



## REMUNERATION TRIBUNAL

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### **Explanatory Statement: Remuneration Tribunal (Official Travel) Determination 2022**

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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 allowances applicable 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 Taxation Determination *TD 2022/10: Income tax: what are the reasonable travel and overtime meal allowance expense rates for the 2022-23 income year?* (TD 2022/10).
9. Amongst other things, the Australian Taxation Office (ATO) determination sets out the amounts that the Commissioner of Taxation considers are reasonable for the substantiation exception in Subdivision 900-B of the *Income Tax Assessment Act 1997* for the 2022–23 income year in relation to claims made by employees for domestic travel expenses and overseas travel expenses.
10. TD 2022/10 (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953* and is available online at <https://www.ato.gov.au/law/view/pdf/pbr/td2022-010.pdf>
11. In making this Determination, the Tribunal decided that the arrangements set out at Table 9 (Table of countries) of TD 2022/10 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 2022/10. The Tribunal has aligned the cost groups contained in TD 2022/10 to the travel tiers that it sets from time to time for office holders.
12. The Tribunal has aligned the motor vehicle allowance with the rate for the cents per kilometre method of calculating income tax deductions for work-related car expenses which is determined by the Commissioner of Taxation in accordance with subsection 28-25(4) of the *Income Tax Assessment Act 1997*. The current instrument is *Income Tax Assessment Act 1997 – Cents per Kilometre Deduction Rate for Car Expenses Determination 2022* (MVE 2022) which is available online at <https://www.ato.gov.au/law/view/document?LocID=%22OPS%2FLI202224%22&PIT=99991231235958>
13. In conducting this review, the Tribunal noted that the ATO had adjusted its cents per kilometre rate for 2022. The Tribunal has, accordingly, increased the motor vehicle allowance to align with MVE 2022.

### **Retrospectivity**

14. 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.

### **Exemption from sunseting**

15. Under section 12, item 56 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, an instrument required to be laid before the Parliament under subsection 7(7) of the *Remuneration Tribunal Act 1973* is exempt from the provisions of paragraph 54(2)(b) of the *Legislation Act 2003*.

16. This exemption has been granted by the Attorney-General because the Remuneration Tribunal has a statutory role independent of government.
17. As the Remuneration Tribunal makes new principal determinations annually, this principal determination is unlikely to have any practical effect beyond the usual 10 year sunset period. As such, the exemption from sunset will not have a practical impact on parliamentary oversight of the relevant measures.

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

18. 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**

19. Part 1 specifies the authority for and the commencement date of the determination and supersedes the previous principal determination, *Remuneration Tribunal (Official Travel) Determination 2019*, applying to the offices covered by this determination. This Part also contains definitions of certain words used in the determination.

#### **PART 2 – GENERAL PROVISIONS**

20. 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**

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

#### **PART 4 – TRAVEL EXPENSES AND TRAVEL ALLOWANCE**

22. 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**

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

#### **PART 6 – RATES OF TRAVEL ALLOWANCE**

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

#### **SCHEDULE 1 – REPEALS**

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

**Authority:** Sub-sections 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 2022**

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 2022 travel and motor vehicle allowances review decisions effective from 28 August 2022.

The determination supersedes the previous principal determination *Remuneration Tribunal (Official Travel) Determination 2019*.

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 2022/10: Income tax: what are the reasonable travel and overtime meal allowance expense rates for the 2022-23 income year?*

The determination includes substantively similar provisions to the previous principal determination with adjustments to 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**