



REMUNERATION TRIBUNAL

Determination 2012/09: Judicial and Related Offices – Remuneration and Allowances

This Determination governs remuneration and allowances for the offices specified in Tables 1, 2 and 3.

The Determination comprises the following parts:

- **Part 1** – General
- **Part 2** – Remuneration and related matters
- **Part 3** – Official travel and related matters
- **Part 4** – Commonwealth provided vehicles and reimbursement of private vehicle running costs for Judges
- **Part 5** – Provisions for Offices on Total Remuneration.

PART 1 – GENERAL, RELATING TO OFFICES IN ALL TABLES

- 1.1 Authority:** This Determination is issued pursuant to the *Remuneration Tribunal Act 1973*, sub-sections 7(3), 7(4) and 7(4B).
- 1.2 Effect of this determination:** This Determination takes effect on and from 1 July 2012 except where specified otherwise. It supersedes and revokes in full Determination 2011/10 (as amended) – *Judicial and Related Offices – Remuneration and Allowances*.
- 1.2.1** Subject to Clause 1.2.2, this Determination sets a base level of remuneration and benefits for office holders. Other authorities may prescribe additional remuneration and/or benefits under, for example:
- (i) general Commonwealth laws concerned with employment;
 - (ii) the specific Commonwealth Act that establishes an office (if any); and/or
 - (iii) the Constitution, which grants certain executive powers to the Governor-General and to Ministers of State.
- 1.2.2** Clause 1.2.1 does not apply to office holders paid under Part 5 (see Clause 5.2), whose offices are listed in Table 3. This clause does not affect the application of the remainder of Parts 1- 4 of this Determination to all office holders.
- 1.3 Administration:** In administering this Determination, authorities:
- (i) shall pay the annual benefits specified in proportion (*pro rata*) to the office holder's period of service during that year;
 - (ii) may issue procedural instructions to assist in the implementation of this Determination;
 - (iii) may elect to apply the same instructions as they do for employees, except

where those instructions are not in accordance with this Determination. This includes the utilisation of agency policies or procedures in relation to the administration of recreation leave.

- 1.4 Use of term 'Judge':** Unless the contrary intention appears, a reference in this Determination to a 'Judge' includes a reference to a Federal Magistrate.

PART 2 - REMUNERATION AND RELATED MATTERS

- 2.1 Base Salary:** A person who holds a full-time office specified in Table 1 or Table 2 shall be paid the Base Salary specified in Table 1 or Table 2.

- 2.2 Additional Allowances:** A Judge who also holds any of the following part-time offices shall be provided with an additional expense allowance of \$2,182 a year with effect on and from 1 July 2012:

- (i) Aboriginal Land Commissioner;
- (ii) Chairman of the Australian Electoral Commission;
- (iii) Chief Judge of the Supreme Court of Norfolk Island; and
- (iv) other offices as specified in Table 1.

- 2.3 Remuneration of part-time office:** Notwithstanding any other provision of this Determination, a person who holds office on a part-time basis, other than a member of the National Native Title Tribunal:

- (i) may not be paid more than the base salary of the equivalent full-time office (if any) in respect of any financial year; and
- (ii) is deemed to hold a full-time office in that year for the purposes of entitlements, other than separation benefits and salary packaging, if paid an amount equal to the base salary of the equivalent full-time office in any given financial year.

- 2.3.1 Remuneration of Part-Time NNTT Members:** Notwithstanding any other provision of this Determination, a person who holds office as a member of the National Native Title Tribunal on a part-time basis:

- (i) may not be paid more than the amount calculated as the Total Remuneration of the equivalent full-time office less 15.4 per cent of the full-time office's Base Salary, in respect of any financial year; and
- (ii) is deemed to hold a full-time office in that year for the purposes of entitlements, other than separation benefits and salary packaging, if paid an amount equal to the amount calculated under 2.3.1 (i) in any given financial year.

