



Australian Capital Territory Remuneration Tribunal

Director of Public Prosecutions

Determination 12 of 2019

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 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 2019 review of remuneration and entitlements for the Director of Public Prosecutions (DPP) was advertised in August 2019. A submission was received from the DPP.

The Tribunal met on 21-22 October 2019 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 2019 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.

The Tribunal considered the current remuneration, allowances and entitlements provided to the DPP and looked at the remuneration and benefits paid to Directors of Public Prosecutions in other States and Territories.

Mr Shane Drumgold, ACT Director of Public Prosecutions appeared before the Tribunal and advocated for parity between the remuneration package of a Supreme Court Judge and the remuneration and entitlements of the DPP in the ACT. Mr Drumgold submitted that the Tribunal in Determination 10 of 2014 had previously acknowledged that the position of the DPP should be remunerated in a way that approaches parity with the salary of a Supreme Court Judge. The submission also raised that the DPP be afforded the entitlement of a judicial pension.

The Tribunal considers that the intent of the 2014 Determination has already been achieved.

Decision

The Tribunal decided that a remuneration increase of 2 per cent be provided to the Director of Public Prosecution from 1 July 2019 to maintain existing relativities.

The Tribunal decided that the entitlement of a judicial pension is a policy decision for the ACT Government and not a matter for the Tribunal.

The Tribunal has increased the fringe benefit tax payment from \$7,000 to \$7,500 and adjusted the provision to align with those that apply to other statutory office holders.

The Tribunal also increased the maximum relocation allowance amount to \$55,000 and made provision for the repayment of this allowance if the officer holder's appointment is ended within twelve months of the date of their appointment.

December 2019



Director of Public Prosecutions

Determination 12 of 2019

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

1 Commencement

This instrument is taken to have commenced on 1 July 2019.

2 Remuneration

2.1 The base salary for the Director of Public Prosecutions is \$458,656 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 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.

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 mentioned 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 mentioned 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 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 no less than 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 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%.
- 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 mentioned in clause 2.1 of this Determination.

7 Fringe benefit tax – vehicle

- 7.1 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.
- 7.2 During the fringe benefits year, where the Director of Public Prosecutions elects to receive an employer-provided vehicle instead of a payment, if the employer's liability in relation to the Director of Public Prosecutions' vehicle provided by the employer for the fringe benefits tax year is less than \$7,500, the difference is payable to the DPP as an allowance at the end of the fringe benefits tax year.
- 7.3 To avoid doubt, if the assessed liability for fringe benefits tax exceeds the \$7,500 threshold, the Director of Public Prosecutions will not be required to pay any component in excess of the \$7,500.
- 7.4 During the fringe benefits tax year, where the Director of Public Prosecutions 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 Director of Public Prosecutions on a fortnightly basis.
- 7.5 The fringe benefits tax allowance of \$7,500 under clause 7.4 is reduced proportionally where the Director of Public Prosecutions is engaged for less than a full fringe benefits tax year.

8 Relocation allowance

- 8.1 In this clause, **ACT** means the Australian Capital Territory and its surrounding district, including Queanbeyan.
- 8.2 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.
- 8.3 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.

8.4 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.

8.5 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.

8.6 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.

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 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);
- 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 mentioned in 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 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.

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.

¹ Australian Taxation Office – Taxation Determination 2019/11 Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2019-20 income year?

- 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.
- 10.8 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.
- 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 2018 – 2021*, 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 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.

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.

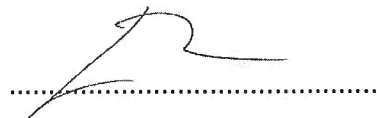
14 Revocation of previous determination

Determination 14 of 2018 is revoked.

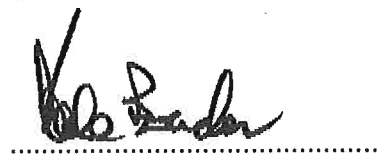
Ms Sandra Lambert AM
Chair



Dr James Popple
Member



Mr Dale Boucher PSM
Member



December 2019