



New South Wales

Parliamentary Remuneration Amendment Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Parliamentary Remuneration Act 1989* (*the Act*):

- (a) to enable the Parliamentary Remuneration Tribunal to determine entitlements of Members of Parliament and recognised office holders (additional to those consisting of basic salary, additional salary and expense allowance), and
- (b) to provide that in the future the Tribunal is to consist of a judicial member or retired judicial member of the Industrial Relations Commission appointed by the President of that Commission.

Parliamentary remuneration in the form of basic salary, additional salary and expense allowance will continue as a matter of statutory entitlement under Part 2 of the Act. Additional entitlements that are the subject of the proposed determinations may be in any form (including for example allowances, services, facilities or equipment). Existing additional allowances will be capable of being dealt with as additional entitlements by way of these determinations.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Parliamentary Remuneration Act 1989* set out in Schedule 1.

Clause 4 requires the Tribunal to make an initial determination of additional entitlements, with effect on and from 1 January 1999.

Clause 5 provides for the person currently holding office as Tribunal to continue in that office for the remainder of the person's term of office. Future appointees will be the holders of office as judicial members of the Industrial Relations Commission.

Schedule 1 [1] inserts a new section 2A, which sets out the purpose of the Act.

Schedule 1 [2] and **[3]** amend section 3.

The definition of *Chief Justice* is replaced by that of *President*, reflecting other proposed amendments.

The definition of *parliamentary duties* is inserted, and is used principally in proposed section 10 (1), for the guidance of the Tribunal in considering additional entitlements. Parliamentary duties include duties that members and recognised office holders are ordinarily expected to undertake, including participation in the activities of recognised political parties, covering for example attendance at parliamentary committee meetings, parliamentary party meetings, and annual or other party conventions.

The definition of *remuneration* is replaced, to make it clear that this expression relates only to the statutory entitlements to basic salary, additional salary and expense allowance. Additional allowances will be categorised as additional entitlements.

Schedule 1 [4] omits section 7, which deals with additional allowances. These allowances will continue to be capable of being dealt with by determinations of the Tribunal.

Schedule 1 [5] makes a consequential amendment.

Schedule 1 [6] replaces section 9, to reflect the new role of the Tribunal in making determinations of a wider class of additional entitlements.

Schedule 1 [7] replaces section 10, to reflect the new arrangements for determinations of additional entitlements. Proposed subsection (1) provides guidance to the Tribunal in making such determinations. Proposed subsection (2) enables the Tribunal to fix the classes, terms and other incidents of additional entitlements. Proposed subsection (3) provides that additional entitlements can be in any form, including in the form of additional allowances payable in money, or in the form of services, facilities and equipment. Proposed subsection (4) enables a determination (as appropriate) to fix conditions subject to which an additional entitlement is provided, to provide for substantiation, to involve reimbursement of actual expenses, to identify existing entitlements as additional entitlements, or to withdraw or alter entitlements. Proposed subsection (5) continues the current restriction on determinations dealing with overseas travel (see existing section 10 (2)). Proposed subsection (6) makes it clear that a determination can amend or revoke determinations. Proposed subsection (7) makes it clear that a determination can apply to all or any members or recognised office holders, or to any class of them. Proposed subsection (8) provides that members and recognised office holders are entitled to the additional entitlements provided for by determinations.

Schedule 1 [8], [10] and [11] make consequential amendments.

Schedule 1 [9] and [12] transfer to the President of the Industrial Relations Commission certain functions under the Act presently exercisable by the Chief Justice of the Supreme Court. These functions relate to the extension of the time within which an annual determination may be made, and the making and furnishing of reports of determinations.

Schedule 1 [13] amends section 13 to require the Tribunal to seek the advice of the Secretary of the Treasury as to the financial implications of determinations of additional entitlements. A copy of the advice is to be published as an annexure to such a determination.

Schedule 1 [14] amends section 14 to make express provision for the Tribunal to consider any submissions made by the Minister.

Schedule 1 [15] and [16] amend section 15 as a consequence of the categorisation of additional allowances as additional entitlements.

Schedule 1 [17] inserts a new section 15A to make it clear that entitlements can be provided apart from the Act as proposed to be amended.

