



NORTHERN TERRITORY OF AUSTRALIA

REMUNERATION TRIBUNAL

REPORT

AND

RECOMMENDATION No. 1 of 2003

MAGISTRATES OF THE NORTHERN TERRITORY

REMUNERATION TRIBUNAL

**REPORT - MAGISTRATES OF THE
NORTHERN TERRITORY**

NORTHERN TERRITORY OF AUSTRALIA

REMUNERATION TRIBUNAL

REPORT

MAGISTRATES OF THE NORTHERN TERRITORY

INTRODUCTION

1. The remuneration and allowances paid to Magistrates is a matter for determination by the Administrator from time to time under section 6 of the *Magistrates Act*.
2. The Tribunal is established by section 6(1) of the *Remuneration Tribunal Act*. Section 10(1) of that Act enables the Administrator to request the Tribunal to inquire into and report with recommendations on the remuneration and allowances to be paid to a person or class of persons, as well as other entitlements to be granted for their services. Tribunal reports are required to be tabled in the Legislative Assembly within 6 sitting days next following their receipt by the Administrator.
3. On 31 July 1981 the Administrator issued a formal Notice of Request to the Tribunal, specifying Magistrates as a class of persons to come within these arrangements and requesting the Tribunal to undertake its duties in this regard “from time to time”.
4. Within this standing authority, each inquiry and report sequence of Tribunal activity has been initiated on the written request of the Chief Minister of the Northern Territory.
5. The last full inquiry was completed on 8 March 2002, on which date the Tribunal made its Recommendation 1 of 2002 to the Administrator.
6. On 28 July 2002 the Chief Minister initiated a supplementary Tribunal inquiry specifically to inquire into the standards of vehicles to which Magistrates are entitled at Government expense. The resultant Tribunal Recommendation 3 of 2002 was made to the Administrator on 28 August 2002.

7. On 31 January 2003 the Administrator made a Determination accepting all the Tribunal's recommendations. That Determination also made the following specific changes to Magistrates' entitlements not considered by the Tribunal:
 - (i.) removal of the right of a Magistrate to attend a relevant interstate conference each year with the approval of the Chief Magistrate; and
 - (ii.) inclusion of the right to a Government funded telephone service in his or her residence and payment of calls up to \$750 per quarter.
8. The Chief Minister initiated the current sequence by letter to the Tribunal dated 7 November 2002, requesting that the inquiry commence on 1 December 2001.
9. The Tribunal has completed the inquiry and this report and recommendation completes the review.

CONDUCT OF THE REVIEW

10. The Magistrates and relevant departmental officers were made aware of the review by letter dated 6 December 2002.
11. The Tribunal received and considered the following submissions from Magistrates:
 - (i.) A submission from Mr David Loadman SM dated 20 December 2002 that the salary increase foreshadowed for Judges in the Federal jurisdiction should flow through to Magistrates, and that Magistrates remuneration should always be enough to attract the most able candidates.
 - (ii.) A submission from Mr J W A Birch SM dated 17 January 2003 recommending deferment of the ambition to consolidate Magistrates' conditions until the review of the Magistrates Act is completed, outlining additional Magistrate workload and productivity gains, and asking that the unofficial salary nexus with Judges of the Northern Territory Supreme Court be maintained.
 - (iii.) A submission from Mr H Bradley CM dated 17 February 2003 covering the flow-on of the increases for Judges of the Federal Court recommended by the Commonwealth Remuneration Tribunal as well as the usual annual economic and other environmental conditions related increase; providing continued justification for

Territory Magistrates to be at the top of the pay scale for Australian Magistrates; requesting an entitlement to a mobile telephone for each Magistrate; requesting earlier pro-rata benefit of long service leave; and advocating full private use of the motor vehicles allocated to Magistrates..

(iv.) A submission from Mr John Lowndes SM dated 25 February 2003 covering the extent, and comparable extent, of the out of hours work demanded of Magistrates in the Northern Territory..

12. Over the period 14 to 18 February 2003 the Tribunal met in Darwin with the

Attorney-General,
Chief Executive Department of Justice,
Executive Director and the Director Courts Administration,
Commissioner for Public Employment,
Under-Treasurer
Auditor-General
Chief Magistrate and Mr Loadman SM.

