



Australian Capital Territory Remuneration Tribunal

ACT Magistrates Court Judicial Positions

Determination 7 of 2021

made under the

Remuneration Tribunal Act 1995, section 10 (Inquiries about holders of certain positions)

ACCOMPANYING STATEMENT

Background

Under section 10 of the *Remuneration Tribunal Act 1995* (the Act), the Remuneration Tribunal (the Tribunal) must inquire into and determine the remuneration, allowances and other entitlements to be paid to the holders of judicial positions mentioned in Schedule 1 to the Act, including the Chief Magistrate, Magistrates and Special Magistrates.

Considerations

In September 2020, the Tribunal decided to determine no adjustment to remuneration, allowances or entitlements for the position holders within its jurisdiction.

At its 2021 Autumn Sitting, the Tribunal determined a 1.8% increase to the remuneration of certain position holders within its jurisdiction, including Members of the Legislative Assembly, ACT Public Service Executives and other full-time statutory officer holders.

At the time, the Tribunal gave considerable weight to community standards and expectations, in particular in terms of the continuing uncertainty of circumstances faced in the Territory by the outbreak of the COVID-19 Delta variant across the country.

As part of the 2021 Autumn Sitting deliberations, the Tribunal acknowledged the Wage Price Index (WPI) and Consumer Price Index (CPI) in the 2020-21 ACT Budget released in February 2021 and subsequent data released by the Australian Bureau of Statistics. In addition, the Tribunal considered the statements from the Governor of the Reserve Bank of Australia concerning the importance of increasing wages to stimulate consumption and the outcome of the Annual Wage Review of the Fair Work Commission released in June 2021. The Tribunal was also aware that no adjustments in remuneration may create a lag, impact on maintaining existing relativities with other office holders and should be avoided wherever possible.

In September 2021, the Tribunal commenced its Spring Sitting. The Tribunal advertised its Spring Sitting on its website and in *The Canberra Times* on Saturday, 4 September 2021. The Tribunal also wrote to the relevant office holders requesting submissions.

At its meetings on 11 and 12 November 2021, the Tribunal met with the Chief Minister, ACT Treasury officials, and officials responsible for the Enterprise Agreement bargaining for ACT Public Sector non-executive employees.

In its deliberations, the Tribunal continued to give consideration to community standards and expectations. In particular, the Tribunal noted the economic uncertainty in the Territory, and the nation, caused by the spread of the COVID-19 Delta variant a few months ago.

The Tribunal noted the wage policies and recent remuneration determinations by its Commonwealth and State/Territory counterparts for comparable office holders being considered as part of the Spring Sitting.

The Tribunal noted the pay increases that applied to the ACT Public Sector non-executive workforce during 2020 and 2021 under Enterprise Agreements. The submission received from the Chief Minister advised that the majority of those Enterprise Agreements expired on 31 October 2021 and that, while negotiations had commenced early in 2021, these negotiations had been severely impacted by the second COVID-19 outbreak which placed increased demand on both unions and the public service. The Tribunal noted the Government's intention to finalise and ballot new Enterprise Agreements with no substantial changes with an expiry date of 31 October 2022. These 12-month Enterprise Agreements would provide two pay rises of 1.35 per cent from December 2021 and June 2022, providing a cumulative pay rise of 2.7 per cent.

In addition, the Tribunal considered the pay increases for the ACT Magistrate Court in the context of the pay increases that were provided to executives in the ACT Public Service and other statutory office holders from the 2021 Autumn Sitting.

