



NORTHERN TERRITORY OF AUSTRALIA

REMUNERATION TRIBUNAL

REPORT

AND

RECOMMENDATION No. 1 of 2001

MAGISTRATES OF THE NORTHERN TERRITORY

REMUNERATION TRIBUNAL

**REPORT - MAGISTRATES OF THE
NORTHERN TERRITORY**

NORTHERN TERRITORY OF AUSTRALIA

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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 inquiry was completed on 3 March 2000. On 30 June 2000 the Administrator made a Determination in accordance with the Tribunal's recommendation.

6. The Chief Minister initiated the current sequence by letter to the Tribunal dated 30 October 2000, requesting that the inquiry commence on 1 December 2000.
7. The Tribunal has completed the inquiry and this report and recommendation completes the review.

CONDUCT OF THE REVIEW

8. The Magistrates and relevant departmental officers were made aware of the review by letter dated 11 December 2000.
9. The Tribunal received and considered the following submissions from Magistrates:
 - A submission from Mr J Birch SM dated 30 January 2001.
 - Submissions from Mr V Luppino SM dated 31 January 2001, and 16 February 2001.
 - A combined Magistrates submission dated 1 February 2001.
 - Submissions from Mr A Gillies SM dated 1 February 2001, and 16 February 2001.
 - A submission from Mr A McGregor SM dated 1 February 2001.
 - A submission from the Chief Magistrate on the issue of judicial education dated 16 February 2001.
10. On 7 February 2000 the Northern Territory Government provided the Tribunal with a submission through the Office of Courts Administration. This submission made reference to the submissions by and on behalf of Magistrates to that date.
11. Over the period 12 to 14 February 2001 the Tribunal met in Darwin with the Chief Executive Officer Office of Courts Administration, the Commissioner for Public Employment, the Chief Magistrate, the Coroner, and with Mr Gilles SM and Mr Birch SM who spoke to the joint submission as well as their own. Each of these people provided the Tribunal with illustrative and background documentation, explanations, and amplification of material already before the Tribunal.

12. Detailed information concerning salaries, allowances and entitlements of holders of judicial offices in other jurisdictions in Australia was obtained by the Tribunal.
13. General information on comparative wage costs and the Consumer Price Index was obtained.

GENERAL DEVELOPMENTS

14. Following the annual review of judicial and related offices by the Commonwealth Remuneration Tribunal, that Tribunal determined a salary increase of 4.6% for Judges of the Federal Court of Australia effective from 1 October 2000. This increase flowed to the Judges of the Supreme Court of the Northern Territory.
15. Increases in salary granted to Magistrates in other Australian jurisdictions within the last twelve months, showing the period since the previous increase in each case and the annual rate of increase, were:

New South Wales	One year, from 1/10/00	6.6%
Victoria	One year, from 1/01/00	6.1%
Tasmania	One Year, from 1/07/00	4.6%
South Australia	One Year, from 1/11/00	4.4%
Western Australia	11 months, from 1/12/00	4.6%
ACT	14 months, from 31/10/00	5.0%

16. State and Territory Tribunals made note of executive salary movements, of any differentials applying in their own jurisdictions, and of relativities with other jurisdictions. Maintenance of sound relative salaries has been accepted by other Tribunals as a significant factor in attracting and retaining suitable persons as members of the judiciary, although in recent years no Tribunal has reported evidence of recruitment difficulty.
17. A table of comparative salaries for Magistrates is included as Attachment A to this report.
18. General wage increases and movements in prices have been lower in the Northern Territory than in the rest of Australia over the past year. The effect of the jump in the CPI occasioned by the introduction of the GST on 1 July 2000 has been ameliorated to some extent by income tax relief. Relevant comparisons are:

Northern Territory Salary Movements

(Australia wide comparison in brackets)

	Year to 30/9 1999	19 Aug. 1999	1 Oct. 1999	1 Dec. 1999
	%	%	%	%
Private Sector	2.4 (2.9)			
Public Sector	2.9 (3.4)			
Executive Contract		3.0		
Judges			4.0	
Magistrates				3.4*

	Year to 30/9 2000	31 Aug. 2000	1 Oct. 2000
	%	%	%
Private Sector	2.8 (3.1)		
Public Sector	2.5 (2.9)		
Executive Contract		2.9*	
Judges			4.6
Magistrates			

* Annualised

REVIEW - SALARY

19. Magistrates have submitted that their salary should be pegged at 80% of the salary of a Judge of the Supreme Court. Until the current determination for Judges comes into effect Magistrates are receiving 77% of that benchmark. An underlying relationship of that order has persisted since the Tribunal reassessed the jurisdiction entitlements and conditions of Magistrates in 1997.

