



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

OFFICE OF THE LEGISLATIVE ASSEMBLY

Secretary
ACT Remuneration Tribunal
PO Box 964
CANBERRA ACT 2601

SUBMISSION TO THE TRIBUNAL'S AUTUMN REVIEW

Please find attached a two part submission for the Tribunal to consider as part of its Autumn Review.

Part 1 of the submission deals specifically with the Resettlement Allowance that is payable in certain circumstances to Legislative Assembly members and argues for greater clarity about when the allowance is, and is not, payable.

Part 2 of the submission deals with travel entitlements of all three employment groups that are the subject of the Tribunal's Autumn Review—Legislative Assembly members, ACT Public Service executives and full-time holders of public office. It observes that the travel entitlements differ (in some cases just marginally) between all three of these groups. Accordingly, it argues for greater uniformity in those entitlements. But it also identifies that, for two of the three groups (ACT Executives and full-time holders of public office), the Tribunal's determinations largely adopt the provisions of the ACTPS travel policy; and the submission reveals some noteworthy findings about hidden costs that the policy seems to drive and it questions whether that policy is, in fact, the most cost effective method for administering travel arrangements.

But in recognition that the ACTPS travel policy:

- a. is not a product of the Tribunal (rather, the Tribunal has simply linked some of its determinations to the policy); and
- b. applies to wider group of employees than those whose travel entitlements are prescribed by the Tribunal,

this Office will shortly write to the authors of the ACTPS Travel Policy to share our findings and seek consideration of the arrangements advocated by this Office, based on our experience with different arrangements.

Tom Duncan
Clerk of the Legislative Assembly

14 February 2018

Part 1 – Resettlement Allowance

The Office of the Legislative Assembly (the Office) administers the remuneration and entitlements of the Assembly's non-Executive members and, as part of that function, has identified that the provisions dealing with the payment of a Resettlement Allowance would benefit from some clarification.

The Tribunal's Determination 2 of 2017 provides as follows:

5 Resettlement Allowance

- 5.1 *All Members are entitled to payment of two weeks' salary for every year of service, capped at a maximum of twelve weeks' salary, if they lose office, retire or resign.*
- 5.2 *The rate of pay of resettlement allowance will be calculated at the base rate of a Member, viz., without any extra loadings for office holders.*

The need for greater clarity was highlighted following the recent death while in office of Mr Steve Doszpot MLA. Even though the Office developed a clear view that the death of a sitting member does not trigger a payment of the resettlement allowance – a view that was shared by the Solicitor-General – the Office nevertheless observed that its view on the matter was not explicitly dealt with by the Tribunal's determination. The Office noted that some individuals had misunderstood whether the member in question had, in fact, resigned (thereby activating the entitlement) and this reinforced the Office's view that, in future, it would be desirable for the relevant determination to remove any doubt by more clearly specifying the circumstances in which the resettlement Allowance is, and is not, payable.

In forming its view, the Office reflected on its understanding of the purpose of, and rationale for, the creation of the entitlement in mid 2014. In this regard, the following extracts from the Tribunal's final report into the MLA entitlement review, published in April 2014, are set out for ease of reference, with relevant excerpts in bold:

The Tribunal is aware that some Members who have lost their seat have faced significant financial hardship. While it can be argued that Members should not assume they would be re-elected, it can also be argued that **it is much harder for this group of people to find immediate employment.** This is because many employers do not want to be associated with those who have overt political affiliations. Additionally, the largest employers in the ACT are the Commonwealth and ACT public services and clearly it is potentially difficult for former Members to be employed in these services.

Other than the ACT, only two other jurisdictions do not provide for a resettlement allowance, viz., New South Wales and Tasmania. This is currently under review in Tasmania.

The Tribunal has decided that all Members will have access to a resettlement allowance. The amount will be two weeks' of the base salary for every year of service, capped at twelve weeks' base salary.

The purpose of the allowance is to enable Members to move from public to private life and to access financial and other counselling services.

