

DETERMINATION AND REPORT OF THE REMUNERATION TRIBUNAL

CONVEYANCE ALLOWANCE – COURT OFFICERS, JUDGES AND STATUTORY OFFICERS

A. REPORT

The following Determination has been issued to amend Determination No. 3 of 2011. The Allowances at paragraph 3 have been adjusted to reflect increases in the Fleet SA Annual Charges Payable.

B. DETERMINATION

1. SCOPE OF DETERMINATION

This Determination applies to Judges, Court Officers and Statutory Officers.

2. INTERPRETATION

2.1. In this Determination, unless the contrary appears:

“**Court Officer**” means Commissioners of the Environment, Resources and Development Court.

“**Executives**” means persons appointed to an executive position under the *Public Sector Act 2009*;

“**Judges**” means any of the following members of the judiciary:
the Chief Justice of the Supreme Court;
Puisne Judges of the Supreme Court;
Masters of the Supreme Court;
the Chief Judge of the District Court;
Judges of the Environment, Resources and Development Court;
Masters of the District Court;
other District Court Judges;
the Chief Magistrate;
the Deputy Chief Magistrate;
Supervising Magistrates;
the Assisting Supervising Magistrate of the Adelaide Magistrates Court;
Stipendiary Magistrates;
the Supervising Industrial Magistrate;
other Industrial Magistrates;
the State Coroner;
the Deputy State Coroner;
the Senior Judge of the Industrial Relations Court and President of the Workers Compensation Tribunal;
the President of the Industrial Relations Commission and Judge of the Industrial Relations Court;
other Judges of the Industrial Relations Court who hold joint commissions in Fair Work Australia and the Industrial Relations Commission of South Australia.

“**Registrar**” means the “Industrial Registrar” or “Registrar” within the meaning of the *Fair Work Act 1994* (SA) and the *Workers Rehabilitation and Compensation Act 1986* (SA).

“Retirement” bears the same meaning as in the *Judges’ Pensions Act 1971*, *Southern State Superannuation Act 2009* and in the *Superannuation Act 1988*.

“Resignation” bears the same meaning as in the *Judges’ Pensions Act 1971*, *Southern State Superannuation Act 2009* and in the *Superannuation Act 1988*.

“Statutory Officers” means any of the following statutory office holders:

Deputy Presidents of the Industrial Relations Commission;
Commissioners of the Industrial Relations Commission;
the Auditor General;
the Electoral Commissioner;
the Deputy Electoral Commissioner;
the Employee Ombudsman; and
the Health and Community Services Complaints Commissioner.

- 2.2. For the purposes of this Determination, **“salary”** bears the same meaning as in the *Judges’ Pensions Act 1971*, *Southern State Superannuation Act 2009* and in the *Superannuation Act 1988* to the intent and effect that any amount paid by way of allowance is not “salary”, and that any abatement or reduction of salary in accordance with this Determination will not affect the determination of entitlements or obligations pursuant to those Acts.

3. **CONVEYANCE ALLOWANCES**

3.1. **Amount of Allowances**

Subject to the conditions set out in this Determination, Judges, Court Officers and Statutory Officers are entitled to receive a Conveyance Allowance payable fortnightly at an annual rate as follows:

3.1.1 For:

Judges of the Supreme Court;
the Chief Judge of the District Court;
the Senior Judge of the Industrial Relations Court;
the President of the Industrial Relations Commission; and
the Auditor General;

an amount which is the higher of:

- a) \$20,808; and
- b) the amount determined from time to time by Fleet SA as the annual charge payable by Executives for a Holden Calais VE V-Series Sedan, less the sum of \$758.

3.1.2 For:

Judges of the District Court;
Judges of the Industrial Relations Court;
Judges of the Environment, Resources and Development Court;
Masters of the Supreme Court;
the Electoral Commissioner; and
the Health and Community Services Complaints Commissioner;

an amount which is the higher of:

- a) \$17,951; and
- b) the amount determined from time to time by Fleet SA as the annual charge payable by Executives for a Holden Calais VE II Sedan, less the sum of \$758.

