NORTHERN TERRITORY OF AUSTRALIA

REMUNERATION TRIBUNAL

REPORT ON THE ENTITLEMENTS OF MAGISTRATES

AND

DETERMINATION No. 1 of 2008
INTRODUCTION

1. The Tribunal is established by section 17(1) of the Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act.

2. Under that Act the entitlements of Magistrates must be reviewed by the Tribunal at least annually. Tribunal reports, including resultant determinations, are to be tabled in the Legislative Assembly within 6 sitting days of their being received by the Minister. The Assembly may disapprove all or part of the determinations by a resolution passed within the next 10 sitting days.

3. This report completes this annual review.

CONDUCT OF THE REVIEW

4. The Magistrates and relevant Northern Territory Government agencies were made aware of the review by letter in January 2008, and submissions invited.

5. The Tribunal received and considered three submissions from individual Magistrates and letters of support from two other Magistrates. Each submission was circulated to the Chief Executive Officers of relevant NT Government agencies for comment. A further submission was received from two Magistrates after the Tribunal indicated its preliminary views.

6. The Tribunal was available in Darwin during January, February and March 2008, to receive the submissions, gather evidence, and receive information on local economic conditions.

7. The Tribunal gathered and reviewed interstate and federal judicial remuneration, allowances and benefits changes, and brought itself up to date on all pertinent economic indicators.

8. All of this material was carefully considered in the context of the records of, and conclusions drawn during, previous inquiries.

REVIEW - REMUNERATION

9. Submissions from the Magistrates made a case for an increase of between 7.7% and 9.2%. The Government made no submissions as to salary movements for Magistrates.
10. The Tribunal is of the view that in all of the circumstances, an increase in salary of 4.6% is appropriate. The Tribunal is also of the view, for a variety of reasons, that there can be, and that it is desirable for there to be, precise relativity between Magistrates’ base remuneration and Judges’ base remuneration. That relativity should be maintained unless there are substantial changes in jurisdiction or some other cogent reason. Taking the foregoing into account, an additional 0.015% would result in a precise relativity of 75%, and accordingly the Tribunal determines that the increase should be 4.615%. This same percentage has been applied to the annual salaries of the Chief Magistrate, Deputy Chief Magistrate and Coroner. Further, the allowance for additional duties of the President of the Mental Health Review Tribunal, and the allowance for the Alice Springs Magistrate performing special administrative duties have also been increased by this percentage. The remuneration of the Chairperson of the Lands, Planning and Mining Tribunal has now been included in this determination.

11. The rates of travelling allowance have, in some cases, been slightly increased to reflect the increases determined reasonable by the Australian Taxation Office. It should be noted that the Brisbane and Perth rates for those Magistrates appointed on or before 21 March 2006 remain at a higher level than the rates for those Magistrates appointed after that date. This is because the rates were set at that higher level in the past, and section 6(2) of the Magistrates Act provides that the salary, allowances and other benefits to which a Magistrate is entitled must not be altered to the Magistrate’s detriment during his or her term of office.

MOTOR VEHICLES

12. The last Determination provided that Stipendiary Magistrates must be provided with a Holden Acclaim, or a motor vehicle specified by NT Fleet to be of an equivalent standard. The Tribunal is of the view that it cannot delegate its determination of the type of motor vehicle that a Magistrate may have to a third party, and even if it could, it would be undesirable. In order to ensure there is no detriment to the entitlement, the Tribunal has compared the features of the Holden Acclaim, which is no longer available, with motor vehicles that are available. The new models which compare with the Holden Acclaim have some additional features. There are no motor vehicles with the same features as the Holden Acclaim and the Tribunal is obliged to nominate those set out in Table 4. This has resulted in a merging with the previous entitlement if the Deputy Chief Magistrate and Coroner. It should be understood that section 4.4 of the Determination allows the option of a Magistrate selecting a lesser vehicle if it results in no greater cost to the Northern Territory.
MOBILE TELEPHONES

13. The mobile telephones in the Determination have no fewer features than those previously determined. The Tribunal is of the view that if a Magistrate requires a mobile telephone with advanced features for the more efficient discharge of his or her responsibilities, then such a mobile telephone if justified should be provided by the Department responsible for providing the court and chamber accoutrements.

