



Administrative
Appeals Tribunal

Guideline On Members' Terms and Conditions

This Guideline may be changed from time to time to reflect Remuneration Tribunal decisions or changes to AAT policies.

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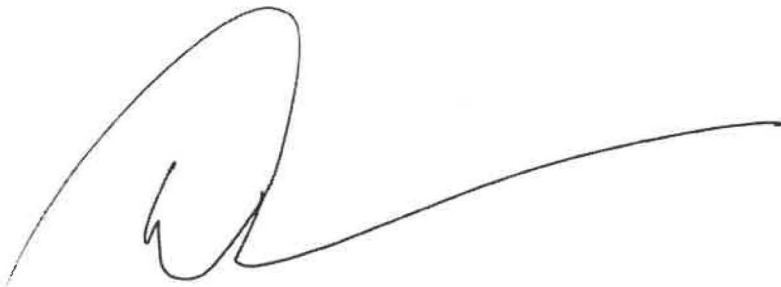
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INTRODUCTION

The *Administrative Appeals Tribunal Act 1975* sets out the role and functions of members. The remuneration of members, conditions of travel and travel allowances, and compensation for early loss of office are determined by the Commonwealth Remuneration Tribunal. These Guidelines complement the relevant Remuneration Tribunal determinations by setting out the terms and conditions of appointment not covered in those instruments.

The President may also determine in separate guidelines terms and conditions that apply only to members exercising the Tribunal's powers in a particular Division or Divisions, or delegate that power to the relevant Division Head.

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Duncan Kerr
President

3 March 2016

1. APPOINTMENTS

1.1 The Administrative Appeals Tribunal consists of the President, Deputy Presidents, Senior Members and Members. They are referred to collectively as members of the Tribunal.

1.2 Members are appointed by the Governor-General.

PRESIDENTIAL MEMBERS

1.3 Presidential members of the Tribunal include the President and Deputy Presidents.

1.4 Presidential members may exercise powers in all Divisions of the Tribunal. Those Divisions are:

- Freedom of Information Division;
- General Division;
- Migration and Refugee Division;
- National Disability Insurance Scheme Division
- Security Division;
- Social Services and Child Support Division;
- Taxation and Commercial Division
- Veterans' Appeal Division

President

The President of the Tribunal must be a Judge of the Federal Court of Australia.

Deputy Presidents

1.5 A Deputy President must be:

- a Judge of the Federal Court of Australia or the Family Court of Australia; or
- a person enrolled as a legal practitioner (however described) of the High Court or the Supreme Court of a State or Territory and have been so enrolled for at least 5 years; or
- a person who in the opinion of the Governor-General, has special knowledge or skills relevant to the duties of a Deputy President.

- 1.6 Deputy Presidents who are not Judges of the Federal Court of Australia or the Family Court of Australia must be appointed either as full-time or part-time members.
- 1.7 The Minister may assign a Deputy President as the Division Head or deputy Division Head of one or more Divisions. The function of the Division Head is to assist the President and to direct the business of the Tribunal in that Division. The function of the deputy Division Head is to assist the Division Head. Assignments as Division Head or deputy Division Head must be for the remainder of the term of the member's appointment.

Senior Members

- 1.8 Senior Members must be appointed either as full-time or part-time members
- 1.9 Senior Members may only exercise the Tribunal's powers in the Divisions of the Tribunal to which they have been assigned by the Attorney-General.
- 1.10 The Minister may assign a senior member as the deputy Division Head of one or more Divisions. The assignment must be for the remainder of the term of the senior member's appointment.

Members

- 1.11 Members must also be appointed either as full-time or part-time members
- 1.12 Like Senior Members, Members may only exercise the Tribunal's powers in the Divisions of the Tribunal to which they have been assigned by the Attorney-General.

2. DUTIES OF OFFICE

GENERAL NATURE OF DUTIES

2.1 Members may be required to undertake a range of work at the Tribunal relating to applications made under the AAT Act. This may involve any or all of the following activities:

- conducting, or taking part in, hearings and making decisions;
- conducting directions hearings;
- determining interlocutory applications;
- conducting alternative dispute resolution processes.

