



NORTHERN TERRITORY OF AUSTRALIA

REMUNERATION TRIBUNAL

REPORT ON THE SALARY, ALLOWANCES AND OTHER BENEFITS FOR
MAGISTRATES

AND

DETERMINATION No. 1 of 2005

REMUNERATION TRIBUNAL

**REPORT - MAGISTRATES OF THE
NORTHERN TERRITORY**

INTRODUCTION

1. The Tribunal is established by section 6(1) of the *Remuneration Tribunal Act*.
2. The last determination of benefits for Magistrates became effective on 1 December 2003. It was made under the *Magistrates Act*, as it then stood, by the Administrator on the basis of a tabled report and recommendations made by this Tribunal following an Inquiry. It was not made public.
3. On 17 June 2004 the High Court released its written judgement containing the reasons for dismissing an appeal against a decision of the Full Court of the Federal Court (in turn confirming a decision of the Federal Court) against a challenge to the validity of the appointment of Northern Territory Chief Magistrate Mr Hugh Bradley¹.
4. That judgement clarified a number of issues concerning the effective determination of remuneration for judicial officers in the Northern Territory. In particular it confirmed that an appointment for a finite term, with salary determined only for that term, was valid.
5. Both the *Magistrates Act* and the *Remuneration Tribunal Act* were amended in October 2004. By virtue of these amendments the Remuneration Tribunal will henceforth determine the salary, allowances, and other benefits paid to Magistrates and review them at least annually. Determinations are to be tabled in the Legislative Assembly within 6 sitting days of their being made. The Assembly may disapprove all or part of the determinations within the next 10 sitting days. The effect of any such disapproval is a return to the *status quo (ante)* for that aspect.
6. The Tribunal has completed the Inquiry and this report and the Determination attached to it completes the review.

¹ North Australian Aboriginal Legal Aid Service Inc v Bradley [2004] HCA 31.

CONDUCT OF THE REVIEW

7. The Magistrates and relevant departmental officers were made aware of the review by letter dated 8 December 2004, and an advertisement calling for submissions appeared in the major Northern Territory newspapers.
8. The Tribunal received and considered:
 - (A) A consolidated submission from interested Magistrates.

The claims made in that submission are that:

- (a) there should be a full and timely flow-on of the final catch-up increases determined for the Federal judiciary;
- (b) changed economic conditions should be compensated for by the application of national rather than Northern Territory indicators;
- (c) when comparative jurisdictional responsibilities (including the after-hours work differential) are re-balanced, to recognise work characteristics and to compensate for the high cost of living, a 12.5% salary increase is justified;
- (d) extra communications entitlements should be granted to recognise some services already provided; better mobile phones should be made available; and the quarterly reimbursement limit on home call costs should be increased;
- (e) leave banking of up to six weeks leave per year should be allowed;
- (f) accrued long service leave should be able to be taken at reduced pay and the period extended accordingly;
- (g) entitlements should be consolidated into the determination rather than established via a public sector employee nexus;
- (h) the requirement that Magistrates be on-call on public holidays justifies either a salary loading or the granting of an extra week's leave, which, between them, equates to the salary of a relieving Magistrate.

The Magistrates also provided the Tribunal with schedule of benefits received by Magistrates across Australia, slightly more than a year's call-out records, and a schedule titled "Comparative Jurisdictions of Australian Magistrates".

- (B) A submission from the Department of Justice.

The responses contained in that submission were that:

- (a) the salary level does not need to be varied to reflect changed work characteristics. In any case the salary is not deterring applicants for appointment. Any increase should be limited to the Federal catch-up element and Northern Territory cost-of-living changes;
- (b) an increase in the amount of the telephone allowance beyond the CPI, or in its scope (which can already be varied under the determination), is not supported;
- (c) leave banking and flexible leave arrangements are supported, but other terms and conditions should only accrue on a prorated basis;
- (d) it is too difficult keep up with across government changes to conditions if all conditions crystallise into a single document;
- (e) with compensation for after hours and public holiday work, including the possibility of extra leave, the issues are not salary related but rather are capable of administrative correction. Some matters that could alleviate the situation require parliamentary consideration;
- (f) less limitation of private use of motor vehicles is supported on the basis that Magistrates be granted an annual car allowance, enough to fund their vehicle but less a small private use component;
- (g) Treasurer's Directions regarding indemnity for employees is vehicle incidents should be applied to Magistrates because the Department no longer comprehensively insures the cars.

