



Australian Capital Territory Remuneration Tribunal

## **ACT Civil and Administrative Tribunal**

### **Determination 19 of 2017**

made under the

Remuneration Tribunal Act 1995, section 10 (Inquiries about holders of certain positions)

### **ACCOMPANYING STATEMENT**

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#### **Background**

Under section 10 of the *Remuneration Tribunal Act 1995*, the Remuneration Tribunal (the Tribunal) is required to inquire into, and determine, the salary, allowances and other entitlements for the ACT Civil and Administrative Tribunal (ACAT) Presidential Members and non-Presidential Members, other than Assessors.

#### **Considerations**

The Tribunal's 2017 review of remuneration and entitlements for the ACAT was advertised in September 2017. The President provided a submission.

The Tribunal met on 25-26 October 2017 and this determination sets out the Tribunal's decision following the review. The President appeared before the Tribunal at this hearing.

The submission highlighted technical issues which meant that Acting Presidential Members are paid less than a Presiding Senior Member when acting for an ACAT Presidential Member.

The submission also outlined the increase in work value of the full-time Senior Member. The full-time Senior Member is a relatively new position which has significant case management and administrative responsibilities, as well as hearing and conference responsibilities and the writing of reserved decisions.

In considering remuneration and allowances for the ACAT positions, the Tribunal noted the Government Submission provided by the Chief Minister and discussions with the Justice and Community Safety Directorate. Treasury officials provided a comprehensive briefing to the Tribunal on the prevailing economic circumstances for 2017 and forecasts for the coming years.

## Decision

The Tribunal determined the remuneration for the following positions with an approximate 3% increase:

- President is \$354,407 per annum;
- Full-time Presidential Member is \$265,805 per annum; and
- Part-time Presidential Member is \$177,203 per annum.

In recognition of the increased work value, the Tribunal determined the remuneration for the Full-time Senior Member would be increased to \$180,124 per annum.

The Tribunal determined the remuneration for the following positions with an approximate 2.5% increase (rounded up to the nearest \$5):

- Senior Member, ACAT: \$1,070 per diem;
- Ordinary Member, ACAT: \$495 per diem.

The Tribunal have amended the wording relating to the payment of a Sessional Acting Presidential Member to ensure that relativities between the classifications are maintained.

November 2017



## Australian Capital Territory Remuneration Tribunal

# ACT Civil and Administrative Tribunal

## Determination 19 of 2017

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Remuneration Tribunal Act 1995, section 10 (Inquiries about holders of certain positions)

### 1 Commencement

1.1 This instrument commenced on 1 November 2017.

### 2 Remuneration

2.1 A person appointed to an office listed in column 1 of Table 2.1 is entitled to the remuneration mentioned in column 2 of Table 2.1.

**TABLE 2.1**

Column 1 Office	Column 2 Remuneration
<b>Presidential Members</b>	
President, ACAT	\$354,407 per annum
Full-time Presidential Member, ACAT	\$265,805 per annum
Part-time Presidential Member, ACAT	\$177,203 per annum
<b>Sessional Acting Presidential Member</b>	
Sessional Acting Presidential Member, ACAT	Paid at the daily rate of 1/230 of the rate paid to the President
<b>Full-time Senior Member</b>	
Full-time Senior Member, ACAT	\$180,124 per annum
<b>Part-time Non-Presidential Members</b>	
Senior Member, ACAT	\$1,070 per diem
Ordinary Member, ACAT	\$495 per diem

### 3 Salary packaging

- 3.1 A person appointed to an office listed in clause 2.1 of this Determination may elect to take the remuneration outlined in clause 2.1 as:
- a) salary; or
  - b) a combination of salary and other benefits (a **salary package**).
- 3.2 Salary packaging must be consistent with:
- a) taxation laws and guidelines issued by the Australian Taxation Office; and
  - b) any salary packaging policy and/or procedures issued for the ACT Public Service, with up to 100% of the remuneration able to be taken as benefits and related costs such as fringe benefits tax.
- 3.3 Salary packaging must be administered without additional cost to the employer and any fringe benefits tax associated with the provision of a benefit must be included in the salary package.
- 3.4 Salary for superannuation purposes is not affected by salary packaging.