20. Magistrates highlighted several jurisdictional changes but provided no persuasive justification in support of higher average or relative levels of responsibility.

21. The Tribunal's reasons for not accepting an automatic nexus between the salaries of Magistrates and Judges have been stated on a number of occasions. Some further reference to this issue is made later in this report.

22. When regard is had for inter and intra jurisdictional relativities in salary determination processes it is clearly important that productivity gains or otherwise within various elements of the judiciary are recognised. Whilst appropriate efficiency and effectiveness indicators are very difficult to craft for the court system, some States claim to be making strong productivity

gains, in particular through the introduction of streamlined procedures, and with the assistance of voice recognition, new means of communication, and technology uptake.

23. Those making representations to the Tribunal did refer to the productivity of Magistrates in terms of hours worked, but without evidence of simultaneous changes in other jurisdictions or tiers, or evidence of whether they were ahead or behind other sectors. In future there is likely to be mounting evidence of productivity gains in the various courts. Against this background the Tribunal will need explanation, if not measurement, of absolute productivity gains and relative productivity gains, at least within the overall courts system, in subsequent inquiries.
24. The last salary Determination for Magistrates became effective on 1 December 2000, one year before this inquiry commenced. The Tribunal has considered the issues and the circumstances on the basis that any change to remuneration and allowances would apply from the day the inquiry commenced.
25. Having considered all of the available information, and with the benefit of the submissions and discussions already noted, and subject to the recommendations concerning allowances below, the Tribunal recommends that the base salary payable to a Magistrate be increased by 4.6% from 1 December 2000.

REVIEW - ALLOWANCES

Northern Territory Allowance

26. As an addition to salary Magistrates with dependants are paid a “Northern Territory Allowance” of \$960 in common with non-executive public sector employees. This allowance is a residue of earlier public service arrangements in the Territory and is picked up by the public sector reference provision. The Tribunal is keen to see these sorts of taxable entitlements consolidated into the determination (as it is with Judges of the Supreme Court) rather than imported by reference.

Airfares

27. Following a Tribunal recommendation in 1997, the recreation airfare entitlement for Magistrates and their dependents was removed in exchange for the inclusion of an annual cash allowance of \$3,500.

28. The Tribunal considered whether this amount should be subsumed within the remuneration portion of their entitlements. Views were received from most Magistrates on this issue.
29. No change to the amount or to its classification as an allowance is recommended.

Travel

30. In 1999 the rates of travelling allowance were increased to remove differences between the entitlements of Magistrates and Judges at that time.
31. Travelling allowance is payable to Judges of the Supreme Court at a rate determined by the Administrator, being a rate not less than that paid to a Judge of the Federal Court of Australia.
32. Since the last determination of travelling allowance for Magistrates there have been changes to both the rates of this allowance and the conditions surrounding its payment to Judges of the Federal Court. The current entitlement is contained in Part C of Commonwealth Remuneration Tribunal Determination number 2000/13 “**Judicial and related offices - remuneration and allowances**”, and in Commonwealth Remuneration Tribunal Determination number 2000/06 “**Travelling Allowance rates**”. These Determinations also cover Magistrates of the new Federal Magistrates Service. Those Magistrates have the same travelling allowance entitlement as Judges of the Federal Court of Australia.
33. The Magistrates have proposed a schedule of rates to be adopted on this occasion. These rates are above those paid to Judges of the Supreme Court. Some are also above or outside of the rates of travelling allowance ruled as reasonable by the Commissioner of Taxation, implying that they be treated as taxable allowances requiring documentary payment substantiation.
34. The Tribunal confirms the general principle that travelling allowance regime should be the same for Magistrates as it is for Judges. In the past this has been done by way of ‘snapshots’ at the time of successive determinations. Determinations setting rates of travelling allowance for Judges of the Supreme Court have to contain a backdating mechanism, as they are made months after movements in travelling allowance rates for Judges of the Federal Court. To avoid two-step complexity and similar backdating for Magistrates the Tribunal recommends that their rates be tied directly to those for the Judges of the Federal Court.

35. The Commonwealth Determination does not contain a rate for travel where no overnight stay is involved. Any allowance element of this kind is taxable, ie subject to documentary substantiation, and has to be included on the group certificate of the recipient. Nevertheless, Magistrates are currently entitled to such an allowance when on circuit duty and it is recommended that this continue, at a rate that has regard to the entitlement for Judges of the Supreme Court.