3.1.3 For:

The Chief Magistrate;
 the Deputy Chief Magistrate;
 Supervising Magistrates;
 Stipendiary Magistrates;
 Industrial Magistrates;
 Masters of the District Court;
 the State Coroner;
 the Deputy State Coroner;
 Deputy Presidents (other than Judges) and Commissioners of the Industrial Relations Commission; and
 Commissioners of the Environment, Resources and Development Court;
 the Employee Ombudsman; and
 the Deputy Electoral Commissioner;

an amount which is the higher of:

- a) \$15,008; and
- b) the amount determined from time to time by Fleet SA as the annual charge payable by Executives for a Holden Commodore VE II Omega Sedan, less the sum of \$758.

3.2. **Temporary Appointees**

Persons appointed to act as a Judge, Court Officer or Statutory Officer, on a temporary basis who are not provided with a vehicle in their substantive position and who serve in that capacity for a period in excess of one calendar month, are entitled to receive after the expiration of the first calendar month of service, a Conveyance Allowance in accordance with clause 3.1.

3.3. **Use of Taxis and Private Vehicles**3.3.1 **Judges and Court Officers**

A Judge or Court Officer is not entitled to the use of a vehicle provided by the State Courts Administrator or to engage taxis or hire car at the expense of the State Courts Administrator, or to seek the payment of any additional allowance for the use of a private vehicle, whether for official or unofficial purposes unless:

- a) it has been certified by the State Courts Administrator that it was inefficient for the Judge or Court Officer to use the vehicle available for their private use; or
- b) such use or engagement is consistent with a general direction given by the Chief Judicial Officer of the relevant Court, or in the case of Court Officers, the presiding officer of the relevant Tribunal, as to the circumstances where the vehicle available for private use, need not be used by reason of efficiency.

An example of circumstances where such certification or general directions may be given is for journeys to and from the airport where it may be more efficient for a Judge or Statutory Officer to use a taxi.

For members of the Industrial Relations Court and Commission of South Australia and the Workers Compensation Tribunal, the Registrar is the relevant approval authority.

3.3.2 **Other Statutory Officers**

A Statutory Officer, other than a Court Officer, must not engage a taxi or hire car, and is not entitled to the payment of any additional allowance for the use of a private vehicle, whether for official or unofficial purposes, unless it is inefficient to use the vehicle available for the Officer's private use.

3.3.3 Amount of Reimbursement

When any person subject to this Determination is seeking payment of an additional allowance to cover the use of a private motor vehicle for official purposes, reimbursement of the cost will be made, calculated at the rate per kilometre at a rate equating to that pursuant to the SA Public Sector Salaried Employees Interim Award.

4. VEHICLES FOR PRIVATE USE

4.1. Selection of Vehicle

Judges and Court Officers, by notice in writing directed to the State Courts Administrator, Statutory Officers, by notice in writing directed to the Director, Fleet SA, and members of the Industrial Relations Court and Commission of South Australia and the Workers Compensation Tribunal of South Australia by notice in writing directed to the Registrar are entitled to elect to have a motor vehicle of any model and type in the attached Schedule of vehicles (as varied from time to time) allocated to him or her upon the conditions specified in this Determination. The annual charge payable for each vehicle, determined by Fleet SA on the same basis as the calculation made in respect of the use of motor vehicles by Executives, and current at the date of this Determination, is set out in the Schedule.

4.2. Alternative Vehicle

An alternative vehicle may be supplied where approval has been granted by the Remuneration Tribunal in recognition of a Judge's, Court Officer's or Statutory Officer's disability or family circumstances. The annual charge for the use of the vehicle will be calculated on the same basis as the calculation made by Fleet SA for annual charges for use of motor vehicles by Executives.

4.3. Temporary Appointees

Persons appointed to act as a Judge, Court Officer or Statutory Officer, on a temporary basis are not entitled to make an election under clause 4.1.

4.4. Charges for Use of Vehicles

The amount payable by a Judge, Court Officer or Statutory Officer, for the use of a selected vehicle is the amount set out in the Schedule adjacent to the description of the type of vehicle under the heading "Annual Charge Payable".

4.5. Payment of Vehicle Charges

If a Judge, Court Officer or Statutory Officer makes an election under clause 4.1 and a vehicle is supplied in accordance with that election, then the salary and allowances otherwise payable to the Judge, Court Officer or Statutory Officer must be abated and reduced so as to offset the charges for the use of the vehicle for the period during which the Judge, Court Officer or Statutory Officer, has the use of the vehicle.