Schedule 1 [18] inserts a new section 17A to enable the Presiding Officer of either House of Parliament to seek a ruling from the Tribunal on the interpretation or application of a determination of additional entitlements.

Schedule 1 [19] amends section 18 to provide that such a ruling is not subject to judicial review.

Schedule 1 [20]–[23] amend Schedule 2 to provide that the Tribunal is to consist of a judicial member or retired judicial member of the Industrial Relations Commission appointed by the President of that Commission, and to make consequential amendments. Section 5 of the proposed Act will allow the existing judge holding office as Tribunal to continue in office for the remainder of the applicable term.

First print

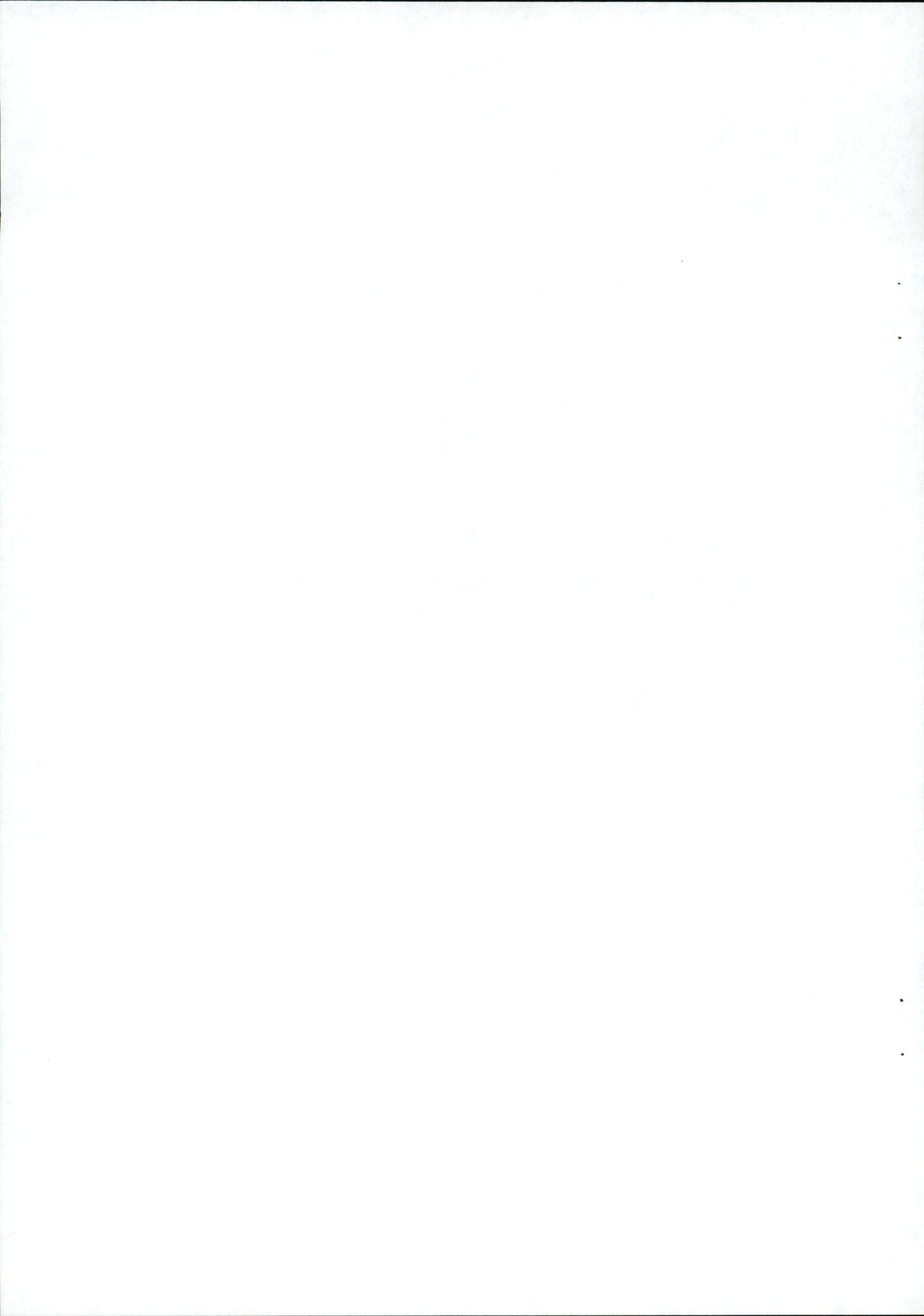


New South Wales

Parliamentary Remuneration Amendment Bill 1998

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New South Wales

Parliamentary Remuneration Amendment Bill 1998

No. , 1998

A Bill for

An Act to amend the *Parliamentary Remuneration Act 1989* to make provision for the determination of additional allowances and other entitlements of Members of Parliament and certain office holders, and to alter the basis of appointment of the Parliamentary Remuneration Tribunal; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Parliamentary Remuneration Amendment Act 1998*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Parliamentary Remuneration Act 1989 No 160

The *Parliamentary Remuneration Act 1989* is amended as set out in Schedule 1.

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4 Initial determination of additional entitlements

- (1) An initial determination relating to additional entitlements is to be made by the Parliamentary Remuneration Tribunal on or before 1 December 1998, with effect on and from 1 January 1999.
- (2) The *Parliamentary Remuneration Act 1989* as amended by this Act applies, with any necessary adaptations, to the initial determination in the same way as it applies to an annual determination.

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5 Transitional provision regarding Parliamentary Remuneration Tribunal

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- (1) If the person holding office as Parliamentary Remuneration Tribunal immediately before the commencement of this section is a Judge of the Supreme Court, the person continues to hold office as Tribunal in accordance with the *Parliamentary Remuneration Act 1989*, for the period comprising the remainder of the person's term of office, as if the amendments made by this Act to Schedule 2 to that Act had not been made.
- (2) During the period referred to in subsection (1), references in that Act to the President of the Industrial Relations Commission are taken to be references to the Chief Justice of the Supreme Court of New South Wales.
