

PREMIER,

**REPORT ON THE REMUNERATION OF
JUDGES,
DISTRICT COURT JUDGES, MASTERS OF THE SUPREME COURT,
MAGISTRATES AND THE
PARLIAMENTARY INSPECTOR OF THE CORRUPTION AND CRIME
COMMISSION**

Section 7 of the *Salaries and Allowances Act 1975* ('the Act') requires the Tribunal, at intervals of not more than twelve months, to inquire into and report to the Minister responsible on the question of whether any alterations are desirable in the remuneration to be paid or provided to Judges, District Court Judges, Masters of the Supreme Court, Magistrates and the Parliamentary Inspector of the Corruption and Crime Commission. The Act provides further that if the Tribunal reports that alterations are desirable, it shall recommend the nature and extent of the alterations to be made.

A copy of the report must be laid before each House of Parliament within five sitting days of that House after the Minister has received the report.

BACKGROUND

The Tribunal issued its last report on the remuneration of the judiciary on 26 November 2010. In so doing, it provided for remuneration increases that maintained the national hierarchy of the Courts. These increases took into account changes in work value that have affected the judiciary in the Western Australian Courts and in the Federal Courts.

On 22 June 2011, the Commonwealth Remuneration Tribunal (CRT) recommended a 3.0 per cent increase in remuneration for the Federal judiciary based on cost of living increases.

CURRENT ENQUIRY

In discharging its statutory requirements with respect to the remuneration of the judiciary, the Tribunal's approach has been to:

- advertise for public submissions;
- write to key office holders; and
- consider relevant labour market and economic data.

This process provides an opportunity for members of the public, the Government, the judiciary themselves or any other interested party to make a submission. It also helps to inform the Tribunal of changes which might have taken place in the roles or responsibilities of the judiciary over the past year and other remuneration issues.

The Tribunal received submissions from the Minister for Commerce on behalf of the Government of Western Australia, the Chief Justice, the Chief Judge of the District

Court, the Magistrates' Society of Western Australia, and the Parliamentary Inspector of the Corruption and Crime Commission. The Tribunal considered all the submissions received.

SUBMISSIONS

The main issues raised in the submissions were:

- whether the salary increases provided to the Federal judiciary should flow on to the Western Australian judiciary; and
- whether the salary of a Magistrate should be increased to 85 per cent from 82.5 per cent of the salary of a District Court Judge.

A submission from the Minister for Commerce outlined the current economic situation in Western Australia as described in the 2011/12 State Budget, acknowledged the longstanding tradition of maintaining national relativities in relation to judicial remuneration and invited the Tribunal to consider the Government's Public Sector Wages Policy in its inquiry, even though judicial officers fall outside the scope of the policy.

The Chief Justice, on behalf of the Supreme Court Judges and Master, submitted that the Tribunal should recommend an increase in the remuneration of Judges and the Master of 3.0 per cent to maintain parity with the Federal Courts.

The Judges of the District Court submitted that there were no exceptional circumstances to warrant a change in the relativities of judicial officers and that the 3.0 per cent increase recommended by the CRT should be recommended for the Western Australian judiciary.

The submission from the Judges of the District Court also drew attention to some difficulties arranging appropriate accommodation on circuits in towns where there is great demand for accommodation. However the District Court was not seeking any changes to the method of determining the travel allowances.

The submission from the Magistrates' Society sought an adjustment of no less than the 3.0 per cent adjustment awarded by the CRT to the Federal judiciary and that the adjustment be effective from 1 July 2011. The Magistrates' Society also sought an increase in the salary relativity of a Magistrate from 82.5 per cent of the salary of a District Court Judge to 85 per cent. The Society cited such factors as increased work load due to being 'on call' and the fact that Magistrates are unable to access the judicial pension as reasons for an increase.

CONSIDERATIONS

Economic Considerations

All economic indicators and commentary from peak economic bodies such as the Reserve Bank of Australia¹ and the Chamber of Commerce and Industry (CCI) Western Australia,² are now showing sustained growth in Australia, despite some concerns in regards to the ‘two speed nature’ of the economy, the impact of the “Carbon Tax” and uncertainty in the global economy with the debt crisis in Europe and the state of the US economy.