4.6. New Models or Types

4.6.1. If:

- a) a new model of a type specified in the Schedule; or
- b) a new type of vehicle

becomes available for selection by a Judge, Court Officer or Statutory Officer, after the date of election and before the placement of a binding order by or on behalf of:

- (a) the State Courts Administrator in relation to a Judge, or a Court Officer; or
- (b) the Director, Fleet SA, in relation to a Statutory Officer; or

- (c) the Registrar, in relation to members of the Industrial Relations Court and Commission of South Australia, and the Workers Compensation Tribunal;

the Judge, Court Officer, or Statutory Officer is entitled to withdraw the original election and elect to take the new model or type of vehicle.

4.6.2. The annual charge payable for a new model or new type of vehicle is that amount determined by Fleet SA as the annual charge for private use of the vehicle by Executives. The annual charge takes into account the following:

- purchase price and depreciation;
- fuel, maintenance, insurance and registration costs and interest rates; (operating costs are calculated on the basis of an average of 70% private usage);
- Goods and Services Tax (GST);
- Fringe Benefits Tax (FBT) based on an attributed business rate of 20,000 kilometres per year;
- the vehicle will be retained for 3 years or 60,000 kilometres travelled, whichever first occurs.

4.6.3. If a model or type of vehicle selected by a Judge, Court Officer or Statutory Officer, becomes unavailable before the placement of a binding order, the Judge, Court Officer or Statutory Officer, must be advised accordingly and allowed to make a further election under clause 4.1.

4.6.4. If a model becomes unavailable after the date of placement of a binding order and a later or better model vehicle is supplied, any Judge, Court Officer or Statutory Officer, who has selected the unavailable vehicle is liable only to pay the annual charge for the vehicle as selected, and not the charge payable for the vehicle as supplied.

4.7. **Accessories**

The Judge, Court Officer or Statutory Officer, may choose to have approved accessories fitted to the vehicle. All such accessories fitted must be manufacturer approved options. The full cost of the accessories and the expense of having them fitted (and including any tax incurred) is payable by the Judge, Court Officer or Statutory Officer. When the vehicle is due for return the Judge, Court Officer or Statutory Officer, may have personally-installed accessories removed from the vehicle, providing the Judge, Court Officer or Statutory Officer, meets the full cost of restoring the vehicle to the same condition as if the accessories had not been fitted.

No compensation will be paid if options are left on the vehicle unless agreed by:

- (a) in the case of Judges and Court Officers, the State Courts Administrator;
- (b) in the case of Statutory Officers, the Director, Fleet SA; and
- (c) in the case of the members of the Industrial Relations Court and Commission of South Australia, and the Workers Compensation Tribunal, the Registrar.

Options such as airbags, ABS brake systems and cruise control may not be removed, and tow bars must not be reinstalled on another vehicle.

4.8. **Retention of Vehicle**

Once having made an election and receiving the vehicle, the Judge, Court Officer or Statutory Officer, must keep the vehicle for a period equivalent to the period determined from time to time by Fleet SA for Public Employment as the period for the replacement of vehicles provided to Executives.

At the conclusion of that period the Judge, Court Officer or Statutory Officer, will be entitled to make a new election, or, if he or she does not make an election, to be paid the allowance.

4.9. **Conditions of Use**

The vehicle will be fully maintained, serviced and insured by;

- (a) the State Courts Administrator on behalf of Judges and Court Officers;
- (b) the Director, Fleet SA, on behalf of Statutory Officers; and
- (c) the Registrar, on behalf of the members of the Industrial Relations Court and Commission of South Australia, and the Workers Compensation Tribunal;

Parking for the vehicle will be made available at or near the place of duty of the Judge, Court Officer, or Statutory Officer, and the vehicle will be available for private and official use subject to the following:

