

Magistrates Court (Conditions of Appointment) Decision 2009

Notifiable instrument NI2009—644

made under the

Magistrates Court Act 1930, s 7C (Conditions of appointment of magistrates)

1. Name of instrument

This instrument is the *Magistrates Court (Conditions of Appointment) Decision 2009*.

2. Commencement

This instrument is taken to have commenced on the day it is signed.

3. Application

This instrument applies to a Chief Magistrate or a magistrate appointed after this instrument commences.

Examples:

The instrument does not apply to a magistrate appointed prior to commencement of this instrument when acting as the Chief Magistrate after commencement. It would apply to a magistrate appointed before commencement from the time that person is appointed Chief Magistrate after commencement.

The instrument does not apply to a person appointed as a special magistrate.

4. Application of earlier conditions

This decision replaces:

- the Determination of Terms and Conditions of magistrates in the Australian Capital Territory made on 13 November 1989 by the Governor-General; and
- the Variation of Determination of Terms and Conditions of magistrates made on 13 July 1992 by the Executive;

made under the *Magistrates Court Act 1930*, for a Chief Magistrate or magistrate appointed after the commencement of this instrument.

5. Decision

The Chief Magistrate and a magistrate hold office on the conditions in this instrument.

6. Special condition

If legislation changes the name and/or function of the office of a Chief Magistrate or magistrate, conditions in this instrument may be amended to:

- reflect the changes in the name and/or function; and
- reflect changes in the relationship between the office and other offices.

Notes: This special condition anticipates the possible future consolidation of ACT courts.

Under s73(3A) of the Australian Capital Territory (Self-Government) Act 1988, any change in the remuneration and allowances of a person holding office are not to be diminished while the person holds that office.

Dated 16 December 2009

Simon Corbell
Attorney General

Andrew Barr
Minister

Conditions

1 Interpretation

1.1 In this instrument:

“**Base Salary**” means the remuneration determined under clause 2.1.

“**benefits**” means non-monetary benefits provided at the Territory's expense.

“**business use**” means the use of a vehicle for purposes associated with the operation of the Magistrates Court.

“**employer's superannuation contribution**” in respect of a magistrate means payments made by the Territory to or in respect of the Commonwealth Superannuation Scheme or the Public Sector Superannuation Scheme (or such other scheme of which a magistrate may be a member) in order to support the provision of benefits under any of those schemes.

“**magistrate**” includes Chief Magistrate unless otherwise indicated.

Note: Under the Legislation Act 2001 other terms are defined. For example, for the purposes of this instrument, “chief executive” means the chief executive of the administrative unit with responsibility for the administration of the Magistrates Court Act 1930.

1.2 The provisions of this instrument are additional and subject to any applicable statutory entitlements or conditions.

Note: For example, conditions may derive from the following ACT and Commonwealth Acts and from regulations and instruments made under those laws:

Financial Management Act 1996

Magistrates Court Act 1930

Public Sector Management Act 1994

Remuneration Tribunal Act 1995

Safety, Rehabilitation and Compensation Act 1988 (Cwth)

Superannuation Act 1976 (Cwth)

Superannuation Act 1990 (Cwth)

Superannuation Benefits (Supervisory Mechanisms) Act 1990 (Cwth)

Superannuation (Productivity Benefit) Act 1988 (Cwth)

Workers Compensation Act 1951, and

Work Safety Act 2008.

2 Remuneration

Remuneration amounts

- 2.1 A Chief Magistrate or magistrate holds office on the remuneration determined by the Remuneration Tribunal from time to time.

Total Remuneration

- 2.2 Total Remuneration is the value attributed to the remuneration to be paid to a magistrate and includes:
- a) salary, subject to the packaging provisions of clause 2.3
 - b) the value of a fully maintained vehicle provided by the Territory in accordance with Attachment 1 plus parking and applicable fringe benefits taxation, and
 - c) the value, calculated in accordance with this Part, of the employer's superannuation contribution
- but does not include:
- d) facilities provided as business support under this Part
 - e) travelling allowances and expenditure specified in Part 3, or
 - f) removal costs and other allowances specified in Part 5.

