

[REDACTED]

From: [REDACTED]
Sent: Monday, 5 August 2019 5:43 PM
To: [REDACTED]
Cc: Statutory Reporting & Compliance
Subject: memo of advice - Relocation assistance - Deputy Chair Crennan [DLM=Sensitive:Legal]
Attachments: 20190805 Memo to Finance - Rental allowance paid to Deputy Chair Daniel Crennan.pdf; Annexure A - Memo dated 15 January 2019.pdf; Annexure B - ASIC Relocation Policy 2018.pdf; Annexure C - [REDACTED] relocation.pdf; Annexure D - [REDACTED]Relocation.pdf

Hi [REDACTED]

Please see attached the advice from our CLO.

Regards,

[REDACTED]
Senior Manager, Statutory Reporting & Compliance Advisory

Australian Securities and Investments Commission

Level 5, 100 Market Street, Sydney, 2000
[REDACTED]



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Memo

TO: [REDACTED] Chief Financial Officer

FROM: [REDACTED] Commission Counsel and [REDACTED], Senior Lawyer, Commission Counsel Team

RE: Payment of rental allowance to Deputy Chair Crennan

DATE: 5/08/2019

Background

1. Daniel Crennan QC commenced his term as a Deputy Chair of ASIC on 16 July 2018. For the purposes of his role, ASIC required Deputy Chair Crennan to relocate from Melbourne to Sydney. We understand that Deputy Chair Crennan relocated to Sydney with his family in or around January 2019. [REDACTED]
2. We further understand that upon relocation to Sydney, Deputy Chair Crennan did not maintain a principal place of residence in Melbourne.
3. We have been asked to advise whether the amounts paid to Deputy Chair Crennan by way of relocation assistance are consistent with the framework for the remuneration and entitlements of statutory officeholders in ASIC.

Relocation assistance

4. In January 2019 ASIC approved the following relocation assistance package:¹
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - **Rental allowance:** \$750 per week for two years (from 5 January 2019 to 4 January 2021), paid directly to the real estate agent (**Rental Allowance**).

Governing framework

5. During the relevant period, the remuneration and entitlements of ASIC's statutory officeholders were governed by the [Remuneration Tribunal \(Remuneration and Allowances for Holders of Full-time Public Office\) Determination 2018 \(the Determination\)](#). We note that section 8 of the

¹ Memo dated 15 January 2019 from [REDACTED] to Deputy Chair Crennan, **Annexure A**.

Determination stated "the remuneration and benefits provided for in this instrument must not be supplemented".

Payments other than Rental Allowance

6. Putting to one side the Rental Allowance (discussed further below), it seems clear that the remaining payments listed at paragraph 4 above (**Other Relocation Payments**) were approved in accordance with the Determination. We note that the test in this regard is subparagraph 7(3)(c) of the Determination, "*expenses incurred on geographic relocation following appointment as an office holder, in accordance with agency policies and practices where approved by the employing authority*". Subsection 7(3) of the Determination provides that the "total remuneration" of an office holder does not include such expenses.
7. The Other Relocation Payments appear to have been approved by a combination of ASIC's 2018 Relocation Policy (**Annexure B**) and practice.
8. Relevantly, the 'Principles' section of ASIC's Relocation Policy at paragraph 3 states:

Relocation refers to an extended period of absence from a team member's home location. If they are regularly commuting back to their home location it is not considered relocation.

...

It is intended that team members are reasonably compensated for the disruption and expense of being relocated.

...

ASIC may not necessarily meet all of costs arising from a relocation and may impose a maximum limit on assistance.

...

This policy is intended to cover ASIC-initiated situations where team members are required to relocate.

9. Applicable paragraphs of the ASIC Relocation Policy are 17, 18 and 21. We note that the policy on its face applied to "team members", and this definition did not include Commissioners. However, we have been informed of a practice in ASIC of reimbursing Commissioners of relocation expenses, including:
 - a. Payment in █████ to Commissioner █████ of a number of expenses totalling █████ associated with the relocation of █████ principal place of residence from █████ to Sydney for the purposes of his appointment. See letter from Chairman █████ to Commissioner █████ dated █████ (**Annexure C**).
 - b. Payment in █████ to Commissioner █████ of █████ for removalist fees associated with his relocation from █████ to Sydney (**Annexure D**).
10. It is also clear that these amounts were costs which, but for Deputy Chair Crennan's relocation to Sydney, would not have been incurred. Accordingly we consider that these amounts satisfy the meaning of the subparagraph

7(3)(c) of the Determination, being expenses incurred on geographic relocation following Deputy Chair Crennan's appointment to the position of Deputy Chair, in accordance with ASIC's Relocation Policy and practices and as approved by ASIC.

Rental Allowance

11. Part 5 of the Determination (Travel and accommodation assistance) is not applicable to Deputy Chair Crennan's circumstances, as this part applies only where the office holder has a principal place of residence in a locality other than the office locality (s 18(1)). Accordingly, the Guidelines issued by the Remuneration Tribunal (**RT Relocation Assistance Guidelines**) in relation to geographic relocation of office holders, which provide guidance in relation to Part 5, do not apply.
12. However, as noted at paragraph 6 above, subparagraph 7(3)(c) of the Determination provides for the reimbursement of expenses incurred on geographic relocation following appointment as an office holder, **in accordance with agency policies** and practices where approved by the employing authority.
13. We have reviewed contemporaneous materials which noted that the Rental Allowance would form part of what ASIC could approve under its Relocation Policy. Relevantly, the ASIC Relocation Policy states at paragraph 22:

The team member will be responsible for the normal rental costs. If any rental assistance is required, the Senior Executive Leader will approve the amount and duration of such assistance.
14. As such, the Rental Allowance meets the requirement of subparagraph 7(3)(c) of the Determination that relocation expenses are approved in accordance with agency policies.
15. We assume, for the purposes of this advice, that the amount of the Rental Allowance represents out-of-pocket expenses that would not have been incurred but for Deputy Chair Crennan's relocation. The figure of \$40,000 per annum was based on the guidance provided in the RT Relocation Assistance Guidelines where the relevant place is Sydney (notwithstanding that these guidelines did not strictly apply). We note that we have sighted communications referring to Deputy Chair Crennan's being out of pocket in relation to rent. However, it may be necessary to obtain further evidence from Deputy Chair Crennan to compare the costs of his living arrangements in Melbourne and Sydney, in order to obtain assurance that the amount of rental allowance does no more than reimburse Deputy Chair Crennan for out of pocket expenses attributable to his relocation.
16. Assuming this is demonstrated, the Rental Allowance would be consistent with the exception at subparagraph 7(3)(c) of the Determination and would not supplement the remuneration and benefits provided for in the Determination.

Memo

TO: Daniel Crennan
CC: [REDACTED]
FROM: [REDACTED]
RE: Relocation assistance
DATE: 15/01/2019

Dear Daniel

I am writing to confirm the relocation support that has been approved under the ASIC Relocation Policy as part of your required relocation to Sydney:

| | | |
|------------------------------|-------------------------------------|--|
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |
| ASIC rental allowance | \$750 per week for two years | paid directly to the real estate agent |
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |

ASIC is paying your rent directly to your real estate agent. As the monthly rent is [REDACTED] and your rent allowance is \$3250 per month, the remaining rent will be deducted directly from your salary. The rental allowance commenced 5 January 2019 and apply until 4 January 2021, unless you decide to return to Melbourne earlier. If you do return before January 2021, the rental allowance will stop from the date you stop paying rent in Sydney.

The bond has been paid on your behalf in the form of a loan and will be recovered over a period of 12 months. For any information on your bond loan please contact me or the Payroll Manager, [REDACTED]

ASIC will pay for your relocation back to Melbourne up to a value of [REDACTED] ASIC will not relocate you from a rental property in Sydney to another rental or purchased property in Sydney.

I hope you and your family are settling in well in Sydney.

Kind regards,



Manager, P&D Advisory
People & Development





ASIC

Australian Securities & Investments Commission

PEOPLE & DEVELOPMENT

Relocation Policy

2018

About this policy

This policy describes ASIC's relocation arrangements, setting out the roles and responsibilities and usual assistance provided with relocation.

This policy supports ASIC's values of **ACCOUNTABILITY**, **PROFESSIONALISM** and **TEAMWORK**.

Policy Ownership

The Senior Manager, People & Development Advisory is responsible for the development and implementation of this policy.

Policy Application

This policy applies to ASIC team members including the Superannuation Complaints Tribunal (SCT), Corporations and Markets Advisory Committee (CAMAC) and the Companies Auditors and Liquidators Disciplinary Board (CALDB).

Policy application is subject to adoption by the Senior Executive Leader, People & Development.

Policy Approval

This policy has been reviewed and approved by the following parties on the following dates:

| Version | Reviewer | Comments | Approved | Date |
|---------|----------|-----------------------|----------|------------------|
| 1.1 | | | Approved | 25 November 2013 |
| 1.2 | | | Approved | November 2016 |
| 1.3 | | Reviewed for currency | Approved | 31 August 2018 |

Policy Distribution

This policy has been distributed to the following parties on the following dates:

| Version | Date | Distribution List |
|---------|---------------|-------------------|
| 1.0 | August 2013 | ASIC Staff |
| 1.2 | November 2016 | ASIC Staff |
| 1.3 | October 2018 | ASIC Staff |

Policy Location

This policy is published on [myASIC](#), People & Development.

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FOR FURTHER INFORMATION
CONTACT P&D ADVISORY ON
#87799

A What is this policy about?

- 1 Team members may be asked by their people leader to relocate to another office location due to the requirements of their role or to undertake a secondment or transfer arrangement. It is ASIC's intention that team members are relocated with minimum disruption to them and their family and at reasonable cost to ASIC. This policy outlines the financial assistance available in the event of relocation.
- 2 This policy provides information on the usual relocation arrangements for:
 - Medium term (3 weeks – 12 months)
 - Long term (12 months – 2 years)
 - Permanent (>2 years), and
 - International.

This policy does not include short term transfers of less than three weeks. If team members are required to relocate for less than three weeks they may be entitled to travel, accommodation and meals under the ASIC Travel Policy.

Further guidance

Information on short term travel arrangements can be found in the ASIC Travel Policy and the ASIC Enterprise Agreement.

ASIC's Secondment Policy offers additional guidance on secondment arrangements.

ASIC's International Travel Policy details important obligations for those travelling internationally to undertake a secondment.

A glossary of key terms is provided on page 15 of this policy.

B Principles

- 3 Where team members are required to relocate on a temporary or permanent basis, ASIC will meet reasonable costs arising from their relocation and if appropriate, their family's relocation.

Principles

- Relocation refers to an extended period of absence from a team member's home location. If they are regularly commuting back to their home location it is not considered relocation.
- Team members will be solely located in a new location to enable them to meet business needs. ASIC is under no obligation to assist team members to relocate if they are new to ASIC, have applied for a vacancy in another location, or have initiated their own transfer.
- It is intended that team members are reasonably compensated for the disruption and expense of being relocated.
- ASIC aims to minimise avoidable relocation costs including Fringe Benefits Tax (FBT). Where possible, assistance should be in the form of FBT-exempt allowances and reimbursements.
- Where possible, relocation costs must be paid directly by ASIC (through an ASIC corporate credit card or an invoice issued to ASIC) rather than as a reimbursement to the team member.
- Relocated team members must declare to ASIC any relocation assistance or financial benefit they are receiving from other sources, such as their partner's employer or rental income. The relocation assistance provided by ASIC will take this into account.
- ASIC may not necessarily meet all of costs arising from a relocation and may impose a maximum limit on assistance.
- Arrangements within this policy may be varied if it is more cost effective.
- This policy is intended to cover ASIC-initiated situations where team members are required to relocate. Any arrangement outside of this policy must be approved by a Commission Member or Senior Executive Leader, in consultation with the Senior Executive Leader, People & Development.

C Accountability

People leader

4 People leaders must ensure arrangements are:

- Reasonable compensation for the disruption and expense of being relocated
- A cost-effective use of Commonwealth resources, and
- Consistent with the principles in this policy.

Team member

6 Team members are responsible for:

- Negotiating and agreeing to the relocation terms prior to their move
- Arranging their own accommodation at their new location, and
- Complying with the principles in this policy.

Senior Executive Leader

7 A Senior Executive Leader will approve the relocation arrangements including any provisions outside of policy and seek Commission approval where required.

People & Development Advisory

8 People & Development will provide advice on relocation arrangements and application of this policy.

D Medium term (3 weeks – 12 months) relocation

Transfer arrangements

- 9 ASIC will provide for the transfer of the team member either through a return economy airfare, or a kilometre allowance and reasonable accommodation costs if a private vehicle is driven to the new location by the most direct route.

Team members will not normally be reimbursed for using their vehicle for normal purposes during the period of the transfer or for return visits during the transfer.

Family members

- 10 ASIC will relocate families where the transfer is more than six months.

Accommodation

- 11 ASIC will generally meet accommodation costs for medium term temporary transfers.

Accommodation should be arranged in serviced apartments or in furnished apartments if the team member relocates for a longer period.

Ideally weekly or monthly rates should be negotiated for accommodation which should be less than the daily rates as set out in the ASIC Travel Policy.

Living Away from Home Allowance

- 12 ASIC may pay a food and incidentals allowance to cover the additional costs incurred by a team member whilst they are away from home.

Where they have access to kitchen facilities, the additional cost should be minimal. If they have no additional costs then no allowance is payable.

If an allowance is payable, it will be paid based on and will not normally exceed the reasonable rates set by the Australian Tax Office each year. Amounts in excess of the reasonable rates attract Fringe Benefits Tax.

Any special circumstance that requires a higher Living Away from Home Allowance must be approved by the Senior Executive Leader, People & Development.

Incidental expenses

- 13 In general, incidental expenses such as gas, electricity and telephone are the team member's responsibility. Additional costs are expected to be covered by the Living Away From Home Allowance (as described above).

In some cases, significant additional costs such as initial set up costs may be paid by ASIC. Each case will be considered on its merits and determined by the Senior Executive Leader in consultation with People & Development Advisory.

Reunion travel

- 14 Team members are encouraged to combine reunion visits to their usual place of residence with legitimate business travel. Refer to the Travel policy for limits on combining personal and business travel.

In the absence of legitimate business reasons for return travel, the following will generally apply for reunion visits:

- If the team member's dependents do not join them at the temporary transfer location, the team member may return home once each fortnight.
- If the team member has no dependents or their dependents join them, they may return home every six weeks.

Reunion travel will incur an FBT liability and could result in a reportable fringe benefit for the team member.

E Long term or permanent (12 months +) relocation

Orientation visit

- 15 ASIC may meet the cost of a return economy airfare and accommodation for the team member and their partner for one orientation visit at the new location. Generally this will be at the rate prescribed in the ASIC Travel Policy.

Transfer arrangements

- 16 ASIC will provide for the transfer of the team member either through a return economy airfare, or a kilometre allowance and reasonable accommodation costs if a private vehicle is driven to the new location by the most direct route.

Team members will not normally be reimbursed for using their vehicle for normal purposes during the period of the transfer or for return visits during the transfer.

Family members

- 17 ASIC will relocate families for long term or permanent relocations. Costs of boarding and transport of family pets may be also met.

Removals and storage

- 18 ASIC will meet the reasonable costs of packing and removal of the team member and their family's household and personal effects.

ASIC may also meet storage costs of these items if necessary at either end. This is usually for a maximum period of three months. Storage costs for a longer period may be approved by the Senior Executive Leader, People & Development.

The team member will be required to obtain quotations from two removalist firms including insurance. The Senior Executive Leader and People & Development Advisory will nominate the firm to be used and confirm the level of support that will be provided.

Temporary interim accommodation

Prior to departure

- 19 In the event that the team member has to move out of their permanent accommodation prior to their actual departure, ASIC may provide up to three nights of hotel accommodation in accordance with the ASIC Travel Policy.

Upon arrival in new location

- 20 ASIC may pay for serviced rental accommodation in the team member's new location for a period of up to two weeks immediately following the transfer to the new location if required. An extension may be granted by the Senior Executive Leader in consultation with People & Development.

Housing in new location

Accommodation cost

- 21 If a team member chooses to rent rather than buy in their new location, ASIC may pay the rental bond in the form of a loan, which will be recovered over a reasonable period of time through payroll deduction. Temporary relocations are encouraged to rent rather than buy premises in the new location.
- 22 The team member will be responsible for the normal rental costs. If any rental assistance is required, the Senior Executive Leader will approve the amount and duration of such assistance.

Purchase in new location

- 23 If a team member on a long term temporary transfer chooses to purchase a property in their new location, ASIC will not provide assistance with the cost of the purchase.
- 24 If a team member who has permanently relocated purchases a property in their new location within two years of their transfer date, ASIC may reimburse reasonable expenses associated with purchase.

This may or may not include:

- Normal real estate costs
- Reasonable legal expenses and search fees
- Mortgage application fees, and
- Bank fees associated with establishing a mortgage.

ASIC will not reimburse mortgage insurance or other exceptional costs.

Housing in old location

Owning a property in old location

- 25 ASIC will not ordinarily provide assistance in respect to the team member's property in the old location. This includes situations where the property remains vacant for a period of time or they choose to let the property.

The level of accommodation and living away from home allowance provided may be affected if the team member does not maintain a principal place of residence.

Personal taxation implications of any income received from renting property remain the team member's responsibility.

Sale of property in old location

- 26 If a team member on a long-term temporary transfer chooses to sell their principal place of residence in their old location, ASIC will not provide assistance with the cost of the sale.
- If a team member has permanently relocated and sells their principal place of residence in their old location within one year after their transfer date, ASIC may assist with the sale.

ASIC may reimburse reasonable expenses associated with the sale including:

- Normal real estate costs, and
- Reasonable legal expenses.

27 Taxation implications of the property sale remain the team member's responsibility.

Breaking a lease agreement

28 Where the team member is living in rental accommodation prior to transfer, ASIC may reimburse reasonable costs incurred including costs of breaking a lease agreement or rent charged for a period after departure.

ASIC will not reimburse amounts forfeited on bonds associated with rental or lease agreements.

Reunion visits

29 ASIC does not provide for reunion visits unless under exceptional circumstances determined by the Senior Executive Leader in consultation with People & Development Advisory.

Partner assistance

30 If the team member's partner is relocating with them, ASIC does not normally provide assistance to find employment in the new location. If assistance is provided, it will usually take the form of payment for attendance at an outplacement workshop selected by People & Development Advisory in consultation with the Senior Executive Leader.

No compensation for loss of income will be provided to the team member's partner.

Incidental expenses

31 Team members may incur other incidental expenses outside of this policy such as change of vehicle registration or telephone connection. In recognition of this, ASIC may pay the team member a disturbance allowance up to a maximum of \$2,000 upon receipt of expenses. This reimbursement will be assessable income and be taxed at the marginal rate.

Temporary transfers becoming permanent

32 If the transfer extends over 12 months, it will be reviewed by the People Leader to determine whether it will cease, continue for another 12 months (maximum) or become permanent.

F International relocation

- 33 International relocation (such as overseas secondment) is negotiated on a case-by-case basis by People & Development. Relocation assistance will depend on the duration of the assignment, country, and arrangements with Host agencies.

Transfer arrangements

- 34 Transfer arrangements would usually include return business class airfares for the team member. Additional baggage allowances may be also negotiated.

Accommodation

- 35 ASIC may meet accommodation costs for international secondments if considered additional to normal housing costs.

The level of accommodation assistance provided will depend on whether the team member will 'maintain a home' in their Principal Place Of Residence in Australia as defined in clause 43.

