

Australian Capital Territory Remuneration Tribunal

Determination 4 of 2022

Full-Time Statutory Office Holders

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 salary, allowances and other entitlements for certain full-time public office holders. This Determination covers the following office holders:

- Assistant Executive Officer, Legal Aid Commission (ACT);
- Chief Executive Officer, Canberra Institute of Technology;
- Chief Executive Officer, Legal Aid Commission (ACT);
- Commissioner for Sustainability and the Environment;
- Discrimination, Health Services and Disability and Community Services Commissioner;
- President and Human Rights Commissioner;
- Public Advocate and Children and Young People Commissioner;
- Victims of Crime Commissioner; and
- Work Health and Safety Commissioner.

Considerations

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

- Members of the Legislative Assembly (including the Chief Minister, Deputy Chief Minister, and other Ministers and Members of the Legislative Assembly holding particular offices);
- the Head of Service, Directors-General and ACT Public Service Executives; and

- Full-time Statutory Office-Holders, referred to in Section 10(1) of the *Remuneration Tribunal Act 1995*, including the Clerk of the Legislative Assembly, the Auditor-General and Electoral Commissioner.

The Tribunal advertised its Autumn Sitting on its website and in the Canberra Times on 17 March 2022. The Tribunal also wrote to the relevant office-holders requesting submissions.

At its meeting in May 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 health emergency, with the Territory now experiencing a tight labour market and wages growth. In its deliberations, the Tribunal gave 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 it 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 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 2021–22 ACT Budget, released in October 2021 by the Chief Minister, which predicted growth in 2022–23 of 2.0 per cent in WPI and 1.75 per cent in CPI.¹

The Australian Bureau of Statistics released the Consumer Price Index for the March Quarter on 27 April 2022, which included an increase of 2.2 per cent for the ACT during the March quarter, with a 5.4 per cent increase over the year (March 2021 to March 2022).² Notwithstanding this, the Tribunal notes the national trimmed mean inflation was 3.7 per cent over the year.³

¹ [ACT Budget 2021-2022 Budget Outlook, Chapter 2 Economic Outlook](#), page 32.

² ACT Treasury, 27 April 2022, CPI – March Quarter 2022
https://www.treasury.act.gov.au/data/assets/pdf_file/0009/399978/CPI.pdf recache

³ Australian Bureau of Statistics Release 27 April 2022 <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>

The Tribunal considered the statements that the Governor of the Reserve Bank of Australia made on 3 May 2022, and noted his views concerning the declining consumer purchasing power from higher inflation. 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 also continued to be aware of the future compounding effect of not providing an increase to remuneration and agreed this should be avoided where possible.

In its 15 June 2022 decision of the Annual Wage Review 2021-22, the Fair Work Commission found that the most significant changes since its previous Review were the sharp rise in the cost of living and the strengthening of the labour market. The Fair Work Commission increased the National Minimum Wage by \$40 per week (which amounted to an increase of 5.2%). The Decision also increased minimum award rates by 4.6%, with a \$40 per week minimum increase applying.

The Tribunal also noted its previous decision with respect to the Territory's Executive Service to include the former motor vehicle allowance as salary. This followed the Government's decision to amend the *Public Sector Management Standards 2016* to remove the entitlement to an employer-provided vehicle. With respect of the Territory's Executive Service, the Tribunal also converted to salary in the amount of \$7,500 the previous fringe benefit tax allowance. In this determination, the Tribunal has adjusted these allowances and provided for salary in lieu of those allowances.

Submission from the Commissioner, Work Health and Safety and Labour Hire Licensing

The Tribunal received a submission from the Commissioner, Work Health and Safety and Labour Hire Licensing.

The Tribunal also considered advice provided by officials from the Chief Minister, Treasury and Economic Development Directorate.

