

## Australian Capital Territory Remuneration Tribunal

# Director of Public Prosecutions

## Determination 12 of 2022

made under the

**Remuneration Tribunal Act 1995, section 10 (Inquiries about holders of certain positions)**

## ACCOMPANYING STATEMENT

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### Background

Under section 10 of the *Remuneration Tribunal Act 1995* the Remuneration Tribunal (the Tribunal) must inquire into and determine the remuneration, allowances and other entitlements for certain full-time public offices, including the Director of Public Prosecutions (DPP) appointed under the *Director of Public Prosecutions Act 1990*.

### Considerations

In October and November 2022, the Tribunal commenced its Spring Sitting to consider the remuneration, allowances and other entitlements of the following office-holders:

- ACT Magistrates Court Judicial members;
- ACT Supreme Court Judicial members;
- ACT Civil and Administrative Tribunal members;
- the ACT Integrity Commissioner (Integrity Commissioner and Chief Executive Officer);
- the Principal Registrar, Courts and Tribunal;
- the Director of Public Prosecutions;
- part-time Holders of Public Office on boards, tribunals and committees; and
- any other positions that have been referred to the Tribunal for consideration.

The Tribunal advertised its Spring Sitting on its website and in the Canberra Times on 10 September 2022. The Tribunal also wrote to the relevant office-holders requesting submissions.

At its meetings in October and November 2022, the Tribunal met with the Chief Minister, ACT Government Treasury officials and officials responsible for the Enterprise Agreement bargaining for ACT Public Sector non-executive employees. The Tribunal also met with a number of full-time public office-holders and departmental officials.

The briefings provided to the Tribunal by ACT Treasury officials outlined the resilient nature of the Territory's economy. ACT Treasury reported that the Territory had transitioned out of

the potential economic crisis brought on by the COVID-19 health emergency, with the Territory now experiencing a tight labour market and wages growth. ACT Treasury also reported that the Territory's labour market is strong and tight, with jobs and wages for most industries in the ACT recovered to be above pre-lockdown levels. In its deliberations, the Tribunal continues to give considerable weight to community standards and expectations, with particular reference to the COVID-19 economic recovery, national and local inflation reporting and wage price index reporting.

The Tribunal also considered the importance of the Territory providing competitive and equitable remuneration, allowances and other entitlements so that the Territory can continue to attract and retain high calibre individuals to deliver high quality services to the ACT community. In this context, the Tribunal noted the wage policies and recent remuneration determinations by its Commonwealth and State/Territory counterparts.

Consistent with usual practice, the Tribunal considered the pay increases that were provided to the ACT Public Sector non-executive workforce during 2021 under the Enterprise Agreements. In addition, when considering pay increases for statutory office-holders, the Tribunal noted the pay increases that were provided to executives in the ACT Public Service in 2022.

In making this determination, the Tribunal has had regard to the fact that the Government is currently negotiating enterprise agreements for employees covered by such agreements. The Tribunal had regard to the 2022–23 ACT Budget, released in August 2022 by the Chief Minister, which predicted growth in 2023–24 of 3.5 per cent in WPI and 3 per cent in CPI.<sup>1</sup>

The Tribunal considered the comments made by the Governor of the Reserve Bank of Australia on 1 November 2022, and noted his comments both in respect to household budgets being under strain from cost-of-living pressures and in relation to many firms finding it hard to find workers.<sup>2</sup> In a tight labour market, an increasing number of firms are paying higher wages to attract and retain staff, especially in an environment where the cost of living is rising.

The Tribunal noted its previous decision with respect to the Territory's Executive Service to include the former fringe benefits tax allowance of \$7,500 as salary. This followed the Government's decisions to amend the *Public Sector Management Standards 2016* to remove the entitlement to an employer-provided vehicle for ACTPS Executives and full-time statutory office holders. In this determination, the Tribunal has adjusted these allowances and provided for salary in lieu of those allowances for full time statutory office holders.