Accommodation should be arranged in a furnished apartment, preferably at a monthly rate, in a location deemed suitable by International Strategy and Risk & Security Services. Accommodation costs should usually be paid for using an ASIC Corporate Card.

Living Away from Home Allowance

- 36 ASIC may pay a food and incidentals allowance to cover the additional costs incurred by the team member while they are away from home. This will be based on the reasonable rates set by the Australian Tax Office each year for the destination country.

Family members

- 37 The relocation of immediate family may be negotiated on a case-by-case basis.

Reunion travel

- 38 Reunion travel is not usually provided for international secondments.

Removal and storage

- 39 Removal and storage are not usually provided but may be negotiated on a case-by-case basis.

Incidental expenses

- 40 In general, incidental expenses such as gas, electricity and telephone, are the responsibility of the team member. Additional costs are expected to be covered by the Living Away From Home Allowance.

Taxation briefings, assistance with foreign and Australian tax returns, and migration assistance may be provided. This will be approved by the Senior Executive Leader.

G Fringe Benefits Tax

- 41 ASIC is liable for Fringe Benefits Tax (FBT) for a variety of fringe benefits provided to its team members. Most reimbursements directly associated with relocation are FBT exempt, but a number of forms of assistance, such as Living Away From Home Allowance, may attract FBT.

Any transfer or relocation should be structured in such a way to minimise the FBT liability. Contact People & Development Advisory for further information.

'Maintaining a home' test

- 42 Where a team member or their spouse maintains a home in their Principal Place Of Residence by way of mortgage, ownership, or rental lease, and the relocation is for less than 12 months, accommodation and living away from home allowances within the Reasonable Limits will be FBT-exempt.

Where the team member or their spouse does not maintain a home (e.g. through subleasing or renting out their home or if the team member resides at their parents' home) ASIC is likely to be liable for FBT on some forms of relocation support. This will affect the level of accommodation and living away from home allowance ASIC provides.

Long term relocations

- 43 Any relocation greater than 12 months' duration with accommodation or Living Away From Home Allowance costs is subject to FBT. Where possible, this type of relocation assistance should be capped to maximum 12 months' duration.

Reportable fringe benefits

- 44 ASIC must report the grossed-up value of fringe benefits (excluding Living Away From Home Allowance) with a total taxable value in excess of \$2,000 on team members' payment summaries.

These reportable fringe benefits may increase team members' income for a number of income tests, including superannuation surcharge, Medicare Levy surcharge, repayment of HECS debts, child support and welfare payments.

Fringe benefits declaration

- 45 Where Living Away From Home Allowance is provided, the team member will be required to complete a FBT declaration.

Key terms

| Term | Meaning in this document |
|-------------------------------------|---|
| People leader | An ASIC employee with people management responsibilities. For example a Senior Executive, Senior Manager, Manager or Team Leader. |
| Team member | An ASIC employee, either ongoing or non-ongoing with no people management responsibilities. |
| Relocation | An extended period of absence from your home location. |
| Partner | A spouse or de facto person who lives with the team member (same or different genders) in a relationship as a couple on a genuine domestic basis. |
| Dependents | A child or children with whom you have an interdependency relationship. |
| Family | Partner and/or Dependents as defined above. |
| Principal Place Of Residence | The usual locality the employee would have lived at had the duties of their employment not required them to work temporarily in another locality. |



ASIC

Australian Securities & Investments Commission

[Redacted]
Chairman

No.1 Martin Place, Sydney
GPO Box 9827 Sydney NSW 2001
DX 653 Sydney

Telephone: +61 2 9911 2002
Facsimile: +61 2 9911 2010

[Redacted]

[Redacted]

Commissioner
Australian Securities and Investments Commission
Level 24
No 1 Martin Place
SYDNEY NSW 2000

Dear [Redacted]

Relocation Costs

On advice from [Redacted] email of [Redacted] and discussions with you, pursuant to Remuneration Tribunal Guidelines of [Redacted]

1. I am satisfied that it was expected, as part of your appointment as Commissioner, that you would relocate your principal residence to Sydney.
2. The attached claims totalling [Redacted] are reasonable.

Accordingly I have authorised [Redacted] to issue reimbursement to you for that amount.

I apologise for the delay in processing this claim. I attach, for your reference, a copy of the Remuneration Tribunal Guidelines.

Kind regards,

[Redacted Signature]

[Redacted]

Encl.

cc: [Redacted]

Vertical text on the right edge of the page, likely a scanning artifact or page number.

Claim for Reimbursement of Relocation Expenses

Following is a claim for costs associated with my relocation to Sydney. Attached are relevant receipts.

| Item | Cost |
|--|------------|
| Sale of [REDACTED] Home | [REDACTED] |
| • Advertising Costs | [REDACTED] |
| • Legal Costs | [REDACTED] |
| • Real Estate Commission | [REDACTED] |
| Relocation to Sydney | [REDACTED] |
| • Return Trip to Sydney with spouse to lease home - airfares and parking | [REDACTED] |
| • Removal of Household Effects | [REDACTED] |
| • Car Allowance - to transport family to Sydney | [REDACTED] |
| • Car Allowance - to transport pets to Sydney | [REDACTED] |
| • Storage - household effects | [REDACTED] |
| • Piano - removal + storage | [REDACTED] |
| Other | [REDACTED] |
| • Pet Boarding - 26/12 - 9/1 | [REDACTED] |
| • TV antenna - in rental property | [REDACTED] |
| • Technology connection - IT/TV/Internet | [REDACTED] |
| Total | [REDACTED] |

Signed:

[REDACTED]

Date:

[REDACTED]

[REDACTED]

REMUNERATION TRIBUNAL

GUIDELINES ON GEOGRAPHIC RELOCATION OF FULL TIME OFFICE HOLDERS

Purpose: These Guidelines are issued by the Remuneration Tribunal to assist Commonwealth agencies, their Ministers and Office Holders in developing any proposal for additional benefits where a person is offered an Office in a geographic locality different from their principal place of residence.

Application: The Guidelines apply to Public Offices where the Tribunal applies a 'total remuneration' approach.

Relocation Costs: Where a person is appointed to an Office and their principal place of residence is in a geographic locality (the 'home locality') different from that of the Office (the 'office locality') it is expected that the person will relocate their principal place of residence to the new locality. When this occurs, reasonable relocation costs may be approved by the employer in accordance with agency policies and practices.

Non-relocation of household: Where a person decides to maintain their principal place of residence in their 'home locality' the Remuneration Tribunal may, in special circumstances and where it is in the interests of the agency, give approval for accommodation costs and/or reunion fares to be paid to an office holder. In assessing such applications the Tribunal will have regard to the views of the relevant Minister on the following:

- the personal circumstances of the Office Holder;
- the duration of the appointment, as well as the duration of the maintenance of two properties by the office holder;
- the availability of other suitable candidates for the office;
- the additional costs involved; and
- any other relevant issues.

What allowances might be available on non-relocation? Where the Tribunal concludes that the circumstances of the office holder and the interests of the agency mean that non-relocation is reasonable, one or both of the following provisions may be approved by the Tribunal.

Accommodation Costs: The employer may meet commercial accommodation costs at the office locality (including one-off utility connection costs). The standard maximum payment is up to \$28,500 per annum, except that the maximum payment for Sydney is up to \$32,780 per annum.

Payment will only continue while:

- the Office Holder continues to have a property in their home locality, as their principal place of residence; and
- the Office Holder lives in premises at the office locality not owned by them or their family.

An Office Holder will not be eligible to access travelling allowance entitlements in their office locality or their home locality whilst they remain eligible for this accommodation costs provision.

Where the commercial accommodation does not include cooking facilities, the cost of meals may form part of the payment, within the accommodation cap set for an office-holder.

Non-commercial Accommodation: Where the Tribunal agrees to the payment of accommodation costs, as outlined above, and the office holder subsequently elects to be accommodated in private, non-commercial accommodation, such as the home of a family member or friend, a rate of one third of the accommodation allowance as determined by the Tribunal, will apply.

Adjustment of Accommodation Costs: Where the Tribunal has agreed to a payment which covers the total rent of a property, and the rent of that property is increased so that the maximum payment is no longer sufficient, the Tribunal will generally agree, on the receipt of written evidence to an increase in the maximum amount to cover the total rent. Unless otherwise advised, a submission accompanying the documentary evidence will not be necessary.

Cessation of Accommodation Allowance: Where, in terms of the ongoing arrangements, it would clearly be more cost effective for the agency to provide travel allowance entitlements in the office locality, at the earliest practical opportunity the agency should decide to pay travel allowance rather than continue to pay the accommodation allowance.

Reunion Fares: Where the Tribunal gives approval, the employer may provide travel assistance between the office locality and the nearest capital city to the home locality for the purpose of family reunion. The normal entitlement will be 12 return airfares per annum based on the class of travel normally available to the office holder.

When the Tribunal agrees to a reunion fares arrangement it will provide the office holder with a choice between the twelve return trips or a dollar figure, up to which figure each year the office holder can organise reunion travel as he or she sees fit. The dollar figure option will be calculated by multiplying by 24 the most common standard basic one-way fare in the appropriate class of travel at the time of assessment. The office holder can make a new election on each anniversary of the original assessment.

Reunion fares example – Office holder X, who normally has Tier 1 travel, travels for reunion purposes between A and B. The Tribunal agrees on 1 May to the employer providing travel assistance. On 1 May the standard basic one-way business class fare between A and B, as advised by the leading airline servicing that route, is \$700. X will be offered a choice between 12 return business class trips from A to B per annum or maximum travel of \$16,800 per annum (\$700 by 24).

X chooses the \$16,800 option. After each twelve months he/she can retain this allowance for another year or, alternately he/she can then choose 12 business class return trips for the following year.

Reunion travel is not travel on official business. Any unused travel entitlement lapses on separation, and may not be carried over or brought forward from year to year.

As outlined above, where an agency decides to cease the payment of accommodation allowance and to pay the office holder travel allowance, the reunion fares allowance for that office holder will no longer apply.

Issued by the Remuneration Tribunal in [REDACTED]



Request for Payment

Use this form to:

- Request a payment where you do not have an invoice and there is no Purchase Order.
If you have an invoice, complete the Purchase Requisition Form on myASIC and follow the instructions on the form.

Complete this form, scan it and email to accounts.payable@asic.gov.au

Section A – Procurer to Complete

| | |
|--------------------------------|--------------------------------------|
| Supplier Name: | [REDACTED] |
| Supplier Address: | [REDACTED] |
| Description of goods/services: | Reimbursement of Relocation Expenses |
| Special Instructions: | See [REDACTED] approval attached. |

Costing Summary

| Loc | Project Code (optional) | Activity | Account | Cost Centre | FBT Code (employee No.) | Amount To Pay |
|-------|-------------------------|----------|---------|-------------|-------------------------|---------------|
| 207 | | | 500004 | 5004 | [REDACTED] | [REDACTED] |
| Total | | | | | | [REDACTED] |

Note: Complete the Activity if a Project Code has been entered.

- I confirm that the ASIC procurement guidelines have been complied with and appropriate advice from APC has been sought.
- I confirm that the goods/services have been received to a satisfactory standard.
- I confirm that I have correctly completed the above costing summary.

| | |
|---------------------|-----------------------------|
| Procurer Name: | [REDACTED] |
| Procurer Signature: | [REDACTED] Date: [REDACTED] |

| | |
|--|------------|
| Delegate Name: | [REDACTED] |
| (Note delegate does not need to sign this form, delegate's approval will be electronic via Peoplesoft Financials.) | |

Section C – Accounts Payable

| | | | | |
|-----------------------------------|---|---|---|------------|
| Prepayments: | Months | From: | To: | Month/Year |
| Payment Details: | <input checked="" type="checkbox"/> EFT Payment | <input type="checkbox"/> Cheque Payment | <input type="checkbox"/> Urgent Payment | |
| GST Free <input type="checkbox"/> | | | | |
| Supplier No: | Payment Date | | | |
| System Ref: | | | | |



Fw: Request for reimbursement of relocation expenses [DLM=Sensitive]

[Redacted] t [Redacted]
o [Redacted]

[Redacted]

Can you please organise payment of this amount.

Thanks

[Redacted]

[Redacted]

///APT ACCOUNTABILITY PROFESSIONALISM

----- Forwarded by [Redacted] -----

From: [Redacted]
To: [Redacted]
Cc: [Redacted]
Date: [Redacted]
Subject: Re: Request for reimbursement of relocation expenses [DLM=Sensitive]

[Redacted]

As discussed, I checked with Treasury, and confirmed with [Redacted] am ok to approve unreimbursed removalist costs of [Redacted] regards

[Redacted]

[Redacted]

FOR GOOD REASON | Confidential and internal matters and financial documents
For internal use only **MONEYSMART**

[Redacted]

[Redacted]

Subject: Request for reimbursement of relocation expenses [DLM=Sensitive]

Dear [Redacted]

As discussed, please find attached a memo seeking your approval for ASIC to reimburse certain expenses related to my relocation to Sydney.

Kind regards

CONFIRMATION OF BOOKING

GRACE

REMOVALS GROUP
100
YEARS OF SERVICE



Removalist



We would like to thank you for choosing Grace to carry out your removal. We appreciate the trust you have placed in our company and staff.

We provided some important documents with our service proposal. If you have not already returned these documents duly signed and made payment, could you please:-

- Complete, sign and return your acceptance form;
- Complete, sign and return the insurance proposal if you would like to insure your goods in transit with Grace;
- Make payment before you move. We accept bank cheques, cash, electronic funds transfer, or credit card (a 3.3% transaction fee applies to credit card payments).

We will contact you the day before the start of your move to confirm timing. Please note that you, or your agent, should be present at all times during the uplift and delivery of your effects.

The details of our services are set out below: (All charges include GST)



Uplift/s from: [Redacted]

on [Redacted]

Delivery/s to: [Redacted]

on [Redacted]

Packing and Removal Charges

Ancillary Services:

Rebul Cases

Unit 4th Floor

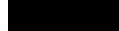
Transit Insurance:

Your goods are not insured with Grace. (Grace can arrange insurance - please speak to a customer service representative.)



TOTAL CHARGES:

(These charges do not include the handling, storage or re-delivery of your goods if the goods are going into store)



Storage Charges: If required (Includes GST)

Storage Rental per week for the first 26 weeks:

STBA

Handling fee (stowing into store and un-stowing out of store):

STBA

Delivery from store to residence: TBA

STBA

Storage Insurance: Your goods are not insured with Grace. (Grace can arrange insurance - please speak to a customer service representative.)

Please read over and check the above details to confirm they are correct.

Thank you again for choosing Grace, we would reiterate the need to return all documents and make payment if you have not already done so. Should you have any further questions, or wish to change any of these arrangements, please telephone 13 14 42 to speak to one of our customer service staff.

Yours sincerely,



Acceptance of Service Proposal: 10250849 Name: [REDACTED]

Please confirm your acceptance of our Service Proposal for your removal by completing the details in the boxes provided and signing this acceptance. Then return this to us so we can begin the process of coordinating your move. If you wish to insure your goods, please also return the signed Insurance Proposal document. This service proposal remains valid for 30 days from the date shown, on the condition that Grace Removals is permitted to commence work within 60 days of acceptance or at any time later agreed in writing at the time of acceptance. We are available to discuss the details of your removal at a convenient time for you.

ARRANGEMENTS:

Pack Date 2: [REDACTED]
Uplift Date: [REDACTED]
Delivery Date: [REDACTED]

Multiple Addresses: [REDACTED]

Delivery Addresses: [REDACTED]

Collection and Delivery are from/to ground floor(s) and with good access unless otherwise indicated on the special requirement and instruction section. This service proposal has been calculated by reference to the goods shown to me, our representative or by the inventory supplied to us. For 'When in area' delivery please refer to the Delivery section in our General Conditions of Removal and Storage.

CHARGES: (Includes GST)

Packing and Removal charge: [REDACTED]

Auxiliary Services:

Rebul Cases
Unit 4th Floor

TRANSIT INSURANCE PREMIUM: (Includes GST) please tick required box

TO BE CONFIRMED MT

I declare the value of my goods are _____

Ultimate Cover:

Calculated at 4.40% of declared value

Standard Cover:

Calculated at 3.30% of declared value

Please ensure you complete and return the separately supplied Insurance Proposal at the same time as returning this Acceptance.

I do not require Grace Removals to arrange any Transit insurance on my behalf.

STORAGE CHARGES: (Includes GST) If Required

Storage Rental per week for the first 26 weeks:

\$TBA

Handling fee (stowing into store and un-stowing out of store):

\$TBA

Delivery from store to residence: TBA

\$TBA

Storage Insurance: (please tick required box)

Ultimate Cover:

Calculated at 0.088 % of declared value per week

Standard Cover:

Calculated at 0.077 % of declared value per week

I do not require Grace Removals to arrange any Storage insurance on my behalf.

Note: Ultimate and Standard cover are not available as a storage cover option unless taken out as transit cover for the removal.

I accept this Service Proposal as shown and the General Conditions of Removal and Storage including the Privacy condition in clause 14 and the Insurance Proposal, a copy of which I have received and read, and agree to pay the charges. I confirm that the effects to be moved are my/our unencumbered property or alternatively, that I am authorised to enter into this contract on behalf of the owner/s of the effects.

Signature: [REDACTED]

Full Name: [REDACTED]

Date: [REDACTED]

METHOD OF PAYMENT: (Please tick)

Cash

Bank Cheque

Credit Card

BPAY

EFT

If by Credit Card: Card Type: _____

Name on Card: _____ Expiry Date: ____/____/____

Card No.: _____ CVV: _____

Card Holders Signature: _____ Date: ____/____/____

Note: If paying by credit card a 3.3% including GST usage fee will apply.

If payment is by Company: (please attach purchase order)

Organisation's Name: _____

Contact Name: _____ Phone: _____



Billers Code: 57398
Ref:
500000102508493

Payment via internet or phone banking
from your cheque or savings account.



BSB: 082182
ACC no: 104316959
Remittance: eft@gmce.com.au
Fax: (02) 9838 5753

Réf : Insurance for Move

From:
Sent:
To:

Hi

Kindly note the following with regards to the Insurance cover :

Ultimate cover :

Covers : Replacement cost, mechanical derangement, pairs and sets

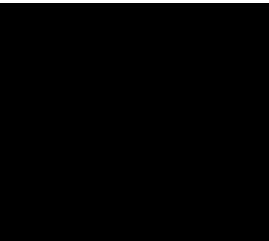
No need to itemise. Only list items over AUSS 1000.00 that are unique individual items

Standard cover : 2.75 % of your declared value

Covers : Replacement cost only

Full itemised list required.

Regards



ACROSS THE STREET, ACROSS THE WORLD. THE BEST MOVES ARE MADE WITH GRACE.

NOTICE: The contents of this e-mail message and any attachments are confidential and intended solely for the addressee. If you have received this transmission in error, please immediately notify the sender by return e-mail and delete this message and its attachments. Any unauthorized use, copying or dissemination of this transmission is prohibited.

