

# **STATUTORY AND OTHER OFFICES REMUNERATION TRIBUNAL**

## **REPORT AND DETERMINATION PURSUANT TO SECTION 14(1) OF THE ACT**

### **REPORT:**

1. On 28 October 1999 the Premier of New South Wales, pursuant to section 14(1) of the *Statutory and Other Offices Remuneration Act 1975* (the Act), directed that the Statutory and Other Offices Remuneration Tribunal (the Tribunal) make a determination in respect of the superannuation loading and lump sum payments paid to certain current and former office holders whose remuneration is determination under section 11 of the Act.
2. The Premier has referred to advice received from the Crown Solicitor and the Anti-Discrimination Board in regard to age discrimination and the eligibility of employees to superannuation benefits. This advice states that New South Wales employers may commit an unlawful act of age discrimination, in the terms and conditions of employment offered to employees, if they do not pay superannuation contributions or provide equivalent remuneration for employees above the age limit in the Commonwealth superannuation legislation.
3. The Commonwealth superannuation legislation currently allows superannuation funds to accept contributions in respect of employees aged up to 70 years of age. Prior to 1 July 1997, contributions could generally only be accepted in respect of employees up to 65 years of age. The exception to this rule was that funds could accept contributions up to 70 years of age in respect of members aged 60 or over on 1 July 1990.
4. To address any perceived discrimination or inequity the Government has approved the payment of a superannuation salary loading for employees aged 70 years and over, and lump sum payments to certain groups of employees and former employees, to compensate them for periods of employment when contributions to the First State Superannuation Scheme were not paid on their behalf because of the age restrictions in the Commonwealth superannuation legislation. These payments will only apply in respect of employees who are not paid under a Total Remuneration Package (TRP).

5. The Premier has drawn to the Tribunal's attention that a number of office holders and former office holders whose remuneration is determined by SOORT and who are listed under Schedules 1, 2 or 3 of the SOOR Act (and who are not Judges, Acting Judges or officers eligible to receive payments under the Judges Pension Scheme) may also have been disadvantaged due to age restrictions in the Commonwealth superannuation legislation.
6. The Tribunal has given due consideration to this request and will make a determination which addresses any inequities. It should be clear that this determination is being made to ensure compliance with advisings received by the Government from the Crown Solicitor and the President of the Anti Discrimination Board and to redress any discrimination inadvertently caused to any office holders and former office holders affected by those advisings.
7. The Tribunal in making its determination has had regard to the provisions of Premier's Department Circular 99/49 of 16 August 1999.
8. The Tribunal has made two determinations to give effect to the Premier's direction.
9. Determination No 1 relates to those office holders currently employed and who are aged 70 years and over. The effect of the determination is to provide a superannuation salary loading to these employees equal to the compulsory employer contribution rate in the First State Superannuation Scheme (FSSS).
10. Determination No 2 relates to the payment of lump sums to specific office holders and former office holders to compensate them for periods of employment when contributions to the FSSS were not paid by employers on their behalf because of the age restrictions in the FSS Act.

## **DETERMINATION**

### 1. DEFINITIONS

“office holder” means a person whose office is listed in schedules 1, 2 or 3 of the *Statutory and Other Offices Remuneration Act 1975*.

“former office holder” means a person who formerly held an office listed under Schedules 1, 2 or 3 of the *Statutory and Other Offices Remuneration Act 1975*.

“compulsory employer contribution percentage rate in the First State Superannuation Scheme” means the employer contribution rate prescribed in Section 12 of the *First State Superannuation Act 1992*.

“remuneration” means salary and allowances as prescribed in the *Statutory and Other Offices Remuneration Act 1973*.

#### **Determination No 1**

The Tribunal determines, pursuant to section 14 of the Act, to provide a superannuation loading, calculated by multiplying the office holder’s remuneration each pay period by the compulsory employer contribution percentage rate in the First State Superannuation Scheme (FSSS) for that particular year, to be paid to office holders aged 70 years and over;

#### **Determination No 2**

The Tribunal determines, pursuant to section 14 of the Act, to provide for lump sums equal to the total amount of the FSSS contributions employers would have paid in respect of office holders and former office holders prescribed below had there been no age restrictions on contributions in the *First State Superannuation Act 1992*, plus compound interest on the FSSS amounts using the annual crediting rate for the capital guarded option in the FSSS.

The Note attached to this Determination explains the significance of the various dates referred to hereunder.

- a) Current office holders aged 70 and over

*Payment period:* period of employment from when the office holder turned 70, or from 1 July 1994 whichever is the later date, until the commencement of the superannuation loading.

- b) Current office holder aged under 70 who turned 65 on and from 2/7/95 to 30/6/97.

*Payment period:* period of employment from when the office holder turned 65 to 30/6/97.

- c) Former office holders who were aged 70 and over when they ceased employment

*Payment period:* period of employment from when employee turned 70, or from 1 July 1994 whichever is the later date, until the office holders ceased employment.

- d) Former office holders who were aged under 70 when they ceased employment, and turned 65 on and from 2/7/95 to 30/6/97.

*Payment period:* period of employment from when the office holder turned 65 to 30/6/97, or the date the employee ceased employment if this was earlier than 30/6/97.

The provisions of this determination exclude office holders in receipt of total remuneration packages and Judges, Acting Judges and other office holders who are members of the Judges Pension Scheme.

Gerry Gleeson

**Statutory and Other Offices**

**Remuneration Tribunal**

**Explanatory Note to Determination No 2**

**1 July 1994** commencement date for the age discrimination provisions of the *Anti Discrimination Act 1977*

**2 July 1995 to 30 June 1997** employees who turned 65 after 1 July 1995 could only receive superannuation contributions up until age 65.

**1 July 1997** employees are eligible to receive contributions up to 70 years.