

STATUTORY AND OTHER OFFICES REMUNERATION TRIBUNAL

Conveyance Allowance

REPORT:

1. The Tribunal's Determination of 28 September 2005 made determinations concerning judicial remuneration. In its Report of those Determinations the Tribunal advised that it had not made a determination on the Conveyance Allowance but that "*...A determination will issue shortly on the Conveyance Allowance and will be effective on and from 1 October 2005.*"
2. The Tribunal's determination on the Conveyance Allowance is now set out below.
3. As noted in its Report dated 28 September 2005, the Tribunal has again received a number of submissions dealing with the Conveyance Allowance. These submissions have sought, *inter alia*, clarification of the purpose of the Allowance, an increase in the Allowance and its application, and one submission questions the legality of the Conveyance Allowance.
4. The Tribunal, better to inform itself on the evolution of this entitlement, has reviewed and now sets out the historical background to the Conveyance Allowance.
5. In its determination of August 1990 SOORT considered the historical relationships between the Supreme Court Judges and Federal Court Judges since the creation of the Federal Court in 1976. SOORT concluded that
 - i. "*... in terms of salaries and allowances, a constant factor has been that the remuneration of Judges of the Supreme Court of New South Wales has been somewhat higher than that of Judges of the Federal Court since that latter was first established. The higher remuneration for Judges of the Supreme Court of New South Wales has taken into account the greater benefits received by the Judges of the Federal Court.*"

ii. The Tribunal considers that the matter of benefits is clearly relevant to the issue of salaries. Federal Judges receive a number of benefits not available to New South Wales Judges such as car and driver, reimbursement of home telephone costs, and first class air travel for the Judge's spouse when accompanying the Judge on official functions."

6. The Tribunal in that determination introduced in addition to salary
 - i. "... an amount of \$10,362 which has regard to the benefits provided to Federal Court Judges."*
7. The Tribunal, having noted the benefits enjoyed by Federal Court Judges which were additional to those provided to Supreme Court Judges, noted further that the cost at that time of providing a reasonably prestigious motor vehicle for 100 percent private use was approximately \$8,200 pa.
8. From 1990 onwards Judges' remuneration was expressed as a gross amount ie the remuneration of a Supreme Court Judge would be \$150,000 pa. This comprised basic salary of \$139,638 (the amount equivalent to the 85 percent nexus with the Judges of the High Court of Australia), plus an amount of \$10,362 which had regard to the benefits provided to a Federal Court Judge. Annual increases were based on the base amount and the \$10,362 was added to provide the Supreme Court Judge's total remuneration.
9. Remuneration of all related Office Holders at the time bore a percentage relationship to the salary of a Supreme Court Judge. The amount used to determine this percentage relationship was the gross amount. Thus all related Office Holders received a proportion of the additional amount provided to Supreme Court Judges.
10. In 1996 the Tribunal reviewed the additional amount and noted that it was predominantly intended to compensate Judges for the cost of motor vehicles. While the Tribunal noted the additional benefits accruing with this amount ie it counted towards Judges' pension scheme and superannuation schemes, the Tribunal decided that on balance it should be retained at its then level.

11. In 2000 the Tribunal increased the quantum of the additional amount from \$10,362 to \$13,400 to better reflect the then cost of salary sacrificing for a vehicle. The Tribunal noted that the amount counted for pension purposes and was discounted from the full salary sacrifice leasing rate in recognition of this.
12. For the first time this additional amount was shown separately in the determination.
13. In its decision made on 27 November 2002 the Federal Tribunal provided for special increases for Federal Judges of 7% from 1 July 2002 and 5% from 1 July 2003, and subsequently in 2003 Federal Judges received a total of 9 percent increase (5% special plus 4% cost of living)..
14. In 2003 the Tribunal undertook a fundamental review of judicial remuneration in New South Wales in light of the Federal Tribunal's 2002 decision.
15. The Tribunal considered that because of its nature (it was essentially a motor vehicle allowance) the additional amount should not count for Judges' pension purposes or Magistrates' superannuation purposes.
16. SOORT determined that part of the 9% 2003 Federal increase should be implemented by absorbing the additional amount into the base remuneration amount, and that a new non pensionable allowance should be created. The Tribunal introduced a new Conveyance Allowance for Judges and Magistrates ranging from \$18,000 to \$13,000 pa.
17. In its Report of 21 June 2003 the Tribunal stated:

“...Conveyance Arrangements:

The Tribunal agrees that the one entitlement available to Federal Judges which is significantly different to the entitlements of Supreme Court Judges is that relating to transport arrangements.

