



No. 9 of 2020

REPORT OF THE REMUNERATION TRIBUNAL
ACCOMMODATION EXPENSE REIMBURSEMENT AND ALLOWANCE FOR
COUNTRY MEMBERS OF PARLIAMENT

INTRODUCTION AND BACKGROUND

1. Section 14 of the *Remuneration Act 1990* (“the Act”) provides that the Remuneration Tribunal (“the Tribunal”) has jurisdiction to determine the remuneration, or a specified part of the remuneration, payable in respect of certain offices, if such jurisdiction is conferred upon the Tribunal by any other Act or by the Governor by proclamation.
2. Section 3A(2) of the *Parliamentary Remuneration Act 1990* (“the PR Act”) confers jurisdiction upon the Tribunal to make a Determination or perform any other function required by the PR Act.
3. Section 3A(3) of the PR Act provides that the Tribunal may make a different provision according to the member, the electorate, the House of Parliament or the circumstances to which the Determination is to apply.
4. Section 4(2)(a) of the PR Act provides that the Tribunal must, in determining electorate allowances and other remuneration for members of Parliament, have regard not only to their parliamentary duties, but also to:
 - 4.1. Their duty to be actively involved in community affairs; and
 - 4.2. Their duty to represent and assist their constituents in dealings with governmental and other public agencies and authorities.

PROCEDURAL HISTORY

5. Section 10(2) of the Act requires that before the making of a Determination affecting the remuneration of a particular person, or persons of a particular class, the Tribunal must allow that person, or persons of that class, a reasonable opportunity to make submissions.
6. Section 10(4) of the Act provides that the Honourable Premier of South Australia (“the Premier”), as the Minister responsible for the Act may intervene, personally or by counsel or other representative, in proceedings before the Tribunal for the purpose of introducing evidence, or making submissions, on any question relevant to the public interest.
7. The Tribunal wrote to the Premier, as the Minister responsible for the Act, and the Members of Parliament on 22 June 2020, notifying of the Tribunal’s intention to conduct its annual review of Determinations for Members of Parliament. The Tribunal invited written submissions with a closing date of 23 July 2020.
8. Additionally, on 22 June 2020, a notice of the review was placed on the Tribunal’s public website.

9. On 4 August 2020, the Tribunal convened to hear oral submissions from affected persons in relation to this matter.

SUBMISSIONS

10. A summary of submissions in relation to this review is included below.
11. On 9 July 2020, the Tribunal received the following submission from Mr Mark Parnell, MLC:
 - 11.1. That for the purposes of the Tribunal's Determination, the meaning of "usual place of residence" should include:
 - 11.1.1. Where a Member's spouse, partner or dependent children usually live;
 - 11.1.2. Where a Member claims any land tax exemption in relation to their primary residence;
 - 11.1.3. Where a Member is enrolled to vote; and
 - 11.1.4. The address on her or his driver's licence.
 - 11.2. That the distance eligibility for the Country Members Accommodation Allowance should be 100km, rather than 75kms from Adelaide;
 - 11.3. That the Part B allowance (less than 75km) should be abolished entirely; and
 - 11.4. That the Parliament should publish claim forms publicly.
12. On 22 July 2020, the Tribunal received a submission from the Treasurer, made on behalf of the Government.
 - 12.1. That the terms of the Tribunal's Determination in relation to Country Members Accommodation Allowance are presently ambiguous;
 - 12.2. That it would be unreasonable to extend the 75km distance limit for Country Members Accommodation Allowance to 100km, as this would require Country Members to drive 100kms home each night after evening functions in Adelaide which might not conclude until 10pm or 11pm.
 - 12.3. That the term "usual place of residence" should be amended to provide that for the purpose of the clause, sufficient evidence of a Member's usual place of residence includes the place of electoral enrolment. Under section 29 of the Electoral Act, the independent Electoral Commissioner of South Australia has to establish a person's "entitlement to enrolment" at a place of residence and Government members submit that would assist in clarifying a Member's entitlement to the accommodation allowance.
 - 12.4. That the words "incurs actual expenditure" should be clarified by the following words: *"including those costs of owning, renting and or maintaining accommodation, for example, interest, rental, rates, maintenance, and any other actual expenditure incurred in connection with the accommodation"*.
13. On 23 July 2020, the Tribunal received a submission from Mr Stephen Mulligan MP, on behalf of the Parliamentary Labor Party.
 - 13.1. The Opposition encourages the Tribunal to consider a full review of the Country Members Accommodation Allowance;
 - 13.2. That having regard to advancements in motor vehicles and upgrades to road infrastructure across South Australia, the Tribunal consider the appropriateness of the 75km threshold, which was established many years ago;
 - 13.3. That the Review considers recommending that all allowances claimed are published on the Parliament's website monthly to ensure full transparency.
14. On 4 August 2020, the following persons made short oral submissions to the Tribunal in support of their written submissions:

- 14.1. The Hon. Rob Lucas MLC and Mr Josh Teague MP (on behalf of Government members); and
- 14.2. Mr Mark Parnell MLC.
15. No other submissions were received by the Tribunal in relation to the review to which this Report relates.