REVIEW - OTHER ENTITLEMENTS

Recreation Leave

36. Magistrates are concerned that bargaining now reported to be going on in the public sector may see a reduction in the six weeks of annual recreation leave available to public employees and that any reduction will flow through to them by virtue of the general conditions nexus determination.
37. Magistrates also claim that parity with Judges and changes to the out of hours rostering system entitle them to an extra weeks recreation leave each year. The arguments provided do not disclose how changes make out-of-hours duty, on average, more time consuming than it has been in the past, or that the level is most unusual compared to the duties of Magistrates elsewhere. The Tribunal has no figures on comparable in-court v. out-of-court time ratios between jurisdictions.
38. The Tribunal accepts that the public sector leave entitlement could be traded off in favour of an enhancement to some other entitlement or package of benefits to public sector employees. The general approach of the Tribunal in such cases would be to recommend backdated reinstatement of the changed nexus entitlement unless an equivalent benefit was substituted automatically by the nexus, or made available as separate backdated inclusion in the determination.

Sick Leave

39. The Magistrates submit that they should be granted unlimited sick leave, instead of three weeks per year cumulative, on the justification of parity with Judges of the Supreme Court. The government submission does not favour this, and the Tribunal makes no recommendation at this time.

Conferences and Legal Education

40. In 1997, the previous study leave entitlement was merged into the salary of Magistrates. The Tribunal recommended such 'cashing out' on the understanding that every effort would be made for each Magistrate to attend at least one conference each year (not including the annual 3 day Magistrates conference). The Tribunal acknowledges the importance of education for Magistrates and also the need to learn of advances made by equivalent courts in larger jurisdictions.
41. The Magistrates submit that lack of financial resources has meant that attendances have been restricted. There is no evidence of budget reduction or of lack-of-funds related attendance refusal in recent times. There do seem to be problems in structuring an annual conference attendance program under which not only the expectations of Magistrates are met, but also a depth of coverage of issues is encompassed for the court.
42. Automatic approval of conference attendance without regard to budgeting and general auditable financial controls required of the accountable officer cannot be recommended.
43. The cost of Magistrates attendance at conferences in Australia has been very close to \$30,000 in each of the last two years. Some Magistrates have not attended inter-State conferences, and the average cost of attendance is set to increase with the entitlement to business class travel.
44. The Tribunal recommends that attendance at one relevant inter-State conference each year become an entitlement of Magistrates for the purposes of their own personal development and the benefit of the court system.
45. The Tribunal has no power to recommend a level of overall annual budget provision for this purpose. That budget will also include funding for other meetings and travel requirements. The Tribunal expects that the conferences entitlement element of such annual budget will be established having reference to a structured program submitted by the Chief Magistrate.

Class of Travel

46. There is general agreement that Magistrates travelling on official business should fly business class where available, and the Tribunal recommends accordingly.

Terms and conditions generally

47. Certain terms and conditions of service for Magistrates not specifically covered by determination are imported by reference to those had by an employee within the meaning of the *Public Sector Employment and Management Act* with the designation of Executive Officer 1.
48. That position no longer exists.
49. As uniform terms and conditions apply to all public sector employees (except those engaged under executive contracts) a nexus with a particular position is no longer required and it is recommended that the reference be removed.

Superannuation

50. The Tribunal noted in its last report that government sponsored superannuation schemes would no longer accept new public sector employees as participants. The employer superannuation contribution for all new employees is now set at the minimum level prescribed under Commonwealth legislation (currently 8% of salary per annum rising to a maximum of 9% of salaries from 1 July 2002).
51. The Magistrates appointed since this change in policy have each made a case for the Tribunal to recommend that they and Magistrates subsequently appointed should have the same access to superannuation as their colleagues.
52. It is common across occupations that entitlement to certain conditions depends on a person's date of appointment. New appointees have current conditions drawn to their attention. A full and uniform superannuation entitlement at some level and scope could be included in a determination for Magistrates, rather than have it imported by the nexus process. Superannuation for Judges of the Supreme Court is covered by particular legislation, rather than by reference, to produce uniformity and to remove executive discretion. The legislature has chosen not to treat this entitlement for Magistrates in the same way. The Tribunal is not persuaded that uniformity should apply.