Each of these people provided the Tribunal with notice of recent developments as well as explanation and amplification of material already before the Tribunal and their views.

13. On 13 March 2003 the Northern Territory Government provided the Tribunal with a submission through the Department of Justice. This submission was made with the benefit of the submissions by Magistrates referred to above.

14. The Government submission was passed to the Chief Magistrate for any comment by Magistrates. No further comment was received.

15. The Tribunal examined general information on comparative wage costs and the Consumer Price Index. Detailed information concerning salaries, allowances and entitlements of holders of judicial offices in other jurisdictions in Australia was also obtained. Particular note was taken of Commonwealth Remuneration Tribunal Determination 2002/21, made after a comprehensive review into the remuneration of Federal judicial and related offices.

GENERAL DEVELOPMENTS

Economic conditions

16. Aggregate productivity increases in the workforce have continued to drive average earnings ahead of the Consumer Price Index (CPI) over recent years. In the year to the end of September 2002 the Wage Cost Index (WCI) and the CPI moved as follows:

	WCI	CPI
NT/Darwin	3.6%	2.2%
Australia	3.3%	3.2%

17. Executive Contract Officers in the Northern Territory Public Service received an increase of 3%, effective from 31 August 2002.

Relativities

18. Following the special review of judicial and related offices begun in 2001 by the Commonwealth Remuneration Tribunal (CRT), that Tribunal determined a salary increase of 7% for Judges of the Federal Court of Australia effective from 1 July 2002. The Tribunal reached the view that “current levels of remuneration need adjustment to reflect the increased quantum and complexity of work in the judicial environment.”
19. During that review the Federal Government submitted that “The Government would not support a significant increase in federal judicial salaries as this would destroy existing relativities with the remuneration payable to judges of State and Territory Supreme Courts.” Unless disallowed, this increase will flow to the Judges of the Supreme Court of the Northern Territory, effective from the same date. The latest possible dates for disallowance, based on the current sittings calendar, are 25 March (Representatives) and 15 May (Senate).
20. The CRT also decided that it would increase judicial salaries by a further 5% on each of 1 July 2003 and 1 July 2004 in addition to the increase determined on economic grounds (usually 3-4%) on each of those dates. In each case these increases will be subject to disallowance by either House of Parliament.

21. Increases in salary granted to Magistrates in other Australian jurisdictions within the last twelve months (subject to disallowance in some cases) were:

		Actual	Annualised
Commonwealth	9 months to 1/7/02	7.0%	9.3%
New South Wales	One year to 1/10/02	4.7%	4.7%
Victoria	17 months to 29/10/02	12.3%	8.7%
Tasmania	One year to 1/07/02	4.6%	4.6%
South Australia	14 months to 1/1/03	10.8%	9.3%
Western Australia	1 year to 1/1/03	3.3%	3.3%
ACT	8 months to 1/7/02	3.1%	4.7%

22. State and Territory Tribunals made note of changes to responsibilities, executive salary movements, differentials applying in their own jurisdictions, and of relativities with other jurisdictions. Attachment A shows the salary element of the remuneration of Chief Magistrates and Magistrates in the Australian jurisdictions.

23. The following table shows the proportional relativity that Magistrates' salaries bear to the respective Supreme Court Judges*:

	Judge	Magistrate	
Commonwealth	237,100	171,200	72.2%
New South Wales	245,280	176,600	72.2%
Victoria	227,100	162,900	71.7%
Queensland	229,450	162,000	72.9%
Western Australia	234,170	168,602	72.0%
South Australia	231,348	161,832	70.0%
Tasmania	225,192	152,005	67.5%
ACT	237,100	167,022	70.4%
NT (current)	237,100	168,863	71.2%

* Note that some of the salaries shown are still within the disallowance period.