### 4 Allowances and entitlements

- 4.1 A person appointed to an office listed in column 1 of Table 4.1 of this Determination is entitled to the allowances and entitlements set out in the schedule mentioned in column 2 of Table 4.1.

**TABLE 4.1**

Column 1 <b>Office</b>	Column 2 <b>Schedule</b>
<b>Presidential Members</b>	
President, ACAT	Schedule 1
Full-time Presidential Member, ACAT	Schedule 1
Part-time Presidential Member, ACAT	Schedule 1
<b>Sessional Acting Presidential Member</b>	
Sessional Acting Presidential Member, ACAT	Schedule 2
<b>Full-time Senior Member</b>	
Full-time Senior Member, ACAT	Schedule 1
<b>Part-time Non-Presidential Members</b>	
Senior Member, ACAT	Schedule 3
Ordinary Member, ACAT	Schedule 3

- 4.2 The value of an allowance or entitlement set out in this Determination is fixed and cannot be transferred to any other component of the total remuneration package.

## 5 Employer's superannuation contribution

- 5.1 A person, appointed to an office in clause 2.1 of this Determination, is only eligible for the employer's superannuation contribution if their superannuation entitlements are not provided elsewhere.
- 5.2 For a person, appointed to an office in clause 2.1 of this Determination, who is a member of the Commonwealth Superannuation Scheme (CSS) or Public Sector Superannuation (PSS) Scheme:
- a) the person's annual rate of remuneration for the purposes of the scheme is the base remuneration as provided in clause 2.1 of this Determination; and
  - b) the value attributed to the employer's superannuation contribution is taken to be a notional 16% of the person's base remuneration.
- 5.3 For a person, appointed to an office in clause 2.1 of this Determination, who is not currently a member of the CSS or PSS but was a member of the PSS Accumulation Plan (PSSap) until it closed to the Territory on 30 June 2006, and has maintained continuous employment with the Territory:
- a) the value of the employer's superannuation contribution is a notional 16% of the base remuneration as provided in clause 2.1 of this Determination; and
  - b) the employer will contribute that amount to an agreed superannuation fund nominated by the person appointed to an office in clause 2.1 of this Determination.
- 5.4 For a person, appointed to an office in clause 2.1 of this Determination, who is a member of any other superannuation fund, the employer's superannuation contribution is to be made at a rate no less than the Employer Superannuation Guarantee Charge Percentage as provided by the *Superannuation Guarantee (Administration) Act 1992*.
- 5.5 For 2016-17 onwards, the Territory's enhanced minimum employer superannuation contribution is 10.5%.
- 5.6 For the avoidance of doubt, section 642 of the *Public Sector Management Standards 2006 (repealed)*, or this section's replacement, applies to persons who are not current CSS or PSS members or appointed to or engaged by the Territory before 30 June 2006 and maintained continuous employment with the Territory.
- 5.7 The value of the employer's superannuation contribution must not be paid in cash to a person appointed to an office in clause 2.1 of this Determination.

## 6 Travelling arrangements

- 6.1 In this clause:

**domestic travel** means official travel to a destination within Australia.

**international travel** means official travel to a destination outside Australia.

**reasonable expenses** means legitimate work-related expenses incurred while conducting official business efficiently and effectively.

**traveller** means a person, appointed under clause 2.1 of this Determination, who is travelling away from their normal place of work for official purposes.

- 6.2 If a traveller is required to travel for official purposes outside of Canberra, the employer must pay the cost of the flights and accommodation expenses outlined below. The reasonable amounts set out in the relevant Australian Taxation Office Determinations<sup>1</sup> relating to meal and incidental expenses will be paid to the traveller as a reimbursement.
- 6.3 All reasonable expenses incurred by a traveller can be reimbursed. It is the intention of these travel arrangements that no traveller who travels for official purposes should be out of pocket, however they must be reasonable expenses.

