



NORTHERN TERRITORY OF AUSTRALIA

REMUNERATION TRIBUNAL

REPORT ON THE SALARY, ALLOWANCES AND OTHER BENEFITS FOR
MAGISTRATES

AND

DETERMINATION No. 1 of 2006

INTRODUCTION

1. The Tribunal is established by section 6(1) of the *Remuneration Tribunal Act*.
2. The current determination of salary allowances and other benefits for Magistrates, the first by this Tribunal, became effective on 1 December 2004. That determination is the first one to have been made as a public document.
3. By virtue of the *Remuneration Tribunal Act* these entitlements must be reviewed by the Tribunal at least annually. New 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.
4. The Tribunal has completed the Inquiry and this report and the Determination attached to it completes the review.

CONDUCT OF THE REVIEW

5. The Magistrates and relevant departmental officers were made aware of the review by letter dated 1 December 2005. That letter flagged the following three significant carry-forward and topical issues:
 - (1) The possibility of a salary nexus with Judges;
 - (2) The possibility of a contribution for expanded private use of vehicles;
 - (3) The approach to setting travelling allowance rates after the 2005 disallowance of some rates by the Legislative Assembly..
6. An advertisement was placed in the major Northern Territory newspapers calling for submissions.
7. The Tribunal received and considered five submissions from interested Magistrates and a submission from a government agency. Each submission was circulated to interested parties.
8. The Tribunal was available in Darwin from 22 February to 24 February 2006 to receive the submissions, gather evidence, and receive information on local economic conditions.

9. 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.
10. All of this material was carefully considered in context with the records of, and conclusions drawn during, previous inquiries.

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 and changes to responsibilities within the Northern Territory Judiciary

12. The general approach of the Tribunal to recognition of responsibility and workload factors has been, and continues to be, that
 - significant increases in jurisdiction limits will be recognised as an when they occur, and
 - workload changes are a resource application rather than a remuneration issue.

13. The last general salary change involving recognition of jurisdiction enlargement occurred following significant legislative change in 1997. An allowance for those Magistrates given responsibility for each of the Mental Health Review Tribunal and the Work Health Court was granted in 2003.

14. The Tribunal recognises that there are features within the pattern of Magistrate duties that can be stressful and debilitating for some appointees. Territory Magistrates already get more recreation leave than counterparts elsewhere, but this entitlement does not automatically ameliorate adverse work health issues. For this reason the Tribunal last year extended the discretion to approve of time off and for special leave to the Chief Magistrate rather than (as it was) to the head of the associated Government Agency.

Legislation which will reduce after hours rostered work is progressively being made and implemented.

15. New legislation that continues to be added to the jurisdiction Magistrates may add to workload (as it is in the States) but there is no evidence that this has made any significant difference to the jurisdictional limit this year.

16. The salary of sitting Northern Territory Judges cannot be less than that of Federal Court Judges. The salaries of the Federal reference group are set having regard for responsibility, productivity and national economic indicators. Last year the Tribunal observed that the stability of jurisdiction makeup as between the Magistrates Court and the Supreme Court, together with the convergence of Territory economic indicators with the national ones, may produce an opportunity to create a salary nexus between Magistrates and Judges.

17. Although it is the expressed desire of the Tribunal that a nexus should be determined, there is doubt that this can or should be done without legislative amendment. Submissions from some Magistrates contain the same view.

18. The *Magistrates Act* contains a no detriment provision, as does the *Supreme Court Act*. Setting say a 75% relativity could not lead to a future detrimental change for Magistrates, except, crucially, in the case where new Judges were appointed on a lower salary than the current ones. This can happen because the Federal remuneration nexus for Territory Judges is set in individual determinations upon appointment, rather than by legislation or in a determination that covers all of them. If the Government chose to appoint future Judges on different salary arrangements, the Magistrate nexus could lead to automatic disallowance action and a freezing of Magistrate salary at the previous year's money value level.

Comparison with Magistrates elsewhere

19. There is no evidence of unexpected differential movements in Magistrates' salaries between the Territory, the States and the ACT over the review period.

