



Australian Capital Territory Remuneration Tribunal

## **ACT Magistrates Court Judicial Positions**

### **Determination 7 of 2022**

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 October and November 2022, the Tribunal commenced its Spring Sitting to consider the remuneration, allowances and other entitlements of the following office-holders:

- ACT Magistrates Court Judicial members;
- ACT Supreme Court Judicial members;
- ACT Civil and Administrative Tribunal members;
- the ACT Integrity Commissioner (Integrity Commissioner and Chief Executive Officer);
- the Principal Registrar, Courts and Tribunal;
- the Director of Public Prosecutions;
- part-time Holders of Public Office on boards, tribunals and committees; and
- any other positions that have been referred to the Tribunal for consideration.

The Tribunal advertised its Spring Sitting on its website and in the Canberra Times on 10 September 2022. The Tribunal also wrote to the relevant office-holders requesting submissions.

At its meetings in October and November 2022, the Tribunal met with the Chief Minister, ACT Government Treasury officials and officials responsible for the Enterprise Agreement bargaining for ACT Public Sector non-executive employees. The Tribunal also met with a number of full-time public office-holders and departmental officials.

The briefings provided to the Tribunal by ACT Treasury officials outlined the resilient nature of the Territory's economy. ACT Treasury reported that the Territory had transitioned out of the potential economic crisis brought on by the COVID-19 health emergency, with the

Territory now experiencing a tight labour market and wages growth. ACT Treasury also reported that the Territory's labour market is strong and tight, with jobs and wages for most industries in the ACT recovered to be above pre-lockdown levels. In its deliberations, the Tribunal continues to give considerable weight to community standards and expectations, with particular reference to the COVID-19 economic recovery, national and local inflation reporting and wage price index reporting.

The Tribunal also considered the importance of the Territory providing competitive and equitable remuneration, allowances and other entitlements so that the Territory can continue to attract and retain high calibre individuals to deliver high quality services to the ACT community. In this context, the Tribunal noted the wage policies and recent remuneration determinations by its Commonwealth and State/Territory counterparts.

Consistent with usual practice, the Tribunal considered the pay increases that were provided to the ACT Public Sector non-executive workforce during 2021 under the Enterprise Agreements. In addition, when considering pay increases for statutory office-holders, the Tribunal noted the pay increases that were provided to executives in the ACT Public Service in 2022.

In making this determination, the Tribunal has had regard to the fact that the Government is currently negotiating enterprise agreements for employees covered by such agreements. The Tribunal had regard to the 2022–23 ACT Budget, released in August 2022 by the Chief Minister, which predicted growth in 2023–24 of 3.5 per cent in WPI and 3 per cent in CPI.<sup>1</sup>

The Tribunal considered the comments made by the Governor of the Reserve Bank of Australia on 1 November 2022, and noted his comments both in respect to household budgets being under strain from cost-of-living pressures and in relation to many firms finding it hard to find workers.<sup>2</sup> In a tight labour market, an increasing number of firms are paying higher wages to attract and retain staff, especially in an environment where the cost of living is rising.

The Tribunal received correspondence from Chief Magistrate Walker requesting that an increase in remuneration be reflective of the consumer price index.

The Tribunal noted its previous decision with respect to the Territory's Executive Service to include the former fringe benefits tax allowance of \$7,500 as salary. This followed the Government's decisions to amend the *Public Sector Management Standards 2016* to remove the entitlement to an employer-provided vehicle for ACTPS Executives and full-time statutory office holders. The Tribunal noted that ACT Magistrates Court judicial positions have not previously received the fringe benefits tax payment. In this determination, the Tribunal has provided for this payment for ACT Magistrates Court judicial office holders.

## **Decision**

The Tribunal determines to increase remuneration by 3 per cent for ACT Magistrates Court judicial positions, with effect from 1 November 2022.

The Tribunal noted its determinations 1 of 2022 and 2 of 2021 with respect to ACTPS Executives where base salary was increased by consolidating the motor vehicle allowance and fringe benefits tax payment. The Tribunal considered the Government's decisions to

---

<sup>1</sup> [ACT Budget 2022-2023 Budget Outlook, Chapter 2 Economic Outlook](#), page 17.

<sup>2</sup> <https://www.rba.gov.au/speeches/2022/sp-gov-2022-11-01.html>

amend the *Public Sector Management Standards 2016* removing the entitlement to an employer-provided vehicle for ACTPS Executives and full-time statutory office holders and noted that ACT Magistrates Court judicial positions have not previously received the fringe benefits tax payment. Consistent with decisions for ACTPS Executives and other office holders, and in the interest of fairness, the Tribunal determines that ACT Magistrates Court judicial office holders are also to be paid the amount of \$7,500 as remuneration.

The retrospective application of this Determination to 1 November 2022 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.

15 December 2022



# ACT Magistrates Court Judicial Positions

## Determination 7 of 2022

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 2022.

### 2. Remuneration

#### *Chief Magistrate*

2.1 The Chief Magistrate is entitled to remuneration of \$444,605 per annum.

#### *Magistrates*

2.2 A Magistrate is entitled to remuneration of \$390,346 per annum.

2.3 Additional salary of \$7,500 per annum is payable to the Chief Magistrate and Magistrates. This salary is to be paid on a pro rata basis for a magistrate working on a part-time basis.

#### *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 are to be paid on a pro rata basis in accordance with the proportion of full-time hours worked.
- 2.8 For the purposes of 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 rates 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 2022/10 Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2022-23 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 10.5% and increases to 11% on 1 July 2023.

- 6.5 The employer provides an additional employer superannuation contribution. The additional employer superannuation contribution is the same rate provided under clause D7 in the *ACT Public Sector Administrative and Related Classifications Enterprise Agreement 2021-2022* or its replacement.
- 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 in which 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 7 of 2021 is revoked.

Ms Sandra Lambert AM  
Chair

A handwritten signature in grey ink, appearing to read "Sandra Lambert", written over a dotted line.

Mr Dale Boucher PSM  
Member

A handwritten signature in black ink, appearing to read "Dale Boucher", written over a dotted line.

15 December 2022