



NORTHERN TERRITORY OF AUSTRALIA
REMUNERATION TRIBUNAL

**REPORT AND RECOMMENDATIONS ON THE
ENTITLEMENTS OF
ACTING AND RELIEVING MAGISTRATES**

**REPORT AND RECOMMENDATION
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. On 19 May 2008, the Northern Territory Administrator, the Hon Tom Pauling AO QC, signed a request to the Tribunal to inquire into and make recommendations on the entitlements of persons appointed as Acting Magistrates and Relieving Magistrates.

CONDUCT OF THE INQUIRY

3. The Chief Magistrate and relevant Government Agencies and Relieving Magistrates were made aware of the inquiry by letter dated Wednesday, 2 July 2008 and submissions were invited. There were no persons appointed as Acting Magistrates at the time of the Inquiry. In addition, an advertisement was placed in the *NT News* on Saturday, 12 July 2008 and in the *Centralian Advocate* on Tuesday, 15 July 2008 inviting submissions to the Inquiry. The Tribunal received and considered six submissions and each submission was circulated to the others who had made submissions, for their comment.
4. The Tribunal reviewed information obtained from interstate and federal judicial remuneration bodies.
5. All the material was carefully considered in conjunction with the existing Northern Territory schedules providing for the terms and conditions of Relieving Magistrates.

REVIEW

6. There are two scenarios under which Relieving Magistrates are appointed. A Magistrate can be appointed as a Relieving Magistrate for six months but only assigned duties by the Chief Magistrate on a daily basis. For example a relieving Magistrate may work one day a week and then three consecutive days in another week; the essential feature is that such a Relieving Magistrate shall be paid on a daily basis. On the other hand, a Relieving Magistrate may also be appointed for up to six months and be assigned duties over the entire period and should therefore be paid a fortnightly salary. The recommended terms and conditions for Relieving Magistrates in this report reflect this proposal.
7. The Tribunal does not see that there should be any difference in the terms and conditions of Acting Magistrates and Relieving Magistrates who undertake full time duties for a specified period. The Tribunal further believes that, where appropriate, the terms and conditions of Acting and Relieving Magistrates should be the same as that of a Stipendiary Magistrate.

8. The Tribunal has used the formula accepted by all government agencies to determine fortnightly salary and divided it by ten to obtain a base daily rate. In the existing determination for Relieving Magistrates, the base daily rate is increased by 15% and it states: "includes a 15% loading in lieu of leave". This is perhaps misleading because if leave and pro rata long service leave were to be included in the percentage then it would only be 10.6%. There are other entitlements which a Relieving Magistrate does not receive such as telephone, sick leave, use of a motor vehicle, etc and the Tribunal believes that a loading of 15% is appropriate to cover all these ancillary entitlements.
9. The Tribunal has given consideration to providing a recommendation that where a Relieving Magistrate undertakes duties for less than half a day then the daily rate be reduced appropriately. There was a submission that a cancellation fee be paid where a Magistrate has been "booked" to undertake duties on a particular day or days and the "booking" is cancelled because the matters have collapsed or a permanent Magistrate is able to take on the duties. The Tribunal has not been able to obtain any evidence of such a fee in any other jurisdiction and perhaps it balances out given that from time to time a Relieving Magistrate will work for less than a day and is paid for the full day.
10. The Tribunal has given particular consideration to significant benefits that full time Magistrates enjoy but which are not provided for in the current terms and conditions of Relieving Magistrates. This is the entitlement to a telephone and motor vehicle and the Tribunal believes that if a Relieving Magistrate or Acting Magistrate is appointed for a period of greater than three months then they should receive these entitlements for the period of their appointment.
11. An Acting or Relieving Magistrate could be engaged from some location other than Darwin and under these circumstances the Acting or Relieving Magistrate would be entitled to some reimbursement for expenses incurred as a result. The Tribunal is of the view that any such expenses are in fact reimbursements and not related to terms and conditions.
12. Under the existing legislation, Stipendiary Magistrates' salaries and allowances and other benefits are determined by the Remuneration Tribunal. Further, the *Magistrates Act* provides that the Administrator determines the terms and conditions of those appointed as Acting Magistrates. However, the Attorney-General determines the terms and conditions of Relieving Magistrates. It would make sense that the Remuneration Tribunal make determinations for all three classes of Magistrates and this could be done at the annual review.

RECOMMENDATIONS

13. This report recommends that the terms and conditions which are set out in Schedule 1 and Schedule 2 apply to Acting and Relieving Magistrates respectively.
14. In addition the Tribunal recommends changes to the *Magistrates Act* so that there can be consistency and timeliness in future determinations of remuneration and other benefits to all Magistrates whether they be permanent, acting or relieving.

John Flynn
Tribunal Member

21 November 2008

SCHEDULE 1

RECOMMENDATIONS AS TO TERMS AND CONDITIONS OF ACTING MAGISTRATES

PART 1 – SALARY

- 1.1** The salary payable to an Acting Magistrate is to be based on the annual salary of a Stipendiary Magistrate as determined from time to time.