#### **Travel**

- 6.4 All official travel is to be appropriately authorised prior to travel and must not be authorised by the traveller under any circumstances. This includes all official travel paid for privately or by the Territory.
- 6.5 A traveller may travel by one or more of the following:
- a) commercially provided road or rail transport;
  - b) commercially provided flights;
  - c) private motor vehicle.
- 6.6 Commercially provided travel should be selected on the basis of—
- a) what is most convenient to the person; and
  - b) seeking the most reasonable costs.
- 6.7 If a traveller travels on commercially provided road or rail transport the employer will pay the fares for that travel.
- 6.8 A traveller can use the Territory's travel manager, which has been procured through a competitive process, as a preferred provider of travel and related services. The travel manager has been instructed to book all travel at the lowest logical fare.
- 6.9 If a traveller travels on commercially provided flights, the employer will pay the fares to the following standard:
- a) for domestic flights less than 4 hours—economy class;
  - b) for domestic flights of 4 hours or more—business class; and
  - c) for international flights—business class.
- 6.10 If a traveller is approved to travel by private motor vehicle the employer will pay the owner of the vehicle an allowance calculated in accordance with the Motor Vehicle Allowance set out in the *ACT Public Service Administrative and Related Classifications Enterprise Agreement 2013-2017*, or its replacement.

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<sup>1</sup> Taxation Determination (2017/19) or its replacement - Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2017-18 income year?

## **Accommodation**

- 6.11 It is standard practice that where an executive traveller must stay overnight while on official travel, the employer will pay the costs for commercial accommodation to the following standard:
- a) for domestic accommodation—4.5 stars; and
  - b) for international accommodation—4.5 stars.
- 6.12 The employer will pay for a traveller to stay in commercial accommodation above the 4.5 star standard and the amounts set out in the relevant Australian Taxation Office Determinations if—
- a) the cost is reasonable; and
  - b) to do so would better enable business objectives to be met.

Examples where business objectives may be better met:

- to allow a traveller to stay in the commercial accommodation where a meeting, conference or seminar they are attending is being held;
- to allow a traveller who is traveling with a Minister to stay in the same commercial accommodation as the Minister, if the Minister is entitled to a higher standard of accommodation.

## **Meals**

- 6.13 If a traveller is absent from Canberra for more than ten hours while on official travel, the employer will reimburse actual, reasonable expenses for meals up to the amounts set out in the relevant Australian Taxation Office Determinations.

## **Incidental expenses**

- 6.14 The employer will reimburse all reasonable expenses and legitimate expenses directly related to official travel up to the amounts set out in the relevant Australian Taxation Office Determinations, including:
- a) taxi, ridesharing service (such as uber) or bus fares to or from an airport; and
  - b) taxi, ridesharing service (such as uber) and public transport costs at a temporary location; and
  - c) airport taxes or charges.

## **Frequent Flyer points**

- 6.15 Frequent flyer points can no longer be accrued or used by a traveller as a result of travel and accommodation paid for by the employer for official travel.

## **7 Incidental travel in conjunction with official travel**

- 7.1 Authorised travellers wishing to take personal leave during, or at the conclusion of official travel should obtain the appropriate approval consistent with the agreed travel arrangements.
- 7.2 Travellers may combine incidental personal travel with official travel, provided there is no additional cost to the Territory. Expenses incurred during leave are at the traveller's own cost. If the period of such incidental travel is greater than 40% of the period of official travel, a pro rata contribution must be made to the overall cost of the travel.

- 7.3 If insurance has been obtained for official travel, it will not cover the traveller for the duration of the personal leave.

## 8 Travel insurance

- 8.1 Travel insurance decisions should be based on risk management principles and include factors such as the nature and destination of the trip.
- 8.2 International travel will normally require travel insurance.
- 8.3 If necessary, the cost of travel insurance will be met as a reasonable work related expense by the Territory.
- 8.4 All legitimate and reasonable work related claims will be covered by the Territory.

