

Parliamentary Remuneration Act 1989 No 160

[1989-160]



New South Wales

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Parliamentary Remuneration Act 1989 No 160



New South Wales

An Act relating to the remuneration to be paid to members of Parliament, Ministers of the Crown and the holders of certain offices in Parliament; and to repeal the *Parliamentary Remuneration Tribunal Act 1975* and the *Parliamentary Remuneration Tribunal (Special Provisions) Act 1989* and to amend the *Parliamentary Contributory Superannuation Act 1971*.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Parliamentary Remuneration Act 1989*.

2 Commencement

- (1) This Act commences on 1 July 1990, except as provided by this section.
- (2) For the purpose of making an annual determination with effect from 1 July 1990, Part 3 and Schedule 2 commence on the date of assent to this Act. They commence for all purposes on 1 July 1990.

2A Purpose of Act

- (1) The purpose of this Act is to provide a system under which:
 - (a) all members are provided with statutory salaries (the basic salary) that are paid as personal income for the performance of their parliamentary duties as members, and
 - (b) all or some recognised office holders are provided with statutory additional salaries that are paid as personal income for the performance of their parliamentary duties as recognised office holders, and
 - (c) all or some recognised office holders are provided with statutory expense allowances for the purpose of facilitating the efficient performance of their parliamentary duties as recognised office holders, and
 - (d) all or some members and all or some recognised office holders may be provided with additional allowances and other entitlements for the purpose of facilitating the efficient performance of their parliamentary duties as members or recognised

office holders.

(2) Nothing in this section gives rise to any civil cause of action or can be taken into account in any civil proceedings.

3 Definitions

In this Act:

additional entitlements means the electoral allowance and other additional entitlements under Part 3.

basic salary has the meaning given by section 4.

determination means an annual determination of the Tribunal under section 11 or a special determination of the Tribunal under section 12.

member means a member of either House of Parliament.

parliamentary duties of a member or recognised office holder means the duties that attach to the office of a member or recognised office holder, and includes the duties that a member or recognised office holder is ordinarily expected to undertake, including participation in the activities of recognised political parties, and includes any duties prescribed as being within this definition, but does not include any duties prescribed as being outside this definition.

President means the President of the Industrial Relations Commission.

recognised office holder means the holder of an office for the time being specified in Schedule 1.

remuneration means remuneration by way of salary, additional salary or expense allowance under Part 2.

Tribunal means the Parliamentary Remuneration Tribunal established under this Act.

Part 2 Parliamentary remuneration

4 Definition of basic salary

The basic salary is, for the purposes of this Act, the amount of the annual allowance by way of salary payable under the law of the Commonwealth to a Member of the House of Representatives who is not entitled to any additional salary, less \$500.

5 Salary of members (other than recognised office holders)

A member who is not a recognised office holder is entitled to be paid a salary at the annual rate of the basic salary.

6 Salary and expense allowance of recognised office holders

- (1) A recognised office holder is entitled to be paid:
 - (a) a salary at the annual rate of the basic salary,
 - (b) an additional salary (if any) at an annual rate calculated as a percentage of the basic salary, being the percentage specified opposite the relevant office in the second column of Schedule 1, and
 - (c) an expense allowance (if any) at an annual rate calculated as a percentage of the basic salary, being the percentage specified opposite the relevant office in the third column of Schedule 1.
- (2) The amount of any such additional salary or expense allowance is to be calculated to the nearest dollar.
- (3) A person who holds 2 or more of the offices specified in Schedule 1 is entitled to the remuneration under this section that is applicable to only one of them, whichever has the greater or greatest such remuneration.
- (4) The regulations may amend or substitute Schedule 1.

7 (Repealed)

Part 3 Additional entitlements

8 The Tribunal

- (1) For the purposes of this Act, there is established a Tribunal to be known as the Parliamentary Remuneration Tribunal.
- (2) Schedule 2 has effect with respect to the Tribunal.

9 Functions of the Tribunal

- (1) The functions of the Tribunal are:
 - (a) to make determinations of additional entitlements that are to be available to a member or recognised office holder, and
 - (b) to approve proposed amendments to the *Parliamentary Contributory Superannuation Act 1971*.
- (2) The Tribunal has such other powers, authorities, duties or functions as are conferred or imposed on it by or under this or any other Act.