20. Some Magistrates have noted an increased differential this year between their salary and that of a Federal Magistrate. They submit that parity is warranted, though acknowledging that the reasons for the Federal increase are obscure. The Federal Magistracy is a relatively new and rapidly evolving jurisdiction. It has its own attraction and retention characteristics. The Tribunal has been unable to obtain the considerations used by the Commonwealth Remuneration Tribunal to see if they give any guidance for future movements in State and Territory Magistrate remuneration.

Salary determination

21. The salary increase this year for Territory Judges was 4.1%, from 1 July 2005.

22. At this point of relative stability (as noted) the Tribunal has decided to pass on the same increase to Magistrates. This takes the base salary of a Magistrate to \$216,323 (\$219,823 with the fixed airfare component). It produces a relativity factor with Judges of 74.75% on 1 December 2005.

23. 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 | 1-10-05 | 4.1% | 211,720 | 72.0% |
| Victoria | 1-7-05 | 11.0% ¹ | 185,385* | 69.3% |
| Queensland | 1-7-05 | N/A% | 203,925* | 70.4% |
| South Australia | 1-11-05 | 4.1% | 205,270 | 70.0% |
| Western Australia | 1-1-06 | 4.1% | 216,583 | 72.0% |
| Tasmania | 1-7-05 | 7.8% ¹ | 192,446* | 67.5% |
| ACT | 1-11-05 | 4.1% | 209,067 | 71.1% |
| NT | 1-12-05 | 4.1% | 219,823 | 74.8% |

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.

REVIEW - ALLOWANCES

Travelling Allowance.

24. In the absence of a capacity to comprehensively review travel costs in the many localities that may be visited by a Magistrate, the Tribunal relies on rates set by the Commonwealth Remuneration Tribunal (CRT), according to its own annual surveys, for office holders of the same status as Magistrates.

25. The guiding principle used by the CRT in assessing travelling allowance rates for all Commonwealth office-holders is:

"Office holders are not expected to gain or lose financially as a result of travelling

¹ Federal increase flowons still occurring

on official business."²

This principle is adopted by the other State Remuneration Tribunals that set travelling allowance rates for the judiciary. For example, in NSW the Statutory and Other Offices Remuneration Tribunal expresses its principles as follows:

"In making its determinations on travel allowance rates the Tribunal has adopted a number of guiding principles as set out hereunder.

- Travelling allowances are intended to meet the costs necessarily incurred by Magistrates who are required to travel away from home/place of work on official business. Such costs cover accommodation, meals and incidental expenses.
- Allowances are provided to ensure that an officer is not financially disadvantaged as a result of having to travel on official business.
- Office holders are not expected to gain or lose financially as a result of travelling on official business."³

26. Several of the rates that were made in the settled Determination by this Tribunal on that basis last year were disallowed by the Legislative Assembly because they offended the no detriment provision in the *Magistrates Act*. The Minister relied on advice from the Northern Territory Solicitor-General.

27. The Solicitor-General questioned the source of the Tribunal's statement in its report that "Travelling Allowance is an entitlement granted to ensure that a Magistrate will not gain or lose financially" when travelling, and referred to the Tribunal's expressed view (that a reduction based on fresh price reviews that establish lower costs of travel to a destination is not detrimental to the recipient) as a "bland statement". His advice concluded that any reduction in an allowance payable to a Magistrate is to the Magistrate's detriment and offends Section 6(2) of the *Magistrates Act*.

28. The effect of the disallowance was to revive the previously determined rates. An effect of this is that a Territory Magistrate visiting either Brisbane or Perth is now entitled to travelling allowance that is \$28 per day more than that payable to a Judge of the High Court of Australia.

29. If travelling allowance rates are not to be set according to cost surveys based on the status of the recipient, the question is: on what basis are they to be set? The Department of Justice view (as expressed verbally to the Tribunal) is that those rates that

² CRT Determination 2004/3

³ 2003 Report and Determination - Travel Allowances for NSW Magistrates REPORT para. 25

have now become unjustified in comparative terms should remain the same in dollars until reference rates derived from the Commonwealth Remuneration Tribunal catch up and pass them. This view is shared by one of the Magistrates.