The Tribunal received correspondence from the Director of Public Prosecutions requesting that the Tribunal acknowledge the rise in consumer price index and adjust remuneration accordingly and asked that changes be applied evenly across office holders.

## **Decision**

The Tribunal determines to increase the remuneration of the Director of Public Prosecutions by 3 per cent to \$481,864, with effect from 1 November 2022.

The Tribunal noted its determinations 1 of 2022 and 2 of 2021 with respect to ACTPS Executives where base salary was increased by consolidating the motor vehicle allowance and fringe benefits payment. In view of the Government's decision to amend the *Public*

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<sup>1</sup> [ACT Budget 2022-2023 Budget Outlook, Chapter 2 Economic Outlook](#), page 17.

<sup>2</sup> <https://www.rba.gov.au/speeches/2022/sp-gov-2022-11-01.html>

*Sector Management Standards 2016* removing the entitlement to an employer-provided vehicle for full-time statutory office holders, consistent with decisions for ACTPS Executives and other office holders, and in the interest of fairness, the Tribunal determines that full-time statutory office holders are also to be paid the fringe benefit tax payment (\$7,500) as remuneration.

The retrospective application of this Determination to 1 November 2022 does not affect the rights of a person (other than the ACT Government) in a manner prejudicial to that person, nor does it impose any liability on such person.

15 December 2022



## Australian Capital Territory Remuneration Tribunal

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### 1 Commencement

This instrument is taken to have commenced on 1 November 2022.

### 2 Remuneration

- 2.1 The base salary for the Director of Public Prosecutions is \$481,864 per annum.
- 2.2 Additional remuneration of \$7,500 is payable in lieu of the former fringe benefits tax allowance.
- 2.3 If a person appointed to this office is also appointed to another office, which is not a second job under the *Public Sector Management Act 1994*, the person must only receive salary for the office that has the highest remuneration.
- 2.4 If a full-time statutory office holder has an employer-provided vehicle, clause 5 and clause 7 of Determination 12 of 2021 continues to apply until such time as the lease of the vehicle ends.

### 3 Salary packaging

- 3.1 A person appointed to an office mentioned in clause 2.1 of this Determination may elect to take the remuneration outlined in clause 2.1 as:
  - a) salary; or
  - b) a combination of salary and other benefits (a **salary package**).
- 3.2 Salary packaging must be consistent with:
  - a) taxation laws and guidelines issued by the Australian Taxation Office; and
  - b) any salary packaging policy and/or procedures issued for the ACT Public Service, with up to 100% of the remuneration able to be taken as benefits and related costs such as fringe benefits tax.
- 3.3 Salary packaging must be administered without additional cost to the employer and any fringe benefits tax associated with the provision of a benefit must be included in the salary package.
- 3.4 Salary for superannuation purposes is not affected by salary packaging.

#### **4 Employer provided benefits**

- 4.1 A person, appointed to an office mentioned in clause 2.1 of this Determination, is entitled to either the employer provided benefits mentioned below or the relevant cash payment in lieu of the benefit mentioned below.
- 4.2 An employer-provided benefit, or cash payment in lieu of an employer-provided benefit, is in addition to the remuneration specified in clause 2.1 of this determination, and does not affect salary for superannuation purposes.
- 4.3 For the avoidance of doubt, the value of an allowance or entitlement set out in this Determination is fixed and cannot be transferred to any other component of the total remuneration package.

#### **5 Vehicle parking space**

- 5.1 An executive is entitled to a parking space in accordance with the *Public Sector Management Standards 2016*.