BACKGROUND OF COUNTRY MEMBERS ACCOMMODATION ALLOWANCE

16. At the time of this review, the Country Members Accommodation Allowance has been the subject of significant public and media attention. Moreover, submissions put to the Tribunal in course of this review have urged a review of the Country Members Accommodation Allowance provisions. Accordingly, a review of those provisions has been undertaken by the Tribunal.
17. The Country Members Accommodation Allowance was first determined by this Tribunal's predecessor, the Parliamentary Salaries Tribunal, in 1966. Prior to that date, the Country Members Accommodation Allowance likely existed as an entitlement which was not established by an independent Tribunal.
18. The 1966 Determination¹ is set out as follows:

"A country member (other than a Minister of the Crown) whose place of residence is not less than thirty-five miles from the General Post Office at Adelaide, who is required, in order to attend any Parliamentary sitting, to stay in Adelaide overnight other than at Parliament House, and who incurs expense in so doing, shall be paid an accommodation allowance at the rate of six dollars (\$6.00) for each such night."
19. Insofar as the Tribunal can discern, the 1966 Determination is the origin of the entitlement in terms of it being fixed by an independent Tribunal. Relevantly, the 1966 Determination provides that the entitlement is based upon the Member of Parliament incurring actual expenses and provides that the allowance is characterised as being for accommodation. Further, the 1966 Determination was made prior to Australia adopting the metric system, and, in the early 1970's, the entitlement was amended such that a metric measurement of 75kms was deemed suitable.
20. The Tribunal notes that, throughout the long history of the Country Members Accommodation Allowance, this is the first annual review where Members of Parliament have put the abovementioned submissions to the Tribunal, following a significant public debate about apparent anomalies.

NATURE AND PURPOSE OF THE ALLOWANCE

21. The Country Members Accommodation Allowance, as it currently operates, provides for the payment of an accommodation allowance based on certain specified eligibility criteria.
22. The entitlement is provided for the purpose of meeting expenses associated with accommodation. There is no provision made for meals, drinks, or incidental expenses in the amount of the entitlement.
23. The allowance exists to facilitate journeys of an official nature from a Country Member's usual place of residence to Adelaide. The allowance operates such that Country Members are not disadvantaged for fully and properly carrying out their official parliamentary, community or electoral duties in Adelaide.

SCHEMES OPERATING IN OTHER STATES AND TERRITORIES

24. The Tribunal has examined in detail the Country Members Accommodation Allowance arrangements operating in other States and Territories. The Tribunal has found that schemes operating in other jurisdictions have similar objectives to the arrangements in place in South Australia.

¹ Determination of the Parliamentary Salaries Tribunal, dated 23 June 1966 under the *Parliamentary Salaries and Allowances Act 1965* (source: *Government Gazette*).

NECESSITY FOR COUNTRY MEMBERS TO TRAVEL TO ADELAIDE FOR OFFICIAL PURPOSES

25. Submissions put to the Tribunal detail the necessity for Country Members of Parliament to frequently be in Adelaide to attend not only sittings of the Parliament but also to attend various functions, community events, and to assist the broader community and their constituents with a range of issues. These tasks are performed by Members in the course of their official duties as a Member of Parliament.
26. The Tribunal has heard that the duties of a Member of Parliament are not comparable to a 9am to 5pm occupation. Members of Parliament are often required to attend community events and functions in their capacity as a Member beyond 11pm.
27. The Tribunal considers that the basis of the Country Members Accommodation Allowance is important insofar as the entitlement facilitates city access to Country Members and avoids a financial disadvantage to Country Members carrying out their official duties in Adelaide.

75KM DRIVING BOUNDARY FOR PART A ELIGIBILITY

28. The Tribunal has reviewed the appropriateness of the 75km driving boundary as one of the eligibility criteria for the payment of the country members accommodation entitlement. A map which illustrates the 75km driving boundary is included below:

75km driving boundary from the Adelaide GPO

(note: this map is a guide only and 100% accuracy is not assumed)



29. A submission was made to the Tribunal that the driving boundary for eligibility ought to be increased from 75km to 100kms. A map which illustrates that submission is included below:

75km driving boundary with 100km driving boundary overlay, from the Adelaide GPO

(note: this map is a guide only and 100% accuracy is not assumed)

