

REMUNERATION TRIBUNAL

REPORT RELATING TO DETERMINATION NO. 5 OF 2001

CONVEYANCE ALLOWANCES

1. Conveyance Allowances for Judges, Statutory Officers and Court Officers are presently prescribed in the Tribunal's Determination No. 8 of 1999.
2. During the year 2000 review of the remuneration of the members of the judiciary and other statutory office holders, the Judicial Remuneration Co-ordinating Committee (JRCC) submitted that the Schedule to this Determination was unnecessarily restrictive and that any currently available vehicle should be able to be selected. In response, the Minister submitted that whilst the Government policy with respect to judicial officers' motor vehicles was to limit them to those manufactured in South Australia, the Government would not object to extending the range of cars included in the Determination provided that the vehicles are manufactured in this State. The following clause was proposed in the Minister's supplementary submission dated 28 November 2000.

“A Judge, or Court Officer may make an application to the State Courts Administrator, and a Statutory Officer may make an application to the Commissioner for Public Employment, for the approval of the use of a vehicle outside the Schedule if there are sound reasons. The State Courts Administrator is to apply the same guidelines as used from time to time by the Commissioner for Public Employment, in relation to executives. If a vehicle outside the Schedule is approved a costing of that vehicle will be carried out by the Director of Fleet SA. If the cost of the vehicle is greater than the conveyance allowance the additional cost must be borne by the Judge, Court Officer or Statutory Officer.”

The Tribunal notes that the proposed clause was not limited to Judges and Court Officers but to Statutory Officers as well.

3. At paragraph 5.8.4 of its Report relating to Determination No. 2 of 2000 the Tribunal indicated its support for extending the range of motor vehicles available and advised that it would review Determination No. 8 of 1999 in 2001.
4. On 27 July 2001 the Tribunal was informed that despite discussions between the JRCC and the Minister's representatives, whilst the requirement for the available vehicles to be manufactured in South Australia was not in contention, the parties had been unable to reach agreement on an extended list of available motor vehicles.
5. In response to a request by the Tribunal, the Minister's representatives provided the Tribunal with a list of the currently available vehicles (including an updated associated annual charge payable for each vehicle listed) and a list of those currently not available (but manufactured in South Australia) and their associated annual charge.

6. The Tribunal has considered the submissions of the parties and has decided that the list of vehicles currently available should be extended to include all vehicles manufactured in South Australia. Further, the Tribunal is not persuaded that there is a need to limit access to the wider range of vehicles to only those situations where “there are sound reasons” for selecting such vehicle and determines accordingly. However, where a Judge, Statutory Officer or Court Officer selects a particular vehicle and the annual charge payable in respect of that vehicle is greater than the applicable conveyance allowance, the additional cost must be borne by the Judge, Statutory Officer or Court Officer.
7. In view of the fact that –
 - the existing Determination in respect of Conveyance Allowances applies to Judges, Statutory Officers and Court Officers and
 - the clause proposed by the Minister in the supplementary submission of 28 November 2000, included the above groups,

the Tribunal has also decided that the wider list of vehicles (including updated annual charges payable), will apply to Judges, Statutory Officers and Court Officers.
8. The attached Determination will take effect from 6 August 2001.

Hedley R. Bachmann
PRESIDENT

6 August 2001

DETERMINATION OF THE REMUNERATION TRIBUNAL

CONVEYANCE ALLOWANCES

1. SCOPE OF DETERMINATION

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

2. INTERPRETATION

2.1. In this Determination, unless the contrary appears:

“**Commissioner**” means the person for the time being appointed to, or carrying out, the duties of, the Commissioner of Public Employment under the *Public Sector Management Act, 1995*;

“**Court Officer**” means any of the following:
the State Coroner;
Commissioners of the Environment, Resources and Development Court.

“**Executives**” means persons appointed to an executive position under the *Public Sector Management Act, 1995*;

“**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;
His Honour Judge WD Jennings, Senior Judge of the Industrial Relations Court and President of the Industrial Relations Commission;

and other Judges of the Industrial Relations Court who hold joint commissions in the Australian Industrial Relations Commission and the Industrial Relations Commission of South Australia.

“**Retirement**” bears the same meaning as in the *Judges Pension Act* and in the *Superannuation Act*.

“**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 Ombudsman;
the Deputy Electoral Commissioner; and
the Employee Ombudsman.

- 2.2. For the purposes of this Determination, “**salary**” bears the same meaning as in the *Judges Pension Act* and in the *Superannuation Act* 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;
the Auditor General;
an amount which is the higher of:

- a) \$12,848; and
- b) the amount determined from time to time by the Commissioner as the annual charge payable by Executives for a Calais 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;
 and
 Masters of the Supreme Court;
 the Electoral Commissioner;
 the Ombudsman;
 an amount which is the higher of:

- a) \$10,807; and
- b) the amount determined from time to time by the Commissioner as the annual charge payable by Executives for a Berlina 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;
 Deputy Presidents (other than Judges) and Commissioners of the Industrial Relations Commission; and
 Commissioners of the Environment, Resources and Development Court;
 the Employee Ombudsman;
 the Deputy Electoral Commissioner;
 an amount which is the higher of:

- a) \$9549; and
- b) the amount determined from time to time by the Commissioner as the annual charge payable by Executives for a Magna 6 cylinder 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 Officer

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.

