



Australian Capital Territory Remuneration Tribunal

## ACT Magistrates Court Judicial Positions

### Determination 8 of 2020

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

## ACCOMPANYING STATEMENT

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### 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 of the Act, including the Chief Magistrate, Magistrates and Special Magistrates.

### Considerations

At its meeting on 18 and 19 March 2020, the Tribunal noted the exceptional and unprecedented circumstances being faced by Australia as a result of the COVID-19 pandemic and decided not to make any adjustments to remuneration, allowances or other entitlements for office holder considered at the 2020 Autumn Sitting until there was more clarity about the ACT Budget position and the wider economic context.

Matters considered by the Tribunal since this time, include the receipt by the Tribunal of a letter from the Chief Minister strongly requesting the Tribunal to determine a pause to any proposed pay rises during the COVID-19 pandemic and the period of immediate economic and community recovery following. The Chief Minister recommended that the Tribunal reconsider its Autumn determinations to reflect the government's commitment to support the ACT community during the current health emergency. The Tribunal noted that this corresponded with its earlier decision.

The Tribunal met again on 17 August 2020 and 2 September 2020 and received a further comprehensive briefing from the Chief Minister and ACT Government Treasury officials. The Tribunal considered the Chief Minister's 'Ministerial Statement August 2020 Economic and Fiscal Update' presented to the Legislative Assembly on 27 August 2020, which reinforced the significant downturn of the Territory's economic circumstances.

While the Tribunal had regard to the determinations by its Commonwealth and State/Territory counterparts, its decision was particularly taken in the context of the ACT's economic circumstances.

Given the current COVID-19 pandemic, the impact on the economic conditions and community expectations, the Tribunal has determined that no adjustments should be made

to the remuneration, allowances and other entitlements of holders of judicial positions in its jurisdiction at this time.

The Tribunal will continue to monitor conditions in the ACT closely and will make appropriate decisions when the Territory's economic and fiscal circumstances are known next year.

**Decision**

The Tribunal has decided to determine no adjustment to remuneration, allowances or entitlements for the holders of Judicial positions covered by this Determination for 2020.

September 2020



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#### 1. Commencement

This instrument commences on 1 November 2020.

#### 2. Remuneration

##### *Chief Magistrate*

2.1 The Chief Magistrate is entitled to remuneration of \$423,191 per annum.

##### *Magistrates*

2.2 A Magistrate is entitled to remuneration of \$371,546 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 2020/5 Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2020-21 income year?* or its replacement. (Current taxation determinations can be viewed under the Law, rulings and policy directory at <http://ato.gov.au>)
- 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* (which at the commencement of this Determination is 9.5%).

6.5 The employer provides an additional employer superannuation contribution. The additional employer superannuation contribution is the same rate provided under clause D7 of the ACT Public Sector Administrative and Related Classifications Enterprise Agreement 2018-2021, as follows:

(a) From 1 July 2019: 1.50%.

(b) From 1 July 2020: 2%.

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:

- if the person contributes 3% or more of their base remuneration component to an agreed superannuation fund in the form of employee contributions, the Territory will contribute an additional 1% employer superannuation contribution above the amount indicated in clause 6.5.

6.7 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.

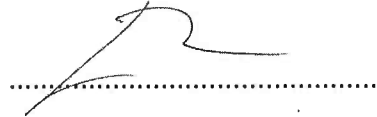
**8. Revocation of previous determination**

Determination 8 of 2019 is revoked.

Ms Sandra Lambert AM  
Chair

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Dr James Popple  
Member

Handwritten signature of Dr James Popple in cursive script, positioned above a horizontal dotted line.

Mr Dale Boucher PSM  
Member

Handwritten signature of Mr Dale Boucher PSM in cursive script, positioned above a horizontal dotted line.

September 2020