

## STATUTORY AND OTHER OFFICES REMUNERATION TRIBUNAL

### Report and Determination – Travel Allowances for NSW Judges

#### REPORT

1. On 4 January 2002 the Premier of New South Wales, the Hon Bob Carr MP, directed the Tribunal, pursuant to section 14 of the Act to make a determination on domestic travelling allowances for NSW Judges when travelling throughout Australia on official business.
2. The reference from the Premier followed the recent amendments to the SOORT Act which expanded the definition of “allowance” as follows

#### ***10A Definitions***

*In this Part:*

*allowance does not include a travelling or subsistence allowance, but includes a travelling or subsistence allowance for travel within Australia by the holder of an office specified in Schedule 1 who is:*

*a Judge or Acting Judge of a court, or*

*any other judicial officer (within the meaning of the Judicial Officers Act 1986) nominated by the Minister by notice in writing to the Tribunal for the purposes of this definition.*

3. “Remuneration” is defined in the Act as salary and allowances payable to office holders. Judges are holders of offices specified in Schedule 1.

Section 21 (1) provides that:

*“Notwithstanding any other section of [this Act](#), a determination does not operate so as to reduce the rate at which remuneration is payable to the holder of an office specified in [Schedule 1](#).”*

4. The Tribunal wrote to the Heads of the various NSW Courts and had discussions with the Chief Justice of the Supreme Court and Mr Justice Wood, the Chief Judge of the District Court, the Chief Judge of the Land & Environment Court and the Chief Judge of the Compensation Court.
5. The Tribunal has also examined travelling allowance arrangements for public servants in NSW including the Chief and Senior Executive Services, for Judges in States other than NSW and in particular the conditions for Federal Judges as determined by the Commonwealth Remuneration Tribunal.

**a) Submissions Received:**

6. The Chief Judge of the District Court has submitted that the appropriate level of allowance for NSW Judges is at the level which was fixed at the beginning of 2000 subject to increases which would reflect CPI increases and the GST which came into effect on July 1, 2000. He further submitted that the current policy be retained of paying travelling allowances on the basis of a daily allowance calculated from the time of departure to the time of arrival home. Also that the current method of calculation be retained, namely, that if after the last full day there is a further period of travel of 6 hours or more, a full day's allowance be paid.
7. The Chief Judge submitted that the current (non-metropolitan) rate of \$190 per night determined by the Federal Tribunal for Federal Judges is inappropriate for NSW. He stated that the Federal Court rarely sits outside the metropolitan areas whereas the NSW District Court carries out a significant amount of its work in non-metropolitan NSW. The Chief Judge added that the predominant work that is carried out on circuit is criminal work and it is substantially criminal trials with juries. Such trials are lengthy and the circuits themselves usually take two weeks in duration but extend to three or four weeks or even longer.
8. There are between 15 and 20 judges on the circuit at any one time. In the 2001/2002 financial year the District Court will sit 706 weeks of circuit sittings – 487 of these are devoted to criminal sittings. The District Court generally sits in major country centres throughout NSW.
9. The Chief Judge makes the point that because of the lengthy nature of trials in the one location the Judge needs to find suitable accommodation to ensure that he does not come into contact with jurors, witnesses or accused persons. Similarly the Judge must also make appropriate arrangements when dining to avoid contact with these parties.

10. The Chief Judge has also sought confirmation of the current practice (unique to judges) where after the last full day if there is a period of travel of 6 hours or more then a full day's travel allowance is payable to the Judge.
11. The Chief Justice of the Supreme Court has supported the views expressed by the Chief Judge of the District Court. The Chief Justice points out that there is no real comparison between the Federal Court Judges and State Judges, having regard to the nature of the work performed by State Judges and in particular the character of circuit work. He also submitted that the second tier capital city rate in the Premier's Circular 2000/01 for Adelaide, Canberra, Darwin and Hobart should apply to Newcastle and Wollongong.
12. The Chief Justice has also advised that the Supreme Court sits in major country centres throughout NSW. As with the District Court, the Supreme Court has also adopted the policy of paying a full day's travel allowance if after the last full day there is a further period of travel of 6 hours or more. The Chief Justice has recommended that this arrangement be confirmed by the Tribunal.
13. The Chief Judge of the Compensation Court, has submitted that Judges from his Court frequently hear cases in capital cities rather than in country centres. The Chief Judge has recommended that the rates for capital cities outlined in Premier's Department Circulars would be appropriate.
14. The Chief Judge of the Land and Environment Court has advised that on behalf of the Judges of the Land and Environment Court she supports the recommendations of the Chief Judge of the District Court and the Chief Judge of the Compensation Court.

**b) Review:**

15. Travelling allowances are intended to meet the costs necessarily incurred by Judges who are required to travel away from home/place of work on official business. Such costs cover accommodation, meals and incidental expenses. The current rates were determined by the Director General of the Premier's Department.