Jurisdiction, Work value, and Productivity

24. No significant changes in jurisdiction were drawn to the attention of the Tribunal.
25. The Chief Magistrate argued that Northern Territory magistrates should be paid at the top of the scale of magistrates generally in Australia (such comparison being made after discounting the airfare increment payable in the Northern Territory). The reasons he advanced are:

- (a.) there is no intermediate court in the northern Territory and the magistrate jurisdiction is wider than all other magistrate services;
 - (b.) the magistrates jurisdiction is at the top of the scale for civil and higher than other magistrates in terms of sentencing;
 - (c.) other magistrates services do not generally have the same degree of circuit work;
 - (d.) after hours duty by magistrates is more extensive and disruptive than other jurisdictions (a matter also raised by Mr Lowndes SM); and
 - (e.) Territory living expenses are generally higher than those in other States.
26. The Tribunal continues to take account of all such jurisdictional and work value indicators. They were all comprehended in the major benchmarking review conducted by the Tribunal in 1997 after significant jurisdictional change.
27. The Government has drawn attention to the unexpected availability of Mr Loadman to undertake magisterial duty and thus lighten case loads. This circumstance is more one of productivity than work value, however. No material was produced to indicate any change to the productivity of the individual magistrates or of the Magistrates Court, though Mr Birch SM drew attention to the institution of a new procedure of contest mentions and new Practice Directions. From a remuneration standpoint the unanswered question is whether these efficiency gains are greater than the overall productivity gains occurring at the same time in other jurisdictions or in other professional workplaces.

REVIEW - SALARY

28. The Tribunal weighs the justification for any change to Magistrates' remuneration by the exercise of independent judgement based on evidence received and obtained covering such things as:
- jurisdiction,
 - special work characteristics,
 - recruitment and retention
 - entitlement trade-offs,
 - comparative data,

- local wage movements,
- local economic circumstances,
- and relative productivity.

29. There can be no nexus between the remuneration of Magistrates and Judges in the Territory as there is in some States. Judges' remuneration is increased annually after the weighing of national, not local, indicators by the CRT. The difficulties inherent in this situation have been discussed in previous reports. With due regard to that situation the Tribunal usually recognizes any increase in Judges' remuneration as a starting point in its considerations for each inquiry cycle.
30. On this occasion the Federal Government has before it a Determination granting Judges a 7% salary increase backdated to 1 July last year. That increase comprises (notionally) an amount for economic conditions/ productivity gains over 9 months and an amount recognising increased work value. Given the tone of the Government submission to the CRT there is some possibility that the work value ingredient of this increase (say 4%) will cause it to be disallowed. Consideration of this may not occur for several months.
31. Most States recognize an informal nexus of a maximum of 85% between the salaries of their Supreme Court judges and those of High Court. Those States may reconsider that nexus following expiration of the disallowance period, though the ambition of the CRT is to so structure its work value increases as to foster retention of judicial relativities through inter-jurisdictional cooperation. States and State Tribunals have yet to address the effect of the large and looming increases in Federal Judicial salaries over the next 15 months.
32. The table in paragraph 21 above shows that the States (apart from Western Australia) had already recognised that judicial salaries needed to be increased for reasons such as work value in addition to general economic conditions increases.
33. Wage cost parity with the public and other industry sectors in the Northern Territory justifies a salary increase for Magistrates of between 3% and 3.6%. An increase of that magnitude will, if the CRT Determination becomes effective, see a very great distortion of judicial relativities in the Northern Territory – extending back to the middle of last year.
34. In view of the uncertainty of the Federal increase this Tribunal does not recommend that the 7% increase be adopted for Magistrates. The Tribunal does, however, recommend that cognizance be had of the States increases over

the past year and the effect these have had on the comparative position of the Northern Territory Magistracy and the superior responsibility that it carries.

35. Having considered all of the available information, in particular States movements in paragraph 21 above, and with the benefit of the submissions and discussions already noted, the Tribunal recommends that the base salary payable to a Magistrate be increased by 4.7% from 1 December 2002, the date of commencement of this inquiry.
36. It may be that if and when the Federal Determination becomes effective the States will move quickly to restore judicial relativities. In that case the Tribunal recommends that a special mid-term reference be made to it.

REVIEW - ALLOWANCES

Travel and other Allowances

37. No submissions were received in respect of travel or other allowances and no change to the Determination is proposed by the Tribunal.

REVIEW - OTHER ENTITLEMENTS

Long Service Leave

38. Magistrates have the same entitlement to long service leave as Public Sector employees. The Government points out that access to that leave is available after 10 years of service, and on a pro-rata basis after 7 years upon resignation. In the absence of any detailed justification the Tribunal does not recommend any change to this entitlement.

