



ACT
Government

AUSTRALIAN CAPITAL TERRITORY REMUNERATION TRIBUNAL

Statement and Determination 19 of 2011

Clerk of the Legislative Assembly

Background

Section 10 of the *Remuneration Tribunal Act 1995* requires the Remuneration Tribunal (Tribunal) to inquire into, and determine, the remuneration, allowances and other entitlements for the Clerk of the Legislative Assembly (the Clerk).

The Tribunal last reviewed remuneration, allowances and other entitlements for the Clerk in April 2011 and subsequently issued Determination 6 of 2011 in June 2011.

This latest review, which sought submissions from interested parties, was notified in the press on 6 August 2011.

Tribunal Consideration

The Tribunal considered submissions, prevailing economic factors and comparative data on remuneration. The Tribunal indicated in June 2011 that it wanted to be in a position to consider further comparative material from other jurisdictions and from within the ACT when it became available. The Tribunal has noted that an offer has been made by the Government to bargaining representatives of administrative staff in the ACTPS covered by directorate industrial agreements amounting to a 3.5% increase in remuneration from 18 August 2011 and a further increase of 3.5% from 1 July 2012.

The Tribunal noted that its determination in June 2011 granted increases of 2.5% to the Clerk.

The Tribunal also noted the uncertain economic climate facing the ACT and the impact that the economic uncertainty may have on the budgetary position of the ACT Government. This was evident from a range of published material and reinforced in the Chief Minister's submission. The Tribunal was particularly concerned about possible weakening of the budgetary position and the recent re-emergence of global financial problems. It noted that the ACT is not and should not be a leader amongst Australian jurisdictions in setting remuneration for public officials and that the Tribunal cannot operate in isolation and must take into account public expectations of appropriate salary setting and the long-term capacity of the Government to fund the remuneration of public officials. The Tribunal did not consider it appropriate in the current circumstances to grant a further increase in 2011 in the remuneration of the Clerk.

As a result the Tribunal determined that remuneration for the Clerk is unchanged from that determined in Determination 6 of 2011 made in June 2011.

There were no changes made to the allowances and other entitlements of the Clerk.

ACT Remuneration Tribunal
September 2011

- - - - -



ACT
Government

**AUSTRALIAN CAPITAL TERRITORY
REMUNERATION TRIBUNAL**

Determination 19 of 2011

Clerk of the Legislative Assembly

Pursuant to Section 10 of the *Remuneration Tribunal Act 1995* the Remuneration Tribunal has inquired into the remuneration and allowances to be paid, and other entitlements to be granted to the Clerk of the Legislative Assembly.

This Determination is taken to have commenced on and from 1 November 2011.

Anne Cahill Lambert AM
Chair

.....

Greg Friedewald
Member

.....

Dated: September 2011



AUSTRALIAN CAPITAL TERRITORY REMUNERATION TRIBUNAL

Determination 19 of 2011

Clerk of the Legislative Assembly

The Tribunal determines as follows:

1. Remuneration

- 1.1. The annual remuneration for the Clerk of the Legislative Assembly (the Clerk) shall be \$177,661 with effect from 1 November 2011.

2. Employer Provided Benefits

- 2.1. Subject to section 11 of the *Remuneration Tribunal Act 1995*, the Clerk shall be entitled to the various employer provided benefits or, where applicable, the relevant cash equivalents of the benefits, as shown in Schedule A.

3. Salary Packaging Scheme

- 3.1. Subject to the following conditions, the Clerk may elect to take remuneration shown in clause 1 as salary or take a combination of salary and other benefits best suited to his or her personal needs and preferences.
- 3.2. The scheme is to be consistent with taxation laws and guidelines applicable to salary packaging schemes, issued by the Australian Taxation Office.
- 3.3. The scheme is to be based on the ACT Public Service Salary Packaging Policy and Procedures issued by the Commissioner for Public Administration, with up to 100% of the relevant remuneration shown in Schedule A being taken as benefits and related costs such as fringe benefits tax.
- 3.4. The scheme shall be operated and administered so that there will be no additional cost to the ACT Government. In particular, any fringe benefits tax associated with the provision of a benefit is to be included in the salary package.
- 3.5. The salary for superannuation purposes of the Clerk is unaffected by participation in the salary packaging scheme