The Office has also considered another scenario in which a member would cease to be a member and where, in its view, the payment of Resettlement Allowance would appear unintended. While no case has ever arisen, there are disqualification provisions in the *Australian Capital Territory (Self-Government) Act 1988* [Commonwealth] (section 14) that provide as follows:

14 Disqualification of member

(1) *A member vacates office if the member:*

- (a) *at any time after the beginning of the first meeting of the Assembly after a general election, is not qualified to take a seat as a member;*
- (b) *is absent without permission of the Assembly from:*
 - (i) *such number of consecutive meetings as is specified by enactment for the purposes of this subparagraph; or*
 - (ii) *if no such enactment is in force—4 consecutive meetings of the Assembly; or*
- (c) *takes or agrees to take, directly or indirectly, any remuneration, allowance, honorarium or reward for services rendered in the Assembly, otherwise than under section 73.*

Section 103 of the *Electoral Act 1992* sets out the various circumstances under which a member might become ineligible (i.e. not qualified) to retain his or her seat as a member by virtue of sub-section 14(1)(a). Sub-sections 14(1)(b) or (c) set out further circumstances where members risk being disqualified. While each circumstance would be very rare, it would seem that payment of a Resettlement Allowance to a member departing in any of those circumstances would also be inconsistent with the purpose for which the Tribunal established the entitlement in 2014.

If the Tribunal was persuaded that both the above circumstances did not warrant payment of the Resettlement Allowance, the insertion of an additional clause that explicitly addressed those circumstances would, in this Office's view, be beneficial.

Part 2 – Travel Entitlements

Background

The Office of the Legislative Assembly administers travel arrangements for a number of individuals who, depending on their status/employment arrangements, enjoy different travel allowance entitlements. Until recently, the Office administered four differing sets of travel arrangements for various groups but, following the recent creation of two executive level roles within the Office, it now administers five different sets of travel arrangements, as follows:

MLAs	determined by the Remuneration Tribunal
the Clerk of the Assembly	determined by the Remuneration Tribunal
OLA executives	set out in the PSM Standards
Other OLA staff	set out in the OLA enterprise agreement
Non-executive members' staff	set out in the Members' staff enterprise agreement

While the differences in travel entitlements for these groups vary in significance [and some are relatively minor], the differences do lead to some complexities and confusion in administration. While the Office has long acknowledged that there are some valid reasons why achieving better, or complete, alignment is somewhat complicated, this submission (and an associated approach to the authors of the ACTPS travel policy) attempts to start the process of addressing those issues.

Current Situation – exposure to the ACTPS Travel Policy

Despite the differences in the various entitlements and arrangements that are administered by the Office, none of the arrangements for the three largest groups (ie MLAs, OLA staff and members' staff) had ever been subject to the core elements of the ACTPS travel policy.

- MLAs and OLA staff are both paid travelling allowances for accommodation, meals and incidentals based on the rates contained in the annual ATO determination of reasonable travel allowances. The arrangements are reasonably well understood and administratively efficient.
- Members' staff, who travel infrequently, are not paid travel allowance *per se* but have a reimbursement scheme where the ATO rates serve as a cap or guide. These arrangements are set out in the Member's staff enterprise agreement.

Only the Clerk of the Assembly—and, since January 2018, two new executive roles created within the Office—are subject to the ACTPS travel policy. In the case of the executive positions, the provisions of the relevant PSM Standards apply directly, whereas, in the case of the Clerk (and also the Auditor-General and Electoral Commissioner, whose entitlements are contained in the same determination), the Tribunal's determination sets out some provisions that broadly reflect that policy.

Because the Office has not, until recently, had any significant exposure to the wider ACTPS travel policy which is contained in the PSM Standards, the Office has not been concerned to voice its observations about the inefficiencies and hidden costs that, in its view, arise from those arrangements. But as a result of the recent additional exposure to those provisions that arose within the Office, we engaged with some of the key ACTPS agencies to better understand their experience with the administration of the ACTPS travel policy; and this helped to reinforce the Office's views about the inefficiencies and hidden costs.