(C) A response from Magistrates, and a response from the Chief Magistrate, to the submission from the Department of Justice.

(D) Several submissions from individual Magistrates.

9 The Tribunal was available in Darwin from 23 February to 25 February 2005 to receive submissions, gather evidence, and receive information on economic conditions.

10. The Tribunal also considered economic conditions as well as salary and responsibility levels, for the public and judicial sectors in the Northern Territory and the rest of Australia.

REVIEW - REMUNERATION

11. When reviewing salary the Tribunal has regard for:
- (a) relativities, recruitment and retention factors within the Northern Territory judiciary, including local economic conditions; and
 - (b) the salaries and allowances payable to Magistrates of the other Australian jurisdictions; and
 - (c) other relevant matters.

Relativities within the Northern Territory Judiciary

12. Each serving Judge of the Supreme Court receives the same salary as a Judge of the Federal Court of Australia, and has done since his or her appointment.
13. Establishing the salary relativity of Magistrates to Judges involves
- netting off the allowance Magistrates receive for airfares, as Judges receive airfares as an entitlement outside of salary, and
 - creating a common reference point by discounting the Magistrates' salary to the date of the last Judges' increase.
14. In the last twelve years the relationship between the Judges and the Magistrates salaries on that adjusted basis has been as follows:

Magistrates date of increase	Prior Judges date of increase	Magistrate % at Judge increase date
22-12-1993	21-12-1993	67.68%
04-05-1995	19-08-1994	67.80%
20-05-1996	19-08-1995	67.78%
06-11-1997	19-08-1997	74.86%
10-03-1999	19-08-1998	75.20%
01-12-1999	01-10-1999	74.85%
01-12-2000	01-10-2000	74.60%
01-12-2001	01-10-2001	73.94%
01-12-2002	01-07-2002	73.34%
01-23-2003	01-07-2003	72.88%

15. The large change in 1997 was mainly due to recognition of new legislation substantially raising the powers of the Magistrates' Court, the gross-up of salary by a weeks leave equivalent on the abolition of study leave entitlements, and an economic conditions increase.
16. The jurisdiction change element of this large increase was 4%. Applying this, as well as the week's leave effect, to the 20-5-1996 Magistrate salary took the position relative to Judges to 71.9%, close to the 72% benchmark that had long been sought by Magistrates. However, the general economic indicator increase used by the Tribunal into 1997 comprised two lots of 4%, even though the period between increases was well short of two years, and this produced an even higher relative benchmark for that year.
17. The declining percentages since then are attributable to the consistent use of Territory economic indicators by this Tribunal for the Magistrates, while the Judges' salary increases over the same period were based on the application of national economic indicators by the Commonwealth Remuneration Tribunal.
18. Over the 11 years from December 1993 to December 2004 the CPI for Darwin rose by 27.6%, while the average for all capital cities rose by 33.4%. Through population growth and the improvement in transport links the historical relatively high cost of living in Darwin is reducing quite quickly.
19. Over the available seven years covered by the Labour Price Index, hourly rates of pay in the Territory rose by 23.7% as compared with 27.2% for Australia. This is an outcome of the CPI trend, and average wages in the Territory are no longer the highest in Australia.
20. All States have agreed that the salary of a Supreme Court Judge should be set by the respective Tribunal at around 85% of the salary of a Judge of the High Court of Australia (Victoria is phasing this in again after an interruption). This helps stop salary leap-frogging and poaching across jurisdictions. Since their Magistrate salaries move automatically with their Judges, the result of this is that national economic indicators flow through to become a component of their annual increase. This is of little importance to the States as their own economic indicators move over time at a rate that is much closer to the national ones.
21. The Tribunal presumes that the Federal benchmark has been chosen for Territory Judges to reflect the employment market they occupy. The market for Magistrates is much more tightly a Territory one, and at current rates the Government finds no difficulty in attracting applicants of the quality sought.