## 9 Definitions

- 9.1 In this Determination:

**ACAT** means the ACT Civil and Administrative Tribunal.

**agreed superannuation fund** means a fund complying with the requirements of:

- the *Income Tax Assessment Act 1936* (Cth); and
- the *Superannuation Industry (Supervision) Act 1993* (Cth).

**CSS** means the Commonwealth Superannuation Scheme.

**domestic travel** means official travel to a destination within Australia.

**employer** means the Australian Capital Territory and includes any person authorised to act on behalf of the Australian Capital Territory.

**fringe benefits tax** means the tax assessed under the *Fringe Benefits Tax Assessment Act 1986*.

**international travel** means official travel to a destination outside Australia.

**PSS** means the Public Sector Superannuation Scheme.

**PSSap** means the PSS Accumulation Plan.

**reasonable expenses** means legitimate work-related expenses incurred while conducting official business efficiently and effectively.

**total remuneration package** includes remuneration set out in clause 2.1, all employer provided benefits, and all allowances. The value of an allowance or entitlement set out in this Determination is fixed and cannot be transferred to any other component of the total remuneration package.

**traveller** means a person, appointed under clause 2.1 of this Determination, who is travelling away from their normal place of work for official purposes.

## 10 Revocation of previous Determinations

- 10.1 Determination 11 of 2016 (Amended) is revoked.

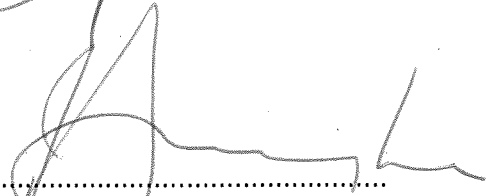


Dr Colin Adrian  
Chair



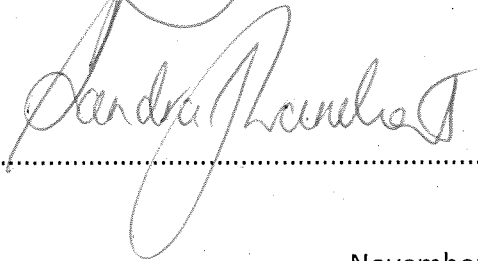
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Mr James Smythe PSM  
Member



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Ms Sandra Lambert AM  
Member



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November 2017

## SCHEDULE 1—PRESIDENTIAL MEMBERS AND FULL-TIME SENIOR MEMBER

### 11 Employer provided benefits

- 11.1 A President Member and Full-time Senior Member is entitled to either the employer provided benefits mentioned below or the relevant cash payment in lieu of the benefit mentioned below.

Note: employer provided benefits or cash payment in lieu of the benefit do not change the remuneration component of the total remuneration package.

### 12 Vehicle

- 12.1 A person appointed to an office, outlined below, is entitled to an executive vehicle and associated arrangements, including a parking space, in accordance with the same entitlements as a Senior Executive Service (SES) member under the *Public Sector Management Standards* and the *Guidelines for the Management and Use of Executive Vehicles*:
- President, ACAT: same arrangements as a Band 3 SES member;
  - Full-time Presidential Members, ACAT: same arrangements as a Band 2 SES member;
  - Part-time Presidential Member, ACAT: same arrangements as a Band 1 SES member;
  - Full-time Senior Member, ACAT: same arrangements as a Band 1 SES member.
- 12.2 For the avoidance of doubt and despite anything to the contrary, the Remuneration Tribunal determines that Part 9.5 (Executive and Statutory Office-Holder vehicle entitlements) of the *Public Sector Management Standards 2006* (repealed) applies to the offices specified in clause 2.1 of this Determination.
- 12.3 In relation to the full-time Presidential Members, the part-time Presidential Member and the full-time Senior Member, any references to the Head of Service or Director-General in these specific sections should be read as the President.
- 12.4 In relation to the President, any references to the Head of Service or Director-General in these specific sections should be read as the Attorney-General.