- 4.9.1. The Judge, Court Officer, or Statutory Officer, must make the vehicle available for official use (including for official use by the Judge, Court Officer, or Statutory Officer) at all times whilst the vehicle is parked at or near the usual place of work of the Judge, Court Officer, or Statutory Officer, and the Judge, or Statutory Officer, does not require the vehicle for private use; and
- 4.9.2. The State Courts Administrator, in relation to Judges and Court Officers, the Director of Fleet SA, and the Registrar in relation to members of the Industrial Relations Court and Commission of South Australia and the Workers Compensation Tribunal, in relation to Statutory Officers will enable the Judge, Court Officer, or Statutory Officer to refuel the vehicle providing that the vehicle is fuelled in accordance with any requirements specified by Fleet SA, which may include requirements that the vehicle be fuelled using a particular brand of motor fuel and that it be only fuelled in South Australia. (If fuelled otherwise than in accordance with those requirements, it will be at the cost of the Judge, Court Officer, or Statutory Officer).
- 4.9.3. The Judge or Court Officer must make the vehicle available as required by the State Courts Administrator and the Statutory Officer must make the vehicle available as required by the Director, Fleet SA, and the member of the Industrial Relations Court and Commission of South Australia and the Workers Compensation Tribunal must make the vehicle available as required by the Registrar for the purposes of the maintenance and repair of the vehicle and must deliver the vehicle to such place as may be specified by the State Courts Administrator, Director, Fleet SA, or Registrar from time to time for that purpose.
- 4.9.4. The State Courts Administrator, in relation to Judges and Court Officers, the Director, Fleet SA, in relation to Statutory Officers and the Registrar in relation to members of the Industrial Relations Court and Commission of South Australia and the Workers Compensation Tribunal will ensure that Judges, Court Officers and Statutory Officers are insured (which may be pursuant to Government "self insurance") in respect of compulsory third party liability, third party property damage and any property damage to the vehicle and will hold the Judge, Court Officer, or Statutory Officer harmless in respect of any such property damage. Personal items within the vehicle need not be covered. The Judge, Court Officer, or Statutory Officer must comply with any requirements of the insurance policy of which the member is aware or should have been aware.
- 4.9.5. The Judge, Court Officer or Statutory Officer, will be responsible for any driving or parking fines for offences incurred.

- 4.9.6. The vehicle is available to the Judge, Court Officer or Statutory Officer, while on leave. Where the Judge, Court Officer or Statutory Officer, is absent from duty for a period greater than 7 days then the Judge, Court Officer, or Statutory Officer, will be responsible for fuelling the vehicle until the Judge, Court Officer, or Statutory Officer, returns to duty.
- 4.9.7. Vehicles may be driven interstate during periods of leave and there is no limit to privately travelled kilometres. Fuel charges for private interstate trips are entirely the personal responsibility of the Judge, Court Officer, or Statutory Officer.

4.10. Special Conditions of Use

Notwithstanding anything else in this Determination:

- 4.10.1. where any damage is the result of wilful or deliberate act of any person, the State Courts Administrator, in relation to Judges or Court Officers, the Director, Fleet SA, in relation to Statutory Officers, and the Registrar, in relation to members of the Industrial Relations Court and Commission of South Australia and the Workers Compensation Tribunal, may take such action as he or she thinks fit to recover the cost of such damage;
- 4.10.2. the insurance and discharges are not applicable if the driver is under the influence of drugs and/or alcohol;
- 4.10.3. the insurance and discharges are not applicable if the insurance has been brought to the attention of the Judge, Court Officer or Statutory Officer and is avoided by an action of the driver of the vehicle;
- 4.10.4. where the insurance policy contains an excess clause, then the Judge, or Court Officer will be liable to repay the State Courts Administrator, in relation to Statutory Officers liable to pay the Director, Fleet SA, and members of the Industrial Relations Court and Commission of South Australia and the Workers Compensation Tribunal will be liable to repay the Registrar the amount of that excess (or any part thereof) in the event that it becomes payable by reason of the driver of the vehicle being blameworthy for any of the damage giving rise to a claim on the policy when the vehicle is being used other than for official use.

4.11. Care of Vehicle

The Judge, Court Officer or Statutory Officer is responsible for ensuring that reasonable care is taken of the vehicle. Off street parking at the home of the person concerned is to be used if available and reasonable steps are to be taken to ensure its security. Where any damage to a vehicle supplied to a:

- 4.11.1. Judge or Court Officer is, in the opinion of the Courts Administration Council, the consequence of a serious breach of the obligations imposed by this clause, the Judge, or Court Officer must, on demand, pay the Courts Administration Authority the proper cost of rectification of such damage;
- 4.11.2. Statutory Officer is, in the opinion of the Director, Fleet SA, the consequence of a serious breach of the obligations imposed by this clause, the Statutory Officer concerned must, on demand, pay to Fleet SA the proper cost of rectification of such damage; and
- 4.11.3. Member of the Industrial Relations Court and Commission of South Australia and the Workers Compensation Tribunal is, in the opinion of the Registrar, the consequence of a serious breach of the obligations imposed by this

clause, the Member concerned must, on demand, pay to the Tribunal the proper cost of rectification of such damage.

