



Remuneration Tribunal

Explanatory Statement: Remuneration Tribunal (Judicial and Related Offices – Remuneration and Allowances) Determination (No.1) 2023

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.

Review of Remuneration for Holders of Public Office

6. The Tribunal's obligations, under sub-sections 7(3) and 8(1)(b) of the Act are to make determinations in respect of remuneration for various offices within its jurisdiction at periods of not more than one year. To meet these obligations, the Tribunal issued determinations on 13 June 2022 and at that time determined a 2.75 per cent adjustment to remuneration for all offices in its jurisdiction.
7. In complying with its obligations to make new determinations the Tribunal takes the opportunity to consider whether any general increase to remuneration for offices might be warranted. In conducting this review the Tribunal takes account of economic conditions in Australia, past and projected movements in remuneration in the public and private sectors (including the Australian Public Service), as well as the outcomes of reviews of public offices completed by the Tribunal. In order to inform its conclusions the Tribunal draws upon authoritative external sources such as the published material available from the Government, the Reserve Bank of Australia and the Australian Bureau of Statistics as well as trends in public and private sector remuneration. The Tribunal is also obliged by the Act to consider the Annual Wage Reviews of the Fair Work Commission.
8. The Tribunal did not receive any submissions on this matter.
9. In order to meet its legislative obligations to make a decision by 12 June 2023, the Tribunal met on 8 June 2023 and decided to defer any adjustment in remuneration for offices in its jurisdiction. The Tribunal has agreed to meet again in August 2023 to consider further data, and to determine whether any adjustment is appropriate for offices within its jurisdiction. A statement setting out the Tribunal's reasons for decision is available at www.remtribunal.gov.au.
10. *Remuneration Tribunal (Judicial and Related Offices – Remuneration and Allowances) Determination (No.1) 2023* implements the Tribunal's decision for Judicial and Related Offices.
11. Consultation on this outcome was considered unnecessary given the matters considered by the Tribunal in making its decision.

Federal Circuit and Family Court of Australia (Division 2) - Recreation Leave

12. There was no consultation on this matter. The amendment removes a recreation leave arrangement for Judges of the Federal Circuit and Family Court of Australia (Division 2) which applied until the end of 2022.

Retrospectivity

13. 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.

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 makes new principal determinations annually, this principal determination is 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:

PART 1 – PRELIMINARY

18. Part 1 specifies the authority for and the commencement date of the determination and supersedes the previous principal *Remuneration Tribunal (Judicial and Related Offices - Remuneration and Allowances) Determination 2022* (as amended) applying to the offices covered by this determination. This Part also contains information about schedules and definitions of certain words used in the determination.

PART 2 – JUDICIAL OFFICERS

19. Division 1 outlines the application of Part 2, and the circumstances in which additional remuneration and benefits may be provided to judicial officers.
20. Division 2 sets the salary and allowances of judicial officers.
21. Division 3 sets out the conditions relating to the provision of car-with-driver service, private plated Commonwealth vehicles and reimbursement of private vehicle running costs to members of the Commonwealth judiciary.
22. Division 4 sets out the recreation leave and salary packaging conditions for Judges of the Federal Circuit and Family Court of Australia (Division 2). A special arrangement allowing a Judge of the Federal Circuit and Family Court of Australia (Division 2) to retain a recreation leave balance for use before end of 2022 has been removed.
23. The provisions of this Part remain otherwise unchanged from those contained in Part 2 of the previous determination.

PART 3 – FULL-TIME OFFICE HOLDERS

24. Division 1 outlines the application of Part 3.
25. Division 2 sets out the total remuneration (Table 3A) and other related matters for full-time office holders.
26. Division 3 sets out the superannuation arrangements and other related matters for full-time office holders, including superannuation salary for specific offices.

- 27. Division 4 sets out the entitlements for vehicles and other benefits for full-time office holders, including business support.
- 28. Division 5 sets out the entitlements for leave of absence and leave accrual for full-time office holders.
- 29. The provisions of this Part remain otherwise unchanged from those contained in Part 3 of the previous determination.

PART 4 – PART-TIME OFFICE HOLDERS

- 30. Division 1 outlines the application of Part 4.
- 31. Division 2 sets out the Daily fees and travel tier (Table 4A), remuneration packaging and other related matters for part-time office holders.
- 32. Division 3 sets out the Annual fees (Table 4B) and other related matters for AAT members.
- 33. The provisions of this Part remain otherwise unchanged from those contained in Part 4 of the previous determination.

PART 5 – OFFICIAL TRAVEL

- 34. Part 5 sets out the entitlements for travel and accommodation assistance for specified office holders.
- 35. The provisions of this Part remain unchanged from those contained in Part 5 of the previous determination.

SCHEDULE 1 – REPEALS

- 36. Schedule 1 specifies instruments which have been amended or repealed.

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

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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

The legislative instrument, or determination, formalises the Tribunal's review decision to defer any adjustment in remuneration for Judicial and Related Offices.

The determination supersedes the previous *Remuneration Tribunal (Judicial and Related Offices - Remuneration and Allowances) Determination 2022* (as amended).

The decision follows a review of remuneration (and significantly related matters) carried out by the Tribunal consistent with subsection 7(3) of the *Remuneration Tribunal Act 1973*.

In addition to formalising the Tribunal's review decision, a special arrangement allowing a Judge of the Federal Circuit and Family Court of Australia (Division 2) to retain a recreation leave balance for use before end of 2022 has been removed.

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

