

SALARIES AND ALLOWANCES (DEBT AND DEFICIT REMEDIATION) BILL 2017

EXPLANATORY MEMORANDUM

OUTLINE

The principal purpose of the Bill is to amend, for the purposes of debt and deficit remediation, the *Salaries and Allowances Act 1975* to prevent increases in the remuneration of certain public offices.

Clause 1 Short title

Clause 1 cites the title of the Act – the *Salaries and Allowances Amendment (Debt and Deficit Remediation) Act 2017* (amending Act).

Clause 2 Commencement

Clause 2 provides for:

- sections 1 and 2 to come into operation on the day the amending Act receives the Royal Assent; and
- the rest of the Act to come into operation on a day fixed by proclamation. Different days may be fixed for different provisions.

Clause 3 Act amended

Clause 3 specifies that the amending Act amends the *Salaries and Allowances Act 1975* (the SA Act).

Clause 4 Part I Division 1 heading inserted

Clause 4 inserts a heading before current section 1 to create a Part I, “Division 1 – Preliminary”.

The new headings inserted here, and that follow, are inserted by way of housekeeping clarification, as a consequence of the insertion of a new Part I, Division 4 which deals with the pay freeze.

Clause 5 Part I Division 2 heading inserted

Clause 5 inserts a heading after current section 4 to create a Part I, “Division 2 – Tribunal established”.

Clause 6 Part I Division 3 heading inserted

Clause 6 inserts a heading after current section 5 to create a Part I, “Division 3 – Inquiries, determinations and reports”.

Clause 7 Section 8 amended

Clause 7 amends current section 8 to create subsection 8(1), which replicates the wording of current section 8, and to create new subsections 8(2) and (3).

Current section 8 requires the Tribunal to make an annual determination or report in respect of the following relevant types of offices or office holders:

- section 6(1):
 - Ministers of the Crown and the Parliamentary Secretary of the Cabinet;
 - a Parliamentary Secretary appointed under section 44A(1) of the *Constitution Acts Amendment Act 1899*;
 - officers and members of the Parliament, including members of parliamentary standing or joint standing committees;
 - the clerks and deputy clerks of the Legislative Council and the Legislative Assembly;
 - officers of the Public Service holding offices included in the Special Division of the Public Service;
 - members of the governing councils of each of the public universities (as listed in section 6(1)(ea));
 - a person holding an office that is prescribed for the purposes of section 6(1)(e);
- section 7(1):
 - judges;
 - District Court judges;
 - masters of the Supreme Court;
 - magistrates;
 - the Parliamentary Inspector of the Corruption and Crime Commission appointed under the *Corruption, Crime and Misconduct Act 2003*; and
- section 7C(2): executive officers of Government entities that are prescribed for the purposes of current subsection 7C(1)(b) of the SA Act.

New subsection 8(2)(a) provides that during the pay freeze, the Tribunal is not required to make annual determinations or reports in relation to the above types of offices or officers – except for executive officers of Government entities under current section 7C(2) which are addressed in new subsection 8(2)(b) – as it is normally required to do under current section 8.

The effect of new subsection 8(2)(b) is that during the freeze, the Tribunal must not make determinations under current section 7C(2) while new section 10F applies. This means that where a Government entity is prescribed for the purposes of current

subsection 7C(1)(b), the Tribunal is to make its determinations, during the freeze, of remuneration to be paid to the executive officer/s of the Government entity under new section 10F(3). It is to be noted that as at the date of commencement of the Bill, no entities will have been prescribed for the purposes of current subsection 7C(1)(b). At the conclusion of the freeze, the Tribunal will revert to making determinations in respect to executive officers of prescribed Government entities pursuant to current section 7C(2), as informed by new section 10F(9).

New subsection 8(3) provides that new subsection 8(2)(a) does not prevent the Tribunal from making a determination or report referred to in 8(2)(a) if the Tribunal considers that the circumstances require it. This is intended to give the Tribunal the ability to make determinations if needed, within the constraints of the provisions of the amending Act.

It is to be noted that the amendments to current section 8 do not impact on the frequency of the Tribunal's determinations in relation to remuneration for local government CEOs made pursuant to current section 7A; and fees, allowances and expenses for elected council members made pursuant to current section 7B.

