



No. 1 of 2021

REPORT OF THE REMUNERATION TRIBUNAL **BERRI COUNTRY MAGISTRATE HOUSING ALLOWANCE**

INTRODUCTION AND BACKGROUND

1. Section 13 of the *Remuneration Act 1990* ("the Act") provides that the Remuneration Tribunal ("the Tribunal") has jurisdiction to determine the remuneration of members of the judiciary and other offices listed in that section of the Act.
2. The Act defines remuneration as including; salary, allowances, expenses, fees and any other benefit of a pecuniary nature.
3. This report deals with an application made by Magistrate Deland for a Berri Country Magistrate Housing Allowance payable in lieu of rental accommodation provided to the Country Resident Magistrate located in Berri, SA.

PROCEDURAL HISTORY

4. On 29 October 2020, as part of the Tribunal's annual review of remuneration for members of the judiciary, the Tribunal received a submission from Magistrate Cathy Deland in relation to an application for a Determination of a Country Magistrate Housing Allowance.
5. The Tribunal decided to deal with the matter separately, in order to conduct further enquires in relation to the nature and operation of existing entitlements.
6. The Tribunal consulted with the Crown Solicitor's Office on behalf of the Premier, the Judicial Remuneration Coordinating Committee, the Magistrates Association of South Australia, and the Chief Magistrate in relation to the submission made by Magistrate Deland.
7. The Tribunal sought further and better particulars in relation to existing entitlements from the Chief Magistrate.

SUBMISSIONS

8. Magistrate Deland's application is summarised below:
 - 8.1. Magistrate Deland requests that the Tribunal approve an allowance for the purposes of maintaining a private residence in Berri.
 - 8.2. That there is a current policy in place whereby Country Resident Magistrates are entitled to secure, furnished accommodation at the country locality, however, Magistrate Deland elected to purchase and maintain her own home at the locality.
 - 8.3. The basis upon which the allowance is sought is Magistrate Deland's personal dissatisfaction with the State provided rental accommodation, having regard to: privacy, security, ongoing maintenance issues, and personal preference for owning own home.

9. No other submissions were received in relation to this matter.

CONSIDERATIONS

10. The application put to the Tribunal by Magistrate Deland seeks the determination of a Country Resident Magistrate Housing Allowance to meet expenses associated with the maintenance of a residence privately owned by Magistrate Deland in the locality of Berri, South Australia.
11. Current work allocation protocols adopted by the magistracy provide that Magistrate Deland sits 5 days per week, 3 weeks per month in the Berri Magistrates Court, and the remaining 1 week per month at the Port Adelaide Magistrates Court.
12. Had Magistrate Deland not elected to purchase and maintain her own residence in Berri, she would have otherwise been entitled to secure, furnished private rental accommodation, at no cost to her, in accordance with the established Country Resident Magistrates policy. That policy has been in effect since 2006 and that policy arrangement is extraneous to any determinations of remuneration made by this Tribunal.
13. The nature of the private rental accommodation available to Magistrate Deland is a house which was previously rented in the general Berri locality at the amount of \$1955.36 per month (or \$451.23 per week). Magistrate Deland's submission states that this accommodation is unsuitable due to her own assessment of several inadequacies including: privacy, security, ongoing maintenance issues, and personal preference for owning her own home. Due to these reasons, Magistrate Deland has elected to purchase and live in her own home in the country locality.
14. Moreover, the Tribunal has heard that Magistrate Deland owns and maintains a private residence in Metropolitan Adelaide, with no payment made to her by the State in relation to that residence.
15. In considering this matter, the Tribunal has examined the distance and duration of a journey using road transport between Adelaide and Berri. That journey is 243 kilometres in distance and 2 hours and 46 minutes in duration. The Tribunal is satisfied that a journey of that nature cannot reasonably be performed by a judicial officer on a daily basis.
16. Therefore, the question before the Tribunal is whether Magistrate Deland ought to be entitled to an allowance on grounds that she has elected to purchase her own home, rather than take up the rental accommodation arrangement provided to Country Resident Magistrates in accordance with the long standing policy adopted by the magistracy.
17. In properly considering this matter, the Tribunal sought further information from the Chief Magistrate and found that similar rental accommodation arrangements apply to Country Resident Magistrates sitting in Courts at Mount Gambier and Port Augusta. No issues have been raised with the Tribunal in relation to those arrangements. No application has been put to the Tribunal in relation to Magistrates resident at Mount Gambier and Port Augusta.
18. The Tribunal notes that Magistrate Deland's work routine is currently five days per week, 3 weeks per month sitting in Berri and 1 week per month sitting in Port Adelaide. That work arrangement has been in place since 2017, and, prior to that, the Berri magistrate would sit full time in Berri. It could be reasonably expected that in the future work allocation protocols for Country Resident Magistrates could change from time to time at the discretion of the magistracy's leadership, having regard to a variety of guiding considerations. The Tribunal is mindful of the varying nature of these working arrangements, and the extent to which the Chief Magistrate may alter them to meet specific work requirements.
19. For the purpose of the Tribunal's reasoning, and to overcome the challenges of varying Courts policy and procedure from time to time, the Tribunal will proceed on the assumption that Magistrates posted to country court locations will reasonably perform the majority (i.e. greater than 50 per cent) of their official duties at the country court