P Please consider your environmental responsibility before printing this e-mail



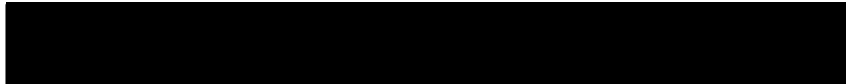


Removalist
payment
(including
insurance)

08:20:58 AM
Sydney/Melbourne time

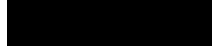
Receipt number N042232862756

From account



To biller

GRACE REMOVALS GROUP



Biller nickname

Biller code

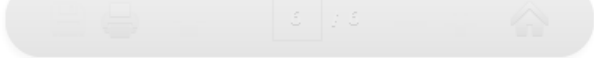
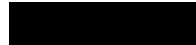
Customer reference number

Amount

grace removal

000057398

50000102508493



[REDACTED]

From: [REDACTED]
Sent: Thursday, 6 August 2020 2:21 PM
To: [REDACTED]
Subject: FW: Application to Remuneration Tribunal [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy, ACCESS=Legal-Privilege]
Attachments: Draft submission to Remuneration Tribunal.docx; Briefing Note- Application to Remuneration Tribunal.docx

Kind regards

[REDACTED]
[REDACTED]

From: [REDACTED]
Sent: Monday, 3 August 2020 1:42 PM
To: [REDACTED]@anao.gov.au>
Subject: FW: Application to Remuneration Tribunal [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy, ACCESS=Legal-Privilege]

For your records.

Kind regards

[REDACTED]
[REDACTED]

Mr John Conde AO
President
Remuneration Tribunal
PO Box 281
Civil Square ACT 2608

By email to: submissions@remtribunal.gov.au

Click to enter a date

Dear Mr Conde

**Submission seeking regarding accommodation assistance
ASIC Deputy Chair Daniel Crennan QC**

1. The purpose of this submission is to request the Remuneration Tribunal (**Tribunal**) exercise its powers under subsections 7(3) and (4) of the *Remuneration Tribunal Act 1973 (RT Act)* to determine specific accommodation assistance in respect of a Deputy Chairperson of the Australian Securities and Investments Commission (**ASIC**), Daniel Crennan QC (**Deputy Chair Crennan**).

Background

Appointment of Deputy Chair Crennan and geographic distribution of ASIC members

2. The members of ASIC are appointed by the Governor-General on the nomination of the Minister in accordance with section 9 of the *Australian Securities and Investments Commission Act 2001 (ASIC Act)*.
3. The ASIC Act requires ASIC to establish a regional office in each State and Territory: subsection 95(1). The majority of ASIC's staff members are based in Sydney and Melbourne, with each office hosting approximately 679 and 702 staff respectively, out of a total of approximately 1,701 staff members.
4. ASIC currently has a membership of seven, each of whom is a full time appointee. The table below sets out the members of ASIC during the period relevant to this submission, namely July 2018 to present.

| Name | Position | Date appointment commenced | Date appointment ceased | Location of member |
|-------------------|--------------|----------------------------|-------------------------|--------------------|
| James Shipton | Chair | 1 February 2018 | N/A | Melbourne |
| Peter Kell | Deputy Chair | 6 May 2013 | 6 December 2018 | Sydney |
| Daniel Crennan QC | Deputy Chair | 16 July 2018 | N/A | Sydney |
| Karen Chester | Deputy Chair | 29 January 2019 | N/A | Melbourne |
| John Price | Member | 21 March 2012 | N/A | Melbourne |
| Cathie Armour | Member | 3 June 2013 | N/A | Sydney |
| Danielle Press | Member | 17 September 2018 | N/A | Melbourne |
| Sean Hughes | Member | 1 December 2018 | N/A | Melbourne |

5. Daniel Crennan QC was appointed as a full-time Deputy Chair of ASIC in accordance with an instrument of appointment dated 7 June 2018 (**Annexure A**). As noted in the table above, Deputy Chair Crennan commenced his term as a Deputy Chair of ASIC on 16 July 2018. Deputy Chair Crennan's appointment is for a period of five years, ending on 15 July 2023.
6. Upon appointment, Deputy Chair Crennan commenced his duties in the location of his principal place of residence (**PPR**), i.e. at ASIC's Melbourne office.
7. On 14 September 2018, ASIC Deputy Chair Peter Kell resigned from ASIC. Deputy Chair Kell was based in ASIC's Sydney office.
8. Following the commencement of Sean Hughes as a member of ASIC on 1 December 2018 and the retirement of Deputy Chair Kell on 6 December 2018, only one of the (then) six ASIC members, Cathie Armour, was based in ASIC's Sydney office. The remainder were based in Melbourne.

Relocation of Deputy Chair Crennan

9. In light of the resignation of Deputy Chair Kell and the distinct imbalance in the presence of ASIC's members between Melbourne and Sydney, ASIC commenced discussions with Deputy Chair Crennan regarding his possible relocation to Sydney in order to carry out his functions and duties from that office.
10. Between late December 2018 and early January 2019, Deputy Chair Crennan relocated to Sydney [REDACTED]
11. Upon relocation to Sydney, Deputy Chair Crennan did not maintain a PPR in Melbourne.

Framework for remuneration and entitlements of ASIC's statutory office holders

12. At the time of Deputy Chair Crennan's relocation from Melbourne to Sydney, the remuneration and entitlements of ASIC's statutory office holders were governed by the *Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2018 (Determination)*. In particular:
 - 12.1. subsection 7(1) of the Determination states that the total remuneration of an office holder is the amount, per year, in column 2 of Table 9A. For a Deputy Chairperson of ASIC that amount is \$608,550;
 - 12.2. subsection 7(3) of the Determination states that the total remuneration of an office holder does not include:
 - 12.2.1. assistance paid in accordance with Part 5 of the Determination (s 7(3)(b)); and
 - 12.2.2. reimbursement of expenses incurred on geographic relocation following appointment as an office holder, in accordance with agency policies and practices where approved by the employing authority (s 7(3)(c)); and
 - 12.3. section 8 of the Determination states that "the remuneration and benefits provided for in this instrument must not be supplemented."

Relocation assistance package

13. In January 2019, ASIC approved the relocation assistance package in respect of Deputy Chair Crennan (**Relocation Package**) set out in the table below.

| Component of Relocation Package | Amount | Details |
|---------------------------------|------------------------------|---|
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |
| Rental Assistance | \$750 per week for two years | Paid directly to the real estate agent for the period 5 January 2019 to 4 January 2021 ¹ |

14. In determining the items and amounts included in the Relocation Package, ASIC applied its Relocation Policy 2018 (**Relocation Policy**) (**Annexure B**). ASIC also considered previous instances of relocation assistance provided to members.
15. As Deputy Chair Crennan did not seek to maintain his PPR in a locality (i.e. Melbourne) other than the relevant office locality (i.e. Sydney), ASIC took the view the *Relocation Assistance Guidelines; Accommodation and Reunion Travel* issued by the Tribunal (**RT Relocation Assistance Guidelines**) did not apply.² Nevertheless, in determining the amount of the Rental Assistance, ASIC was guided by the RT Relocation Assistance Guidelines where the relevant place is Sydney. The RT Relocation Assistance Guidelines provide that the current accommodation assistance cap for Sydney is \$40,000 per annum.
16. ASIC considered that each of the payments comprising the Relocation Package constituted expenses incurred on geographic relocation following Deputy Chair Crennan’s appointment to the position of Deputy Chair, which could be approved by ASIC in accordance with its Relocation Policy and practice. As such ASIC considered that the

¹ On 1 December 2019, ASIC ceased making direct payments to the real estate agent. Deputy Chair Crennan currently makes these payments to the real estate agent and is reimbursed by ASIC.

² Equally, Part 5 of the Determination, which deals with travel and accommodation assistance for office holders who maintain a PPR in a locality other than the office locality, was not applicable to Deputy Chair Crennan’s circumstances.

Relocation Package was consistent with subparagraph 7(3)(c) of the Determination.

Rental Assistance

17. In respect of the specific component of the Relocation Package for rental assistance, the rental assistance represents the increased rental payable by Deputy Chair Crennan in Sydney compared to his residence in Melbourne.
18. It has now become apparent that there is some doubt as to whether the Rental Assistance could properly be considered the reimbursement of expenses incurred on geographic relocation so as to fall within s7(3)(c) of the Determination. This is because the Rental Assistance was granted for a two year period, and therefore may be considered as a form of ongoing support rather than an expense incurred on geographic relocation.
19. Accordingly, for the avoidance of doubt, ASIC seeks a determination of the Tribunal which provides for the amount of the Rental Assistance to be paid to Deputy Chair Crennan.

Submissions

20. The below submissions take account of the *Guidelines for Making a Submission to the Remuneration Tribunal* published on the Tribunal's website.

Significant organisational change

21. As at 16 July 2018, ASIC consisted of five members, including Deputy Chair Crennan. Of these:
 - 21.1. three members were based in Melbourne; and
 - 21.2. two members, including Deputy Chair Peter Kell, were based in Sydney.
22. As referred to above at paragraphs 2 to 11, as a result of a number of further member appointments and the resignation of Deputy Chair Kell, as at December 2018, of ASIC's members only Cathie Armour was based in the Sydney office.
23. The following are significant operational reasons for ASIC to have a presence of at least two members (in the context of a Commission of six to seven members) in the Sydney office:
 - 23.1. the Sydney office has the second largest number of ASIC staff members; and

23.2. many of ASIC's internal key stakeholders work most closely with Deputy Chair Crennan (for example ASIC's General Counsel and litigation special counsel are both based in Sydney);

23.3. many of ASIC's external stakeholders (including the major financial institutions, the Australian Securities Exchange and other regulators) are headquartered in Sydney. In person meetings with these stakeholders require the attendance of member(s), as part of the performance of the Commission's functions and duties.

Comparability of circumstances with other office holders

24. Notwithstanding their application only to situations in which an office holder maintains a PPR in a locality other than the office locality, the accommodation assistance principles set out in the RT Relocation Assistance Guidelines are an appropriate comparator for the circumstances the subject of these submissions. In particular:

24.1. the amount of the Rental Assistance in effect does no more than reimburse Deputy Chair Crennan for out of pocket expenses attributable to his relocation; and

24.2. It is noted that Deputy Chair Crennan's decision to relocate his PPR to Sydney has resulted in a lower cost to the Commonwealth than would have been the case than if he had maintained his PPR in Melbourne. In this regard, in accordance with the RT Relocation Assistance Guidelines, approval would have been sought from the Tribunal for Deputy Chair Crennan to be provided assistance with the cost of both accommodation in Sydney and the cost of travel to Melbourne for the purposes of family reunion.

25. It is further noted that Deputy Chair Crennan's relocation to Sydney has involved considerable personal expense of approximately [REDACTED] for which Mr Crennan has not been compensated. This includes, for example, [REDACTED]. These expenses would not have been incurred but for Deputy Chair Crennan's relocation for the purposes of his appointment.

Determination sought

26. For the reasons referred to above at paragraphs 20 to 25, it is submitted that a determination of the Tribunal in respect of specific rental accommodation assistance to Deputy Chair Crennan is appropriate in all the circumstances. Such a determination could be made on the following terms:

26.1. rental accommodation assistance in the amount of \$39,000 per annum; and

26.2. application from 5 January 2019 to 4 January 2021.

27. It is noted that given the proposed period of assistance (dating from January 2019), the determination would necessarily be made with retrospective effect. This would comply with subsection 12(2) of the *Legislation Act 2003*, as it does not affect the rights of a person (other than the Commonwealth or an authority of the Commonwealth) to that person's disadvantage, nor does it impose any liability on such a person.

ASIC contact details

28. Should the Tribunal require any further information regarding this submission, please contact [REDACTED], Commission Counsel at ASIC on the details below:

[REDACTED]
Commission Counsel
Chief Legal Office
Australian Securities and Investments Commission
Telephone: [REDACTED]

29. Alternatively, my office can be contacted on: [REDACTED]

Yours sincerely

[REDACTED]

Memo

TO: [REDACTED] Chief of Operations

CC: [REDACTED] General Counsel

FROM: [REDACTED] Commission Counsel

RE: Application to Remuneration Tribunal – Deputy Chair Crennan

DATE: 26/05/2020

A. Purpose of Memorandum

1. The purpose of this memorandum is to brief you regarding the recommendation made by the Australian National Audit Office (**ANAO**) that ASIC seek a determination of the Remuneration Tribunal regarding whether the package of relocation assistance approved in January 2019 for the relocation of Deputy Chair Crennan from Melbourne to Sydney is compliant with the provisions of the *Remuneration Tribunal Act 1973 (RT Act)*.
2. ASIC will seek a determination from the RT regarding the rental assistance part of the relocation assistance package rather than the entire relocation package which is itemised below.
3. ASIC has prepared a draft submission on behalf of the Treasurer in accordance with the Remuneration Tribunal guidelines (**Annexure B**).

B. Background

Appointment and relocation of Deputy Chair Crennan

4. Daniel Crennan QC commenced his appointment as a Deputy Chair of ASIC on 16 July 2018 and was initially based in Melbourne.
5. Following the resignation of Deputy Chair Peter Kell with effect from December 2018, it became apparent that the Commission would be entirely Melbourne-based, other than in respect of Commissioner Cathie Armour. Accordingly, Deputy Chair Crennan was asked to relocate to Sydney in order to bolster the Commission's Sydney presence.
6. Deputy Chair Crennan relocated with his family to Sydney in the period between late December 2018 and early January 2019. He did not seek to maintain his principal place of residence (**PPR**) as Melbourne.
7. The following relocation assistance package was approved for Deputy Chair Crennan, as set out below (**Relocation Package**).

| Component of Relocation Package | Amount | Details | Actual amount paid |
|---------------------------------|------------------------------|---|----------------------|
| [REDACTED] | | | |
| [REDACTED] | | | |
| [REDACTED] | | | |
| [REDACTED] | | | |
| [REDACTED] | | | |
| Rental Assistance | \$750 per week for two years | Paid directly to the real estate agent for the period 5 January 2019 to 4 January 2021 ¹ | Payments are ongoing |

8. P&D determined the Relocation Package by reference to the *Relocation Assistance Guidelines: Accommodation and Reunion Travel* issued by the Remuneration Tribunal (**RT Relocation Assistance Guidelines**), which relevantly state:²

If an office holder relocates his or her principal place of residence to the office locality on appointment, the person’s employing authority is able to approve relocation costs in accordance with that agency’s policies and practices. This does not require the agreement of the Tribunal.

9. This passage of the RT Relocation Assistance Guidelines reflects the wording of the determination issued by the Remuneration Tribunal which governs the remuneration and entitlements of ASIC’s statutory office holders. At the relevant time, this was the *Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2018 (Determination)*. The Determination states at subparagraph 7(3)(c) that the “total remuneration”³ of an office holder does not include the following:

¹ On 1 December 2019, ASIC ceased making direct payments to the real estate agent. Deputy Chair Crengan currently makes these payments to the real estate agent but is reimbursed by ASIC as part of his fortnightly pay.

² Note that the remainder of the RT Relocation Assistance Guidelines are published for the purposes of guiding agencies in respect of officeholders who maintain a PPR in a location other than the office locality.

³ “Total remuneration” is defined in section 7 as the value, calculated at the total cost to the employing authority of the office holder (including fringe benefits tax), of the following in relation to the office holder: salary, allowances, lump sum payments, benefits and the employer superannuation contribution.

reimbursement of expenses incurred on geographic relocation following appointment as an office holder, in accordance with agency policies and practices where approved by the employing authority;

10. Accordingly, P&D applied ASIC's Relocation Policy 2018 (**Relocation Policy**) in determining the Relocation Package.⁴ Relevantly, the 'Principles' section of the Relocation Policy states:

Relocation refers to an extended period of absence from a team member's home location. If they are regularly commuting back to their home location it is not considered relocation.

...

It is intended that team members are reasonably compensated for the disruption and expense of being relocated.

...

ASIC may not necessarily meet all of [the] costs arising from a relocation and may impose a maximum limit on assistance.

...

This policy is intended to cover ASIC-initiated situations where team members are required to relocate.

11. With regard to the rental assistance component of the Relocation Package (**Rental Assistance**), the figure of \$750 per week (or approximately \$40,000 per annum) was based on the guidance provided in the RT Relocation Assistance Guidelines. These provide that, where an office holder maintains a PPR in a location other than the office locality, and the Remuneration Tribunal has determined accommodation assistance for the office holder, the employing authority may reimburse qualifying accommodation costs up to \$40,000 where the relevant place is Sydney.
12. At the time of determining the Relocation Package, ASIC did not contact the Remuneration Tribunal to confirm that the contemplated package complied with the Determination.
13. Section 8 of the Determination states, "The remuneration and benefits provided for in this instrument must not be supplemented."

Detection of potential issue in respect of Relocation Package

14. In around June 2019, P&D identified a potential issue concerning the Relocation Package in respect of the Fringe Benefits Tax (**FBT**) treatment of the Rental Assistance.⁵ This led to the reconsideration of whether the Rental Assistance in fact complied with the framework governing the remuneration and benefits of ASIC's statutory office holders.
15. On review, it was considered:

4 Relevant passages of the Relocation Policy dealt with: Removals and storage, relocation of family members and pets, and rental costs.

5 P&D advised that it determined FBT was payable in respect of the Rental Assistance; this was contrary to P&D's original thinking that the Rental Assistance was FBT exempt.

- a. The components of the Relocation Package other than the Rental Assistance fall within subparagraph 7(3)(c) of the Determination, because they represent expenses incurred on geographic relocation following appointment, were determined in accordance with ASIC policies and practices, and were approved by ASIC.
- b. In this regard, there are two past examples of ASIC reimbursing Commissioners in respect of relocation expenses, being:
 - i. Payment in ██████ to Commissioner ██████ of a number of expenses totalling ██████ associated with the relocation of his principal place of residence from ██████ to Sydney for the purposes of his appointment.
 - ii. Payment in ██████ to Commissioner ██████ of ██████ for removalist fees associated with his relocation from ██████ to Sydney.
- c. While the Relocation Policy applies on its face to "team members", and this definition does not include Commissioners, the above examples evidence a practice of reimbursing Commissioners in respect of their relocation expenses.
- d. In respect of the Rental Assistance:
 - i. The approval complied with the ASIC Relocation Policy, which states:

The team member will be responsible for the normal rental costs. If any rental assistance is required, the Senior Executive Leader will approve the amount and duration of such assistance.
 - ii. Accordingly, provided the amount of the Rental Allowance represented out-of-pocket expenses that would not have been incurred but for Deputy Chair Crennan's relocation, then the Rental Assistance would arguably be consistent with the exception at subparagraph 7(3)(c) of the Determination and would not supplement the remuneration and benefits provided for in the Determination in breach of section 8 of the Determination.

