



Australian Capital Territory Remuneration Tribunal

Determination 3 of 2020

Full-time Statutory Office Holders: Auditor-General, Clerk of the Legislative Assembly, Electoral Commissioner

made under the

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

ACCOMPANYING STATEMENT

Background

Under section 10 of the *Remuneration Tribunal Act 1995* (the Act), the Remuneration Tribunal (the Tribunal) is required to inquire into, and determine, the remuneration, allowances and other entitlements for certain full-time public offices. Of those offices, this Determination covers the following:

- Auditor-General;
- Clerk of the Legislative Assembly; and
- Electoral Commissioner.

Considerations

At its meeting on 18 and 19 March 2020, the Tribunal noted the exceptional and unprecedented circumstances being faced by Australia as a result of the COVID-19 pandemic and decided not to make any adjustments to remuneration, allowances or other entitlements for office holder considered at the 2020 Autumn Sitting until there was more clarity about the ACT Budget position and the wider economic context.

Matters considered by the Tribunal since this time, include the receipt by the Tribunal of a letter from the Chief Minister strongly requesting the Tribunal to determine a pause to any proposed pay rises during the COVID-19 pandemic and the period of immediate economic and community recovery following. The Chief Minister recommended that the Tribunal reconsider its Autumn determinations to reflect the government's commitment to support the ACT community during the current health emergency. The Tribunal noted that this corresponded with its earlier decision.

The Tribunal met again on 17 August 2020 and 2 September 2020 and received a further comprehensive briefing from the Chief Minister and ACT Government Treasury officials. The

Tribunal considered the Chief Minister's 'Ministerial Statement August 2020 Economic and Fiscal Update' presented to the Legislative Assembly on 27 August 2020, which reinforced the significant downturn of the Territory's economic circumstances.

While the Tribunal had regard to the determinations by its Commonwealth and State/Territory counterparts, its decision was particularly taken in the context of the ACT's economic circumstances.

Given the current COVID-19 pandemic, the impact on the economic conditions and community expectations, the Tribunal has determined that no adjustments should be made to the remuneration, allowances and other entitlements of office holders in its jurisdiction at this time.

The Tribunal will continue to monitor conditions in the ACT closely and will make appropriate decisions when the Territory's economic and fiscal circumstances are known next year.

Decision

The Tribunal has decided to determine no adjustment to remuneration, allowances or entitlements for the office holders covered by this Determination for 2020.

September 2020



Australian Capital Territory Remuneration Tribunal

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made under the

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

1 Commencement

- 1.1 The instrument is taken to have commenced on 1 July 2020.

2 Application

- 2.1 This Determination applies to the following offices:

- the Auditor-General;
- the Clerk of the Legislative Assembly; and
- the Electoral Commissioner.

3 Remuneration

- 3.1 The offices outlined below shall be entitled to the following remuneration per annum:

- Auditor-General: \$312,086.
- Clerk of the Legislative Assembly: \$239,020.
- Electoral Commissioner: \$228,420.

- 3.2 A person appointed to an office listed above must not receive the remuneration mentioned above if the person is paid a higher remuneration for that office from another source.

- 3.3 If a person appointed to an office listed above is also appointed to another office under ACT legislation, the person must only receive remuneration for the office that has the highest remuneration.

4 Salary packaging

- 4.1 A person appointed to an office listed in clause 2.1 of this Determination may elect to take the remuneration outlined in clause 3, as:
- a) salary; or
 - b) a combination of salary and other benefits (a *salary package*).
- 4.2 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.
- 4.3 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.
- 4.4 Salary for superannuation purposes is not affected by salary packaging.

5 Employer provided benefits

- 5.1 A person appointed to an office listed 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.
- 5.2 An employer-provided benefit, or cash payment in lieu of an employer-provided benefit, is in addition to the remuneration specified in clause 3.1 of this determination, and does not affect salary for superannuation purposes.
- 5.3 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.

6 Vehicle

- 6.1 A person appointed to an office listed in clause 2.1 of this Determination, is entitled to an executive vehicle and associated arrangements, including a parking space. This entitlement is to be determined according to the same entitlements as if the person were a Senior Executive Service (SES) member at the same salary band under the *Public Sector Management Standards 2016* and the *Guidelines for the Management and Use of Executive Vehicles*.

7 Employer's superannuation contribution

- 7.1 A person appointed to an office listed in clause 2.1 of this Determination is only eligible for the employer's superannuation contribution if their superannuation entitlements are not provided elsewhere.
- 7.2 For a person appointed to an office listed 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.
- 7.3 For a person appointed to an office listed 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 listed in clause 2.1 of this Determination.
- 7.4 For a person appointed to an office listed 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* (which at the commencement of this Determination is 9.5%).
- 7.5 A person appointed to an office listed in clause 2.1 of this Determination is entitled to the enhanced employer contribution superannuation arrangements that apply to an SES member in the ACT public sector under associated arrangements.
- 7.6 The employer provides an additional employer superannuation contribution. The additional employer superannuation contribution is the same rate provided under clause D7 of the ACT Public Sector Administrative and Related Classifications Enterprise Agreement 2018-2021, as follows:
 - (a) From 1 July 2019: 1.50%.
 - (b) From 1 July 2020: 2%.
- 7.7 A person appointed to an office listed in clause 2.1 of this Determination is entitled to the same superannuation entitlements as an SES member under the *Public Sector Management Standards*. This clause takes effect from 1 September 2016. The value of the employer's superannuation contribution must not be paid in cash to a person appointed to an office listed in clause 2.1 of this Determination.

