



NORTHERN TERRITORY OF AUSTRALIA

REMUNERATION TRIBUNAL

REPORT

AND

RECOMMENDATION No. 2 of 2003

MAGISTRATES OF THE NORTHERN TERRITORY

REMUNERATION TRIBUNAL

**REPORT - MAGISTRATES OF THE
NORTHERN TERRITORY**

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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 25 March 2003, on which date the Tribunal made its Recommendation 1 of 2003 to the Administrator.
6. The Report and Recommendation was tabled in the House of Assembly on 1 May 2003. On 1 August 2003 the Administrator made a Determination accepting all the Tribunal’s recommendations.

7. The Chief Minister initiated the current sequence by letter to the Tribunal dated 9 July 2003, requesting that the inquiry be completed by 29 August 2003. The Chief Minister said “I seek this inquiry following advice of a 7% increase in judicial salaries at the Federal level, in order to ensure relativities are maintained amongst judicial salaries in the Territory”.
8. The Tribunal has completed the inquiry and this report and recommendation completes the review.

CONDUCT OF THE REVIEW

9. The Magistrates and relevant departmental officers were made aware of the review by letter dated 21 July 2003, and advertisements calling for public submissions were placed in the major Northern Territory newspapers.
10. The Tribunal received and considered the following submissions from Magistrates:
 - (i.) A submission from Mr David Loadman SM dated 28 July 2003 that Magistrates’ salaries should not be less than 72% of the salary of a Supreme Court Judge.
 - (ii.) A submission from Mr H Bradley CM dated 31 July 2003 passing on a request formulated at a meeting of Magistrates that the full effect of the existing Commonwealth Remuneration Tribunal (CRT) Determination should be passed on from its date of implementation, and that this principle should apply to future CRT Determinations implementing the phased increases they have foreshadowed.
 - (iii.) Three submissions from Mr Vincent Luppino SM dated 15 May 2003, 14 July 2003 and 15 August 2003 requesting recognition of the extra work done by the Magistrate performing duties as a member of the Mental Health Review Tribunal.
11. The Tribunal was available in Darwin from 7 August to 9 August to receive submissions. Particular issues were clarified with Mr Luppino SM and with Mr Cox of the Office of Courts Administration.
12. The Tribunal noted the CRT report of the major review of judicial remuneration it concluded in 2002, as well as CRT Determinations 2002/21 and 2003/12. The Tribunal also examined the extent and timing of the flow-

on to the States and the ACT (in the cases where this has occurred) of the increases in the remuneration of Federal judicial officers. A comparative salary table is included as Attachment A. Recent general wages cost data were considered.

THE FEDERAL LEVEL DEVELOPMENTS

13. In November 2002 The CRT produced its report “Major Review of Judicial and Related Offices’ Remuneration”.
14. In its Report the Tribunal recognised the significant contribution to the economy that an effective independent judicial system provides, and reached a number of conclusions, including that:
 - there had been an erosion of the purchasing power of judicial salaries since the benchmark was set in 1901 (against the background that the Constitution provides that judicial remuneration shall not be diminished during a Judge’s continuation in office);
 - the complexity and diversity of the workload of the courts has increased with the complexity of society; and
 - there is a need to provide remuneration at a level that will attract and retain high quality people to the judicial system (given that they should no have to accept remuneration from other sources).
15. At that time the most recent increase in Federal judicial salaries had occurred on 1 October 2001. The Tribunal decided that to restore a proper level of remuneration those salaries should be increased over two years as follows:

At 1 July 2002 (9 months on)	7% (including changed economic conditions)
At 1 July 2003	5% plus then recognition of economic factors.
At 1 July 2004	5% plus then recognition of economic factors.
16. The 7% increase was Determined and back-dated as necessary by Determination 2002/21 of 25 November 2002. That Determination became effective on 16 May 2003 upon the elapsing of the parliamentary disallowance periods.
17. The first of the 5% increases was determined by Determination 2003/12, supplemented by a 4% economic conditions increase. The last disallowance opportunity for this Determination (15 sitting days in each House) is 13 October 2003 (House of Representatives).

Impact on the Northern Territory

18. Judges of the Northern Territory Supreme Court received the 7% pay increase from 1 July 2002.
19. On 1 December 2002 Magistrates in the Northern Territory received a pay increase of 4.7% following the annual recommendation of this Tribunal. That increase was well above the economic indicators of wages and CPI growth in the Territory. The full 7% to retain relativities was not recommended, given the uncertainty over the possible disallowance of the CRT Determination, but the increase over available economic indicators did recognise the trend in the States to anticipate such increase.
20. The Commonwealth Remuneration Tribunal report discloses that the economic indicators component of the first 7% increase was 3.1%. This suggests that the catch-up increase in the 1 July 2002 determination was about 3.9%.
21. Consequently remuneration of Northern Territory magistrates on and from 1 December 2002 was 2.8% below what it would have been had the Federal increase applied in full at that date.

