



REMUNERATION TRIBUNAL

Explanatory Statement: Determination 2017/09

Judicial and Related Offices – Remuneration and Allowances

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 members of Parliament, Judges of Federal Courts, most full-time and part-time holders of public offices including Specified Statutory Offices and Principal Executive Offices.

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.

Annual review

6. The Tribunal has an obligation, under sub-sections 7(1), (2), (3) and 8(1) of the Act to make determinations in respect of remuneration for various offices within its jurisdiction at periods of not more than one year. In meeting this obligation the Tribunal decides whether any general adjustment to remuneration should occur. The Tribunal issued determinations in December 2016 and at that time made no general adjustments to remuneration.

7. In considering whether any general adjustment should occur the Tribunal takes account of a range of economic conditions in Australia, including trends in public and private sector remuneration. 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. It is obliged by the Act also to consider the Annual Wage Reviews of the Fair Work Commission. The Commission's 2017 decision was released on 6 June 2017.
8. The Tribunal did not receive any submissions on this matter.
9. On 22 June 2017 the Tribunal notified its decision to increase remuneration by 2 per cent for public offices in its jurisdiction with effect from 1 July 2017. A statement setting out the Tribunal's reason for decision is available at www.remtribunal.gov.au.
10. Determination 2017/09 implements the Tribunal's decision for Judicial and Related Offices.
11. Consultation on these amendments was considered unnecessary given the matters considered by the Tribunal in making its decision.

Administrative Appeals Tribunal

12. There was no consultation on this matter as the amendment removes a travel condition applying to the former President whose term of appointment has ceased. The Attorney-General press release of 15 May 2017 confirms cessation of the appointments.

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.

The power to repeal, rescind and revoke, amend and vary

14. 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 – GENERAL

15. Part 1 specifies the authority for and commencement date of the determination and supersedes and revokes the previous principal Determination 2016/17 (as amended) applying to the offices covered by this determination.
16. The provisions in Part 1 are unchanged from those contained in Part 1 of the superseded determination.

PART 2 – REMUNERATION AND RELATED MATTERS

17. Part 2 sets out the remuneration and related matters for judicial and related offices specified in Table 1 (Rates of Remuneration – Judicial Offices), Table 2A (Full-Time Salary and Part-Time Daily Fees – Non-Judicial Offices), Table 2B (Annual Fees – Part-Time Non-Judicial Offices).
18. The Salary figures in Tables 1, 2A and 2B have been increased by 2 per cent, rounded.
19. The commencement date is 1 July 2017 in each Table.
20. Other provisions in Part 2 remain unchanged from those contained in Part 2 of the superseded determination.

PARTS 3 – 4

21. Parts 3 and 4 set out the conditions:

- governing official travel and related matters for judicial and related offices which are contained in Determination 2016/07 (or any Determination that supersedes 2016/07); and
- relating to provision of car-with-driver service, privately plated Commonwealth vehicles and reimbursement of private vehicle running costs to members of the Commonwealth judiciary.

22. Clause 3.5 relating to the Hon Justice Duncan Kerr Chev LH President of the Administrative Appeals Tribunal has been removed. Justice Kerr's term has expired.

PART 5 – PROVISIONS FOR OFFICES ON TOTAL REMUNERATION

23. Part 5 sets out the remuneration (Table 3) and related arrangements applying to offices where Total Remuneration has been determined. The rates of remuneration in Table 3 have been increased by 2 per cent, rounded.

24. Clause (2) to Table 3 increases the personal remuneration for the Chief Executive Officer of the Family Court of Australia by 2 per cent.

25. The other provisions in Part 5 are unchanged from those contained in Part 5 of the superseded determination.

PART 6 – TRANSITIONAL ARRANGEMENTS FOR AAT MEMBERS COVERED BY SCHEDULE 9 OF THE *TRIBUNALS AMALGAMATION ACT 2015* (the Amending Act)

26. Part 6 includes transitional arrangements for AAT members covered by the transitional arrangements of Schedule 9 of the *Tribunals Amalgamation Act 2015*. The Full-Time Salary and Part-time Daily Fees in Table 4 have been increased by 2 per cent, rounded.

27. The other changes to Part 6 include changing the Determination numbers to reference the new Principal Determination numbers.

Authority: Subsections 7(3), 7(4) and 7(4B)
of the *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, applies the Tribunal's 2017 annual review decision of a 2 per cent remuneration increase (rounded as appropriate) to the remuneration of judicial and related office holders from 1 July 2017.

The determination supersedes and revokes in full the previous *Determination 2016/17 Judicial and Related Offices – Remuneration and Allowances*.

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

The determination

- deletes a reference to the Hon Justice Duncan Kerr Chev LH as his term as President of the AAT has ceased.

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.

Remuneration Tribunal