4.12. **Additional Drivers**

The vehicle may be driven by any other Government employee who requires the vehicle for official use.

Judges and Court Officers must nominate to the State Courts Administrator and Statutory Officers must nominate to the Director, Fleet SA respectively, the names of any persons to use the vehicle at times when it is not required to be available for official use and, subject to the control and direction of the Judge, Court Officer or Statutory Officer, such persons will be authorised to use the vehicle upon such nomination.

Approval is required from States Courts Administrator for Judges and Court Officers, from the Director, Fleet SA for Statutory Officers, and the Registrar for members of the Industrial Relations Court and Commission of South Australia and the Workers Compensation Tribunal for the vehicle to be driven by holders of any form of provisional licence or learner's permit. Approval is also required if any other category of person not otherwise mentioned, is to drive the vehicle.

4.13. **Right to Purchase**

At any time during the 12 months immediately preceding the date of his or her retirement or resignation, a Judge or Court Officer, by notice in writing to the State Courts Administrator, a Statutory Officer, by notice in writing to the Director, Fleet SA, and a member of the Industrial Relations Court and Commission of South Australia and the Workers Compensation Tribunal, by notice in writing to the Registrar, may elect to purchase the vehicle then allocated to him or her as at the date of his or her retirement or resignation or at the end of the lease period. After such notification has been given, the State Courts Administrator, the Director, Fleet SA, or the Registrar must take such steps as are necessary to ensure that it can sell the vehicle to the member.

4.14 **No Changeover**

A Judge, Court Officer or Statutory Officer who makes an election under clause 4.13 shall not be permitted or required to hand a vehicle in for normally scheduled changeover where that changeover would occur between the date of election and the date of retirement/resignation/end of lease period.

4.15 **Conditions of Purchase**

The conditions of in relation to a purchase made following an election under clause 4.13 shall be:

- 4.15.1 The price will be the fair market value for such a vehicle sold without any statutory warranty.
- 4.15.2 The price shall be agreed between the Director, Fleet SA, and the Judge/Court Officer/Statutory Officer, due regard being had to prices generally recovered for such vehicles at Fleet SA public auctions.
- 4.15.3 Failing such agreement, the price shall be determined by an independent valuer agreed by the parties. Where the prospective retiree/resignee is a:
 - 4.15.3.1 Judge or Court Officer, any fee payable to such a valuer shall be borne in equal shares by the prospective retiree/resignee and the State Courts Administrator;
 - 4.15.3.2 Statutory Officer any fee payable to such a valuer shall be borne in equal shares with half payable by the respective retiree/resignee

and the other half being payable from funds appropriated to pay expenses associated with the statutory office held by the retiree/resignee; and

- 4.15.3.3 Member of the Industrial Relations Court and Commission of South Australia and the Workers Compensation Tribunal, any fee payable to such a valuer shall be borne in equal shares by the prospective retiree/resignee and the Registrar.

- 4.15.4 The price shall be payable in full on or prior to the date of retirement/resignation of the Judge, Court Officer or Statutory Officer.

5. TRANSITIONAL PROVISIONS

During the transitional period following the first introduction of these conditions, a Judge, Court Officer or Statutory Officer will be deemed to have made the relevant election at the time that he/she last received a Government vehicle, but otherwise will hold the vehicle subject to these conditions as from the date of the introduction of these conditions.

6. DATE OF OPERATION

- 6.1 The Conveyance Allowances prescribed in Clause 3.1.1, 3.1.2 and 3.1.3 are operative from 1 May 2012.
- 6.2 If a Judge, Court Officer or Statutory Officer currently has the use of a vehicle pursuant to a previous Determination, the Conveyance Allowance and Annual Charge Payable under the previous Determination will continue to apply. Clause 3 and the Schedule to this Determination will have no effect until that Judge, Court Officer or Statutory Officer takes delivery of a vehicle included in the Schedule to this Determination, or elects not to receive a vehicle.
- 6.3 This Determination supersedes Determination 3 of 2011.



Deane R Prior
PRESIDENT



Julie A Obst
MEMBER



David J Smythe
MEMBER

2) April 2012