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 and Statutory Officers, by notice in writing directed to the Director, Fleet SA, 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 the Commissioner 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 required because of a Judge's, Court Officer's or Statutory Officer's, disability. The annual charge for the use of the vehicle will be calculated on the same basis as the calculation made

by the Commissioner 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

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 the Commissioner 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; and
- (b) in the case of Statutory Officers, the Director, Fleet SA.

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 the Commissioner 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, and;
- (b) the Director, Fleet SA, on behalf of Statutory Officers.

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, and the Director of Fleet SA, 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 the Commissioner, 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, 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 or Director, Fleet SA, from time to time for that purpose.
- 4.9.4. The State Courts Administrator, in relation to Judges and Court Officers and the Director, Fleet SA, in relation to Statutory Officers 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, and the Director, Fleet SA, in relation to Statutory Officers, 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, and in relation to Statutory Officers liable to pay the Director, Fleet SA 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 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. Where any damage to a vehicle supplied to a 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.

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. The vehicle must not be driven by an "L" or "P" plate driver who is not the person to whom the vehicle is allocated under this Determination other than in an emergency situation.

4.13. **Right to Purchase**

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

4.13. **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.

4.14. **Conditions of Purchase**

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

4.14.1. The price will be the fair market value for such a vehicle sold without any statutory warranty.

4.14.2. The price shall be agreed between the Director, Fleet SA, and the prospective retiree, due regard being had to prices generally recovered for such vehicles at Fleet SA public auctions.

4.14.3. Failing such agreement, the price shall be determined by an independent valuer agreed by the parties. Where the prospective retiree is a Judge or Court Officer any fee payable to such a valuer shall be

borne in equal shares by the prospective retiree and the State Courts Administrator. Where the prospective retiree is a Statutory Officer any fee payable to such a valuer shall be borne in equal shares with half payable by the respective retiree and the other half being payable from funds appropriated to pay expenses associated with the statutory office held by the retiree.

4.14.4. The price shall be payable in full on or prior to the date of retirement 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 Subject to 6.3, the allowances prescribed in Clause 3 are operative from the date of this Determination and supersede those of all previous Determinations covering Judges, Statutory Officers and Court Officers.

6.2 Subject to 6.3, the Annual Charges Payable set out in the attached Schedule apply from the date of this Determination.

6.3 If a Judge, Statutory Officer or Court 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, Statutory Officer or Court Officer takes delivery of a vehicle included in the Schedule to this Determination, or elects not to receive a vehicle.

H.R. Bachmann
PRESIDENT

D. Flux
MEMBER

J. Meeking
MEMBER

Dated: 6 August 2001

SCHEDULE

TYPE OF VEHICLE	ANNUAL CHARGE PAYABLE
Calais Sedan VX	\$13,606
Commodore VU Utility 3.8L	\$9,682
Commodore S VU Utility 3.8L	\$11,739
Commodore VX Executive Sedan 3.8L	\$10,172
Commodore VX Executive Wagon 3.8L	\$10,666
Commodore VX Acclaim Sedan 3.8L	\$11,047
Commodore VX Acclaim Wagon 3.8L	\$11,773
Commodore VX Berlina Sedan 3.8L	\$11,565
Commodore VX Berlina Wagon 3.8L	\$12,412
Commodore S VX Sedan 3.8L	\$11,089
Commodore S Supercharged VX Sedan 3.8L	\$11,772
Commodore SS VX Sedan 5.7L	\$13,634
WH Statesman V6 Sedan 3.8L	\$14,563
WH Statesman V6 Supercharged Sedan 3.8L	\$14,644
WH Statesman V8 Sedan 5.7L	\$15,318
WH Caprice V6 Sedan 3.8L	\$16,581
WH Caprice V6 Supercharged Sedan 3.8L	\$17,046
WH Caprice V8 Sedan 5.7L	\$17,474
TJ Magna 6 cyl Executive Sedan (3.5L)	\$10,307
TJ Magna 6 cyl Executive Wagon (3.5L)	\$11,129
TJ Magna Sports 6 cyl Sedan (3.5L)	\$10,809
TJ Magna Advance 6 cyl Sedan (3.5L)	\$11,228
TJ Magna Advance 6 cyl Wagon (3.5L)	\$11,702
TJ Magna VR-X 6 cyl Sedan (3.5L)	\$11,723
KJ Verada Ei Sedan (3.5L)	\$11,729
KJ Verada Ei Wagon (3.5L)	\$12,347
KJ Verada Xi Sedan (3.5L)	\$13,544