

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

REMUNERATION AND ALLOWANCES LEGISLATION AMENDMENT BILL 1992

**EXPLANATORY MEMORANDUM**

(Circulated by authority of the Minister for Industrial Relations,  
Senator the Hon. Peter Cook)





## **REMUNERATION AND ALLOWANCES LEGISLATION AMENDMENT BILL 1992**

### **OUTLINE**

This Bill alters the salaries of members of the Australian Industrial Relations Commission (AIRC) and senior officers of Commonwealth universities. It also makes a wider range of persons eligible to be appointed Chairman of the Remuneration Tribunal.

### **AIRC**

The salaries of members of the AIRC will be tied to the salaries of Federal Court Judges. The President will receive the same salary as the Chief Justice. The Vice President will receive 103% of a Judge's salary. Senior Deputy Presidents will receive the same salary as a Judge. Deputy Presidents will receive 95% of a Judge's salary. Commissioners will receive 70% of a Deputy President's salary. These are the salary relativities recommended by the Review of the AIRC (the Gleeson Committee).

The Bill will override the Remuneration Tribunal's decision to give Deputy Presidents the same salary as Federal Court Judges, and to give Commissioners 70% of that salary.

There is to be no retrospective reduction of salaries.

### **Universities**

The Bill reduces the salaries set by the Remuneration Tribunal for the Vice-Chancellors and Deputy Vice-Chancellors of the Australian National University and the University of Canberra. The reduction of salary is not retrospective.

### **Chairman of the Remuneration Tribunal**

The Bill removes the existing requirement that only a Judge or retired Judge of a State court, or a person qualified for appointment as a Judge of a State court, can be appointed as Chairman of the Remuneration Tribunal.

### **Minor Amendments**

The Bill makes several minor clarifications and corrections of existing legislation concerning remuneration.

### **FINANCIAL IMPACT STATEMENT**

The Bill will have no significant impact on Commonwealth expenditure.

## **NOTES ON CLAUSES**

### **PART 1 - PRELIMINARY**

#### **Clause 1 - Short Title**

1.1 The Act is to be called the *Remuneration and Allowances Legislation Amendment Act 1992*.

#### **Clause 2 - Commencement**

2.1 The Act is to commence on the day on which it receives Royal Assent, except that provisions clarifying and correcting earlier legislation are to be taken to have commenced when that earlier legislation commenced. This is explained in detail in the notes on the relevant substantive clauses of the Bill.

### **PART 2 - AMENDMENT OF THE INDUSTRIAL RELATIONS ACT 1988**

#### **Clause 3 - Principal Act**

3.1 This is a formal provision which allows the *Industrial Relations Act 1988* to be referred to in this Part of the Bill as the "Principal Act".

#### **Clause 4 - Performance of duties on part-time basis**

4.1 This clause amends section 12 of the *Industrial Relations Act* so that a part-time member of the Australian Industrial Relations Commission will receive the appropriate proportion of full-time salary.

4.2 These are consequential amendments flowing from the Government's decision that the salaries of members of the Commission are to be fixed by reference to Federal Court salaries, rather than be determined separately by the Remuneration Tribunal.

4.3 The existing subsection 12(1) provides that a member of the Australian Industrial Relations Commission may, with the consent of the President, perform his or her duties on a part-time basis. Subsection 12(1) is to remain in the Act.

4.4 The new subsection 12(2) will require that the President and the member specify, in an agreement, what proportion of full-time duties the part-time member is to work. The member will then be paid that same proportion of the full-time salary [paragraph 12(2C)(a)].

4.5 Clause 11 of the Bill allows an existing agreement to have effect as if made under this new subsection 12(2).

4.6 Subsection 12(2E) will give a part-time member the benefit of a retrospective salary increase. The mechanism adopted to implement this is explained in paragraphs 5.9 to 5.13 and paragraph 6.4 of these notes.

4.7 Clause 4 also repeals the existing subsection 12(2) of the Act, which provides for the Remuneration Tribunal to determine the remuneration of part-time members.

**Clause 5 – Remuneration and allowances of Presidential Members, etc.**

5.1 This clause alters the remuneration of Presidential Members of the Australian Industrial Relations Commission.

***The new salaries: proposed subsections 21(1) – (2B)***

5.2 Clause 5 substitutes into the *Industrial Relations Act* new provisions by which salaries of Presidential Members will be tied to Federal Court salaries.

5.3 The President will receive the same salary as the Chief Justice of the Federal Court [subsection 21(1)].

5.4 The Vice President will receive 103% of the salary of a Federal Court Judge [subsection 21(2)].

5.5 Senior Deputy Presidents will receive the same salary as a Federal Court Judge [subsection 21(2A)].

5.6 Deputy Presidents will receive 95% of the salary of a Federal Court Judge [subsection 21(2B)].

5.7 These provisions will give Presidential Members the automatic benefit of any increase of Federal Court salaries. The Remuneration Tribunal will continue to set Federal Court salaries; when the Tribunal decides to increase Federal Court salaries its determinations will also have the effect of increasing Presidential Members' salaries.