14. This concludes the report.

John Flynn
Tribunal Member
NORTHERN TERRITORY OF AUSTRALIA

Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act

DETERMINATION OF ENTITLEMENTS OF MAGISTRATES

The Remuneration Tribunal:

(a) under section 7(1) of the Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act and with reference to section 43 of the Interpretation Act, revokes the determination of salary, allowances and other benefits for Magistrates dated 23 March 2007 (the “former determination”); and

(b) under section 7(1) of the Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act, determines the entitlements of Magistrates as set out in the Schedule (the “Determination”); and

(c) under section 7(1) of the Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act, determines that for the period starting on 1 December 2007 and ending immediately before the date of this Determination, a Magistrate is entitled to be paid an amount equal to the difference between:

(i) the amount paid to the Magistrate under the former determination; and

(ii) the amount that would have been payable to the Magistrate had this Determination been in operation during that period.

Dated 23 April 2008.

John Flynn
Member of the Remuneration Tribunal
SCHEDULE

DETERMINATION NO. 1 OF 2008

MAGISTRATES

This Determination sets out the entitlements of Magistrates appointed under section 4(3) of the Magistrates Act

PART 1 – GENERAL

1.1 Definitions: In this Determination:

'Coroner' means the Magistrate appointed to be the Territory Coroner under the Coroners Act;

'employee' means an employee within the meaning of the Public Sector Employment and Management Act;

'Magistrate' means a Magistrate appointed under section 4(3) of the Magistrates Act;

'new Magistrate' means a Magistrate appointed after the date of this Determination.

1.2 Secondment to a Court in a State or another Territory: If a Magistrate is seconded to a Court in a State or another Territory, all or any of the allowances and other benefits (other than salary and superannuation) provided for by this Determination may be varied or replaced to match the allowances and other benefits in that State or Territory, subject to the agreement of the Minister and the relevant minister of the State or Territory.

PART 2 – SALARY AND ALLOWANCES

2.1 Annual salary: The annual salary of a Magistrate is set out in Table 1.
### Table 1
#### Annual Salary

<table>
<thead>
<tr>
<th>Office</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Magistrate</td>
<td>$269,462</td>
</tr>
<tr>
<td>Deputy Chief Magistrate</td>
<td>$249,772</td>
</tr>
<tr>
<td>Coroner</td>
<td>$259,615</td>
</tr>
<tr>
<td>Stipendiary Magistrate</td>
<td>$239,925</td>
</tr>
<tr>
<td>Chairperson, Lands, Planning and Mining Tribunal</td>
<td>$249,772</td>
</tr>
</tbody>
</table>

#### 2.2 Allowance for additional duties:

**2.2.1 President of Mental Health Review Tribunal:** If a Magistrate is appointed to be the President of the Mental Health Review Tribunal an allowance at the rate of $9,847 per annum is payable.

**2.2.2 Alice Springs – special administrative duties:** If a Magistrate based at Alice Springs is performing special administrative duties under direction from the Chief Magistrate, an allowance at the rate of $7,023 per annum is payable.

**2.2.3 Other additional duties:** An allowance at a rate equal to 1.75% of the salary of the Magistrate is payable:

(a) for each period that the Magistrate undertakes administrative responsibilities for the Mental Health Review Tribunal under the terms of a written direction from the President of the Tribunal; or

(b) while the Magistrate holds the appointment of managing magistrate for the Work Health Court.

#### 2.3 Northern Territory Allowance: A Magistrate with at least one dependant is entitled to an allowance for being a resident of the Territory at the rate of $960 per annum.