22. The Magistrates submit that national economic indicators should be used in their salary determination because Territory indicators are producing progressive decrement relative both to Territory Judges and Magistrates elsewhere.
23. The Tribunal respects the remuneration level set for Judges by the Government. That level, applying from 1 July 2004, includes the final general Australian judiciary catch-up increase of 5% this year². If basic relativity is to be preserved in the Northern Territory judiciary then this catch-up would have to be applied to Magistrates as well.
24. The economic conditions increase this year for Judges was 3.9% from 1 July 2004, against the June to June Australian Labour Price Index rise of 3.5%, giving a productivity and real executive salary enhancement of 0.4%. The Territory index figure December to December was 3.0%. Accepting the same enhancement gain the economic conditions increase for Magistrates would be 3.4%.

Comparison with Magistrates elsewhere

25. Magistrates' relativities with Supreme Court Judges in the States (and not the ACT) are set by legislation or long-standing practice. They are, when adjusted where necessary for allowances received (to render them comparable):

Magistrates Salaries and Judge Relativity

Jurisdiction	Date of Effect	Amount \$	Relativity
NSW	1-10-04	203,385	72.0%
Victoria	1-7-04	167,000	69.3%
Queensland	1-7-03	188,240	70.4%
South Australia	1-11-04	197,190	70.0%
Western Australia	1-1-05	208,053	72.0%
Tasmania	1-7-04	178,571	67.5%
ACT	1-11-04	201,029	71.2%

The higher dollar figure in Western Australia is partly due to the later date of its determination.

26. The Magistrates submit that the lack of an intermediate District or County Court in the Territory (as with Tasmania and the ACT) and the higher

² Details of the phased introduction of catch-up salary increases for Federal judicial offices were included in Tribunal report 2/2003

decision limits and new appeals jurisdictions for the Magistrates Court produces a primary relative position for that Territory Court as well as savings for the Government. They say that such savings within the judicial system should translate into salaries which, when also recognising the scope and style of Territory work conditions, should be the highest in Australia. Material provided by the Magistrates highlights the extent of extra jurisdiction of the Territory Magistrates Court in the absence of a District Court.

27. The Tribunal has, at least since the major jurisdictional review in 1997, accepted that a high relative position should be afforded to Territory Magistrates. Point to point interstate comparisons are not always instructive, however, because the salary of Magistrates in the States is set according to a ranking, usually set by the Parliament, within each State's schedule of all judicial officers. Thus, within each State system a Magistrate's salary moves with the respective Judges' salaries, and is not influenced by factors relating only to Magistrates. Once Parliament sets these relativities it simply creates the market for the persons to be appointed. A State Magistrate's workload is only a remuneration factor when Parliament is persuaded to change the relativity proportion. A Magistrate's workload in any States is a combination of the number of Magistrates engaged, their schedule, and the legislation extended to them. It manifests itself in the throughput of the courts. The Judges' salaries movements, on which Magistrates' salaries are based, have regard for interstate and Commonwealth judicial relativities but have often been influenced at the margin by local policy issues and conditions, as well as local recruitment and retention issues flowing through the judiciary as a whole.
28. Increasingly, the weight of importance of interstate comparisons gets down to recruitment and retention factors, recognising the differing economic circumstances of the jurisdictions being compared.