- (3) This section ceases to have effect when the office of Tribunal first becomes vacant after the commencement of this section.

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Schedule 1 Amendments

(Section 3)

[1] Section 2A

Insert after section 2:

2A Purpose of Act

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- (1) The purpose of this Act is to provide a system under which:
 - (a) all members are provided with statutory salaries (the basic salary) that are paid as personal income for the performance of their parliamentary duties as members, and 10
 - (b) all or some recognised office holders are provided with statutory additional salaries that are paid as personal income for the performance of their parliamentary duties as recognised office holders, and 15
 - (c) all or some recognised office holders are provided with statutory expense allowances for the purpose of facilitating the efficient performance of their parliamentary duties as recognised office holders, and 20
 - (d) all or some members and all or some recognised office holders may be provided with additional allowances and other entitlements for the purpose of facilitating the efficient performance of their parliamentary duties as members or recognised office holders. 25
- (2) Nothing in this section gives rise to any civil cause of action or can be taken into account in any civil proceedings. 30

[2] Section 3 Definitions

Omit the definitions of *Chief Justice* and *remuneration*.

[3] Section 3

Insert in appropriate order:

parliamentary duties of a member or recognised office holder means the duties that attach to the office of a member or recognised office holder, and includes the duties that a member or recognised office holder is ordinarily expected to undertake, including participation in the activities of recognised political parties, and includes any duties prescribed as being within this definition, but does not include any duties prescribed as being outside this definition. 5 10

President means the President of the Industrial Relations Commission.

remuneration means remuneration by way of salary, additional salary or expense allowance under Part 2. 15

[4] Section 7 Additional allowances

Omit the section.

[5] Part 3

Omit the heading to the Part.
Insert instead "Additional entitlements". 20

[6] Section 9

Omit the section. Insert instead:

9 Functions of the Tribunal

- (1) The functions of the Tribunal are:
- (a) to make determinations of additional entitlements that are to be available to a member or recognised office holder, and 25
 - (b) to approve proposed amendments to the *Parliamentary Contributory Superannuation Act 1971*. 30

- (2) The Tribunal has such other powers, authorities, duties or functions as are conferred or imposed on it by or under this or any other Act.

