

## STATUTORY AND OTHER OFFICES REMUNERATION TRIBUNAL

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

#### REPORT

1. On 29 April 2003 the Premier of New South Wales, the Hon Bob Carr MP, directed the Tribunal, pursuant to section 14 of the Statutory and Other Offices Remuneration Act 1975 (the Act) to make a determination on domestic travelling allowances for NSW Magistrates when travelling throughout Australia on official business. The Premier required the Tribunal's Report and Determination by 31 May 2003. This date was later extended to 31 July 2003 by the Premier following a request from the Tribunal.
2. The Tribunal is generally precluded from determining travelling allowances for office holders listed in the Schedules of the Act. In 2002, however, the Act was amended to provide the Tribunal with the statutory authority to determine travelling allowances for judges or other judicial office holders nominated by the Minister. The Act now provides:

#### **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. Magistrates are holders of offices specified in Schedule 1 and are judicial officers within the meaning of the Judicial Officers Act 1986.

**Submissions Received:**

4. The Chief Magistrate has advised that the Local Court conducts approx. 160 weeks pa of sittings in country locations with each such Court sitting for 49 weeks per year. This is achieved by using regional relieving magistrates (4) or sending magistrates from Sydney. Other Magistrates who regularly visit country locations include, Children's Magistrates, State Coroner, Chief Industrial Magistrate Mining Warden and four members of the Licensing Court.
5. The Chief Magistrate considers that the capacity of the Court to provide this extensive service comes with all the social and economic dislocation experienced by judges in superior courts. He adds that the conclusions drawn by the Tribunal in respect of the need for anonymity and avoiding contact with jurors and accused persons and the impracticality of a reimbursement of actual costs is equally relevant to the Magistracy.
6. The Chief Magistrate also considers that the guiding principles should also be adopted for the Local Court and that the abolition of the full rate for the final part day introduced by the Tribunal for Judges would save approx \$76,000 pa.
7. The Chief Magistrate recommends that the Local Court be brought into line with the arrangements that pertain to judges "...in all respects." This includes the conditions and the rates applicable to judges.
8. The Tribunal also received a submission from one Magistrate seeking rental assistance. The Magistrate advised that all Magistrates are required to undertake country postings for a period of two years. In these circumstances Magistrates are required to maintain their primary place of residence and also incur additional housing costs in the town where they have been posted to work. The Magistrate felt that some relief for these additional costs should be provided.

9. While the Tribunal understands the circumstances which have led to the submission being made it is not prepared to consider this matter. The Tribunal would note that country postings for Magistrates is a policy of the Local Court and any applicant for the position of Magistrate should be aware that country service for at least two years is mandatory. Any assistance for Magistrates in these circumstances should be considered by the Local Court.

**Review:**

10. The Tribunal has examined travelling allowance arrangements for public servants in NSW including the Chief and Senior Executive Services, for Magistrates in States other than NSW and in particular the conditions for Federal Magistrates as determined by the Commonwealth Remuneration Tribunal.
11. As with Judges, travelling allowances are intended to meet the costs necessarily incurred by Magistrates who are required to travel away from home/place of work on official business. Such costs cover accommodation, meals and incidental expenses. The rates are determined by the Director General of the Premier's Department and are consistent with the reasonable rates determined from time to time by the Commissioner of Taxation.
12. 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.

**Considerations:**

13. As with judges, 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.
14. The Tribunal has examined carefully the submission of the Chief Magistrate and compared his comments to the determination made on travel allowances for Judges. Many of the considerations applicable to Judges' country travel are equally applicable to the Magistracy. There are, however, some significant differences between the Local Court and the District Court.
15. Unlike Judges, Magistrates are located in country centres. There are 36 regional locations in non metropolitan NSW where 44 magistrates reside and work. From these locations Magistrates undertake 39 circuits to smaller and more remote locations within their particular region. In Dubbo, for example, there are two Magistrates. One Magistrate sits daily in Dubbo and receives no travel allowance whereas the second Magistrate travels each day to a different location (Cobar Narromine Warren) and receives daily travel allowance. For some locations eg Bourke, Gunnedah and Wentworth, Magistrates fly in from Sydney to conduct sittings.
16. Advice from the Local Court is that Magistrates sit in 151 locations most of which are in rural NSW whereas the District Court sits in 20 locations. Travel allowances are also incurred in circumstances where there are periods of relief required, additional sittings and ad hoc requirements eg illness or special visits from the Coroner, Children's Magistrate etc. Advice from the Local Court is that travel allowances paid for the circuit work comprise the major proportion of the Local Court travel expenditure.