***Allowances : proposed subsections 21(1) – (2B)***

5.8 Allowances for Presidential Members are to be set by regulation. Until these regulations come into force, existing entitlements to allowances continue in force [clause 9 provides for this].

***Lump Sum Payments : proposed subsections 21(2D) – (2G)***

5.9 Clause 5 also inserts into the *Industrial Relations Act* provisions which give Presidential Members the benefit (pro rata) of the lump sum payments received by the Chief Justice and Judges of the Federal Court when an increase in judicial salaries comes into operation later than the date set by the Remuneration Tribunal.

***Existing deferral of salary increases for Judges***

5.10 Provisions already in the *Remuneration Tribunal Act 1973* defer the operation of a Federal Court salary increase until each House of the Parliament has had 15 sitting days within which to pass a resolution "disapproving of" (in substance, disallowing) the determination made by the Remuneration Tribunal giving the salary increase. These provisions are set out at paragraph 5.27 of these notes. They were included in the *Remuneration Tribunal Act* because of the constitutional requirement that the remuneration of a federal Judge not be diminished.

5.11 Subsection 7(5E) of the *Remuneration Tribunal Act* provides that when the judicial salary increase comes into operation (ie, after the 15 sitting days have passed), the Judges are entitled to a lump sum payment equivalent to the increased salary denied to the Judges by this deferral of the operation of the Remuneration Tribunal's decision.

5.12 In substance (but not in form), what the Judges receive is a back payment of a salary increase.

***Flow-on to Presidential Members***

5.13 To maintain the intended ratios between the salaries of Federal Court Judges and the salaries of Presidential Members of the Commission, it is necessary that Presidential Members also be given the full benefit of any judicial salary increase. This requires that Presidential Members receive this benefit for the same period for which Judges receive it. Presidential Members will receive what will be, in substance, a back payment of a salary increase from the same date from which the Remuneration Tribunal will have decided that Federal Court Judges are to receive the benefit of that salary increase. Proposed subsections 21(2D), (2E), (2F) and (2G) provide for this.

***Former members of the Commission***

5.14 Proposed subsections 21(2D), (2E), (2F) and (2G) refer to Presidential Members and "former" Presidential Members of the Commission. This is so that the entitlement to what is, in substance, a retrospective payment of a salary increase will be available to a member who retires from the Commission after the substantive date of effect for the salary increase but before it comes into

operation. At the time these new provisions of the Act will be applied by reference to that salary increase, such a person will have become a former member.

5.15 For example, if the Remuneration Tribunal were to make a determination increasing Federal Court Judges' salaries, expressed to have effect from 1 June 1993, that determination might not come into operation until, say, 1 September 1993 (being 15 sitting days after it is tabled in each House). If a Judge of the Federal Court retired on 1 July 1993, he or she would be entitled to a lump sum payment representing the difference between the actual salary received for June and the salary that would have been payable for June if the operation of the Remuneration Tribunal's determination had not been deferred by statute to allow the possibility of disallowance. The source of the former Judge's entitlement would be subsection 7(5E) of the *Remuneration Tribunal Act*. A Senior Deputy President of the Commission who retired on 1 June 1993 would be given the same entitlement by proposed subsection 21(2F).

***Comparison with existing salaries and with the salaries determined by the Remuneration Tribunal***

***President***

5.16 The President's annual salary is now \$143,789 (the amount set by the Parliament in June 1990).

5.17 At the time of introduction of this Bill, the Chief Justice's salary is \$152,416. However, the Remuneration Tribunal has made a determination increasing the Chief Justice's salary with effect from 15 August 1991; this is an increase of 2½% in accordance with the National Wage Case. That determination (No.21 of 1991) is being tabled in both Houses on 2 April 1991. It will come into force 15 sitting days after it is tabled in each House, if neither House of Parliament passes a resolution disapproving the determination. If (as the Government intends) each House allows the judicial salary increases in Determination No.21 to come into force, that determination will also have the effect of increasing the President's salary to what would then be the Chief Justice's new salary of \$156,226.

5.18 The President will be entitled to a lump sum payment, in substance backdating the salary of \$152,416 to 1 January 1991 and (if the Parliament allows Determination No.21 of 1991 to come into operation) backdating the further salary increase to 15 August 1991. The basis for the lump sum payment is explained in the notes on clause 8. It will give the President the same remuneration as the Chief Justice.

***Deputy Presidents***

5.19 Each Deputy President's annual salary is now \$131,734 (the amount set by the Parliament in June 1990).

5.20 At the time of introduction of this Bill, the salary of a Federal Court Judge is \$139,638. 95% of this is \$132,656. Deputy Presidents will receive the benefit of this increase backdated (in substance) to 1 January 1991. If the Parliament allows the Remuneration Tribunal's Determination No.21 of 1991 to come into force in relation to Federal Court Judges (as explained above in the notes on the President's salary, paragraph 5.17), Deputy Presidents would receive the benefit of the salary increase given to the Judges by that determination. The salary of a Deputy President would then be \$135,972 (in substance, backdated to 15 August 1991 by a lump sum payment, as explained in paragraph 8.3).