The economic indicators, as detailed in Table 1, provide support to the commentary provided by the peak economic bodies and show that the annual average growth in the public sector Wage Price Index (WPI) for Western Australia at 3.6%, is less than the growth in the Western Australian private and combined sector WPI of 4.1% and 4.0% respectively for the same period. The WA Average Weekly Earnings outstripped the WPI even further with an average yearly growth of 10.9%.

The Consumer Price Index for the period to 30 September 2011 grew by 3.5 per cent nationally and 2.8 per cent in Perth.

¹ Reserve Bank of Australia Statement on Monetary Policy November 2011
<http://www.rba.gov.au/publications/smp/2011/nov/html/index.html>

² Media Statement, Chamber of Commerce and Industry (CCI), Western Australia *WA well placed to ride out global uncertainty* <http://www.cciwa.com/docs/media/11-october-2011-outlook-september-2011.pdf>

TABLE 1: NATIONAL AND WESTERN AUSTRALIAN ECONOMY – QUARTERLY AND ANNUAL AVERAGE INCREASES – SELECTED ECONOMIC INDICATORS 2011

Indicator	Quarterly % Increase	Annual Average % Increase
Perth - Consumer Price Index - Sept Qtr 2011	0.2%	2.8%
National - Consumer Price Index - Sept Qtr 2011	0.6%	3.5%
WA - Wage Price Index - Sep Qtr 2011	1.4%	4.0%
National - Wage Price Index - Sept Qtr 2011	1.2%	3.6%
WA - Wage Price Index - Sept Qtr 2011 - Private Sector	1.4%	4.1%
National - Wage Price Index - Sept Qtr 2011 - Private Sector	1.4%	3.7%
WA - Wage Price Index - Sept Qtr 2011 - Public Sector	1.5%	3.6%
National - Wage Price Index - Sept Qtr 2011 - Public Sector	1.0%	3.3%
WA - Average Weekly Earnings - Aug Qtr 2011	3.4%	10.9%
National - Average Weekly Earnings - Aug Qtr 2011	0.3%	4.7%
WA - Average Weekly Earnings (Full-time Adult Ordinary Time Earnings) - Aug Qtr 2011	4.4%	11.3%
National - Average Weekly Earnings (Full-time Adult Ordinary Time Earnings) - Aug Qtr 2011	1.2%	5.3%
WA Total Employment Growth - Oct 2011	-0.6%	1.0%
National Total Employment Growth - Oct 2010	0.2%	0.9%

Sources: CPI: ABS Cat. 6401.0; WPI ABS Cat. 6345.0; AWE ABS Cat. 6302.0; EG ABS Cat. 6202.0

With improvements in economic performance and forecasts of continuing growth, the Tribunal considered that the public interest required that consideration be given to an increase in the remuneration of the judiciary.

Remuneration of Judges

The Tribunal took into consideration the economic outlook, submissions from the judiciary and the government, attraction and retention issues and the increases granted to other groups within the Tribunal's jurisdiction and has recommended that the increase provided to the Federal judiciary should flow on to the Western Australian judiciary.

Remuneration of Other Office Holders

The Tribunal again considered the submission for the Magistrates' Society that "the relativity of salaries of Magistrates should be 85 per cent of the salaries paid to District Court Judges rather than the existing 82.5 per cent." The Tribunal noted the supporting claims that Magistrates do not qualify for the same pension and superannuation benefits as Judges and that the requirement to be 'on call' has increased the work load of Magistrates.

In its 2009 report, the Tribunal noted "*the Tribunal accepted the general principle put to it that any alteration in the relativities between the different levels of remuneration applicable to the different levels in the judicial hierarchy should only occur in the most exceptional circumstances.*" Given that Magistrates have never qualified for the same pension and superannuation benefits as Judges since the establishment of the Tribunal and the requirements of being 'on call' have existed since 2007, the Tribunal found that these were not exceptional circumstances that warranted altering the relativities with the judicial hierarchy.

It was also noted by the Tribunal that in its 2007 report the Tribunal reviewed the position of Chief Magistrate and found "*the impact of growth in the number and locations of the magistrates around the State and the management tasks that have developed as a result of new legislation [Magistrates Court Act 2004]. The Tribunal is satisfied that there has been a substantial increase in work value and that alignment of the salary of the Chief Magistrate with that of a District Court Judge is appropriate.*" This resulted in the Magistrates receiving a similar increase due to their alignment with the remuneration of the Chief Magistrate.