Changes in responsibilities and working conditions

29. The Magistrates submit that their workload is growing in terms of hours, scope and challenge. They have provided examples of new and more demanding jurisdictions being extended to them, and of increasing call-outs. They also highlight the unusual need to drive long distances on circuit work, necessitating early starts and late finishes. Amongst other remedies they propose that the Tribunal consider extra salary, overtime, and/or an extra week's leave.
30. The Territory is too small to justify a full time out-of-hours Magistrate or to have the rostered Magistrate relieved of sitting duties. However, the number

of call-outs during rostered on-call duty is increasing, particularly with domestic violence applications.

31. Responsibility levels, personally debilitating work conditions, and hours worked, have been generally reflected in salary rates that are proportionally higher within the judiciary in the Northern Territory than they are in any State or Territory. They are also ameliorated through each Magistrate being paid air fares for holidays, receiving an extra two weeks of annual leave, and through the entitlement to paid attendance at a relevant interstate conference each year.
32. Hours worked are also a function of the number of available Magistrates, the time they are allowed off before having to sit in Court after call-outs, and the design of the legislation under which they have responsibilities. The Tribunal recommends that the number of Magistrates continues to be closely reviewed, and that legislative alternatives to reduce the need for Magistrate call-out rate be given priority.
33. In the meantime the new right of the Chief Magistrate to grant special leave as time off in lieu may be able to be used where call out pressure restricts a Magistrate's capacity or where a Magistrate has been rostered to be on call on a public holiday.
34. The Department of Justice submission says that amendments to the legislation to relieve the out of hours call on Magistrates will be introduced, On 5 May a Bill to amend the *Bail Act* was presented to the House. As this Bill only covered bail for serious repeat offenders, one Magistrates has voiced concern to the Tribunal that this may be the extent of what the Department is contemplating. The Department supports time off in lieu where justified.

Salary determination

35. With due consideration of all factors available to the Tribunal, including the above comparisons and indicators, the Tribunal has decided that:
 - the full 5% relativities increase should flow on to Magistrates;
 - a compounding economic conditions increase of 3.4% should be applied, and
 - the date of effect should be 1 December 2004, one year after the previous increase.

36. This takes the recommended base salary of a Magistrate to \$207,804 (\$211,304 with the fixed airfare component). It produces a relativity factor with Judges of 72.85% when back-cast to 1 July 2004.
37. Having reached these conclusions, the Tribunal notes that the increasing stabilisation of the relativity between Magistrates and Judges is producing a climate where a fixed relationship could be considered in its next determination sequence.

REVIEW - ALLOWANCES

Travelling Allowance.

38. Travelling allowance is an entitlement granted to ensure that a Magistrate will not gain or lose financially as a result of travelling on duty or other authorized official business. Rates of travel allowance, and the conditions under which travelling allowance can be paid, have been adjusted in the Determination (with one exception in paragraph 39 below) to be in line with rates and conditions currently determined for comparable officers by the Commonwealth Remuneration Tribunal according to that principle.
39. Some of those rates are lower than those previously determined for Magistrates.
40. This is the first time that a rate has been reduced since the introduction of the no detriment provision. Travel allowance rates are set after comprehensive price reviews. In the view of the Tribunal, reduction of a particular rate on that basis is not detrimental to the recipient.
41. For the respective category of officer, the Commissioner for Taxation accepts that travelling allowance paid in accordance with the rates and conditions set by the Commonwealth Remuneration Tribunal is not subject to substantiation rules and do not, therefore need to be considered as assessable income for the recipient.
42. Magistrates who travel on duty for more than 5 hours without an overnight stay have long been entitled to an allowance (now \$45). The Commissioner for Taxation has ruled that any payment of travelling allowance for a period where there is no overnight stay is an assessable amount. Payment of the amount is continued under the Determination. Whether or not it is taxable may require a ruling.