*The Commonwealth scheme entitles a Judge to either:
A Commonwealth Car with driver service for travel to and from work; or*

A Commonwealth provided private plated vehicle in accordance with Commonwealth Executive Vehicle Scheme (EVS) guidelines; or Reimbursement of private vehicle running costs incurred by the Judge up to \$8,000 p.a. plus petrol costs.

Under the EVS guidelines a salary sacrifice or annual payment of \$750 is paid by the Judge.

The NSW scheme entitles a Judge to:

Free public transport.

Hire cars and taxis when travelling to suburban courts or on circuit.

\$400 p.a. for the use of hire cars or taxis.

An additional sum of \$13,400 p.a. which is substantially available for the use of a vehicle.

The acquisition of a car under the Judicial Car Scheme by way of salary sacrifice.

Unlike the Commonwealth Government the NSW Government no longer provides motor vehicles to senior public officials for whom vehicles are available only on a salary sacrifice basis.

The Tribunal acknowledges that the additional sum of \$13,400 to Supreme Court Judges is paid by way of salary and hence counts towards the calculation of pension under the Judges Pension Scheme. This is not the case for Commonwealth Judges or for Judges in any Australian State. Since the compensatory sum in this determination is solely to assist towards transport costs it is no longer appropriate that the compensation be by way of salary but instead by way of an allowance.

Further, it is not appropriate that retired judges be compensated in their pension indexation arrangements for transport costs incurred by serving Judges.

Presently less than half the number of Supreme Court Judges take advantage of the salary sacrifice scheme administered by the Attorney-General's Department. The remaining Judges may use the additional sum to make private car arrangements but the choice is their own as to how the additional sum is used.

The issue for the Tribunal is how to ensure equity between those Judges who acquire a vehicle under salary sacrifice, those who make private arrangements and for several who do not use a vehicle.

Having regard to the provisions abovementioned for transport for Supreme Court Judges the Tribunal has decided that an allowance of \$18,000 p.a. should be available to all Supreme Court Judges.

For District Court Judges an allowance of \$15,000 p.a. shall apply. Magistrates and other Office Holders shall be entitled to an allowance of \$13,000 p.a. This allowance will not count for pension or superannuation purposes."

18. In summary therefore, the Tribunal in 2003 introduced the Conveyance Allowance which as noted above replaced the former “additional amount” provided to Supreme Court Judges to compensate for the motor vehicle provided to Federal Court Judges. It should be noted that judicial officers receiving the additional amount were also reimbursed the cost of business travel.
19. To clarify the purpose of the Conveyance Allowance it should be noted that under the Commonwealth’s Executive Vehicle Scheme Federal Court Judges are provided with a fully maintained private plated motor vehicle for a contribution of less than \$1,000 per year. While the vehicle may be used by a Federal Court Judge for business travel it is difficult to see how there would be any significant amount of such travel given that in New South Wales the Federal Court sits only in Sydney. It appears therefore that the vehicle provided to the Federal Court Judge would be principally available for and used for private purposes.
20. Further, it should be noted that other jurisdictions eg Victoria, Western Australia and Queensland also provide judges with fully maintained private plated motor vehicles.
21. So that Supreme Court Judges are not disadvantaged by comparison with Federal Court Judges, it is necessary to compensate NSW Supreme Court Judges for the private use motor vehicle benefits enjoyed by Federal Court Judges. The Conveyance Allowance is, as was the additional amount before it, intended to provide such compensation.
22. State judicial officers may (but are not obliged to) use the Conveyance Allowance towards the cost of leasing a motor vehicle through the State Government’s leasing scheme. Vehicles can be leased on a 100 percent private use basis ie the officer meets all the lease costs, which include running and on road costs, from his/her salary. Alternatively, where the officer establishes a need to use the vehicle for business related travel eg circuit court work, the

officer can take a business/private lease, where an agreed percentage of the lease costs is met by the Attorney General's Department.