Judicial remuneration relativities within the Northern Territory

22. Unlike the States, the remuneration of Magistrates in the Territory is not automatically established by application of percentages extending from a determination benchmark salary within the judiciary. In the States it is common that the respective independent Tribunal sets the salary of a Supreme Court Judge from time to time, and District Court Judges and Magistrates rates move at the same time because each is expressed as a percentage of the other in cascading order.
23. There are two main reasons for the non-Statelike position of the Territory. Firstly, there is no District Court in the Territory. The jurisdiction of the Territory Magistrates Court is of a higher order and with more hardship characteristics than in the States, and the boundary with Supreme Court has proven somewhat fluid over the past decade or so. Secondly, the salary of all Judges of the Northern Territory Supreme Court is determined as being not less than the salary of a Judge of the Federal Court of Australia. Because the standing reference to this Tribunal to inquire into and report on the remuneration of Territory Judges is now never activated their salary increases as and when Federal increases occur. This means that their salary increases are determined according to such things as national jurisdictional,

national relativities, national retention issues and national economic indicators.

24. The unique characteristics and fluidity of the responsibilities and work of Territory Magistrates are under constant review by this Tribunal. For example, in 1991 the Tribunal granted Magistrates an increase of 22½% to a salary equivalent to 70% of a Judge. In 1995 the relativity was increased to 72%. In 1997 jurisdictional changes were recognised and a week's leave pay was added. This brought the relativity to 77.5%¹. At the same time the Tribunal has to recognise that sometimes the whole increase in Judges' salaries is not justified for flow-on to Magistrates because of the national influences therein. For example, in the period between the big relativities readjustment in 1997 and 30 June 2003 the CPI growth for Australia was 3.5% more than for Darwin, and the Wage Cost Index growth for Australia was 2.1% more than for Darwin.
25. Territory costs/wages are on a long-term convergence pattern with those in the rest of Australia. With no other factors changing this means that the percentage relativity of Magistrates to Judges should decline somewhat. Clearly, a fixed percentage within this single Territory jurisdiction is the sensible ambition, however, with the continuation of the trends noted and with the external reference for Judges remaining in place, this is not practical.

REVIEW - SALARY RELATIVITIES

26. In the last several years the relationship between the Judges and the Magistrates salaries has been as follows:

	Magistrates ²	Judges	Percentage
	\$	\$	%
1-Dec-1999	153,189	203,500	75.28
1-Dec-2000	160,235	212,900	75.26
1-Dec-2001	165,363	221,500	74.65
1-Dec-2002	173,135	237,100	73.02

27. The main reason for the declining percentages is the use of Territory rather than national economic indicators by this Tribunal. Having regard for the trends, to restore relativities the Magistrate salary should be increased by

¹ These percentages include the effect of the airfares allowance for Magistrates. This number reduces to 75.6% if that allowance is excluded.

² These amounts do not include the special airfares allowance.

such amount as will bring the final percentage to 74.5%, ie by close to \$3,500 (or 2.02%).

28. The timing of any flow-on has been raised by the Magistrates. The submit that it should be backdated to the application date of the increase for Judges.
29. The long-standing policy of this Tribunal is to not recommend backdating changes in remuneration beyond the date of the formal initiation of its inquiry³. The Tribunal interprets its foundation reference⁴ as empowering it to make its inquiries from time to time about remuneration “to be paid”, not about remuneration which has been paid. Going back beyond the initiation date implies that the Tribunal can put itself into some kind of retrospective mindset sufficient to decide what might better have been better recommendations for part of a time frame some earlier recommendation already covered.
30. This policy has meant that every year there is a few months delay between the effective date of Judges salary increases and those of Magistrates. Once this pattern was established the recommendations of the Tribunal recognised the continuing effect of the delays. The Tribunal recommendation implemented as at 1 December 2002 made an attempt to anticipate some of the effects of rebalancing the judicial remuneration system, and asked for an out of sequence inquiry to be requested once the attitude of the Commonwealth Government to the CRT determined changes was known. It did these things to minimise systematic detriment caused by inevitable flow-on delays.
31. The general policy of no retrospectivity is reaffirmed. On this occasion, however, partial retrospectivity is recommended. This is justified on two grounds. The comparable Judges structural increase would otherwise be more than twelve months prior to the full implementation of relativity restoration. Also this inquiry was requested to concentrate on the single issue of relativity, and the Tribunal does not find itself in the position of trying to re-evaluate all the remuneration setting influences of an earlier day.
32. The next inquiry, scheduled to commence on 1 December 2003, will have all the material necessary to establish the flow-on effect related to the Federal increases already determined (over 9%) to apply from 1 July 2003, as well as the recognition of the economic indicators for the full year to that date.
33. The Federal judiciary increase scheduled to be determined as of 1 July 2004 is likely to be of the order of 9%. As its magnitude could be questioned during the disallowance period to November 2004, an inquiry by the

³ In this case 9 July 2003.