Fares

43. The Tribunal finds no reason to change the allowance in lieu of air fares.

REVIEW - OTHER ENTITLEMENTS

Communications

44. Magistrates are entitled to a home telephone, a mobile telephone of specified model, and to reimbursement of home line calls and recurrent mobile phone charges to a maximum of \$750 per quarter. The Department also provides a fax machine and allows broadband costs to be charged against the allowance.
45. The Magistrates submit that entitlements already granted outside of the formal Determination should be actually determined, and that the level of the allowance be increased or separately supplemented to reflect its erosion and to allow for the additions.
46. The Department of Justice does not support any real increase in the quarterly entitlement. It points out that there is already sufficient scope a Magistrate's ability to swap certain benefits for non-determined benefits to be funded.
47. The Tribunal agrees that an increase of \$50 in the quarterly limit is warranted.

Leave Banking

48. Last year the Tribunal considered the creation of an entitlement for Magistrates to buy extra leave in order to better balance work – family commitments ("leave-banking"). It deferred the possibility pending advice that administrative systems could cope with it.
49. The Magistrates have submitted that 6 weeks leave should be able to be purchased. The Department of Justice supports flexibility for leave, but proposes that time related entitlements only accrue on a pro-rated basis during the extended period.
50. The Tribunal agrees that Magistrates should have the right to purchase up to four full weeks of additional leave per financial year, with the extra leave counting as service for all purposes. For those availing themselves of this option a total of ten weeks annual leave may be taken, the same as the entitlement of a Federal Magistrate³

³ Commonwealth Remuneration Tribunal Determination 2004/14, paragraph B17(d).

Motor Vehicles

51. The submission from the Department of Justice points to continuing confusion as to the extent of private usage that is permissible in the use of the car that is now supplied at no cost to a Magistrate. In order that the extent of private usage may be expanded to the level enjoyed by an Executive Contract Officer (ECO), the Department suggests that Magistrates receive an ECO like employment cost supplement as an allowance, be able to decide whether to have a government supplied car or not, and, if they do, they should be required to pay the fortnightly ECO-like private use contribution (reduced from the ECO level to reflect the amount of private use right they now have). With this arrangement ECO-like use rules would apply, including work pooling requirements.
52. The Tribunal made an exhaustive inquiry into the private use of vehicles supplied to Magistrates in 2002⁴. The salary of a Magistrate recognises that he or she is able to make reasonable private use of the vehicle supplied. That private use must be for his or her own personal purposes. Where the driver is someone else carrying on those purposes on his or her behalf, that driver must be nominated by the Magistrate. Thus, someone else could be nominated to go shopping for the Magistrate's family, but could not drive the car to attend a nightclub whether nominated or not. These distinctions are clear and could prove important in the case of an accident or controversial incident involving the vehicle.
53. Paragraph 13 of the standard contract for an ECO allows reasonable private use of a vehicle for which a contribution is being deducted. It is not clear how, in practice, the ECO has greater private use rights than a Magistrate and what that extra use represents as a proportion of total private use. Without this information it is not possible to decide the amount of any deduction to cover the increment.
54. When such information is provided the Tribunal will, if it is justified, determine the contribution to be made by any Magistrate who opts for the defined extra private use. In Victoria the contribution is \$750 per annum.
55. The Department of Justice's submission also raises the issue that Magistrates may not have the same indemnity protection as is afforded to employees where they are involved in a vehicle accident. The situation has arisen since the Department no longer insures its vehicles. The Magistrates submit that their determined entitlement to a vehicle, in respect of which all ownership costs will be met, includes insurance for the car. This is not a strong argument in the Tribunal's view. The Tribunal does accept that the technical risk situation that has occurred is not intended and has determined that

⁴ Remuneration Tribunal Report and Recommendation No. 1 of 2002.

Magistrates should have the same obligations and protections arising out of car accidents as do public sector employees.

REVIEW - CONSOLIDATION OF BENEFITS

56. On 20 October 2004 the *Magistrates Act* was amended to provide:

"6. Remuneration

(1) Subject to subsection (2), a Magistrate appointed under section 4(3) is entitled to receive salary, allowances and other benefits as determined by the Remuneration Tribunal under section 9B of the Remuneration Tribunal Act.