Clause 8 Section 10 amended

Clause 8 deletes "section 7C(2)" in current section 10(4)(d) and replaces it with "section 7C(2) or the amount of remuneration to be paid or provided to those officers as referred to in section 10F(3)".

Currently, section 10(4)(d) provides that the Minister shall appoint a person to assist the Tribunal in an inquiry into the minimum and maximum amounts of remuneration to be paid or provided to executive officers of Government entities referred to in section 7C(2). The person appointed is to be nominated by the chief executive officer of the department principally assisting in the administration of the *Financial Management Act 2006* (currently the Department of Treasury).

Clause 8 recognises that, under new subsection 8(2)(b), during the freeze the Tribunal cannot make a determinations under current section 7C(2). The effect of new subsection 8(2)(b) is that the Tribunal's determinations in relation to executive officers of Government entities will instead be made under new section 10F(3).

Clause 8 therefore ensures that while the freeze is in place, the Minister may appoint a person to assist the Tribunal in its inquiries which are conducted under section 10F(3) (instead of section 7C(2)). It is to be noted that under section 10(4)(d) as amended, the Minister retains the ability to appoint a person to assist the Tribunal in any inquiry that is conducted under section 7C(2) with the intention of issuing a determination that comes into operation after new section 10F ceases to apply.

Inquiries under new section 10F will only be conducted during the pay freeze, in respect of executive officers of Government entities that are prescribed for the purposes of current subsection 7C(1)(b).

Clause 9 Part I Division 4 inserted

Clause 9 creates a new Part I, “Division 4 – No remuneration increases before 1 July 2021” after current section 10A.

The provisions of new Part I, Division 4 give effect to the pay freeze in relation to the following types of positions or offices:

- section 6(1):
 - Ministers of the Crown and the Parliamentary Secretary of the Cabinet;
 - a Parliamentary Secretary appointed under section 44A(1) of the *Constitution Acts Amendment Act 1899*;
 - officers and members of the Parliament, including members of parliamentary standing or joint standing committees;
 - the clerks and deputy clerks of the Legislative Council and the Legislative Assembly;
 - officers of the Public Service holding offices included in the Special Division of the Public Service;
 - a person holding an office that is prescribed for the purposes of section 6(1)(e);
- section 7(1):
 - judges;
 - District Court judges;
 - masters of the Supreme Court;
 - magistrates;
 - the Parliamentary Inspector of the Corruption and Crime Commission appointed under the *Corruption, Crime and Misconduct Act 2003*; and
- section 7C(2): executive officers of Government entities that are prescribed for the purposes of current subsection 7C(1)(b).

The freeze does not extend to:

- determinations of remuneration to be paid or provided to members of public university governing councils – current section 6(1)(ea);
- the payment or reimbursement of travel for members of Parliament as approved by the Treasurer in accordance with current sections 6(7) and 11A;
- determinations made for the purposes of the *Parliamentary Superannuation Act 1970* – current section 6A;
- determinations relating to redundancy benefits for members of Parliament – current section 6AA;
- determinations relating to entitlements of former Premiers, Ministers and members of Parliament – current section 6B;

- determinations of remuneration to be paid or provided to chief executive officers of local governments – current section 7A; and
- determinations of fees or allowances to be paid or provided, or expenses to be reimbursed, to elected council members of local governments – current section 7B.

Remuneration for members of public university governing councils, local government CEOs and fees, allowances and expenses for elected council members of local governments have been excluded from the ambit of the pay freeze as these kinds of remuneration do not impact upon debt and deficit remediation for the State Government.

New section 10B – Term used: commencement day

New section 10B defines the term “**commencement day**”, for the purposes of new Part I, Division 4, to mean the day on which section 9 of the amending Act comes into operation. Each provision of Part I, Division 4 has effect from commencement day, until 1 July 2021 (unless otherwise specified).

New section 10C – No increases in Governor’s remuneration before 1 July 2021

New section 10C concerns the Tribunal’s inquiries into, determinations of, the remuneration to be paid to the Governor, under current section 5A of the SA Act. Such determinations are made before an appointment is made to the office of Governor, at the request of the Premier (see current section 5A(1)).