PART 2 – TRAVEL

- 2.1** For this Part, “travel on official duty” means:
- a) travel while on duty in the Territory; or
 - b) travel for a purpose approved by the Minister for Justice and Attorney-General or the Chief Executive Officer of the Agency responsible for courts administration.
- 2.2** The Acting Magistrate is entitled to business class travel, if available, for travel on official duty by air.
- 2.3** Travelling allowance is payable to the Acting Magistrate for travel on official duty.
- 2.4** The rates of travelling allowance are set out in Clause 2.5 (including Tables 1 and 2) and in Clause 2.6.
- 2.5** The following provisions apply to travel on official duty that involves an overnight stay:
- a) if the cost for accommodation and meals is met by the Acting Magistrate, the amount of travelling allowance payable for each night spent at a location in column 1 of Table 1 is the rate specified in column 2;
 - b) if an entity other than the Acting Magistrate pays for accommodation, the amount of travelling allowance payable is the total amount specified in column 2 of Table 2;
 - c) if an entity other than the Acting Magistrate pays for a meal, the travelling allowance payable must be reduced by the rate specified for that meal in column 2 of Table 2;
 - d) if the Acting Magistrate is accommodated in private non-commercial accommodation (such as the home of a family member or friend), the daily rate of travelling allowance for a location in column 1 of Table 1 is one third of the rate specified in column 2, rounded up to the nearest dollar.

Table 1
Daily Rates

column 1 location	column 2 rate
Sydney, Melbourne	\$406
Brisbane	\$372
Perth	\$416
Other capital cities	\$350
Other places	\$327

Table 2
Rates for Meals and Incidentals

column 1 meal	column 2 rate
Breakfast	\$25.00
Lunch	\$36.00
Dinner	\$57.30
Incidentals	\$22.70
Total	\$141.00

- 2.6** If the Acting Magistrate is on circuit duty for 5 hours or more that does not involve an overnight stay, travel allowance is payable at the daily rate of \$45.

PART 3 – VEHICLE AND TELEPHONE

- 3.1 Motor Vehicle:** An Acting Magistrate who is appointed for 3 months or more is entitled to be provided with a 6 cylinder motor vehicle with private number plates for his or her official duties. The vehicle model is to be a Holden Berlina, Toyota Progidy or Holden Captiva CX SUV 7.
- 3.2 Running costs:** The costs of purchasing or leasing the vehicle and of running and maintaining it in the Territory are to be paid by the Territory.
- 3.3 Private use of vehicle:** An Acting 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 3.4 – keep the motor vehicle at his or her residence while it is not in use.
- 3.4 Responsibility of Acting Magistrate:** An Acting 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 Acting Magistrate is on leave).

- 3.5 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 an Acting Magistrate as if the Magistrate were an employee of the Agency.
- 3.6 Residential telephone:** If an Acting Magistrate has been appointed for 3 months or more, he or she 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 \$200 per month.
- 3.7 Mobile telephone:** An Acting Magistrate is entitled to be provided with a network connected mobile telephone.
- 3.7.1 Telephone model:** The telephone model is to be a NextG Samsung 412 or other model with equivalent functions.
 - 3.7.2 Recurrent costs:** The recurrent costs of the mobile telephone are to be paid by the Territory up to the maximum monthly limit specified in clause 3.6.
- Note: the maximum monthly amount the Territory is liable to pay is \$200 total for combined residential phone charges and recurrent mobile phone costs.*
- 3.8 Variation of entitlements:** At the request of an Acting Magistrate, the Magistrate's entitlements under clause 3.1, 3.6 or 3.7 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.

PART 4 – RECREATION AND SICK LEAVE

- 4.1 Recreation Leave:** An Acting Magistrate is entitled to recreation leave at the rate of 2.5 days for every completed month of duty. A completed month of duty means 22 working days. Payment of recreation leave will be based on the Acting Magistrate's annual salary together with a loading of 17.5%.
- 4.1.1 Usage:** Any accrued recreation leave may be taken by an Acting Magistrate during the period of duty if approved by the Chief Magistrate or may be paid as a lump sum at the completion of the appointment.
- 4.2 Sick Leave:** An Acting Magistrate is entitled to apply for sick leave up to 1 week for each period of 2 months duty provided the total leave does not exceed 3 weeks in 12 months. If an Acting Magistrate's appointment is for less than 12 months, this provision applies proportionately rounded up to the nearest day.

Note: if the appointment is for 6 months then 3 sick leave days will accrue after 2 months and must not exceed 8 days in 6 months.

