



REMUNERATION TRIBUNAL

Explanatory Statement: Determination 2017/15

Official Travel by Office Holders

1. The *Remuneration Tribunal Act 1973* (the Act) establishes the Remuneration Tribunal (the Tribunal) as an independent statutory authority responsible for reporting on and determining the remuneration, allowances and entitlements of key Commonwealth office holders. These include members of parliament, Judges of Federal Courts, most full-time and part-time holders of public offices including Specified Statutory Offices and Principal Executive Offices.

Consultation

2. Section 11 of the Act advises that in the performance of its functions the Tribunal:
 - may inform itself in such manner as it thinks fit;
 - may receive written or oral statements;
 - is not required to conduct any proceeding in a formal manner; and
 - is not bound by the rules of evidence.
3. The Tribunal normally receives submissions on remuneration from a portfolio minister, or a secretary, program manager or employing body (in respect of a Principal Executive Office) with responsibility for the relevant office(s). The Tribunal will normally seek the views of the relevant Portfolio Minister prior to determining remuneration for an office.
4. The Tribunal may reach a decision based on the information provided in the submission and other publicly available information such as portfolio budget statements, annual reports, corporate plans, legislation and media releases. On occasion it may wish to meet with relevant parties or seek further information from the relevant minister or person making the submission.
5. Amongst other relevant matters in deliberating on appropriate remuneration for an office the Tribunal informs itself on:
 - the main functions, responsibilities and accountabilities of the office;
 - the organisational structure, budget and workforce;
 - the requisite characteristics, skills or qualifications required of the office holder(s); and
 - the remuneration of similar, comparator, offices within its jurisdiction.

Review of Travelling Allowance

6. There was no consultation on this matter as it is the Tribunal's practice to review, each year, the travelling allowance rates available to office holders for which it determines remuneration. In conducting this review, making this Determination and adjusting travelling allowance rates the Tribunal has taken account of the Australian Taxation Office's (ATO) Determination TD 2017/19: *Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2017-18 income year?*

7. Amongst other things the ATO Determination sets out the amounts that the ATO Commissioner considers are reasonable for the substantiation exception in Subdivision 900-B of the *Income Tax Assessment Act 1997* for the 2017-18 income year in relation to claims made by employees for domestic travel expenses and overseas travel expenses.
8. Taxation Determination TD 2017/19 (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.
9. In conducting its travel review the Remuneration Tribunal exercises its powers under sub-sections 5(2A), 7(3) and 7(4) of the *Remuneration Tribunal Act 1973*. In making Remuneration Tribunal Determination 2017/15 the Tribunal decided that the arrangements set out at Table 9 (Table of countries) of TD 2017/19 are appropriate for office holders in its jurisdiction to cover meal and incidental expenses incurred while travelling overseas. Rather than replicate the detailed tables and related allowance rates in its determination the Tribunal has incorporated these by reference to TD2017/19. The Tribunal has aligned the cost groups contained in TD2017/19 to the travel tiers that it sets from time to time for office holders.
10. Taxation Determination TD 2017/19 is available online for free at <http://law.ato.gov.au/atolaw/view.htm?docid=%22TXD%2FTD201719%2FNAT%2FATO%2F00001%22>.
11. Remuneration Tribunal Determination 2017/15 includes substantively similar provisions to the previous Determination with minor adjustments to most travelling allowance rates. Changes to travelling allowance rates are consistent with the ATO Determination.

Retrospectivity

12. Any retrospective application of this Determination is in accordance 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.

The power to repeal, rescind and revoke, amend and vary

13. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Details of the determination are as follows:

PART 1 - GENERAL

14. Clauses 1.1 to 1.3 of Part 1 specify the authority for, and the date of effect of, the Determination and notes that it supersedes and revokes the previous Principal Determination 2016/07 – Official Travel by Office Holders.
15. Clause 1.4 notes that the travel tier relevant to individual office holders is determined in the Determinations that set out remuneration for those office holders. It also sets out the interaction between the provisions of this Determination and other Determinations that may contain specific provisions for an office or group of offices. In such a case, the specific provision in another Determination will apply to the extent of any inconsistency.
16. Clause 1.5 outlines the offices to which the Determination applies.
17. Clause 1.6 sets out the definitions of certain words and phrases used in the Determination.
18. Clause 1.7 sets out the general principles that apply to travel on official business, including a requirement for office holders to consider any travel-related administrative guidelines put in place by their agency.

19. The provisions in Part 1 are unchanged from those contained in Part 1 of the superseded determination.

PART 2 – TRAVEL ON OFFICIAL BUSINESS

20. Clauses 2.1 to 2.4 of Part 2 set out provisions relating to class of travel, including travel by the office holder when accompanying a person travelling at a higher class of travel or when accompanied by a spouse/partner.
21. Clause 2.5 encourages office holders to use their agency's travel-related preferred provider arrangements where these exist.
22. Clause 2.6 provides that frequent flyer points accrued at the Commonwealth's expense should not be used for private purposes.
23. The provisions in Part 2 are unchanged from those contained in Part 2 of the superseded determination.

PART 3 – TRAVEL EXPENSES

24. Part 3 sets out general conditions applying to the payment of travelling expenses, with Clauses 3.5 to 3.9 focusing particularly on domestic travel and Clauses 3.10 to 3.11 on overseas travel.
25. Clauses 3.5 to 3.9 refer to Schedule A of the Determination, which sets out the new travelling allowance rates payable for travel to various Australian cities, towns and other centres, for each of the three travel tiers, with effect on and from 27 August 2017.
26. With the exception of the rate changes referenced above, the provisions in Part 3 are unchanged from those contained in Part 3 of the superseded determination.

PART 4 – OFFICIAL TRAVEL BY MOTOR VEHICLE

27. Part 4 provides that an office holder may choose to hire a vehicle or to use his or her own vehicle for the purposes of travel on official business where it is demonstrably in the interest of the Commonwealth to do so. In these cases, the Commonwealth will meet the cost of the rental vehicle or pay the per kilometre rate of motor vehicle allowance set out in Table 4A of the Determination.
28. The rates specified and the other provisions in Part 4 are unchanged from those contained in Part 4 of the previous amended Determination.

Authority: Subsections 5(2A), 7(3) and 7(4) of the Remuneration Tribunal Act 1973

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Remuneration Tribunal Determination 2017/15

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This Legislative Instrument, or Determination, supersedes and revokes the previous Principal Determination 2016/07 - *Official Travel by Office Holders*.

Its major purpose is to adjust the travelling allowance amounts for offices within the Remuneration Tribunal's jurisdiction, including judicial offices. In doing this, it closely reflects the amounts determined by the Australian Taxation Office as reasonable travel expense amounts in Taxation Determination TD 2017/19: *Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2017-18 income year?*

The Determination includes substantively similar provisions to the previous Principal Determination, as amended, with minor adjustments to most allowance rates.

The instrument maintains the principle of just and favourable conditions of work.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Remuneration Tribunal