#### Fringe benefit tax

- 12.5 The fringe benefits tax payable by the employer to the Australian Taxation Office is the amount remaining after the employer's liability for fringe benefits tax is calculated, as required under the *Fringe Benefits Tax Assessment Act 1986*.
- 12.6 The executive vehicle and employer's superannuation contribution set out in the *Public Sector Management Standards 2016* are considered for calculating fringe benefits tax.
- 12.7 A provisional amount of \$7,000 is available to cover the cost of any fringe benefit tax for a vehicle or parking space. If the liability for fringe benefits tax is less than \$7,000, the excess is payable to the President Member and Full-time Senior Member. If the

liability for fringe benefits tax exceeds \$7,000, the President Member and Full-time Senior Member will not be required to pay the excess to the employer. Any unused fringe benefit tax allowance paid to a President Member and Full-time Senior Member will be subject to tax, if paid as remuneration.

- 12.8 The provisional amount of \$7,000 in fringe benefits tax is reduced proportionally if a President Member and Full-time Senior Member is appointed for less than a fringe benefit tax year.

### **13 Relocation allowance**

- 13.1 In this clause:

**ACT** includes the surrounding district, including Queanbeyan.

**relocation** means from a residence outside the ACT to a residence in the ACT.

- 13.2 Relocation allowance is provided to assist an individual with relocation.
- 13.3 Relocation allowance will not cover the total cost of relocation in all circumstances.
- 13.4 The maximum relocation allowance is \$51,533.
- 13.5 If a President Member and Full-time Senior Member relocates because of this appointment, the person is entitled to be reimbursed up to the maximum relocation allowance, for receipted, reasonable costs of the following:
- a) packing personal effects and furniture belonging to the person and their family;
  - b) necessary storage of personal effects and furniture;
  - c) removal costs and associated insurance of personal effects and furniture;
  - d) unpacking of personal effects and furniture;
  - e) costs of travel, accommodation and meals between the former location and the ACT;
  - f) temporary accommodation costs at the former location and in the ACT up to a maximum aggregate period of six months, or, in exceptional circumstances, nine months with the approval of the ACT Remuneration Tribunal;
  - g) costs of disconnection and reconnection of utilities;
  - h) cost of stamp duty and legal and professional services associated with the sale of the residence at the former location and/or the purchase of a residence or lease on a block of land in the ACT;
  - i) subject to the approval of the ACT Remuneration Tribunal, any other reasonable expenses necessarily incurred in relocating to the ACT.
- 13.6 The maximum relocation allowance may be exceeded if the ACT Remuneration Tribunal agrees—
- a) there are unusual or exceptional circumstances; and
  - b) the unusual or exceptional circumstances were unforeseen or unable to be dealt with without exceeding the maximum relocation allowance.

- 13.7 If a President Member and Full-time Senior Member thinks that unusual and exceptional circumstances exist, they may ask the ACT Remuneration Tribunal to consider the matter and determine whether the maximum relocation allowance can be exceeded. A request must be in writing and must include—
- a) details of the unusual or exceptional circumstances; and
  - b) details of the relocation; and
  - c) expenses incurred by the Presidential Member or Full-time Senior Member; and
  - d) the expected total relocation expenses of the Presidential Member or Full-time Senior Member; and
  - e) the level of assistance the Presidential Member considers should be provided; and
  - f) any other relevant information.
- 13.8 Relocation allowance does not apply to any expenses incurred at the conclusion of employment.

#### **14 Leave**

- 14.1 A Presidential Member or Full-time Senior Member is eligible for leave as set out in the *ACT Public Service Administrative and Related Classifications Enterprise Agreement 2013 – 2017*, or its replacement.
- 14.2 In relation to the full-time Presidential Members, the part-time Presidential Member and the full-time Senior Member, any reference to the Head of Service in the Enterprise Agreement should be read as the President, ACAT.
- 14.3 In relation to the President, any reference to the Head of Service in the Enterprise Agreement should be read as the Attorney-General.