- 2.4 Use of specified rates for part-time office:** The appropriate authority may elect to pay a person who holds office on a part-time basis a proportion of the base salary of the equivalent full-time office specified in Table 2 (if any), in accordance with the hours worked, subject to a cap of 12 hours pay in any one day. Otherwise, the office holder shall be paid the daily fee specified in Table 2. The proportion of base salary of the equivalent full-time office (hourly rate) will be ascertained by applying the following formula:

$$\frac{\text{Base Salary}}{313} \times \frac{6}{36.75} = \text{Hourly Rate.}$$

Payment of daily fees

- 2.5 Use of daily fees:** A person who is eligible to receive a daily fee may not be paid more than one daily fee in respect of any one day.

- 2.5.1** Where a day includes a formal meeting of the authority and official business (including reasonable preparation time and reasonable travel time other

than travel between the person's home and principal place of work) and is of:

- (i) three or more hours duration – the full daily fee is payable;
- (ii) two or more (but less than three) hours duration – three-fifths of the daily fee is payable;
- (iii) less than two hours duration – two-fifths of the daily fee is payable.

2.5.2 On another day or days, where official business is of at least five hours duration in aggregate – a daily fee is payable.

2.5.3 The appropriate authority must certify the nature and duration of work undertaken prior to any payment of fees to a person who holds office on a part-time basis.

2.5.4 Payment of daily fees to Part-Time AAT Members: The following clauses apply, (and clauses 2.5.1-2.5.3 do not apply) in relation to a person who holds office as a member of the Administrative Appeals Tribunal on a part-time basis.

- (i) A daily fee is payable once such a person has undertaken official business of five hours duration in aggregate, regardless of the day or days on which that work is done.
- (ii) The President of the Administrative Appeals Tribunal must certify the nature, reasonableness and duration of official business undertaken prior to any payment of fees to such a person.
- (iii) Official business may include a hearing, preparation for a hearing, reading submissions, decision writing and travel time other than for travel between the person's home and principal place of work.

2.5.5 Australian Competition Tribunal: Clause 2.5.2 does not apply to Members of the Australian Competition Tribunal who are paid by way of daily fees. Such Members are entitled to payment for the period for which they undertake official business of the Tribunal on non-sitting days on the following basis:

- (i) where an office holder is engaged on "business of the authority", a full daily fee is paid where the member is engaged for at least 5 hours. A Member is not paid any higher fee for more than 5 hours and any extra time cannot be carried over;
- (ii) where an office holder is engaged on "business of the authority" for less than 5 hours on a day, subject to (i) above that period may be aggregated with other periods of less than 5 hours on other days. For each multiple of 5 aggregated hours a daily fee is payable.

2.6 Leave: A person who holds an office other than that of a Judge shall be entitled to the following types and amounts of leave of absence:

- (i) any unused leave credits accrued previously, including under Determination 2012/11 – *Recreation Leave for Full-Time Holders of Relevant Offices*;
- (ii) if a full-time office holder:
 - (a) the public holidays observed by the Australian Public Service in the location in which the office is based;
 - (b) paid recreation leave of four weeks per year of service, accruing on 1 January each year;
- (iii) other paid and unpaid leave, including sick and carers' leave, at the discretion of the Commonwealth.

2.6.1 A person who holds an office other than that of a Judge:

- (i) may elect to take recreation leave on a half-pay basis and/or to cash

out up to one week's recreation leave per financial year; and

(ii) shall be paid the balance of their recreation leave on leaving office.

2.7 Separation benefits: The separation benefits of an Office Holder are to be determined in accordance with the following sub-clauses.

2.7.1 A person who holds an office other than that of a Judge is not entitled to separation benefits under Clause 2.7.3 where:

(i) the person served the full term of appointment;

(ii) the person was appointed on a part-time basis and is eligible for a daily fee;

(iii) the appointment was terminated prematurely for reasons of misbehaviour or unsatisfactory performance; or

(iv) the appointment was terminated prematurely on account of mental or physical incapacity and the person is entitled to receive invalidity retirement benefits under Commonwealth superannuation legislation.

2.7.2 Subject to Clause 2.7.1, where a person's appointment to a public office is terminated prematurely, the Commonwealth may elect to offer suitable alternative employment (including in a Commonwealth company or authority).