4. Relocation Allowance

- 4.1. A reference in this clause to the ACT includes a reference to the surrounding district, including Queanbeyan.
- 4.2. Relocation allowance is an amount provided to **assist** an individual to relocate from a residence outside the ACT to a residence within the ACT. It is not intended that the allowance cover all costs in all circumstances
- 4.3. Where the Clerk is relocated from a residence outside the ACT to a residence within the ACT, as a result of a fixed-term appointment or engagement, he or she shall be entitled to be reimbursed the actual, receipted, reasonable costs of relocating his or her residence to the ACT subject to the following conditions.
- 4.4. Reimbursement may be made in respect of: -
 - (a) packing of personal effects and furniture belonging to the individual and his or her partner;
 - (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 subject to a maximum period in all of six months, or, in exceptional circumstances, nine months with the 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; and
 - (i) subject to the approval of the ACT Remuneration Tribunal, any other reasonable expenses necessarily incurred in relocating to the ACT.
- 4.5. Total maximum amount under this provision shall not exceed \$49,790. The maximum amount must not be exceeded unless the ACT Remuneration Tribunal agrees that there are **unusual or exceptional** circumstances prevailing, which are unforeseen or unable to be dealt with without exceeding the maximum relocation allowance.
- 4.6. Where the Clerk considers that unusual and exceptional circumstances exist in their relocation to the ACT, then they may request the Remuneration Tribunal to consider the matter and determine whether the maximum allowance can be exceeded. In such circumstances the Remuneration Tribunal will require the following information:

- details of the **unusual or exceptional** circumstances;
- details of the relocation;
- expenses incurred by the office holder;
- the expected total relocation expenses of the office holder;
- the level of assistance the office holder considers should be provided; and
- any other relevant information.

4.7. This entitlement does not apply to any expenses incurred at the conclusion of employment.

5. Leave and other entitlements where no specific provisions

5.1 Subject to section 11 of the *Remuneration Tribunal Act 1995*, and except when there is in force any other determination of the Tribunal specifying the leave or any other entitlements to be granted to the Clerk, the Clerk shall be entitled to the leave or other entitlements as would be available to an executive engaged under section 72 of the *Public Sector Management Act 1994*.

5.2 For the avoidance of doubt, this entitlement includes recognition of accrued leave credits where such credits have been accrued in employment in the ACT Public Service by the office holder immediately before taking up the office of Clerk, provided that a payment equivalent to the value of the unused credits has not been made or the accrued credits otherwise accounted for by the Territory.

6. Revocation of Previous Determination

6.1 Determination 6 of 2011, dated 8 June 2011 is revoked.

7. Date of Effect

7.1 The date of effect of this Determination is 1 November 2011.

- - - - -

Schedule A

Employer Provided Benefits – Clerk of the Legislative Assembly

Benefit	Annual Cash Payment or Cash Payment In Lieu of Benefit
Employer's Superannuation Contribution	As set out in Clause 2 of this schedule
Use of Government leased motor vehicle	\$16,000
Parking	\$2,500
Fringe Benefits Tax allowance	\$7,000

Conditions

1. General

- 1.1. The value of the remuneration component and the employer provided benefits (EPBs) shall be fixed and non-transferable to other components of the total remuneration package.
- 1.2. The Clerk of the Legislative Assembly (the Clerk) shall be entitled to the EPBs, or their cash equivalent (except the employer's contribution to superannuation and the FBT except in accordance with sub-clause 3.2). Each EPB shall be separate, fixed and shall not be transferable so as to increase or decrease any other EPB.

2. Employer's Superannuation Contribution

- 2.1. For a person engaged as the Clerk:
 - (a) who is an existing Commonwealth Superannuation Scheme (CSS) or Public Sector Superannuation Scheme (PSS) member; or
 - (b) was previously engaged or appointed under the *Public Sector Management Act 1994* between 1 July 2005 and 30 June 2006, where the subsequent engagement as the Clerk would be continuous with the employment between 1 July 2005 and 30 June 2006;

the employer shall continue to meet its requirements under the *Superannuation Act 1976* (Cth) and the *Superannuation Act 1990* (Cth) as they apply to those persons who are contributory members of the CSS and PSS established under those Acts.

- 2.2. For the purposes of calculating the entitlements component of the total remuneration package for a person to whom sub-clause 2.1 applies, the value of the employer's superannuation contribution shall be notionally deemed to be 16% of the remuneration component.
- 2.3. For a person to whom sub-clause 2.1 applies, the person may cease to be a CSS or PSS member upon their election.

