

SCHEDULE 1

Terms and Conditions of Appointment

Specialist Assessor

1. Background

- a. The South Australian Civil and Administrative Tribunal is established by the SACAT Act.
- b. Assessors of the Tribunal are appointed under section 22 of the SACAT Act by the Governor on the recommendation of the Minister and with the advice and consent of the Executive Council.
- c. Under section 22(3), Assessors must be persons who, in the opinion of the Minister, are qualified, by reason of their knowledge, expertise and experience, to provide specialist knowledge in a field or fields in which the Tribunal exercises jurisdiction (after taking into account the provisions of any relevant Act).

2. Interpretation

In this instrument:

- a. words used have the same meaning as words used in the SACAT Act or Regulations or the Tribunal's Rules.
- b. a reference to any legislation, Rule, Practice Direction or Code of Conduct means that legislation, Rule, Practice Direction or Code of Conduct as amended and in force from time to time and includes any legislation, Rule, Practice Direction or Code of Conduct substituted for it and any instrument made under it or the substituted legislation, Rule, Practice Direction or Code of Conduct.
- c. The following words have the following meanings, unless the contrary intention appears:
 - i. **“Code of Conduct”** or **“Code”** means the Code in Appendix 2;
 - ii. **“Complying Superannuation Scheme”** means a complying superannuation scheme within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth;

- iii. **“Executive Senior Member”** means a Senior Member of the Tribunal who, at the relevant time, is the nominee of the President under the Tribunal’s Rules to be in charge of a particular Stream or Streams of the Tribunal;
- iv. **“the Assessor”** means each person herein appointed as an Assessor of the Tribunal;
- v. **“Members”** means Executive Senior Members, Senior Members and Ordinary Members of the Tribunal and includes where relevant (but subject to the SACAT Act) supplementary Members;
- vi. **“Minister”** means the Minister (or the Minister’s delegate and includes a person acting as Minister) responsible for the administration of the SACAT Act;
- vii. **“Performance Standards”** means the performance standards set out in Appendix 1 or the standards that may be set from time to time by the President of the Tribunal;
- viii. **“Presiding Member”** means a person who constitutes the Tribunal alone or, where the Tribunal is constituted by two or more persons, means a person who is the Presiding Member in accordance with section 24 of the SACAT Act, i.e. the most senior of them;
- ix. **“SACAT Act”** means the *South Australian Civil and Administrative Tribunal Act 2013*;
- x. **“Sessional”**, in respect of an Assessor’s appointment, means that the Assessor is not appointed on a full-time or part-time basis and is not employed under a contract of employment, but is paid on the basis of an agreed range of hours to be worked within a specified period or on an ad hoc arrangement to meet the varying needs of the Tribunal;
- xi. **“State”** means the State of South Australia.

3. Conditions of Appointment

- a. The Assessor is appointed to the Tribunal on the conditions specified in this instrument of appointment.
- b. The Assessor is not appointed under a contract of employment and no relationship of employer and employee arises between the Assessor and the Tribunal or any other person as a result of this appointment.
- c. The Assessor is also bound by the provisions of the SACAT Act from time to time applying to Assessors’ appointments and functions.

- d. This instrument comprises the conditions on which the Assessor is appointed to the Tribunal and, for completeness, incorporates certain provisions of the SACAT Act applying to Assessors' appointments and functions (but with the intent that the SACAT Act will always prevail should the provision incorporated in this instrument be later repealed or amended).

4. Duration of Appointment and Reappointment

- a. The Assessor is appointed for the term of office, not exceeding five years, that is specified in this instrument of appointment in respect of the Assessor.

5. Basis of Appointment

- a. As a sessional appointee to the Tribunal, the Assessor will be paid on the basis of work performed for an agreed range of hours within a specified period or on an *ad hoc* arrangement to meet the varying needs of the Tribunal. Aside from the payments provided for in this instrument, the Assessor is not entitled to any other payment or benefit relating to his or her appointment as an Assessor. No minimum level of work is guaranteed to the Assessor and no retainer or any similar or other gratuitous payment will be made.