2.7.3 Where the Commonwealth does not offer alternative employment under Clause 2.7.2, the Commonwealth will pay the office holder one-third of one month's base salary, or salary for superannuation purposes in the case of an office holder remunerated under Part 5, per month of service remaining, in lieu of obligations such as provision of notice or payment instead of notice or redundancy pay and subject to:

(i) a minimum payment of four month's base salary or salary for superannuation purposes; and

(ii) a maximum payment of one year's base salary or salary for superannuation purposes.

2.7.4 Under Clause 2.7.3, the Commonwealth may calculate service remaining taking into account any period of continuing Commonwealth service in alternative employment, and may require an office holder to sign a release in return for the payment.

2.7.5 For the purposes of calculating a separation benefit under Clause 2.7.3 in respect of a part-time office holder:

(i) the reference in Clause 2.7.3 to base salary shall be understood as a reference only to the applicable annual base salary, or salary for superannuation purposes in the case of an office holder remunerated under Part 5, and not to include daily fees;

(ii) the applicable annual base salary, or salary for superannuation purposes in the case of an office holder remunerated under Part 5, shall be notionally converted to a monthly figure by dividing it by 12; and

(iii) no account shall be taken of any period of potential future service in respect of which the office holder has already been, or is to be, paid the applicable base salary or salary for superannuation purposes in the case of an office holder remunerated under Part 5.

2.8 Cashing out and purchasing of recreation leave for Federal Magistrates:

Federal Magistrates shall:

- (i) be entitled to paid recreation leave of four weeks per year of service accruing on 1 January each year;
- (ii) be paid on leaving office as though they were then to take the balance of their recreation leave;
- (iii) be eligible to cash out part of their recreation leave credits providing they:
 - (a) have accrued in excess of four weeks' recreation leave;
 - (b) take an amount of leave equal to or greater than that cashed out; and
 - (c) cash out a maximum of two weeks' recreation leave in any year;
- (iv) be eligible to elect to purchase one, two, three or four weeks' additional leave per year. Federal Magistrates will have an amount deducted from their annual salary, dependent on the amount of leave purchased and their salary, which will be reflected in their regular salary payments. Purchased leave counts as service for all purposes.

2.9 Salary packaging: A full-time office holder, including a Federal Magistrate, but otherwise excluding Judges, may elect to take benefits in lieu of base salary but must take at least 50 per cent of their base salary as salary.

2.9.1 A part-time office holder, other than a Judge, may elect to take benefits in lieu of her or his part-time office fee or a combination of part-time office fee and benefits, where this is in accordance with agency policies and procedures on salary packaging.

2.9.2 Any election to salary package in accordance with this section must be consistent with relevant taxation laws and rulings or guidelines applicable to salary packaging schemes issued by the Australian Taxation Office.

2.9.3 Any election to salary package in accordance with this section must not result in cost to the Commonwealth (including in relation to any fringe benefits taxation) additional to the cost which would be incurred if benefits able to be taken as salary were taken as salary.

PART 3 – OFFICIAL TRAVEL AND RELATED MATTERS

3.1 The provisions of Determination 2004/03 (as amended) – *Official Travel by Office Holders* – apply to offices covered by this Determination, subject to any exclusions or limitations in this Determination. In establishing entitlements, the Travel Tier identified in this Determination for an office will apply under Determination 2004/03.

3.2 Justices of the High Court of Australia (including the Chief Justice) who do not establish their place of residence in Canberra shall be paid \$31,120 a year in lieu of the travelling allowance that would otherwise be payable.

3.3 Military Justice System: The employer may approve housing, relocation and medical assistance in accordance with agency policy and practices for the offices of Chief Judge Advocate and the Registrar of Military Justice.

3.4 President, Fair Work Australia: The President has the same travel entitlements when travelling within Australia as the Chief Justice of the Federal Court.