The Tribunal had regard to the 2021–22 ACT Budget, released in August 2021, which forecasted a WPI of 1.75 per cent and CPI of 1.75 per cent.¹

The Australian Bureau of Statistics released the CPI for the 2021 September quarter on 27 October 2021, which included an increase of 0.8 per cent for the ACT during that quarter, with a 3.7 per cent increase over the year (June quarter 2020 to June quarter 2021).² The Tribunal noted that since making its decision as part of the 2021 Autumn Sitting, the national trimmed mean inflation rate increased to 2.1 per cent, from 1.6 per cent in the June 2021 quarter.³

The Australian Bureau of Statistics released the WPI for the 2021 September quarter on 17 November 2021, which included an increase of 1.0 per cent for the ACT during that quarter — the equal highest quarterly growth rate of all jurisdictions. Over the year, to the September 2021 Quarter, the WPI in the ACT increased by 2.1 per cent, which was marginally lower than the national average. There was a 2.0 per cent growth in the ACT public sector WPI over the year which was higher than the national average of 1.7 per cent,

¹ ACT Budget 2021-22, Chapter 1, Overview, Table 1.1.1 Economic Parameters, 2021-22 Budget, baseline forecasts, percentage change, p.12

² Australian Bureau of Statistics, Consumer Price Index (October 2021), <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>

³ The trimmed mean is designed to remove large, one-off price impacts. Australian Bureau of Statistics Media Release: CPI rose 0.8% in the September 2021 quarter (27 October 2021), <https://www.abs.gov.au/media-centre/media-releases/cpi-rose-08-september-2021-quarter>

for the first time since the September 2013 quarter. The ACT private sector WPI had a growth of 2.4 per cent, equal with the national average.⁴

In considering remuneration, allowances and entitlements for the ACT Magistrates Court, the Tribunal had discussions with the Chief Magistrate, the Chief Minister, and officials from the Justice and Community Safety Directorate.

The Tribunal noted the Commonwealth Remuneration Tribunal issued the *Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2021*, which made no adjustment to the remuneration, allowances or entitlements to a range of judicial and related offices.

Further examination of the remuneration, allowances and other entitlements for judicial and related offices

At the 2019 Spring Sitting, the Tribunal determined that it would undertake a further examination of the remuneration, allowances and other entitlements for judicial and related offices. This examination would include consideration of the allowance payable to the Chief Justice and the remuneration payable to the Associate Judge, Magistrates (including the Chief Magistrate), and to various related offices (the ACT Civil and Administrative Tribunal, the Sentence Administration Board, and the Director of Public Prosecutions).

As a result of a reallocation of government resources and changed priorities, in response to the COVID-19 pandemic, the further examination was placed in abeyance in 2020. At its 2021 Autumn Sitting, the Tribunal decided to proceed with the further examination.

The Tribunal invited the judicial and related officers to provide any new or additional information to support the further examination, and considered the information provided. The Tribunal also considered the remuneration of judicial and related positions, in other Australian jurisdictions, comparable to positions within the ACT.

As part of the further examination, the Tribunal was provided with a comprehensive briefing on the history of the ACT Courts, judicial positions under its jurisdiction, and the decisions of previous Tribunals.

The Magistrates Court plays an essential and significant role within the ACT Community and as part of the overall justice system.

The Tribunal considered a detailed analysis of the listing arrangements in the ACT Magistrates Court, to assist the Tribunal to understand the broader operating context and any recent changes to the work value of ACT Magistrates.

The Tribunal noted that ACT Magistrates continue to be the highest paid magistrates in the country. The Tribunal considered the fact that there is no intermediate court in the ACT between the Magistrates Court and the Supreme Court, as there is in some Australian jurisdictions. Some matters that would come within the jurisdiction of an intermediate court are dealt with by the ACT Magistrates Court; other matters are dealt with by the ACT Supreme Court. In addition, some matters that previously fell within the jurisdiction of the ACT Magistrates Court are now matters for the ACT Civil and Administrative Tribunal. And

⁴ Australian Bureau of Statistics, Wage Price Index (November 2021), <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/wage-price-index-australia/latest-release>; <https://www.abs.gov.au/media-centre/media-releases/wage-price-index-reverts-pre-pandemic-pattern> and https://www.treasury.act.gov.au/data/assets/pdf_file/0006/399993/WPI.pdf/ recache

ACT Magistrates do not undertake jury trials as do intermediate courts in other jurisdictions. Accordingly, the absence of an intermediate court within the ACT does not, of itself, indicate that the work value of ACT Magistrates is greater than that of their counterparts in other Australian jurisdictions that have an intermediate court.

