



REMUNERATION TRIBUNAL

Explanatory Statement: Remuneration Tribunal (Judicial and Related Offices – Remuneration and Allowances) Amendment Determination 2018

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.

Part-time Administrative Appeals Tribunal (AAT) members

6. The Tribunal consulted with the heads of the Federal Courts and other authorities in finalising its Review of Judicial and Related Offices. As part of this consultation, the Tribunal received a request from the President of the AAT, the Hon Justice D G Thomas, to remove footnote 5 to Table 2A in *Determination 2017/09: Judicial and Related Offices – Remuneration and Allowances* which provided a minimum annual payment of 5 times the daily fee for particular office holders subject to certification that work was not available. The provisions provide a transition period for the new arrangements.

Minor drafting changes

7. These changes correct a minor drafting error and amend a table heading for clarity. Consultation on these amendments was considered unnecessary.

Retrospectivity

8. 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

9. 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 – NAME

10. Part 1 specifies the name of the instrument.

PART 2 – COMMENCEMENT

11. Part 2 specifies the commencement date of the instrument.

PART 3 – AUTHORITY

12. Part 3 specifies the authority for the instrument.

PART 4 – SCHEDULES

13. Part 4 outlines the effect of instruments specified in a Schedule to the instrument.

SCHEDULE 1 – AMENDMENTS

14. Section 1 amends the table item dealing with the Federal Circuit Court in section 21, by omitting the words "of the" from column 1.

15. Section 2 repeals the table heading in subsection 25(2):

"Table 3C - Superannuation salary for specified Part 3 office holders"

and substitutes it with;

"Table 3C – Superannuation salary for the purposes of CSS, PSS, DFRDB and MSBS for specified Part 3 office holders".

16. Section 3 repeals subsection 38(5):

"(5) the minimum annual payment to the member is 5 times the amount of the daily fee in Table 4A that applies to the member"

and substitutes it with;

"(5) If the member was a member of the AAT on 1 August 2018, the minimum annual payment to the member, for the year ending on 31 December 2018, is 5 times the annual amount of the daily fee in Table 4A that applies to the member.

(6) Subsection (5) is subject to certification by the President of the AAT that work for the member was not available."

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

Remuneration Tribunal (Judicial and Related Offices – Remuneration and Allowances) Amendment Determination 2018

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 determination amends Principal Determination:

Remuneration Tribunal (Judicial and Related Offices – Remuneration and Allowances) Determination 2018.

The determination:

- removes superfluous words in the table item dealing with the Federal Circuit Court in section 21;
- amends the table heading to subsection 38(5) for clarity; and
- removes the minimum annual payment of 5 times the daily fee subject to certification that work was not available, for part-time AAT members appointed after 1 August 2018, and for all part-time AAT members from 1 January 2019.

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