Some members may also be required to undertake administrative and case management duties as specified by the President.

For the purpose of carrying out their duties, the President delegates to members of the Tribunal certain powers under the AAT Act and authorises members to exercise other powers. These delegations and authorisations are set out in instruments that can be found on the Intranet at: <http://aatintranet/corporate/Legal%20Instruments/Forms/AllItems.aspx>.

2.2 Some legally-qualified members may be asked to undertake non-merits review functions. Members who meet the qualification requirements may be nominated to exercise powers in relation to matters such as:

- warrants issued under the *Surveillance Devices Act 2004* and the *Telecommunications (Interception and Access) Act 1979*;
- controlled operations authorised under the *Crimes Act 1914*.

REQUIREMENTS OF THE ADMINISTRATIVE APPEALS TRIBUNAL ACT

Oath or affirmation of office

- 2.3 A person who is appointed or re-appointed to the Tribunal is required, before proceeding to discharge the duties of the office, to take an oath or an affirmation that he or she will truly serve Her Majesty in the office to which he or she is appointed and that he or she will faithfully and impartially perform the duties of that office.
- 2.4 Arrangements for the "swearing in" are made by the local District Registrar. The oath or affirmation must be taken before the Governor-General, a Justice of the High Court or a Judge of another federal court or of the Supreme Court of a State or Territory.

Outside employment

- 2.5 A full-time member must not engage in paid employment outside the duties of his or her office without the consent of the President.
- 2.6 A part-time member must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties (see also paragraph 2.15, 'Appearing before the Tribunal', below).
- 2.7 These provisions do not apply in relation to the holding by a member of an office or appointment in the Defence Force.

Disclosure of interests by members

- 2.8 A member who is, or is to be, a member of the Tribunal as constituted for the purposes of a proceeding must disclose to the parties to the proceeding and to the President any interest, pecuniary or otherwise, that could conflict with the proper performance of his or her functions in relation to the proceeding. The member must not take part in that proceeding, or exercise any powers in relation to the review except with the consent of all of the parties and the President. See: Section 14 of the AAT Act.
- 2.9 A member who is assigned to the Migration and Refugee Division must not have any direct or indirect pecuniary interest in an immigration advisory service.

TRIBUNAL EXPECTATIONS

2.10 Members should be aware that:

- A person who holds public office is expected to perform the duties of their office diligently and carefully, and to comply with all lawful instructions given in connection with their duties.
- A person who holds a full-time office is to devote all of their time, attention and skills to the performance of their duties:
 - (a) during normal business hours;
 - (b) at such other times as may reasonably be necessary to the performance of their duties.
- A person who holds office on a part-time basis is to work at such times and and/or on such duties as agreed or directed.

2.11 The standards of professional behaviour expected of Members are set out in the Conduct Guide for AAT Members. The conduct guide applies to all members and is based around three core values: independence, impartiality and integrity. The purpose of the guide is to:

- set out principles of appropriate conduct and professional behaviour to guide AAT members in their professional duties and in their private conduct as it affects those duties; and
- provide a reference point for AAT members' adherence to our three core values and to aid accountability.

2.12 Members are also expected to participate in the Tribunal's member performance appraisal and professional development processes.

APS CODE OF CONDUCT

2.13 Members who have any staff supervisory responsibilities are expected to abide by the Australian Public Service (APS) Code of Conduct (s 14 *Public Service Act 1999*) in so far as it applies to their treatment of and behaviour towards staff of the Tribunal.

3. TERMS AND CONDITIONS OF EMPLOYMENT

REMUNERATION

3.1 Salary, daily fees and allowances for full and part-time members are determined annually by the Remuneration Tribunal; usually in June. Determinations and variations to Determinations of the Tribunal are subject to disallowance by the Parliament. The *Tribunals Amalgamation Act 2015* stipulates that members appointed prior to 1 July 2015 are to hold office on the terms and conditions applicable to them prior to the amalgamation for the term of their appointment. As a result, the Remuneration Tribunal determination that is applicable to each member depends on whether they were appointed before or after that date and, if before, the tribunal to which they were originally appointed.