**2.3.1 Dependant:** For this clause "dependant" means:
(a) a Magistrate's spouse, or any child under the age of 18, who permanently resides with the Magistrate and who is not in receipt of income in excess of the weekly minimum adult wage (including any Northern Territory Allowance and district allowance); or

(b) any other person or category of person approved by the Remuneration Tribunal for the purpose of the allowance.

PART 3 – TRAVEL

3.1 Travel on official duty: For this Part, "travel on official duty" means the following:

(a) travel while on duty in the Territory;

(b) travel to attend a conference mentioned in clause 3.3;

(c) travel for a purpose approved by the Minister or the Chief Executive Officer.

3.2 Class of travel: A Magistrate is entitled to travel business class, if available, for travel on official duty by air.

3.3 Travel to conference: Each financial year, a Magistrate is entitled to attend:

(a) one relevant interstate conference, subject to the approval of:

   (i) for the Chief Magistrate – the Chief Executive Officer; or

   (ii) for any other Magistrate – the Chief Magistrate; or

(b) one relevant overseas conference, subject to the endorsement of the Chief Magistrate and the approval of the Minister.

3.4 Travelling Allowance: Travelling allowance is payable to a Magistrate for travel on official duty.

3.5 Rates of travelling allowance: Subject to clause 3.6, the rates of travelling allowance for travel on official duty involving an overnight stay:

(a) for a Magistrate appointed after 21 March 2006 – are set out in Tables 2 and 3; and

(b) for any other Magistrate – are set out in Tables 2A and 3.
### Table 2
**Daily Rates**
(Magistrates appointed after 21 March 2006)

<table>
<thead>
<tr>
<th>Column 1 Location</th>
<th>Column 2 Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sydney, Melbourne</td>
<td>$404.45</td>
</tr>
<tr>
<td>Brisbane</td>
<td>$355.45</td>
</tr>
<tr>
<td>Other capital cities</td>
<td>$334.45</td>
</tr>
<tr>
<td>Other places</td>
<td>$319.45</td>
</tr>
</tbody>
</table>

### Table 2A
**Daily Rates**
(other other Magistrates)

<table>
<thead>
<tr>
<th>Column 1 Location</th>
<th>Column 2 Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sydney, Melbourne</td>
<td>$404.45</td>
</tr>
<tr>
<td>Brisbane, Perth</td>
<td>$360.00</td>
</tr>
<tr>
<td>Other capital cities</td>
<td>$334.45</td>
</tr>
<tr>
<td>Other places</td>
<td>$319.45</td>
</tr>
</tbody>
</table>

### Table 3
**Rates for Meals And Incidentals**

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2 Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breakfast</td>
<td>$25.00</td>
</tr>
<tr>
<td>Lunch</td>
<td>$36.00</td>
</tr>
<tr>
<td>Dinner</td>
<td>$56.40</td>
</tr>
<tr>
<td>Incidentals</td>
<td>$22.05</td>
</tr>
<tr>
<td>Total</td>
<td>$139.45</td>
</tr>
</tbody>
</table>

#### 3.6 Travel involving an overnight stay:
The following provisions apply to travel on official duty that involves an overnight stay.

#### 3.6.1 Daily Rate:
If the cost for accommodation and meals is met by:

(a) a Magistrate appointed after 21 March 2006 – the amount of travelling allowance payable for each night spent at a location in column 1 of Table 2 is the rate specified in column 2 of the Table; or
(b) any other Magistrate – the amount of travelling allowance payable for each night spent at a location in column 1 of Table 2A is the rate specified in column 2 of the Table.

3.6.2 Rate for Meals and Incidentals only: If an entity other than the Magistrate pays for accommodation, the amount of travelling allowance payable for each day is the total amount specified in column 2 of Table 3.

3.6.3 Meals provided: If an entity other than the Magistrate pays for a meal, the travelling allowance payable must be reduced by the rate specified in Table 3 for that meal.