10 General provisions as to determinations of additional entitlements

- (1) In making determinations, the Tribunal is to give effect to the following principles:

- (a) additional entitlements are to be provided for the purpose of facilitating the efficient performance of the parliamentary duties of members or recognised office holders,
 - (b) parliamentary duties of members and recognised office holders include participation in the activities of recognised political parties.
- (2) Members and recognised office holders are entitled to an electoral allowance and other additional entitlements in accordance with the provisions of applicable determinations of the Tribunal under this Part.
- (2A) The Tribunal may, by a determination:
- (a) fix the amount of the electoral allowance, and
 - (b) fix the classes, terms and other incidents of other additional entitlements.
- (2B) The following provisions apply to the electoral allowance:
- (a) the allowance is payable to members (whether or not recognised office holders),
 - (b) the allowance is payable in money,
 - (c) the allowance is payable as compensation in respect of all incidents of the performance of parliamentary duties (other than those compensated or reimbursed by other additional entitlements),
 - (d) different amounts may be fixed for different members or classes of members.
- (2C) Subsections (3) and (4) apply to determinations with respect to additional entitlements, other than the electoral allowance.
- (3) A determination may provide for additional entitlements in any form, including but not limited to:
- (a) the payment of additional allowances in terms of allowances, fees and other emoluments payable in money (including for example travel allowances, travel expenses, and committee allowances), and
 - (b) the provision of services, facilities and equipment (including for example electorate services, electorate staff, electorate offices, office equipment, travel, and communication equipment).
- (4) A determination may:
- (a) fix conditions on which an additional entitlement is to be provided, and may specify the form of substantiation (if any) that is required for particular kinds of additional entitlements, and

- (b) involve the reimbursement of the whole or a part of actual expenses, and
 - (c) identify an existing entitlement as an additional entitlement, and
 - (d) withdraw or alter an additional entitlement.
- (5) However, a determination may not grant, withdraw or otherwise deal with entitlements for travel outside Australia.
- (6) A determination may amend or revoke a determination that has already been made.
- (7) A determination or a provision of a determination may relate to all or any individual members and recognised office holders or to any class of them.
- (8) (Repealed)

11 Annual determinations of additional entitlements

- (1) An annual determination as regards additional entitlements is to be made on or before 1 June in each year (or such later date as the President directs under this section), with effect from 1 July in that year.
- (2) The President may, because of the illness of the person holding office as the Tribunal or for any other reason that seems proper to the President, from time to time by order published in the Gazette, direct that a particular annual determination is to be made on or before a later specified date.
- (3) If an annual determination is not made by 1 July in a year, additional entitlements are to continue to be provided on the current basis, and additional entitlements in the nature of additional allowances continue to be payable at the rates at which they were payable before that date, until payment of additional allowances can be effected in accordance with the determination, but any necessary adjustments are to be made as a result of the making of the determination.

12 Special determinations of additional entitlements

- (1) The Minister may direct that a special determination be made as regards additional entitlements.
- (2) Such a direction:
- (a) may relate to all or any additional entitlements or to any class of them, and
 - (b) may relate to all or any individual members and recognised office holders or to any class of them.
- (3) A special determination is to be made by such time as the Minister directs and is to take effect from such time as the Tribunal specifies in the determination.

12A Financial implications of determinations

- (1) In making a determination under this Act, the Tribunal is to have regard to the financial implications of the determination for the State.
- (2) The Tribunal is required:
 - (a) to invite the Secretary of the Treasury to make submissions to the Tribunal about those financial implications, and
 - (b) to take any submission so made into account before making the determination.
- (3) A copy of any such submission made by the Secretary of the Treasury is to be included as an annexure to the determination.

13 Reports of the Tribunal

- (1) The Tribunal is to make a report to the President of each determination under this Act.
- (2) The President is, as soon as practicable after receipt of the report, to forward it to the Minister.
- (3) The Minister is, as soon as practicable after receipt of the report, to cause a copy of it to be laid before each House of Parliament.
- (4) A determination is, as soon as practicable after it is made, to be published in the Gazette.
- (5) (Repealed)

14 Inquiries etc by the Tribunal

- (1) In the performance of its functions, the Tribunal:
 - (a) may inform itself in such manner as it thinks fit and may conduct such inquiries as it thinks fit, and
 - (b) may receive written or oral submissions, and
 - (c) is not required to conduct any proceeding in a formal manner, and
 - (d) is not bound by the rules of evidence, and
 - (e) is to consider any submissions furnished by the Minister.
- (2) Without affecting the generality of subsection (1), the Tribunal may invite submissions from recognised office holders, members, officers of the Legislature, members and officers of statutory bodies and government departments and any other persons.

