



Australian Capital Territory Remuneration Tribunal

ACT Civil and Administrative Tribunal

Determination 9 of 2020

made under the

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

ACCOMPANYING STATEMENT

Background

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

Considerations

At its meeting on 18 and 19 March 2020, the Tribunal noted the exceptional and unprecedented circumstances being faced by Australia as a result of the COVID-19 pandemic and decided not to make any adjustments to remuneration, allowances or other entitlements for office holder considered at the 2020 Autumn Sitting until there was more clarity about the ACT Budget position and the wider economic context.

Matters considered by the Tribunal since this time, include the receipt by the Tribunal of a letter from the Chief Minister strongly requesting the Tribunal to determine a pause to any proposed pay rises during the COVID-19 pandemic and the period of immediate economic and community recovery following. The Chief Minister recommended that the Tribunal reconsider its Autumn determinations to reflect the government's commitment to support the ACT community during the current health emergency. The Tribunal noted that this corresponded with its earlier decision.

The Tribunal met again on 17 August 2020 and 2 September 2020 and received a further comprehensive briefing from the Chief Minister and ACT Government Treasury officials. The Tribunal considered the Chief Minister's 'Ministerial Statement August 2020 Economic and Fiscal Update' presented to the Legislative Assembly on 27 August 2020, which reinforced the significant downturn of the Territory's economic circumstances.

While the Tribunal had regard to the determinations by its Commonwealth and State/Territory counterparts, its decision was particularly taken in the context of the ACT's economic circumstances.

Given the current COVID-19 pandemic, the impact on the economic conditions and community expectations, the Tribunal has determined that no adjustments should be made to the remuneration, allowances and other entitlements of holders of Judicial positions and other office holders in its jurisdiction at this time.

The Tribunal will continue to monitor conditions in the ACT closely and will make appropriate decisions when the Territory's economic and fiscal circumstances are known next year.

Decision

The Tribunal has decided to determine no adjustment to remuneration, allowances or entitlements for the members covered by this Determination for 2020.

Following advice from the ACT Civil and Administrative Tribunal, the Part-time Presidential Member has been removed from this determination as this is no longer required.

September 2020



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

1 Commencement

1.1 This instrument commences on 1 November 2020.

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
Presidential Members	
President, ACAT	\$371,546 per annum
Full-time Presidential Member, ACAT	\$278,660 per annum
Sessional Acting Presidential Member	
Sessional Acting Presidential Member, ACAT	Paid at the daily rate of 1/230 of the rate paid to the President
Full-time Senior Member	
Full-time Senior Member, ACAT	\$189,243 per annum
Part-time Non-Presidential Members	
Senior Member, ACAT	\$1,130 per diem
Ordinary Member, ACAT	\$525 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 Office	Column 2 Schedule
Presidential Members	
President, ACAT	Schedule 1
Full-time Presidential Member, ACAT	Schedule 1
Sessional Acting Presidential Member	
Sessional Acting Presidential Member, ACAT	Schedule 2
Full-time Senior Member	
Full-time Senior Member, ACAT	Schedule 1
Part-time Non-Presidential Members	
Senior Member, ACAT	Schedule 3
Ordinary Member, ACAT	Schedule 3

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 listed 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 equivalent to the Employer Superannuation Guarantee Charge Percentage as provided by the *Superannuation Guarantee (Administration) Act 1992* (which at the commencement of this Determination is 9.5%).
- 5.5 The employer provides an additional employer superannuation contribution. The additional employer superannuation contribution is the same rate provided under clause D7 of the ACT Public Sector Administrative and Related Classifications Enterprise Agreement 2018-2021, as follows:
- (a) From 1 July 2019: 1.50%.
 - (b) From 1 July 2020: 2%.
- 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 listed in clause 2.1 of this Determination.

6 Travelling arrangements

6.1 In this clause:

home base means the town or city in which the traveller's principal place of residence is located.

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, listed under clause 2.1 of this Determination, who is travelling away from their home base for official purposes.

6.2 If a traveller is required to travel for official purposes, the employer must pay the cost of the transport and accommodation expenses outlined below. The reasonable amounts set out in the relevant Australian Taxation Office Determination¹ relating to meal and incidental expenses will be paid to the traveller as a reimbursement. These expenses are not to be paid to the traveller where their home base is within the ACT or surrounding districts and the travel for official purposes is within the ACT or surrounding districts.

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.

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 must 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

¹ Australian Taxation Office – Taxation Determination 2020/5 Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2020-21 income year?

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 Sector Administrative and Related Classifications Enterprise Agreement 2018 – 2021*, or its replacement.

