



NORTHERN TERRITORY OF AUSTRALIA

REMUNERATION TRIBUNAL

REPORT ON THE ENTITLEMENTS OF MAGISTRATES

AND

DETERMINATION No. 2 of 2007

INTRODUCTION

1. The Tribunal is established by section 17(1) of the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act*.
2. Under that Act the entitlements of Magistrates must be reviewed by the Tribunal at least annually. Tribunal reports, including resultant determinations, are to be tabled in the Legislative Assembly within 6 sitting days of their being received by the Minister. The Assembly may disapprove all or part of the determinations by a resolution passed within the next 10 sitting days.
3. This report completes this annual review.

CONDUCT OF THE INQUIRY

4. The Magistrates and relevant departmental officers were made aware of the review by letter dated 1 December 2006.
5. The Tribunal received and considered five submissions from interested Magistrates and a submission from a government agency. Each submission was circulated to interested parties.
6. The Tribunal was available in Darwin from 21 February 2007 to 23 February 2007 to receive the submissions, gather evidence, and receive information on local economic conditions.
7. The Tribunal gathered and reviewed interstate and federal judicial remuneration, allowances and benefits changes, and brought itself up to date on all pertinent economic indicators.
8. All of this material was carefully considered in context with the records of, and conclusions drawn during, previous inquiries.

REVIEW - REMUNERATION

9. Submissions from three Magistrates made the case for continuation of the current relativity with Judges. The salary increase this year for Territory Judges, through parity with Federal Judges, was 4.4% from 1 July 2006, to \$307,000. This

increase has flowed, or is flowing, to other jurisdictions. In most of those other jurisdictions Magistrates' salaries are legislated as a set proportion of a respective Judge's salary.

10. The Department of Justice advised the Tribunal that wage movements in the Northern Territory Public Sector 2004-2007 Certified Agreement were 5% in 2004, 3% in 2005 and 3% in 2006. The Department made no recommendation as to the salary movement for Magistrates on this occasion.

11. There continues to be relative stability in the jurisdictional share as between the Supreme Court and the Magistrates Court, and there is no compelling economic environment reason why relativities within the judiciary should be disturbed. Consequently the full flow-on has been determined. This takes the base salary of a Magistrate to \$225,841 (\$229,341 with the fixed airfare component). It produces a relativity factor with Judges of 74.7% on 1 December 2006. This proportion is higher than in other Australian States and the ACT due to the higher jurisdictional limits that have applied in the Northern Territory since 1997.

12. With this increase the comparison with Magistrates and Judges in other jurisdictions is:

Magistrates Salaries and Judge Relativity

Jurisdiction	Date of Effect	Increase 2005/06	Salary \$	Relativity with Judges
NSW	1-10-06	4.4%	221,040	72.0%
Victoria	1-7-06	11.1% ¹	205,897*	69.3%
Queensland	1-7-06	3.8%	211,705*	70.4%
South Australia	1-11-06	4.4%	214,300	70.0%
Western Australia	1-1-07	4.4%	226,113	72.0%
Tasmania	1-7-06	4.2% ¹	200,468*	67.5%
ACT	1-11-06	3.4%	216,189**	70.4%
NT	1-12-06	4.3%	229,341	74.7%

Notes: Salary figures do not include separate car allowances where applicable.

Salaries marked * are not readily available so these figures should be checked with the jurisdiction concerned before reliance is placed upon them.

** Includes a flat amount for the periodic performance of certain duties.

¹ Federal increase flow-ons still occurring

Allowance for additional duties – President of the Mental Health Tribunal.

15. The Chief Magistrate held the appointment of President of the Mental Health Review Tribunal under the *Mental Health and Related Services Act* until 2 November 2006. On that date another Magistrate was appointed to the position.

16. That position carries with it significant responsibility for the supervision of professionals, for the setting of procedures, and for independent reporting through the Minister to the Parliament. The work of the Tribunal has been increasing.

17. The Chief Magistrate has asked that additional salary be paid to any Magistrate holding the Presidency, and the Department of Justice agrees. Both have made submissions (as has the incumbent Magistrate) on the positioning of such an allowance within the current salary structure for Magistrates.

18. Relativities with other jurisdictions are difficult to establish, as the Presidents of equivalent Review Tribunals are usually independent experts of long experience being paid a daily rate. Reviews of decisions in South Australia are performed by the District Court.

19. Having considered this material, an allowance has been determined that brings the salary of the President to the Deputy Chief Magistrate level.

Allowance for additional duties – Special administrative duties Alice Springs.

20. The location of the Deputy Chief Magistrate in Alice Springs allowed a degree of administrative autonomy for that regional division of the court.

21. There is no Deputy Chief Magistrate currently appointed. The Department of Justice says that none will be appointed until the legislation is amended to more clearly define the powers and functions of the position.