The Tribunal considered it important to maintain a meaningful distinction between the remuneration of Magistrates and the higher offices of Chief Magistrate and Deputy Chief Magistrate. The Tribunal has therefore recommended that Magistrates receive the same per cent increase awarded to the District Court Judges.

Motor Vehicles for Judges, Masters and Magistrates

In its 2010 report the Tribunal adopted a new framework for motor vehicle entitlements for Judges, Masters and Magistrates where a notional dollar value replaced the benchmark vehicles. Advice received from the judiciary and from the administering authority has indicated that this system is working well for all concerned parties.

The Tribunal has made a number of minor changes to the motor vehicle entitlements. Advice received from State Fleet has indicated that a number of vehicle manufacturers are utilising turbo charged and super charged engine technologies to improve fuel efficiency. The Tribunal had previously prohibited super charged vehicles, but allowed turbo charged vehicles with an engine capacity of 3.0 litres or less. The Tribunal accepted the argument that by allowing Judges, Masters and Magistrates to access super charged vehicles, with the same restriction as turbo charged vehicles, that is, those with an engine capacity of 3.0 litres or less, it would increase the range of fuel efficient vehicles from which Judges, Masters and Magistrates could select.

The Tribunal was presented with an argument that some members of the judiciary were able to access off road vehicles with their notional dollar value limit, but that the selection needed to be approved by the Chief Judicial Officer and meet operational requirements. The Tribunal accepted the argument that there is no additional cost to the state arising from the selection of an off road vehicle which might be a vehicle of choice for personal reasons. As such the Tribunal has removed the requirement for Judges, Masters and Magistrates to seek approval from the Chief Judicial Officer when selecting an off road vehicle as their motor vehicle entitlement. Where the use of an off road vehicle is substantiated by operational need, this must be approved by the Chief Judicial Officer. In these circumstances the existing Toyota Prado GXL Auto 3.0 litre Turbo Diesel has been retained as the benchmark and it shall be provided for the use of the Judge or Magistrate at no additional cost.

The Tribunal has decided to maintain the notional dollar values for a leased vehicle at their current values. In the latest State Fleet review of its rental settings it found that over half of the vehicles surveyed had experienced a fall in the monthly lease rental rates. The Tribunal considered that the notional dollar values were sufficient given these developments and in effect this represents an increase in the real value of the entitlement. The Tribunal has also included a formula for calculating the notional lease value to aid Judges, Masters and Magistrates in selecting their vehicle and to assist the administering authority.

Travelling and Accommodation Allowance

In 2009 the Tribunal aligned the travelling and accommodation allowance for members of the judiciary to the Australian Taxation Office (ATO) reasonable benefit limits. The submissions received in the 2011 inquiry have indicated that this arrangement is working satisfactorily and thus, the Tribunal has maintained the ATO reasonable benefit limits as the appropriate travelling and accommodation allowance.

Timing

Historically, there has been a six month difference between the timing of adjustments to remuneration in the Federal and State Courts. The Tribunal has in the past made allowance for this within the relativity established under the arrangement which flows from the relationship with remuneration of the Federal Court. In 2009 and 2010 the CRT awarded four separate work value adjustments of 1.5 per cent in addition to the general increase awarded to the Federal judiciary. The timing of these increases resulted in the Tribunal moving the effective date on the increases awarded to the judiciary forward from the established 1 January date. As the CRT has issued its increase to the Federal judiciary effective from 1 July 2011, the Tribunal has re-established the six month difference between the timing of adjustments and has recommended an effective date of 1 January 2012.

This recommendation recognises movements in judicial remuneration within Federal Courts but also takes into account the statutory reporting periods which apply under the Tribunal's recommendations in this state.

RECOMMENDATION

The Tribunal recommends adjustments to the remuneration paid or provided to Judges, District Court Judges, Masters of the Supreme Court, Magistrates and the Parliamentary Inspector of the Corruption and Crime Commission to be in line with those set out in the attached Schedule. For ease of reference, the Schedule consists of a consolidated listing of all the entitlements and benefits provided by way of past and current recommendations of the Tribunal.

Specifically, the current recommendation is that a 3.0 per cent increase in remuneration be granted to Judges, District Court Judges, Masters of the Supreme Court, Magistrates and the Parliamentary Inspector of the Corruption and Crime Commission with effect from 1 January 2012.