SCHEDULE 2

RECOMMENDATIONS AS TO TERMS AND CONDITIONS OF RELIEVING MAGISTRATES

PART 1 – SALARY

- 1.1** The salary payable to a Relieving Magistrate who undertakes duties on a daily continuous basis is to be based on the annual salary of a Stipendiary Magistrate as determined from time to time.
- 1.2** The daily rate paid to a Relieving Magistrate who is assigned duties by the Chief Magistrate on a day to day basis is calculated as follows:

$$(\text{Annual salary per clause 1.1}) \times 12/313 \times 1/10 \times 1.15$$

PART 2 – TRAVEL

- 2.1** For this Part, “travel on official duty” means:
- a) travel while on duty in the Territory; or
 - b) travel for a purpose approved by the Minister for Justice and Attorney-General or the Chief Executive Officer of the Agency responsible for courts administration.
- 2.2** The Relieving Magistrate is entitled to business class travel, if available, for travel on official duty by air.
- 2.3** Travelling allowance is payable to the Relieving Magistrate for travel on official duty.
- 2.4** The rates of travelling allowance are set out in Clause 2.5 (including Tables 1 and 2) and in Clause 2.6.
- 2.5** The following provisions apply to travel on official duty that involves an overnight stay:
- a) if the cost for accommodation and meals is met by the Relieving Magistrate, the amount of travelling allowance payable for each night spent at a location in column 1 of Table 1 is the rate specified in column 2;
 - b) if an entity other than the Relieving Magistrate pays for accommodation, the amount of travelling allowance payable is the total amount specified in column 2 of Table 2;
 - c) if an entity other than the Relieving Magistrate pays for a meal, the travelling allowance payable must be reduced by the rate specified for that meal in column 2 of Table 2;

- d) if the Relieving Magistrate is accommodated in private non-commercial accommodation (such as the home of a family member or friend), the daily rate of travelling allowance for a location in column 1 of Table 1 is one third of the rate specified in column 2, rounded up to the nearest dollar.

Table 1
Daily Rates

column 1 location	column 2 rate
Sydney, Melbourne	\$406
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Perth	\$416
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Other places	\$327

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column 1 meal	column 2 rate
Breakfast	\$25.00
Lunch	\$36.00
Dinner	\$57.30
Incidentals	\$22.70
Total	\$141.00

- 2.6** If the Relieving Magistrate is on circuit duty for 5 hours or more that does not involve an overnight stay, travel allowance is payable at the daily rate of \$45.

PART 3 – VEHICLE AND TELEPHONE

- 3.1 Motor Vehicle:** A Relieving Magistrate who undertakes duties on a daily continuous basis for a period of 3 months or greater is entitled to be provided with a 6 cylinder motor vehicle with private number plates for his or her official duties. The vehicle model is either a Holden Berlina, Toyota Progidy or Holden Captiva CX SUV 7.
- 3.2 Running costs:** The costs of purchasing or leasing the vehicle and of running and maintaining it in the Territory are to be paid by the Territory.
- 3.3 Private use of vehicle:** A Relieving 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:
- 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
 - subject to clause 3.4 – keep the motor vehicle at his or her residence while it is not in use.
- 3.4 Responsibility of Relieving Magistrate:** A Relieving Magistrate must:
- ensure that when the motor vehicle is being used for private purposes, it is used properly and in accordance with this clause; and
 - 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 Relieving Magistrate is on leave).
- 3.5 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 Relieving Magistrate as if the Magistrate were an employee of the Agency.
- 3.6 Residential telephone:** A Relieving Magistrate who undertakes duties on a daily basis for a period of 3 months or more 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 \$200 per month.
- 3.7 Mobile telephone:** A Relieving Magistrate is entitled to be provided with a network connected mobile telephone.
- 3.7.1 Telephone model:** The telephone model is to be a NextG Samsung 412 or other model with equivalent functions.
- 3.7.2 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 3.6.
- Note: the maximum monthly amount the Government is liable to pay is \$200 total for combined residential phone charges and recurrent mobile phone costs.*
- 3.8 Variation of entitlements:** At the request of a Relieving Magistrate, the Magistrate's entitlements under clause 3.1, 3.2 or 3.7 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.

PART 4 – RECREATION AND SICK LEAVE

(applicable to Relieving Magistrates who are on continuous duty)

- 4.1 Recreation Leave:** A Relieving Magistrate is entitled to recreation leave at the rate of 2.5 days for every completed month of duty. A completed month of duty means 22 working days. Payment of recreation leave will be based on the Relieving Magistrate's annual salary together with a loading of 17.5%.

4.1.1 Usage: Any accrued recreation leave may be taken by a Relieving Magistrate during the period of duty if approved by the Chief Magistrate or may be paid as a lump sum at the completion of the appointment.

4.2 Sick Leave: A Relieving Magistrate is entitled to apply for sick leave up to 3 days for each period of 2 months duty provided the total leave does not exceed 8 days in 6 months. If a Relieving Magistrate's appointment is for less than 6 months, this provision applies proportionately rounded up to the nearest day.

Note: if the appointment is for 3 months then 3 sick leave days will accrue after 2 months and must not exceed 4 days in 3 months.