- 2.4. For a person engaged as Clerk, on and from 1 July 2006, who is not, or ceases to be, a person mentioned in sub-clause 2.1, the value of the employer's superannuation contribution is:
- (a) 9% of the remuneration component; or
 - (b) 10% of the remuneration component, if the Clerk contributes 3% or more of his or her remuneration component to the agreed superannuation fund nominated by the Clerk in the form of personal superannuation contributions.
- 2.5. The employer must contribute any nominated amount on behalf of the Clerk to an agreed superannuation fund nominated by the Clerk.
- 2.6. The value of the employer's superannuation contribution must not be paid in cash to the Clerk.

3. Elections – Employer Provided Benefits

- 3.1. The Clerk shall elect which of the EPBs he or she wishes to retain or to be paid in cash.
- 3.2. The amount of the Fringe Benefits Tax Allowance payable to the Clerk will be the amount remaining after the employer's liability for fringe benefits tax is calculated, as required under the *Fringe Benefits Tax Assessment Act 1986*.
- 3.3. If the liability for fringe benefits tax exceeds the sum of \$7,000 the Clerk shall not be required to pay the excess to the employer.
- 3.4. The Clerk's right to take an annual EPB (or cash in lieu) shall be reduced proportionally where the relevant employment comprises only part of a financial year.
- 3.5. Where the Clerk elects to take an EPB in cash the total value of the elected EPB shall be paid to the Clerk in equal fortnightly instalments.
- 3.6. Definitions

Agreed superannuation fund means a fund complying with the requirements of the *Income Tax Assessment Act 1936* (Cth) and complying with the *Superannuation Industry (Supervision) Act 1993* (Cth) where relevant.

Employer means the Australian Capital Territory and includes any person authorised to act on behalf of the Australian Capital Territory in relation to any act, approval or direction to be done, granted or exercised, by or on behalf of the Australian Capital Territory under contract.

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

4. Motor Vehicle and Parking

4.1. Definitions

Business use means the use of an executive vehicle for purposes associated with the operation of the agency.

Clerk means the Clerk of the ACT Legislative Assembly.

vehicle means a self drive and private plated passenger motor vehicle which is provided to a Clerk as part of their total remuneration package, and includes any vehicle provided in lieu of that vehicle.

private use means the use of a vehicle for private or non-business purposes

4.2. Vehicle Entitlement

4.2.1. The Clerk shall be entitled to the use of a four cylinder executive vehicle, within the Territory's leasing arrangements.

4.2.2. The Clerk shall be entitled to a parking space for his or her vehicle at or near his or her place of work.

4.2.3. If a vehicle is to be returned, replaced, purchased or transferred, this must be done in accordance with the requirements of the fleet provider and the whole of government policy for executive vehicle management.

4.3. Vehicle Entitlement – Part-time Clerk

4.3.1. Subject to sub-clause 4.3.2, a Clerk who works regular hours but is engaged on a part-time basis will continue to receive the vehicle entitlement as if he or she were full-time.

4.3.2. The Tribunal may approve requests, made in writing, that the vehicle entitlement of the Clerk engaged on a part time basis be restricted to a pro rata basis.

4.4. Choice of Vehicle

4.4.1. When entering into a lease for a vehicle with the fleet provider, the Clerk is entitled to choose a vehicle, subject to:

- (a) the requirements of this clause;
- (b) the requirements of the Territory's fleet provider; and
- (c) the whole of government policy for executive vehicle management.

4.4.2. The vehicle selected by the Clerk must be a four cylinder vehicle.

4.4.3. The vehicle model selected by the Clerk must be suitable for business use at his or her place of work.

- 4.4.4. The vehicle model selected by the Clerk must not be a high performance, luxury or prestige vehicle.
- 4.4.5. The vehicle selected by the Clerk may be Australian made or imported.
- 4.4.6. The vehicle selected by the Clerk must be valued by the Territory's fleet provider at or below \$41,800 (GST exclusive).
- 4.4.7. The Clerk is entitled to choose optional items of equipment for a vehicle provided:
 - (a) the equipment is approved and the modifications made in accordance with the requirements specified in the whole of government policy for executive vehicle management; and
 - (b) the total value of the vehicle with the equipment does not exceed \$41,800.