Responsibility for the ACTPS Travel Policy

This submission fully recognises that the ACTPS Travel Policy is not a product of the Remuneration Tribunal and that the policy has far wider application than the employees and other public office holders that have their remuneration and related entitlements determined by the Tribunal. That is why the Office will also shortly approach the authors of that policy to question whether that policy is, in fact, the most cost effective method for administering travel arrangements throughout the Territory's administration.

But, because aspects of the policy are adopted by the Remuneration Tribunal in its determinations for ACTPS Executives and statutory office holders, this Office wanted to highlight to the Tribunal some of the findings that emerged from its recent engagement with some of the key ACTPS agencies about travel administered under that policy.

What are the inefficiencies and hidden costs in the ACTPS travel policy?

By way of background, the ACTPS travel policy was introduced in December 1998. In August of that year, in the lead up to its introduction, Chief Executives of ACT agencies were informed that:

"The new policy involves the introduction of a post-travel reimbursement for travel expenses. This will replace the current pre-travel cash allowance system and will establish best practice travel arrangements in the ACT Public Service. This new policy will streamline current rules and create an environment which promotes value for money travel outcomes. It will also improve the accountability of travel expenditure through the requirement that travellers substantiate expenses based upon actual receipts and facilitate the optimum use of discount travel options."

Following the August 1998 announcement, the Legislative Assembly Secretariat (this Office's predecessor) developed a clear view that the administrative costs of the new policy had not been fully taken into account and that, while the new policy might lead to some minor reductions in direct travel expenses, those expense reductions were likely to be outweighed by the administrative cost of the new policy. Relying on its independence from Executive government, the Secretariat established under its staff enterprise agreement a substitute travel allowance system that linked to the ATO reasonable travel allowance determination – and that system has operated without any significant problems for close to two decades. Its simplicity and effectiveness led the Office to argue in a submission to the Remuneration Tribunal that a similar system should be adopted for Assembly members – and those arguments were accepted by the Remuneration Tribunal in July 2014.

To explore the current experience of agency staff who administer the ACTPS Travel Policy, the Office engaged in discussion with a number of "travel arrangers" in some of the ACTPS agencies. The following information summarises the key concerns and complaints identified through those discussions/inquiries. The Office concluded that the nature of the concerns and complaints would be unlikely to be confined to those agencies the Office spoke to – and could be generally regarded as common to all travel administration in the ACTPS.

In each case, the concerns or complaints are detailed and are then compared to how the same travel arrangement would operate under the travel allowance system advocated by this Office.

Assignment of accommodation star ratings

Directorate staff the Office has spoken to pointed to considerable time being spent on managing this aspect of travel. Common issues included the following:

- Once an initial go ahead had been given for a staff member to travel, a process would commence to identify suitable travel in the appropriate star category and, not infrequently (and particularly for those staff who were below Executive level and who are required to stay in 3 star accommodation), the staff member(s) travelling, in conjunction with “travel arrangers”, would identify additional costs (such as additional taxi fares and travel time due to them being located some distance for the place where the business activity is being undertaken). Considerable time is often devoted to making a business case to stay at a higher standard of accommodation at a more convenient location.
- It was not uncommon for Executive level staff – including Directors General – to be part of a delegation accompanying a minister and for there to be an expectation that the entire delegation would be co-located. While the business case for a higher standard of accommodation might exist, the Office learnt that the time devoted to this issue by senior officials was significant – and was necessary due to their status because any failure to properly document an upgrade might lead to adverse findings if subjected to scrutiny.
- Another common issue reported was that the rate available for an accommodation outlet within the LIDO accommodation booking system (ie the system used under the ACTPS travel policy to book accommodation and charge it back to agencies) was higher – in some cases significantly higher – than the rate available for the same accommodation outlet through publicly available booking sites (e.g. Wotif, Expedia, Trivago), meaning that agencies either were unaware and paid higher rates than what was available publicly or, as some agencies reported, obliged travel arrangers to spend valuable time liaising with the travel contract managers to secure matching rates.
- Similarly, there were also instances reported where the LIDO system showed no availability for a suitable accommodation venue which was freely available on the publicly available booking sites.
- An issue that arose periodically and which complicated the booking process involved staff who wished to avail themselves of a higher standard of accommodation and who were happy to meet the excess cost personally – this made the administration of the travel arrangements more awkward and again usually required staff (often executive level staff) to document their alternative processes to withstand any scrutiny that might arise.
- Finally, it was not uncommon for travellers to report apparent inconsistencies in the standards between similarly rated accommodation, particularly where accommodation outlets self-rated themselves.