The Tribunal also considered the Magistrates' role as coroners. The Tribunal noted that, in 2003, Magistrates were provided an allowance for performing coronial duties, but that this allowance was rolled into salary in 2007. The coronial work consists of a 24 hour on-call duty roster – this is shared across all Magistrates so that each Magistrate participate in the roster 5–6 times a year. The Tribunal noted the Government's recent announcement that it will establish and fund a dedicated ACT Coroner. Even though there will be a continuing requirement for Magistrates to undertake coronial duties, the establishment of a dedicated coroner should reduce the coronial workload for other Magistrates.

The Chief Magistrate advised the Tribunal that a single day in lieu is made available where a Magistrate works for a week of 24-hour on-call duty, including a weekend sitting. The Tribunal understands that this arrangement was approved by a former Attorney-General. As leave entitlements are outlined in the Magistrates Conditions of Appointment instrument, this is not a matter for the Tribunal.

As ACT Magistrates must determine both matters of fact and law, they are expected to give detailed reasons for findings of fact. The Tribunal understands that ACT Magistrates exercise a discretion whether to provide detailed reasons for a judgement either ex-tempore or in writing. It appears that written judgements are published only in significant cases.⁵

The Tribunal notes that there have been changes to the volume of work in the ACT Magistrates Court. However, the Tribunal is of the view that there has been no net change in work value.

Having regard to all of the above factors, and having given close consideration to all the material put to it, the Tribunal is not convinced that there is a greater work value sufficient to justify increasing the remuneration for Magistrates to the extent that has been requested in the material submitted to the Tribunal over recent years. The Tribunal is also not persuaded that there is a case for a fixed nexus between the remuneration of Magistrates and that of a Judge of the Supreme Court.

Additionally the Tribunal's legislative obligation is to review the remuneration, allowances and other entitlements for magistrates (and other office holders) on an annual basis. If the Tribunal were to establish a fixed nexus it would still be required to consider the appropriateness of that nexus, annually. In the Tribunal's view, a fixed nexus could only be implemented legislatively. For example, the remuneration, allowances and entitlements of resident judges of the ACT Supreme Court are linked, by section 37U(2) of the *Supreme Court Act 1933*, to those of a Federal Court judge, from time to time.

Decision

While the Tribunal determined a different percentage increase for certain position holders in its jurisdiction as part of the 2021 Autumn Sitting, given the reasons outlined above, on

⁵ In 2019–20 the ACT Magistrates Court recorded 7,545 lodgements of criminal matters with 6,680 finalised (see ACT Courts Annual Review 2019–20), and 1,571 civil matters were brought before the Court (including lodgements and enforcement of ACAT Orders and registration of interstate judgments). In 2019, 46 decisions were published on the Court's website; 39 decisions were published in 2020.

balance, the Tribunal has decided that it is appropriate to increase the remuneration of ACT Magistrates Court judicial positions by 2%, with effect from 1 November 2021.

The retrospective application of this Determination does not affect the rights of a person (other than the ACT Government) in a manner prejudicial to that person, nor does it impose any liability on such person.

December 2021



Australian Capital Territory Remuneration Tribunal

ACT Magistrates Court Judicial Positions

Determination 7 of 2021

made under the

Remuneration Tribunal Act 1995, section 10 (Inquiries about holders of certain positions)

1. Commencement

This instrument is taken to have commenced on 1 November 2021.

2. Remuneration

Chief Magistrate

2.1 The Chief Magistrate is entitled to remuneration of \$431,655 per annum.

Magistrates

2.2 A Magistrate is entitled to remuneration of \$378,977 per annum.

Special Magistrates

2.3 If a Special Magistrate undertakes judicial duties for 3 hours or more on any given day, they are entitled to the daily remuneration calculated at the rate of 1/230 of the annual remuneration paid to a Magistrate. When determining whether the Special Magistrate has been engaged for 3 hours or more the Chief Magistrate may include reasonable travelling time.

