



REMUNERATION TRIBUNAL

Replacement Explanatory Statement: Remuneration Tribunal (Members of Parliament) Amendment Determination (No. 2) 2022

1. The determination is made under sections 45 and 46 of the *Parliamentary Business Resources Act 2017* (the PBR Act), which gives the Tribunal power to make determinations in relation to various matters for members, and former members, of the Parliament at least once each year.
2. The Tribunal must determine the remuneration to be paid to members, the rates of travel allowances for domestic travel, and the allowances and expenses to be paid to former members. The Tribunal must publish its reasons for making a determination.
3. The Tribunal also has functions under section 35 of the PBR Act relating to travel expenses, travel and motor vehicle allowances and other public resources. The Tribunal must inquire annually into travel expenses and travel allowances for domestic travel (except rates of travel allowances for domestic travel which it determines), and may be asked by the Special Minister of State to inquire into other matters. Regulations must be made or amended in accordance with the Tribunal's recommendations.

Consultation

Determination of Office Holder's Salary

4. On 20 July 2022, the Special Minister of State, Senator the Hon Don Farrell, referred to the Tribunal a request from Mr Adam Bandt MP, Leader of the Australian Greens, to determine office holder's salary for a number of parliamentary offices not currently included in the Parliamentary Business Resources (Office Holder) Determination 2017 (PBR determination).
5. The Tribunal decided not to determine remuneration for any offices not already listed in the PBR determination. It agreed to remove the upper limit of 10 members for the offices of Whip in the House of Representatives of a minority party; Whip in the Senate of a minority party; and Deputy Whip in the House of Representatives of a minority party. The lower limit of five members remains.

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 for parliamentarians 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. The travel allowance rates for parliamentarians include the Canberra rate that is set at a lower rate than that available to other office holders in the Tribunal’s jurisdiction, the Prime Minister’s travel allowance rate, and the meals and incidentals rate for Ministers provided with accommodation.
12. Consistent with the methodology applied for other office holders in its jurisdiction, the Tribunal adjusted the existing rates for the Canberra travel allowance and the Prime Minister’s travel allowance by the average percentage increase in the relevant ATO rates from the year of the last increase to the current year.
13. The Tribunal aligns the private vehicle allowance for parliamentarians 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>
14. 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.
15. The Tribunal’s Reasons for Determination are available at www.remtribunal.gov.au.

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.

Exemption from disallowance

17. Subsection 47(7) of the PBR Act provides that this determination is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to it.

18. Exemption from disallowance is appropriate in the context of this instrument, as it amends the entitlements of Senators and Members of the House of Representatives.

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

19. 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:

Section 1 – Name

20. Section 1 specifies the name of the instrument.

Section 2 – Commencement

21. Section 2 specifies the commencement date of the instrument.

Section 3 – Authority

22. Section 3 specifies the authority for the instrument.

Section 4 – Schedules

23. Section 4 outlines the effect of instruments specified in a Schedule to the instrument.

SCHEDULE 1—AMENDMENTS COMMENCING DAY AFTER REGISTRATION

Remuneration Tribunal (Members of Parliament) Determination 2022

24. Item 1 amends the table item in Schedule A dealing with the Whip in the House of Representatives of a minority party by removing the upper limit of specified members by omitting: “, and no more than 10,”
25. Item 2 amends the table item in Schedule A dealing with the Whip in the Senate of a minority party by removing the upper limit of specified senators by omitting: “, and no more than 10,”
26. Item 3 amends the table item in Schedule A dealing with the Deputy Whip in the House of Representatives of a minority party by removing the upper limit of specified members by omitting: “, and no more than 10,”

SCHEDULE 2 —AMENDMENTS COMMENCING 28 AUGUST 2022

27. Item 1 increases the rate of travel allowance for the Prime Minister for each night in commercial accommodation by amending clause 5.3 by omitting “\$583” and substituting it with “\$598”.
28. Item 2 increases the rate of travel for a Minister where the Commonwealth pays for the accommodation by amending paragraph 5.5(a) by omitting “\$188” and substituting it with “\$199”.
29. Item 3 increases the rate of private vehicle allowance prescribed in sections 12, 27 and 28 of the PBR Regulations by amending paragraph 6.1 by omitting “68 cents” and substituting it with “78 cents”.

30. Item 4 repeals Schedule B of *Remuneration Tribunal (Members of Parliament) Determination 2022* which sets out Travel Allowance Rates and substitutes a new Schedule B setting out revised Travel Allowance Rates.

Authority: Sections 45 and 46
Parliamentary Business Resources Act 2017