3.2 The principal determinations are:

- For full-time and part-time members appointed to the AAT prior to 1 July 2015 - *Determination 2015/18: Judicial and Related Offices - Remuneration and Allowances.*
- For full-time members appointed to the MRT-RRT and SSAT prior to 1 July 2015 - *Determination 2015/21: Remuneration and Allowances for Holders of Full-Time Public Office.*
- For part-time members appointed to the MRT-RRT and SSAT prior to 1 July 2015 - *Determination 2015/20: Remuneration and Allowances for Holders of Part-Time Public Office.*
- For all full-time and part-time members appointed on or after 1 July 2015 - *Determination 2015/18: Judicial and Related Offices - Remuneration and Allowances.*

3.3 *Determination 2015/11: Official Travel by Office Holders* is the principal determination dealing with travel allowances for all members.

Full-time members

3.4 The applicable Remuneration Tribunal Determination represents an exhaustive statement of the office holder's remuneration and significantly related benefits.

3.5 Full-time members are paid an annual salary in fortnightly instalments. A pay advice slip showing details of gross salary, deductions and net salary is provided to each member through Aurion Self Service.

3.6 Full-time members may elect to receive their Total Remuneration benefit as salary or a combination of salary and benefits. Under the Determination, a minimum of 50 per cent of Total Remuneration must be taken as salary.

Part-time members

3.7 Part-time members may be engaged under one of two distinct remuneration structures:

- a 'sessional' part-time remuneration structure, based on a daily sitting fee; or
- an annual fee part-time pro-rata remuneration structure, based on a member working a regular and fixed number of days per week (between 1 and 4) over a period of at least 12 months (or until the expiry of their period of appointment).

Sessional part-time Members

3.8 Sessional part-time members are paid a daily fee for each day of minimum seven hours that they are engaged in hearings or on Tribunal business. For certain members appointed before 1 July 2015 the minimum number of hours required to qualify for the payment of a daily fee is five.

3.9 Tribunal business may include a hearing, preparation for a hearing, reading submissions, decision writing, attending Tribunal meetings, certain conferences or seminars and travel time other than for travel between the member's home and principal place of work. Hearings include interlocutory hearings, directions hearings, conferences, conciliation conferences and mediations. A daily fee is payable once a part-time member has aggregated the requisite hours of work, regardless of the days on which that work was done. Hours worked under this minimum are carried over until the minimum is accrued.

3.10 Fees for part-time members are administered in accordance with the relevant "AAT Guidelines relating to the Payment of Daily Fees to Part-time Members" relating to the AAT Division in which the part-time work was undertaken.

3.11 A member will not be paid more than one daily fee in respect of any one day. That is, the general principle of one day's pay for one day's work applies.

Cancellation Fee

- 3.12 Sessional part-time members are paid a cancellation fee of 50% of the daily fee for cancellation of each day's work where less than 5 working days' notice is given. This includes the circumstance where a hearing does not proceed on a day on which a member has attended and no other tribunal work was available.

Minimum Annual Remuneration

- 3.13 Sessional part-time members appointed on or after 1 July 2015 are paid a minimum annual payment of 5 daily sitting fees where the President has certified that that insufficient work was reasonably available to the member for the member to work 5 days. If the number of remunerated days is less than 5, then the balance will be paid at the end of the financial year.
- 3.14 Certain part-time members appointed on or after 12 August 2004 and before 1 July 2015 are paid a minimum annual payment of 10 daily sitting fees where the President has certified that that insufficient work was reasonably available to the member for the member to work 10 days. If the number of remunerated days is less than 10, then the balance will be paid at the end of the financial year.
- 3.15 A pro-rata payment will be made on a sessional part-time member's separation from the Tribunal for any approved work.

Annual fee part-time members

- 3.16 The remuneration of annual fee part-time members is determined according to the statutory office they hold, the number of days per week they are required to work and the conditions of employment applicable to them at the time of their appointment.
- 3.17 Annual fee part-time members are paid an annual salary in fortnightly instalments. A pay advice slip showing details of gross salary, deductions and net salary is provided to each member through Aurion Self Service.
- 3.18 Annual fee part-time members may elect to receive their remuneration as salary or a combination of salary and benefits.