Example:
If a conference provides a dinner, the payment to the Magistrate for meals and incidentals for that day must be reduced by the rate specified in Table 3 for dinner.

3.6.4 Non-commercial accommodation: If the Magistrate is accommodated in private non-commercial accommodation (such as the home of a family member or friend), the daily rate of travelling allowance is one third of the rate that would otherwise be payable under clause 3.6.1, rounded up to the nearest dollar.

3.7 Travel not involving overnight stay: If a Magistrate is on circuit duty for 5 hours or more that does not involve an overnight stay, the Magistrate is entitled to an allowance at the daily rate of $45.

PART 4 – VEHICLE AND TELEPHONE

4.1 Motor vehicle: A Magistrate is entitled to be provided with a 6-cylinder motor vehicle with private number plates for his or her official duties.

4.1.1 Vehicle model: The vehicle provided must be the model indicated in Table 4 or a motor vehicle specified by the Remuneration Tribunal to be of equivalent standard.

Table 4

<table>
<thead>
<tr>
<th>Office</th>
<th>Vehicle Model</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Magistrate</td>
<td>Holden Calais</td>
</tr>
<tr>
<td>Magistrate</td>
<td>Holden Berlina</td>
</tr>
<tr>
<td></td>
<td>Toyota Prodigy</td>
</tr>
</tbody>
</table>
4.1.2 **Running costs:** The costs of owning the vehicle and of running and maintaining it in the Territory are to be paid by the Territory.

4.1.3 **Private use of vehicle:** A Magistrate is entitled to reasonable private use of the motor vehicle when it is not needed or not likely to be needed for official purposes and may:

(a) nominate, on a journey by journey basis, another person as the person authorised to use the motor vehicle during the course of that journey; and

(b) subject to clause 4.1.4 – keep the motor vehicle at his or her residence while it is not in use; and

(c) use the motor vehicle while on leave in the Territory or elsewhere in Australia if he or she pays for all the fuel used in driving the motor vehicle and all the other costs of running and maintaining the motor vehicle while on leave outside the Territory.

4.1.4 **Responsibility of Magistrate:** A Magistrate must:

(a) ensure that when the motor vehicle is being used for private purposes, it is used properly and in accordance with this clause; and

(b) ensure that any credit card given to him or her by the Territory to pay the running costs of the motor vehicle is used properly for that purpose; and

(c) comply with the operating guidelines (if any) of NT Fleet relating to the motor vehicle, be responsible for the due preservation of the motor vehicle and account for any undue damage to it; and

(d) comply with the directions (if any) of the Chief Magistrate or a person acting under the authority of the Chief Magistrate that relate to parking the motor vehicle and access to and use of the motor vehicle for official purposes by other persons while the motor vehicle is not in use (including while the Magistrate is on leave).

4.1.5 **Accidents involving vehicle:** Any provisions in force in the Agency at the date of the making of this Determination relating to
accidents involving departmental vehicles apply to a Magistrate as if the Magistrate were an employee of the Agency.

4.2 **Residential telephone:** A Magistrate is entitled to be provided with a telephone for his or her residence with the following to be paid by the Territory:

(a) installation and rental costs of the telephone;

(b) charges for calls up to $800 per quarter.

4.3 **Mobile telephone:** A Magistrate is entitled to be provided with a network connected mobile telephone.

4.3.1 **Telephone model:** The telephone is to be:

(a) for the Chief Magistrate or Coroner - NextG LG TU550; and

(b) for any other Magistrate – NextG Samsung 412

4.3.2 **Recurrent costs:** The recurrent costs of the mobile telephone are to be paid by the Territory up to the maximum quarterly limit specified in clause 4.2(b).

Note: To clarify, the maximum quarterly amount the Government is liable to pay is $800 total for combined residential phone charges and recurrent mobile phone costs.