Accommodation

53. A Magistrate was appointed to Katherine last year. Prior to this a Magistrate from Darwin attended the court when not on circuit and received rental assistance for his accommodation in the town. The permanent appointee has had difficulty finding suitable accommodation, with all that implies for a

Magistrate in such a small centre. He submits that he and future Magistrates living in the town should be accommodated in suitable public housing or receive a rental allowance.

54. Katherine is a small town with a limited private stock of private accommodation. It is inevitable that circumstances will cause Magistrates to move, requiring replacement, from time to time. Not only is it difficult to buy executive housing; it is also difficult to sell it. Rental accommodation, when available, is often priced at opportunistic rates given the seasonality and uncertainties in major economic sectors based in the town. For these reasons a number of successor in office residences are provided in Katherine. The local Magistrate is a key position and should be able to be accommodated in the town without the difficulty and sometimes very long delays attaching to purchase and sale of a suitable residence in that town.
55. The Tribunal is sympathetic to the needs of the Katherine Magistrate and recommends key personnel status for provision of housing. The recommendation is made on the basis of the size and special characteristics of Katherine, not on isolation factors.

ROLE OF THE TRIBUNAL

56. By the *Supreme Court Act* and the *Magistrates Act*, the remuneration and allowances payable to Judges and Magistrates are determined by the Administrator of the Northern Territory. There is no necessity for these determinations to be influenced by any advice other than that of the Executive Council, nor is there any requirement in those Acts for them to be tabled in the Legislative Assembly or otherwise made public.
57. The Administrator, acting with the advice of the Executive Council, has a discretion under the *Remuneration Tribunal Act* to request this Tribunal to, or from time to time to, inquire into and report with recommendations on the remuneration and allowances paid to a person or class of persons. A standing request was made by the Administrator in respect of Magistrates on 31 July 1981, and similarly in respect of Judges on 25 January 1984. Tribunal inquiries under the standing requests are initiated by the government.
58. The *Remuneration Tribunal Act* provides that each such report is to be tabled in the Legislative Assembly within 6 sitting days next following the receipt of the report by the Administrator. The determination may be made at any time but is usually made quite some time after the report is tabled.

59. No inquiries have been initiated in respect of Judges salaries and allowances since the salary parity nexus with Federal Court Judges salaries was established about ten years ago. Allowances and other conditions for Judges are determined by the Administrator at the time of the appointment of each Judge and from time to time for general conditions.
60. Inquiries into the salaries and allowances of Magistrates as a class of persons are now requested annually, and the Tribunal is aware of only one instance where the Administrator has separately determined a Magistrate's salary and allowance. In that case the determination was only for a fixed introductory period after the Magistrate's appointment.
61. The structure of these arrangements is producing difficulties for the Tribunal.
62. In recognition of the separation of powers convention, Magistrates in other jurisdictions are usually grouped with all other judicial officers for independent remuneration and allowances determination purposes. The respective Tribunals commonly determine the salary of a senior Judge and through application of a set of percentages (reviewed by them from time to time) to the various offices, including Magistrates, consistency is maintained. That consistency also flows through via determination of allowances and entitlements by tiers and for general application. In arriving at their determinations the Tribunals are influenced by factors peculiar to their jurisdiction, and also by wider relativity considerations. Their determinations are not capable of amendment by the executive branch, though they must be tabled in Parliament. Amendment by Parliament may have constitutional implications in some States.
63. For each of the Judges of the Supreme Court the Administrator has determined that they be entitled to a salary that is not less than that paid to a Judge of the Federal Court of Australia in any subsequent determinations. In practice those subsequent determinations have adopted the Federal rates, and the standing reference to this Tribunal has not been activated. The Tribunal is not privy to the processes by which allowances and entitlements for Judges are produced for the Administrator for determination.
64. The Tribunal recognises Northern Territory factors, such as economic conditions and comparable salary movements, as issues relevant to its task. Its difficulty is, however, that if they are recognised at all the salaries relativities within the Northern Territory judiciary change – without any change to relative responsibilities or relative productivity.
65. In reaching its recommendations the Tribunal tends to put most weight on maintaining consistency within the judiciary. As a result there has been a widening gap between the salaries paid to Magistrates and those paid to

comparable officers within the public sector executive service in recent years.