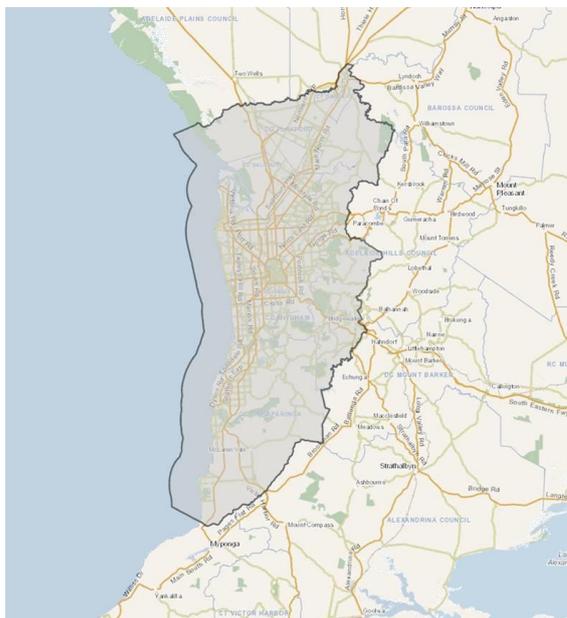


30. The Tribunal has noted the submissions in relation to advancements in road infrastructure and motor vehicles since the 75km driving boundary was fixed by this Tribunal's predecessor in the 1970s. The Tribunal considers that this issue is finely balanced, as sources such as the Royal Automobile Association ("RAA") have reported that, despite significant developments in road infrastructure projects, Adelaide's road networks have become more congested in recent years², leading to an increase in motor vehicle travelling time measured across typical Adelaide driving routes.
31. Further, the Tribunal does not consider extending the driving boundary beyond 75km to be appropriate at the time of this review, given the inherent Work Health and Safety risks associated with this proposal when considered against the background of a Member's duty to be involved in community affairs at any hour of the day or night.
32. The Tribunal will, however, continue to monitor developments in the State's road infrastructure throughout the course of future reviews of this entitlement.

OUTSIDE METROPOLITAN ADELAIDE FOR PART B ELIGIBILITY

33. The Part B entitlement for Country Members provides a lower level of allowance, for Members whose usual place of residence is less than 75km from the Adelaide GPO, but is outside of the Metropolitan Adelaide boundary (as defined by the *Development Act 1993*).
34. The Tribunal has considered the appropriateness of lower rates of allowance that are current payable under Part B, which is currently capped at \$234 per night and up to 15 nights per financial year.
35. A map which illustrates the Metropolitan Adelaide boundary is included below:

Metropolitan Adelaide, as defined by the *Development Act 1993*
(note: this map is a guide only and 100% accuracy is not assumed)



36. The Tribunal is of the view that the provision of the Part B entitlement continues to be appropriate, but only in the circumstance where the Member incurs actual expenditure staying in commercial accommodation in accordance with the terms of the accompanying Determination.

INCURS/INCURRED ACTUAL EXPENDITURE FOR ELIGIBILITY

37. The Tribunal considers it appropriate that, as part of the eligibility criteria for the country members accommodation entitlement, Members must incur actual expenditure for accommodation. Where no actual expense is incurred by the Member, the Tribunal does not consider any allowance ought to be paid.

² Royal Automobile Association ("RAA"), *Media Release, RAA Travel Survey Reveals Voyage of the Jammed*

38. The Government made submissions to the Tribunal that the term “incurs actual expenditure” be expanded upon to include the following:
- “including those costs of owning, renting and or maintaining accommodation, for example, interest, rental, rates, maintenance, and any other actual expenditure incurred in connection with the accommodation”.*
39. The Tribunal has considered the Government’s position, but has decided to adopt a different approach, with a reimbursement model to be used for commercial accommodation expenses, and an allowance model to be used for second residence expenses.
40. The Tribunal considers it appropriate that a Country Member may elect, or has elected, to rent on an ongoing, as distinct from on an occasion by occasion basis, or own, a second residence in Adelaide for use as accommodation where it is necessary for that member to itinerantly conduct official parliamentary, community or electoral business in Adelaide. The Tribunal notes that at least some Members have found this to be a more practical form of arrangement, given the frequency of their visits to Adelaide.
41. Accordingly, the Tribunal has made separate provisions for an entitlement in relation to second residence expenses within the terms of its accompanying Determination.

EVIDENCE OF USUAL PLACE OF RESIDENCE

42. The Tribunal has heard submissions in relation to the appropriate standard of evidence in discerning a Member’s *“usual place of residence”*.
43. Specifically, the Government submitted that a such evidence ought to include the address where the member is registered on the electoral roll.
44. The Tribunal considers that the Member’s address on the electoral roll is an appropriate form of evidence when discerning a Member’s usual place of residence for the purposes of the accommodation allowance.
45. Accordingly, the Tribunal has made provision for such a definition within the accompanying Determination.
46. The Tribunal has recognised that a Member may change their address at any time after being elected. This may reflect the Member’s assessment of their official duties and obligations, or it may reflect family or personal circumstances. No restriction in this respect is considered appropriate by the Tribunal.

