



No. 13 of 2022

REPORT OF THE REMUNERATION TRIBUNAL

Application for supply of a Four-Wheel Drive Vehicle to the Resident Magistrate, Berri, at a cost equal to the Conveyance Allowance provided by Determination No 14 of 2021

INTRODUCTION

1. On 19 October 2022 the Remuneration Tribunal (**Tribunal**) received an application and submission from the Resident Magistrate, Berri (**Berri Magistrate**) to grant the supply of a Four-Wheel Drive (**4WD**) vehicle at a cost equal to the conveyance allowance provided by Tribunal Report and Determination No 14 of 2021 (as may be amended from time to time).
2. The Tribunal has duly considered this application, however for the reasons given in this report the Tribunal has decided not to make a determination as sought.

THE REVIEW PROCESS

3. On 20 October 2022, in accordance with sections 10(2) and 10(4) of the *Remuneration Act 1990 (Act)*, the Tribunal wrote to and invited submissions by 18 November 2022 in respect of this application from:
 - a. the Honourable Premier of South Australia – as the Minister responsible for the Act who may make submissions or introduce evidence in the public interest
 - b. the Judicial Remuneration Coordinating Committee (**JRCC**)
 - c. the Magistrates Association of South Australia
 - d. the Chief Magistrate
4. The Tribunal also placed a notice on its website from 20 October 2022 calling for submissions from affected persons by 18 November 2022.
5. On 28 October 2022 the JRCC provided a submission stating that it supported the application for provision of the vehicle while the Magistrate is Resident Magistrate in the Riverland.
6. On 3 November 2022 the Chief Magistrate provided a submission in support of the application which agreed with the reasons and submissions of the Berri Magistrate.
7. On 8 November 2022 the Premier's representative confirmed that the Premier did not intend to provide any submissions in respect of this application.

8. No other submissions were received.
9. No hearing was convened by the Tribunal in respect of this application, as the Berri Magistrate did not seek to make oral submissions and nor did any other interested person. The Tribunal did however briefly raise the matter at its hearing on 14 November 2022, and the Honourable Justice Tim Stanley as chair of the JRCC briefly explained that they supported the application.
10. In summary, the Berri Magistrate has sought this determination for a variety of reasons, including:
 - a. The Berri Magistrate currently uses a 4WD vehicle, but has to pay \$5,626 per annum in addition to the conveyance allowance set by the Tribunal.
 - b. Resident Magistrates at Port Augusta and Mount Gambier have for many years been entitled, by previous Tribunal determinations, to have a 4WD supplied at a cost equal to the conveyance allowance.
 - c. The supply of a 4WD vehicle is highly desirable for reasons that go beyond the initial justification for the supply of such vehicles adopted by the Tribunal. Those reasons include, safety, reliability, comfort as well as suitability for use, when required on unsealed roads or off-road.
 - d. The Berri Magistrate is required as part of his or her duties to undertake a return trip between Adelaide and Berri once a month, and is likely to return to Adelaide frequently on the weekends to spend time with family. The Berri Magistrate is also required to travel to Waikerie at least once each month.

CONSIDERATION AND CONCLUSION

11. The Tribunal has initially considered this request from a safety perspective. The Tribunal notes the assertions that a 4WD vehicle is safer, more reliable and more comfortable, as well as being more suitable for use on unsealed roads. The Berri Magistrate notes that the position requires travelling considerable distances with heavy traffic volumes, on roads in variable conditions such that a 4WD is asserted to be considerably safer than a normal passenger vehicle. The potential for collisions with wildlife or livestock is also proposed as a safety consideration in favour of a 4WD vehicle.
12. The Tribunal acknowledges that the Berri Magistrate is only occasionally required to travel on unsealed roads
13. The proposition that 4WD vehicles are inherently safer than traditional passenger vehicles has been the subject of significant research and debate. A key element in this respect relates to the make of the vehicle and the safety equipment associated with it. However, issues associated with poorer handling and comparatively fewer safety features are also significant issues.
14. The Tribunal is not persuaded that a 4WD vehicle is necessarily safer on a highway with common heavy vehicle than a normal passenger vehicle.
15. It may be the case that a 4WD vehicle is better able to withstand a collision with either wildlife or livestock, but this may be offset by both safety equipment and manoeuvrability issues. As the Berri Magistrate has drawn to the Tribunal's attention, issues of road speed are also fundamental.