Part 3A Parliamentary superannuation

14A Superannuation approvals

- (1) The Tribunal may, for the purposes of section 4 of the *Parliamentary Contributory Superannuation Act 1971*, determine whether any proposed amendment to that Act is warranted.
- (2) In determining whether any amendment is warranted, the Tribunal:
 - (a) must have regard to the Heads of Government Agreement, that commenced on 1 July 1996, relating to the exemption of certain State public sector superannuation schemes from the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, including whether the amendment is consistent with that agreement, and
 - (b) must have regard to the effects of any proposed amendment on the present and future liabilities of the Parliamentary Contributory Superannuation Fund, and
 - (c) may obtain, and have regard to, actuarial advice relating to the costs and effects of any proposed amendment.
- (3) If the Tribunal determines that an amendment is warranted, the Tribunal must issue a certificate approving the amendment and forward it to the member of the Legislative Assembly requesting the determination. If the member proposes to proceed with or support the amendment, the member is to cause the certificate to be laid before the Legislative Assembly (unless a certificate to the same effect has already been laid before the Legislative Assembly in the same Session of Parliament).
- (4) The Tribunal must cause a determination that an amendment is warranted to be published in the Gazette if notified by any member of the Legislative Assembly that the member proposes to proceed with or support the amendment.
- (5) Section 14 applies to the Tribunal in the exercise of its functions under this Part in the same way as it applies to the exercise of its functions in making determinations.
- (6) Without affecting the generality of section 14, the Tribunal may, in considering whether to approve an amendment, invite submissions from the Trustees of the Parliamentary Contributory Superannuation Fund.

Part 4 Miscellaneous

15 Payment of Parliamentary remuneration and allowances

- (1) Remuneration is payable in such manner, and subject to such provisions, as may be prescribed by the regulations.
- (2) Additional allowances are payable in such manner, and subject to such provisions, as may be specified in a determination that is in force.

- (3) An additional allowance that is abolished or replaced ceases to be payable, in accordance with the terms of the determination.
- (4) An additional allowance whose rates or conditions are modified by a determination becomes payable in its modified form instead of its previous form, in accordance with the terms of the determination.
- (5) Any payment of remuneration or additional allowances to which a person is entitled under this Act, or any part of any such payment, not drawn by the person or on the person's behalf within 28 days after the payment becomes due and payable reverts to the Treasury and becomes part of the Consolidated Fund.
- (6) All remuneration payable by virtue of this Act is payable out of the Consolidated Fund, which, to the necessary extent, is appropriated accordingly.

15A Entitlements generally

- (1) Nothing in this Act is to be construed as preventing members or recognised office holders from being provided with entitlements apart from this Act, including for example:
 - (a) offices and facilities at Parliament House, or
 - (b) offices and facilities for Ministers elsewhere, or
 - (c) travel by Ministers.
- (2) To the extent to which additional entitlements under this Act, or any such entitlements provided apart from this Act, need to be funded, they are to be provided out of money to be appropriated by Parliament or otherwise legally available.

16 Terms of office

- (1) For the purposes of this Act, a person elected as a member of the Legislative Council is to be taken:
 - (a) to become a member of the Legislative Council on the day of his or her election, and
 - (b) to cease to be a member of the Legislative Council on:
 - (i) the day of his or her death, or
 - (ii) the day on which his or her seat as such a member becomes vacant, otherwise than pursuant to section 22B (1) (c) of the *Constitution Act 1902*, or
 - (iii) the day appointed for the taking of the poll for the periodic Council election within the meaning of that Act that next follows the day on which he or she ceases, pursuant to section 22B (1) (c) of that Act, to be a member of the

Legislative Council,

whichever first occurs.

- (2) For the purposes of this Act, a person elected as a member of the Legislative Assembly is to be taken:
- (a) to become a member of the Legislative Assembly on the day of his or her election, and
 - (b) to cease to be a member of the Legislative Assembly on:
 - (i) the day of his or her death, or
 - (ii) the day on which his or her seat as such a member becomes vacant, otherwise than by reason of the fact that that Assembly has been dissolved or has expired by the effluxion of time, or
 - (iii) the day appointed for the taking of the poll for the general election of members of the Legislative Assembly next following his or her election,
- whichever first occurs.