⁴ Notice of Request dated 31 July 1981.

Territory Tribunal should not be requested before the usual date of 1 December in that year either.

34. The regular 1 December commencement date in the Territory has applied since the CRT began using 1 October each year as the judicial salaries increase implementation date. The CRT has now brought forward their annual implementation date to 1 July. Once the catch-up determinations are dealt with and the more regular pattern re-establishes itself in 2005 the Territory implementation date should be advanced to 1 September.
35. On the basis of the available material and with due consideration, the Tribunal recommends that the salary of Magistrates be increased by \$3,500, backdated to 1 December 2002, with proportional increases to other Magisterial office-holders.

REVIEW - ALLOWANCES

36. 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

37. Submissions were received from Mr Luppino SM requesting that extra remuneration be paid to him for performing demanding duties as Delegate of the President of the Mental Health Review Tribunal. The Tribunal has agreed to give consideration to this request now as the original submission sent in time for consideration during the last inquiry was misdirected.
38. He and other Magistrates are appointed as legal practitioner members of that Tribunal, and Mr Hugh Bradley, the Chief Magistrate is its President. These appointments are in the personal name of the respective practitioner, without reference to their position as Magistrates.
39. Members of the Tribunal receive time based fees, allowances and expenses by Determination made under the *Remuneration (Statutory Bodies) Act*. That determination specifically precludes any Magistrate from receiving any remuneration, allowances or expenses as a member of the Tribunal (or as the holder of any of the other statutory appointments within the determination).
40. The Government intention appears to be that service by any Magistrate as a legal practitioner member of the Mental Health Review Tribunal is to be recognised as being within his or her duties as a Magistrate.

41. Similarly, the role of President in running the Tribunal is within the duties of the Chief Magistrate.
42. For the time that any of the Magistrate appointee to the Tribunal exercises all of the powers and responsibilities of President, extra remuneration will be warranted. In that circumstance the question is not just whether remuneration should be assessed as being for work over and above the number of hours of work per week of an average Magistrate (well recognised as long – with call out periods and unpredictable demands). Rather it is to assess the value of the responsibility differential between the work of a Magistrate and the work performed while acting in the other role.
43. This Tribunal is open to recommending that a new position for remuneration purposes be introduced into the Magistrates *Determination of Remuneration* covering the Stipendiary Magistrate who is the President's delegate on the Mental Health Review Tribunal. The remuneration level would require evidence of time spent and of more onerous work characteristics. Back-dating of any new classification may well be justified.
44. The Tribunal needs comment from the Chief Magistrate and the Department of Justice on this issue. Further consideration will be given during the next inquiry.

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

	<u>Chief Magistrate</u> \$	<u>Magistrate</u> \$	<u>Date of Effect</u>
Commonwealth ^a	216,330	186,960	1.7.03
New South Wales ^b	239,100	192,280	1.7.03
Victoria ^b	196,800	162,900	29.10.02
Queensland ^c	192,885	173,610	1.7.02
South Australia ^b	204,112	174,352	1.11.02
Western Australia ^a	196,470	174,641	1.1.03
Tasmania ^a	179,092	161,183	1.7.03
ACT ^d	197,950	173,340	1.11.02
Northern Territory ^a (current)	198,279	176,635	1.12.02
Northern Territory (recommended)	202,216	180,135	1.12.02

Notes (1) Northern Territory salaries are packages which include an annual family airfare component.

(2) Comparisons are to be noted with caution, as the jurisdictions of the courts differ. the responsibilities of the Chief Magistrates vary, different approaches are taken to car costs, and superannuation entitlements vary even within each jurisdiction.

(3) Those with recent date of effect may still be within the parliamentary disallowance period.

Footnotes

- a Serviced car provided no cost
b Car not provided. Salary can be sacrificed for leased government car
c Car provided circuits or mileage rate paid
d Serviced car provided at nominal cost

NORTHERN TERRITORY OF AUSTRALIA
REMUNERATION TRIBUNAL

RECOMMENDATION No. 2 of 2003

MAGISTRATES OF THE
NORTHERN TERRITORY COURT

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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	198,716	202,216
Coroner	191,335	194,835
Deputy Chief Magistrate	183,995	187,495
Magistrate	176,635	180,135

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

Dated this twenty second day of August Two thousand and three.



O. Alder
Member of the
Northern Territory Remuneration Tribunal