#### **6 Employer's superannuation contribution**

- 6.1 A person, appointed to an office mentioned in clause 2.1 of this Determination, is only eligible for the employer's superannuation contribution if their superannuation entitlements are not provided elsewhere.
- 6.2 For a person, appointed to an office mentioned in clause 2.1 of this Determination, who is a member of the Commonwealth Superannuation Scheme (CSS) or Public Sector Superannuation (PSS) Scheme:
  - (a) the person's annual rate of remuneration for the purposes of the scheme is the base remuneration as provided in clause 2.1 of this Determination; and
  - (b) the value attributed to the employer's superannuation contribution is taken to be a notional 16% of the person's base remuneration.
- 6.3 For a person, appointed to an office mentioned in clause 2.1 of this Determination, who is not currently a member of the CSS or PSS but was a member of the PSS Accumulation Plan (PSSap) until it closed to the Territory on 30 June 2006, and has maintained continuous employment with the Territory:
  - (a) the value of the employer's superannuation contribution is a notional 16% of the base remuneration as provided in clause 2.1 of this Determination; and
  - (b) the employer will contribute that amount to an agreed superannuation fund nominated by the person appointed to an office mentioned in clause 2.1 of this Determination.
- 6.4 For a person, appointed to an office mentioned in clause 2.1 of this Determination, who is a member of any other superannuation fund, the employer's superannuation contribution is to be made at a rate equivalent to the Employer Superannuation Guarantee Charge Percentage as provided by the *Superannuation Guarantee (Administration) Act 1992*.

Note: at the commencement of this Determination, the Employer Superannuation Guarantee Charge Percentage is 10.5% and increases to 11% on 1 July 2023.

- 6.5 The employer provides an additional employer superannuation contribution. The additional employer superannuation contribution is the same rate provided under clause D7 in the *ACT Public Sector Administrative and Related Classifications Enterprise Agreement 2021-2022* or its replacement.
- 6.6 In respect of a person, appointed to an office mentioned in clause 2.1 of this Determination, who is not a CSS or PSS member or appointed to or engaged by the Territory before 30 June 2006 and has maintained continuous employment with the Territory:
- for each pay period in which the person contributes 3% or more of their base remuneration to their nominated superannuation fund in the form of employee contributions (either in pre or post tax dollars), the Territory will contribute an additional 1% employer superannuation contribution pro-rata per pay above the entitlement in clause 6.5, based on the person's gross fortnightly OTE (or other methods where prescribed by the nominated superannuation fund rules).
- 6.7 If the legislated minimum Superannuation Guarantee rate mentioned in clause 6.4 of this Determination is increased, it will be absorbed by the additional employer contribution provided in clause 6.5, but will not affect the entitlement in clause 6.6.
- 6.8 The value of the employer's superannuation contribution must not be paid in cash to a person appointed to an office mentioned in clause 2.1 of this Determination.

## **7 Relocation allowance**

- 7.1 In this clause, **ACT** means the Australian Capital Territory and its surrounding district, including Queanbeyan.
- 7.2 Relocation allowance is provided to assist an individual with the costs to relocate from their home location to the ACT in order to take up the appointment as the Director of Public Prosecutions.
- 7.3 The person appointed to the office mentioned in clause 2.1 may be reimbursed an amount of up to \$55,000, for receipted, reasonable costs of the following:
- a) packing personal effects and furniture belonging to the person and their family;
  - b) necessary storage of personal effects and furniture;
  - c) removal costs and associated insurance of personal effects and furniture;
  - d) unpacking of personal effects and furniture;
  - e) costs of travel, accommodation and meals between the former location and the ACT;
  - f) temporary accommodation costs at the former location and in the ACT up to a maximum aggregate period of six months, or, in exceptional circumstances, nine months with specific approval of the ACT Remuneration Tribunal;
  - g) costs of disconnection and reconnection of utilities;
  - h) cost of stamp duty and legal and professional services associated with the sale of the residence at the former location and/or the purchase of a residence or lease on a block of land in the ACT;