ANAO Recommendation

16. For the purposes of assisting the ANAO in its audit of ASIC's 2018-19 Financial Statements, in August 2019 Finance briefed the ANAO regarding this issue, the substance of which is summarised above.
17. The ANAO replied to Finance on 6 August 2019, stating that it was "*not convinced*" the arrangement complied with subparagraph 7(3)(c) of the Determination. The ANAO recommended that ASIC approach the Remuneration Tribunal directly "*to obtain a decision on whether these arrangements...satisfy subparagraph 7(3)(c) of the determination, or represent breaches of the Remuneration Tribunal Act 1973.*"

18. The reasons that the ANAO expressed doubt regarding the arrangement were that:
- a. The Relocation Policy applied only to 'team members' (the definition of which did not include people leaders), signalling the expectation that a different policy applied to Commissioners.
 - b. Noting the past examples of relocation assistance provided to Commissioners and the framing of the Relocation Policy to apply to 'team members', the approval of the Relocation Package should have been made by someone who was not subordinate to the Deputy Chair (noting that in the cases cited above, approval had been given by the Chair).
 - c. The past examples demonstrated that ASIC had previously only approved reimbursement of one-off costs associated with the relocation of Commission members, rather than providing "ongoing" rental assistance.
 - d. Subparagraph 7(3)(c) of the Determination refers to "reimbursement of expenses incurred on geographic relocation". An accommodation allowance for a period of two years, of a five year appointment, is arguably an employment benefit rather than an expense incurred on geographic relocation.
19. Following the ANAO's advice, ASIC contacted the Secretariat of the Remuneration Tribunal by telephone on 9 August 2019. The Secretariat indicated, in summary, that:
- a. The Tribunal will not expressly provide ASIC with a view as to whether the Relocation Package or the Rental Assistance specifically are consistent with the Determination.
 - b. However, the Rental Assistance appears to be a form of ongoing support rather than the reimbursement of an expense incurred on relocation.
 - c. ASIC can seek a determination of the Remuneration Tribunal which would regularise the arrangement for Deputy Chair Crennan. However, it is not the Tribunal's *practice* to make determinations which have retrospective effect.
 - d. Any request for a determination should be made by ASIC's portfolio Minister and follow the requirements for submissions set out on the Tribunal's website.
20. If the Relocation Package (Rental Assistance specifically) does not meet the terms of subparagraph 7(3)(c) of the Determination, then there is a residual question as to whether these payments "supplement the remuneration and benefits provided for" under the Determination and therefore breaches section 8 of the Determination.
21. If the payments are considered to breach the Determination, the payments would constitute a 'recoverable amount' under section 16A of the RT Act. Under s 16A, a 'recoverable amount' is a debt due to the Commonwealth. In addition, section 16C would require you, as ASIC's accountable authority

under the *Public Governance, Performance and Accountability Act 2013* (**PGPA Act**), to publish a report of the amount "in such manner as [you] think fit".⁶

22. In respect of any such debt due to the Commonwealth, ASIC would need to seek a waiver of the debt from the Finance Minister under section 63 of the PGPA Act.⁷

C. Recommended remedial steps

23. Given the doubts raised by ANAO and as there is no mechanism to seek a "ruling" on whether the Relocation Package (particularly the Rental Assistance) breaches the Determination, we consider it prudent that the Remuneration Tribunal is approached to make a determination which in effect approves the Rental Assistance.
24. We note in this regard that the ANAO expressed doubt regarding the entire Relocation Package. However, as real doubt only exists with respect to the Rental Assistance, only this part of the relocation package should be the subject of the determination. This is because the Rental Assistance has been granted for a period of two years, casting doubt on whether it falls within the words "expenses **incurred on** geographic relocation" at subparagraph 7(3)(c) of the Determination. We do not consider that the matters raised by the ANAO as detailed at paragraph 19 above cast sufficient doubt upon the remainder of
25. The Remuneration Tribunal has a discretion to inquire into and determine the remuneration of public officeholders, and matters significantly related to that remuneration, under subsections 7(3) and (4) of the RT Act.
26. The RT Relocation Assistance Guidelines state "where a person is appointed to an office and his or her principal residence is in a geographic locality different from that of his or her usual place of work ... it is expected that the person will relocate to the new locality". Furthermore, the guidance states the Tribunal may determine relocation assistance "in exceptional circumstances" where there are "compelling reasons" for a person to maintain their PPR in another locality. The guidance does not specifically contemplate providing rental assistance where the office holder does not maintain a PPR in another locality.

Retrospectivity

27. It should be noted that the determination ASIC would be seeking (i.e. rental assistance for a two-year period commencing on 5 January 2019) would necessarily have retrospective effect. As noted at paragraph 19.c above, the

⁶ ASIC's practice in previous cases has been to publish a report of the recoverable amount in its Annual Report, as a footnote in the relevant passage of its Financial Statements.

⁷ In ██████ ASIC previously sought and obtained from the Finance Minister a waiver of debts which arose out of breaches of the relevant Remuneration Tribunal determination. This arose in respect of carparking benefits provided to certain Commissioners which had not been not taken into account in reducing the remuneration of those office holders.

Remuneration Tribunal has indicated to ASIC that its practice is not to make determinations but there does not appear to be any legal impediment preventing the Tribunal from making a determination with retrospective effect.

Submission to the Remuneration Tribunal

28. The Remuneration Tribunal publishes on its website the *Guidelines for Making a Submission to the Remuneration Tribunal (RT Submission Guidelines)*. The RT Submission Guidelines apply where a specific determination of the Tribunal is sought under ss 7(3) and (4) of the RT Act.

[REDACTED]

From: [REDACTED]
Sent: Monday, 10 August 2020 6:06 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: Memo for ANAO- Shipton Relocation Package [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Attachments: 20200810 Memo to ANAO Payment of expenses on geographic relocation (Shipton).docx; ASIC Relocation Policy - 2016.pdf; Determination 2017-11.doc; International Relocation - five year costing - 20170307.docx; KPMG taxation services provided to J Shipton on relocation.docx

Hi [REDACTED]

Here is the legal advice on the Shipton relocation payments. The requirement to lodge a 2017-18 Australian tax return was triggered by James moving to Australia to accept the ASIC position. As a resident for tax purposes, James' worldwide income and associated tax credits were inputs into his 2017-18 Australian tax return. While international relocations are rare in ASIC, taxation services are within the scope of normal relocation support ASIC provides.

I am available to discuss this evening (till 8pm) or tomorrow if you need to clarify anything.

Kind regards

[REDACTED]
[REDACTED]

Memo

TO: [REDACTED] ANAO

FROM: [REDACTED], Commission Counsel, Chief Legal Office

RE: Reimbursement of expenses on geographic relocation -Mr Shipton

DATE: 10/08/2020

Executive Summary

1. James Shipton's appointment as Chair was announced in October 2017 and he formally commenced as ASIC Chair on 1 February 2018. Between November 2017 and February 2018, James Shipton was required to travel to Australia for briefings in preparation for the commencement of his term as Chair.
2. The ANAO has queried whether the tax advice component of the relocation expenses paid by ASIC on behalf of Chair Shipton (KPMG Invoices) is consistent with the *Remuneration Tribunal Remuneration and Allowances for Holders of Full-time Public Office) Determination 2017/11* (the **Determination**).
3. For the reasons set out below, ASIC's view is the relevant taxation expenses (KPMG Invoices) were incurred "on" *Chair Shipton's "geographic relocation to Australia" to take up his position ASIC Chair. These were paid and approved by ASIC in accordance with its policies and practices.* Consequently, these payments are consistent with the Determination.

Background

Framework for remuneration of Commissioners

4. Under subsection 7(3) of the Remuneration Tribunal Act 1973 (**RT Act**), the Tribunal is to determine the level of remuneration to be paid to various public office holders. The RT Act relevantly defines 'public office' as "an office established by, or an appointment made under, a law of the Commonwealth (other than this Act)": s 3(4)(a).
5. Subsection 112(1) of the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**) states that a member of the Commission "must be paid such remuneration as is determined by the Remuneration Tribunal".
6. Determinations of the Tribunal are made at intervals ranging from around 6 months to a year. The Tribunal amends determinations from time to time throughout the year.

7. For present purposes, the relevant determination was the Determination *(attached)*.
8. Table 2A (Clause 2.1) of the Determination provides the 'Total Remuneration' for the Chairperson of ASIC is \$745,770.
9. Total Remuneration represents the value, calculated at the total cost to the employer (including Fringe Benefits Tax), of:
 - salary, allowances or lump sum payments;
 - Benefits; and
 - the Employer's Superannuation Contribution

but does not include:

 - facilities provided as business support as referred to in Part 2;
 - allowances specified in Part 3;
 - reimbursement of expenses incurred on geographic relocation following appointment as an Office Holder, in accordance with agency policies and practices where approved by the employer;*
 - travelling allowances and expenditure referred to in Part 4;
 - any payment in lieu of recreation leave in accordance with Part 5; and
 - any compensation for early loss of office in accordance with Part 6.

Meaning of "Reimbursement of expenses incurred on geographic relocation"

10. The Determination and RT Act do not define "expenses incurred on geographic relocation" but a plain English reading suggests that "expenses incurred on geographic relocation" requires a direct causal nexus between the relocation and the incurring of the expense.

ASIC's Relocation Policy

11. ASIC's Relocation Policy ¹ **(attached)** applies to staff and members.
12. The 'Principles' section of ASIC's Relocation Policy relevantly states:

Where team members are required to relocate on a temporary or permanent basis, ASIC will meet reasonable costs arising from the relocation and if appropriate, their family's relocation.
13. Regarding "Accountability", the Relocation Policy states:

A Senior Executive Leader will approve the relocation arrangements including any provisions outside the policy and seek Commission approval where required.
14. Regarding "International relocation", the Relocation Policy states:

International relocation (such as overseas secondment) is negotiated on a case by case basis by People & Development.
15. As Chair Shipton's circumstances were unique (a very senior appointment where Chair Shipton was relocating back to Australia after an extended period

¹ ASIC Relocation Policy dated 2016

overseas), ASIC worked with Treasury to identify the types of expenses ASIC would pay on Chair Shipton's relocation to Australia.

16. ASIC sought independent advice from Deloitte to prepare an International Relocations Framework (**attached**). It was agreed by ASIC and Treasury a relocation package of \$250,000 would be offered to Chair Shipton.
17. ASIC's relocation package for Chair Shipton included tax advice. This is consistent with domestic and international standards. Furthermore, ASIC has a history of providing taxation support to its employees where they were required to relocate for more than 183 days.
18. ASIC also works closely with the Financial Conduct Authority, United Kingdom (FCA) and often exchange team members. The FCA provide tax advice and tax return support to their team members placed at ASIC given there is no tax treaty between the United Kingdom and Australia.

KPMG Taxation Advice

19. In January 2018, the Senior Executive Leader, People & Development agreed that ASIC would pay the costs of tax return support for Chairman Shipton in respect of the following tax years:
 - US 2017
 - US 2018
 - AUS 2017/18
20. As set out in [REDACTED] memo of 6 August 2020, the tax services provided by KPMG were **only required** because Mr Shipton relocated to take up the role of Chair at ASIC. Please find **attached** a table listing all the KPMG invoices and explaining the nexus between the advice sought and the relocation to Australia.

Expenses paid by ASIC on geographic relocation

21. ASIC paid the following expenses on behalf of Chair Sipton in accordance with ASIC’s Relocation Policy, International Relocation Framework and the Relocation Package agreed with Chair Sipton in late 2017.

| Expenses Paid by ASIC per Relocation Policy | Sipton actual |
|---|---------------|
| Airfares 2 business class Airport transfers (Estimate – booked by International Strategy) | [REDACTED] |
| Removals and Storage Removal of Work material - Boston Removal of personal effects – Hong Kong Temporary storage Delivery to Australia, Quarantine service Unpacking & setting up house Reassembly of disassembled goods | [REDACTED] |
| Orientation visit Return Airfare – business class | [REDACTED] |
| Immigration and visas Permanent Residency visa (estimate) | [REDACTED] |
| Taxation Initial pre-arrival tax consultation Taxation Briefing and Advice Taxation return – United States Taxation return – Australia | [REDACTED] |
| School fees / tuition fees <i>based on 2 dependants aged 22 or under (per annum) – includes primary / secondary / tertiary</i> <i>Outside of relocation policy – RT approval required</i> | [REDACTED] |
| Travel and medical Comprehensive travel and medical insurance (per annum) | [REDACTED] |
| Short term accommodation Accommodation – 3 weeks | [REDACTED] |
| Relocation Support Home Search Post arrival settling in assistance | [REDACTED] |
| Expenses | [REDACTED] |



ASIC

Australian Securities & Investments Commission

PEOPLE & DEVELOPMENT

Relocation Policy

2016

About this policy

This policy describes ASIC's relocation arrangements, setting out the roles and responsibilities and usual assistance provided with relocation.

This policy supports ASIC's values of **ACCOUNTABILITY**, **PROFESSIONALISM** and **TEAMWORK**.

Policy Ownership

The Senior Manager, People & Development Advisory is responsible for the development and implementation of this policy.

Policy Application

This policy applies to ASIC team members including the Superannuation Complaints Tribunal (SCT), Corporations and Markets Advisory Committee (CAMAC) and the Companies Auditors and Liquidators Disciplinary Board (CALDB).

Policy application is subject to adoption by the Senior Executive Leader, People & Development.

Policy Approval

This policy has been reviewed and approved by the following parties on the following dates:

| Version | Reviewer | Comments | Approved | Date |
|---------|----------|----------|----------|------------------|
| 1.1 | | | Approved | 25 November 2013 |
| 1.2 | | | Approved | November 2016 |

Policy Distribution

This policy has been distributed to the following parties on the following dates:

| Version | Date | Distribution List |
|---------|---------------|-------------------|
| 1.0 | August 2013 | ASIC Staff |
| 1.2 | November 2016 | ASIC Staff |

Policy Location

This policy is published on [myASIC](#), People & Development.

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FOR FURTHER INFORMATION
CONTACT P&D ADVISORY ON
#87799

A What is this policy about?

- 1 Team members may be asked by their people leader to relocate to another office location as part of a secondment or transfer arrangement. It is ASIC's intention that team members are relocated with minimum disruption to them and their family and at reasonable cost to ASIC. This policy outlines the financial assistance available in the event of relocation.
- 2 This policy provides information on the usual relocation arrangements for:
 - Medium term (3 weeks – 12 months)
 - Long term (12 months – 2 years)
 - Permanent (>2 years), and
 - International.

This policy does not include short term transfers of less than three weeks. If team members are required to relocate for less than three weeks they may be entitled to travel, accommodation and meals under the ASIC Travel Policy.

Further guidance

Information on short term travel arrangements can be found in the ASIC Travel Policy and the ASIC Enterprise Agreement.

ASIC's Secondment Policy offers additional guidance on secondment arrangements.

ASIC's International Travel Policy details important obligations for those travelling internationally to undertake a secondment.

A glossary of key terms is provided on page 15 of this policy.

B Principles

- 3 Where team members are required to relocate on a temporary or permanent basis, ASIC will meet reasonable costs arising from their relocation and if appropriate, their family's relocation.

Principles

- Relocation refers to an extended period of absence from a team member's home location. If they are regularly commuting back to their home location it is not considered relocation.
- Team members will be solely located in a new location to enable them to meet business needs. ASIC is under no obligation to assist team members to relocate if they are new to ASIC, have applied for a vacancy in another location, or have initiated their own transfer.
- It is intended that team members are reasonably compensated for the disruption and expense of being relocated.
- ASIC aims to minimise avoidable relocation costs including Fringe Benefits Tax (FBT). Where possible, assistance should be in the form of FBT-exempt allowances and reimbursements.
- Relocation costs must be paid directly by ASIC (through an ASIC corporate credit card or an invoice issued to ASIC) rather than as a reimbursement to the team member.
- Relocated team members must declare to ASIC any relocation assistance or financial benefit they are receiving from other sources, such as their partner's employer or rental income. The relocation assistance provided by ASIC will take this into account.
- ASIC may not necessarily meet all of costs arising from a relocation and may impose a maximum limit on assistance.
- Arrangements within this policy may be varied if it is more cost effective.
- This policy is intended to cover all ASIC-initiated situations where team members are required to relocate. Any arrangement outside of this policy must be approved by a Commission Member or Senior Executive Leader, in consultation with the Senior Executive Leader, People & Development.

C Accountability

People leader

4 People leaders must ensure arrangements are:

- Reasonable compensation for the disruption and expense of being relocated
- A cost-effective use of Commonwealth resources, and
- Consistent with the principles in this policy.

Team member

6 Team members are responsible for:

- Negotiating and agreeing to the relocation terms prior to their move
- Arranging their own accommodation at their new location, and
- Complying with the principles in this policy.

Senior Executive Leader

7 A Senior Executive Leader will approve the relocation arrangements including any provisions outside of policy and seek Commission approval where required.

People & Development Advisory

8 People & Development will provide advice on relocation arrangements and application of this policy.

D Medium term relocation

Transfer arrangements

- 9 ASIC will provide for the transfer of the team member either through a return economy airfare, or a kilometre allowance and reasonable accommodation costs if a private vehicle is driven to the new location by the most direct route.

Team members will not normally be reimbursed for using their vehicle for normal purposes during the period of the transfer or for return visits during the transfer.

Family members

- 10 ASIC will relocate families where the transfer is more than six months.

Accommodation

- 11 ASIC will generally meet accommodation costs for medium term temporary transfers.

Accommodation should be arranged in serviced apartments or in furnished apartments if the team member relocates for a longer period.

Ideally weekly or monthly rates should be negotiated for accommodation which should be less than the daily rates as set out in the ASIC Travel Policy.

Living Away from Home Allowance

- 12 ASIC may pay a food and incidentals allowance to cover the additional costs incurred by a team member whilst they are away from home.

Where they have access to kitchen facilities, the additional cost should be minimal. If they have no additional costs then no allowance is payable.

If an allowance is payable, it will be paid based on and will not normally exceed the reasonable rates set by the Australian Tax Office each year. Amounts in excess of the reasonable rates attract Fringe Benefits Tax.

Any special circumstance that requires a higher Living Away from Home Allowance must be approved by the Senior Executive Leader, People & Development.

Incidental expenses

- 13 In general, incidental expenses such as gas, electricity and telephone are the team member's responsibility. Additional costs are expected to be covered by the Living Away From Home Allowance (as described above).

In some cases, significant additional costs such as initial set up costs may be paid by ASIC. Each case will be considered on its merits and determined by the Senior Executive Leader in consultation with People & Development Advisory.

Reunion travel

- 14 Team members are encouraged to combine reunion visits to their usual place of residence with legitimate business travel. Refer to the Travel policy for limits on combining personal and business travel.

In the absence of legitimate business reasons for return travel, the following will generally apply for reunion visits:

- If the team member's dependents do not join them at the temporary transfer location, the team member may return home once each fortnight.
- If the team member has no dependents or their dependents join them, they may return home every six weeks.

Reunion travel will incur an FBT liability and could result in a reportable fringe benefit for the team member.

E Long term or permanent relocation

Orientation visit

- 15 ASIC will meet the cost of a return economy airfare and accommodation for the team member and their partner for one orientation visit at the new location. Generally this will be at the rate prescribed in the ASIC Travel Policy.

Transfer arrangements

- 16 ASIC will provide for the transfer of the team member either through a return economy airfare, or a kilometre allowance and reasonable accommodation costs if a private vehicle is driven to the new location by the most direct route.

Team members will not normally be reimbursed for using their vehicle for normal purposes during the period of the transfer or for return visits during the transfer.

Family members

- 17 ASIC will relocate families for long term or permanent relocations. Costs of boarding and transport of family pets may be also met.

Removals and storage

- 18 ASIC will meet the reasonable costs of packing and removal of the team member and their family's household and personal effects.

ASIC may also meet storage costs of these items if necessary at either end for a maximum total period of up to three months.

The team member will be required to obtain quotations from two removalist firms including insurance. The Senior Executive Leader and People & Development Advisory will nominate the firm to be used and determine the level of support that will be provided.

Temporary interim accommodation

Prior to departure

- 19 In the event that the team member has to move out of their permanent accommodation prior to their actual departure, ASIC may provide up to three nights of hotel accommodation in accordance with the ASIC Travel Policy.

Upon arrival in new location

- 20 ASIC may pay for serviced rental accommodation in the team member's new location for a period of up to two weeks immediately following the transfer to the new location if required. An extension may be granted by the Senior Executive Leader in consultation with People & Development.

Housing in new location

Accommodation cost

21 If the team member chooses to rent rather than buy in their new location, ASIC may pay the rental bond in the form of a loan, which will be recovered over a reasonable period of time through payroll deduction. Temporary relocations are encouraged to rent rather than buy premises in the new location.