22. In the meantime capacity to perform supervisory and work allocation duties, and other administrative tasks, needs to be clarified as being in the hands of one of the Alice Springs Magistrates at any time. The Chief Magistrate intends to do this by written direction and asks that there be an allowance to the Magistrate concerned for the extra responsibility. The Department of Justice agrees. In South Australia there is a similar allowance payable in the regions.

23. On the basis of material provided, an allowance has been determined that produces a salary for the delegate that is midway between the total salaries of the

Magistrate appointed as manager of the Work Health Court and the Deputy Chief Magistrate.

REVIEW - ALLOWANCES

Travelling Allowance.

24. The rates of travelling allowance have been adjusted having regard for general survey based rulings by the Taxation Commissioner and for respective Federal judicial rates set by the Commonwealth Remuneration Tribunal.

25. During their circuits some Magistrates stay in accommodation attached to court houses. The Tribunal's intention has been that when this happens the Magistrate is entitled to the meals and incidentals rate, as an indemnification limit for him or her for the actual costs incurred.

26. Disqualification from an entitlement for an accommodation inclusive travelling allowance rate has been expressed as:

2004 and earlier Determinations by the Administrator as recommended by the Tribunal.

“if the travel involves an overnight stay and the Territory pays for the accommodation of the Stipendiary Magistrate but not his or her meals whilst on duty – (*meals and incidental rates*);”

2005 Determination by the Tribunal where there is an overnight stay on official duty.

“If an entity other than the Magistrate pays for accommodation, the amount of travelling allowance is – (*meals and incidental rates*).”

27. On 5 March 2007 the Department of Justice provided the Tribunal with a copy of a legal opinion it had received in December 2005 on this entitlement. That opinion concludes that “a magistrate is entitled to the full rate of travelling allowance where they stay overnight in a court house”.

28. The opinion holds that the words “pays for” (in the above-referenced Determinations) are not satisfied when a Magistrate is simply allowed to stay in court house accommodation.

29. Acceptance of this opinion by the Department has meant that some Magistrates have become entitled to substantial back pay equivalent to the accommodation part of travelling allowance, even though they incurred no expenditure for accommodation. In cases where this has been paid, the whole amount of travelling allowance for the days concerned, and not just the accommodation back payment, would be a taxable payment, as each day's allowance, having no regard for costs incurred at the location, does not qualify as non-substantiable travelling allowance under current tax law.

30. The Tribunal was not aware of this opinion during last year's inquiry, so the 2006 Determination had no regard for it.

32. The Determination now made removes the accommodation element entitlement where accommodation is provided rather than paid for, but only for Magistrates appointed from now on. The Tribunal's intention is to continue to introduce the indemnification principle for new Magistrates in any case where a general change would offend the no detriment provision of the *Magistrates Act* for current Magistrates. The Department of Justice has agreed that the creation of a new class of Magistrates is appropriate in this case. This makes three classes of Magistrates for travelling allowance purposes.

33. The device of creating cascading levels of Magistrate for travelling allowance purposes is necessary because:

- (a) Section 6(2) of the *Magistrates Act* provides that allowances can not be altered to a Magistrate's detriment during his or her term of office; and
- (b) subject to that Section, the Tribunal must determine allowances every year (Section 7(1) of the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act*).

34. Properly determined, any (travel) allowance that is meant to cover variable daily (travel) costs will move upwards and downwards with those costs. Every time a new class of Magistrates is created it means that those in former tiers who draw on travelling allowance that is greater than that for their successors are either travelling at higher standards or taking a profit over accepted cost levels. This could cause tensions within the Magistracy. It certainly causes administrative complexity.

35. This situation (which is the same for Judges) is probably unique, at least in Australia.

36. In the Federal jurisdiction, "remuneration" of Judges cannot be diminished because of Section 72(iii) of the *Constitution*. However the Federal Parliament has

given the Commonwealth Remuneration Tribunal power to set daily travelling allowance rates for all judicial officers without any injunction about reducing them, on the basis that “remuneration” includes only annual allowances.

37. **The Tribunal recommends:**

that the *Magistrates Act* be amended to restrict allowances in Section 6(2) to annual allowances for Magistrates appointed from now on.

REVIEW - OTHER ENTITLEMENTS

Conference Travel

38. Due to the remoteness of the Northern Territory the Tribunal has accepted that Magistrates should have an annual entitlement to attend a conference, relevant to their duties, at Government expense. This allows them to keep up to date with productivity issues and to create links with other Magistrates. Occasionally, judicial conferences of such interest are held in Indonesia. The wording of the 2006 Determination rules out attendance at overseas conferences, even though attendance would be cheaper than attendance at a conference in an Australian capital city. The overseas option has been included at the discretion of the Chief Magistrate and the Minister.

Motor Vehicles

39. The Department of Justice has asked that the standard of vehicles provided to Magistrates be based on a nexus with the vehicle entitlement of specific Executive Contract Officer appointees. It suggests this because the models specified in the 2006 Determination are no longer produced by Holden.