- i) subject to the approval of the ACT Remuneration Tribunal, any other reasonable expenses necessarily incurred in relocating to the ACT.
- 7.4 The Tribunal may decide to reimburse a higher amount of allowance if the Tribunal agrees:
- a) there are unusual or exceptional circumstances; and
  - b) the unusual or exceptional circumstances were unforeseen or unable to be dealt with without exceeding \$55,000.
- 7.5 If a person, appointed to an office mentioned in clause 2.1 thinks that unusual and exceptional circumstances exist, they may ask the ACT Remuneration Tribunal to consider the matter and determine whether the maximum relocation allowance can be exceeded. A request must be in writing and must include:
- a) details of the unusual or exceptional circumstances; and
  - b) details of the relocation; and
  - c) expenses incurred by the full-time Statutory Office Holder; and
  - d) the expected total relocation expenses of the full-time Statutory Office Holder; and
  - e) the level of assistance the full-time Statutory Office Holder considers should be provided; and
  - f) any other relevant information.
- 7.6 If the person appointed to an office mentioned in clause 2.1 terminates their employment with the Territory within twelve months of the date of their appointment, the person may be required to repay the following amount:
- a) If the person terminated employment within six months from the date of their appointment – 100% of the amount reimbursed under clause 8.3;
  - b) If the person terminates employment more than six months and less than twelve months from the date of their appointment – 50% of the amount reimbursed under clause 8.3.

Note: Relocation allowance does not apply to any expenses incurred at the conclusion of employment.

## **8 Other entitlements**

- 8.1 For the avoidance of doubt, under section 115 of the *Public Sector Management Standards 2016*, the following provisions of the *Public Sector Management Standards 2006 (repealed)* continue to apply in relation to a person appointed to an office mentioned in clause 2.1 of this Determination:
- part 3.6 (recognition of prior service on appointment or engagement);
  - part 4.1 (continuity of service);
  - part 5.5 (payment in lieu of entitlements on cessation of employment or death);
  - part 9.4 (statutory office-holder financial entitlements); and
  - part 9.6 (executive employee and statutory office-holder leave and other entitlements).

## 9 Travelling arrangements

9.1 In this clause:

**home base** means the town or city in which the traveller's principal place of residence is located.

**international travel** means official travel to a destination outside Australia.

**reasonable expenses** means legitimate work-related expenses incurred while conducting official business efficiently and effectively.

**traveller** means a person, appointed to an office mentioned in clause 2.1 of this Determination, who is travelling away from their home base for official purposes.

9.2 If a traveller is required to travel for official purposes, the employer must pay the cost of the transport and accommodation expenses outlined below. The reasonable amounts set out in the relevant Australian Taxation Office Determination<sup>3</sup> relating to meal and incidental expenses will be paid to the traveller as a reimbursement. These expenses are not to be paid to the traveller where their home base is within the ACT or surrounding districts and the travel for official purposes is within the ACT or surrounding districts.

9.3 All reasonable expenses incurred by a traveller can be reimbursed.

### Travel

9.4 All official travel is to be appropriately authorised prior to travel and must not be authorised by the traveller under any circumstances. This includes all official travel paid for privately or by the Territory.

9.5 The traveller may travel by one or more of the following:

- a) commercially provided road or rail transport;
- b) commercially provided flights;
- c) private motor vehicle.

9.6 Commercially provided travel should be selected on the basis of:

- a) what is most convenient to the person; and
- b) seeking the most reasonable costs.

9.7 If a traveller travels on commercially provided road or rail transport the employer will pay the fares for that travel.

9.8 A traveller must use the Territory's travel manager, which has been procured through a competitive process, as a preferred provider of travel and related services. The travel manager has been instructed to book all travel at the lowest logical fare.

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<sup>3</sup> [Australian Taxation Office – Taxation Determination 2022/10 Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2022-23 income year?](#)



- 9.9 If a traveller travels on commercially provided flights the employer will pay the fares to the following standard:
- a) for domestic flights less than 4 hours — economy class;
  - b) for domestic flights of 4 hours or more — business class;
  - c) for international flights — business class.
- 9.10 If a traveller is approved to travel by private motor vehicle, the employer will pay the owner of the vehicle an allowance calculated in accordance with the Motor Vehicle Allowance set out in the *ACT Public Sector Administrative and Related Classifications Enterprise Agreement 2021-2022* or its replacement.