location. This assumption will be reflected in the terms of any Determination made by the Tribunal in relation to this matter.

20. The remaining issue for the Tribunal's consideration is therefore whether a Country Housing Allowance ought to be paid to Magistrate Deland, and, more specifically, whether the grounds upon which Magistrate Deland's request has been made are sufficient as to warrant the payment of an allowance.
21. The grounds provided by Magistrate Deland include privacy, security, ongoing maintenance issues, and personal preference for owning own home. The Tribunal considers these grounds to have some cogency. In particular, the need for home privacy and personal security of judicial officers is of particular importance to the good order of the State. Relevantly, in 2016, the Tribunal issued a Determination¹ for a Judicial Security Allowance which acknowledged and met this genuine requirement.
22. Furthermore, evidence was heard by the Tribunal in 2016 of an increasing risk in relation to the personal security of judicial officers generally. A particular emphasis was placed upon the security risk borne by judicial officers at their private residences. An extract from the Tribunal's 2016 Report is provided below:

"On the material before it, the Tribunal is satisfied that a substantive level of risk to the personal safety of judicial officers exists, which should be recognised as extending to the time a judicial officer performs work at the courts, their chambers and at their private residence."
23. The Tribunal has taken a similar line of reasoning in deciding the issue currently before the Tribunal, and has concluded that the payment of a housing allowance would assist in this respect.

CONCLUSION

24. Accordingly, the Tribunal considers it appropriate that the Berri Country Resident Magistrate should be entitled to a Berri Country Resident Magistrate Housing Allowance in lieu of taking up the country rental accommodation provided by the State, subject to the terms of the accompanying Determination, which provide that the Berri Country Resident Magistrate must perform the majority of his or her official duties in Berri.
25. In the Tribunal's view, nothing within the accompanying Determination incorporates liability to the State for any extraneous, associated, or unforeseen cost or any loss in relation to the purchase of a private residence by a Magistrate.

AMOUNT OF ALLOWANCE

26. In arriving at an appropriate amount of allowance, the Tribunal was persuaded that the amount of expenditure previously met by the State in relation to rental accommodation in Berri was appropriate. That amount is \$23,464 per annum.
27. The Tribunal supports the notion that there should be no additional cost to the State involved in the establishment of the abovementioned allowance, when compared to the cost of the previous rental accommodation arrangement provided by the State.
28. When reviewing this entitlement in future, the Tribunal intends to have regard to movements in the costs of rental accommodation at the country court location, to ensure that the State does not incur any undue or unexpected costs in relation to the payment of the allowance.
29. The Tribunal has not been asked to consider issues in relation to taxation of the above allowance. The Tribunal notes that issues in relation to taxation are not within its mandate and jurisdiction.

OPERATIVE DATE

30. The Tribunal considers it appropriate that the operative date of the accompanying Determination shall be 27 April 2020, which is the date upon which Magistrate Deland vacated her State provided rental accommodation in Berri.

¹ Remuneration Tribunal Determination 13 of 2016 – Judicial Security Allowance

31. The accompanying Determination 1 of 2021 will now issue.



Matthew O'Callaghan
PRESIDENT



Deborah Black
MEMBER



Peter de Cure
MEMBER

Dated this 3rd day of February 2021