8 Fringe benefit tax – vehicle

- 8.1 The employer incurs fringe benefits tax liabilities for vehicles provided to their employees. Fringe benefits tax is determined and calculated under the Fringe Benefits Tax Assessment Act 1986. For the purposes of this section, the fringe benefits tax year is 1 April of a year to 31 March of the following year.
- 8.2 During the fringe benefits tax year, where the office holder elects to receive an employer-provided vehicle instead of a payment, if the employer's liability in relation to the office holder's vehicle provided by the employer for the fringe benefits tax year is less than \$7,500, the difference is payable to the office holder as an allowance at the end of the fringe benefits tax year.

- 8.3 To avoid doubt, if the assessed liability for fringe benefits tax exceeds the \$7,500 threshold, the office holder will not be required to pay any component in excess of the \$7,500.
- 8.4 During the fringe benefits tax year, where the office holder elects to receive a payment instead of an employer provided vehicle, the amount of \$7,500 per annum is paid as an allowance to the office holder on a fortnightly basis.
- 8.5 The fringe benefits tax allowance of \$7,500 under clause 8.4 is reduced proportionally where the officer holder is engaged for less than a full fringe benefits tax year.

9 Relocation allowance

- 9.1 In this clause, **ACT** means the Australian Capital Territory and its surrounding district, including Queanbeyan.
- 9.2 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 a statutory office holder.
- 9.3 The person appointed to an office listed 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 the approval of the ACT Remuneration Tribunal (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 specific approval of the Tribunal, any other reasonable expenses necessarily incurred in relocating to the ACT.
- 9.4 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.
- 9.5 If a person appointed to an office in listed clause 2.1 thinks that unusual and exceptional circumstances exist, they may ask the 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 executive; and
- d) the expected total relocation expenses of the executive; and
- e) the level of assistance the executive considers should be provided; and
- f) any other relevant information.

9.6 If the person appointed to an office listed in clause 2.1 terminates their employment with the Territory within twelve months of the date of their engagement, the person may be required to repay the following amount:

- a) If the person terminates employment within six months from the date of their appointment—100% of the amount reimbursed under section 9.3;
- 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 section 9.3.

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

10 Other entitlements

10.1 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:

- a) part 3.6 (recognition of prior service on appointment or engagement);
- b) part 4.1 (continuity of service);
- c) part 5.5 (payment in lieu of entitlements on cessation of employment or death);
- d) part 9.4 (statutory office-holder financial entitlements); and
- e) part 9.6 (executive employee and statutory office-holder leave and other entitlements).

10.2 Leave entitlements, salary sacrifice arrangements and vacation childcare subsidy are provided to executives under Division 5.6 of the *Public Sector Management Standards 2016*, as amended from time to time.

11 Travelling arrangements

11.1 In this clause:

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

domestic travel means official travel to a destination within Australia.

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 listed in clause 2.1 of this Determination, who is travelling away from their normal place of work for official purposes.

- 11.2 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 Determination¹ 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.
- 11.3 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.

12 Travel

- 12.1 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.
- 12.2 A 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.
- 12.3 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.
- 12.4 If a traveller travels on commercially provided road or rail transport the employer will pay the fares for that travel.
- 12.5 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.
- 12.6 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.
- 12.7 If a traveller has approval 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 2018-2021*, or its replacement.

13 Accommodation

- 13.1 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:

¹ Australian Taxation Office – Taxation Determination 2020/5 Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2020-21 income year?

- a) for domestic accommodation—4.5 stars;
 - b) for international accommodation—4.5 stars.
- 13.2 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 the Speaker or a Minister to stay in the same commercial accommodation as that Speaker/Minister if they are entitled to a higher standard of accommodation.
- 14 Meals**
- 14.1 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.
- 15 Incidental expenses**
- 15.1 The employer will reimburse all reasonable 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 service (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.
- 16 Frequent Flyer Program**
- 16.1 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.
- 17 Incidental travel in conjunction with official travel**
- 17.1 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.
- 17.2 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.
- 17.3 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.

18 Travel insurance

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

19 Definitions

- 19.1 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.

PSS means the Public Sector Superannuation Scheme.

PSSap means the PSS Accumulation Plan.

Senior Executive Service (SES) Member means a member of the service in the senior executive service under the *Public Sector Management Act 1994*. A person, appointed to an office listed in clause 2.1 of this Determination, has a number of the same entitlements as an SES Member.

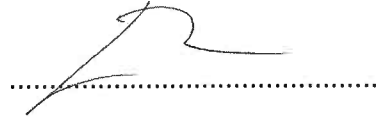
20 Revocation of previous Determination

- 20.1 Determination 14 of 2019 is revoked.

Ms Sandra Lambert AM
Chair

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Dr James Popple
Member

A handwritten signature in black ink, appearing to read 'Dr James Popple', written over a horizontal dotted line.

Mr Dale Boucher PSM
Member

A handwritten signature in black ink, appearing to read 'Mr Dale Boucher', written over a horizontal dotted line.

September 2020