17 Other provisions as to basic salary

- (1) If the basic salary changes retrospectively, remuneration under this Act is to be adjusted retrospectively in conformity with the change.
- (2) If, apart from this section, there would be no basic salary under section 4 during a period, the basic salary during that period is the most recent amount of the basic salary (or, failing that, the amount of \$54,500).

17A Rulings

- (1) The President of the Legislative Council or the Speaker of the Legislative Assembly may request the Tribunal to give a ruling on the interpretation or application of a determination.
- (2) The Tribunal is required to give the requested ruling within a reasonable period, unless the request is withdrawn.

18 Determinations or rulings not to be subject to judicial review

A determination (including a determination under section 14A) of the Tribunal, or a ruling of the Tribunal under section 17A, may not be challenged, reviewed, quashed or called into question before any court or in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition, mandamus, certiorari or otherwise.

19 Repeal of Parliamentary Remuneration Tribunal Act 1975 No 25 and Parliamentary Remuneration Tribunal (Special Provisions) Act 1989 No 70

- (1) The *Parliamentary Remuneration Tribunal Act 1975* and the *Parliamentary Remuneration Tribunal (Special Provisions) Act 1989* are repealed.
- (2) Nothing in this Act affects the payment of remuneration under the repealed Acts for any period before the commencement of this Act.
- (3) A person is entitled to payment of remuneration under the repealed Acts (excluding remuneration by way of salary or expense allowances, but including special expenses allowances) for the period from the commencement of this Act until additional allowances are first determined under this Act, as if the repealed Acts were still in force.
- (4) Payments under this Act are to be adjusted to avoid payment of a double benefit of the same kind for the same period through the operation of subsection (3).
- (5) The provisions of section 15 (5) and (6) extend to remuneration referred to in this section.

20 Savings, transitional and other provisions

Schedule 3 has effect.

21 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1 Additional salaries and expense allowances

intref (expressed as a percentage of the basic salary)

(Sections 3, 6)

Recognised office holder	Additional salary	Expense allowance
Part 1 Ministers		
Premier	95%	55% less such percentage as is necessary to reduce the Premier's expense allowance by \$15,000
Deputy Premier	76%	27%

Minister who is Leader of Government Members in the Legislative Council	78%	26%
Minister who is Deputy Leader of Government Members in the Legislative Council	70%	26%
Senior Ministers, being Ministers not referred to above who are designated as Senior Ministers by the Premier	67%	26%
Other Ministers	57%	26%

Part 2 Other office holders

President of the Legislative Council	57%	26%
Speaker of the Legislative Assembly	57%	26%
Deputy Speaker of the Legislative Assembly	30%	20%
Deputy Leader of the Government in the Legislative Council (when not a Minister)	20%	14%
Chair of Committees in the Legislative Council	20%	14%
Chair of Committees in the Legislative Assembly	20%	14%
Leader of the Opposition in the Legislative Council	20%	14%
Deputy Leader of the Opposition in the Legislative Council (when leader of a party)	11%	14%
Deputy Leader of the Opposition in the Legislative Council (when not leader of a party)	11%	6%
Deputy Leader in the Legislative Council (other than the Leader of the Opposition or the Deputy Leader of the Opposition) of a recognised political party not fewer than 9 members of which are members of the Legislative Council and of which no member is a Minister	7%	6%
Leader of the Opposition in the Legislative Assembly	57%	26%
Deputy Leader of the Opposition in the Legislative Assembly	20%	14%
Government Whip in the Legislative Council	13%	7%
Deputy Government Whip in the Legislative Council	7%	6%
Opposition Whip in the Legislative Council	13%	7%
Deputy Opposition Whip in the Legislative Council	7%	6%
Government Whip in the Legislative Assembly	13%	7%
Opposition Whip in the Legislative Assembly	13%	7%