New section 10C(1) provides that section 10C applies to a determination made by the Tribunal under section 5A, of the remuneration to be paid to the Governor, that comes into operation before 1 July 2021, that is, for the duration of the pay freeze.

New section 10C(2) provides that during the freeze the Tribunal may not make a determination under which the remuneration to be paid to the Governor is more than the remuneration that was paid to the person who held that office immediately before commencement day.

New section 10C(3) provides that if the office of Governor is vacant immediately before commencement day, the Tribunal’s determination of the remuneration to be paid to the Governor must not be more than the remuneration paid to the last person to hold that office before commencement day.

New section 10C(4) provides that if the Tribunal specifies in a determination a method of altering from time to time the remuneration payable to the Governor (as it has a discretion to do under current section 5A(3)), the Tribunal must not specify a method that allows for the remuneration of the Governor to be increased before 1 July 2021.

New section 10C(5) provides that the regulations may prescribe a kind or class of remuneration to which section 10C does not apply. This provides a mechanism of exclusion by way of prescription, to provide flexibility, should the need arise or future circumstances so require.

New section 10D – No increases in remuneration under s. 6 before 1 July 2021

New section 10D applies to the Tribunal's determinations, during the freeze, of remuneration for the offices listed in current section 6(1) of the SA Act, other than determinations for remuneration of members of public university governing councils which are made under current section 6(1)(ea).

New section 10D(1) defines "**classification framework**" to mean a framework under which the Tribunal, in respect of the offices referred to in section 6(1)(d):

- (a) assesses the work value of each of the offices using established principles and methodologies;
- (b) based on that assessment, assigns each of the offices to a level of classification, known as a band; and
- (c) specifies in respect of each band minimum and maximum amounts of salary.

The term "classification framework" is based on the language used in Part 2, First Schedule and Part 2, Second Schedule of the Tribunal's determination under section 6 of the SA Act that was current at the time the amending Act was drafted (see *Determination of the Salaries and Allowances Tribunal for Clerks and Deputy Clerks of the Parliament, Public Service Office Holders included in the Special Division of the Public Service and Persons Holding Offices Prescribed in Salaries and Allowances Regulation Number 3* of 20 June 2017, with effect from the same date). In that determination the Tribunal uses a classification framework to allocate each section 6(1)(d) office to a band, and determines the minimum and maximum amounts of salary for each band.

New section 10D(2) provides that new section 10D applies to a determination made by the Tribunal under section 6, other than a determination made under section 6(1)(ea), that comes into operation before 1 July 2021 (that is, for the duration of the pay freeze). This impacts the offices listed in section 6(1), as follows:

- (a) Ministers of the Crown and the Parliamentary Secretary of the Cabinet;
- (ab) subject to section 44A(4) and (5) of the *Constitution Acts Amendment Act 1899*, a Parliamentary Secretary appointed under section 44A(1) of that Act;
- (b) officers and members of the Parliament, including additional remuneration to be paid or provided to a member, other than an officer, of Parliament who is the Chairman, Deputy Chairman or a member of a standing committee of a House or a joint standing committee of both Houses;

- (c) clerks and deputy clerks of the Legislative Council or the Legislative Assembly;
- (d) officers of the Public Service holding offices included in the Special Division of the Public Service; and
- (e) a person holding any other office of a full-time nature, created or established under a law of the State, that is prescribed for the purposes of this section, but not being an office the remuneration for which is determined by or under any industrial award or agreement made or in force under any other law of the State.

However, this excludes determinations of remuneration for members of public university governing councils, as listed in current section 6(1)(ea). Remuneration for members of those governing boards has been excluded from the ambit of the pay freeze as funding for public universities does not impact on debt and deficit remediation for the State Government.

New subsections 10D(3), (4), (5) and (6) apply as follows:

- 10D(3) – where an office or other position referred to in section 6(1) was occupied by a person immediately before commencement day;
- 10D(4) – where an office referred to in section 6(1)(d) or (e) was vacant immediately before commencement day, and the last person to hold the office before commencement day did so on or after 1 July 2016; and
- 10D(5) and (6) – where either:
 - an office referred to in section 6(1)(d) or (e) was vacant immediately before commencement day, and the last person to hold the office did so before 1 July 2016; or
 - the Tribunal has not previously determined the remuneration to be paid or provided to an office referred to in section 6(1)(d) or (e), for example because it is a new office.