### **Accommodation**

- 9.11 It is standard practice that where an executive traveller must stay overnight while on official travel, the employer will pay for commercial accommodation to the following standard:
- a) for domestic accommodation — 4.5 stars;
  - b) for international accommodation — 4.5 stars.
- 9.12 The employer will pay for a traveller to stay in commercial accommodation above the 4.5 star standard and the amounts set out in the relevant Australian Taxation Office Determinations if:
- a) the cost is reasonable; and
  - b) to do so would better enable business objectives to be met.

Examples where business objectives may be better met:

- to allow a traveller to stay in the commercial accommodation where a meeting, conference or seminar they are attending is being held;
- to allow a traveller who is traveling with a Minister to stay in the same commercial accommodation as the Minister, if the Minister is entitled to a higher standard of accommodation.

### **Meals**

- 9.13 If a traveller is absent from their home base for more than ten hours while on official travel, the employer will reimburse actual, reasonable expenses for meals up to the amounts set out in the relevant Australian Taxation Office Determinations.

### **Incidental expenses**

- 9.14 The employer will reimburse all reasonable expenses and legitimate expenses directly related to official travel up to the amounts set out in the relevant Australian Taxation Office Determinations, including:
- a) taxi, ridesharing (such as uber) or bus fares to or from an airport; and
  - b) taxi, ridesharing service (such as uber) and public transport costs at a temporary location; and
  - c) airport taxes or charges.

## **10 Frequent Flyer points**

- 10.1 Frequent flyer points cannot be accrued or used by a traveller as a result of travel and accommodation paid for by the employer for official travel.

## **11 Incidental travel in conjunction with official travel**

- 11.1 Authorised travellers wishing to take personal leave during, or at the conclusion of official travel should obtain the appropriate prior approval consistent with the agreed travel arrangements.
- 11.2 Travellers may combine incidental personal travel with official travel, provided there is no additional cost to the Territory. Expenses incurred during leave are at the traveller's own cost. If the period of such incidental travel is greater than 40% of the period of official travel, a pro rata contribution must be made to the overall cost of the travel.
- 11.3 If insurance has been obtained for official travel at official expense, such insurance must not cover the traveller for the duration of the personal leave.

## **12 Travel insurance**

- 12.1 Travel insurance decisions should be based on risk management principles and include factors such as the nature and destination of the trip.
- 12.2 International travel will normally require travel insurance.
- 12.3 If necessary, the cost of travel insurance will be met as a reasonable work related expense by the Territory.
- 12.4 All legitimate and reasonable work related claims will be covered by the Territory.

## **13 Definitions**

- 13.1 In this Determination:

***agreed superannuation fund*** means a fund complying with the requirements of:

- the *Income Tax Assessment Act 1936* (Cth); and
- the *Superannuation Industry (Supervision) Act 1993* (Cth).

***CSS*** means the Commonwealth Superannuation Scheme.

***domestic travel*** means official travel to a destination within Australia.

***employer*** means the Australian Capital Territory and includes any person authorised to act on behalf of the Australian Capital Territory.

***fringe benefits tax*** means the tax assessed under the *Fringe Benefits Tax Assessment Act 1986*.

***home base*** means the town or city in which the traveller's principal place of residence is located.

***international travel*** means official travel to a destination outside Australia.

***PSS*** means the Public Sector Superannuation Scheme.

***PSSap*** means the PSS Accumulation Plan.

***reasonable expenses*** means legitimate work-related expenses incurred while conducting official business efficiently and effectively.

**traveller** means a person, appointed under clause 2.1 of this Determination, who is travelling away from their home base for official purposes.

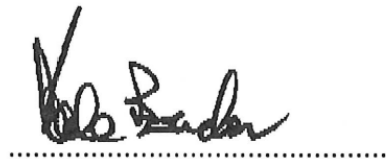
**14 Revocation of previous determination**

Determination 12 of 2021 is revoked.

Ms Sandra Lambert AM  
Chair

A handwritten signature in grey ink, reading "Sandra Lambert", written over a dotted line.

Mr Dale Boucher PSM  
Member

A handwritten signature in black ink, reading "Dale Boucher", written over a dotted line.

15 December 2022