5.21 In explaining the effect that this clause would have on the existing salary of Deputy Presidents, it is necessary to take account of recent determinations of the Remuneration Tribunal (Nos.19 and 21 of 1991, confirmed by No.1 of 1992) which would increase the salaries of Deputy Presidents if they come into operation before this Bill receives Royal Assent. Those determinations are being tabled in each House on 2 April 1992; they do not come into force – in relation to Presidential Members – until 15 sitting days of each House after they are tabled in that House. If either House passes a resolution "disapproving of" the determinations (in substance, disallowing them) they will never come into force in relation to Presidential Members.

5.22 If this Bill receives Royal Assent without those determinations first coming into force (and this is what the Government intends), one effect of this Bill will be that the increases in the salaries of Presidential Members of the Commission directly provided by the Remuneration Tribunal in those recent determinations will never come into force.

***Salaries of Part-time Presidential Members***

5.23 The existing subsection 21(6) of the *Industrial Relations Act* provides that section 21 has effect subject to section 12. Subsection 21(6) will apply to the new provisions inserted in section 21 by this clause. Section 12 provides for members of the Commission to arrange with the President to work part-time. The existing subsection 21(6) will therefore continue to have the effect that any part-time Presidential Member is not entitled to a full-time salary.

***The old provisions***

5.24 Clause 5 repeals existing subsections 21(1), (2) and (2A) of the *Industrial Relations Act*. Those subsections provide that the Presidential Members are to be paid such remuneration as is determined by the Remuneration Tribunal and are to receive travelling allowances at the same rates as Federal Court Judges (for the President, at the same rates as the Chief Justice of the Federal Court).



**Definition of "the Court"**

5.25 The provisions inserted into the *Industrial Relations Act* by this clause refer to "the Court"; that phrase is defined in the existing subsection 4(1) of that Act to mean the Federal Court.

**Subsection 7(5E) of the Remuneration Tribunal Act**

5.26 As clause 5, and several subsequent provisions of this Bill, apply by reference to subsection 7(5E) of the *Remuneration Tribunal Act* it is convenient to set out here the text of that subsection and the surrounding subsections needed to understand it. The surrounding subsections give a deferred effect to increases in the salary of Judges and those with the status of Judges (this includes Presidential Members but not Commissioners)

5.27 Subsections 7(5) – (5F), and 7(8), of the *Remuneration Tribunal Act* provide as follows:

- \* (5) Subject to subsection (5A), a determination of the Tribunal shall be in writing and shall come into operation, or shall be deemed to have come into operation, on such date as the Tribunal specifies in the determination.
- (5A) A determination to which this subsection applies comes into operation according to subsections (5C) and (5D).
- (5B) Subsection (5A) applies to a determination that relates to the remuneration to be paid to a holder of:
  - (a) an office of Justice or Judge of a Federal Court or of the Supreme Court of a Territory; or
  - (b) the office of a person who, under an Act, has the same status as a Justice or Judge of a court referred to in paragraph (a).
- (5C) So far as it relates to a holder of an office referred to in subsection (5B), a determination to which subsection (5A) applies takes effect on the latest of the following:
  - (a) the date specified by the Tribunal in the determination;
  - (b) the day after the fifteenth sitting day of the House of Representatives after a copy of the determination is laid before that House;

- (c) the day after the fifteenth sitting day of the Senate after a copy of the determination is laid before the Senate.
- (5D) Except to the extent that subsection (5C) applies, a determination to which subsection (5A) applies takes effect according to subsection (5).
- (5E) Where, under subsection (5C), a determination, so far as it relates to a particular office, comes into operation after the date specified in the determination, a person who held the office at any time during the period of deferral is entitled to receive the difference between:
  - (a) the remuneration that would have been payable to him or her in respect of that period if the determination had come into operation according to subsection (5); and
  - (b) the remuneration that was payable to him or her in respect of that period.
- (5F) For the purposes of subsection (5E), the period of deferral is the period commencing on the date specified in the determination and ending on the day on which the determination comes into operation in relation to the holder of the particular office.
- ...
- (8) If either House of the Parliament, within 15 sitting days of that House after a copy of a determination has been laid before that House, passes a resolution disapproving of the determination, then –
  - (a) if the determination has not come into operation – the determination shall not come into operation; or
  - (b) if the determination has come into effect – the determination shall not have any force or effect in respect of a period on or after the day on which the resolution was passed. "

***Clause 6 – Remuneration and Allowances of Commissioners***

6.1 Clause 6 substitutes a new section 23 of the *Industrial Relations Act* which gives Commissioners a salary of 70% of a Deputy President's salary.

6.2 The new section 23 also provides for allowances to be prescribed by regulation. Until regulations are made, existing entitlements to allowances will continue to apply [this is the effect of clause 9].