Motor Vehicles

39. Following a thorough examination of the motor vehicle entitlement during the last inquiry it was recommended and subsequently determined that the Government motor vehicle was provided and serviced without cost to the Magistrate on the basis that it was used by he/she or others for the Magistrate's purposes (work and domestic).
40. It was put to the Tribunal that this was unduly restrictive and that the entitlement to use the vehicle should be widened to full private use.

41. Cars on allocation to Supreme Court judges may only be driven by those judges, their spouses or Associates. Senior officers in the Public sector are able to have full private use because they make a standard contribution via salary sacrifice.
42. The Tribunal makes no recommendation about broadening the allowable use of Government cars. The Tribunal would entertain such broadening if a commensurate contribution were included in the arrangement to be determined. The quantum of such contribution would likely be lower than the standard applied in other contract packages as the cost of the Magistrate's personal private use is already comprehended in his/her salary. This issue might be raised during the next inquiry cycle.

Mobile telephones

43. The claim by Magistrates for provision of a Government mobile telephone, with recurrent costs remaining within the \$750 per quarter telephone allowance, has been supported by the Government and is recommended accordingly

ROLE OF THE TRIBUNAL

44. Direct determination of judicial remuneration in the Northern Territory on the advice of the Executive branch continues to create a perception that influence over the judiciary is or could be being exercised by the Government of the day.
45. Introduction of a new entitlement and removal of another in the latest Determination without any advice from the Tribunal reinforces this perception.
46. Determination of judicial remuneration, entitlements and allowances should be made by the Tribunal and subject to disallowance by the Parliament, as in the States and the Commonwealth jurisdictions, in accordance with the doctrine of the separation of powers..

**Magistrates – Comparative salaries of
State and Territories as at their date of effect**

	<u>Chief Magistrate</u> \$	<u>Magistrate</u> \$	<u>Date of Effect</u>
Commonwealth*	198,100	171,200	1.7.02
Queensland**	183,700	162,000	1.7.01
New South Wales	220,750	176,600	1.10.02
Victoria**	196,800	162,900	29.10.02
Tasmania	168,894	152,005	1.7.02
South Australia***	190,049	161,832	1.1.03
Western Australia	189,676	168,602	1.1.03
ACT	190,735	167,022	1.7.02
Northern Territory (current)	189,535	168,863	1.12.01
Northern Territory (recommended)	198,279	176,635	1.12.02

Notes (a) Northern Territory salaries are packages which include an annual family airfare component.

(b) Comparisons are to be noted with caution, as the jurisdictions of the courts differ and the responsibilities of the Chief Magistrates vary.

* Subject to disallowance

** Includes motor vehicle allowance

*** Includes a conveyancing allowance of \$8,832

NORTHERN TERRITORY OF AUSTRALIA
REMUNERATION TRIBUNAL

RECOMMENDATION No. 1 of 2003

MAGISTRATES OF THE
NORTHERN TERRITORY COURT

NORTHERN TERRITORY OF AUSTRALIA

REMUNERATION TRIBUNAL

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MAGISTRATES OF THE NORTHERN TERRITORY COURT

In accordance with a request from the Administrator that the Tribunal from time to time inquire into and report with recommendations on the remuneration and allowances to be paid and other entitlements to be granted to magistrates within the meaning of the *Magistrates Act*, the Tribunal recommends that the following salaries, and entitlement be varied by the Administrator under section 6 of the *Magistrates Act* in respect of magistrates, effective from 1 December 2002.

Salary

	Rate per annum Base salary \$	Rate per annum Salary package \$
Chief Magistrate	194,779	198,279
Coroner	187,564	191,064
Deputy Chief Magistrate	180,349	183,849
Magistrate	173,135	176,635

The salary package includes \$3,500 in lieu of airfares.

Mobile Telephones

Magistrates should be entitled to be provided with an Optus network connected Nokia 3315 mobile telephone.

The Chief Magistrate and the Coroner should be entitled to be provided with an Optus connected Nokia 6310, 6610 or 8310 mobile telephone.

The recurrent costs of such telephones should be met from and to the maximum of the quarterly telephone cost limit set in the Determination.

Dated this twenty fifth day of March Two thousand and three.

O. Alder
Member of the
Northern Territory Remuneration Tribunal