



Remuneration Tribunal

Explanatory Statement: Remuneration Tribunal (Judicial and Related Offices – Remuneration and Allowances) Determination (No.2) 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 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. On 18 August 2023, the Tribunal received a submission from a member of the public. The submission provided the view that remuneration for judicial offices should be increased by at least a 5 per cent.
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.
12. Remuneration Tribunal (Judicial and Related Offices – Remuneration and Allowances) Determination (No.2) 2023 implements the Tribunal's decision for Judicial and Related Offices.
13. Consultation on this outcome was considered unnecessary given the matters considered by the Tribunal in making its decision.

Travel allowance and vehicle expenses

14. There was no consultation on this matter as it is the Tribunal's practice to review, each year, the travel and motor vehicle allowances applicable to office holders for which it determines remuneration. Remuneration Tribunal (Official Travel) Determination 2023 applies the majority of the Tribunal's decisions arising from its review. This determination implements travel-related decisions of the Tribunal peculiar to judicial offices.
15. The allowance for official travel to Canberra is a payment made in lieu of travelling allowance to Justices of the High Court who do not establish a place of residence in Canberra. The Tribunal has adjusted this amount consistent

with the Canberra rate of travel specified in Taxation Determination TD 2023/3: Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2023–24 income year?

16. The maximum reimbursement for private vehicle running costs for certain judicial officers is adjusted by the movement in the transport component of the Consumer Price Index for the period since the Tribunal's last increase (2022) to March 2023.
17. Amongst other things the Australian Taxation Office (ATO) determination sets out the amounts that the Commissioner of Taxation considers are reasonable for the substantiation exception in Subdivision 900-B of the *Income Tax Assessment Act 1997* for the 2023–24 income year in relation to claims made by employees for domestic travel expenses and overseas travel expenses.
18. TD 2023/3 (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953* and is available online at <https://www.ato.gov.au/law/view/pdf/pbr/td2023-003.pdf>.

Retrospectivity

19. 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.
20. With respect to the application of the general adjustment of 4 per cent for all offices, retrospective application does not disadvantage any person as it establishes more generous remuneration entitlements than would otherwise apply.

Exemption from sunseting

21. 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*.
22. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.
23. 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

24. 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

25. 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 (No.1) 2023 (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.
26. The maximum reimbursement amount for private vehicle running costs in paragraphs 12(1)(b), (2)(b) and (3)(b) has been amended.
27. The value of the allowance in lieu of travelling allowance in Canberra in subsection (40)(1) has been amended.
28. In accordance with section 7(5C) of the Act, these amendments are only to be implemented once the determination passes the parliamentary disallowance period.
29. The provisions of this Part otherwise remain otherwise unchanged from those contained in Part 1 of the previous determination.

PART 2 – JUDICIAL OFFICERS

30. Division 1 outlines the application of Part 2, and the circumstances in which additional remuneration and benefits may be provided to judicial officers.
31. Division 2 sets the salary and allowances of judicial officers.
32. 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.
33. 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.
34. The provisions of this Part remain otherwise unchanged from those contained in Part 2 of the previous determination.

PART 3 – FULL-TIME OFFICE HOLDERS

35. Division 1 outlines the application of Part 3.
36. Division 2 sets out the total remuneration (Table 3A) and other related matters for full-time office holders.
37. Division 3 sets out the superannuation arrangements and other related matters for full-time office holders, including superannuation salary for specific offices.
38. Division 4 sets out the entitlements for vehicles and other benefits for full-time office holders, including business support.
39. Division 5 sets out the entitlements for leave of absence and leave accrual for full-time office holders.

40. The provisions of this Part remain otherwise unchanged from those contained in Part 3 of the previous determination.

PART 4 – PART-TIME OFFICE HOLDERS

41. Division 1 outlines the application of Part 4.

42. Division 2 sets out the Daily fees and travel tier (Table 4A), remuneration packaging and other related matters for part-time office holders.

43. Division 3 sets out the Annual fees (Table 4B) and other related matters for AAT members.

44. The provisions of this Part remain otherwise unchanged from those contained in Part 4 of the previous determination.

PART 5 – OFFICIAL TRAVEL

45. Part 5 sets out the entitlements for travel and accommodation assistance for specified office holders.

46. The provisions of this Part remain unchanged from those contained in Part 5 of the previous determination.

SCHEDULE 1 – REPEALS

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

Authority: Sub-sections 7(3), (3AA), (4) and (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 determine an adjustment of 4 per cent to remuneration for Judicial and Related Offices with effect from 1 July 2023.

The determination supersedes the previous Remuneration Tribunal (Judicial and Related Offices - Remuneration and Allowances) Determination (No.1) 2023 (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, the determination:

- amends the maximum reimbursement amount for private vehicle running costs for certain judicial offices; and
- amends the amount of the annual allowance paid in lieu of travelling allowance to Canberra for certain judicial offices.

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