23. The administrative arrangements surrounding the Tribunal's determinations are a matter for the Attorney General's Department. However, the Tribunal considers it is reasonable to expect that an officer who pays for a vehicle on a 100 percent private basis should be reimbursed for any business related travel undertaken in that vehicle. Conversely an officer who has a business component built into the vehicle lease might be expected not to claim business related motor vehicle travel costs except and to the extent that they exceed the business percentage agreed in the lease.
24. The Tribunal now turns to the question of the quantum of the Allowance.
25. The Federal model is simple, in that the Federal Judge chooses a car and all costs except for the nominal contribution of the Judge are met by the Court. In NSW the officer must personally bear these costs.
26. Costings for leasing of motor vehicles are based on the standard methodology used in the NSW public sector to determine annual costs to an officer who salary sacrifices to lease a motor vehicle. To determine the annual cost of the vehicle it is necessary to have the make and model of the vehicle, the percentage of private/business use and an estimate of the kilometres to be travelled in the relevant 12 month period.
27. The Tribunal in 2003 used a Holden Calais as the benchmark vehicle on which to base the quantum of the Conveyance Allowance.
28. As part of this review, the Tribunal has considered the appropriateness of using one make and model of motor vehicle to determine the quantum of the allowance.
29. Vehicles made available to and chosen by Federal Court Judges vary in make and model.

30. The Tribunal has sought from the NSW Attorney General's Department details of the current composition of the judicial fleet of vehicles. The vehicles presently leased by NSW Judges and Magistrates vary in make and model to the extent that there is no one vehicle that reasonably can be used as a benchmark for costings.
31. The Tribunal considers that a more appropriate approach to determining the quantum of the entitlement is to use the average of a range of costs, rather than to use one particular make and model. Using this approach the Tribunal considers that an amount of \$20,500 is presently appropriate for the Conveyance Allowance.
32. The Tribunal has given careful consideration to submissions that the Conveyance Allowance should be uniform across all NSW jurisdictions. The Tribunal acknowledges in particular that many District Court Judges and Magistrates in the course of their duties are likely to be involved in significantly more travel than are Judges of the Supreme Court. However, the Tribunal is informed that in other State jurisdictions there is a differential in the category of vehicles made available to Supreme Court Judges and those made available to District Court Judges and Magistrates. On balance the Tribunal considers it reasonable that the rates for District Court Judges and Magistrates should be proportional to the rate determined for the Judges of the Supreme Court.
33. Finally, the Tribunal referred to the Crown Solicitor a submission from a judicial officer which questioned the legality of certain aspects of the Tribunal's 21 June 2003 determination. The Crown Solicitor has advised the Tribunal that the amount determined as a Conveyance Allowance is in fact an allowance and is not invalid, and further has confirmed that in any event the Tribunal's determination is not affected by any error, whether jurisdictional or otherwise.

34. Having regard to this advice the Tribunal will take no further action in respect of the particular submission.

CONCLUSION

35. Having regard to the matters outlined above, and after considering the views of the Assessors, the Tribunal makes the following determination in respect of the Conveyance Allowance to take effect on and from 1 October 2005.

**Statutory and Other Offices
Remuneration Tribunal**

A handwritten signature in black ink, consisting of a series of fluid, connected strokes that form a stylized, somewhat abstract shape.

Helen Wright

Dated: 25 October 2005

DETERMINATION No 5

CONVEYANCE ALLOWANCE effective on and from 1 October 2005

Full time Office Holders receiving salary as, or equivalent to a Supreme Court Judge or higher shall be entitled to a Conveyance Allowance of \$20,500 pa.

Full time Office Holders receiving salary as, or equivalent to a District Court Judge shall be entitled to a Conveyance Allowance of \$18,450 pa.

Full time Office Holders receiving salary below that of a District Court Judge shall be entitled to a Conveyance Allowance of \$14,760 pa.

The Conveyance Allowance here determined shall not count towards Judges' pension or for superannuation purposes.

**Statutory and Other Offices
Remuneration Tribunal**

A handwritten signature in black ink, appearing to be 'Helen Wright', written in a cursive style.

Helen Wright

Dated: 25 October 2005