Under the model advocated in this submission:

- staff would be paid an accommodation component as part of a travel allowance entitlement based on the location in which they are undertaking business and the salary tier/bracket they belonged to; and
- staff would book and pay for their own accommodation.

While under this model, it is still possible for agencies to meet a higher standard of accommodation or a higher cost than the ATO rate covers if this is justified, this Office's experience over nearly two decades (for Office staff) and nearly 5 years for MLAs – is that such claims are rare.

Staff who are provided with accommodation as part of their official program and staff who do not stay in commercial accommodation (e.g. stay with a relative or friend) would not be paid this component.

Reimbursement/ acquittal of expenses including corporate credit card expenses

All agency staff the Office spoke to reported that, after staff had returned from official travel, considerable time was devoted to assembling, reconciling, submitting and explaining/ detailing or querying expense claims, acquittals, a cash advance or corporate credit card expenses. This was not surprising as such processes are obviously time consuming, not just for the travelling staff member but, under such a model, for the independent person (perhaps a manager or a finance officer – or both) who must review those expenses.

Again, not surprisingly, observations were made that some staff dealt with such issues more promptly than others and some more thoroughly than others – the key issue being that the agency was often not able to finalise the costs and the administration of various travel arrangements until long after the travel itself had been completed.

Common concerns and frustrations with administering meal expense claims arose where staff had participated in meals with other travellers or business associates and where costs had been shared or split but where one person, or a few people, had paid the bill – leaving the travelling staff member to identify and claim just their share.

Common concerns and frustrations with corporate credit card holders was the effort involved in managing and adjusting expenses incurred in respect of others and where the bill included an expense for alcohol.

Under the model advocated in this submission:

- staff would be paid a meal component as part of a travel allowance entitlement based on the location in which they were undertaking business and the salary tier/bracket they belonged to and their time of departure from and arrival at the location; and
- staff would arrange and pay for their own meals.

While under this model, it is still possible for agencies to meet a higher standard of meal or a higher cost than the ATO rate covers if this is justified, this Office's experience over nearly two decades (for Office staff) and nearly 5 years for MLAs – is that such claims are rare.

Staff who are provided with meals as part of their official program would not be paid the relevant meal component.

Some agencies – and some parts of agencies – were less aware than others about the impact of the ATO Reasonable Travel Allowance Determination

The ACTPS Travel Policy is silent on the ATO Reasonable Travel Allowance Determination but, in spite of that, the Determination still applies to any payments made to ACTPS staff for travel. The Office's discussion with agencies suggested that some agencies, or parts of agencies, may be more aware than others that any reimbursements need to be limited to the reasonable allowance amounts to avoid taxation obligations.

Under the model advocated in this submission, staff would receive the reasonable allowance amounts as a travel allowance meaning that only in exceptional cases, where amounts in excess of the reasonable allowances were paid, would any taxation obligations arise.

Conclusion

This Office would strenuously argue that the system of paying a travel allowance for accommodation, meals and incidentals based on the rates contained in the annual ATO determination of reasonable travel allowances is a simpler, more effective system that avoids the inefficiencies and hidden costs that so obviously are embedded in the ACTPS Travel Policy. It is the system that this Office has adopted for its own staff for nearly two decades and for members since 2014.

The Office acknowledges fully that, even if the Tribunal is persuaded by the arguments set out in this submission, it may not wish to move away from the ACTPS travel policy without engaging with the authors of that policy. But the Office does point out that, currently, the three groups who are the subject of this annual review each have differing travel allowance entitlements and the Tribunal has the capacity to adopt a standard model for all three groups. This submission argues that the model the Tribunal has already applied to MLAs is the simplest and most cost-effective model.

