



## Remuneration Tribunal

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### **Explanatory Statement: Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination (No.2) 2023**

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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.

#### *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 8 June 2023, and at that time determined no adjustment to remuneration for all offices in its jurisdiction.

7. The Tribunal noted in its published statement of the same date, that it would meet again in August 2023 to consider further data, and determine whether any adjustment in remuneration is appropriate for offices within its jurisdiction.
8. In complying with its obligations 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.
9. The Tribunal did not receive any submissions on this matter.
10. On 28 August 2023 the Tribunal decided to determine a general adjustment of 4 per cent to remuneration for public offices in its jurisdiction. The increase applies with effect from 1 July 2023 for all offices except Federal Members of Parliament, which applies with effect from 1 September 2023.
11. A statement setting out the Tribunal's reasons for decision is available at [www.remtribunal.gov.au](http://www.remtribunal.gov.au).
12. Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination (No.2) 2023 formalises the Tribunal's decision for Part-time Public Offices.
13. Consultation on this outcome was considered unnecessary given the matters considered by the Tribunal in making its decision.

#### *Amendments relating to the Australia Council*

14. On 6 July 2023, the Hon Tony Burke MP, Minister for the Arts, wrote to the Tribunal seeking a determination of remuneration for the offices of Creative Australia. Creative Australia replaced the Australia Council as the Australian Government's principal arts investment, development and advisory body with effect from 24 August 2023. It is established by the *Creative Australia Act 2023* and associated transitional legislation. The request was accompanied by a submission outlining the roles and responsibilities of each office and the qualities and capabilities required of office holders.
15. Remuneration Tribunal Amendment Determination (No.5) 2023 set remuneration for the new offices of Creative Australia, and changed a number of existing Australia Council offices consistent with the *Creative Australia Act 2023* with effect from 24 August 2023, including removing the offices of Creative Partnerships Australia and the Australia Council Peer Assessment Panels which cease to exist. Noting the general adjustment takes effect from 1 July 2023, this

determination provides for the offices of the Australia Council for the period 1 July 2023 to 23 August 2023.

### **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 application of the general adjustment of 4 per cent for all offices (including those of the Australia Council), retrospective application does not disadvantage any person as it establishes more generous remuneration entitlements than would otherwise apply.

### **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, this principal determination is 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:**

#### **PART 1 – PRELIMINARY**

22. Part 1 specifies the authority for and the commencement date of the determination and supersedes the previous principal Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination (No.1) 2023 (as amended) applying to the offices covered by this determination. This Part also contains definitions of certain words used in the determination.

#### **PART 2 – GENERAL PROVISIONS**

23. Part 2 sets the general provisions and other related matters.
24. The provisions of this Part remain otherwise unchanged from those contained in Part 2 of the previous determination.

### **PART 3 – ANNUAL FEES**

25. Part 3 sets out the remuneration for offices on annual fees and other related matters (such as special provisions for certain offices).
26. Sets remuneration for the offices of Australia Council in Table 3A until 23 August 2023.
27. References Australia Council in addition to the Australia Council Board in special provisions in Table 3B.
28. The provisions of this Part otherwise remain unchanged from those contained in Part 3 of the previous determination, as amended.

### **PART 4 – DAILY FEES**

29. Part 4 sets out the remuneration for offices on daily fees, conditions of payment for the daily fees and other related matters for specific offices (such as special provisions for certain offices).
30. Sets remuneration for the offices of Australia Council, Sector Strategy Panels in Table 4A until 23 August 2023.
31. The provisions of this Part otherwise remain unchanged from those contained in Part 4 of the previous determination, as amended.

### **PART 5 – ANNUAL MEETING FEES AND ADDITIONAL DAILY FEES**

32. Part 5 sets out remuneration for offices on this fee structure, conditions of payment for the annual meeting and additional fees and other related matters for specific offices (such as special provisions for certain offices).
33. The provisions of this Part remain unchanged from those contained in Part 5 of the previous determination, as amended.

### **PART 6 – BASE FEES AND MEETING FEES**

34. Part 6 sets out the remuneration for offices on this fee structure, conditions of payment for the base fee and meeting fees and other related matters for specific offices (such as special provisions for certain offices).
35. The provisions of this Part remain unchanged from those contained in Part 6 of the previous determination.

### **PART 7 – ABORIGINAL LAND COUNCILS FEES**

36. Part 7 sets out the conditions of payment for fees to the Aboriginal Land Councils and other related matters (such as special provisions for certain offices).
37. The provisions of this Part remain unchanged from those contained in Part 7 of the previous determination.

### **SCHEDULE 1 – REPEALS**

38. Schedule 1 specifies instruments which have been amended or repealed.

**Authority:** Sub-sections 7(3) and 7(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 (Remuneration and Allowances for Holders of Part-time Public Office) Determination (No.2) 2023**

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 determine an adjustment of 4 per cent to remuneration for Part-time Public Offices from 1 July 2023. Additionally, the determination:

- Sets remuneration for the offices of Australia Council in Table 3A until 23 August 2023;
- References Australia Council in addition to the Australia Council Board in special provisions in Table 3B; and
- Sets remuneration for the offices of Australia Council, Sector Strategy Panels in Table 4A until 23 August 2023.

The determination supersedes the previous Remuneration Tribunal (Remuneration and Allowances for Holders of Part-time Public Office) Determination (No. 1) 2023 (as amended).

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

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**