The Commissioner advocated for an increase to the base salary having regard to the work value and equivalent senior executive officers/statutory office holders within the ACT and across jurisdictions, with similar management responsibilities and advocated for the position to be indexed to a level in the Senior Executive structure. The Tribunal gave appropriate consideration to comparable positions.

The Tribunal discussed the work value, workload, complexities and relativities of the position with the Commissioner. The Tribunal had regard to the added responsibility of the Labour Hire Licensing role.

In addition, the Tribunal had regard to comparable positions in other jurisdictions.

The Tribunal was of the view that there is a compelling argument to increase the remuneration of the Commissioner, Work Health and Safety and Labour Hire Licensing having regard to all of the circumstances. The Tribunal maintained its view, however, that while the Senior Executive Structure provides a guide, the Tribunal would continue to evaluate Statutory Office Holder positions in their own right.

Submission from the ACT Human Rights Commission

The Tribunal received a submission from the President and Commissioners of the ACT Human Rights Commission.

The Tribunal considered advice provided by the President as well as officials from the Justice and Community Safety Directorate.

The President and Commissioners advocated for an increase to the base salary for each of the three Commissioners as well as the President, having regard to the work value and equivalent chief executive officers/statutory office holders within the ACT and across jurisdictions, with similar responsibilities. The Tribunal gave appropriate consideration of these comparable positions.

The Tribunal discussed the work value, workload, complexities and relativities of the Commissioner positions with the President. The Tribunal had regard to the level of responsibility and difference in work value between the President and other Commissioners, noting the President's leadership role. The Tribunal also discussed the need to ensure an appropriate gap exists between the remuneration of the President and that of the Commissioners.

In addition, the Tribunal had regard to comparable positions in other jurisdictions. The President and Commissioners provided the Tribunal with further information about comparable positions.

The Commissioners also provided to the Tribunal an outline of the additional functions, services and responsibilities which have accrued over the last six years.

In that context, the Tribunal was of the view that there was a compelling argument to increase the remuneration of the President and the Commissioners of the Human Rights Commission. The Tribunal maintained its view, however, that while the Senior Executive Structure provides a guide, the Tribunal would continue to evaluate Statutory Office Holder positions in their own right.

Decision

The Tribunal acknowledges that there continues to be uncertainty due to the ongoing and accelerating transmission of COVID-19. However, having regard to the prevailing economic circumstances, the Tribunal believes that it would be prudent to increase the remuneration of the office-holders covered by this Determination.

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 Sector Management Standards 2016* removing the entitlement to an employer-provided vehicle, the Tribunal has decided to roll the amount of the fringe benefit tax payment (\$7,500) into the base remuneration for full-time statutory office holders. The additional base remuneration amounts are outlined in the salary table below, with the comparable remuneration level in the ACTPS Executive band structure.

Having considered the responsibilities and leadership role of the position of President of the Human Rights Commission, the Tribunal determined to increase the remuneration of this position to \$308,819.

The Tribunal noted the complexities and responsibilities of the roles of Discrimination, Health Services and Disability and Community Services Commissioner, Public Advocate and Children and Young People Commissioner, and Victims of Crime Commissioner, and determined to increase the remuneration of these positions to \$238,765.

The Tribunal noted the additional role of labour hire licensing to the Work Health and Safety Commissioner position and determined to increase the remuneration of this role to \$277,493.

For the reasons outlined above, the Tribunal has decided to provide an increase of 3.25 per cent to the remuneration of all other office-holders covered by this Determination. The increase is taken to have commenced on 1 July 2022.

July 2022



Australian Capital Territory Remuneration Tribunal

Determination 4 of 2022

Full-Time Statutory Office Holders

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 2022.

2 Remuneration

2.1 A person appointed to an office listed in column 1 of the table below is entitled to the remuneration mentioned in column 2 of the same row in the table below.