66. The Tribunal also has difficulty obtaining consistency between general allowances recommended for Magistrates and those paid to Judges. With Travelling Allowance, for example, Judges' rates are determined by the Administrator having regard to those payable to a Judge of the Federal Court of Australia, but also having regard for the non-reduction provision in the Supreme Court Act and special clauses in the basic determination of conditions applying to individual Judges. Consequently this Tribunal can not easily create a Travelling Allowance nexus between Magistrates and Judges.
67. The Tribunal also has difficulty recommending consistency between other minor general entitlements provided to Magistrates and those provided to Judges. For Magistrates these are imported by a nexus with an employee in the public sector. It is the intention of the Tribunal that these be progressively brought within the ambit of determinations so that changes are considered within the package for Magistrates and the suggestion that the executive can apply influence via By-law interpretation is avoided. Unfortunately a nexus within the varying judicial entitlements is hard to establish.
68. Another difficulty relates to the timing of changes to remuneration and allowances. Judges' salaries change when the salary of a Judge of the Federal Court of Australia changes. Their allowances change through appointment determinations as well as periodic determinations relating to travelling allowance and other matters. Some of these determinations are back-dated. The fact that they do not have to be tabled means that the Tribunal may not be aware of some of them. An outcome of this is the possible need for catch-up increases for Magistrates. If that happens, percentage increases are distorted and leap-frogging can be promoted within the remuneration setting framework.
69. The judicial remuneration setting system is capable of being perceived as being internally inconsistent and out of step, capable of executive influence, and partly secret. This situation is substantially a legacy of the previous "colonial" style of administration of Northern Territory affairs and the way those arrangements were drawn into the body of legislation twenty years ago.
70. It is beyond the reference to the Tribunal for it to recommend that the situation be remedied to remove the difficulties under which it operates. However, the Tribunal feels that it is proper that it should report such difficulties and perceptions, and to record its view that they will persist until the judiciary as a whole is drawn more specifically within Section 9(1) of the *Remuneration Tribunal Act* and until the Administrator issues a standing

request for the Tribunal to inquire into and determine the remuneration and allowances of all members of it by a set date each year.

**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>
Queensland*	160,550	145,850	1.7.99
New South Wales	195,550	156,440	1.10.00
Victoria*	172,500	138,000	1.1.00
Tasmania	154,478	139,032	1.7.00
South Australia	164,340	139,270	1.11.00
Western Australia	176,555	156,938	1.12.00
Australian Capital Territory	172,401	156,552	31.10.00
Northern Territory (current)	175,839	156,689	1.12.99
Northern Territory (recommended)	183,766	163,735	1.12.00

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.

* Includes motor vehicle allowance

NORTHERN TERRITORY OF AUSTRALIA

REMUNERATION TRIBUNAL

RECOMMENDATION No. 1 of 2001

MAGISTRATES OF THE
NORTHERN TERRITORY COURT

NORTHERN TERRITORY OF AUSTRALIA

REMUNERATION TRIBUNAL
RECOMMENDATION No 1 of 2001

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 salary, allowances, terms and conditions be varied by the Administrator under section 6 of the *Magistrates Act* in respect of magistrates, effective from 1 December 2000.

Salary

	Rate per annum Base salary \$	Rate per annum Salary package \$
Chief Magistrate	180,266	183,766
Coroner	173,589	177,089
Deputy Chief Magistrate	166,912	170,412
Magistrate	160,235	163,735

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

Travelling Allowance

Travelling allowance should be paid to Magistrates

(a) in respect of approved travel involving at least one overnight stay

(i) subject to (ii), at the rates applying to office holders ranked as Tier 1 in Commonwealth Remuneration Tribunal Determination 2000/6 as amended or replaced by that Tribunal from time to time.

(ii) where the Magistrate is accommodated in private, non commercial accommodation such as the home of a family member or friend, a rate of one third of the specified rate is payable, rounded up to the nearest dollar.

(b) when travelling on circuit duty for at least 5 hours, without an overnight stay, at a rate of \$45.

Other terms and conditions

1. The current entitlement to a Northern Territory Allowance should be established by its inclusion in the Determination rather than by importation by reference from the public sector.
2. The reference point for the importation of terms and conditions set in by-laws made under the *Public Sector Employment and Management Act* should be simply to an employee thereunder.
3. When travelling by air on official duty a Magistrate should be entitled to travel business class where available.
4. Subject to approval by the Chief Magistrate of the specific conference concerned, Magistrates should be entitled to attend one relevant inter-State conference each financial year.
5. The Katherine Magistrate should be entitled to accommodation in a suitable government owned or leased residence on a key person successor-in-office basis.

Dated this fourth day of March Two thousand and one.

O. K. Alder
Member of the
Northern Territory Remuneration Tribunal