6.3 Clause 6 repeals the old section 23 which provides for Commissioners to be paid such remuneration as is determined by the Remuneration Tribunal.

***Lump Sum Payments : proposed subsection 23(3)***

6.4 An increase in the salary of Federal Court Judges would automatically increase the salary of Commissioners. The new subsection 23(3) gives Commissioners an entitlement to a lump sum payment when the operation of an increase in Federal Court salary is deferred. This is to maintain the set proportionality between the salary of a Commissioner and the salary of a Federal Court Judge. Any lump sum payment under this provision will be, in substance, a back payment of a salary increase. This is explained in paragraphs 5.9 to 5.13.

***Part-time Commissioners : proposed subsection 23(4)***

6.5 The new subsection 23(4) provides that section 23 has effect subject to section 12. Section 12 provides for members of the Commission to arrange with the President to work part-time. The effect of subsection 23(4) is to make it clear that any Commissioner who works part-time is not entitled to a full-time salary.

***Comparison with existing salary***

6.6 Before the Remuneration Tribunal made the determinations which this Bill will override, the annual salary for a Commissioner was \$92,214. The intended practical effect of clause 6 is that the salary will become \$95,180.

6.7 The new salary will be 70% of the new salary for a Deputy President; it will therefore be 70% of 95% of whatever salary is then in force for a Federal Court Judge. If (as the Government intends) neither House of Parliament passes a resolution disapproving of the Remuneration Tribunal's Determination No.21 of 1991, the salary of a Federal Court Judge would become \$143,129 [this is explained in paragraphs 5.17 and 5.20]. The annual salary of a Commissioner would then become \$95,180.

6.8 The Remuneration Tribunal had decided that the salary of Commissioners should be 70% of the salary of Deputy Presidents. The Bill preserves this ratio.

6.9 The Remuneration Tribunal's decision to give Deputy Presidents the same salary as Federal Court Judges, and to give Commissioners 70% of that salary, took immediate effect for Commissioners but not for Deputy Presidents.

This is because of subsection 7(5E) of the *Remuneration Tribunal Act* [see paragraphs 5.26 and 5.27 of these notes]. Therefore Commissioners already enjoy the benefit of the salary increase. Each Commissioner's annual salary is therefore already \$100,190, the amount set by the Remuneration Tribunal, being 70% of the salary set by the Tribunal for Federal Court Judges. The effect of the Bill will be to reduce Commissioners' salaries, but not by as much as they would be reduced if either House disallowed the Remuneration Tribunal's determinations.

**Clause 7 – Appropriation for payment of certain salaries and allowances**

7.1 This clause amends section 358 of the *Industrial Relations Act*, which provides that the Consolidated Revenue Fund is appropriated to the extent necessary for payment of salaries and allowances under section 21. Because of the amendments made by other clauses of this Bill, section 21 will no longer be the only section under which payments will be due to members of the Australian Industrial Relations Commission. Also, not all the payments that will be due under the new provisions would be within the existing phrase "salary and allowances". The amounts that will be payable to compensate for deferral of an increase in Judges' salaries (as explained in the notes on clauses 5 and 6) will not be "salary or allowances".

7.2 Therefore the amended section 358 will refer to "salary, allowances and other amounts", and will refer to all the sections under which amounts will now become payable to members of the Commission.

**Clause 8 – Transitional – salaries for Presidential Members**

8.1 Clause 8 gives Presidential Members of the Australian Industrial Relations Commission the retrospective benefit of the new salaries, for the period from 1 January 1991. It will be as if, since 1 January 1991, Deputy Presidents were entitled to 95% of Federal Court Judges' salaries, except that this retrospectivity can operate only to increase, not decrease, the salary.

8.2 In substance, the salaries of Deputy Presidents for that period will be made higher than they were at the time (and are now), but not so high as they would be if the recent determinations of the Remuneration Tribunal were allowed to come into force.

8.3 Clause 8 will give Deputy Presidents a lump sum of the difference between their actual annual salary from 1 January 1991 (\$131,734) and the salary that would have been applicable if their salary had then been fixed as 95% of a Federal Court Judge's salary. At present, 95% of a Federal Court Judge's salary for that period would be \$132,663. If (as the Government intends) each House of the Parliament allows Federal Court salaries to be increased by the Remuneration

Tribunal's Determination No.21 with – in effect – retrospective effect to 15 August 1991, Deputy Presidents will also have the same retrospective benefit of this National Wage Case increase. The retrospective effect of the deferred salary increase given to Federal Court Judges by Determination No. 21 is explained in paragraphs 5.17 and 5.20.

8.4 Clause 8 gives the President the same retrospective benefit he would receive if the Remuneration Tribunal's decisions took effect, ie, the same salary (and the same payments in lieu of salary) as the Chief Justice of the Federal Court.

***Retrospective salary increase for part-time Presidential Member***

8.5 Clause 8 gives a part-time Deputy President the same retrospective benefit (pro rata) as is given to full-time Deputy Presidents. This effect follows from the effect which clause 8 gives to the determinations that have been made by the Remuneration Tribunal setting part-time remuneration for the period from 1 January 1991. Those determinations gave a part-time member the relevant proportion of the relevant full-time salary.