22 The team member will be responsible for the normal rental costs. If any additional assistance is required, the Senior Executive Leader will approve the amount and duration of such assistance. This will take the form of an allowance taxed at the marginal rate.

Purchase in new location

23 If a team member on a long term temporary transfer chooses to purchase a property in their new location, ASIC will not provide assistance with the cost of the purchase.

24 If a team member who has permanently relocated purchases a property in their new location within two years of their transfer date, ASIC may reimburse reasonable expenses associated with purchase.

This may include:

- Normal real estate costs
- Reasonable legal expenses and search fees
- Mortgage application fees, and
- Bank fees associated with establishing a mortgage.

ASIC will not reimburse mortgage insurance or other exceptional costs.

Housing in old location

Owning a property in old location

25 ASIC will not ordinarily provide assistance in respect to the team member's property in the old location. This includes situations where the property remains vacant for a period of time or they choose to let the property.

The level of accommodation and living away from home allowance provided may be affected if the team member does not maintain a principal place of residence.

Personal taxation implications of any income received from renting property remain the team member's responsibility.

Sale of property in old location

26 If a team member on a long-term temporary transfer chooses to sell their principal place of residence in their old location, ASIC will not provide assistance with the cost of the sale.

If a team member has permanently relocated and sells their principal place of residence in their old location within one year after their transfer date, ASIC may assist with the sale.

ASIC may reimburse reasonable expenses associated with the sale including:

- Normal real estate costs, and
- Reasonable legal expenses.

27 Taxation implications of the property sale remain the team member's responsibility.

Breaking a lease agreement

28 Where the team member is living in rental accommodation prior to transfer, ASIC may reimburse reasonable costs incurred including costs of breaking a lease agreement or rent charged for a period subsequent to departure.

ASIC will not reimburse amounts forfeited on bonds associated with rental or lease agreements.

Reunion visits

29 ASIC does not provide for reunion visits unless under exceptional circumstances determined by the Senior Executive Leader in consultation with People & Development Advisory.

Partner assistance

30 If the team member's partner is relocating with them, ASIC does not normally provide assistance to find employment in the new location. If assistance is provided, it will usually take the form of payment for attendance at an outplacement workshop selected by People & Development Advisory in consultation with the Senior Executive Leader.

No compensation for loss of income will be provided to the team member's partner.

Incidental expenses

31 Team members may incur other incidental expenses outside of this policy such as change of vehicle registration or telephone connection. In recognition of this, ASIC may pay the team member a disturbance allowance up to a maximum of \$2,000 upon receipt of expenses. This reimbursement will be assessable income and be taxed at the marginal rate.

Temporary transfers becoming permanent

32 If the transfer extends over 12 months, it will be reviewed by the People Leader to determine whether it will cease, continue for another 12 months (maximum) or become permanent.

F International relocation

33 International relocation (such as overseas secondment) is negotiated on a case-by-case basis by People & Development. Relocation assistance will depend on the duration of the assignment, country, and arrangements with Host agencies.

Transfer arrangements

34 Transfer arrangements would usually include return business class airfares for the team member. Additional baggage allowances may be also negotiated.

Accommodation

35 ASIC may meet accommodation costs for international secondments if considered additional to normal housing costs.

The level of accommodation assistance provided may be affected if the team member does not maintain a principal place of residence in Australia.

Accommodation should be arranged in a furnished apartment, preferably at a monthly rate, in a location deemed suitable by International Strategy and Risk & Security Services.

Living Away from Home Allowance

36 ASIC may pay a food and incidentals allowance to cover the additional costs incurred by the team member while they are away from home. This will be based on the reasonable rates set by the Australian Tax Office each year for the destination country.

Family members

37 The relocation of immediate family may be negotiated on a case-by-case basis.

Reunion travel

38 Reunion travel is not usually provided for international secondments.

Removal and storage

39 Removal and storage are not usually provided but may be negotiated on a case-by-case basis.

Incidental expenses

40 In general, incidental expenses such as gas, electricity and telephone, are the responsibility of the team member. Additional costs are expected to be covered by the Living Away From Home Allowance.

G Fringe Benefits Tax

- 41 ASIC is liable for Fringe Benefits Tax (FBT) for a variety of fringe benefits provided to its team members. Most reimbursements directly associated with relocation are FBT exempt, but a number of forms of assistance, such as Living Away From Home Allowance, may attract FBT.

Any transfer or relocation should be structured in such a way to minimise the FBT liability. Contact People & Development Advisory for further information.

'Maintaining a home' test

- 42 Where a team member or their spouse maintains a home in their principal place of residence by way of mortgage, ownership, or rental lease, and the relocation is for less than 12 months, accommodation and living away from home allowances within the Reasonable Limits will be FBT-exempt.

Where the team member or their spouse does not maintain a home (e.g. through subleasing or renting out their home or if the team member resides at their parents' home) ASIC will be liable for FBT on all benefits provided. This may affect the level of accommodation and living away from home allowance ASIC provides.

Long term relocations

- 43 Any relocation greater than 12 months' duration with accommodation or Living Away From Home Allowance costs is subject to FBT. Where possible, this type of relocation assistance should be capped to maximum 12 months' duration.

Reportable fringe benefits

- 44 ASIC must report the grossed-up value of fringe benefits (excluding Living Away From Home Allowance) with a total taxable value in excess of \$2,000 on team members' payment summaries.

These reportable fringe benefits may increase team members' income for a number of income tests, including superannuation surcharge, Medicare Levy surcharge, repayment of HECS debts, child support and welfare payments.

Fringe benefits declaration

- 45 Where Living Away From Home Allowance is provided, the team member will be required to complete a FBT declaration.

Key terms

| Term | Meaning in this document |
|----------------------|---|
| People leader | An ASIC employee with people management responsibilities. For example a Senior Executive, Senior Manager, Manager or Team Leader. |
| Team member | An ASIC employee, either ongoing or non-ongoing with no people management responsibilities. |
| Relocation | An extended period of absence from your home location. |
| Partner | A spouse or de facto person who lives with the team member (same or different genders) in a relationship as a couple on a genuine domestic basis. |
| Dependents | A child or children with whom you have an interdependency relationship. |
| Family | Partner and/or Dependents as defined above. |



REMUNERATION TRIBUNAL

Determination 2017/11: Remuneration and Allowances for Holders of Full-Time Public Office

This Determination governs remuneration and allowances for the full-time Public Offices specified in Table 2A.

This Determination specifies the total value an Office Holder is to receive by way of salary and other benefits in respect of carrying out the functions and exercising the powers of his or her office. The salary and benefits provided for in this Determination must not be supplemented.

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PART 1 – GENERAL

- 1.1 Authority:** This Determination is issued pursuant to sub-sections 7(3) and 7(4) of the *Remuneration Tribunal Act 1973*.
- 1.2 Effect of this determination:** This Determination commences on 1 July 2017 except where specified otherwise. It revokes and supersedes in full *Determination 2016/19: Remuneration and Allowances for Holders of Full-Time Public Office (as amended)*.
- 1.3 Definitions:** For the purposes of this Determination, the following definitions apply.

‘Agency’ means the agency to which the Office Holder is attached, or the portfolio department, if the office holder is not attached to an agency.

‘Benefits’ means all non-monetary benefits provided at the employer’s expense to or on behalf of an Office Holder as a personal benefit, including a vehicle (where provided – refer Clause 2.6), the value attributed by the Remuneration Tribunal to the Employer Superannuation Contribution (refer Clause 2.5) and any other benefits received by way of remuneration packaging (refer Clause 2.4).

‘Employer’ means the Commonwealth and includes any person authorised to exercise powers, perform acts, grant approvals or give directions for, or on behalf of, the Commonwealth.

'Employer's Superannuation Contribution' means:

- (a) in respect of a member of a Commonwealth defined benefit scheme (including the Commonwealth Superannuation Scheme or the Public Sector Superannuation Scheme), the value attributed to the Employer's Superannuation Contribution in accordance with sub-clauses 2.5.2, 2.5.3, 2.5.4 or 2.5.5; or
- (b) in respect of a member of the Public Sector Superannuation Accumulation Plan, 15.4 per cent of ordinary time earnings (OTE) for the office holder; or
- (c) in respect of a member of any other fund, the minimum level of employer superannuation contribution that would reduce to zero the charge percentage for that Office Holder under section 23 of the *Superannuation Guarantee (Administration) Act 1992*.

Contributions made on a salary sacrifice basis do not form part of the Employer's Superannuation Contribution: these are covered by clause 2.4 (Remuneration packaging).

'Office Holder' means the holder of an office listed in Column 1 of Table 2A of this Determination.

'Total Remuneration' is the amount shown in Clause 2.1 of this Determination. Total Remuneration represents the value, calculated at the total cost to the employer (including Fringe Benefits Tax), of:

- salary, allowances or lump sum payments;
- Benefits; and
- the Employer's Superannuation Contribution

but does not include:

- facilities provided as business support as referred to in Part 2;
- allowances specified in Part 3;
- reimbursement of expenses incurred on geographic relocation following appointment as an Office Holder, in accordance with agency policies and practices where approved by the employer;
- travelling allowances and expenditure referred to in Part 4;
- any payment in lieu of recreation leave in accordance with Part 5; and
- any compensation for early loss of office in accordance with Part 6.

PART 2 – REMUNERATION AND RELATED MATTERS

2.1 Total Remuneration: Office Holders are eligible for the Total Remuneration as set out in Column 2 of Table 2A below, commencing on 1 July 2017, unless otherwise specified.

TABLE 2A – FULL-TIME OFFICE HOLDERS – TOTAL REMUNERATION AND OTHER BENEFITS

| <u>Column 1</u> Office | <u>Column 2</u> Total Remuneration for office (per annum) | <u>Column 3</u> Additional clauses applying | <u>Column 4</u> Travel Tier |
|---|---|--|--------------------------------|
| Chair, Australian Prudential Regulation Authority (APRA) | \$852,310 | | 1 |
| Solicitor-General | \$745,770 | 2.2.1 | 1 |
| Chairperson, Australian Competition and Consumer Commission (ACCC) | \$745,770 | | 1 |
| Chairperson, Australian Securities and Investments Commission (ASIC) | \$745,770 | | 1 |
| Australian Public Service Commissioner | \$692,500 | | 1 |
| Commissioner, Australian Federal Police | \$692,500 | | 1 |
| Deputy Chair, APRA | \$681,840 | | 1 |
| Member, APRA | \$639,230 | | 1 |
| Director-General of Security, Australian Security Intelligence Organisation | \$639,230 | | 1 |
| Australian Border Force Commissioner | \$617,920 | | 1 |
| Deputy Chairperson, ASIC | \$596,610 | | 1 |
| Chairman, Productivity Commission | \$585,960 | | 1 |
| Vice Chief of the Defence Force | \$585,960 | | 1 |
| Chief of Navy | \$559,330 | | 1 |
| Chief of Army | \$559,330 | | 1 |
| Chief of Air Force | \$559,330 | | 1 |
| Deputy Chairperson, ACCC | \$559,330 | | 1 |
| Director-General, Office of National Assessments | \$559,330 | | 1 |
| Vice President, Fair Work Commission | \$559,330 | | 1 |
| Chief Executive Officer, Australian Digital Health Agency | \$532,690 | | 1 |
| Australian Electoral Commissioner | \$532,690 | | 1 |
| Chair, Australian Energy Regulator | \$532,690 | | 1 |
| Chair/Chief Executive Officer, Clean Energy Regulator | \$532,690 | | 1 |
| Chair, Australian Communications and Media Authority (ACMA) | \$532,690 | | 1 |
| Chief Executive Officer, Digital Transformation Agency | \$532,690 | 2.2.8 | 1 |

| <u>Column 1</u> Office | <u>Column 2</u> Total Remuneration for office (per annum) | <u>Column 3</u> Additional clauses applying | <u>Column 4</u> Travel Tier |
|--|--|--|--|
| Chief Executive Officer, Austrade | \$532,690 | | 1 |
| Chief Executive Officer, National Disability Insurance Scheme Launch Transition Agency | \$532,690 | | 2 |
| Director of Public Prosecutions | \$532,690 | | 1 |
| Member, ASIC | \$532,690 | | 1 |
| Chief Executive Officer, Australian Crime Commission | \$506,060 | | 1 |
| Chief Executive, Australian Financial Security Authority | \$479,430 | | 2 |
| Chief Executive Officer, Australian Transaction Reports and Analysis Centre | \$479,430 | | 2 |
| Chief Scientist | \$479,430 | | 1 |
| Director, Bureau of Meteorology | \$479,430 | | 2 |
| Member, ACCC | \$479,430 | | 1 |
| Deputy President, Fair Work Commission | \$452,790 | | 1 |
| Information Commissioner | \$452,790 | | 1 |
| Chief Executive Officer, Independent Hospital Pricing Authority | \$452,790 | | 1 |
| Commonwealth Ombudsman | \$452,790 | | 1 |
| Examiner, Australian Crime Commission | \$452,790 | | 1 |
| Inspector-General of Intelligence and Security | \$452,790 | | 1 |
| Integrity Commissioner, Australian Commission for Law Enforcement Integrity | \$452,790 | | 1 |
| Australian Building and Construction Commissioner | \$426,160 | | 2 |
| Chief Commissioner, Australian Transport Safety Bureau | \$426,160 | | 1 |
| CEO, National Offshore Petroleum Safety and Environmental Management Authority | \$426,160 | | 2 |
| Chair, Tax Practitioners Board | \$426,160 | | 1 |
| Chief Executive Officer, Australian Commission on Safety and Quality in Health Care (ACSQHC) | \$426,160 | | 1 |
| Chief Executive Officer, Australian Curriculum, Assessment and Reporting Authority (ACARA) | \$426,160 | | 2 |
| Chief Executive, Murray-Darling Basin Authority | \$426,160 | | 1 |
| Deputy Chair, Productivity Commission | \$426,160 | | 1 |
| Fair Work Ombudsman | \$426,160 | | 1 |
| Inspector-General of Taxation | \$426,160 | | 1 |
| President, Australian Human Rights Commission | \$426,160 | | 1 |
| Parliamentary Budget Officer | \$426,160 | 2.2.12 | 2 |

| <u>Column 1</u> Office | <u>Column 2</u> Total Remuneration for office (per annum) | <u>Column 3</u> Additional clauses applying | <u>Column 4</u> Travel Tier |
|--|--|--|--|
| Chair, Australian Accounting Standards Board | \$399,520 | | 1 |
| Inspector-General Australian Defence Force | \$399,520 | | 2 |
| Chief Commissioner & Chief Executive Officer, Australian Skills Quality Authority | \$399,520 | | 2 |
| Chief Executive Officer, Australian Fisheries Management Authority | \$399,520 | | 1 |
| Chief Executive Officer, Safe Work Australia | \$399,520 | | 2 |
| General Manager, Fair Work Commission | \$399,520 | | 1 |
| Chief Executive Officer, Comcare | \$399,520 | | 2 |
| Member, Australian Energy Regulator | \$399,520 | | 1 |
| Deputy Chair, ACMA | \$399,520 | | 1 |
| Chief Executive Officer, Innovation and Science Australia | \$399,520 | 2.2.9 | 1 |
| Chair, Pharmaceutical Benefits Advisory Committee (PBAC) | \$399,520 | | 1 |
| Auditing and Assurance Standards Board (AUASB), Chair | \$372,890 | | 1 |
| Director of Military Prosecutions | \$372,890 | | 2 |
| Commissioner, Fair Work Commission | \$372,890 | | 1 |
| Associate Director of Public Prosecutions | \$372,890 | | 1 |
| Chief Executive Officer, Australian Aged Care Quality Agency | \$372,890 | | 2 |
| CEO, Australian Pesticides and Veterinary Medicines Authority | \$372,890 | | 2 |
| CEO, Australian Radiation Protection and Nuclear Safety Agency | \$372,890 | | 1 |
| Chief Executive Officer, Climate Change Authority | \$372,890 | | 2 |
| Director, Australian Institute of Criminology | \$372,890 | | 1 |
| Director, Professional Services Review | \$372,890 | | 1 |
| Director-General, National Archives of Australia | \$372,890 | | 2 |
| General Manager, National Blood Authority | \$372,890 | | 2 |
| Freedom of Information Commissioner | \$372,890 | | 2 |
| Privacy Commissioner | \$372,890 | | 2 |
| Chief Executive Officer, Australian Renewable Energy Agency (ARENA) | \$372,890 | | 2 |
| Chief Executive Officer, Infrastructure Australia | \$372,890 | 2.2.13 | 1 |
| Chief Executive Officer, Northern Australia Infrastructure Facility | \$372,890 | 2.2.2 | 1 |
| Commissioner, Productivity Commission | \$372,890 | | 2 |

| <u>Column 1</u> Office | <u>Column 2</u> Total Remuneration for office (per annum) | <u>Column 3</u> Additional clauses applying | <u>Column 4</u> Travel Tier |
|---|--|--|--|
| Registered Organisations Commissioner | \$372,890 | | 2 |
| Member, ACMA | \$346,250 | | 1 |
| Deputy Chief Commissioner, ASQA | \$346,250 | | 2 |
| Director, Old Parliament House | \$346,250 | | 1 |
| Chief Executive Officer, National Mental Health Commission (NMHC) | \$346,250 | | 2 |
| Aboriginal and Torres Strait Islander Social Justice Commissioner | \$346,250 | | 2 |
| Age Discrimination Commissioner | \$346,250 | | 2 |
| Aged Care Complaints Commissioner | \$346,250 | | 2 |
| Australian Small Business and Family Enterprise Ombudsman | \$346,250 | | 2 |
| Children's e-Safety Commissioner | \$346,250 | | 2 |
| CEO, National Transport Commission | \$346,250 | | 1 |
| Chief Executive Officer, Australian National Preventative Health Agency (ANPHA) | \$346,250 | | 2 |
| Chief Executive Officer, Australian Sports Anti-Doping Authority (ASADA) | \$346,250 | | 2 |
| Chief Executive Officer, Independent Parliamentary Expenses Authority (IPEA) | \$346,250 | | 2 |
| Disability Discrimination Commissioner | \$346,250 | | 2 |
| Human Rights Commissioner | \$346,250 | | 2 |
| National Children's Commissioner | \$346,250 | | 2 |
| Official Secretary to the Governor-General | \$346,250 | | 2 |
| Race Discrimination Commissioner | \$346,250 | | 2 |
| Sex Discrimination Commissioner | \$346,250 | | 2 |
| Chief Executive Officer, Tertiary Education Quality and Standards Agency (TEQSA) | \$346,250 | 2.2.7 | 2 |
| Commissioner, ASQA | \$346,250 | | 2 |
| Chief Executive Officer, Australian Organ and Tissue Donation and Transplantation Authority | \$319,620 | | 2 |
| Administrator of the Northern Territory | \$319,620 | | 1 |
| Chief Executive Officer, Aboriginal Hostels Limited (AHL) | \$319,620 | | 2 |
| Chief Executive, National Capital Authority | \$319,620 | 2.2.11 | 2 |
| Administrative Appeals Tribunal (AAT) (former Deputy Principal Member, Migration Review Tribunal (MRT)) | \$319,620 | 2.2.5 | 2 |