17. While NSW Magistrates may travel to other capital cities on official business, their most frequent travel is to non metropolitan NSW for hearings. This can be either direct from Sydney or as part of a regional circuit.
18. Currently NSW Magistrates receive identical capital city travel allowance rates as the Judges. The current ‘other than capital city’ travel allowance for Judges is \$246.65 per overnight stay whereas the rate for the SES and Magistrates is \$193.05 per overnight stay.
19. In its initial determination on Judges’ travel dated 11 April 2002, the Tribunal noted that by longstanding arrangement Judges received the capital city rate for travel when travelling to ‘other than capital city’ locations. The Tribunal noted that this rate was generous but could not reduce it because Section 21 of the Act required 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](#).”*

“Remuneration” for the purposes of the Act includes salary and allowances

20. Because of the particular circumstances that led to the current ‘other than capital city’ travel allowance rate for Judges, the Tribunal does not intend to extend it to Magistrates. It is then a question of what would be an appropriate rate, particularly when much of the travel and associated expenses for Magistrates, unlike Judges, is to smaller rural centres where costs generally would be expected to be lower.
21. 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 \$193.05 is also appropriate. For Newcastle and Wollongong, however, the same survey conducted by the Tribunal suggests that the current public rate is not sufficient and an increase is appropriate.

22. For reasons similar to those applicable to Judges, the Tribunal considers that the need for full certification of all expenses, accommodation, meals and incidentals is not appropriate for Magistrates' travel expenses. Magistrates will, therefore, continue to receive the full daily rate of travel allowance as determined here.
23. The Tribunal has also reviewed the arrangement where a Magistrate who has been absent for at least one night, receives a full day's travel allowance for the second day where the officer has not incurred any accommodation expenses. This is inappropriate and will be discontinued but, if the Magistrate is absent for more than a day across a meal break then the appropriate meal allowance would be paid.
24. In future the Tribunal intends making an annual determination for travel allowances for Judges and Magistrates, particularly as all the conditions applicable to both groups will be identical as will the principles which underpin them. These Principles are set out hereunder. The actual rates will be as specified in the determination for each Group.

**Principles Adopted:**

25. In making its determinations on travel allowance rates the Tribunal has adopted a number of guiding principles as set out hereunder.
- Travelling allowances are intended to meet the costs necessarily incurred by Magistrates who are required to travel away from home/place of work on official business. Such costs cover accommodation, meals and incidental expenses.
  - Allowances are provided to ensure that an officer is not financially disadvantaged as a result of having to travel on official business.

- 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 rates for accommodation across NSW vary considerably from town to town. 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 Magistrate will most likely be neither financially advantaged or disadvantaged.

26. Having regard to the amount and duration of travel, and the importance of the Local Court to the delivery of justice to rural NSW the rates travel allowance for capital city and non metropolitan travel and daily meal allowances is as determined hereunder.

**Statutory and Other Offices  
Remuneration Tribunal**

**Gerry Gleeson**  
Dated: 16 July 2003

## DETERMINATION

Pursuant to section 14 of the Act the Tribunal determines that the travel allowances for Magistrates shall be on and from the date of this determination:

### 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 \$193.05

## 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 Magistrate stays overnight at commercial accommodation.
- Where the Magistrate 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	\$17.20
Lunch	\$19.20
Dinner	\$33.05

### Statutory and Other Offices Remuneration Tribunal

Gerry Gleeson

Dated: 16 July 2003