

REMUNERATION TRIBUNAL

STATEMENT

COMPENSATION FOR LOSS OF OFFICE FOR STATUTORY OFFICE-HOLDERS

At the request of Government the Remuneration Tribunal conducted an inquiry into superannuation and retiring allowance benefits for holders of public office. The Tribunal reported on these matters in October 1985. Government considered the Tribunal's report and, on 31 October 1989, advised the Tribunal that it accepted the majority of the recommendations made by it.

2. Pursuant to section 7(4)(b) of the *Remuneration Tribunal Act 1973* Government requested the Tribunal to inquire into and determine the quantum of compensation for loss of office for full-time public office-holders. It indicated that it proposed to amend the *Remuneration Tribunal Act* to permit the Tribunal to make determinations covering recreation leave (including leave bonus) entitlements and consequent entitlements to payment in lieu of recreation leave on cessation of office by public office-holders.

3. Subsequently, by the *Industrial Relations Legislation Amendment Act 1991*, relevant amendments were made and the Tribunal was required to inquire into and determine recreation leave entitlements of relevant full-time holders of public office. Accordingly, the Tribunal was subsequently invited to proceed with the making of determinations in respect of the recreation leave entitlements and the compensation for loss of office entitlements of the relevant full-time public office-holders.

4. On 15 October 1991 the Tribunal sought updated submissions from interested persons and from Government in respect of these matters. In due course the Government indicated that it did not depart from the views previously indicated.

5. Subsequently, the Tribunal made Determination No 20 on 22 November 1991 providing for office-holders within the Tribunal's jurisdiction generally recreation leave entitlements equivalent to officers of the Public Service. The Tribunal stated at the time that this Determination was made on an interim basis. The determination has been made upon the basis that, in due course, appropriate amendments will be made to the terms of the determination to accommodate special cases and particular provision will be made, by separate determination or otherwise, in respect of special cases.

6. The determination of recreation leave entitlements for the full-time public office-holders who require special consideration is presently the subject of consideration in Government. It is envisaged that a determination or determinations in respect of those office holders will be made in due course.

7. The Tribunal has made a determination in respect of compensation for loss of office for full-time public office-holders. That determination is in general form. It is intended to apply to full-time public office-holders: the public office-holders affected are, of course, limited to those to whom the jurisdiction of the Tribunal extends.

8. It is the intent of the determination that the compensation provided is to be determined by reference to the remuneration of the public office-holder as fixed by the Tribunal and applying at the date of the retirement of that office-holder. The remuneration is that fixed by the Tribunal in its relevant determination: it does not include other entitlements such as superannuation. In calculating the "minimum payment" and the "maximum payment" for the purposes of the Determination, the amount is to be fixed by reference to the amount which would be paid pursuant to the entitlement of the office holder to that remuneration if paid on an ordinary fortnightly or monthly basis.

9. The entitlement to compensation does not arise unless "the Commonwealth has not made the office-holder an offer of suitable alternative employment". The phrase "suitable alternative employment" has been adopted as the phrase which in the past has been conventionally used in this regard. It is a phrase of necessary generality. It is the intention of the determination that the suitability of the alternative employment offered is to be judged by taking into account the nature of the duties of the office from which the office-holder has retired, the remuneration of that office, and the place or places in which the

duties of office have been performed. The suitability of the alternative employment offered is to be judged by reference to objective factors of that kind. It is not the intention of the determination that the suitability of the alternative employment shall lie in the discretion of the public office-holder in question to be determined merely on subjective grounds.

10. It is the contemplation of the Tribunal that the determination, made in general terms, will apply in respect of full-time public office-holders within its jurisdiction: see, e.g., the *Remuneration Tribunal Act 1973* s.3(4). It has been the contemplation of the Tribunal and, it is believed, of Government, in relation to the Tribunal's report and otherwise that a determination be made in general terms. Experience has however shown that, having regard to the large number of full-time public office-holders, it is to be anticipated that special cases will arise. The Tribunal envisages that, from time to time, it may be necessary, by special determinations, to make particular provision for such special cases.