TABLING OF REPORT

Under the provisions of the *Salaries and Allowances Act 1975*, this report is required to be laid before each House of Parliament within five sitting days of the House after its receipt by the Minister. Either House of Parliament, within 15 sitting days of that House, having a copy of the report laid before it, may pass a resolution disapproving a recommendation made by the Tribunal.

Dated at Perth this 25th day of November 2011.

W S Coleman AM
CHAIRMAN

C A Broadbent
MEMBER

B J Moore
MEMBER

SALARIES AND ALLOWANCES TRIBUNAL

SCHEDULE

REPORT ON THE REMUNERATION OF JUDGES, DISTRICT COURT JUDGES, MASTERS OF THE SUPREME COURT, MAGISTRATES, AND THE PARLIAMENTARY INSPECTOR OF THE CORRUPTION AND CRIME COMMISSION

REMUNERATION ARRANGEMENTS, INCORPORATING RECOMMENDED ALTERATIONS

1. Remuneration

Remuneration shall be payable at the following rates to Judges, Masters and Magistrates effective from 1 January 2012.

POSITION	REMUNERATION
Chief Justice	\$461,224
President of the Court of Appeal	\$431,680
Senior Puisne Judge	\$412,181
Senior Judge of the Court of Appeal	\$412,181
Puisne Judge	\$399,981
Senior Master of the Supreme Court	\$370,660
Master of the Supreme Court	\$359,982
Chief Judge District Court	\$399,981
Senior Judge District Court	\$370,660
Judge District Court	\$359,982
Chief Magistrate	\$359,982
Deputy Chief Magistrate	\$315,547
Principal Registrar/Magistrate Supreme Court *	\$315,547
Principal Registrar/Magistrate Family Court *	\$315,547
Magistrates	\$296,985
Registrars/Magistrates Family Court *	\$296,985
Parliamentary Inspector, Corruption and Crime Commission	\$159,991

* The relevant office holders have Commissions to be Magistrates while having been given leave to hold the offices of Registrar and Principal Registrar as the case may be.

2. Travelling and Accommodation Allowance

Where an overnight stay away from home is involved, a travelling and accommodation allowance (inclusive of accommodation, meals and incidentals) shall be payable in accordance with the relevant Australian Taxation Office reasonable

benefit limit applicable from time to time and where accompanied by certification that the expense was appropriately incurred.

- 2.1 If the reasonably and properly incurred travelling and accommodation expenses exceed the abovementioned specified rates, the actual costs should be reimbursed. Receipts or vouchers must be provided in support of any claim for reimbursement in excess of the specified rate.
- 2.2 Claims for overnight stays in the Perth metropolitan area should be subject in each case to the approval of the relevant Chief Judicial Officer.
- 2.3 Part payment of travelling and accommodation allowances shall apply in the following circumstances:
 - 2.3.1 Where the Judge, Master or Magistrate 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 shall be payable.
 - 2.3.2 Where the cost of commercial accommodation is met by an entity other than the Judge, Master or Magistrate, an allowance shall be payable in accordance with the relevant Australian Taxation Office reasonable benefit limit for meals and incidentals applicable from time to time and where accompanied by certification that the expense was appropriately incurred.
 - 2.3.3 Where in the case of commercial accommodation referred to in 2.3.2 above, the cost of a meal or meals is met by an entity other than the Judge, Master or Magistrate, the amount of travelling allowance shall be reduced by the relevant amount(s) referred to in the preceding paragraph.

3. Motor Vehicles

The following arrangements apply or continue to apply, as the case may be, to each Judge, Master and full-time Magistrate for the provision of a fully maintained motor vehicle for business and private use.

- 3.1 All vehicles (being part of the Government-owned State Fleet) should be managed in accordance with the policies and conditions established and amended from time to time by the Department of Finance (the effective owner of the State Fleet). Applicable terms and conditions are currently set out in the document "State Fleet - Agency General Agreement".
- 3.2 Selection of appropriate vehicles should be subject to consultation between the Department of the Attorney General (as the department administratively supporting the Courts and therefore the "Agency" responsible for managing the leasing arrangements for vehicles provided to Judges, Masters and Magistrates) and the relevant Court. Although the cost of the vehicles is centrally funded, as a consequence of it being a benefit recommended under

the *Salaries and Allowances Act 1975*, the area remains an administrative responsibility of the Department to manage in a cost effective manner.