1 July 2016 was the date on which the Tribunal's determination, in relation to current section 6 offices or positions, which most recently applied a CPI increase to remuneration for those offices or positions, came into effect (see *Determination of the Salaries and Allowances Tribunal for Clerks and Deputy Clerks of the Parliament, Public Service Office Holders included in the Special Division of the Public Service and Persons Holding Offices Prescribed in Salaries and Allowances Regulation Number 3* of 21 June 2016). The Tribunal's determination of 20 June 2017 in respect to these offices or positions did not apply a CPI increase.

Where new subsection 10D(3) applies, the Tribunal must not make a determination under which the remuneration to be paid or provided in respect of an office or other position referred to in section 6(1) is more than the remuneration paid or provided to that office or position immediately before commencement day.

Where new subsection 10D(4) applies, the remuneration determined by the Tribunal to be paid or provided in respect of the office must not be more than the remuneration paid or provided to the last person to hold the office before commencement day.

Where an office or position referred to in current section 6(1)(d) or (e) has been vacant since before 1 July 2016, the remuneration for the office or position will not reflect the remuneration that has been determined by the Tribunal under the current determination. New subsection 10D(5) provides that new subsection 10D(6) applies in this circumstance, and where the Tribunal has not previously determined the remuneration to be paid or provided in respect of an office referred to in section 6(1)(d) or (e), for example because it is a new office.

New subsection 10D(6) provides that, in determining the remuneration to be paid or provided in respect of the office, the Tribunal:

- (a) must, in its first determination after commencement day, consider the remuneration paid or provided immediately before commencement day in respect of other offices with which the office is comparable; and
- (b) must not, in any subsequent determination, determine remuneration that is more than the remuneration which it first determined during the freeze.

New subsection 10D(7) is intended to prevent the Tribunal from changing the approach (the “principles and methodologies”) it uses in classifying offices under section 6(1)(d), and to “freeze” the number of bands and the minimum and maximum amounts set by the Tribunal in respect to each band. The approach that was current at the time of drafting of the amending Act is outlined in the *Determination of the Salaries and Allowances Tribunal for Clerks and Deputy Clerks of the Parliament, Public Service Office Holders included in the Special Division of the Public Service and Persons Holding Offices Prescribed in Salaries and Allowances Regulation Number 3* of 20 June 2017.

New subsection 10D(7) provides that if a determination of the Tribunal includes a classification framework in respect of the offices referred to in section 6(1)(d):

- (a) the principles and methodologies the Tribunal uses to assess the work value of each of the offices must not differ from the principles and methodologies that it used immediately before commencement day;
- (b) the number of bands in the classification framework must not differ from the number of bands in the classification framework that applied immediately before commencement day; and
- (c) the minimum and maximum amounts of salary specified in respect of a band must not differ from the minimum and maximum amounts that applied in respect of that band immediately before commencement day.

New subsection 10D(8) provides that nothing in new section 10D prevents the Tribunal from determining to increase the remuneration to be paid or provided to a section 6(1)(d) office as a consequence of assigning the office to a higher classification level under a classification framework included in a determination.

The freeze provisions do not prevent the Tribunal, during the freeze, from changing the level of classification of a section 6(1)(d) office, either upwards or downwards, based on the application of the standard assessment principles and methodologies for work value which are used by the Tribunal immediately before commencement day. Generally this would occur where there are significant changes in the functional nature of the office. Where the Tribunal adjusts the classification of an office, nothing prevents a consequential increase or decrease in the remuneration to be paid to the office.

The freeze provisions do not use the term “freeze” for this reason; the “freeze” is intended to prevent increases in remuneration in the circumstances which are provided for, but is not intended to prevent decreases in remuneration if justifiable by reason of “reclassification” of a position to a lower level of classification.

New subsection 10D(9) provides that the regulations may prescribe a kind or class of remuneration to which section 10D does not apply. This provides a mechanism of exclusion by way of prescription, to provide flexibility, should the need arise or future circumstances so require.