TABLE 2.1

Column 1 Office	Column 2 Base Remuneration	Column 3 ⁵ Additional Remuneration	Column 4 ⁶ Total Remuneration
Assistant Executive Officer (DCEO), Legal Aid Commission (ACT)	\$238,765	\$24,500	\$270,765
Chief Executive Officer, Canberra Institute of Technology	\$329,044	\$25,000	\$361,544
Chief Executive Officer, Legal Aid Commission (ACT)	\$308,819	\$25,000	\$341,319
Commissioner for Sustainability and the Environment	\$258,087	\$24,500	\$290,087
Discrimination, Health Services and Disability and Community Services Commissioner, ACT Human Rights Commission	\$238,765	\$24,500	\$270,765
President and Human Rights Commissioner, ACT Human Rights Commission	\$308,819	\$25,000	\$341,319

Public Advocate and Children and Young People Commissioner, ACT Human Rights Commission	\$238,765	\$24,500	\$270,765
Victims of Crime Commissioner, ACT Human Rights Commission	\$238,765	\$24,500	\$270,765
Work Health and Safety Commissioner	\$277,493	\$24,500	\$309,493

⁵ Previous motor vehicle allowance

⁶ Including previous motor vehicle allowance and fringe benefits tax payment, excluding allowances and superannuation, consistent with changes outlined in Determinations 1 of 2022 and 2 of 2021 and Public Sector Management Amendment Standards 2021 (No 1).

- 2.2 If a full-time statutory office holder has an employer-provided vehicle, Determination 4 of 2021 continues to apply until such time as the lease of the vehicle ends.
- 2.3 A person appointed to an office listed in column 1 of Table 2.1 must not receive the salary mentioned in column 2 if the person is paid a higher salary for that office from another source.
- 2.4 If a person appointed to an office listed in column 1 of Table 2.1 is also appointed to another office under ACT legislation, 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 column 1 of Table 2.1 may elect to take the remuneration mentioned in column 2 of Table 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 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.
- 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 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 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.
- 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 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%).
- 6.5 A person, appointed to an office 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.
- 6.6 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 2021-2022, as follows:
- (a) 1.5%.

- 6.7 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*.
- 6.8 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.

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 an appointment as a statutory officer holder.
- 7.3 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.
- 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 listed in 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.

7.6 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 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 section 8.3.

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

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 listed 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).

8.2 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.

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.

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.

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 Determination⁴ 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. 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.

10 Travel

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 If a traveller travels on commercially provided road or rail transport the employer will pay the fares for that travel.
- 10.5 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.
- 10.6 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.
- 10.7 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 Sector Administrative and Related Classifications Enterprise Agreement 2018 – 2021*, or its replacement.

11 Accommodation

- 11.1 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:
- a) for domestic accommodation—4.5 stars;

⁴ [Australian Taxation Office – Taxation Determination 2021/6 Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2021-22 income year?](#)

- b) for international accommodation—4.5 stars.
- 11.2 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 a Minister to stay in the same commercial accommodation as that Minister if they are entitled to a higher standard of accommodation.

12 Meals

- 12.1 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.

13 Incidental expenses

- 13.1 The employer will reimburse 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.

14 Frequent Flyer Program

- 14.1 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.

15 Incidental travel in conjunction with official travel

- 15.1 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.
- 15.2 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.
- 15.3 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.

16 Travel insurance

- 16.1 Travel insurance decisions should be based on risk management principles and include factors such as the nature and destination of the trip.

- 16.2 International travel will normally require travel insurance.
- 16.3 If necessary, the cost of travel insurance will be met as a reasonable work-related expense by the Territory.
- 16.4 All legitimate and reasonable work-related claims will be covered by the Territory.

17 Definitions

17.1 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.

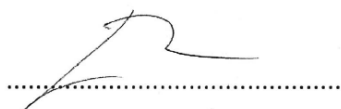
18 Revocation of previous Determination

18.1 Determination 4 of 2021 is revoked.


Ms Sandra Lambert AM
Chair



Dr James Popple
Member



Mr Dale Boucher PSM
Member



July 2022