(2) The salary, allowances and other benefits to which a Magistrate is entitled under subsection (1) must not be altered to the Magistrate's detriment during his or her term of office. "⁵

57. This new protection may be compared with the protection given in the Federal arena, under the *Commonwealth of Australia Constitution Act*, as follows:

"72. The Justices of the High Court and of the other courts created by the Parliament—

....

(iii) Shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office."

58. The word remuneration is not defined. So far as this Tribunal is aware its scope has not been established by the courts. The intention of Parliament may, however, be inferred from its *Remuneration Tribunal Act 1973*. That Act establishes the Commonwealth Remuneration Tribunal and requires it to determine, from time to time, the remuneration to be paid to the holders of public offices (including Judges and Federal Magistrates). The Act provides that remuneration in this context "shall be read as including a reference to annual allowances". Tribunal powers to determine leave and other benefits are dealt with separately.

⁵ Savings provisions ensure that the final Determination of the Administrator continues in force until the first Determination of the Tribunal.

59. The scope of the word 'remuneration', and the power of the respective Tribunals to make determinations in respect of it, varies across the States. For example, just salaries and allowances in money in NSW, just salary in Victoria, only salary and fixed allowances in Queensland, pecuniary benefits in South Australia, and salary, allowances and cars in Western Australia. Whether remuneration may be diminished is an interpretation issue which extends from the Constitution of each State. It does seem that the new Northern Territory non-detriment provision, extending as it does to every benefit received by a Magistrate, is unique in Australia.
60. This situation provides substantial protection for Magistrates, and removes the concern expressed to the Tribunal in past years that the Executive could compromise their judicial independence by administrative action. When the Administrator was originally granted power to appoint Magistrates and to determine their remuneration and conditions, they were effectively removed from the Public Service mechanisms. The latest amendment reinforces and extends this separation.
61. Prior to the amendment the Administrator determined salary, some allowances and certain specific entitlements (including the right to a motor vehicle). The balance of benefits, carried over from the days when there were Public Service entitlements, were established in the determinations by a clause importing all "other" entitlements enjoyed by a senior level public sector employee position. Under this nexus arrangement the reference benefits floated up and down when changes were made to legislation, when the Commissioner amended public sector by-laws, and when superannuation schemes and government contribution rates thereto changed. The most significant of the benefits imported via the nexus are leave and superannuation.
62. There is nothing particularly unusual about such a nexus provision. For example, the Commonwealth *Remuneration Tribunal Act* specifically enables the Commonwealth Tribunal to determine that remuneration and other benefits be the same as those applying to the holder of some other position, even if the remuneration or benefits concerned are set by some other tribunal or authority.
63. The Tribunal has had to contemplate the effect of the new no-detriment amendment on continuation of the nexus provision. Basically, the Tribunal has a choice either to import some more benefits into the Determination, retaining the nexus provision for the smaller residue and inserting a non-reduction clause, or consolidating all the rest, thus doing away with the nexus altogether.

64. The first advantage of full consolidation is that thenceforth there can be no detrimental change made by others to a Magistrate's benefits that have to be tidied up later. If there are beneficial changes to public sector conditions then it would be for the Tribunal to consider a parallel improvement or some other change to the mix of benefits that may be more relevant to Magistrates. The second advantage of consolidation, is that from that moment on all Magistrates will have the same benefits extended to them upon appointment. With the nexus approach, the starting point for establishing detriment will be the level of benefit that existed on the date of the Magistrate's appointment. Consequently, a situation could arise where successive Magistrates had differing conditions. This, of course happened under the previous system. For example, current Magistrates were granted the employer superannuation contribution entitlements prevailing at their date of their appointment. The third advantage is that all benefits can be located in the one place.
65. The Department of Justice is strongly against the consolidation approach and prefers retention of the nexus. The Department says that it finds it only slightly inconvenient to trace entitlements through public sector By-Laws. It also says that consolidation would necessitate dual systems being set up within the office. They point to an administrative nightmare arising if at some time in the future this Tribunal determined some conditions for Magistrates which did not accord with a wider public sector change in conditions.
66. Magistrates are not public sector employees. The broad definition of remuneration in the Act, combined with the no-detriment clause, make it inevitable that conditions will draw apart. The worst possible result would be for future Magistrates to have different no-detriment entitlements depending on their date of appointment.
67. Of the various ways that this situation could be handled, the Tribunal has decided that all the prevailing nexus benefits be recognised as actual benefits, incapable of change by the Commissioner for Public Employment or anyone else, and capable of review only through the formal Tribunal determination process. This course follows a strict interpretation of section 6 of the *Magistrates Act*.
68. The Tribunal has made some specific provisions to ensure that the consolidation operates fairly and independently. They are:
- (a) specifying six weeks of annual leave;