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 their home base 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 cannot 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 prior 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 at official expense, such insurance must 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*.

home base means the town or city in which the traveller's principal place of residence is located.

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.

traveller means a person, appointed under clause 2.1 of this Determination, who is travelling away from their home base for official purposes.

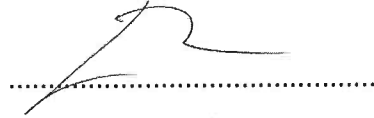
10 Revocation of previous Determination

- 10.1 Determination 9 of 2019 is revoked.

Ms Sandra Lambert AM
Chair

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Dr James Popple
Member

A handwritten signature in black ink, appearing to read 'Dr James Popple', written over a horizontal dotted line.

Mr Dale Boucher PSM
Member

A handwritten signature in black ink, appearing to read 'Dale Boucher', written over a horizontal dotted line.

September 2020

SCHEDULE 1—PRESIDENTIAL MEMBERS AND FULL-TIME SENIOR MEMBER

11 Employer provided benefits

- 11.1 A Presidential 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.
- 11.2 An employer-provided benefit, or cash payment in lieu of an employer-provided benefit, is in addition to the remuneration specified in clause 2 of this determination, and does not affect salary for superannuation purposes.
- 11.3 For the avoidance of doubt, 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.

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 4 SES member;
 - Full-time Presidential Members, ACAT: same arrangements as a Band 2 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 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 – vehicle

- 12.5 The employer incurs fringe benefits tax liabilities for vehicles provided to their employees. Fringe benefits tax is determined and calculated under the *Fringe Benefits Tax Assessment Act 1986*. For the purposes of this section, the fringe benefit tax year commences 1 April of a year to 31 March of the following year.
- 12.6 During the fringe benefits year, where the person appointed to the office mentioned in clause 2.1 elects to receive an employer-provided vehicle instead of a payment, if the employer's liability in relation to the office holder's vehicle provided by the

employer for the fringe benefits tax year is less than \$7,500, the difference is payable to the statutory office holder as an allowance at the end of the fringe benefits tax year.

- 12.7 To avoid doubt, if the assessed liability for fringe benefits tax exceeds the \$7,500 threshold, the office holder will not be required to pay any component in excess of the \$7,500.
- 12.8 During the fringe benefits tax year, where the office holder elects to receive a payment instead of an employer provided vehicle, the amount of \$7,500 per annum is paid as an allowance to the office holder on a fortnightly basis.
- 12.9 The fringe benefits tax allowance of \$7,500 under clause 12.8 is reduced proportionally where the officer holder is engaged for less than a full fringe benefits tax year.

13 Relocation allowance

- 13.1 In this clause, **ACT** means the Australian Capital Territory and its surrounding district, including Queanbeyan.
- 13.2 Relocation allowance is provided to assist an individual with the costs to relocate from their home location to the ACT in order to take up an appointment as a statutory office holder.
- 13.3 If a Presidential Member or Full-time Senior Member relocates because of this appointment, the person is entitled to be reimbursed up to the maximum relocation allowance of \$55,000, 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.
- 13.4 The Tribunal may decide to reimburse a higher amount of allowance if the 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.

- 13.5 If a Presidential Member or 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.
- 13.6 If a Presidential Member or a Full-time Senior Member terminates their employment with the Territory within twelve months of the date of their appointment, the person may be required to repay the following amount:
- a) If the person terminates employment within six months from the date of their appointment – 100% of the amount reimbursed under clause 13.3;
 - b) If the person terminates employment more than six months and less than twelve months from the date of their appointment – 50% of the amount reimbursed under clause 13.3.

Note: 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 Sector Administrative and Related Classifications Enterprise Agreement 2018 – 2021*, or its replacement.
- 14.2 In relation to the full-time Presidential Members 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"> ACAT business on a day when there is no formal meeting. 	100%	1/230
3 hours or more, in a single period	<ul style="list-style-type: none"> Formal meetings; and/or ACAT business 	100%	1/230
Between 2 and 3 hours in a single period	<ul style="list-style-type: none"> Formal meetings; or Formal meetings and ACAT business 	60%	1/230 x 60%
Less than 2 hours, in a single period	<ul style="list-style-type: none"> Formal meetings 	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 is intended 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 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"> • ACAT business on a day when there is no formal meeting 	100%
3 hours or more, in a single period	<ul style="list-style-type: none"> • formal meetings; and/or • ACAT business 	100%
between 2 and 3 hours, in a single period	<ul style="list-style-type: none"> • formal meetings; or • formal meetings and ACAT business 	60%
less than 2 hours, in a single period	<ul style="list-style-type: none"> • formal meetings 	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.