New section 10E – No increases in judicial remuneration before 1 July 2021

New subsection 10E(1) provides that new section 10E applies to a report made by the Tribunal to the Minister under current section 7 that comes into operation before 1 July 2021, that is, during the freeze.

Current section 7 concerns the Tribunal’s inquiries and reports to the Minister on the question whether any alterations are desirable in the remuneration to be paid or provided to the offices listed in section 7(1), namely:

- judges;
- District Court judges;
- masters of the Supreme Court;
- magistrates; and
- the Parliamentary Inspector of the Corruption and Crime Commission appointed under the *Corruption, Crime and Misconduct Act 2003*.

New subsection 10E(2) provides that the Tribunal must not make a report under which the remuneration recommended to be paid or provided in respect of an office referred to in current section 7(1) is more than the remuneration that was paid or provided to the office immediately before commencement day.

New subsection 10E(3) provides that the regulations may prescribe a kind or class of remuneration to which section 10E does not apply. This provides a mechanism of exclusion by way of prescription, to provide flexibility, should the need arise or future circumstances so require.

New section 10F – No increases in remuneration of certain executive officers of Government entities before 1 July 2021

New section 10F limits the ability of the Tribunal, during the freeze, to make determinations under current section 7C(2), of the remuneration to be paid or provided to executive officers of “Government entities”, which are prescribed in the regulations for the purposes of current subsection 7C(1)(b).

New subsection 10F(1) defines, for the purposes of new section 10F:

- “**entity**” to mean an entity that is specified in column 1 of Schedule 2; and
- “**executive officer**” of an entity as having the meaning given in current section 7C(1) and (4).

New subsection 10F(2) provides that section 10F applies until the beginning of 1 July 2021, that is, for the duration of the freeze.

New subsection 8(2)(b) provides that the Tribunal must not make a determination under current subsection 7C(2) that comes into operation while new section 10F applies. This means that during the freeze, the Tribunal is to make its determinations of the remuneration to be paid to executive officers of entities, that are prescribed by the regulations for the purposes of current subsection 7C(1)(b), pursuant to new subsection 10F(3).

New subsection 10F(3) provides that if, on or after commencement day, an entity is prescribed by the regulations for the purposes of the definition of “**Government entity**” in current subsection 7C(1)(b), the Tribunal is to inquire into and determine the amount of remuneration to be paid or provided to executive officers of the entity.

New subsection 10F(3) differs from current subsection 7C(2), in that the Tribunal is to determine the *amount* of remuneration (as provided for in new subsection 10F(3)), rather than the minimum and maximum amounts of remuneration (as provided for in current subsection 7C(2)).

At the time the amending Act was drafted, no entities had been prescribed for the purposes of current subsection 7C(1)(b) and the Tribunal had not made any determination under current section 7C(2). Until prescription occurs, the remuneration for the executive officers of the entities listed in column 1, Schedule 2 of the SA Act is determined under the enabling legislation for the entity, by the board of management of the entity on the recommendation of the relevant Minister. Should an entity continue to not be prescribed during the freeze, the remuneration for the

executive officer/s of the entity will continue to be determined by the entity board of management on the recommendation of the relevant Minister.

Where an entity is prescribed during the freeze, the Tribunal will make determinations of remuneration for its executive officer/s pursuant to new subsection 10F(3). Once the freeze has concluded, the Tribunal will revert to making determinations, pursuant to current section 7C(2), of the range of remuneration for executive officers of the entity; and pursuant to the enabling legislation of the entity, the entity board of management will set the remuneration within the range.

The remuneration for executive officers of entities that are prescribed for the purposes of current subsection 7C(1)(b), who have a contract in force at the time of prescription, will not be affected by the amending Act for the remainder of the contractual term, by operation of current subsection 7C(4). Should an entity be prescribed during the freeze, an executive officer who is subject to a current contract will not be subject to new section 10F because under current subsection 7C(4), he or she will not be an executive officer for the purposes of new section 10F. If, before 1 July 2021, that current contract expires, or a current executive officer resigns and a new executive officer is appointed, then the remuneration to be paid or provided to the executive officer under a new contract would be determined by the Tribunal under new subsection 10F(3) read with 10F(4).