4.4 **Variation of entitlements:** At the request of a Magistrate and subject to the agreement of the Remuneration Tribunal, the Magistrate's entitlements under clause 4.1, 4.2 or 4.3 may be varied on the condition that the variation does not result in a greater cost to the Territory of the total entitlements payable under the clause.

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**PART 5 – LEAVE**

5.1 **Application of Part 2 of Public Sector Employment and Management By-laws:** Subject to clause 5.3, Part 2 of the Public Sector Employment and Management By-laws, as in force at 25 May 2005, (the "By-laws") applies to a Magistrate, with the modifications specified in clause 5.2, as if the Magistrate were an employee.

5.2 **Modifications to By-laws:** Part 2 of the By-laws is applied with the modifications specified in this clause.

5.2.1 **Recreation leave:** For by-law 4 of the By-laws, "annual credit" is taken to be a period of 6 weeks.
5.2.2 Purchase of additional credits: Magistrates may elect to purchase additional leave up to a limit of four weeks per year subject to the following conditions:

(a) Magistrates will have their annual salary (and fortnightly salary payments) reduced accordingly;

(b) purchased leave counts as service for all purposes.

5.2.3 Long service leave in lieu: A Magistrate has a special entitlement to a payment in lieu of long service leave on resignation from employment as follows:

(a) 22.5 calendar days after 7 completed years of service;

(b) 45 calendar days after 8 completed years of service;

(c) 67.5 calendar days after 9 completed years of service.

Payment under this provision is calculated using the following formula:

\[
\text{calendar days} \quad \text{annual salary} \\
30 \quad X \quad 12
\]

5.2.4 Terminology: The terminology of Part 2 of the By-laws is modified as follows:

(a) a reference to the Agency is taken to be a reference to the Local Court;

(b) a reference to Chief Executive Officer is taken to be a reference to:

(i) for the Chief Magistrate – the Chief Executive Officer; and

(ii) for any other Magistrate – the Chief Magistrate;

(c) a reference to an employee is taken to be a reference to a Magistrate.

5.3 Determination prevails: If there is a conflict between a provision of this Determination and a provision of the By-laws as applied by this Part, the provision of this Determination prevails and, to the extent of the
inconsistency, the provision of the By-laws has no effect in relation to the accrual or utilisation of leave by a Magistrate.

**PART 6 – SUPERANNUATION**

6.1 **Definitions:** For this Part:

‘CSS’ means the Commonwealth Superannuation Scheme;

‘NTGPASS’ means the Northern Territory Government and Public Authorities Superannuation Scheme;

‘NTSSS’ means the Northern Territory Supplementary Superannuation Scheme.

6.2 **Employer Contributions:** A Magistrate is entitled to employer superannuation contribution as follows:

(a) if the Magistrate is a member of the CSS or a member of the NTGPASS and NTSSS – the contributions required to be made under the respective scheme;

(b) in any other case – contributions to a complying superannuation fund chosen by the Magistrate at the minimum rate required under the Federal Superannuation Guarantee legislation.

6.3 **Employee Contributions:** A Magistrate may elect to have up to 50% of salary payable to him or her under clause 2.1 paid into a superannuation scheme nominated by the Magistrate.

**PART 7 – RELOCATION EXPENSES**

7.1 **Application:** This Part applies to the following:

(a) a person who is required to move from another location in order to take up appointment as a Magistrate;

(b) a Magistrate who transfers from one location to another.

7.2 **Cost of conveyance:** The person is entitled to the costs of conveyance of the person, family members and reasonable household furniture and effects to the new location.

7.3 **Relocation allowance:** A Magistrate is entitled to a relocation allowance for a period of six fortnights at the following fortnightly rates:
(a) Magistrate only – $423;

(b) Magistrate with resident family – $584.

7.3.1 **Resident family:** For clause 7.3, the resident family rate is applicable where the employee's spouse, children or any other person who resided with the employee as part of the employee's family prior to relocation, accompanied the employee upon relocation and for whom the cost of that relocation was met by the Territory.