30. A couple of rates stranded in this way is of no great importance at this stage, but given that legislation provides that any travelling allowance reduction is not possible without detriment, that part of the annual determination may end up without explainable foundation. This has already happened with the determination of travelling allowance for Territory Judges by the Government. Several of their daily allowance rates are stranded at an even higher differential than that mentioned above for Magistrates. They are entitled to travelling allowance even where some other entity pays for all of their travelling expenses. Their daily rate is not reduced when they stay in other than commercial accommodation while travelling. There even seems to have been some drafting errors in the Judges' favour in meal allowance determinations that cannot be rectified without offending the detriment provision. The Judges situation is well beyond any possibility of being able to be brought back to Australian standards via the passage of time.

31. In addition to the non-detriment provision in the *Judges Act*, personal determinations of salary, allowances and benefits to Territory Judges each contain the protection that travelling allowance will be paid at a rate that is not less than that paid to a counterpart Judge of the Federal Court of Australia, as determined by the Administrator. In each case subsequent travelling allowance determinations have been uniform for all Judges. Thus even though more recently appointed Judges have been appointed when lower travelling allowance was payable to their Federal counterparts they have the benefit of rates stranded because of the no-detriment provision over many earlier years.

32. The Tribunal will do everything it can to prevent a repetition of such an apparently out of control situation developing for Magistrates. If there is to be no change to the legislation (so that only annual allowances are protected by the no-detriment provision, as is the case with the Commonwealth) then the Tribunal will apply lower travelling allowance rates or conditions to subsequently appointed Magistrates each time a no-reduction distortion occurs. It has done so on this occasion.

33. The Solicitor-General's advice confirms that where the rates of travelling allowance paid to Magistrates exceed the respective reasonable amounts determined for the time being by the Commissioner for Taxation⁴ (as they are in the cases noted), then they are to be shown as assessable income in the hands of the recipient. As for the lack of specification of a need to spend the travelling allowance on travel expenses by Judges, it is quite clear that all travelling allowances paid to Territory Judges are assessable income⁵.

⁴ Taxation Determination TD 2005/32 covering the 2005/2006 financial year.

⁵ As stated in this Tribunal's Report and Recommendation 1 of 2005, based on the Commissioner's current

REVIEW - OTHER ENTITLEMENTS

Superannuation

34. Unless in continuing government employment, Magistrates appointed after the closure of the contributory 'NTGPASS' lump sum superannuation scheme in 1999 receive a government superannuation contribution of 9% of salary into their choice of private fund (CoF).
35. It has been claimed that the growing number of Magistrates with the CoF entitlement are vastly disadvantaged relative to the others. The Tribunal has previously agreed that there seems to have been a progressive decline in the superannuation element of a Magistrate's total remuneration, disturbing the relativity with Judges.
36. The Tribunal has taken advice from the Northern Territory Commissioner for Superannuation on this issue. The Commissioner has disclosed that modelling done in respect of average members of NTPASS and CoF shows that the level of government contribution for both schemes is roughly equivalent. The reason for this outcome is, for the CoF people, the effect of compounding interest on the 9% (less 15% contributions tax) that is put in as salary is earned, and, for NTGPASS people, the fact that the government contribution is not put in until the end of their service as a top-up to the compound interest affected sum put in by the contributor, and that the 15% contributions tax applies to the whole defined benefit at that time.
37. The Commissioner also points out that Magistrates under either scheme are far better off than Executive Contract Officers (ECOs) on a similar salary package. This is because an ECO is required to fund their employer superannuation support from their salary package whereas Magistrates have their employer superannuation provided in addition to their salary package. For an ECO who is a member of NTGPASS, this generally means a deduction of 17.4% of their superannuation salary (65% of salary package). Additionally, the final employer benefit payable to an ECO who is a member of NTGPASS is calculated on their 'superannuation salary' rather than their total salary package.
38. The significant decline in package relativity as between the Judges and Magistrates really occurred at the time of the closure of the Commonwealth Superannuation Scheme (CSS) and the move to the first of the defined benefits schemes. As all CSS members have now left the ranks of the Magistrates the

degree of variance in conditions on account of superannuation for those now serving does not appear to be inequitable.