[7] Section 10

Omit the section. Insert instead: 5

10 General provisions as to determinations of additional entitlements

- (1) In making determinations, the Tribunal is to give effect to the following principles:
- (a) additional entitlements are to be provided for the purpose of facilitating the efficient performance of the parliamentary duties of members or recognised office holders. 10
 - (b) parliamentary duties of members and recognised office holders include participation in the activities of recognised political parties. 15
- (2) The Tribunal may by a determination fix the classes, terms and other incidents of additional entitlements.
- (3) A determination may provide for additional entitlements in any form, including but not limited to: 20
- (a) the payment of additional allowances in terms of allowances, fees and other emoluments payable in money (including for example electoral allowances, travel allowances, travel expenses, and committee allowances), and 25
 - (b) the provision of services, facilities and equipment (including for example electorate services, electorate staff, electorate offices, office equipment, travel, and communication equipment). 30
- (4) A determination may:
- (a) fix conditions on which an additional entitlement is to be provided, and may specify the form of substantiation (if any) that is required for particular kinds of additional entitlements, and 35

- (b) involve the reimbursement of the whole or a part of actual expenses, and
 - (c) identify an existing entitlement as an additional entitlement, and
 - (d) withdraw or alter an additional entitlement. 5
- (5) However, a determination may not grant, withdraw or otherwise deal with entitlements for travel outside Australia.
- (6) A determination may amend or revoke a determination that has already been made. 10
- (7) A determination or a provision of a determination may relate to all or any individual members and recognised office holders or to any class of them.
- (8) Members and recognised office holders are entitled to additional entitlements in accordance with the provisions of applicable determinations. 15
- [8] Section 11 Annual determinations of additional entitlements**
- Omit "allowances" from section 11 (1).
Insert instead "entitlements".
- [9] Section 11 (2)** 20
- Omit "Chief Justice" wherever occurring.
Insert instead "President".
- [10] Section 11 (3)**
- Insert "additional entitlements are to continue to be provided on the current basis, and additional entitlements in the nature of" after "a year."
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[11] Section 12 Special determinations of additional entitlements

Omit "allowances" wherever occurring.
Insert instead "entitlements".

[12] Section 13 Reports of the Tribunal

Omit "Chief Justice" wherever occurring.
Insert instead "President".

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[13] Section 13 (5)

Insert after section 13 (4):

- (5) Before the report of a determination is made to the President, the Tribunal is required to seek the written advice of the Secretary of the Treasury as to the financial implications of the determination. A copy of the advice is to be published as an annexure to the determination.

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[14] Section 14 Inquiries etc by the Tribunal

Insert at the end of section 14 (1) (d):

, and

- (e) is to consider any submissions furnished by the Minister.

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[15] Section 15 Payment of Parliamentary remuneration and allowances

Omit "(other than additional allowances)" from section 15 (1).

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[16] Section 15 (5)

Insert "or additional allowances" after "remuneration".

[17] Section 15A

Insert after section 15:

15A Entitlements generally

- (1) Nothing in this Act is to be construed as preventing members or recognised office holders from being provided with entitlements apart from this Act, including for example: 5
- (a) offices and facilities at Parliament House, or
 - (b) offices and facilities for Ministers elsewhere, or
 - (c) travel by Ministers. 10
- (2) To the extent to which additional entitlements under this Act, or any such entitlements provided apart from this Act, need to be funded, they are to be provided out of money to be appropriated by Parliament or otherwise legally available. 15

[18] Section 17A

Insert after section 17:

17A Rulings

- (1) The President of the Legislative Council or the Speaker of the Legislative Assembly may request the Tribunal to give a ruling on the interpretation or application of a determination. 20
- (2) The Tribunal is required to give the requested ruling within a reasonable period, unless the request is withdrawn. 25

[19] Section 18 Determinations or rulings not to be subject to judicial review

Insert “, or a ruling of the Tribunal under section 17A.” after “Tribunal”.

[20] Schedule 2 Parliamentary Remuneration Tribunal

Omit "Chief Justice" wherever occurring.
Insert instead "President".

[21] Schedule 2, clause 1 Appointment of person to constitute Tribunal

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Omit "Judge" from clause 1 (1).
Insert instead "judicial member or retired judicial member of the Industrial Relations Commission".

[22] Schedule 2, clause 1 (2)

Omit "Judge". Insert instead "person appointed".

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[23] Schedule 2, clause 1 (3)

Omit the subclause.