OTHER ACCOMMODATION ARRANGEMENTS

47. The Tribunal is aware that some Members may wish to utilise other accommodation arrangements when claiming an accommodation entitlement for eligible journeys to Adelaide. These include, but are not limited to, staying with a friend or family member, or other types of non-commercial accommodation. For the future, the Tribunal is not satisfied that real costs are actually incurred in those circumstances.
48. Accordingly, the accompanying Determination will only provide for commercial accommodation costs and second residence accommodation costs.

OTHER BENEFITS PROVIDED TO MEMBERS OF PARLIAMENT

49. The Tribunal has observed that, in accordance the legislative scheme governing the remuneration of Members of Parliament, various other allowances and other benefits may be provided to Members of Parliament from time to time. It is relevant to set out section 6A of the *PR Act*, as follows:

“6A—Ability to provide other allowances and benefits

- (1) This Act does not limit or affect the ability of the Parliament or the Crown to provide allowances and other benefits that are additional or supplementary to the awards of the Remuneration Tribunal under this Act.”*

50. Any such other allowances and benefits provided under section 6A of the *PR Act* do not emanate from a Determination made by this Tribunal. Without limiting these

arrangements, the Tribunal has been made aware of administrative arrangements for late night taxi services after Parliamentary sittings, and access to motor vehicles under specified salary sacrifice arrangements.

51. It may be argued that some of the above benefits impact on the Country Members accommodation entitlement determined by this Tribunal. However, the Tribunal has adopted the position that, whilst the above benefits may be provided by the Parliament from time to time, these are administrative arrangements that may be subject to change without notice, and, as such, it is not currently appropriate to incorporate the consideration of these informal benefits into this review.

ACCOUNTABILITY ISSUES

52. The Tribunal considers that the objectives and principles underpinning the entitlements applicable to Country Members should be achieved through systems which are demonstrably transparent and are not administratively cumbersome. The requirement for transparency has been given particular weight.
53. Accordingly, a reimbursement based system will be adopted for commercial accommodation, whilst the allowance based system will remain for second residence expenses, with additional requirements and clarifications implemented to assist in the proper governance of this entitlement.
54. The Tribunal notes the submissions that the Country Members Accommodation Allowance claim forms should be published on the Parliament's website. The Tribunal has observed that, at the time of this review, the Parliament has independently given an undertaking to publish the claim forms on its website. The Tribunal has not made a formal Determination in this respect.
55. The Tribunal notes that its legislative role and function in relation to Members of Parliament is to make Determinations of remuneration, and to review those Determinations on an annual basis. The Tribunal has no enforcement powers in relation to compliance issues at the workplace level.

AMOUNT OF THE ENTITLEMENTS

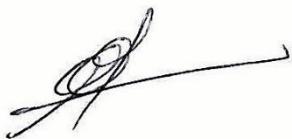
56. The Tribunal has reviewed the amount of the country members accommodation entitlement against current commercial accommodation costs. The Tribunal is of the view that the current nightly maximum amount of the entitlement remains appropriate for these commercial accommodation arrangements.
57. The Tribunal does not consider that commercial accommodation costs should determine the quantum of the allowance applicable to a second residence. In fixing an appropriate amount of second residence allowance, the Tribunal has had regard to the median long-term rental accommodation costs in Adelaide. The Tribunal notes that this amount is generally consistent with the cost of owning and maintaining a second residence in Adelaide. On that basis, the Tribunal has determined a second residence accommodation allowance amount of \$185 per night.
58. In relation to the Part B entitlement, the Tribunal does not consider that the journey from outside Metropolitan Adelaide is sufficient as to warrant the payment of an entitlement in relation to expenses incurred for a Member's second residence. Accordingly, the Tribunal will not prescribe an entitlement for second residence accommodation under Part B.
59. The Tribunal has reviewed the maximum number of nights for which the allowance may be claimed in a financial year. The Tribunal considers that this should be 135 nights per financial year under Part A and 15 nights per financial year under Part B.
60. In reaching the above conclusions, the Tribunal has had due regard to the economic and social circumstances of the State at the time of this Review.

ELIGIBILITY CRITERIA AND ENTITLEMENT

61. The Tribunal has amended the terms of its accompanying Determination to reflect the abovementioned changes to the eligibility criteria and entitlement.

ISSUANCE OF DETERMINATION

62. The Tribunal has issued Determination 9 of 2020, which should be read in conjunction with this Report.



Matthew O'Callaghan
PRESIDENT



Peter Alexander
MEMBER



Pamela Martin
MEMBER

Dated this 7th day of September 2020.