New subsection 10F(4) provides that the amount of remuneration to be determined under new subsection 10F(3) in respect of an executive officer of an entity must not be more than the amount of remuneration that was paid or provided to the person who held the office immediately before commencement day.

New subsection 10F(5) provides that if no person held an office of executive officer of an entity immediately before commencement day, the Tribunal:

- (a) must, in the case of its first determination under new subsection 10F(3) in respect of the executive officer, take into consideration the remuneration paid or provided immediately before commencement day in respect of executive officers of other entities with which the entity is comparable; and
- (b) must not, in the case of any subsequent determination under new subsection 10F(3), determine remuneration that is more than the remuneration determined in its first determination made in accordance with paragraph (a).

New subsection 10F(6) provides that current section 6(2) and (3) apply to a determination made under new subsection 10F(3). Section 6(2) and (3) require a determination of the Tribunal to be in writing, to be signed by the members of the Tribunal, to come into operation or to be deemed to come into operation on a date specified therein, and to be published in the *Government Gazette*. These requirements also apply to determinations of the Tribunal in respect of offices or positions, other than offices of executive officers of Government entities, that are impacted by the freeze.

New subsection 10F(7) provides that once the Tribunal has made its first determination under new subsection 10F(3) in respect of an executive officer of an entity, the Tribunal may make subsequent determinations under new subsection 10F(3) in respect of the executive officer if it considers the circumstances require it, but nothing in this section requires the Tribunal to do so. This new subsection is intended to provide the Tribunal with the flexibility to deal with essentially unforeseen situations that may arise. For example, the mix of remuneration benefits may change without the overall level of remuneration increasing; or the overall level of remuneration may be decreased. This is similar to new subsection 8(2) in respect of offices or positions, other than offices of executive officers of Government entities, that are impacted by the freeze.

New subsection 10F(8) provides that while new section 10F applies:

- (a) a provision in the written law under which an entity is established that provides for the entity's governing body to set the remuneration of an executive officer within the range determined by the Tribunal under current section 7C(2) does not apply; and
- (b) the executive officer is to be paid or provided the remuneration determined by the Tribunal under new subsection 10F(3).

New subsection 10F(9) provides that a determination made under new subsection 10F(3) in respect of an executive officer of an entity, and in force when new section 10F ceases to apply, continues to apply in respect of the executive officer until the remuneration of the executive officer is determined in accordance with current section 7C and the written law under which the entity is established. This enables a determination of the remuneration to be paid to an executive officer, that is made by the Tribunal during the freeze, to continue to apply after the freeze concludes, until such time as the remuneration for the executive officer is determined pursuant to section 7C(2) and the enabling legislation for the entity.

New subsection 10F(10) provides that the regulations may prescribe a kind or class of remuneration to which section 10F does not apply. This provides a mechanism of exclusion by way of prescription, to provide flexibility, should the need arise or future circumstances so require.

New section 10G – Compensatory determinations after 1 July 2021 prohibited

New section 10G(1) provides that new section 10G applies to determinations or reports of the Tribunal that come into operation on or after 1 July 2021, that is, once the freeze has concluded.

New section 10G(2) prevents the Tribunal from making a determination or report of the remuneration for an office or position that was impacted by the pay freeze, which is intended to compensate (or "catch-up") for potential remuneration increases which

were foregone during the freeze. It is intended to apply in cases where the Tribunal determines or reports both an amount, or a range, of remuneration.

While it will not be permissible for the Tribunal to provide for compensatory remuneration to recover amounts that may have been paid but for the freeze, it will not be prevented from taking into account changed economic circumstances. For example, if CPI were to have increased by 5 percent in total over the freeze period, the Tribunal could provide for an equivalent remuneration increase to be applicable with effect from 1 July 2021 onwards.

New subsection 10G(2) provides that the Tribunal must not make a determination under current section 5A, 6, or 7C, or a report under section 7, which has the effect of providing for the payment or provision of remuneration on the basis that the remuneration was not paid or provided before 1 July 2021 by reason of the operation of new section 10C, 10D, 10E or 10F (as the case requires).

Clause 10 Part I Division 5 heading inserted

Creates a new Part I “Division 5 – Miscellaneous” before section 11.