4.5. Payment in Lieu of Vehicle

- 4.5.1. The Clerk may elect to receive payment in lieu of the entitlement to a vehicle of the amount of \$16,000.
- 4.5.2. Payment in lieu of a vehicle will be paid in fortnightly instalments.
- 4.5.3. Where the Clerk elects to receive payment in lieu of a vehicle, the Clerk:
 - (a) is entitled to retain access to a parking space; and
 - (b) is not entitled to access any other entitlements provided under this clause.
- 4.5.4. The Clerk may elect to receive payment of \$2,500 pa in lieu of the entitlement to a parking space.
- 4.5.5. Payment in lieu of a parking space will be paid in fortnightly instalments.
- 4.5.6. Where the Clerk is engaged on a part-time basis, and is restricted to a pro rata vehicle entitlement under sub-clause 4.3, any payment in lieu of the entitlement to parking must be made on a pro rata basis.

4.6. Vehicle Modification

- 4.6.1. If the Clerk has a disability that affects his or her ability to drive a standard vehicle, the Clerk will be entitled to such modifications the Tribunal certifies in writing as being reasonably necessary to enable the Clerk to drive a vehicle.

4.7. Vehicle Maintenance and Running Costs

- 4.7.1. Subject to sub-clause 4.7.3 all vehicle maintenance costs will be met by the Territory.

- 4.7.2. All running costs of the vehicle will be met by the Territory.
- 4.7.3. Where, as a result of the conduct of the driver of the vehicle, the Territory's insurance arrangements will not respond in part or in whole to a claim for damage to a vehicle, the driver (or where the driver is the Clerk or a person nominated by the Clerk) will be required to meet the repair costs, not covered by the Territory's insurance arrangements, associated with restoring that executive vehicle.

4.8. Vehicle Care

- 4.8.1. The Clerk must ensure that due care and security is afforded to the vehicle.
- 4.8.2. In accordance with sub-clause 4.8.1, if the Clerk home garages the vehicle he or she must;
- (a) park the vehicle behind property line;
 - (b) if possible, park the vehicle under cover.

4.9. Authorised Use of Vehicle

- 4.9.1. Any driver of the vehicle must:
- (a) hold an appropriate license; and
 - (b) obey all traffic laws and parking restrictions; and
 - (c) abide by the requirements outlined in the whole of government policy for executive vehicle management.
- 4.9.2. The driver in control of the vehicle is personally responsible for any breaches of traffic laws and parking restrictions, and must pay any fines incurred.

4.10. Business Use of the Vehicle

- 4.10.1. Subject to sub-clause 4.10.2, when the Clerk is at his or her normal place of work, the Clerk must bring the vehicle to work and make it available for business use by the Clerk's agency during normal business hours.
- 4.10.2. When a vehicle is being repaired or serviced, or undergoing a similar process, the Clerk is not required to bring the vehicle to his or her normal place of work.
- 4.10.3. Staff who drive the vehicle are subject to the same conditions related to the authorised use of that vehicle as the Clerk.
- 4.10.4. Staff who use the vehicle must:
- (a) report vehicle accidents and defects to the agency; and

- (b) record accidents and defects to the agency; and
- (c) ensure that all cargo is properly secured; and
- (d) Abide by the requirements outlined in the whole of government policy for executive vehicle management.

4.11. Private Use of Vehicle

- 4.11.1. The Clerk may use the vehicle for private purposes outside of normal business hours.
- 4.11.2. The vehicle may only be driven for private purposes by:
 - (a) The Clerk to who the vehicle is provided; or
 - (b) An appropriate licensed driver nominated by the Clerk to the Clerk's agency who is approved by the agency.
- 4.11.3. The Clerk's agency shall maintain a register of drivers approved to drive the vehicle for private purposes.
- 4.11.4. Drivers approved to drive the vehicle for private purposes are subject to the same conditions of authorised use of that vehicle as the Clerk.
- 4.11.5. The Clerk must not use the vehicle for personal gain, or the personal gain of any other person.
- 4.11.6. The Clerk must not permit another person to use the vehicle for the Clerk's personal gain, or the personal gain of any other person.

4.12. Record Keeping

- 4.12.1. The agency must keep appropriate records on the use of the vehicle;
 - (a) for Fringe Benefits Tax calculation and audit purposes; and
 - (b) an appropriate licensed driver nominated by the Clerk to the Clerk's agency who is approved by the agency.
- 4.12.2. The agency is responsible for the calculation and payment of any Fringe Benefit Tax liability associated with the vehicle.