LEAVE

General

- 3.19 Full-time members are entitled to leave of various types which are either planned or unplanned:
- Planned leave is ordinarily Recreation Leave or Long Service Leave. Occasionally planned leave can include leave such as for future surgery.
 - Unplanned absences include those relating to personal illness or for caring purposes.
- 3.20 Full-time members are also entitled to paid leave on the public holidays observed by the Australian Public Service in the State or Territory in which the member is based.
- 3.21 Leave of absence other than recreation leave shall be granted on such terms and conditions as are set out in this document, or otherwise as determined by the President.
- 3.22 Sessional part-time members and annual fee part-time members do not have leave entitlements. However, to assist in efficient listings of hearings, they should notify their Division Head and District Registrar if they will be unavailable for listing for any length of time.
- 3.23 The Governor-General may terminate a part-time member's appointment where a member is unavailable, except on leave of absence, to perform the duties of his or her office for more than 3 months.
- 3.24 Applications for leave are to be made electronically through Aurion's 'Self Service' functionality with applications auto-forwarded to Division Heads for approval. The President has authorised the Division Heads to approve Member's leave and to use their discretion to inform the President of any leave applications they feel require the President's attention. When applying for recreation and long service leave it is up to members to ensure that the appropriate arrangements are in place for ensuring that the orderly conduct of business can continue. Members should include in their request confirmation that the leave sought will not involve the rescheduling or reconstitution of any matters.
- 3.25 Where members have unplanned absences due to personal illness or caring responsibilities they must seek approval on their return from leave.

3.26 Any 'unpaid leave' or 'leave without pay' taken by a Member does not count as service. Any Annual leave taken at half-pay by a Member will only count for half of the service to be credited if the Member had taken the Annual leave at full pay.

Recreation Leave

3.27 Full-time members shall accrue a credit of four weeks paid recreation leave for each completed year of service. Accrued leave is credited to full-time members on a pro-rata basis each fortnight. Recreation leave accrued in previous Commonwealth service may be carried over under certain conditions.

3.28 Full-time members are expected not to exceed a maximum balance of eight weeks recreation leave (40 days). The President may request that members take leave in excess of this.

3.29 Members may elect to take recreation leave at half pay and/or to cash out up to one week's recreation leave each financial year.

3.30 Members are paid the balance of their recreation leave on leaving office.

Long Service Leave

3.31 Long service leave for full-time Members will be in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976*.

Personal Leave

3.32 The President may grant personal leave in the following circumstances:

- a) where the member is ill or injured;
- b) to care or provide support for members of their immediate family or household who are ill or injured or have an unexpected emergency affecting them; and
- c) where the President is satisfied there are other emergency or compelling reasons for granting the leave.

Parental Leave

3.33 In accordance with the *Maternity Leave (Commonwealth Employees) Act 1973*, full-time members are entitled to up to 52 weeks maternity leave, paid for the first 12 weeks for a member with at least 12 months continuous qualified service for the purpose of that Act, and otherwise unpaid.

3.34 Two weeks paid parental leave will also be granted to members following the birth, adoption, or long-term fostering of a child. This leave is in addition to any paid or unpaid leave available under the Maternity Leave Act and is accessible by the child's mother, father, partner, adoptive or foster parents.

Leave in Special Circumstances (including Community Service and Compassionate Leave)

3.35 If, in the President's opinion, special circumstances exist to justify the granting of leave to a full-time Member, the President may grant leave of absence with or without pay to that Member.

SUPERANNUATION

3.36 As an employer, the Tribunal is required to adhere to and apply Australian superannuation legislation and the rules applying to membership of superannuation schemes. Eligibility and entitlements will depend on a member's personal circumstances, including age and eligibility for membership of the different Commonwealth administered superannuation schemes.

OFFICIAL TRAVEL

3.37 Remuneration Tribunal Determination 2015/11 provides for official travel and related matters. It covers travel by full and part-time members.

3.38 Official travel is subject to the operational requirements of the Tribunal and President's approval. Travel arrangements, and any arrangements for working intra or interstate, must be cost effective and timely.