| <u>Column 1</u> Office | <u>Column 2</u> Total Remuneration for office (per annum) | <u>Column 3</u> Additional clauses applying | <u>Column 4</u> Travel Tier |
|---|--|--|--|
| AAT (former Deputy Principal Member, Refugee Review Tribunal (RRT)) | \$319,620 | 2.2.5 | 2 |
| Deputy Commonwealth Ombudsman | \$319,620 | | 2 |
| Director, National Industrial Chemicals Notification and Assessment Scheme (NICNAS) | \$319,620 | | 2 |
| Gene Technology Regulator | \$319,620 | | 2 |
| Merit Protection Commissioner | \$319,620 | | 2 |
| Principal Member, Veterans' Review Board (VRB) | \$319,620 | | 1 |
| Administrator of the National Health Funding Pool | \$319,620 | | 2 |
| Commissioner, Australian Charities and Not-for-profits Commission | \$319,620 | | 2 |
| Administrator, Christmas and Cocos (Keeling) Islands | \$292,990 | | 2 |
| Administrator of Norfolk Island | \$292,990 | | 2 |
| Administrator, Torres Strait Regional Authority | \$292,990 | | 2 |
| Chairperson, Superannuation Complaints Tribunal (SCT) | \$292,990 | | 2 |
| Chairperson, Torres Strait Regional Authority | \$292,990 | | 2 |
| Deputy Australian Building and Construction Commissioner | \$292,990 | | 2 |
| AAT (former Deputy Principal Member, Social Security Appeals Tribunal (SSAT)) | \$292,990 | 2.2.6 | 2 |
| Deputy Chair, Pharmaceutical Benefits Advisory Committee (PBAC) | \$292,990 | | 1 |
| Director General, Australian Safeguards and Non-Proliferation Office | \$292,990 | | 2 |
| Member, Tax Practitioners Board | \$292,990 | | 2 |
| Aged Care Pricing Commissioner | \$292,990 | | 2 |
| Chief Executive Officer, Asbestos Safety and Eradication Agency | \$292,990 | | 2 |
| Registrar of Aboriginal and Torres Strait Islander Corporations | \$292,990 | | 2 |
| Executive Director of Township Leasing | \$266,350 | | 2 |
| Deputy Chairperson, SCT | \$239,720 | | 2 |
| AAT (former Senior Member, MRT) | \$239,720 | 2.2.5 | 2 |
| AAT (former Senior Member, RRT) | \$239,720 | 2.2.5 | 2 |
| Director, Classification Board | \$239,720 | 2.2.3 | 2 |
| Student Identifiers Registrar | \$239,720 | | 2 |
| Senior Member, VRB | \$239,720 | | 2 |
| Director, Tuition Protection Service | \$239,720 | 2.2.10 | 2 |

| <u>Column 1</u> Office | <u>Column 2</u> Total Remuneration for office (per annum) | <u>Column 3</u> Additional clauses applying | <u>Column 4</u> Travel Tier |
|---|--|--|--------------------------------|
| Chief Executive Officer, National Health Funding Body | \$239,720 | | 2 |
| Chairman (full-time), Central Land Council | \$213,080 | | 3 |
| Chairman (full-time), Northern Land Council | \$213,080 | | 2 |
| AAT (former Member, MRT) | \$213,080 | 2.2.5 | 2 |
| AAT (former Member, RRT) | \$213,080 | 2.2.5 | 2 |
| AAT (former Senior Member, SSAT) | \$213,080 | 2.2.6 | 2 |
| Deputy Director, Classification Board | \$186,450 | 2.2.3 | 2 |
| Chair (full-time), Anindilyakwa Land Council | \$186,450 | | 2 |
| AAT (former Member, SSAT) | \$186,450 | 2.2.6 | 2 |
| Classifier, Classification Board | \$133,180 | 2.2.4 | 3 |

2.2 Alternative/Additional Remuneration Provisions: Where Column 3 of Table 2A contains a reference to this clause in respect of an Office, the provisions of this clause modify Column 2 of Table 2A. Unless otherwise specified, the rates in this clause will apply from 1 July 2017.

2.2.1 Solicitor-General: While Dr Stephen Donaghue QC does not establish his principal place of residence in Canberra he will be paid an annualised amount of \$34,500 per year instead of the daily amounts of travel allowance set out in Clauses 3.5 – 3.9 of *Determination 2016/07 – Official Travel by office Holders* (or any determination that supersedes 2016/07) that would otherwise be payable for travel to Canberra, effective from 2 April 2017.

2.2.2 Northern Australia Infrastructure Facility, Chief Executive Officer: The Chief Executive Officer will receive Total Remuneration of \$418,790 until 30 June 2021, during the financial assistance phase prescribed under section 8 of the *Northern Australia Infrastructure Facility Act 2016*.

2.2.3 Classification Board: On any occasion when the Deputy Director acts as Director, he or she will be entitled to the remuneration and other conditions determined for the Director. Ms Margaret Anderson will receive \$239,720 Total Remuneration as Deputy Director from 1 July 2017 to 24 July 2017.

2.2.4 Temporary Classifier: Where a person is appointed to the Classification Board as a Temporary Classifier, a daily fee of \$552 is payable, in lieu of other provisions in this Part. The provisions of Part 3 (Allowances), Part 5 (Recreation leave) and Part 6 (Compensation for early loss of office) do not apply. The conditions for payment of the daily fee shall be as set out in the Tribunal's determination in relation to Holders of Part-Time Office, 2017/10 Schedule B.

2.2.5 Administrative Appeals Tribunal – Migration Review Tribunal/Refugee Review Tribunal: This determination applies to a full-time office holder of the AAT who is a former member of the MRT/RRT and is covered by the transitional provisions of Item 5 of Schedule 9 to the *Tribunals Amalgamation Act 2015* (i.e. for the remaining balance of the former MRT/RRT member's term of appointment that commenced before 1 July 2015).

- 2.2.6 Administrative Appeals Tribunal – Social Security Appeals Tribunal:** This determination applies to a full-time office holder of the AAT who is a former member of the SSAT and is covered by the transitional provisions of Item 5 of Schedule 9 to the *Tribunals Amalgamation Act 2015* (i.e. for the remaining balance of the former SSAT member's term of appointment that commenced before 1 July 2015).
- 2.2.7 Tertiary Education Quality and Standards Agency (TEQSA), Chief Executive Officer:** Mr Anthony McClaran will receive \$399,520 Total Remuneration for the initial term of his appointment, until 9 October 2020.
- 2.2.8 Digital Transformation Agency:** The Chief Executive Officer, Mr Gavin Slater will receive an additional fixed loading of \$127,000 per annum for the initial term of his appointment, until 30 April 2024.
- 2.2.9 Innovation and Science Australia, Chief Executive Officer:** The Chief Executive Officer, Dr Charles Day will receive an additional fixed loading of \$50,000 until 25 November 2019.
- 2.2.10 Tuition Protection Service, Director:** Mr Vipin Mahajan will receive \$262,060 Total Remuneration while he occupies the office shown in Column 1 of Table 2A.
- 2.2.11 National Capital Authority, Chief Executive:** Mr Malcolm Snow will receive \$344,620 Total Remuneration for the initial term of his appointment, until 12 January 2018.
- 2.2.12 Parliamentary Budget Officer:** Mr Phil Bowen will receive \$444,850 Total Remuneration until 22 July 2017.
- 2.2.13 Infrastructure Australia:** The Chief Executive Officer, Mr Phillip Davies will receive \$365,570 Total Remuneration from 8 May 2017 to 30 June 2017.
- 2.3 Part-time work:** Where approval is given by the employer for an Office Holder to perform the duties of an Office on a part-time basis, the Total Remuneration contained in Table 2A will be payable on a pro-rata basis in accordance with the proportion of full-time hours worked. Where proposed hours are less than 60 per cent of the full-time rate, prior agreement of the Remuneration Tribunal is required to the remuneration level.
- 2.4 Remuneration packaging:** Subject to this Part, an Office Holder may elect to receive the benefit of the Total Remuneration, other than the value of the Employer's Superannuation Contribution, in cash as salary or as a combination of salary and Benefits. Any election must be consistent with relevant taxation laws and rulings or guidelines applicable to salary packaging schemes issued by the Australian Taxation Office. Any election must not result in a cost to the employer (including in relation to any fringe benefits taxation) additional to the cost which would be incurred if all of the Total Remuneration elements able to be taken as salary were taken as salary.

2.5 Superannuation

2.5.1 Tables 2.5A and 2.5B set the Superannuation Salary for certain office holders for the purpose of clauses 2.5.2, 2.5.3, 2.5.4 and 2.5.5. Where no specific amount is listed in Table 2.5A for the specific office or office holder, then Table 2.5B applies.

TABLE 2.5A - DEFINED BENEFIT SCHEME ARRANGEMENTS--SPECIFIED PROVISIONS

| Specified office and/or office holder | Superannuation Salary |
|--|-----------------------|
| Mr Duncan Lewis, Director-General of Security, Australian Security Intelligence Organisation | \$504,710 |
| Director of Public Prosecutions | \$383,540 |
| Ms Jennifer Taylor, Chief Executive Officer Comcare | \$349,460 |
| Mr Michael Manthorpe, Commonwealth Ombudsman | \$343,340 |
| Mr Phillip Glyde, Chief Executive Officer, Murray-Darling Basin Authority | \$342,400 |
| Deputy President, Fair Work Commission | \$339,600 |
| Mr David Fricker, Director-General, National Archives of Australia | \$288,070 |
| Director of Military Prosecutions | \$283,400 |
| Administrator of the Northern Territory | \$239,720 |
| Mr Vipin Mahajan, Director, Tuition Protection Service | \$194,260 |
| Deputy Director, Classification Board | \$160,350 |
| Classifier, Classification Board | \$114,540 |

Table 2.5B – Defined Benefit Scheme Arrangements Office or Office holder not SPECIFIED in Table 2.5A

| Office Holder's Total Remuneration | Superannuation Salary [#] |
|---|--|
| Equal to or more than \$426,160 | 70% of the Officeholder's Total Remuneration |
| Less than \$426,160 | 73% of the Officeholder's Total Remuneration |
| [#] calculated amount is to be rounded up to the nearest \$10. | |

2.5.2 For an Office Holder who is a member of the Commonwealth Superannuation Scheme:

- (a) the Officer Holder's annual rate of salary for the purposes of the scheme is the Superannuation Salary specified in Table 2.5A or calculated in accordance with Table 2.5B as relevant to the Office Holder; and
- (b) the value attributed to the Employer's Superannuation Contribution is taken to be 15.4 per cent of the Office Holder's Superannuation Salary.

2.5.3 For an Office Holder who is a member of the Public Sector Superannuation Scheme:

- (a) the Office Holder's basic salary for the purposes of the scheme is the Superannuation Salary specified in Table 2.5A or calculated in accordance with Table 2.5B as relevant to the Office Holder; and
- (b) the amount of the Officer Holder's recognised allowances for the purpose of the scheme is zero; and
- (c) the value attributed to the Employer's Superannuation Contribution is taken to be 15.4 per cent of the Office Holder's Superannuation Salary.

- 2.5.4** For an Office Holder who is a member of the Defence Force Retirement and Death Benefits Scheme:
- (a) the Office Holder's annual rate of salary for the purposes of the scheme is the Superannuation Salary specified in Table 2.5A or calculated in accordance with Table 2.5B as relevant to the Office Holder; and
 - (b) the value attributed to the Employer's Superannuation Contribution is taken to be 15.4 per cent of the Office Holder's Superannuation Salary.
- 2.5.5** For an Office Holder who is a member of the Military Superannuation and Benefits Scheme:
- (a) the Office Holder's annual rate of salary for the purposes of the scheme is the Superannuation Salary specified in Table 2.5A or calculated in accordance with Table 2.5B as relevant to the Office Holder; and
 - (b) the value attributed to the Employer's Superannuation Contribution is taken to be 15.4 per cent of the Office Holder's Superannuation Salary.
- 2.5.6** For an Office Holder who is a member of the Public Sector Superannuation Accumulation Plan, the Office Holder's superannuation salary for the purposes of the scheme is the Office Holder's ordinary time earnings (OTE).
- 2.5.7** For an Office Holder who is a member of any other superannuation fund, the Employer's Superannuation Contribution is the minimum level of employer superannuation contribution that would, under section 23 of the *Superannuation Guarantee (Administration) Act 1992*, reduce the charge percentage in relation to that Office Holder to zero.
- 2.5.8 No cash in lieu:** The value attributable by virtue of this clause to the Employer's Superannuation Contribution is referable to a non-salary component of Total Remuneration and may not be the subject of an election to take an equivalent amount of salary instead.
- 2.6 Vehicles:** Where an Office Holder accepts an offer of an agency owned or leased vehicle for private use, the Office Holder's Total Remuneration will be reduced by the actual cost of the vehicle to the agency and fringe benefits taxation, less a reasonable amount (if any) reflecting business usage patterns. Where an Office Holder has access to an agency owned or leased vehicle for private use, the Office Holder will be considered to have accepted an offer of a vehicle for the purposes of this provision. Any business usage amount is to be assessed on log book records for at least a 12 week representative period. Where the annual business kilometres are less than 5,000 it will be based on the 'cents per kilometre' method. Where business kilometres are 5,000 kilometres or more, the percentage of business use to total kilometres travelled per annum will be applied to the total cost of the vehicle.
- 2.6.1 Vehicle parking:** Where an Office Holder accepts an offer of a car park at Commonwealth expense, the actual cost (including fringe benefits tax) of the car park to the Agency will be a Benefit for Total Remuneration purposes.
- 2.7 Business Support:** Where an Office Holder is provided with communications, information technology and other office facilities necessary for the efficient conduct of his or her office, incidental private use of those facilities by the Office Holder does not necessitate the value of the facilities being included in Total Remuneration.

PART 3 – ALLOWANCES

3.1 Accommodation Allowance: The Office Holders listed in Column 1 of Table 3A will be eligible to receive an accommodation allowance (subject to expenditure) as shown in Column 3 of Table 3A whilst they occupy the office shown in Column 2. This amount is to assist the Office Holder in meeting settling-in and commercial rental accommodation costs (including one-off utility connection costs) in the office location:

- (a) while they also continue to have a property other than in the office location, as their principal place of residence; and
- (b) it will not be paid for such periods that they live in premises owned by them at the office location.

An Office Holder will not be eligible to access travel allowance entitlements in the home locality or the office locality whilst they remain eligible to receive the accommodation allowance. However, where in terms of the ongoing arrangement it would clearly be more cost effective for the agency to provide travel allowance entitlements in the office locality, the agency should decide at the earliest practical opportunity to pay travel allowance rather than the accommodation allowance.

Where the commercial accommodation does not include cooking facilities, the cost of meals may form part of the payment, within the accommodation cap set for an Office Holder.

TABLE 3A – ACCOMMODATION ALLOWANCES

| Column 1 Office Holder | Column 2 Office | Column 3 Allowance (pa) |
|-----------------------------------|---|------------------------------------|
| Ms June Oscar | Aboriginal and Torres Strait Islander Social Justice Commissioner | \$40,000 |
| Mr Nick Ryan | Chief Executive Officer, Australian Aged Care Quality Agency | \$40,000 |
| Ms Kate Jenkins | Sex Discrimination Commissioner, Australian Human Rights Commission | \$40,000 |
| Mr Michael Griffin | Integrity Commissioner, Australian Commission for Law Enforcement Integrity | \$34,500 |
| Mr Gavin Slater | Chief Executive Officer, Digital Transformation Agency | \$34,500 |
| Dr Charlie Day | Chief Executive Officer, Innovation and Science Australia | \$34,500 |
| Dr Alan Finkel | Chief Scientist | \$34,500 |
| The Hon Margaret Stone | Inspector-General of Intelligence and Security | \$34,500 |
| Mr Mark Bielecki | Registered Organisations Commissioner | \$34,500 |
| Mr Robert Fitzgerald | Commissioner, Productivity Commission | \$22,000 |

- 3.1.1 Classification Board:** Subject to individual qualification for this allowance, to be decided by the employer in accordance with agency guidelines, Members who have, or had, to relocate to Sydney to take up their appointment will be paid an accommodation allowance of \$13,500 per annum. The allowance does not represent salary for superannuation.
- 3.1.2 Defence Chiefs:** The employer may approve housing assistance in accordance with agency policy and practices for the Vice-Chief of the Defence Force, the Chief of Navy, the Chief of Air Force, the Chief of Army and the Director of Military Prosecutions.
- 3.1.3 Official residence:** Where residing in an official residence is a requirement of an office, total remuneration does not include the value of accommodation in the official residence, or the running costs of the premises.
- 3.1.4 Non-commercial accommodation:** Where an Office Holder listed in Column 1 of Table 3A elects to be accommodated in private, non-commercial accommodation, such as the home of a family member or friend, a rate of one third of the accommodation allowance in Column 3 of Table 3A is payable in lieu of the amount specified in Column 3.
- 3.2 Reunion Travel:** The Office Holders shown in Column 1 of Table 3B may receive travel costs of up to the amount shown in Column 3 from their Employer for travel back to their principal place of residence for the purposes of family reunion while they continue to occupy the office shown in Column 2. Where the Agency decides, as provided in Clause 3.1 of this Determination, to pay an office holder travel allowance instead of accommodation allowance, any reunion travel allowance in Table 3B for that Office Holder will cease to apply at the same time.
- 3.2.1 Who can use reunion travel?** The allowance provided in Clause 3.2 and specified in Table 3B is intended to facilitate personal travel by the office holders identified in that Table. However, where the office holder certifies that the workload and responsibilities of the office prevents him or her from travelling to the principal place of residence for reunion purposes, reunion travel by the office holder's partner and/or a child or children of the office holder or his or her partner, whose normal place of residence is the office holder's principal place of residence, can be funded within the financial limits of the allowance. Travel by a person other than the office holder must be at economy class, and only for direct travel between the office holder's principal place of residence and office location.

TABLE 3B – REUNION TRAVEL

| Column 1 Office Holder | Column 2 Office | Column 3 Allowance (pa) |
|-----------------------------------|---|------------------------------------|
| Mr Eric Hutchinson | Administrator of Norfolk Island | \$41,400 |
| Ms June Oscar | Aboriginal and Torres Strait Islander Social Justice Commissioner | \$27,000 |
| Mr Gavin Slater | Chief Executive Officer, Digital Transformation Agency | \$19,440 |
| Dr Charlie Day | Chief Executive Officer, Innovation and Science Australia | \$18,500 |
| Ms Kate Jenkins | Sex Discrimination Commissioner, Australian Human Rights Commission | \$18,500 |
| Mr Barry Haase | Administrator of Christmas Island and Cocos (Keeling) Islands | \$17,000 |
| Mr Mark Bielecki | Registered Organisations Commissioner | \$16,824 |
| The Hon Margaret Stone | Inspector-General of Intelligence and Security | \$14,376 |
| Mr Michael Griffin | Integrity Commissioner, Australian Commission for Law Enforcement Integrity | \$13,896 |
| Mr Nick Ryan | Chief Executive Officer, Australian Aged Care Quality Agency | \$12,216 |
| Mr Tim Kelsey | Chief Executive Officer, Australian Digital Health Agency | \$10,000 |
| Mr Robert Fitzgerald | Commissioner, Productivity Commission | \$9,950 |

PART 4 – OFFICIAL TRAVEL**General Travel Provisions**

- 4.1** The provisions of Determination 2016/07 – *Official Travel by Office Holders* (or any Determination that supersedes Determination 2016/07) apply to offices covered by this Determination, subject to any exclusions or limitations in this Determination. In establishing entitlements, the Travel Tier identified in this Determination for an office will apply under Determination 2016/07 (or any Determination that supersedes Determination 2016/07).
- 4.1.1** **ACCC:** the ACCC may put in place arrangements for Members' travel to Canberra that are more cost effective than the travel entitlements they are otherwise entitled to under this Determination.
- 4.1.2** **Administrator, Christmas and Cocos (Keeling) Islands:** The Administrator, and any immediate family members normally resident with him/her on Christmas Island shall be entitled to two return economy class fares per annum each between their home and work base.

