



Australian Capital Territory Remuneration Tribunal

ACT Magistrates Court Judicial Positions

Determination 11 of 2018

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

Considerations

The Tribunal's 2018 review of remuneration, allowances and other entitlements for the ACT Magistrates Court was advertised in August 2018. The Tribunal received submissions from the Chief Magistrate and the Director-General, Justice and Community Safety Directorate. The Chief Minister also provided a Government Submission.

The Tribunal met on 16-18 October 2018 and this determination sets out the Tribunal's decision following the review.

The Tribunal considered the current remuneration, allowances and entitlements for the Chief Magistrate, Magistrates and Special Magistrates and looked at the remuneration and benefits paid to magistrates in other States and Territories. The Chief Magistrate and Magistrate Glenn Theakston appeared before the Tribunal.

Treasury officials provided a comprehensive briefing to the Tribunal on the prevailing economic circumstances for 2018 and forecasts for the coming years. In making its decision, the Tribunal also considered the Government Submission and discussions with the Chief Minister and the Justice and Community Safety Directorate. The Attorney-General also wrote to the Tribunal about issues relating to Special Magistrates and the *Courts and Other Justice Legislation Amendment Act (No 2) 2018* which allows for Magistrates to work on a part-time basis.

These submissions sought clarification of the official duties of Special Magistrates within the determination. The submissions advised that the Tribunal's current Determination does not indicate whether out of court work could be claimed and remunerated. The Tribunal discussed the issue with the Chief Magistrate and Justice and Community Safety Directorate.

The Tribunal also noted the recent amendments to the *Magistrates Courts Act 1930* by the *Courts and Other Justice Legislation Amendment Act (No 2) 2018* that allows for a Magistrate to enter into an agreement with the Chief Magistrate (subject to approval with the Attorney-General) to work on a part-time basis.

Decision

The Tribunal decided that a remuneration increase of approximately 2% will be granted to ACT Magistrates Court judicial positions. The Tribunal has also decided to maintain the same relativity between the Magistrates, Special Magistrates and the Chief Magistrate.

The Tribunal decided to amend the section relating to the duties of Special Magistrates to ensure that it properly recognises and includes work undertaken by Magistrates in connection with their official judicial duties, as approved by the Chief Magistrate.

The Tribunal decided that a Magistrate who has been approved to work on a part-time basis will be entitled to a pro rata amount of their annual remuneration, allowances and other entitlements based on the proportion of hours worked in comparison to full-time hours.

November 2018



Australian Capital Territory Remuneration Tribunal

ACT Magistrates Court Judicial Positions

Determination 11 of 2018

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

1. Commencement

This instrument is effective from 1 November 2018.

2. Remuneration

2.1 Chief Magistrate

The Chief Magistrate is entitled to remuneration of \$412,869 per annum.

2.2 Magistrates

A Magistrate is entitled to remuneration of \$362,484 per annum.

2.3 Special Magistrates

- a) 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.
- b) Where a Special Magistrate undertakes judicial duties for less than 3 hours, they are entitled to three fifths of the daily remuneration rate.
- c) **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.

2.4 Special Magistrate - Northern Territory

- a) 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.

2.5 Part-time work

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.

For the purposes of this clause, '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 2009, 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 2018/11, Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2018–19 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 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 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 2009*, NI2009-644, or its replacement.

6. Employer's superannuation contribution

6.1 A person, appointed to an office 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 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 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 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 no less than the Employer Superannuation Guarantee Charge Percentage as provided by the *Superannuation Guarantee (Administration) Act 1992*.

6.5 For 2016-17 onwards, the Territory's enhanced minimum employer superannuation contribution is 10.5%, until the ACT Public Sector Administrative and Related Classifications Enterprise Agreement 2018-2021 commences. The employer superannuation contribution is then adjusted according to the rate outlined in the ACT Public Sector Administrative and Related Classifications Enterprise Agreement 2018-2021.

6.6 In respect of a person appointed to an office 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 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*.

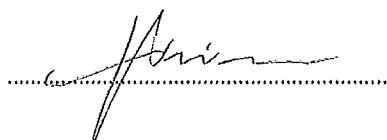
PSS means the Public Sector Superannuation Scheme.

PSSap means the PSS Accumulation Plan.

8. Revocation of previous determination

Determination 17 of 2017 is revoked.

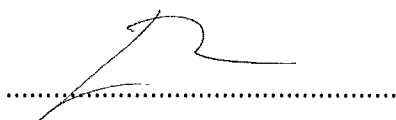
Dr Colin Adrian
Chair



Ms Sandra Lambert AM
Member



Dr James Popple
Member



November 2018