***Subclause 8(1) – Special payment where retrospectivity to 1 January 1991 would have worked to the financial advantage of a Presidential Member***

8.6 Subclause 8(1) gives an entitlement to the amount by which "notional salary" is greater than "actual salary". "Notional salary" is defined in subclause 8(2). "Actual salary" is defined in subclause 8(4). Subclause 8(1) refers to the "interim period"; this is defined in subclause 8(5) to mean the period from 1 January 1991 until this Bill receives Royal Assent.

***Subclause 8(2) – Notional salary payable in respect of the interim period***

8.7 The notional salary is what the Presidential Member would have been paid, for the period between 1 January 1991 and Royal Assent, if his or her salary had then been 95% of a Federal Court Judge's salary (or, in the case of the President, if his salary had then been set as equivalent to the Chief Justice's salary).

8.8 In this context, "salary" includes payments which are in substance backpayments of a salary increase. The Remuneration Tribunal has already given the President an entitlement to the same actual salary as the Chief Justice for that period. However, the reference to the President in subclause 8(2) is necessary so that the President will be entitled to the same backpayment as the Chief Justice when the Chief Justice's salary is increased with an effect that is retrospective in substance although not in form. The retrospective effect of a deferred increase in the Chief Justice's salary is explained in paragraphs 5.10, 5.11 and 5.17.

***Subclause 8(3) – Retrospectivity assumption***

**8.9** The "notional salary" under subclause 8(2) is to be calculated as if the President's salary had always been equal to the Chief Justice's salary and as if a Deputy President's salary had always been 95% of a Federal Court Judge's salary.

**8.10** The drafting device used to achieve this effect is to assume that Remuneration Tribunal determinations were modified so as to have provided that linkage to Federal Court salaries. The assumed modification is of any determination which had the effect of setting a Presidential Member's salary for any part of the period since 1 January 1991. Subclause 8(3) refers to the provisions of the *Industrial Relations Act* which, before the enactment of this bill, provide for the Remuneration Tribunal to set Presidential Members' salaries: paragraph 12(2)(a) [for part-time members] and subsection 21(1) [for full-time members].

**8.11** To apply subclause 8(3), it will not be necessary to consider the content of actual determinations. The drafting device of referring to modification of determinations is used only to allow subclause 8(2) to properly reflect retrospective salary increases. The existing provision for giving Presidential Members the benefit of any retrospective salary increase is subsection 7(5E) of the *Remuneration Tribunal Act*. That subsection is set out in paragraph 5.27 of these notes. It applies by reference to determinations made by the Remuneration Tribunal increasing salaries. The drafting device allows subclause 8(2) to refer to subsection 7(5E).

***Subclause 8(4) – Actual salary payable in respect of the interim period***

**8.12** The "actual salary" is defined to include payments which are in substance backpayments of a salary increase, but only to the extent that those payments are for the period between 1 January 1991 and Royal Assent.

***Commissioners***

**8.13** The Bill does not give Commissioners any additional remuneration for the period before Royal Assent. This is because they already receive during this period the higher salary given by the Remuneration Tribunal (i.e. 70% of a Federal Court Judge's salary). This is explained further in paragraphs 10.5 to 10.8 of these notes.

***Clause 9 – Transitional – Allowances for members of Commission***

**9.1** This clause allows members of the Commission to continue to be paid allowances following enactment of this Bill, even though regulations prescribing allowances would not be in force immediately.

***Clause 10 – Transitional – payments attributable to subsection 7(5E) of the Remuneration Tribunal Act 1973***

**10.1** This clause qualifies the new provisions for lump sum payments (in substance, for retrospective payment of deferred salary increases) so that they will not give an entitlement to a lump sum payment referable to a salary increase actually payable for the same period that would be covered by the lump sum payment.

**10.2** Clause 10 qualifies the new subsections 12(2E), 21(2D), (2E), (2F) and (2G), and 23(3). Those subsections are explained in paragraphs 4.6, 5.9 – 5.13 and 6.4 of these notes. All six of those subsections give members of the Australian Industrial Relations Commission the retrospective benefit of any deferred increase in Federal Court salaries. The subsections will apply each time the Remuneration Tribunal increases Federal Court salaries and decides on a date of effect which is earlier than the date on which the Tribunal's determination comes into force, as a result of the deferral effected by the *Remuneration Tribunal Act* (to allow each House time to decide whether to disallow the increase, as explained in the notes on clause 5). If neither House passes a resolution disapproving of the determination, the six new subsections of the *Industrial Relations Act* specified above will give to persons who were members of the Commission during the period of statutory deferral an entitlement to a payment that is in substance backpayment of the salary increase.

***Paragraph 10(a)***

**10.3** Paragraph 10(a) prevents these six new subsections of the *Industrial Relations Act* being triggered by any determination of the Remuneration Tribunal which will have already taken effect before this Bill receives Royal Assent.