40. Establishing entitlements by way of nexus with the Public Sector presents at least two problems for the Tribunal. Firstly, it is doubtful if the Tribunal can abrogate its determinative powers in favour of some other determinative entity. Secondly, enforcement of any change to the standard of vehicle provided could provoke action under the detriment provisions of the *Magistrates Act*.

41. No change has been made to the entitlement. Cars of the equivalent standard to the superseded models will have to be provided.

42. The Tribunal expects that during the next annual inquiry a new listing, agreed not to be detrimental, can be specified.

Mobile telephones

43. The models of mobile telephones specified as the entitlement for Magistrates are no longer produced. The Department of Justice has recommended other models for substitution.

44. The models have not been changed due to detriment considerations, as equivalent base models may still be provided. Substitution of new models will be considered during the next inquiry if agreement can be reached.

45. Optus is no longer the preferred carrier for the Northern Territory Government, so its specification has been removed.

Removal Expenses

46. The money amounts included in Clause 7.3 have been changed following an increase in the same entitlements for certain public sector employees.

47. This concludes the Report.

O. Alder
Tribunal Member
23 March 2007

NORTHERN TERRITORY OF AUSTRALIA

Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act

DETERMINATION OF ENTITLEMENTS OF MAGISTRATES

The Remuneration Tribunal:

- (a) pursuant to section 28(2)(b) of the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act*, revokes the determination of salary, allowances and other benefits for Magistrates dated 21 March 2006 (the "former determination"); and
- (b) pursuant to section 7(1) of the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act*, makes the determination set out in the Schedule (the "Determination"); and
- (c) pursuant to section 7(1) of the *Assembly Members and Statutory Officers (Remuneration and Other Entitlements) Act*, determines that for the period on and from 1 December 2006 and ending immediately before the date of this Determination, a Magistrate is entitled to be paid an amount equal to the difference of:
 - (i) the amount paid to the Magistrate under the former determination; and
 - (ii) the amount that would have been payable to the Magistrate had this Determination been in operation during that period.

Dated

Otto Alder
Member of the Remuneration Tribunal

SCHEDULE

DETERMINATION NO. 2 OF 2007

This Determination sets out the entitlements of 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*;
- '**Minister**' means the Minister for Justice and Attorney-General; and
- '**new Magistrate**' means a Magistrate appointed after the date of the making of this Determination.

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	\$257,575
Deputy Chief Magistrate	\$238,754
Coroner	\$248,163
Stipendiary Magistrate	\$229,341

2.2 Allowance for additional duties:

2.2.1 President of Mental Health Review Tribunal: If a Magistrate is appointed to be the President of the Mental Health Review Tribunal:

- an allowance at the rate of \$9 413 per annum is payable; and
- if the appointment included the period 2 November 2006 to 30 November 2006 – an allowance equal to the amount that would have been payable for that period had an allowance at that rate applied from 2 November 2006.

2.2.2 Alice Springs – special administrative duties: If a Magistrate based at Alice Springs is performing special administrative duties under direction from the Chief Magistrate, an allowance at the rate of \$6 713 per annum is payable.

2.2.3 Other 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: Each financial year, a Magistrate is entitled to attend:

- one relevant interstate conference, subject to the approval of:
 - for the Chief Magistrate – the Chief Executive Officer; or
 - for any other Magistrate – the Chief Magistrate; or
- one relevant overseas conference, subject to the endorsement of the Chief Magistrate and the approval of the Minister.

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:

- for a Magistrate appointed after 21 March 2006 – are set out in Tables 2 and 3; and
- for any other Magistrate – are set out in Tables 2A and 3.

Table 2
Daily Rates
(Magistrates appointed
after 21 March 2006)

column 1 location	column 2 rate
Sydney, Melbourne	\$402
Brisbane	\$353
other capital cities	\$332
other places	\$288

Table 2A
Daily Rates
(other Magistrates)

column 1 location	column 2 rate
Sydney, Melbourne	\$402
Brisbane, Perth	\$360
other capital cities	\$332
other places	\$288

Table 3
Rates for Meals
and Incidentals

column 1	column 2 rate
Breakfast	\$25
Lunch	\$36
Dinner	\$55
Incidentals	\$22
Total	\$138

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:

- a Magistrate appointed after 21 March 2006 – 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; or
- any other Magistrate – the amount of travelling allowance payable for each night spent at a location in column 1 of Table 2A 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 for each day is the total amount specified in column 2 of Table 3.

3.6.3 Accommodation provided to new Magistrate: If an entity provides accommodation to a new Magistrate, the amount of travelling allowance payable for each day is the total amount specified in column 2 of Table 3.

3.6.4 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.

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.

3.6.5 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 is one third of the rate that would otherwise be payable under clause 3.6.1, 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 a 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 clause 5.3, Part 2 of the *Public Sector Employment and Management By-laws*, as in force at 25 May 2005, (the "By-laws") applies 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 conditions:

- 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 – \$423;
 - Magistrate with resident family – \$584.
- 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.