## SCHEDULE 2—SESSIONAL ACTING PRESIDENTIAL MEMBERS

### 15 Conditions of payment of daily fees

- 15.1 When Sessional Acting Presidential Members are acting for the President, they are paid at the daily rate of 1/230 of the rate paid to the President.
- 15.2 When Sessional Acting Presidential Members are acting for a Presidential Member, they must be paid the percentage of the daily fee set out in column 3 of Table 15 if they undertake the corresponding type of work for the number of hours set out in columns 2 and 1 respectively.

**TABLE 15**

Column 1 Hours worked in one day	Column 2 Type of work	Column 3 Percentage of daily fee	Column 4 Calculation Rate
5 hours or more, comprised of periods each at least 1 hour long.	<ul style="list-style-type: none"> <li>ACAT business on a day when there is no formal meeting.</li> </ul>	100%	1/230
3 hours or more, in a single period	<ul style="list-style-type: none"> <li>Formal meetings; and/or</li> <li>ACAT business</li> </ul>	100%	1/230
Between 2 and 3 hours in a single period	<ul style="list-style-type: none"> <li>Formal meetings; or</li> <li>Formal meetings and ACAT business</li> </ul>	60%	1/230 x 60%
Less than 2 hours, in a single period	<ul style="list-style-type: none"> <li>Formal meetings</li> </ul>	40%	1/230 x 40%

- 15.3 The maximum payment that a Sessional Acting Presidential Member can receive for one day is 100% of the daily fee.
- 15.4 The daily fee for a formal meeting includes a component to cover normal preparation time, however, if the President considers it appropriate that a period of preparation time beyond this warrants recognition, the President may determine that payment in accordance with the scheduled fee is be payable for such periods as if it was ACAT business.
- 15.5 For each day a daily fee is paid, the President must certify the hours worked including reasonable travelling time of the Sessional Acting Presidential Member.
- 15.6 In this clause:  
**ACAT business** means any approved ACAT business conducted by an Acting Presidential Member of ACAT other than attendance at a formal meeting.

## SCHEDULE 3—PART-TIME NON-PRESIDENTIAL MEMBERS (Senior Members, Ordinary Members)

### 16 Conditions of payment of daily fees

- 16.1 A part-time non-Presidential Member must be paid the percentage of the daily fee referred in Table 2.1, as set out in column 3 of Table 16 if the person undertakes the corresponding type of work for the number of hours set out in columns 2 and 1 respectively.

**TABLE 16**

Column 1 Hours worked in one day	Column 2 Type of work	Column 3 Percentage of daily fee
5 hours or more, comprised of periods each at least 1 hour long	<ul style="list-style-type: none"> <li>ACAT business on a day when there is no formal meeting</li> </ul>	100%
3 hours or more, in a single period	<ul style="list-style-type: none"> <li>formal meetings; and/or</li> <li>ACAT business</li> </ul>	100%
between 2 and 3 hours, in a single period	<ul style="list-style-type: none"> <li>formal meetings; or</li> <li>formal meetings and ACAT business</li> </ul>	60%
less than 2 hours, in a single period	<ul style="list-style-type: none"> <li>formal meetings</li> </ul>	40%

- 16.2 The maximum payment that a part-time non-Presidential Member can receive for one day is 100% of the daily fee.
- 16.3 The daily fee for a formal meeting includes a component to cover normal preparation time, however, if the President considers it appropriate that a period of preparation time beyond this warrants recognition, the President may determine that payment in accordance with the scheduled fee is be payable for such periods as if it was ACAT business.
- 16.4 For each day a daily fee is paid, the President must certify the hours worked including reasonable travelling time of the part-time, non-Presidential Member.
- 16.5 In this clause:

**ACAT business** means any approved ACAT business conducted by a part-time, non-Presidential Member of ACAT other than attendance at a formal meeting.

### 17 Additional payment – Senior Members and Ordinary Members acting as Presiding Members

- 17.1 If a tribunal has two or more members, an additional payment of 10% of the daily fee is payable to any member who is the presiding member.
- 17.2 The additional payment applies to all hours worked, including preparation time, the hearing and any post hearing work.