**10.4** This is because clause 8 of this Bill will already have given Presidential Members the full retrospective benefit of any deferred increase of Federal Court salaries which takes effect before Royal Assent. The "notional salary" under clause 8, by reference to which a Presidential Member's entitlement is calculated, will be increased by the increasing of the Federal Court salary. This is explained further in paragraph 8.8 of these notes. To allow these six new subsections of the *Industrial Relations Act* to have their literal effect by reference to a Federal Court salary increase that took effect before Royal Assent would therefore inappropriately double the benefit of the salary increase.

***No retrospective increase for Commissioners***

**10.5** A retrospective increase in the salary of Federal Court Judges will not give Commissioners of the Australian Industrial Relations Commission any benefit for the period before Royal Assent. The difference between the effect for Presidential Members and the effect for Commissioners is because of the different

effect which the existing provisions of the *Remuneration Tribunal Act* give to a salary increase for these different categories of member.

**10.6** If enacted in time, this Bill will deny to Presidential Members the benefit of the recent determinations of the Remuneration Tribunal increasing their salaries. This is because those determinations have not yet come into force. In place of this denied benefit, Presidential Members are given the retrospective benefit of the new linkages to Federal Court salaries. In substance, it is as if the new salary linkages were in force from 1 January 1991 (but not so as to retrospectively reduce salary).

**10.7** For Commissioners, the recent salary increases have already come into force and are not being taken away retrospectively. There is therefore no need to backdate for Commissioners the new linkage to the salary of Federal Court Judges.

**10.8** In practice, this does not adversely affect Commissioners. A retrospective application of the new salary linkage (70% of 95% of a Federal Court Judge's salary), by reference to the retrospective salary increase that Judges will receive, if neither House disallows the Remuneration Tribunal's decision to give Judges the 2½% National Wage Case increase, would still result in a lower salary than Commissioners have already been given for the period. This is because the Remuneration Tribunal has already given Commissioners a salary of 70% of the level to which Judges' salaries will rise if the Remuneration Tribunal's determination is not disallowed.

***Paragraph 10(b)***

**10.9** No retrospective payment in lieu of a deferred salary increase is to be payable for a period of deferral before this Bill receives Royal Assent. As for paragraph 10(a), this is because clause 8 of the Bill already gives Presidential Members the benefit of such a deferral.

***Former member of Commission***

**10.10** The reference to a "former member" is explained in paragraph 5.14 of these notes.

***Clause 11 – Transitional – part-time members of Commission***

**11.1** This clause is a consequence of the insertion of a new subsection 12(2) of the Industrial Relations Act by clause 4 of this Bill. The new subsection 12(2) provides that when the President consents to a member working part-time the President and the member are to enter into an agreement specifying the proportion of full-time duties that the member is to work. Clause 11 will give effect to an agreement made before this Bill receives Royal Assent. This will avoid disruption of existing arrangements for part-time work. In particular, it will make it



unnecessary for an existing part-time member to enter into an agreement with the President on the same day that this Bill receives Royal Assent.

**Clause 12 – Appropriation for payment of transitional amounts**

12.1 This clause allows payment of the transitional amounts due under clauses 8 and 9.

**PART 3 – AMENDMENT OF THE INDUSTRIAL RELATIONS  
LEGISLATION AMENDMENT ACT 1991**

**Clause 13 – Principal Act**

13.1 This is a formal provision allowing the *Industrial Relations Legislation Amendment Act 1991* to be referred to in this Part of the Bill as the "Principal Act".

**Clause 14 – Interpretation**

14.1 This is a formal amendment to correct a typographical error.

14.2 Section 24 of the Principal Act amended the Remuneration Tribunal Act. Paragraph (b) of section 24 provided for a phrase to be omitted from paragraph 3(4)(q) of the Remuneration Tribunal Act. Paragraph (b) incorrectly set out that phrase as "(other than an executive education officer)". Clause 14 of the present bill changes "officer" to "office". Read literally, the original amendment purported to omit from the original provision a phrase that was never there.

**Retrospectivity**

14.3 This correction is backdated to 27 June 1991, the date on which paragraph (b) of section 24 came into force.

**PART 4 – AMENDMENT OF THE  
REMUNERATION AND ALLOWANCES ACT 1990**

**Clause 15 – Principal Act**

15.1 This is a formal provision which allows the *Remuneration and Allowances Act 1990* to be referred to in this Part of the Bill as the "Principal Act".

**Clause 16 – Operation of Part**

**16.1** Section 3 of the Principal Act concerns the operation of Part 2 of that Act. Part 2 sets salaries for various offices, replacing the salaries that had been set by the Remuneration Tribunal.

**16.2** Subsection 3(2) of the Principal Act allowed the Remuneration Tribunal to override the salaries set by the Act, but only by making a Determination "that is expressed to override a provision of this Act". The requirement that the Determinations be expressed in this particular manner has led to uncertainty about the effectiveness of some Determinations made by the Tribunal. In each case there is no doubt that the Tribunal had the power to set a new salary and no doubt that the Tribunal intended to exercise this power. It is therefore considered inappropriate that the mere failure to use a particular form of words should place in doubt the validity of salary increases which the Tribunal has decided should have effect.

