes to the Board of the National Disability Insurance Agency (NDIA) and seeking the determination of reduced person-specific remuneration for Dr Peta Seaton AM in her role on the Sustainability Committee and reduced person-specific remuneration for the Hon Dr Denis Napthine AO in his role as a member of the Board, to take into account their state parliamentary pensions. Both members agreed to this reduction.

*Foreign Investment Review Board, Member*

8. On 12 October 2022, the Department of the Treasury advised the Tribunal's Secretariat that the Hon Cheryl Edwardes was no longer a member of the Foreign Investment Review Board.

*Northern Territory Aboriginal Investment Corporation, various offices*

9. On 29 September 2022, the Minister for Indigenous Australians, the Hon Linda Burney MP wrote to the Tribunal seeking a determination of remuneration and travel tier for the offices of Chair and Member of the Board and committees of the Northern Territory Aboriginal Investment Corporation. The accompanying submission provided detail of the roles and responsibilities of each office.

*Australian Sports Commission, Member*

10. On 14 October 2022, the Department of Health advised the Tribunal's Secretariat that the Hon Hugh Delahunty was no longer a member of the Board of the Australian Sports Commission.

*Australia Business Arts Foundation, all offices*

11. On 23 September 2022, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts advised the Tribunal's Secretariat that the current name of the Australia Business Arts Foundation was Creative Partnerships Australia.

*Defence Force Advocate*

12. With the accession of King Charles III, those barristers previously appointed Queen's Counsel become King's Counsel. The special provision for the Defence Force Advocate is updated to refer to a King's Counsel. There was no consultation on this matter.

*Various part-time offices*

13. 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.
14. On 29 September 2022, Senator the Hon Katy Gallagher, Minister for the Public Service wrote to the Tribunal to rectify the anomaly with regards to a number of

part-time offices. The Minister advised the offices of Chair and Commissioner, National Mental Health Commission; Chair, Editorial Advisory Board; Chair and Member, Australian Commission on Safety and Quality in Health Care – Expert Committees; Member, Australia Council – Peer Assessment Panel; Chair and Member, Australia Council – Sector Strategy Panels; and Member (non-Board member), Australian National Maritime Museum Committee, are offices to which the provisions of the *Remuneration Tribunal Act 1973* should apply.

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

### **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 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.
18. With respect to the offices of the Northern Territory Aboriginal Investment Corporation, the retrospective application does not disadvantage any person as the provisions set remuneration and travel tier from the date the offices were established.

### **Exemption from sunseting**

19. 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*.
20. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.
21. 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 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**

22. 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:**

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

**SCHEDULE 1—AMENDMENTS**

**Part 1 – Main amendments**

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

28. Item 1 removes the provision for reunion travel assistance for Ms Natasha Griggs, former Administrator of Christmas and Cocos (Keeling) Islands in Table 5A.

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

29. Item 2 amends the reference to special provisions for the NDIA in Table 3A.
30. Item 3 removes the reference to a special provision for the Foreign Investment Review Board in Table 3A.
31. Item 4 sets the remuneration and travel tier for the offices of the Northern Territory Aboriginal Investment Corporation in Table 3A.
32. Item 5 amends the reference to special provisions for the Australian Sports Commission in Table 3A.
33. Item 6 changes the name of Australia Business Arts Foundation to Creative Partnerships Australia in Table 3A.
34. Item 7 sets the remuneration and travel tier for the offices of the Northern Territory Aboriginal Investment Corporation Investment Committee in Table 3A.
35. Item 8 sets the remuneration and travel tier for the offices of the Northern Territory Aboriginal Investment Corporation Audit and Risk Committee in Table 3A.
36. Item 9 amends the special provisions applying to the NDIA Sustainability Committee in Table 3B, to set person-specific remuneration for Dr Peta Seaton AM in her role on that committee.
37. Item 10 sets person-specific remuneration in Table 3B for the Hon Dr Denis Napthine AO in his role as Member of the NDIA Board.
38. Item 11 removes person-specific remuneration in Table 3B for the Hon Cheryl Edwardes and the Hon Hugh Delahunty who no longer hold appointments to the Foreign Investment Review Board and the Australian Sports Commission, respectively.

39. Item 12 replaces the term Queen’s Counsel with the term King’s Counsel in the special provision for the Defence Force Advocate in Table 4B.

## **Part 2 – Other amendments**

40. Item 13 repeals and sets the remuneration and travel tier for the National Mental Health Commission (Chair or Commissioner) in Table 4A.

41. Item 14 repeals and sets the remuneration and travel tier for the Australia Council, Sector Strategy Panels in Table 4A.

42. Item 15 repeals and sets the remuneration, travel tier and special provision for the Editorial Advisory Board in Table 4A.

43. Item 16 repeals and sets the remuneration and travel tier for the Australian National Maritime Museum – Committee (non-Board member) in Table 4A.

44. Item 17 repeals and sets the remuneration and travel tier for the Australia Council, Peer Assessment Panel Members in Table 4A.

45. Item 18 repeals and sets a special provision for the Editorial Advisory Board in Table 4B.

46. Item 19 repeals and inserts the Australian Commission on Safety and Quality in Health Care – Expert Committees into Table 4C.

## **Part 3 – Application of amendments**

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

47. Item 20 inserts a reference to application and transitional provisions in section 8.

48. Item 21 sets application and transitional provisions for the items associated with the Northern Territory Aboriginal Investment Corporation and the amendments made by Part 2 of Schedule 1 of the determination.

**Authority:** Sub-sections 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. 11) 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 2022; and*
- *Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination 2022.*

The determination:

- removes reunion travel assistance for Ms Natasha Griggs, former Administrator, Christmas and Cocos (Keeling) Islands;
- sets remuneration and travel tier for the offices of the Northern Territory Aboriginal Investment Corporation, its Investment Committee and its Audit and Risk Committee;
- updates the name of Australia Business Arts Foundation to Creative Partnerships Australia;
- amends the special provisions associated with the National Disability Insurance Agency to set reduced person-specific remuneration for Dr Peta Seaton AM in her role on the Sustainability Committee, in accordance with government policy and as acknowledged by Dr Seaton; and sets reduced person-specific remuneration for the Hon Dr Denis Napthine AO in his role as Member of the National Disability Insurance Agency Board, in accordance with government policy and as acknowledged by Dr Napthine;
- removes person-specific remuneration for the Hon Cheryl Edwardes, former member of the Foreign Investment Review Board;
- removes person-specific remuneration for the Hon Hugh Delahunty, former member of the Australian Sports Commission Board;
- updates the reference to Queen's Counsel to King's Counsel in the item associated with the Defence Force Advocate;
- repeals and re-establishes remuneration, travel tier and any associated special provisions for the offices of:
  - National Mental Health Commission (Chair or Commissioner);
  - Australia Council, Sector Strategy Panels;
  - Editorial Advisory Board;
  - Australian National Maritime Museum – Committee (non-Board member);
  - Australia Council, Peer Assessment Panel Members; and
  - Australian Commission on Safety and Quality in Health Care – Expert Committees.

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