

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

REMUNERATION TRIBUNAL BILL 1995

EXPLANATORY MEMORANDUM

**Circulated by the authority of
Kate Carnell
Chief Minister**

Remuneration Tribunal Bill 1995

Outline

This Bill establishes an ACT Remuneration Tribunal to determine remuneration, allowances and entitlements for ACT office holders, appointees and executives in the public service. The ACT Tribunal will replace the existing arrangement whereby the remuneration of most ACT public offices are set by the Commonwealth Remuneration Tribunal.

The Bill sets up a Tribunal of not more than three members to inquire into and determine the remuneration of the offices referred to in clauses 9 and 10 of the Bill. These offices include Members of the Legislative Assembly, Magistrates, ACT Public Service Chief Executives and Executives and other full-time statutory office holders such as the Auditor General, the Commissioner for Health Complaints and the Fire Commissioner. The Chief Minister may include other offices and appointments by written notice to the Tribunal.

The existing Judges of the Supreme Court of the ACT, all of whom currently hold appointments as Judges to the Federal Court of Australia, will continue to have their remuneration set by the Commonwealth Remuneration Tribunal. The ACT Tribunal will set the remuneration of any subsequently appointed Supreme Court Judges who do not also hold Federal Court appointments.

The Tribunal must make determinations for the specified offices as soon as practicable after the commencement of the Act. While the Tribunal must review determinations at least yearly, this will not automatically lead to yearly increases in remuneration.

The Tribunal's determinations must be presented in writing to the Chief Minister, who must then table the determination in the Legislative Assembly within 6 sittings days.

The Chief Minister determines the fees and allowances paid to members of the Remuneration Tribunal. These determinations must be tabled in the Legislative Assembly and are disallowable instruments.

An associated bill, the *Remuneration Tribunal (Consequential and Transitional Provisions) Bill 1995* provides for the continued operation of existing Commonwealth Remuneration Tribunal determinations. These will lapse when they are replaced by determinations of the ACT Tribunal.

The *Remuneration Tribunal (Consequential and Transitional Provisions) Bill 1995* also makes consequential amendments to certain ACT laws to remove contradictory references to the Commonwealth Remuneration Tribunal.

Outline of Provisions

Part I- PRELIMINARY

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the Act. The first part of the Act commences on the day the Act is notified in the Gazette. The main provisions of the Act, which set up the Tribunal and deal with its inquiries and determinations, do not commence until notified in the Gazette on a day fixed by the Minister. If this is not done within 6 months, the provisions will commence at the end of that period.

Clause 3 is an interpretation section where terms in the proposed Act are defined.

Part II- THE REMUNERATION TRIBUNAL

Clause 4 establishes the Remuneration Tribunal, which consists of not more than 3 members appointed by the Executive. The term of an appointment cannot exceed 5 years, although members may be reappointed.

Clause 5 states that the Tribunal can consist of one member. Where there is more than one member, the Executive must appoint a member as Chairperson.

Clause 6 provides that a member of the Tribunal is to be paid fees and allowance set in accordance with clause 19. Under clause 19, the Chief Minister determines fees and allowances of members of the Tribunal. These determinations are disallowable instruments.

Clause 7 permits a member to resign by written notice to the Chief Minister.

Clause 8 permits the Executive to remove a member of the Tribunal from office because of misbehaviour or physical or mental incapacity.

Part III- INQUIRIES AND DETERMINATIONS

Clause 9 requires the Tribunal to inquire into and determine the remuneration, allowances and entitlements of the Chief Minister, a Deputy Chief Minister and other Ministers. The Tribunal shall also inquire into the remuneration, allowances and entitlements of other members of the Legislative Assembly because of any office they hold or functions that they perform in relation to the Legislative Assembly.

Clause 10 requires the Tribunal to inquire into and determine the remuneration, allowances and entitlements for the appointments and offices

listed in the clause. This list includes judicial appointees, Magistrates, the Clerk of the Legislative Assembly, the Auditor General, Chief Executives and Executives and full-time statutory appointees.

The Chief Minister may add to this list the holder of any office or appointment, or class of offices or appointments. This is done by specifying the offices or appointments, or the class, in an instrument given to the Tribunal. These instruments must be notified in the Gazette.

The clause also recognises that the ACT Tribunal cannot make determinations for ACT Supreme Court Judges who are also Federal Court Judges. The Tribunal can make determinations with respect to any additional allowances paid to the Chief Justice of the Supreme Court.

Clause 11 means that in making its determinations, the Tribunal cannot include allowances or entitlements of a kind that are already granted or paid under a law of the Territory or the Commonwealth, or under an instrument of appointment. For example, the Tribunal cannot include superannuation entitlements where a person's superannuation entitlements are set by a Commonwealth law, or allowances or entitlements that may be set under the Standards made under *Public Sector Management Act 1994*.

Clause 12 requires the Tribunal to present its determinations in writing to the Chief Minister. The Chief Minister must then table the determinations in the Legislative Assembly within 6 sitting days.

Sub-clause 12(3) provides that determinations commence on a day determined by the Tribunal, although this date cannot be more than 90 days from the day the determination is made.

Clause 13 requires the Tribunal to make determinations for offices set out in clauses 9 and 10 as soon as practicable after the commencement of the substantive provisions of the Act. The Tribunal must also review its determinations at least yearly.

Clause 14 provides for interim determinations by the Chief Minister when there is no existing determination for the offices referred to in clauses 9 and 10. Interim determinations cease to have effect when the Tribunal makes a determination for the person referred to in the interim determination.

Clause 15 states that remuneration and allowances provided for in subsisting determinations shall be paid either in accordance with legislation establishing the relevant statutory body or, in any other case, out of the Consolidated Revenue Fund.

Division 2 - Procedure

Clause 16 deals with the procedure of the Tribunal in conducting inquiries. The Tribunal may inform itself in such manner as it thinks and may receive

written or oral statements. The Tribunal is not required to conduct formal inquiries and is not bound by the rules of evidence.

Clause 17 deals with the procedure at the Tribunal's meetings where there is more than one member. The Chairperson may convene meetings at which he or she is to preside. If the Chairperson is absent from a meeting, members are to elect another member to preside.

The Tribunal may determine its own procedure at meetings, 2 members can constitute a quorum, questions shall be decided by a majority of votes of the members present and the member presiding can make a casting vote in the event of a tied vote.

Part IV- MISCELLANEOUS

Clause 18 permits the Tribunal to make arrangements with the Chief Executive of the Chief Minister's Department for the use of public servants or facilities.

Cause 19 permits the Tribunal to engage consultants to be paid from the Tribunal's budget. Any engagement of consultants is on behalf of the Territory and must be in writing.

Clause 20 permits the Chief Minister to determine the fees and allowances payable to members of the Tribunal. Subclause 20(2) states that these determinations are disallowable instruments for the purposes of section 10 of the *Subordinate Laws Act 1989*. This means the determination must be notified in the Gazette, tabled in the Legislative Assembly within 15 sitting days after the date of notification, and may be subject to a motion of disallowance.