Public sector By-laws allow the Commissioner to determine the length of leave.

- (b) allowing payment in lieu of long service leave on resignation after 7 years of service;

The nexus provision placed discretion for this in the hands of the Chief Executive Officer, creating a perception of background executive influence.

- (c) allowing the Chief Magistrate discretion to approve all forms of leave;

This also for potential influence reasons but more importantly to allow better day to day management of the affairs of the court.

- (d) specifying the right to salary sacrifice;

This was previously an administrative entitlement for employees.

- (e) including a comprehensive savings provision to guarantee no detriment occurs as a result of the consolidation.

69. Otherwise the benefits have been imported exactly as they are in the By-laws, thus avoiding any confusion about the no-detriment starting point.

REVIEW - CONCLUSION

70. The attached Determination reflects those alterations to the previously determined salary, allowances and other benefits receivable by Magistrates that have been found to be justified before and by the Tribunal during this inquiry. With the exception of the new right to purchase extra leave, all of the benefits that were previously established by nexus with a public sector position have been imported into the Determination unchanged.
71. This concludes the Report.

O. Alder
Tribunal Member
25 May 2005

NORTHERN TERRITORY OF AUSTRALIA

Remuneration Tribunal Act

DETERMINATION OF SALARY, ALLOWANCES AND OTHER
BENEFITS FOR MAGISTRATES

The Remuneration Tribunal –

- (a) pursuant to section 9B(2) of the *Remuneration Tribunal Act* and with reference to section 43 of the *Interpretation Act*, revokes the determination of remuneration and allowances and terms and conditions of appointment of Magistrates dated 6 July 2004 (as amended);
- (b) pursuant to section 9B(2) of the *Remuneration Tribunal Act*, makes the determination set out in the Schedule (the "Determination"); and
- (c) pursuant to section 9B(3) of the *Remuneration Tribunal Act*, specifies that the revocation and the Determination are taken to take effect on 1 December 2004.

Dated 25th May 2005.

Otto Alder
Member of the Remuneration Tribunal

Note for paragraph (a) –

Under section 7 of the Remuneration Tribunal Amendment Act 2004 (No. 51 of 2004), a determination in force under section 6 of the Magistrates Act immediately before 20 October 2004 is taken to be a determination under section 9B(2) of the Remuneration Tribunal Act.

SCHEDULE

DETERMINATION NO. 1 OF 2005

This Determination sets out the salary, allowances and other benefits for Magistrates appointed under section 4(3) of the *Magistrates Act*.

PART 1 – GENERAL

- 1.1 Definitions:** In this Determination, unless the contrary intention appears –
- '**Agency**' means the Agency administering the *Magistrates Act*;
 - '**Chief Executive Officer**' means the Chief Executive Officer of the Agency;
 - '**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*; and
 - '**Minister**' means the Minister for Justice and Attorney-General.
- 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

office	annual salary
Chief Magistrate	\$237,282
Deputy Chief Magistrate	\$219,964
Coroner	\$228,622
Stipendiary Magistrate	\$211,304

2.2 Allowance for additional duties: An allowance at a rate equal to 1.75% of the salary of the Magistrate is payable –

- 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
- 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 Magistrate's spouse or any child under the age of 18 years, 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
- 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:

- travel while on duty in the Territory;
- travel to attend a conference mentioned in clause 3.3;
- 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: A Magistrate is entitled to attend one relevant interstate conference each financial year, subject to the approval of –

- for the Chief Magistrate – the Chief Executive Officer; or
- for any other Magistrate – the Chief Magistrate.