Remuneration packaging

- 2.3 Subject to this Part, a magistrate may elect to receive the benefit of the Total Remuneration by way of salary packaging as determined by the Remuneration Tribunal.

Superannuation

- 2.4 Regardless of anything else in this instrument, a magistrate's annual rate of salary for superannuation purposes is the Base Salary.
- 2.5 If the magistrate is a member of the Commonwealth Superannuation Scheme (CSS) or the Public Sector Superannuation Scheme (PSS), or has a preserved or deferred benefit in one of these schemes, the employer superannuation contributions will be paid to that scheme.
- 2.6 If the magistrate is not a member of CSS or PSS he or she may elect to join the default scheme for the ACT Government or have employer superannuation contributions directed to a superannuation fund nominated by the magistrate provided that the fund complies with all relevant superannuation legislation requirements of the relevant taxation legislation.

- 2.7 In choosing a superannuation fund, it is the magistrate's responsibility to meet any employee requirements of the fund.
- 2.8 Since 1 July 2006, employer superannuation contributions depend on whether or not the magistrate is currently a member of the PSS or CSS superannuation schemes. If a magistrate appointed after the commencement of this instrument is an existing member of the PSS or CSS scheme, employer contribution arrangements will continue to be made to the relevant fund.
- 2.9 In respect of magistrates who are not CSS or PSS members:
- a) the employer contribution is 9% of the salary component of the contract, or 10% if the magistrate contributes 3% or more of his or her salary component, to an agreed superannuation fund in the form of personal superannuation contributions.
 - b) the value of the employer's superannuation contributions made in respect of the magistrate to the superannuation scheme shall reflect the amounts actually made or liable to be made.
- 2.10 The value attributable to the employer's superannuation contribution is referable to a non-salary component of Total Remuneration and may not be the subject of an election to take an equivalent amount of salary instead.

Vehicle and parking

- 2.11 In accordance with the scheme in Attachment 1, a magistrate may elect to receive:
- a) a Territory provided vehicle or
 - b) payment in lieu of the entitlement to the vehicle.
- 2.12 An amount payable under subclause 2.11 shall not be taken as part of the Base Salary of the magistrate for any purpose.
- 2.13 During a year a magistrate may vary his or her election under the scheme (by changing to/from the relevant vehicle scheme described in Attachment 1 from/to payment in lieu), provided that no additional administrative or other expenses are incurred by the Territory as a result of the variation.
- 2.14 Example:
- A magistrate who elects to take payment in lieu of a vehicle may, at any time, opt to enter into a vehicle lease. However, a magistrate who has elected for a vehicle leasing arrangement cannot change the election (to cash payment) until the lease has expired, because this would incur additional cost.

2.15 The entitlement under the scheme is determinable at the time an election is made.

2.16 Example:

At 1/5/10 'Vehicle 1' is available for election under the scheme. However, at 1/7/10 'Vehicle 1' is no longer available because of an increase in the price of that vehicle, but 'Vehicle 2' is available. A magistrate may elect on 1/5/10 to take 'Vehicle 1'. On 1/7/10 the magistrate cannot elect to take 'Vehicle 1', but can take 'Vehicle 2'.

Business support

2.17 A magistrate is entitled to provision by the chief executive of communications, information technology and other office facilities necessary for the efficient conduct of Magistrates Court business.

2.18 Such provision includes:

- a) incidental private use of such facilities
- b) one local and one national newspaper per day (the magistrate may choose to take part or all of this entitlement in paper or digital form), and
- c) a robe (and replacement robe as may reasonably be required from time to time).

2.19 A magistrate is entitled to be reimbursed by the Territory for the annual costs of one or more telecommunications service (whether a telephone 'landline', mobile phone, internet-based telecommunication service or like) to a total combined value \$1,500 per year, indexed from year to year at the CPI rate. The cost of such services over this allowance, even for official purposes, is not separately reimbursed.