Motor Vehicles

39. Most submissions received this time made representations about the extent of private use of the vehicle supplied to Magistrates.
40. This issue has received considerable attention in the course of recent inquiries, and it has been comprehensively reported upon. ECOs, with whom links to equivalent conditions were previously in place, have a right to "reasonable personal use" of the car supplied to them, and that car is required by the contract to be "part of an Agency's Pool and be available for pool use during working hours".
41. For some years the car entitlement simply said that there could be "reasonable private use" and home garaging. The Department of Justice asked that this be clarified so that it did not have to exercise discretion over Magistrates' vehicle use, and it did this in its recommendation 1 of 2002. Briefly, it recommended that priority of use was for official purposes, and that reasonable private residual could be made of the car by a Magistrate, including his or her right to specifically nominate others to use it. The recommended words became part of the then Administrator's determination and carried through into last year's first determination by the Tribunal. The wording reflects the genesis of the entitlement in the context of a package of remuneration changes when Magistrates became entitled to be provided with a government owned and serviced car. There is a fuller explanation in last year's report. Suffice to say that the change was a considered and legally determined one, not as some Magistrates have put to the Tribunal "a recent invention".
42. In last year's report the Tribunal asked for information on the extent of any difference in the personal use rights as between ECOs and Magistrates, in order to quantify the extent of any contribution Magistrates might be able to make to achieve a parallel entitlement.
43. No information has been provided so no further attention has been paid to the possibility of a contribution, nor on extended usage rights extending from that, on this occasion.
44. For consistency the Tribunal has always regarded the private use of vehicle component of remuneration as an entitlement for the Magistrate's own purposes. This may include use of the car and its government fuel by nominated people. The Magistrate's own purpose may include normal activities on behalf of the family. It is not the intention of the Tribunal (in specifying the entitlement in

the way that it has) that the entitlement should extend to anyone else for their separate private purposes, be they family members or otherwise, e.g. for a son to attend a late night disco up or down the track, or for a brother to tour Kakadu. Some Magistrates have submitted that the current wording of the entitlement, insofar as it affects the ordinary boundaries of "reasonable private use", encourages "contrived justifications of private usage". The Tribunal is not persuaded that any change to the entitlement should occur, leaving any serious question of reasonableness and authority that arise to be argued in the appropriate forum.

Relocation Expenses

45. The money amounts of fortnightly entitlements to relocation allowance have been reviewed and increased to those applying generally in the public sector.

REVIEW - CONCLUSION

46. The savings provision of the previous determination (Part 8) was included as protection for Magistrates who would have no other option than to seek disallowance action if there were any unintentional detrimental changes to entitlements across the threshold to the major consolidation of benefits in that instrument. As that threshold has passed that provision has now been removed.
47. This concludes the Report.

O. Alder
Tribunal Member
21 March 2006

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 25 May 2005; and
- (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 2005.

Dated

2006.

Otto Alder
Member of the Remuneration Tribunal

SCHEDULE

DETERMINATION NO. 1 OF 2006

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*;
- '**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 | \$246,867 |
| Deputy Chief Magistrate | \$228,839 |
| Coroner | \$237,852 |
| Stipendiary Magistrate | \$219,823 |

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 –

- for a new Magistrate – 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
(new Magistrates)

| column 1 location | column 2 rate |
|----------------------|------------------|
| Sydney, Melbourne | \$402 |
| other capital cities | \$332 |
| other places | \$283 |

Table 2A
Daily Rates
(other Magistrates)

| column 1 location | column 2 rate |
|----------------------|------------------|
| Sydney, Melbourne | \$402 |
| Brisbane, Perth | \$360 |
| other capital cities | \$332 |
| other places | \$283 |

**Table 3
Rates for Meals
and Incidentals**

| column 1 | column 2 rate |
|-------------|------------------|
| Breakfast | \$25 |
| Lunch | \$36 |
| Dinner | \$53 |
| Incidentals | \$21 |
| Total | \$137 |

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 new 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; 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 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.

3.6.4 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 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 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 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 – \$403;
- Magistrate with resident family – \$557.

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.