2.4 If a Special Magistrate undertakes judicial duties for less than 3 hours, they are entitled to three fifths of the daily remuneration rate.

2.5 **Judicial duties** includes the following:

- court sitting time, as listed by the Chief Magistrate;
- preparation, decision writing and judicial education approved by the Chief Magistrate;
- reasonable travelling time other than for travel between the person's home and principal place of work.

Special Magistrate - Northern Territory

- 2.6 No remuneration is payable to a Special Magistrate if they are a Magistrate under the Magistrates Act (NT) and they are already entitled to remuneration determined under the laws of the Northern Territory.

Part-time work

- 2.7 For a magistrate working on a part-time basis in accordance with section 7C of the *Magistrates Act 1930*, the remuneration, allowances and entitlements for the Magistrate is to be paid on a pro rata basis in accordance with the proportion of full-time hours worked.
- 2.8 For the purposes of this clause 2.7, 'remuneration, allowances and entitlements' does not include any pro-rata business support entitlements, official travel entitlements, training and development entitlements and relocation and security assistance entitlements prescribed under the *Magistrates Court (Conditions of Appointment) Decision 2019*, NI2019-262, or its replacement, made under section 7C of the Magistrates Court Act, or travel allowance under this Determination. The full-time rate of these entitlements are provided to part-time Magistrates.

3. Travel Allowance

- 3.1 For travel on official business the Chief Magistrate or a Magistrate is entitled to the reasonable amounts for daily travel allowance expenses according to salary levels and destinations specified in Australian Taxation Office – *Taxation Determination 2021/6 Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2021-22 income year?* or its replacement.
- 3.2 Where the cost of accommodation is met by the employer or another organisation, the rate for accommodation in the Australian Taxation Office Determination is not payable. Where the cost of accommodation and any meal is met by the employer or another organisation, the rates for accommodation and that meal in the Australian Taxation Office Determination are not payable.
- 3.3 Where the cost of accommodation and all meals are met by the employer or another organisation, only the rate for incidentals in the Australian Taxation Determination is payable.

4. Salary Packaging

- 4.1 A person appointed to an office listed in clause 2 of this Determination may elect to take their remuneration mentioned as:
- a) salary; or
 - b) a combination of salary and other benefits (a ***salary package***).
- 4.2 Salary packaging must be consistent with:
- c) taxation laws and guidelines issued by the Australian Taxation Office; and
 - d) any salary packaging policy and/or procedures issued for the ACT Public Service, with up to 100% of the remuneration able to be taken as benefits and related costs such as fringe benefits tax.

4.3 Salary packaging must be administered without additional cost to the employer and any fringe benefits tax associated with the provision of a benefit must be included in the salary package.

4.4 Salary for superannuation purposes is not affected by salary packaging.

5. Other entitlements

5.1 Other entitlements such as vehicle, parking, official travel and leave arrangements are outlined in the *Magistrates Court (Conditions of Appointment) Decision 2019*, NI2019-262, or its replacement.

6. Employer's superannuation contribution

6.1 A person, appointed to an office mentioned in clause 2 of this Determination, is only eligible for the employer's superannuation contribution in this determination if their superannuation entitlements are not provided for elsewhere.

6.2 For a person, appointed to an office mentioned in clause 2 of this Determination, who is a member of the Commonwealth Superannuation Scheme (CSS) or Public Sector Superannuation (PSS) Scheme:

- (a) the person's annual rate of remuneration for the purposes of the scheme is the base remuneration as provided in clause 2 of this Determination;
- (b) the value attributed to the employer's superannuation contribution is taken to be a notional 16% of the person's base remuneration.