6. Duties

- a. The Assessor must perform the duties set out in Appendix 1 in accordance with the relevant performance standards as well as any other duties that the Assessor is lawfully and reasonably directed to perform by the President or any person authorised by the President.
- b. The Assessor will obey all lawful and reasonable directions of the President and any person authorised by the President to give directions relating to hearings to the Assessor and will comply with all policies published by the Tribunal.
- c. The Assessor will devote to the duties of their office the time and attention that may reasonably be required both during ordinary working hours and at other times.
- d. The Assessor may be required to travel when the Tribunal has listed matters for hearing in regional locations.
- e. The Assessor is obliged to advise the President of the nature of any paid employment or professional work or undertaking engaged in by the Assessor outside his or her duties as an Assessor of the Tribunal and the Tribunal may not

list the Assessor for matters if, in the President's opinion, to do so would or may conflict with the proper performance of the Assessor's paid employment or professional work or undertaking engaged in by the Assessor outside his or her duties as an Assessor of the Tribunal.

7. Code of Conduct

The Assessor must comply with the Code of Conduct set out in Appendix 2.

8. Remuneration

- a. The Assessor will be remunerated at the set out in schedule 1.
- b. Sessional rates are inclusive of time expended in respect of preparation including prior reading of materials, and travel time to and from the local registry relevant to the Assessor. However, in the case of complex matters to be heard by the Assessor, payment of additional remuneration to the Assessor may be approved by the Principal Registrar or any other person with delegated authority of the President.
- c. Notwithstanding any other provision of this instrument, an Assessor is to be remunerated on the basis of each completed or partially completed hour worked by the Assessor or during which the Assessor is otherwise engaged in the functions of the Tribunal.
- d. Assessors will be paid \$65 per hour in respect of preparation of written reasons for a decision by the Assessor, where the decision of the Tribunal is reserved, to a maximum of \$130 unless a greater amount is approved by the Principal Registrar on the recommendation of the relevant ESM or delegate of the President.
- e. Assessors will receive 50% of the relevant remuneration payable in respect of a session in the event that all work allocated by the Tribunal in relation to the relevant session does not proceed for reasons other than the unavailability of the Assessor for any reason. However, where a matter allocated by the Tribunal is cancelled by the Tribunal and at least one clear business days' notice is given to the Assessor in respect of the cancellation, no payment will be made.
- f. The Assessor will be reimbursed in respect of expenses reasonably incurred in relation to travel, meals, incidentals and motor vehicle usage in connection with their services to the Tribunal.
- g. If the Assessor is allocated tasks or functions by the President or her delegate in addition to the tasks or functions of the Assessor under this appointment, the

President or delegate, may, at their discretion, facilitate payment to the Assessor of additional remuneration in recognition of the further tasks or functions, at a rate set by the President from time-to-time.

- h. The salary packaging arrangements available to public sector employees are available to Assessors notwithstanding they are not employees save that Assessors can only sacrifice salary into a superannuation scheme compliant with Commonwealth legislation.
- i. An Assessor who is concurrent with their appointment as an Assessor of the Tribunal, employed as a public sector employee on a full-time basis is not entitled to be paid any remuneration in association with their role as Assessor of the Tribunal, unless an exemption has been obtained in accordance with Department of the Premier and Cabinet Circular No. 16 as amended from time to time. An Assessor who is concurrent with their appointment as an Assessor of the Tribunal, employed as a public sector employee on a part-time basis is only entitled to be remunerated in association with their role as an Assessor of the Tribunal in respect of their role as Assessor on days when they are not performing remunerative duties as a public sector employee.

9. Superannuation

- a. During the term of the Assessor's appointment, the Assessor must be a member of a complying superannuation scheme.
- b. The State will meet the cost of compulsory employer superannuation contributions, subject to Commonwealth law.

10. Performance Review

- a. The performance of the Assessor will be reviewed against the performance standards by the President or the President's nominee at least once every three years if the Assessor has been called by upon by the Tribunal (or more often if required by the President).
- b. The Assessor will actively participate in, and apply the outcome of, each performance review.