**16.3** The existing section 3 of the Principal Act places two restrictions on the Remuneration Tribunal's power to alter the remuneration set by that Act. Neither of these restrictions is being altered by this Bill. The first restriction is that the Tribunal cannot alter the salary of Senators and Members of the House of Representatives. The second restriction is that the Tribunal cannot alter the remuneration that is applicable to any time before 1 June 1990.

**Retrospective effect**

**16.4** This clause is taken to have commenced on 20 June 1990 [subclause 2(3) so provides]. This is the date on which the Principal Act received Royal Assent. The effect of this is that all Determinations made by the Remuneration Tribunal since then have the effect they would have had if the Principal Act had never imposed this restriction on the form of words which the Tribunal had to use to exercise its power.

**Clause 17 – Schedule 1**

**Subclause 17(1)**

**17.1** Subclause 17(1) is a formal amendment which corrects references to the Australian Industrial Relations Commission, now referred to by that full formal name. This amendment is made retrospective to 20 June 1990, the date when the Principal Act received Royal Assent [subclause 2(3) of the Bill gives this amendment the retrospective effect]. This is to clarify that the Principal Act has its intended effect in relation to the entire period since it was enacted.

**Subclause 17(2) : Annual leave loading**

**17.2** Subclause 17(2) restores an entitlement to annual leaving loading accidentally removed in 1990.

**17.3** The clause that is being added to Schedule 1 to the Principal Act refers in paragraph (a) to "the holder of an office specified in Part 4 of clause 2". The offices specified in that Part (when the Principal Act was originally enacted) were:

- . Master, Supreme Court of the Australian Capital Territory;
- . Judicial Registrar of the Family Court of Australia;
- . Chief Magistrate, Australian Capital Territory; and
- . Magistrate, Australian Capital Territory.

**17.4** The holders of these offices, and Commissioners of the Australian Industrial Relations Commission, were accidentally deprived of annual leave loading by being listed in Schedule 1.

**17.5** The period for which this amendment restores the entitlement to annual leave loading is the period for which the Principal Act sets the salary of these offices.

**17.6** Part 4 of Schedule 1 has already been amended to delete the reference to the Chief Magistrate and Magistrates (because of the transfer of responsibility for these offices to the ACT Government). The present retrospective amendment will have effect for the period during which the Principal Act set the salaries for these offices.

**17.7** The original provision copied a mistake in a determination made by the Remuneration Tribunal. That determination listed the affected offices in a separate list (together with judges) to reflect the judicial or quasi-judicial nature of these offices. Previously the affected offices had been included in one general list of offices (this was before the Tribunal was given jurisdiction to determine judges' salaries). In moving these offices from the general list to the new judicial list the Tribunal the Tribunal did not intend to cancel the established entitlement to annual leave loading. In a subsequent determination the Tribunal has restored the loading for these offices; this provision of the Bill is needed to extend that restoration of the entitlement with full retrospective effect for the period during which the Principal Act set the salaries.

**17.8** Judges and Presidential Members of the Australian Industrial Relations Commission have never been entitled to annual leave loading, so this provision does not extend to those offices.

***Retrospectivity***

17.9 Subclause 17(2) is taken to have commenced on 1 July 1991 [subclause 2(4) so provides]. This is because the new salaries set by the Principal Act came into force on that date.

**PART 5 – AMENDMENT OF THE  
REMUNERATION TRIBUNAL ACT 1973**

***Clause 18 – Principal Act***

18.1 Clause 18 is a formal provision which allows the Remuneration Tribunal Act 1973 to be referred to in this Part of the Bill as the "Principal Act".

***Clause 19 – Interpretation***

19.1 Clause 19 contains two amendments of the definitions section (section 3) of the *Remuneration Tribunal Act*.

***Subclause 19(1)***

19.2 Subclause 19(1) corrects an omission in the definition of the phrase "executive education office" in subsection 3(1) of the *Remuneration Tribunal Act*. That phrase was defined as meaning the office of Vice-Chancellor or Deputy Vice-Chancellor of the ANU, Vice-Chancellor of the University of Canberra, or Principal or Deputy Principal of the Australian Maritime College. Subclause 19(1) adds a reference to the office of Deputy Vice-Chancellor of the University of Canberra.

***Retrospectivity***

19.3 Subclause 19(1) is taken to have commenced on 1 January 1991 [subclause 2(5) so provides]. This is the date on which the reference to the University of Canberra was inserted into the definition of "executive education office".