16. The Commissioner of Taxation publishes Rulings annually which detail the reasonable rates of travelling allowances which would not require substantiation for taxation purposes. In setting the reasonable amounts, the Commissioner;

*“...does **not** determine the amount of allowance an **employee** should receive or an employer should pay their **employees**. The amount of an allowance is a matter to be determined between the payer and payee. The Commissioner determines the reasonable amount for the purposes of the tax law, i.e., the amount that will be accepted for exception from the requirement to obtain and keep written evidence for substantiation purposes. It is not provided for the purpose of being used for employment or industrial relations purposes in setting the amount of allowance paid.”*

17. In addition the Commissioner has agreed that the travel allowance rates, determined by the Federal Tribunal for Judges, are reasonable for taxation purposes.

18. The Director General of the Premier’s Department also determines the rules under which these allowances are paid. These rules are consistent with the long standing principle that travel allowances are provided to ensure that an officer is not financially disadvantaged as a result of having to travel on official business.

20. Since 1995 officers of the Chief and Senior Executive Services (SES) have only been entitled to claim actual expenses when travelling on official business. The daily rates are used only as indicative upper limit. SES officers are also entitled to reimbursement of actual and reasonable daily meal expenses.

21. Public Servants covered by the Crown Employees (Public Service Conditions of Employment) Award 1997 are entitled to claim the daily rate of travel allowance for each full day the officer is away from their residence. For any residual part day travel the officer can only claim actual meal expenses “...properly and reasonably incurred.” Under this Award, public servants are able to claim daily meal allowances for trips not requiring an overnight stay.

22. By a long-standing policy, travelling allowance rates for the judiciary, have mirrored the rates payable to the SES. Under this policy NSW Judges were entitled to claim the capital city rates of travelling allowance for visits on official business to country locations, where such travel has involved an overnight stay.
23. As at January 1, 2000 there was a standard capital city rate for the SES of \$246.65. For NSW Judges, this rate applied to all capital cities and to towns and cities in New South Wales. In January 2001, the Director General of the Premier's Department approved a variable capital city rate with two tiers. Tier 1 being \$375.40 and Tier 2 \$305.40 (Premier's Department Circular 2001/1 refers). The effective date of these changes was 1 October 2000.
24. Judges, as a result of that determination, received a significant increase in travel allowance for country travel ie from \$246.65 to \$375.40. In February 2001 the Attorney General suggested that the existing Judges' travel allowance policy was no longer applicable and, as an alternative, it would be preferable that the Federal Remuneration Tribunal's determination in respect of travel allowances for the Federal Judiciary be applied.
25. On 10 April 2001, the Director General of the Premier's Department rescinded the Judges' travel policy and determined that NSW Judges receive identical rates as the Federal Judiciary, namely,
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|---------------------|-------|
| Sydney              | \$350 |
| Mel.Bris.Perth      | \$360 |
| Ade.Dwn.Hbt.Canb    | \$290 |
| Other than Cap City | \$190 |
26. The effect of this decision was to increase the rate for capital city travel allowance but to reduce the rate of county daily travel allowance for Judges from \$246.65 to \$190.
27. The Director-General also determined that claims for actuals with certification were not appropriate for Judges.

28. As a result of these fluctuations in rates the Director General of the Premier's Department on 17 May 2001, agreed with the recommendations from the Attorney General (on behalf of the Judges) that travel allowances be determined by the Tribunal and, until the Tribunal made its determination, that the original rate of \$246.65 be retained for country travel for Judges. The Act was amended to permit the Tribunal to make such determinations and took effect on and from 1 January 2002.
29. For the purposes of calculating allowances, judges have to travel beyond 35 kms from their chambers. The time commences from when the judge leaves his/her chambers/home and ceases when the Judge returns to his her chambers/home.
30. For each full day's travel the judge receives the daily travelling allowance rate. Judges are also paid the daily travel allowance if after 24 hours absence there is a further absence of 6 hours or more. A further absence of less than six hours attracts no allowance.
31. If no accommodation is used but the Judge is absent at meal times then a meal allowance is paid without substantiation.

**c) Considerations:**

32. The Tribunal in this determination will be setting rates for overnight stays in capital cities, for overnight stays in areas other than capital cities and meal rates for day or part of day absences from headquarters. The Tribunal will also determine the conditions upon which the rates are to be paid.
33. As noted above, NSW Judges receive identical capital city travel allowance rates as the SES. The current 'other than capital city' travel allowance for Judges is \$246.65 per overnight stay. The Federal Tribunal's rate is \$190 per overnight stay and for the SES the rate is \$190.20.