11. Leave

The Assessor will not be entitled to any leave or leave loading.

12. Confidential Information

- a. The Assessor will not, while holding office as an Assessor or at any time thereafter, disclose any confidential information obtained during the course of undertaking the duties of his or her office except as required in performing the duties of that office or as authorised by the President or as required by law.
- b. Any intellectual property invented or created by the Assessor as a result of their undertaking the duties of their office will remain the property of the Crown in right of the State unless otherwise agreed in writing between the Minister and the Assessor.

13. Disclosure of Interests

An Assessor who has a pecuniary or other interest that could conflict with the proper performance of the Assessor's functions in proceedings before the Tribunal:

- a. is obliged to disclose the interest to the parties to the proceedings and to the President; and
- b. must not take part in the proceedings or exercise powers affecting the proceedings:
 - i. if the President directs the Assessor to withdraw from the proceedings; or
 - ii. if a party to the proceedings does not consent to the Assessor hearing and determining, or participating in the hearing and determination of, the proceedings (unless the President determines that the Assessor can do so).

14. Removal or resignation from or vacation of office

- a. Assessors may be removed from office in accordance with s 22(9) of the SACAT Act, which may be amended from time to time.
- b. A person ceases to be an Assessor of the Tribunal where one or more of the circumstances outlined in s 22(10) of the SACAT Act are met, which may be amended from time to time.

15. Medical Examination

- a. If it appears to the President or the President's nominee that the Assessor has failed to carry out the duties of their office satisfactorily or in accordance with the relevant performance standards due to either mental or physical incapacity, the President or the President's nominee may require the Assessor to undergo a medical examination by a qualified medical practitioner selected by the Assessor

from a panel of medical practitioners nominated by the President or the President's nominee. That medical examination is to be at the expense of the State.

- b. Medical reports provided to the President or the President's nominee will only be used for the purpose for which they were obtained and will otherwise be dealt with in accordance with the Information Privacy Principles issued by Cabinet from time to time, the *State Records Act 1997* and the destruction Schedules issued under that Act. A copy of any report obtained under this clause will be released to the Assessor at their request and the Assessor may furnish to the President or the President's nominee medical reports obtained by the Assessor within fourteen days of being provided with a copy of any report in the custody of the President or the President's nominee.

16. Property of the Crown

If the Assessor is removed from office by the Governor or ceases to be an Assessor of the Tribunal, on the Assessor's last working day the Assessor must return to the Minister or the Minister's nominee all property owned by the Minister and the Crown in right of the State.

17. Immunities

- a. The Assessor has the same protections, privileges and immunities from liability as a judge of the Supreme Court of South Australia.
- b. An action in tort does not lie against a person for anything that the person has done (or omitted doing), in good faith, in the performance or purported performance of a function under the SACAT Act or a relevant Act as an Assessor of the Tribunal.

18. Notices

Notices must be in writing and delivered or sent by email (unless the Assessor has indicated a different preferred method of communication with the Minister or the Tribunal) by the Minister or the Minister's nominee to the provided email address of the Assessor or the last known email address of the Assessor.

APPENDIX 1

ASSESSORS

DUTIES

In accordance with the SACAT Act and Regulations, and the Tribunal Rules, Practice Directions and Code of Conduct, an Assessor will, under the leadership of the President:

- Hear and determine matters together with a Presiding Member when the Tribunal is constituted of two or more persons;
- Conduct compulsory conferences or mediations or other alternative dispute resolution processes as directed and approved by the President;
- Ensure decisions are made within timeframes determined by the President;

PERFORMANCE STANDARDS

Assessors are responsible to the President for meeting the following general performance standards:

1. The excellent and consistent performance of the duties and functions of the Assessor's office;
2. The competencies and performance indicators set out in Council of Australasian Tribunals, *Tribunal Competence Framework: Promoting Professional Excellence*;
3. At all times acting in a manner consistent with the Code of Conduct for Tribunal Members

REMUNERATION

OFFICE	SESSIONAL RATE (all as at 6 April 2018)
Specialist Assessor	\$220.00 per hour