3 Official travel

Entitlement to official travel

- 3.1 Subject to this Part and Part 7, a magistrate is entitled to travel on official business (including for training and development) within Australia and internationally in accordance with the same conditions applicable to a chief executive, as determined from time to time by the Remuneration Tribunal.
- 3.2 The Chief Magistrate must give reasonable written notice to the Attorney-General of planned absences from the Territory for official business by the Chief Magistrate or a magistrate.
- 3.3 A magistrate's absence from the Territory on official business must be considered and approved by the Chief Magistrate if satisfied by the magistrate that the travel is in the interests of the Territory.
- 3.4 A magistrate's international travel on official business must be considered and approved by the Attorney General if satisfied by the magistrate that the travel is in the interests of the Territory.
- 3.5 The Chief Magistrate may be accompanied by his or her domestic partner on 1 occasion of official travel within Australia each year at Territory expense, however no other magistrate is entitled to domestic partner accompanied travel at Territory expense.

Note: travelling allowances are determined by the Remuneration Tribunal.

4 Leave

Normal duty

- 4.1 Subject to this Part and any law applicable in the Territory, a magistrate is to be available for duty, at the reasonable direction of the Chief Magistrate, on all days the Magistrates Court is open for and conducts normal business, and on such other days as the Chief Magistrate may reasonably require for the magistrate to conduct the business of the court.

Recreation leave

- 4.2 A magistrate is entitled to recreation leave at a rate of 20 working days for each completed 12 months of service, or pro rata for lesser periods, to be credited in the same way as recreation leave entitlements are credited to employees generally in the ACT Public Service.

- 4.3 In addition to rights under section 7H of the *Magistrates Court Act 1930* (Rights of public servants), a magistrate's recreation leave credit includes any existing recreation leave accrued either through prior service in the Australian Public Service or in the service of an Australian State or Territory, or through employment in a Commonwealth or Territory authority, that in any case ceased not more than two months prior to being appointed as a magistrate.
- 4.4 The Chief Magistrate must give reasonable written notice to the Attorney-General of planned recreation leave, which leave may be for a period up to the Chief Magistrate's existing recreation leave credit.
- 4.5 A magistrate's planned recreation leave (which may be for a period up to the magistrate's existing recreation leave credit) must be considered and approved by the Chief Magistrate if the Chief Magistrate is satisfied it is appropriate.
- 4.6 Where a magistrate ceases to be a magistrate, other than by death, and does not carry forward a recreation leave credit to other Commonwealth or Territory employment, he or she is entitled to be paid the salary equivalent of:
- a) any recreation leave credit unused at the time he or she ceased to be a magistrate, and
 - b) recreation leave accrued since the last 1 January at the rate of one twelfth of a full year's recreation leave accrual for each completed month of service,
- but if a magistrate has died, the Attorney-General may authorise payment of this amount to a dependant of the magistrate or the magistrate's legal personal representative.

Personal leave

- 4.7 A magistrate is entitled to personal leave which may be accessed at full or half-pay to accommodate personal illness or injury, to care for a family member, or to meet family responsibilities of an emergency and unscheduled nature.
- 4.8 A magistrate's entitlement to personal leave accrues at the rate of 18 days on the date of appointment plus a further 18 days at the end of each 12 months service.
- 4.9 A magistrate is entitled to an additional three days full paid personal leave (non-accumulative) on each occasion of a death of a member of their immediate family (as defined in the Public Sector Management Standards 2006) or household.

- 4.10 The Chief Magistrate's absence of three days or more using personal leave must be notified to the Attorney-General with reasons for absence.
- 4.11 A magistrate's absence of three days or more using personal leave must be considered and approved by the Chief Magistrate if the Chief Magistrate is satisfied it is appropriate.
- 4.12 In addition to the personal leave entitlement specified in clause 4.8, a magistrate's sick leave entitlements accrued either through prior service in the Australian Public Service or in the service of an Australian State or Territory, or through employment in a Commonwealth or Territory authority, that in either case ceased not more than two months prior to being appointed a magistrate will be recognised as if accrued while as a magistrate and will be paid at full pay or half pay as originally accrued.
- 4.13 Neither unused personal leave nor unused sick leave accrued through prior service referred to above will be paid out where a magistrate ceases for whatever reason to be a magistrate.
- 4.14 The Attorney-General may grant additional personal leave to a magistrate at the Attorney-General's discretion.