6.3 For a person, appointed to an office mentioned in clause 2 of this Determination, who is not currently a member of the CSS or PSS but was a member of the PSS Accumulation Plan (PSSap) until it closed to the Territory on 30 June 2006, and has maintained continuous employment with the Territory:

- (a) the value of the employer's superannuation contribution is a notional 16% of the base remuneration as provided in clause 2 of this Determination; and
- (b) the employer will contribute that amount to an agreed superannuation fund nominated by the person appointed to an office in clause 2 of this Determination.

6.4 For a person, appointed to an office mentioned in clause 2 of this Determination, who is a member of any other superannuation fund, the employer's superannuation contribution is to be made at a rate equivalent to the Employer Superannuation Guarantee Charge Percentage as provided by the *Superannuation Guarantee (Administration) Act 1992*.

Note: at the commencement of this Determination, the Employer Superannuation Guarantee Charge Percentage is 10% and increases to 10.5% on 1 July 2022.

6.5 The employer provides an additional employer superannuation contribution. The additional employer superannuation contribution is the same rate provided under clause D7 in one of the following:

- (a) the *ACT Public Sector Administrative and Related Classifications Enterprise Agreement 2018-2021* while it is in force; or
- (b) the *ACT Public Sector Administrative and Related Classifications Enterprise Agreement 2021-2022* on its commencement.

6.6 In respect of a person appointed to an office mentioned in clause 2 of this Determination, who is not a CSS or PSS member or appointed to or engaged by the Territory before 30 June 2006 and has maintained continuous employment with the Territory:

- for each pay period the person contributes 3% or more of their base remuneration to their nominated superannuation fund in the form of employee contributions (either in pre or post tax dollars), the Territory will contribute an additional 1% employer superannuation contribution pro-rata per pay above the entitlement in clause 6.5, based on the person's gross fortnightly OTE (or other methods where prescribed by the nominated superannuation fund rules).

6.7 If the legislated minimum Superannuation Guarantee rate mentioned in clause 6.4 of this Determination is increased, it will be absorbed by the additional employer contribution provided in clause 6.5, but will not affect the entitlement in clause 6.6.

6.8 The value of the employer's superannuation contribution must not be paid in cash to the person appointed to an office mentioned in clause 2 of this Determination.

7. Definitions

7.1 In this Determination:

agreed superannuation fund means a fund complying with the requirements of:

- the *Income Tax Assessment Act 1936* (Cth); and
- the *Superannuation Industry (Supervision) Act 1993* (Cth).

CSS means the Commonwealth Superannuation Scheme.

employer means the Australian Capital Territory and includes any person authorised to act on behalf of the Australian Capital Territory.

fringe benefits tax means the tax assessed under the *Fringe Benefits Tax Assessment Act 1986*.

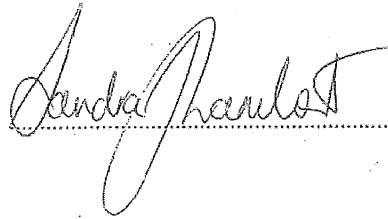
PSS means the Public Sector Superannuation Scheme.

PSSap means the PSS Accumulation Plan.

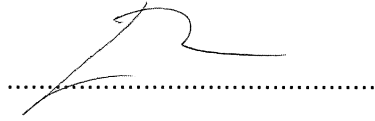
8. Revocation of previous determination

Determination 8 of 2020 is revoked.

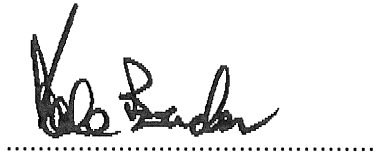
Ms Sandra Lambert AM
Chair

A handwritten signature in cursive script, reading "Sandra Lambert", positioned above a horizontal dotted line.

Dr James Popple
Member

A handwritten signature in cursive script, appearing to read "James Popple", positioned above a horizontal dotted line.

Mr Dale Boucher PSM
Member

A handwritten signature in cursive script, appearing to read "Dale Boucher", positioned above a horizontal dotted line.

December 2021