PART 5 – RECREATION LEAVE

5.1 Recreation Leave entitlements: The provisions of Determination 2012/11 – *Recreation Leave for Full-Time Holders of Relevant Offices* apply to full-time¹ Offices listed in Column 1 of Table 2A in this Determination to the extent specified in that Determination.

5.1.1 Administrator, Christmas and Cocos (Keeling) Islands: The Administrator is entitled to seven days recreation leave per annum additional to any entitlement in Clause 5.1.

5.1.2 Administrator, Norfolk Island: The Administrator is entitled to three days recreation leave per annum, additional to any entitlement in Clause 5.1.

PART 6 – COMPENSATION FOR EARLY LOSS OF OFFICE

6.1 Compensation for early loss of office for an Office Holder will be in accordance with the provisions of *Determination 2014/17: Compensation for Loss of Office for Holders of Public Office*.

6.2 Where an Office Holder serves the full term of appointment, no entitlement to payment under this part arises.

Signed on this 28th day of June 2017

Signed
John C Conde AO
PRESIDENT

Signed
Ewen G W Crouch AM
MEMBER

Signed
Heather J Zampatti
MEMBER

¹ Note that the Remuneration Tribunal may only determine recreation leave in respect of full-time office holders – refer s7(3AA) of RT Act. Leave (if any) for Part-time Office Holders is determined by the relevant Minister or the Governor-General.



ASIC

Australian Securities & Investments Commission

PEOPLE & DEVELOPMENT

Relocation Package Options

March 2017

Relocation Package Options

| Option A | | Option B | |
|---|------------------|--|------------------|
| Airfares | | Airfares | |
| 2 business class Adult | 21,300 | 2 business class Adult Fare | 12,000 |
| 2 business class Child (<i>under 13</i>) | | 2 economy class fare (<i>child 13+</i>) | 2,700 |
| Excess luggage | 2,000 | Excess luggage | 2,000 |
| Return fares – end of assignment | 23,300 | Return fares – end of assignment | 16,700 |
| Removals and Storage | | Removals and Storage | |
| Removal of Personal effects (40ft container) | 15,000 | Removal of Personal effects (40ft container) | 15,000 |
| Unpacking & setting up house | 150 | Unpacking & setting up house | 150 |
| Return removals –end of assignment | 15,150 | Return removals –end of assignment | 15,150 |
| Storage in home location | 10,000* | | |
| Orientation visit | | Orientation visit | |
| 2 Return Airfares – business class | 24,000 | 1 Return Airfare – Business class | 12,000 |
| Orientation Service 2 days | 2,200 | Orientation Service 1 day | 1,100 |
| Immigration and visas | | Immigration and visas | |
| 457 visa + dependants | 10,000 | 457 visa + dependants | 10,000 |
| Taxation | | Taxation | |
| Briefing – one off | 3,000 | Briefing – one off | 3,000 |
| Tax Lodgement (per annum) | 5,000* | | |
| School fees / tuition fees | | School fees | |
| <i>based on 2 dependants aged 22 or under (per annum) – includes primary / secondary / tertiary</i> | 50,000* | <i>based on 2 dependants aged 18 or under (per annum) – primary or secondary school only</i> | 50,000* |
| Travel and medical | | Travel and medical | |
| Comprehensive travel and medical insurance (per annum) | 10,000* | Travel insurance through ASIC's current insurance policy <i>Does not include medical.</i> | 3,000* |
| Short term accommodation | | Short term accommodation | |
| Airport Transfers – guided | 100 | Accommodation – 3 weeks via AOT | 6000 |
| Accommodation arranged | 150 | | |
| Accommodation – 3 weeks | 6000 | | |
| Relocation Support | | Relocation Support | |
| Home Search | 1,600 | Home Search | 1,600 |
| Post arrival settling in assistance | 1,100 | | |
| Cost Summary | | Cost Summary | |
| Year One | 161,600 | Year One | 118,550 |
| 2 | 75,000 | 2 | 53,000 |
| 3 | 75,000 | 3 | 53,000 |
| 4 | 75,000 | 4 | 53,000 |
| 5 | 113,450 | 5 | 84,850 |
| Total – Five Year Assignment | \$500,050 | Total – Five Year Assignment | \$362,400 |

Estimates based on a family of 2 adults and 2 children relocating from Europe. Costs will vary according to country of origin, and the number and age of children.

* Denotes on-going cost – payable each year.

Orientation

The orientation is a fully accompanied program designed to give an overview of areas and suburbs in the new city that meet lifestyle and budget requirements, prior to the commencement of a home search.

- Pre-arrival needs analysis/support
- Collection from and return to hotel, serviced apartment or office
- Accompanied tour of two or three areas in the destination city/location
- Overview of residential suburbs including public transport, housing, medical, shopping and community facilities in each suburb
- Inspection or drive-by one or two sample properties
- Follow-up email consultation to address outstanding queries or issues arising from the visit

| Program | Service Fees |
|---------------|--------------|
| 1-day Program | AUD 1,100.00 |
| 2-day Program | AUD 2,000.00 |

Note:

- All prices quoted are exclusive of 10% GST
- Maximum of 4 persons only per vehicle
- Alternative vehicles provided by prior arrangement – additional fee will apply
- Baby capsules/child seats by special arrangement
- Cancelled programs will be charged at a minimum of three hours
- NB all programs include travel and research time.

Immigration Assistance

Temporary Work (Skilled) (subclass 457) Visa

Crown Relocations uses its destination expertise to navigate the complexities of local immigration and visa processes to deliver a total immigration management program for transferees. While the actual visa application process varies from country to country, Crown Relocations ensures the following critical requirements are managed:

- Advice on destination immigration requirements: work permit/visa, dependent permit/visa etc.
- Counseling on the application process and documentation required for the application
- Collation of documentation, preparation of the application and lodging of the application with the appropriate authority
- Regular communication with the corporate client and transferee to ensure all parties are kept fully informed during the approval process
- Notification to corporate client and transferee when visa and/or work permit is issued

| Immigration Management | Service Fees |
|---|--------------|
| Program Administration covers overall immigration assistance and management | AUD 2,250.00 |
| Conduct a pre-arrival briefing by telephone covering the services being delivered and actions required by the assignee. | |

| Immigration Service | Program Fees |
|--------------------------|----------------------|
| Short Term Business visa | AUD 1,200.00 |
| Permanent Residence | AUD 4,200.00 |
| Principal visa extension | Price on application |
| Sponsorship transfer | Price on application |
| Document notarization | Price on application |

Note:

- Disbursements including translation of documents, medical examinations, endorsements, government fees and courier charges will be re-invoiced at cost and will be in addition to the fees noted above.

Business Sponsorship Status Application

The subclass 457 visa is the most commonly used program for employers to sponsor overseas workers to work in Australia on a temporary basis.

The subclass 457 visa allows businesses to employ overseas workers for up to 4 years in skilled occupations only. In order for a corporate to employ overseas workers on the subclass 457 visa they must hold Business Sponsorship Status (BSS)

Crown Relocations uses its destination expertise to navigate the complexities of the standard business sponsorship application process to deliver a total immigration management program for corporates.

- Advice on the BSS application process
- Counseling on the application process and documentation required for the application
- Collation of documentation, preparation of the application and lodging of the application with the appropriate authority
- Regular communication with the corporate client to ensure all parties are kept fully informed during the approval process
- Notification to corporate client when BSS is issued

| Immigration Management | Service Fees |
|---|--------------|
| Business Sponsorship Status (BSS) (Australian or Overseas Businesses) Program Administration covers overall assistance and management | AUD 2,250.00 |

Note:

- Disbursements including translation of documents, endorsements, government fees and courier and postal charges, photocopying and all other out of pocket expenses will be re-invoiced at cost and will be in addition to the fees noted above.
- All prices quoted are exclusive of 10% GST
- Destination government fees and charges are subject to change without notice.

Airport Transfer

Crown Relocations liaises with the corporate client and/or transferee about the arrival flight itinerary, number of persons traveling and quantity of luggage. Crown then coordinates and confirms a transfer from airport to temporary accommodation, office or new residence and communicates arrangements to the transferee. Crown's Airport Transfer program is designed to reduce stress and provide a streamlined arrival at a foreign location, thereby creating a positive start to a preview visit or a new international assignment.

| Airport Transfer | Service Fees |
|---------------------------|--------------|
| Up to 4 persons – one way | AUD 100.00 |

Note:

- Additional charges may apply for services delivered after business hours, on weekends and public holidays, and for excess luggage transfer requirements. Firm fee available on confirmation of flight arrival time and number of persons traveling.
- All prices quoted are exclusive of 10% GST
- **Plus direct cost of transport.**

Temporary Accommodation

Crown Relocations liaises with the transferee to establish individual accommodation needs, and then coordinates all bookings for short-term motel/hotel/serviced apartment-style accommodation. This is done in accordance with the established transferee needs, corporate relocation policy, corporate budget and local market availability. Program includes liaison with the transferee, providing options-based requirements, email confirmation of reservation and update to corporate client.

| Temporary Accommodation | Service Fees |
|--|--------------|
| Temporary accommodation search for serviced apartment | AUD 150.00 |
| Temporary accommodation search for non-serviced apartment | AUD 420.00 |
| Research, Unaccompanied Viewing (if applicable) and Booking of non-serviced apartment short term accommodation (1-3 options) | AUD 700.00 |

Note:

- All prices quoted are exclusive of 10% GST
- **Program fee does not include actual cost of accommodation**
- NB all programs include travel and research time.

Home Search

Crown Relocations Home Search program is designed to streamline the house-hunting process and ensure the transferee finds quality housing to suit their lifestyle and housing allowance. Crown works with the transferee, pre-arrival, to understand individual needs, outline housing options in the destination market and also to manage transferee expectations of housing relative to their housing allowance.

Crown is independent and able to work with all realtors and major landlords. The transferee benefits from truly independent and objective information and advice, while the corporate client knows that their relocation policy and housing allowances are adhered to. Crown's Home Search Rental programs safeguard corporate interests and provide transparency to the local realty market.

- Pre-arrival needs analysis/support
- Tour of residential areas appropriate to lifestyle and budget
- Inspection of short-listed properties
- Assistance with lease and property condition report negotiations as applicable
- Assistance with property handover and move-in
- Assistance with utility connections, where required

| Home Finding Rental | Service Fees |
|---------------------|--------------|
| 1-day Program | AUD 1,600.00 |
| 2-day Program | AUD 2,600.00 |
| 3-day Program | AUD 3,500.00 |
| 4-day Program | AUD 4,400.00 |
| 5-day Program | AUD 5,200.00 |

Education Support Services

Crown Relocations understands that choosing a school for their children is a transferee's major concern in the relocation process, and critical to the success of an international assignment to Australia. Crown's Education Support Services are designed to provide an objective overview of the education system, in-depth information on all available education options and introduction to schools appropriate to the transferee's needs.

| Education Support Services | Program Fees |
|---|--------------|
| <p>Option 1 – Half Day Research and consulting service via telephone and/or email</p> <ul style="list-style-type: none"> • Comprehensive education and student needs analysis, including discussion of short- and long-term goals • Provide school reports, identifying criteria such as curriculum, style, size and location of schools • Schedule and coordinate school tours appointments • Facilitate meetings with key admission contacts | AUD 700.00 |
| <p>Option 2 - One Day</p> <ul style="list-style-type: none"> • Includes all services from Option 1 plus • Advise parents/children on the admissions procedure and potential interview scenarios • Accompany family on visit to selected schools, transportation included (1 day of accompanied assistance) • Coordinate communication between schools and family | AUD 1,400.00 |
| <p>Option 3 – Two days</p> <ul style="list-style-type: none"> • Includes all services from Option 1 & 2 plus • Assist/advise parents on completing application materials • Follow up with admissions coordinators to ensure that all supporting documents have been submitted • Communicate with schools and parents to attend to relevant issues • Monitor current child's waiting list position at selected schools | AUD 2,200.00 |

Settling In Assistance / Post Arrival Orientation

Crown Relocations tailored and fully-accompanied Post-Arrival Orientation program gives an in-depth introduction to the transferee's new neighborhood. The program is designed to ensure the transferee and their family settles as quickly as possible. Each program is tailored to meet individual needs and the local community environment, and typically includes:

- Introduction to public transport
- Visit to shopping mall/food markets
- Options for doctor, dentist, baby health care
- Visit to bank and post office
- Overview of leisure and hobby facilities
- Advice on employing a domestic helper
- Local information as relevant

| Orientation Program | Service Fees |
|---------------------|--------------|
| 1-day Program | AUD 1,100.00 |
| 2-day Program | AUD 2,000.00 |

Note:

- All prices quoted are exclusive of 10% GST
- Maximum of 4 persons only per vehicle
- Alternative vehicles provided by prior arrangement – additional fee will apply
- Cancelled programs will be charged at a minimum of three hours
- Baby capsules/child seats by special arrangement

J Shipton -KPMG taxation services provided on relocation to Australia

| Invoice Date | Invoice number | Invoice Description | Cost (incl fees excl GST) | What was involved | Nexus between "geographical relocation" and tax advice |
|--------------|----------------|---------------------|---------------------------|-------------------|--|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

| | | | | | |
|--|--|--|--|--|--|
| | | | | | |
|--|--|--|--|--|--|

[REDACTED]

From: [REDACTED]
Sent: Tuesday, 18 August 2020 7:22 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: ASIC KMP - additional information to support relocation expenses [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]
Attachments: KPMG - background on services provided to Mr. Shipton; L - [REDACTED] @ ASIC - 18 August 2020 (002).pdf; 17082020 AGS Advice.pdf

Hi [REDACTED]

Thank you for giving ASIC the opportunity to make further submissions regarding whether the taxation support provided by ASIC to James Shipton on relocation to Australia from the US/Hong Kong in January 2018 (Tax Expenses), to take up the position of ASIC Chair exceeded the Remuneration Tribunal Determination (Determination).

In addition to the ASIC memo and supporting documents provided on 10 August 2020 (ASIC Documents), ASIC requests ANAO takes the following into consideration in its deliberations:

1. A legal opinion prepared by [REDACTED] of AGS dated 17 August 2020 (AGS Advice);
2. An email dated 14 August 2020 from [REDACTED] of KPMG (KPMG Email); and
3. A letter of advice prepared by Minter Ellison's Workplace Partner [REDACTED] and Tax partner [REDACTED] ([REDACTED]) dated 18 August 2020 (Minter Ellison Advice).

AGS Advice

AGS were briefed with the ASIC Documents and your email of 11 August 2020. In summary, AGS advise (Advice attached) it was reasonable for ASIC to treat the Tax Expenses as expenses incurred on relocation within the meaning of the Determination. We note this advice supports the approach taken by ASIC. Notably, at paragraph 9 AGS advise that:

“the question of whether a particular expense can be said to be incurred on geographic relocation requires a consideration of whether there is a sufficient connection between the relocation and the incurring of the expense. As a general proposition, where *but for the geographic relocation* the office holder would not have incurred the expense, we consider that the expense would have a sufficient connection to the relocation to be capable of being an expense ‘incurred on geographic relocation’. In our view, this would include payments for expenses incurred for specialist taxation advice, provided that the need to obtain that advice arose from the geographic relocation, as appears to have been the case here.” (emphasis added).

AGS also state that:

[11] Neither the 2017 Determination, later determinations, nor the Remuneration Tribunal's 2014 (see attached) or 2018 *Relocation Assistance Guidelines: Accommodation and Reunion Travel*, specify any particular requirements for an agency's ‘policies and practices’. This suggests that the Tribunal is content to leave it to the discretion of agencies to determine relocation costs for a particular office holder, depending on the circumstances of that office holder.

[12] Given the breadth of the expression ‘policies and practices’, we think it would be possible for an agency (or employing authority for the office) to develop a policy (eg for a new statutory office), to extend the application

of an existing policy to enable the payment of relocation costs for an office holder, or, even, create a new policy for an existing statutory office, depending on the particular circumstances of the office holder.

[13] This seems to us to be what occurred here, given that (unlike previously), the ASIC Chair was an overseas recruitment. In this particular instance, the relocation package was developed by ASIC and the Treasury, informed by advice to ASIC from Deloitte as to domestic and international practice for international relocation arrangements applicable to comparable positions. In that context, we are instructed that the inclusion of a component for taxation assistance is consistent with domestic and international standards.

KPMG Email

KPMG's email of 14 August 2020 (**attached**) provides further detail explaining the nexus between Mr Shipton's relocation and the Tax Advice. KPMG also note that the nature of the tax support provided by ASIC is "standard practice for executives of Mr Shipton's level".

Minter Ellison Advice

ASIC asked [REDACTED] and [REDACTED] of Minter Ellison to provide an external opinion (based on their understanding of the tax issues arising on geographical relocation and the tax support commonly provided to senior executives) on whether the tax support provided to Mr Shipton was "reasonable" in the circumstances. Given the time constraints, Minter Ellison could only comment at a level of principle. However, they are able to confirm "it is standard practice for an employer to cover the reasonable cost of tax advice (including tax filings) where an executive is relocating countries". Furthermore by reference to the KPMG invoices, Minter Ellison have concluded it was reasonable for ASIC to fund the specific advice provided to Mr Shipton (**Minter Ellison letter of advice attached**).

Additional comments

In addition to the above, we make the following points:

- (a) the expenses itemised in the International Relocation Framework document shared with Treasury in 2017, were indicative and did not take into account the personal circumstances of the successful candidate. So for example, if the successful candidate had been someone from NZ, ASIC could have been asked to pay more for family relocation, which included school fees but less for tax;
- (b) another rationale for having a continuum and interconnectivity between the 2017 and 2018 US tax returns (in addition to KPMG's and Minter Ellison's comments) is that Mr Shipton was working to 'close out' all remaining tax US (and MA) liabilities in those two returns for the purposes of demonstrating a breakage in US Federal (and Massachusetts State) tax residency (and liability) in early 2018. This aim (ie ending US tax residency/ closing out remaining liabilities) is one of the reasons why taxation support is commonly provided over multiple years for professionals leaving the US; and
- (c) Where feasible Mr Shipton took steps to minimise the tax expenses, for example he prepared the Hong Kong Tax Returns rather than engage KPMG.

Conclusion

We consider the AGS Advice (supported by the additional information provided by KPMG and opinions expressed by Minter Ellison) together with ASIC's submissions of 10 August, provide compelling reasons for determining ASIC's payment of the Tax Expenses did not exceed the Determination. We welcome your views and any further questions you may have.

I understand you have to complete the papers tomorrow so I am available most of the day (except 10-11am and 1-2.30pm) if you want to discuss.

Kind regards

[Redacted]

Acting Chief Financial Officer

Australian Securities and Investments Commission

Level 5, 100 Market Street, Sydney, 2000

[Redacted]



ASIC



ASIC Chair – whether certain taxation related expenses are payments ‘incurred on geographic relocation’

1. Thank you for your request for advice on the question of whether certain expenses that were paid to the ASIC Chair are capable of being expenses ‘incurred on geographic relocation’ and therefore excluded from the Chair’s total remuneration as calculated under Remuneration Tribunal Determinations. This advice is confined to the consideration of the proper interpretation of the Determinations; namely, when an expense can be said to be ‘incurred on geographic relocation’.