3.3 In providing for the use of a motor vehicle under this arrangement, the Tribunal requires that office holders and the Department of the Attorney General will take account of the following principles established by the Tribunal. The provision of a motor vehicle should:

- meet the operational conveyance needs of the judiciary;
- be representative of fair value and benefit;
- be supportive of the efficient, effective and ethical use of State resources;
- be consistent with current principles of environmental sustainability, in particular, fuel efficiency and Government emissions targets;
- provide for adequate safety and security of judicial office holders;
- be commensurate with the status of judicial offices; and
- where private use of a vehicle is permitted, provide scope for personal preference in choice of motor vehicle consistent with the above principles.

3.4 For the purposes of determining the value of the motor vehicle lease relative to the value of the relevant benefit set out in this determination, the lease value shall be based on a whole of life lease over two years/40,000 kilometres. The lease value will be determined at the time of ordering the motor vehicle and will be inclusive of the cost of accessories. No additional costs shall be incurred by the office holder as a result of fluctuations in lease costs during the specified term of the lease.

3.5 The notional lease value must include the lease cost, Fringe Benefits Tax (FBT) and all other operating costs based on the relevant figure of nominated kilometres to be travelled annually. The formula to be adopted in valuing the motor vehicle is:

$$L + R + aD + \text{FBT} + I + \text{LCT}, \text{ where}$$

L	=	Lease payments
R	=	Registration costs
a	=	Running cost per kilometre
D	=	nominated annual kilometres
FBT	=	Fringe Benefits Tax
I	=	Insurance
LCT	=	Luxury car tax

3.6 Motor vehicles leased for judicial office holders shall not be changed prior to the expiration of the lease unless it is for operational reasons approved by the relevant Chief Judicial Officer in consultation with the Department of the Attorney General.

3.7 The Chief Justice is entitled to the provision of a vehicle to the notional value of \$27,300 per annum.

3.8 Judges, Masters and the Chief Magistrate are entitled to the provision of a vehicle to the notional value of \$26,900 per annum.

- 3.9 Magistrates are entitled to the provision of a vehicle to the notional value of \$25,400 per annum.
- 3.10 Judges, Masters, the Chief Magistrate and Magistrates may choose any vehicle and accessories in the Common Use Contract or an “off contract” vehicle and accessories available under Government leasing arrangements, the total cost of which does not exceed the maximum cost of accessing a motor vehicle benefit determined in this report. Where the total cost of the chosen vehicle and accessories exceeds the maximum cost of accessing a motor vehicle benefit determined in this report, the additional cost must be borne by the individual. This includes the purchase cost of any accessories and the installation cost and removal costs if required before disposal of the vehicle.
- 3.11 In order to contain additional administrative costs associated with “off contract” leases, office holders may request cost quotations for not more than three vehicles outside the Government’s Common User Contract for motor vehicles, in the process of selecting a vehicle under this arrangement.
- 3.12 Vehicles with V8 engines are not included. Turbo charged and super charged engines with a capacity greater than 3.0 litres are not included.
- 3.13 Each actual lease should be tailored to achieve the most cost-effective arrangement based on individual usage patterns.
- 3.14 Where the use of an off road vehicle is substantiated by operational need, this must be approved by the Chief Judicial Officer. Off road vehicles shall be of a standard, the cost of which does not exceed the lease value of the Toyota Prado GXL Auto 3.0 litre Turbo Diesel fitted with “roo” bar (air bag compliant). This includes the purchase cost of other essential accessories approved by the relevant Chief Judicial Officer.
- 3.15 For the Magistrate resident in Kununurra, use of the Government provided vehicle is permitted to and from Darwin for periods of up to seven days under the same conditions as if the vehicle were in Western Australia. Under the State Fleet – Agency General Agreement, office holders are required to seek approval from State Fleet for travel outside Western Australia for periods of seven days or more.
- 3.15 Where a Magistrate is employed on a part time basis, a pro rata amount should be added to the remuneration in lieu of a motor vehicle. For that purpose, the full value of the vehicle is assessed at \$24,000 per annum.
- 3.16 Where an acting Magistrate is employed for less than two years, a pro rata amount should be added to the remuneration in lieu of a motor vehicle. For this purpose, the full value of the vehicle is assessed at \$24,000 per annum.

Dated at Perth this 25th day of November 2011.

W S Coleman AM
CHAIRMAN

C A Broadbent
MEMBER

B J Moore
MEMBER

SALARIES AND ALLOWANCES TRIBUNAL