Statutory leave provisions

- 4.15 A magistrate is entitled to:
- a) long service leave in accordance with the *Public Sector Management Act 1994* as if the magistrate was an officer for the purposes of that Act;
 - b) maternity leave in accordance with the *Public Sector Management Act 1994* as if the magistrate was an officer for the purposes of that Act, and
 - c) parental leave in accordance with the *Public Sector Management Standards 2006* as if the magistrate was an officer for the purposes of those Standards.
- 4.16 The Chief Magistrate is to give reasonable written notice to the Attorney-General before taking statutory leave.
- 4.17 Application by a magistrate to take statutory leave must be made to the Chief Magistrate.

Miscellaneous leave

- 4.18 Magistrate's leave for any other purpose must be considered and approved by the Attorney-General if the Attorney-General is satisfied it is in the interests of the Territory. Such leave of absence may be with or without pay and subject to conditions at the discretion of the Attorney-General.

Leave Records

- 4.19 A magistrate must notify the Courts Administrator on behalf of the chief executive of leave as soon as practicable after notice, authorisation or approval is given under this Part, or in any event within 10 working days of the completion of the leave. Notification shall be in the form, if any, specified by the chief executive.

5 Relocation and security assistance

- 5.1 The chief executive may approve reimbursement of costs incurred by a magistrate in connection with relocating to a place within 100kms of Canberra to take the appointment as magistrate.
- 5.2 An amount payable under subclause 5.1 shall not be taken as remuneration for any purpose.
- 5.3 If a magistrate has or installs a home security system at his or her home, the Territory will pay for (or reimburse as appropriate) reasonable back-to-base monitoring costs associated with the system while the person is a magistrate.
- 5.4 Nothing in subclause 5.3 requires the Territory to pay for the installation of a home security system for a magistrate.

6 Assistance for training and development

Costs of training and development

- 6.1 Subject to this Part and Part 7, the Territory will pay for (or reimburse as appropriate) adequate training and development to enable a magistrate to perform the functions of a magistrate.
- 6.2 This assistance includes:
- a) basic single registration for a magistrate to attend a convention or other conference, and

- b) an official conference meal function;
- 6.3 but excludes:
- c) any penalty (for example for late registration or cancellation)
 - d) guest registration fees, and
 - e) fees for other social functions related to the conference.

7 Expenditure Budget

- 7.1 The Chief Magistrate is entitled to be consulted:
- a) when the chief executive prepares or revises an Expenditure Budget setting total amounts for expenditure under Parts 3 and 6 for each financial year
 - b) on budget issues associated with the appointment of a new magistrate, and
 - c) from time to time about the state of the budget for the Magistrates Court and the priorities to which the budget should be applied.
- 7.2 Any proposed expenditure in relation to a magistrate is subject to funds being certified available from the budget by the Courts Administrator on behalf of the chief executive. Reimbursement is at the discretion of the Courts Administrator on behalf of the chief executive and may be in full or in part and may be subject to conditions.

Attachment 1 - Vehicles

Application

Part 7.3 (Executive vehicles) of the Public Sector Management Standards 2006 (as amended from time to time) applies to magistrates appointed after the commencement of this instrument as if:

(1) Section 551A in that part were omitted and replaced with the following:

“551A Application—pt 7.3

(1) This part applies to:

- (a) executives; and
- (b) full time statutory office holders, subject to subsection (2).

(2) This part does not apply to:

- (a) the clerk of the Legislative Assembly; or
- (b) the Chief Justice of the Supreme Court; or
- (c) Judges of the Supreme Court; or
- (d) the President of the Court of Appeal; or
- (e) acting Judges of the Supreme Court; or
- (f) the Master of the Supreme Court.

(3) In this part a reference to an executive includes a reference to the Chief Magistrate or a magistrate appointed after the commencement of the *Magistrates (Conditions of Appointment) Decision 2009*.”

(2) For the purposes of subsections 552(6) and 553(1) in that part, a magistrate is taken to be remunerated in zone 3.

(3) Section 555A were omitted.