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

3.5 Rates of travelling allowance: The rates of travelling allowance are set out in Tables 2 and 3.

**Table 2
Daily Rates**

column 1 location	column 2 rate
Sydney, Melbourne	\$395
other capital cities	\$325
other places	\$211

**Table 3
Rates for Meals
and Incidentals**

column 1	column 2 capital city	column 3 other place
Breakfast	\$22	\$18
Lunch	\$34	\$19
Dinner	\$53	\$37
Incidentals	\$21	\$20
Total	\$130	\$94

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 the Magistrate, 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.

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 is –

- for each day at a capital city – the total amount specified in column 2 of Table 3; and
- for each day at any other place – the total amount specified in column 3 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 and that location.

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 for a location in column 1 of Table 2 is one third of the rate indicated in column 2 of the Table, 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 NT fleet to be of equivalent standard.

Table 4

office	vehicle model
Chief Magistrate	Holden Calais
Deputy Chief Magistrate Coroner	Holden Berlina
Stipendiary Magistrate	Holden Acclaim

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 –

- nominate, on a journey by journey basis, another person as the person authorised to use the motor vehicle during the course of that journey;
- subject to clause 4.1.4 – keep the motor vehicle at his or her residence while it is not in use; and
- 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 –

- ensure that when the motor vehicle is being used for private purposes, it is used properly and in accordance with this clause;
- 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;
- comply with the operating guidelines of the NT Fleet (if any) relating to the motor vehicle, be responsible for the due preservation of the motor vehicle and account for any undue damage to it; and
- 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:

- installation and rental costs of the telephone;
- charges for calls up to \$800 per quarter.

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

4.3.1 Telephone model: The telephone is to be –

- for the Chief Magistrate or Coroner – a Nokia 6310, 6610 or 8310 (or equivalent); and
- for any other Magistrate – a Nokia 3315 (or equivalent).

4.3.2 Recurrent costs: The recurrent costs of the mobile telephone are to be paid by the Territory from and to the maximum quarterly limit for the residential telephone specified in clause 4.2.

- 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.

PART 5 – LEAVE

- 5.1 Application of Part 2 of PSEM By-laws:** Subject to clauses 5.3 and 5.4, Part 2 of the *Public Sector Employment and Management By-laws*, as in force at the date of the making of this Determination, (the "By-laws") apply 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 condition:

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

- 22.5 calendar days after 7 completed years of service;
- 45 calendar days after 8 completed years of service;
- 67.5 calendar days after 9 completed years of service.

Payment under this provision is calculated using the following formula:

$$\frac{\text{calendar days}}{30} \times \frac{\text{annual salary}}{12}$$

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

- a reference to "the Agency" is taken to be a reference to "the Local Court";
- a reference to "Chief Executive Officer" is taken to be a reference to –
 - for the Chief Magistrate – the "Chief Executive Officer"; and
 - for any other Magistrate – the "Chief Magistrate";
- 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 so applied 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:

- 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;
- 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 any 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 person who is required to move from another location in order to take up his or her appointment as a Magistrate;
 - 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:
- Magistrate only – \$392;
 - Magistrate with resident family – \$542.
- 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.

PART 8 – SAVINGS

- 8.1 No detriment:** If the application of this Determination –
- results in a change to the salary, allowances or other benefits to which a Magistrate was entitled immediately prior to the making of this Determination ("the pre-existing condition"); and
 - in the opinion of the Remuneration Tribunal, the application of the changed condition would be to the detriment of the Magistrate,
- the pre-existing condition must apply.
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