Leader in the Legislative Assembly (other than the Leader of the Opposition or the Deputy Leader of the Opposition) of a recognised political party not fewer than 10 members of which are members of the Legislative Assembly and of which no member is a Minister	20%	14%
Deputy Leader in the Legislative Assembly of such a recognised political party	13%	7%
Whip in the Legislative Assembly of a recognised political party not fewer than 10 members of which are members of the Legislative Assembly	11%	7%
Parliamentary Secretary in the Legislative Council	13%	7%
Parliamentary Secretary in the Legislative Assembly	13%	7%
Deputy Whip in the Legislative Assembly of a recognised political party not fewer than 40 members of which are members of the Legislative Assembly	11%	7%
Chairman of the Public Accounts Committee constituted under the Public Finance and Audit Act 1983	7%	7%
Chair of the Joint Standing Committee on Road Safety	7%	7%
Chair of the Joint Standing Committee on Children and Young People	7%	7%
Chairman of the Legislation Review Committee constituted under the Legislation Review Act 1987	7%	7%
Chair of the Social Issues Committee of the Legislative Council	7%	7%
Chair of the State Development Committee of the Legislative Council	7%	7%
Chairman of the Committee on the Independent Commission Against Corruption constituted under the Independent Commission Against Corruption Act 1988	7%	7%
Chairperson of the Committee on the Office of the Ombudsman constituted under the Ombudsman Act 1974	7%	7%
Chairman of the Committee on the Health Care Complaints Commission constituted under the Health Care Complaints Act 1993	7%	7%
Chair of the Standing Committee on Public Works	7%	7%
Chair of the Standing Committee on Public Bodies Review	7%	7%
Chair of the Standing Committee on Law and Justice of the Legislative Council	7%	7%
Chair of the Standing Committee on Parliamentary Privilege and Ethics of the Legislative Council	7%	7%
Chair of the Standing Committee on Parliamentary Privilege and Ethics of the Legislative Assembly	7%	7%
Chair of the Standing Committee on Natural Resource Management	7%	7%

Chairperson of the joint Committee on the Office of the Valuer-General

7%

7%

Schedule 2 Parliamentary Remuneration Tribunal

(Section 8)

1 Appointment of person to constitute Tribunal

- (1) The Tribunal is to consist of a judicial member or retired judicial member of the Industrial Relations Commission appointed by the President on a part-time basis.
- (2) Subject to this Act, the person appointed holds office as the Tribunal for such period, not exceeding 3 years, as is specified in the instrument of appointment of the Tribunal and is eligible for re-appointment.
- (3) (Repealed)

2 Persons assisting the Tribunal

The Minister may, if the Minister thinks fit, appoint a person or persons to assist the Tribunal in any inquiry.

3 Fees etc

- (1) The person holding office as the Tribunal and any person appointed under clause 2 are to be paid such fees and allowances as are, from time to time, fixed by the Governor on the recommendation of the Minister made after consultation by the Minister with the President and the Attorney General.
- (2) The fees and allowances payable to any such person must be fixed before the person's appointment, and may be varied in respect of any year commencing on 1 January before that day.

4 Vacation of office

- (1) The person holding office as the Tribunal is to be regarded as having vacated the office if the person:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Governor, or
 - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her fees or allowances as the Tribunal for their benefit, or
 - (e) becomes a temporary patient or a continued treatment patient within the

meaning of the *Mental Health Act 1958*, a forensic patient within the meaning of the *Mental Health Act 1983* or a protected person within the meaning of the *Protected Estates Act 1983*, or

(f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or

(g) is removed from office by the Governor on the recommendation of the President.

(2) The Governor may, on the recommendation of the President, remove from office a person holding office as the Tribunal or a person appointed under clause 2.

Schedule 3 Savings, transitional and other provisions

1 Savings and transitional regulations

The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Parliamentary Remuneration Amendment Act 2001

Parliamentary Remuneration Amendment (Recognised Office Holder) Act 2002

2 Provision consequent on enactment of **Parliamentary Remuneration Amendment Act 2001**

Section 10, as amended by the *Parliamentary Remuneration Amendment Act 2001*, extends to a determination of the Tribunal that was in force on the commencement of those amendments.

3 Provision consequent on enactment of **Parliamentary Remuneration Amendment (Recognised Office Holder) Act 2002**

Anything done or omitted to be done on or after 27 March 1999 is as valid as it would have been had the amendment to Schedule 1 made by Schedule 1 [2] to the *Parliamentary Remuneration Amendment (Recognised Office Holder) Act 2002* been in force when the thing was done or omitted to be done.