



REMUNERATION TRIBUNAL

Explanatory Statement: Remuneration Tribunal (Official Travel) Determination 2018

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 Judges of Federal Courts and most full-time and part-time holders of public offices, including Specified Statutory Offices. An additional function of the Tribunal is to determine a classification structure for Principal Executive Offices and the terms and conditions applicable to each classification within the structure.

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 Travel and Motor Vehicle Allowances

6. There was no consultation on this matter as it is the Tribunal's practice to review, each year, the travel and motor vehicle allowance rates available to office holders for which it determines remuneration.
7. The Tribunal did not receive any submissions on this matter.

8. In conducting this review, making this determination and adjusting travel allowance rates the Tribunal has relied on the Australian Taxation Office's (ATO) *Determination TD 2018/11: Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2018–19 income year?* (TD 2018/11).
9. 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 2018–19 income year in relation to claims made by employees for domestic travel expenses and overseas travel expenses.
10. Taxation Determination TD 2018/11 (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953* and is available online for free at <https://www.ato.gov.au/law/view/view.htm?docid=%22TXD%2FTD201811%2FNAT%2FATO%2F00001%22>.
11. In making this determination the Tribunal decided that the arrangements set out at Table 9 (Table of countries) of TD 2018/11 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 TD 2018/11. The Tribunal has aligned the cost groups contained in TD 2018/11 to the travel tiers that it sets from time to time for office holders.
12. In conducting this review, making this determination and adjusting the motor vehicle allowance rate the Tribunal has relied on the ATO's *Income Tax Assessment Act 1997 – Cents per Kilometre Deduction rate for Car Expenses 2018* (MVE 2018). Subsection 28-25(4) of the *Income Tax Assessment Act 1997* allows the Commissioner of Taxation to determine the rate for the cents per kilometre method for an income year. The determination applies to eligible taxpayers who elect to use the cents per kilometre method when calculating income tax deductions for their work-related car expenses. This instrument is available online for free at <https://www.ato.gov.au/law/view/document?LocID=%22ITD%2FMVE20161%22&PiT=99991231235958>
13. *Remuneration Tribunal (Official Travel) Determination 2018* applies the Tribunal's 2018 travel and motor vehicle allowance review decisions.

Restructure of Determination

14. As part of the travel and motor vehicle allowance review process, the Tribunal has taken the opportunity to review, restructure and reformat the determination to reflect standard Commonwealth drafting practice and to improve clarity and readability. The Office of Parliamentary Counsel was engaged to assist in this process.
15. *Remuneration Tribunal (Official Travel) Determination 2018* includes substantively similar provisions to the previous principal determination with minor adjustments to most allowance rates.

Retrospectivity

16. 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

17. 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 – PRELIMINARY

18. Part 1 specifies the authority for and the commencement date of the determination and supersedes the previous principal determination, *Determination 2017/15: Official Travel by Office Holders* (as amended) applying to the offices covered by this determination. This Part also contains definitions of certain words used in the determination.

PART 2 – GENERAL PROVISIONS

19. Part 2 sets out the purpose and application of the determination and the general principles for administering the determination.

PART 3 – TRAVEL ON OFFICIAL BUSINESS

20. Part 3 sets out the provisions for travel including class of travel, upgrades and accompanied travel provisions.

PART 4 – TRAVEL EXPENSES AND TRAVEL ALLOWANCE

21. Part 4 sets out the payment arrangements and other related matters, including travel within Australia and overseas, accompanied accommodation costs and provisions for partial payments.

PART 5 – OFFICIAL TRAVEL BY MOTOR VEHICLE

22. Part 5 sets out the provisions for travel by motor vehicle including motor vehicle allowance.

PART 6 – RATES OF TRAVEL ALLOWANCE

23. Part 6 sets out the rates of travel allowance for capital cities and country centres.

SCHEDULE 1 – REPEALS

24. Schedule 1 specifies instruments which have been amended or repealed.

Authority: Subsections 5(2A) and 7(3) and (4)
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 (Official Travel) Determination 2018

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

The Legislative Instrument, or determination, applies the Tribunal's 2018 travel and motor vehicle allowance review decisions effective from 26 August 2018.

The determination has been restructured and reformatted to reflect standard Commonwealth drafting practice and to improve clarity and readability.

The determination supersedes the previous *Determination 2017/15 - Official Travel by Office Holders* (as amended).

The major purpose of the determination is to adjust the travel 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 2018/11: Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2018-19 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 fair, and current, remuneration for work performed.

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.

The Remuneration Tribunal