34. While NSW Judges may travel to other capital cities on official business, their most frequent travel is to non metropolitan NSW to sit and hear trials - particularly in the District Court. Such circuit work involves extensive travel to various centres and judges can be away, depending on the trial list and trial duration, for up to four weeks at a time.
35. The Chief Judge of the District Court, the Hon Justice RO Blanch has advised that the District Court is scheduled to sit for a total of 706 weeks of circuit sittings for 2001/2002 and that between 15-20 judges are on circuit at any given time. These statistics alone testify to the importance of the District Court in the delivery and administration of justice in NSW.
36. These statistics also demonstrate that NSW Judges travel more frequently to county locations and they are away from home for longer periods on official duties than either the SES or their federal counterparts.
37. The Federal Tribunal has issued a number of guiding principles including the following:
- Office holders are not expected to gain or lose financially as a result of travelling on official business.
  - Where an office holder is accommodated in private, non-commercial accommodation such as the home of a family member or friend, a rate of one third of the specified rate is payable, rounded upwards to the nearest dollar.

The Tribunal considers that these guiding principles are appropriate for NSW Judges.

38. After reviewing the survey of accommodation and meal costs both inter and intra state, the Tribunal considers that the current capital city rates are appropriate. In relation to country NSW the current daily rate of \$246.65 is generous by public service standards. The daily meal allowances are less than those revealed in the survey.

39. The Tribunal has discussed two proposals with the Judges. The first is to vary the present arrangements and apply those used for the SES. This would provide that Judges' accommodation costs were met and actual expenses up to certain limits paid for meals and incidentals. Such a proposal would require full certification by the Judges. The second proposal would be to introduce a credit card system. This would also require full certification of all expenses incurred.
40. The Judges have pointed out the problems they see in these two proposals. In particular, they emphasised that the circuit arrangements for Judges put them in a significantly different position to those of the normal SES travel where absences are for quite short periods. With circuit work where the absences range over several weeks up to a month the full certification would require extensive handling of receipts and documentation both by the Judge himself and then with consequential administrative load on the department administering the scheme. The Judges have also emphasised the privacy arrangements which would be impacted upon by requiring the full certification. Thus these proposals could result in an unreasonable administrative burden on the Judge together with an increase in the workload for the administrative units of the Attorney General's Department.
41. After much deliberation the Tribunal accepts the cogency of the Judges' arguments and their special position in the community and therefore it is not intended to progress the above two proposals.
42. In not requiring the full certification of all expenses, accommodation, meals and incidentals the issue for the Tribunal is what constitutes a fair and reasonable daily rate. The rates for accommodation across NSW vary considerably from town to town. Consideration therefore has been given to specifying several tiers of country towns as is the case with the capital cities. There will be some country towns where the country daily rate will be of financial advantage to the Judge and there will be some (a much lesser number) where the Judge could be financially disadvantaged. On balance, the Tribunal is persuaded that with the exception of Newcastle and Wollongong a common rate should be applied for the remainder of NSW in the knowledge that across a year a Judge will most likely be neither financially advantaged or disadvantaged.



43. There is one aspect of the current conditions which Judges agree should be discontinued and this concerns the part-day arrangements where the Judge has been absent at least for one night. The present arrangements allow for a Judge to receive a full day's travel allowance in some circumstances where the Judge has not incurred any direct accommodation expenses. This arrangement must cease but if the Judge is absent for more than a day across a meal break then the appropriate meal allowance would be paid.
44. There is the further issue of permitting the Judge to receive the full daily allowance when in fact commercial accommodation may not be utilised. The Federal Tribunal provides that where accommodation is paid for by someone other than the officer travelling or the officer stays at non-commercial accommodation then the daily rate is reduced by two-thirds. The Tribunal considers that this is a reasonable measure and will apply a similar condition for NSW Judges travel.
45. In future, the Tribunal will review these rates at the time of its annual review to take effect from 1 October each year.
46. Having regard to the amount and duration of travel, and the importance of the circuit court to the delivery of justice to rural NSW and, after considering the views of the Assessors, the Tribunal considers that, on balance, the rate of \$246.65 travel allowance for non metropolitan travel is appropriate. For Newcastle and Wollongong, however, a survey conducted by the Tribunal suggests that the rate not sufficient and an increase is warranted. Similarly, the Tribunal considers the daily meal allowances are insufficient and have been increased to more realistic levels.

**Statutory and Other Offices  
Remuneration Tribunal**

**Gerry Gleeson**

## DETERMINATION

Pursuant to section 14 of the Act the Tribunal determines that the travel allowances for Judges will be as follows.

### A Travel necessitating an overnight stay

#### 1) Capital City Rates

Adelaide	\$292.90
Canberra	\$292.90
Darwin	\$292.90
Hobart	\$292.90
Brisbane	\$362.90
Melbourne	\$362.90
Perth	\$362.90
Sydney	\$362.90

**2. Newcastle and Wollongong** \$292.90

**3. Other areas** \$246.65

## CONDITIONS

General conditions are to be as determined from time to time by the Attorney General. In addition the following specific conditions will apply.

- The full daily travel allowance rate is to be paid only where the judge stays overnight at commercial accommodation.
- Where the judge stays overnight at non commercial accommodation then one third of the daily rate is to be paid.
- Where travel is for a period in excess of 24 hours then meal expenses for the final part day are to be paid.

### B Meal Allowances for travel NOT involving an overnight stay

Breakfast	\$20.00
Lunch	\$25.00
Dinner	\$45.00

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