Summary

2. We consider it was reasonable in the circumstances for ASIC to have proceeded on the basis that the expenses incurred by the ASIC Chair in obtaining specialist taxation assistance were expenses incurred on geographic relocation within the meaning of the 2017 (and subsequent) Determinations.

Context

3. Mr Shipton relocated from the United States of America (US) to Australia to take up the statutory office of ASIC Chair. Although Mr Shipton’s appointment as ASIC Chair commenced in February 2018, **he resigned his role in the US and returned to Australia in November 2017**. We are instructed that his resignation and relocation to Australia resulted in an alteration to his US taxation status, which necessitated him obtaining specialist taxation assistance from KPMG with the lodgement of his US taxation returns for the 2017 and 2018 calendar years, and then his Australian tax return for the 2017 – 2018 financial year (which overlapped with the 2017 and 2018 US tax years).

* Note: This is incorrect. Mr Shipton resigned and relocated to Australia in January 2018 (in order to commence in February 2018).

4. We are instructed that Mr Shipton’s relocation package (agreed by ASIC and Treasury) made express provision for the payment of taxation advice on relocation. Specifically, in January 2018, ASIC agreed that it would pay for Mr Shipton’s tax return support for the 2017 and 2018 US tax years, and the 2017-18 Australian tax year.
5. The documents provided with the request indicate that KPMG provided the taxation services in the first half of 2019, and invoiced for them in August 2019. The documents also indicate that the reason for the delay was because relevant documents had been lost during the relocation by the removalists that had been engaged by ASIC, and it had taken time to obtain replacement documents from the US. We understand ASIC paid the invoiced amounts, in accordance with the previously agreed process.

6. During its audit of ASIC's 2019 – 2020 financial statements (which is ongoing), the Australian National Audit Office (ANAO) expressed the view that these expenses were not capable of being expenses incurred on geographic relocation, and therefore form part of the ASIC Chair's total remuneration. In the ANAO's view, tax returns represent an ongoing obligation rather than a relocation expense: accordingly, ASIC should not have agreed to reimburse the Chair for the Chair's taxation related expenses as part of the relocation assistance. We understand ASIC's view to be that but for the relocation, the ASIC Chair would not have required the taxation assistance, and furthermore, that the provision of taxation assistance is consistent with domestic and international practice.

Reasons

Are payments to an office holder in respect of taxation support capable of being 'expenses incurred on geographic relocation' within the meaning of the 2017 Determination and therefore excluded from the office holder's total remuneration?

7. At the time of the ASIC Chair's appointment, clause 1.3 of the *Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2017* (2017 Determination) relevantly excluded from the definition of 'Total Remuneration' 'reimbursement of expenses incurred on geographic relocation following appointment as an Office Holder, in accordance with agency policies and practices where approved by the employer'. In this context, the 'employer' was defined as '...the Commonwealth and includes any person authorised to exercise powers, perform acts, grant approvals or give directions for, or on behalf of, the Commonwealth'. Since that time, the Remuneration Tribunal has restructured its determinations, but the definition of what constitutes 'total remuneration' has remained relevantly unchanged (see for example, the *Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2020*, s 8(3)).
8. Based on the content of the ANAO's email of 11 August 2020 to the Acting Chief Financial Officer, it seems to us that the ANAO has proceeded from the starting point that expenses for taxation assistance are not capable of being treated as an expense incurred on geographic relocation, irrespective of the extent of the connection between the relocation and the expense. However, assuming that (i) the expense and its reimbursement are in accordance with agency policies and practices where approved by the employer (employing authority), and (ii) the expense is not in relation to a matter that is defined as being part of total remuneration, we have not identified anything in the 2017 Determination (or later Determinations) that would suggest that a particular kind of expense could never be treated as an expense on relocation.
9. In our view, the question as to whether a particular expense is an expense incurred on geographic relocation is not answered by reference to the particular kind of expense incurred. Rather, the question of whether a particular expense can be said to be incurred on geographic relocation requires a consideration of whether there is a sufficient connection between the relocation and the incurring of the expense. As a

general proposition, where *but for the geographic relocation* the office holder would not have incurred the expense, we consider that the expense would have a sufficient connection to the relocation to be capable of being an expense 'incurred on geographic relocation'. In our view, this would include payments for expenses incurred for specialist taxation advice, provided that the need to obtain that advice arose from the geographic relocation, as appears to have been the case here.

10. As a practical matter, we think the more proximate in time the expense is to the geographic relocation, the more likely it is that the expense will be regarded as having the requisite connection to the geographic relocation to be an expense incurred on that relocation. In the present instance, the relevant expenses were incurred some period after the relocation. However, this delay appears also to have been the result of circumstances that themselves were occasioned by the relocation – that is, the loss by the ASIC-engaged removalists of the ASIC Chair's taxation records, and the need for the ASIC Chair to obtain replacement records from the US.

'...in accordance with agency policies and practices where approved by the employer'

11. Neither the 2017 Determination, later determinations, nor the Remuneration Tribunal's 2014 (see attached) or 2018 *Relocation Assistance Guidelines: Accommodation and Reunion Travel*, specify any particular requirements for an agency's 'policies and practices'. This suggests that the Tribunal is content to leave it to the discretion of agencies to determine relocation costs for a particular office holder, depending on the circumstances of that office holder.
12. Given the breadth of the expression 'policies and practices', we think it would be possible for an agency (or employing authority for the office) to develop a policy (eg for a new statutory office), to extend the application of an existing policy to enable the payment of relocation costs for an office holder, or, even, create a new policy for an existing statutory office, depending on the particular circumstances of the office holder.
13. This seems to us to be what occurred here, given that (unlike previously), the ASIC Chair was an overseas recruitment. In this particular instance, the relocation package was developed by ASIC and the Treasury, informed by advice to ASIC from Deloitte as to domestic and international practice for international relocation arrangements applicable to comparable positions. In that context, we are instructed that the inclusion of a component for taxation assistance is consistent with domestic and international standards.
14. For completeness, we also note that at the time that the ASIC Chair's relocation package was being developed, ASIC's *Relocation Policy* for its employees provided for taxation support to ASIC employees required to relocate to another jurisdiction for at least 183 days. While the relocation policy did not, on its terms, apply to the ASIC statutory office holders, we do not consider that ASIC (or Treasury, as the relevant employing authority for the office) would have been precluded, if it so chose, from relying on that policy as the starting point for determining a statutory office holder's relocation entitlements.

Conclusion

15. Against this background, we consider it was reasonable in the circumstances for ASIC to have proceeded on the basis that the expenses incurred by the ASIC Chair incurred in obtaining specialist taxation assistance were expenses incurred on geographic relocation within the meaning of the 2017 (and subsequent) Determinations.

Further considerations

16. [REDACTED] has read this advice and agrees with its contents.

Contact

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

From: [REDACTED]@kpmg.com.au>
Sent: Friday, 14 August 2020 9:12 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: KPMG - background on services provided to Mr. Shipton

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Hi [REDACTED]

Thank you for your time on the call yesterday evening. As discussed we have provided some further background on the work that we performed for Mr. Shipton below. Please let us know if you need any further details.

Background on services provided

KPMG provided three main streams of work for Mr. Shipton as follows:

1. Australian tax return preparation.

KPMG prepared Mr. Shipton's 30 June 2018 Australian tax return. As Mr. Shipton was relocating back to Australia after an extended period living overseas, he became an Australian tax resident and was therefore taxable on his worldwide income. KPMG assistance was required due to the complexities arising [REDACTED]

2. Australian tax advice

[REDACTED]

3. US Tax Return preparation

KPMG prepared Mr. Shipton's [REDACTED] tax returns for years ending 31 December 2017 and 31 December 2018 [REDACTED]

There were advantages to having KPMG prepare Mr. Shipton's 2017 and 2018 US tax returns which included:

- 1) [REDACTED]
- 2) [REDACTED]

Industry practice

It is standard practice for executives at Mr. Shipton's level when relocating to receive tax return support through their employer from an international accounting firm specialising in cross-border tax matters. Often this would include tax return preparation for the 'home' and 'host' locations of the move in the year of departure. However, where the timing of the move coincides with the end or beginning of a tax year in the home or host location, it is not uncommon for an employer to authorise tax support for two tax years for continuity.

Best regards,



 | Director
[\[redacted\]@pmg.com.au](mailto: [redacted]@pmg.com.au)

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MinterEllison

18 August 2020

PRIVILEGED AND CONFIDENTIAL

[REDACTED]
Commission Counsel, Chief Legal Office
Australian Securities and Investments Commission
Level 5, 100 Market Street
SYDNEY NSW 2000

Dear [REDACTED]

Tax Advice Associated with Relocation

We refer to previous correspondence.

By way of brief background, we confirm your instructions that ASIC has paid for tax advice to the Chair, Mr Shipton, as part of his relocation package.

Following questions being raised by the Australian National Audit Office, you have asked us whether, in our view, this is reasonable.

We advise as follows:

1. In our experience, it is standard practice for an employer to cover the reasonable cost of tax advice (including tax filings) where an executive is relocating countries to take up a position. Typically, the employer would arrange that advice themselves, through their own advisers, and would validate the expenses (and their reasonableness) through their usual processes.
2. We are not in a position to comment on the reasonableness of each of KPMG's invoice (as this would necessitate a detailed knowledge of the advice), but we can comment at a level of principle.
3. Under ASIC's Relocation Package Options – Option A, the employee is entitled to a one-off taxation briefing and tax lodgement. In our view, it is reasonable for ASIC to cover the cost of a tax briefing on relocation and the briefing to understand Mr Shipton's tax 'profile' (eg. the sources of his taxable income), and to inform Mr Shipton of the relevant Australian tax requirements that must be complied with, including the requirement to hold a tax file number, which is necessary for the purposes of filing an Australian tax return.
4. KPMG was engaged to prepare Mr Shipton's Australian tax return for the 2017/18 tax year and US tax returns for the 2017 and 2018 tax years. In order to prepare the Australian tax return, KPMG would need to have all relevant information [REDACTED]

Accordingly, in our view, it is reasonable for ASIC to cover the cost of the advice described in the second invoice (821223640) [REDACTED]



While the 2017 tax year preceded Mr Shipton's relocation, we note KPMG's advice that the 2017 US tax return was prepared while Mr Shipton was in Australia and that it would be logical for the same adviser to prepare both 2017 and 2018 US tax returns.

5. The third invoice (821223636) directly relates to the filing of Mr Shipton's US tax returns and associated compliance matters. [REDACTED]
[REDACTED] Accordingly, in our view, it is reasonable for ASIC to cover the cost of this advice.
6. The final invoice (720030466) is described as involving the preparation of Mr Shipton's 2017/18 Australian tax return and re-filing of this return. [REDACTED]
[REDACTED] Accordingly, in our view it is reasonable for ASIC to cover the cost of this advice in the context of ensuring Mr Shipton is made fully aware of all of the relevant tax consequences of becoming an Australian tax resident and Mr Shipton's tax returns are completed accurately.

Please do not hesitate to contact either of us if you would like to discuss.

Yours faithfully
MinterEllison

[REDACTED]

Partner

Partner



Rental Assistance for ASIC member

1. You have sought our advice on whether ongoing rental assistance to an ASIC member is capable of being treated as an expense on geographic relocation, or whether it is a payment that forms part of the Commissioner's total remuneration.

Summary

2. In our view, given that the ASIC member's principal place of residence (PPR) is Sydney, which is the same location as his office locality, we consider that the value of rental assistance (including any fringe benefits tax liability) would form part of the Commissioner's total remuneration.
3. It may be possible for a submission to be made to the Tribunal requesting that it determine a special accommodation allowance for the office holder with retrospective effect. That said, while we think it is legally possible for the Tribunal to make determinations that have retrospective effect, the Tribunal may well be of the view that it would not be appropriate to do so in this instance. In effect, what the Tribunal would be asked to do would be to now determine that an amount was payable in addition to the ASIC member's total remuneration when that amount is (for the reasons we explain below) likely to have been part of the ASIC member's total remuneration during the relevant period.

Reasons

Q1

Is ongoing rental assistance capable of being an expense on geographic relocation?

4. In this instance, the ASIC member moved his PPR locality from Melbourne to Sydney, the same location as the office locality.
5. Relevantly for this aspect of the request, s 8(3)(c) of the *Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination 2020 (Determination)*¹ provides that an officeholder's total remuneration does not include, 'reimbursement of expenses incurred on geographic relocation following appointment as an office holder, in accordance with agency policies and practices where approved by the employing authority'.

¹ Unless otherwise stated in this advice, references to the *Remuneration Tribunal (Remuneration and Allowances for Holders of Full-time Public Office) Determination* are to the 2020 Determination. The relevant provisions have remained substantively unchanged from previous determinations (although they have been renumbered).

6. The question is whether ongoing rental assistance could be said to fall within the exception to total remuneration in s 8(3)(c) of the Determination, as 'reimbursement of expenses incurred on geographic relocation following appointment as an office holder' throughout the term of the office holder's appointment, or whether s 8(3)(c) is limited only to reimbursement of expenses associated with the movement of the office holder's principal place of residence to the office locality, and not to ongoing rental assistance.
7. In our previous advice to you on s 8(3)(c), we expressed the view that the question as to whether a particular expense is an expense incurred on geographic relocation is not answered by reference to the particular kind of expense incurred. Rather, the question of whether a particular expense can be said to be incurred on geographic relocation requires a consideration of whether there is a sufficient connection between the relocation and the incurring of the expense.
8. We then went on to say that as a general proposition, where but for the geographic relocation the office holder would not have incurred the expense, we consider that the expense would have a sufficient connection to the relocation to be capable of being an expense 'incurred on geographic relocation'.
9. On one view, the reason why an office holder might need ongoing rental assistance is because they have undertaken a geographical relocation.
10. However, ongoing rental assistance is a form of accommodation assistance. For accommodation assistance, there are other provisions of the Determination that are relevant. Specifically, Part 5 of the Determination sets out circumstances in which particular office holders (as determined by the Tribunal) are entitled to an amount in respect of accommodation assistance. Section 8(3)(b) of the Determination provides that assistance paid in accordance with Part 5 also does not form part of an office holder's total remuneration.
11. In this context, the Remuneration Tribunal's *Relocation Assistance Guidelines: Accommodation and Reunion Travel* (Guidelines) relevantly state that it is open to the employing authority to write to the Tribunal to seek approval for the office holder to be provided with assistance with the cost of accommodation in the office locality '[w]here there are compelling reasons for a person to maintain his or her principal place of residence in the PPR locality'.
12. This suggests that the Tribunal takes the view that employing authorities should not pay rental assistance (accommodation assistance) otherwise than as determined by the Tribunal in accordance with Part 5 of the Determination.
13. While it is the case that the Guidance does not deal with the situation where the office holder has moved their PPR to the office locality, we think this is likely to be indicative of a view held by the Tribunal that once the office holder has moved their PPR to the office locality (and so is no longer incurring expenses in relation to accommodation in more than one location), they should no longer require accommodation assistance.
14. Accordingly, while the issue is not free from doubt, we consider the better view to be that s 8(3)(c) is intended to refer to amounts reimbursing expenses associated with the movement of the office holder's principal place of residence to the office locality, and not to ongoing rental assistance to the office holder following their movement.

Rather, ongoing rental assistance is likely to be characterised as ‘assistance paid in accordance with Part 5’, and covered by s 8(3)(b) of the Determination.

15. In the absence of a determination under Part 5 of the Determination, the value of the rental assistance payment that is currently being paid to the ASIC member would likely form part of the office holder’s total remuneration, on the basis that it would be an allowance (see s 8(2)(b)). The value of any rental allowance would include fringe benefits tax, where payable (see s 8(2) of the Determination).

Q2

Can the Remuneration Tribunal determine an amount for rental assistance in addition to the office holder’s total remuneration?

16. Rental assistance (accommodation assistance) arguably falls within the meaning of ‘remuneration and allowances’ in s 7(3) of the *Remuneration Tribunal Act 1973* (RT Act), and is thus capable of being determined by the Tribunal.
17. Accommodation assistance under s 19 of the Determination is expressed to be available only where the office holder has a PPR in a locality other than the office locality. As the ASIC member has moved his PPR to the same locality as the office locality, assistance would not be available under s 19.
18. Section 20 of the Determination contains special provision for accommodation assistance for certain specified offices (members of the Classification Board and the Defence Chiefs). It would seem that if the Tribunal was minded to do so, it could determine special provisions for additional office holders in particular cases.

As a matter of law, the Tribunal could make a determination that was expressed to have retrospective effect

19. Section 7(5) of the RT Act relevantly provides that a determination of the Tribunal ‘...shall be in writing and shall come into operation, or shall be deemed to have come into operation, on such date as the Tribunal specifies in the determination.’ In other words, the Tribunal’s determination can be expressed to have commenced on a date before the date on which the determination is made.
20. Because determinations of the Tribunal are required to be tabled before the Parliament (RT Act, s 7(7)), they are taken to be a legislative instrument for the purposes of the *Legislation Act 2003* (see item 10 of the table in reg 6(1) of the *Legislation (Exemptions and Other Matters) Regulation 2015*). There does not appear to be any provision in the Legislation Act (including s 12, which concerns the retrospectivity of legislative instruments) which would affect the conclusion expressed in [19] above.
21. Against that background, it would be open to the Treasurer, if he considered that it was appropriate to do so, to make a submission to the Tribunal requesting it to determine that the office holder’s entitlement to rental assistance be expressed to have taken effect on a specified date, that date being earlier than the date on which the Tribunal makes the determination.

In practice, it is not clear that the Tribunal would do so

22. While s 20 of the Determination makes clear that the Tribunal can determine special

provisions for particular office holders, the Tribunal may well be of the view that it would not be appropriate to do so in this instance. In effect, what the Tribunal would be asked to do would be to now determine that an amount is payable in addition to the ASIC member's total remuneration when (applying the reasoning above), that amount is likely to have been part of the ASIC member's total remuneration during the relevant period. In this context, we understand the Tribunal has advised ASIC that it was not its practice to make determinations with retrospective effect (Instructions, paragraph 18(c)).

Context

Background

23. On 16 July 2018, the ASIC member commenced his appointment as an ASIC Deputy Chair, based initially in Melbourne. Between late December 2018 and early January 2019, the ASIC member relocated his PPR to Sydney with his family following the resignation of a Sydney-based ASIC member.
24. The purpose of the relocation was to ensure that ASIC had 2 members located in Sydney. As part of his relocation package, ASIC agreed to pay to the member's real estate agent \$750 a fortnight in rental assistance for the period between 5 January 2019 to 4 January 2021. On 1 December 2019, ASIC ceased making direct payments to the real estate agent – the payments are now made by the ASIC member, who is reimbursed by ASIC.
25. In its audit of ASIC's 2018-19 Financial Statements, the Australian National Audit Office (ANAO) queried whether the rental assistance could be properly said to be a payment made on geographic relocation, and therefore exempt from the office holder's total remuneration. Most pertinently, the ANAO expressed the view that an accommodation allowance for a period of 2 years was arguably an employment benefit rather than expense incurred on geographic location (Instructions, paragraph 17(d)). In turn, this would mean that such payments should have been included within the envelope of the ASIC member's total remuneration.
26. Section 9 of the Determination prohibits the supplementation of the remuneration and benefits provided for in the Determination.
27. ASIC is presently giving consideration to seeking the Treasurer's agreement to make a submission to the Remuneration Tribunal to request it to determine accommodation allowance for the ASIC member under s 20 of the Determination.

Next steps

28. [REDACTED] has read this advice and agrees. Please contact us if you have any questions.

Contact

