



Australian Capital Territory Remuneration Tribunal

## Director of Public Prosecutions

### Determination 14 of 2018

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

The Tribunal's 2018 review of remuneration and entitlements for the DPP was advertised in August 2018. Submissions were received from the Director of Public Prosecutions, the General Manager of the ACT Office of the Director of Public Prosecutions and the Director-General, Justice and Community Safety Directorate.

The Tribunal met on 16-18 October 2017 and this determination sets out the Tribunal's decision following the review.

Treasury officials provided a comprehensive briefing to the Tribunal on the prevailing economic circumstances for 2018 and forecasts for the coming years. In making its decision, the Tribunal also considered the Government Submission provided by the Chief Minister and discussions with the Justice and Community Safety Directorate.

### Decision

The Tribunal determined that the remuneration for the Director of Public Prosecutions would be increased by 2% from 1 July 2018.

November 2018



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#### 1 Commencement

This instrument is effective from 1 July 2018.

#### 2 Remuneration

2.1 The base salary for the Director of Public Prosecutions (DPP) is \$449,663 per annum.

2.2 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.

#### 3 Salary packaging

3.1 A person appointed to an office listed 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 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.

Note: employer provided benefits or cash payment in lieu of the benefit do not change the remuneration component of the total remuneration package.

## **5 Vehicle**

- 5.1 A person appointed to an office in clause 2.1 of this Determination, is entitled to an executive vehicle and associated arrangements, including a parking space, in accordance with the same entitlements as a Senior Executive Service (SES) member under the *Public Sector Management Standards* and the *Guidelines for the Management and Use of Executive Vehicles*.
- 5.2 The office in clause 2.1 of this Determination has the same arrangements as a Band 4 SES member.
- 5.3 For the avoidance of doubt and despite anything to the contrary, the Remuneration Tribunal determines that Part 9.5 (Executive and Statutory Office-Holder vehicle entitlements) of the *Public Sector Management Standards 2006* (repealed) applies to the office specified in clause 2.1 of this Determination. Any references to the head of service or director-general in these specific sections should be read as the Attorney-General.

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

- 6.1 A person, appointed to an office 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 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 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 in clause 2.1 of this Determination.
- 6.4 For a person, appointed to an office 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 no less than the Employer Superannuation Guarantee Charge Percentage as provided by the *Superannuation Guarantee (Administration) Act 1992*.
- 6.5 For 2016-17 onwards, the Territory's enhanced minimum employer superannuation contribution is 10.5%, until the ACT Public Sector Administrative and Related

Classifications Enterprise Agreement 2018-2021 commences. The employer superannuation contribution is then adjusted according to the rate outlined in the ACT Public Sector Administrative and Related Classifications Enterprise Agreement 2018-2021.

- 6.6 For the avoidance of doubt, section 642 of the *Public Sector Management Standards 2006 (repealed)*, or this section's replacement, applies to persons who are not current CSS or PSS members or appointed to or engaged by the Territory before 30 June 2006 and maintained continuous employment with the Territory.
- 6.7 The value of the employer's superannuation contribution must not be paid in cash to a person appointed to an office in clause 2.1 of this Determination.

## **7 Fringe benefit tax**

- 7.1 The fringe benefits tax payable by the employer to the Australian Taxation Office is the amount remaining after the employer's liability for fringe benefits tax is calculated, as required under the *Fringe Benefits Tax Assessment Act 1986*.
- 7.2 The executive vehicle and employer's superannuation contribution set out in the *Public Sector Management Standards 2016* are considered for calculating fringe benefits tax.
- 7.3 A provisional amount of \$7,000 is available to cover the cost of any fringe benefit tax for a vehicle or parking space. If the liability for fringe benefits tax is less than \$7,000, the excess is payable to the person appointed to an office in clause 2.1 of this Determination. If the liability for fringe benefits tax exceeds \$7,000, the person appointed to an office in clause 2.1 of this Determination will not be required to pay the excess to the employer. Any unused fringe benefit tax allowance paid to a person appointed to an office in clause 2.1 of this Determination will be subject to tax, if paid as remuneration.
- 7.4 The provisional amount of \$7,000 in fringe benefits tax is reduced proportionally if the person appointed to an office in clause 2.1 of this Determination is appointed for less than a fringe benefit tax year.

## **8 Relocation allowance**

- 8.1 In this clause:  
**ACT** includes the surrounding district, including Queanbeyan.  
**relocation** means from a residence outside the ACT to a residence in the ACT.
- 8.2 Relocation allowance is provided to assist an individual with relocation.
- 8.3 Relocation allowance will not cover the total cost of relocation in all circumstances.
- 8.4 The maximum relocation allowance is \$51,533.
- 8.5 If a person, appointed to an office in clause 2.1 of this Determination, relocates because of this appointment, the person is entitled to be reimbursed up to the maximum relocation allowance, 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.
- 8.6 The maximum relocation allowance may be exceeded if the ACT Remuneration 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 the maximum relocation allowance.
- 8.7 If a person, appointed to an office in clause 2.1 of this Determination, 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.
- 8.8 Relocation allowance does not apply to any expenses incurred at the conclusion of employment.

## **9 Other entitlements**

- 9.1 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 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);
- part 9.5 (executive and statutory office-holder vehicle entitlements); and
- part 9.6 (executive employee and statutory office-holder leave and other entitlements).

## 10 Travelling arrangements

10.1 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 under clause 2.1 of this Determination, who is travelling away from their home base for official purposes.

10.2 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>1</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.

10.3 All reasonable expenses incurred by a traveller can be reimbursed. It is the intention of these travel arrangements that no traveller who travels for official purposes should be out of pocket, however they must be reasonable expenses.

### Travel

10.4 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.

10.5 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.

10.6 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.

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

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<sup>1</sup> Australian Taxation Office – Taxation Determination 2018/11, Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2018–19 income year?, or its replacement

- 10.8 A traveller can 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.
- 10.9 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.
- 10.10 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 Service Administrative and Related Classifications Enterprise Agreement 2013 – 2017*, or its replacement.

### **Accommodation**

- 10.11 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.
- 10.12 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**

- 10.13 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**

- 10.14 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.

### **Frequent Flyer points**

10.15 Frequent flyer points can no longer 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 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, it will 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.

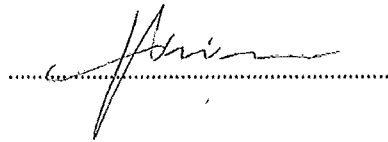
**total remuneration package** includes base salary set out in clause 2.1, all employer provided benefits, and all allowances. The value of an allowance or entitlement set out in this Determination is fixed and cannot be transferred to any other component of the total remuneration package.

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

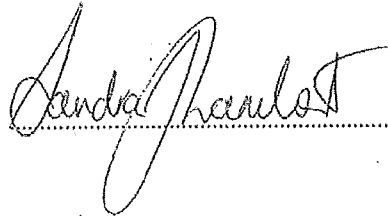
#### 14 Revocation of previous determination

Determination 18 of 2017 is revoked.

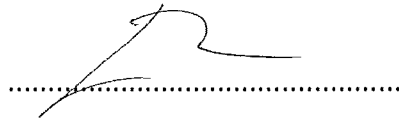
Dr Colin Adrian  
Chair



Ms Sandra Lambert AM  
Member



Dr James Popple  
Member



November 2018