19.4 Before that date the Tribunal had jurisdiction to determine the salaries of the Principal and Deputy Principal of the Canberra College of Advanced Education (that College became the University of Canberra). The Remuneration Tribunal has continued to have jurisdiction to determine or (for non-Commonwealth universities) recommend the salaries of the Vice-Chancellor and Deputy Vice-Chancellor of every other university that is within its jurisdiction. In exercising that jurisdiction the Tribunal has also set the salary of the Deputy Vice-Chancellor of the University of Canberra. Retrospectively overcoming the anomalous and

accidental omission of this office from the Tribunal's jurisdiction will put beyond doubt the validity of the Tribunal's decision.

***Subclause 19(2)***

19.5 Subclause 19(2) inserts in subsection 3(4) of the *Remuneration Tribunal Act* a reference to an office of member of the Australian Industrial Relations Commission. This adds to a list of offices excluded from the jurisdiction of the Remuneration Tribunal under that Act.

**Clause 20 – Establishment of Remuneration Tribunal**

20.1 Subsection 4(6) of the Remuneration Tribunal Act, which is repealed by clause 20, provides that a person may only be appointed as Chairman of the Remuneration Tribunal if the person is a Judge or retired Judge of a court of a State or is qualified for appointment as a Judge of a court of a State. The effect of clause 20 is that this requirement will no longer apply.

**Clause 21 – Transitional – pending determinations relating to Presidential Members of the Australian Industrial Relations Commission**

21.1 This clause has the effect of ensuring that a determination of the Remuneration Tribunal setting the salaries of Presidential Members of the Australian Industrial Relations Commission is to have no effect if it has not come into force before this Bill receives Royal Assent.

21.2 This reflects the policy that, in relation to the period from 1 January 1991, the salary of Presidential Members is to be that set by the Bill, except that there is to be no retrospective reduction of salary. The clause is consistent with that exception to the general policy; if a determination of the Remuneration Tribunal has come into force by Royal Assent it will not be affected by this clause.

21.3 Clause 21 is necessary because of subsection 7(5E) of the *Remuneration Tribunal Act*. That subsection gives a deferred effect to decisions by the Remuneration Tribunal increasing salaries of Presidential Members [this is the same deferred effect that subsection 7(5E) gives to increases in Judges' salaries, as explained in the notes on clause 5]. Therefore, a decision which the Remuneration Tribunal makes before this Bill receives Royal Assent, but which would not come into operation until after Royal Assent because of subsection 7(5E) of the *Remuneration Tribunal Act*, would have two effects (were it not for this Bill). The first would be to increase the actual salary from a date after Royal Assent; that effect is negated by the new provisions concerning the salary applicable to the period after Royal Assent. The second effect of such a determination would be to give an entitlement to a lump sum payment to compensate for the statutory deferral of the salary increase. Clause 21 negates that effect. Clause 21 is confined to

Presidential Members because subsection 7(5E) of the *Remuneration Tribunal Act* is so confined.

**21.4** On the assumption that this Bill receives Royal Assent before the Remuneration Tribunal's recent determinations of salary come into force (as discussed earlier in these notes), clause 21 will have the effect that Presidential Members will not be entitled to a lump sum payment representing the salary increase that those determinations would have given if their operation had not been deferred by the existing legislation [subsection 7(5E) of the *Remuneration Tribunal Act*, set out at paragraph 5.27 of these notes]. This is the same effect that would have occurred if either House had passed a resolution disapproving those determinations.

***"Directly determines the salary"***

**21.5** Clause 21 is confined to determinations of the Remuneration Tribunal which "directly" determine the salary of Presidential Members. The Remuneration Tribunal's determinations setting the salaries of Federal Court Judges will now indirectly determine the salary of Presidential Members because of the fixed relativities established by this Bill.

**21.6** Clause 21 is also confined to "salary"; this will allow the Remuneration Tribunal's determinations to continue to give Presidential Members an entitlement to allowances until regulations are made under the new provisions [this is explained in the notes on clause 9].

**PART 6 – SALARIES OF EXECUTIVE EDUCATION OFFICERS – DEEMED DETERMINATION OF THE REMUNERATION TRIBUNAL**

**Clause 22 – Salary to be paid to holders of executive education offices**

**22.1** This clause sets new salaries for the Vice-Chancellors and Deputy Vice-Chancellors of the Australian National University and the University of Canberra.

**22.2** The drafting device of deeming the Remuneration Tribunal to have determined these new rates of salary is a convenient method of preserving the Tribunal's power to alter the salaries (as it regularly reviews the salaries of all offices within its jurisdiction).

**22.3** The new salaries will come into effect when this Bill receives Royal Assent. The higher salaries applicable to the period before Royal Assent (as set by the Remuneration Tribunal) are not retrospectively lowered.

**Clause 23 – Tabling and disallowance provisions do not apply to deemed determination**

23.1 This is a formal provision made necessary by the drafting device of deeming the Remuneration Tribunal to have determined the new salaries (this drafting device is explained in the notes on clause 22). Subsections 7(7) and (8) of the *Remuneration Tribunal Act* require determinations of the Tribunal to be tabled in each House, and allow either House to pass a resolution disapproving of the determination. These provisions would be inappropriate in relation to a salary which the Parliament itself would set by enacting this Bill.