16. Apart from situations where there is substantial off-road use, the Tribunal is not persuaded that the provision of a 4WD vehicle creates a significant safety benefit. Further, the Tribunal rejects any notion that passenger vehicles of the nature available to Magistrates are inherently less safe for either Magistrates or other public sector employees who regularly use them.
17. The Berri Magistrate relies on a comparative argument based on the provision of 4WD vehicles to the Resident Magistrates in Port Augusta and Mt Gambier.
18. In 2002¹ the Tribunal agreed that the then Magistrate based at Port Augusta who was undertaking trial Regional Management duties, should be supplied with a 4WD vehicle without being required to pay the additional costs for that vehicle. In reaching that decision the Tribunal noted that the trial position required travel, over hundreds of kilometres on un-bituminised roads. The Tribunal did not establish this arrangement as an automatic component of remuneration for Magistrates in other areas.
19. In 2003² that Tribunal considered remuneration arrangements for country Resident Magistrates in Port Augusta and Mount Gambier. A 4WD vehicle was requested for the Port Augusta based Magistrate but not for the Mt Gambier based Magistrate. As a part of those arrangements the Tribunal confirmed the provision of a 4WD vehicle to the Port Augusta Magistrate, at no additional cost.
20. In 2006³ the Tribunal considered and agreed to the provision of a 4WD vehicle for the Mt Gambier Resident Magistrate because of the then Magistrate's argument that he was involved in prosecutions under the *Native Vegetation Management Act 1985* and the *Fisheries Act 1982*, both of which required viewing off road locations. The Resident Magistrate argued that the principles of judicial independence meant that it was inappropriate for him to travel to those sites with the contesting parties. The Resident Magistrate also referred to the risk of wildlife on roads. The Tribunal agreed to the provision of a 4WD vehicle at no additional cost to the Magistrate on the basis of the judicial independence principle.
21. The Tribunal acknowledges that issues of judicial independence might arise if a Magistrate is frequently required to travel off road as part of their conduct of matters and travel with parties involved in a matter is inappropriate. That issue has not been seriously argued in this instance. The Tribunal is not satisfied that the circumstances applicable to the Berri Magistrate are necessarily comparable to those of the Magistrates in Port Augusta or Mt Gambier in 2003 and 2006 respectively. Indeed, the Tribunal is uncertain about the continuing relevance of those 2003 and 2006 provisions. If the Berri Magistrate has a vehicle unsuited to off-road use it appears to the Tribunal that the hire of an appropriate vehicle to deal with occasional off-road use to avoid the need to travel to a site with the parties to a matter would be more economical. To this end, the Tribunal has amended the determination providing for a conveyance allowances and related entitlements, to enable the State Courts Administrator to allow the hire of a vehicle at the State's expense in circumstances where the vehicle available to a member of the judiciary for official and private use cannot travel safely to a designated location.

¹ Determination and Report of the Remuneration Tribunal – No 7 of 2002 – Resident Magistrate – Port Augusta Magistrates Court.


² Determination and Report of the Remuneration Tribunal – No 8 of 2003 – Country Resident Magistrates.

³ Determination and Report of the Remuneration Tribunal – No 7 of 2006 – 4WD Request – Mount Gambier Resident Magistrate.

22. The Tribunal has also noted a further factor relevant to its deliberations on this issue. The current conveyance allowance for Magistrates is \$16,063 per annum, as set by Determination 9 of 2022. Magistrates can select a wide range of vehicles, including 4WD vehicles at different costs and pay for the difference themselves. That is the arrangement currently adopted by the Berri Magistrate. Depending on the costs of a 4WD vehicle selected, the additional annual cost could amount to over \$5,000 per annum. The effect of the Berri Magistrate's request would effectively result in that additional cost being met by the State government through one of its agencies. The Tribunal is not satisfied that the information before it justifies such a potential expenditure.
23. For these reasons the Tribunal is not prepared to grant the Berri Magistrate's request. Given this conclusion no determination is appropriate.



Matthew O'Callaghan
PRESIDENT



Deborah Black
MEMBER



Peter de Cure AM
MEMBER

Dated: 14 December 2022