3.39 The payment of travel allowance to a member while on Tribunal business is calculated on the basis of when it is reasonable to travel to, and return from, Tribunal business. Members may travel the day before attending to Tribunal business where it is reasonable to do so, having regard to the starting time of the Tribunal business, airline schedules, and the likelihood of morning fog and so on. Members may travel earlier or later than these times for personal reasons, but there is no entitlement to travel allowance for such additional time away.

- 3.40 Members traveling by air while on Tribunal business are encouraged to travel economy class where it is reasonable to do so. Travel to conferences and seminars approved by the Tribunal will normally be economy class.
- 3.41 Travel allowance is not payable beyond the last day of Tribunal business unless airline schedules or other travel arrangements do not allow the member to return that day. When a hearing finishes unexpectedly early, and a member has already incurred accommodation costs for that day/evening, the member is entitled to reimbursement of that cost.
- 3.42 The most economical ground transport available and practical must be used. Cabcharge vouchers, bus or train tickets may be issued for official travel to and from the airport in their city of residence and in each city visited. Unused tickets and vouchers must be returned to the Registry to be properly acquitted and accounted for. Members are reminded of the need to ensure that public funds are expended appropriately.
- 3.43 The Tribunal will not meet the cost of ground travel to and from the interstate temporary accommodation and the visited Registry or hearing venue each day unless special reasons exist such as the need to carry heavy documents to the registry at the commencement and end of the visit. Members are responsible for their own arrangements for getting to work each day. Cabcharge vouchers may not be used for this purpose unless special reasons exist.

Airline Lounge membership

- 3.44 Airline lounge memberships via the Tribunal's discounted Corporate Membership can be accessed by all Members on request. Membership can be paid directly through the Finance Section or can also be salary packaged under the Tribunal's internal salary packaging arrangements.
- 3.45 Membership fees for full-time members will be recovered against a full-time member's Total Remuneration Package as part of the Tribunal's internal salary packaging arrangements.
- 3.46 Part-time members membership fees can also be salary packaged from future earnings.
- 3.47 As airline lounge memberships are an exempt benefit under FBT legislation, only the cost of the membership is deducted. Membership remains valid until expiry even if the Member leaves the Tribunal.

USE OF PRIVATELY OWNED MOTOR VEHICLES

- 3.48 Members may, in certain approved circumstances, use a rental car, or their private vehicle while travelling on Tribunal business, for example, while on circuit to a country centre, or travelling to a Tribunal conference or meeting out of town. The rates of allowance to be paid for use of a private vehicle will be consistent with the rates used in the Tribunal's Agency Agreement for employees.
- 3.49 All reasonable rental costs will be paid when a rental car is used.
- 3.50 Payment for the use of a private vehicle or rental car must be approved prior to the commencement of any journey.
- 3.51 Members using their own car should be aware of the following conditions:
- (a) the member must provide the District Registrar with evidence of comprehensive and compulsory third party insurance policies that cover the user for damages arising out of an accident when using the private motor vehicle for business purposes;
 - (b) the member must provide the District Registrar with proof of car registration and driver's licence details;
 - (c) if involved in an accident while driving a private motor vehicle on official business the member will be required to meet any excess payment in respect of the comprehensive insurance policy, including the forfeiture of a "no claim" bonus, if appropriate; and
 - (d) if the Commonwealth is adjudged liable in court proceedings against it for damages arising out of any accident involving a private motor vehicle being used for official purposes, the Commonwealth will be entitled to claim against the user (the member) of the private motor vehicle for the recovery of any damages awarded against it.

RELOCATION AND REMOVAL EXPENSES

- 3.52 When a full-time member is appointed to the Tribunal in a place other than where he or she normally resides, the President may approve the payment of certain relocation allowances. This matter is usually agreed by the President prior to the member taking up appointment.
- 3.53 Where a full-time member during the term of their appointment transfers from one place to another and the transfer is regarded by the President as in the public interest, the member may seek the President's approval for certain forms of assistance including specified transport and removal costs. This would be approved only in exceptional circumstances and not merely to assist a member who chooses to relocate.