PART 4 – COMMONWEALTH PROVIDED VEHICLES AND REIMBURSEMENT OF PRIVATE VEHICLE RUNNING COSTS FOR JUDGES

4.1 Definitions: For the purposes of this part of the Determination, the following definitions apply.

4.1.1 'Judge' refers to a Judge other than a Federal Magistrate;

4.1.2 'The Executive Vehicle Scheme', (EVS) means the scheme for the use of privately plated Commonwealth vehicles administered by the Australian Public Service Commission;

- 4.1.3 'Commonwealth car-with-driver service'** means the arrangements for the use of a Commonwealth car-with-driver established from time to time by the Attorney-General with the Chief Justice of the High Court of Australia, the Chief Justice of the Federal Court of Australia and the Chief Justice of the Family Court of Australia for Judges of those Courts;
- 4.1.4 'principal registry'** means –
- (i) in the case of the High Court of Australia, the Registry of the Court;
 - (ii) in the case of the Federal Court of Australia, the Principal Registry;
 - (iii) in the case of the Family Court of Australia, the Principal Registry;
- 4.1.5 'private vehicle running costs'** include costs of a kind described in guidelines issued by the relevant Chief Justice or the Chief Federal Magistrate, but does not include expenditure relating to the acquisition, leasing or hire of any vehicle; and
- 4.1.6** references in the EVS to **'Agency Heads'** should be read as references to the person or group of persons within each Court with responsibility for managing the administrative affairs of the Court.
- 4.2 Guidelines:** The Chief Justice of the High Court of Australia, the Chief Justice of the Federal Court of Australia, the Chief Justice of the Family Court of Australia and the Chief Federal Magistrate may issue guidelines for the purposes of this part.
- 4.2.1** Guidelines issued under this section must take account of established Commonwealth standards for the efficient, effective and ethical use of Commonwealth resources.
- 4.3 Arrangements for the Chief Justice of the High Court:** In addition to a Commonwealth car-with-driver service, the Chief Justice of the High Court of Australia is allowed annually:
- (i) a Commonwealth-provided privately plated vehicle in accordance with the EVS; or
 - (ii) reimbursement of private vehicle running costs incurred by the Chief Justice up to \$10,700.
- 4.4 Access to privately plated vehicles or reimbursement of private vehicle running costs for Judges:** A Judge, other than the Chief Justice of the High Court of Australia, who has elected for the time being to forgo the entitlement, either in the Judge's city of residence or in the city in which the principal registry of the Court is situated, to a regular Commonwealth car-with-driver service, is allowed annually in that city and as the alternatives to that service:
- (i) a Commonwealth-provided privately plated vehicle in accordance with the EVS; or
 - (ii) reimbursement of private vehicle running costs incurred by the Judge up to \$10,700.
- 4.5 Access to privately plated vehicles or reimbursement of private vehicle running costs for Federal Magistrates:** A Federal Magistrate is allowed annually:
- (i) a Commonwealth-provided privately plated vehicle in accordance with the EVS; or
 - (ii) reimbursement of private vehicle running costs incurred by the Federal Magistrate up to \$10,700.
- 4.6 No cashing out:** The value of the entitlement allowed under clauses 4.3, 4.4 or 4.5 may not be taken as cash, except to the extent that reimbursement is claimed for expenditure in accordance with paragraphs 4.3(ii), 4.4(ii) or 4.5(ii).
- 4.7 Election to vary allowance:** During a year, the Chief Justice of the High Court of Australia, a Judge or a Federal Magistrate may elect to vary his or her election under

clause 4.3, 4.4 or 4.5 to, or from, a privately plated vehicle under the EVS from, or to, obtaining reimbursement of private vehicle running costs, provided that no additional administrative or other expenses are incurred by the Commonwealth as a result of the election to so vary this allowance.

Table 1 RATES OF REMUNERATION – JUDICIAL OFFICES
Effective on and from 1 July 2012

Column 1	Column 2	Column 3	Column 4	Column 5
Authority	Office	Full-Time Office Base Salary \$	Part-Time Office Daily Fee \$	Travel Tier
High Court of Australia	Chief Justice	523,500	-	1
	Justice	475,070	-	1
Federal Court of Australia	Chief Justice	443,320	-	1
	Judge	402,880	-	1
Family Court of Australia	Chief Justice	443,320	-	1
	Deputy Chief Justice	414,780	-	1
	Judge (including Judges assigned to the appeal division, Judge administrators and senior Judges)	402,880	-	1
Federal Magistrates Court	Chief Federal Magistrate	370,310	-	1
	Federal Magistrate	314,230	-	1
Copyright Tribunal	President (1)	402,880	-	1
	Deputy President (Judicial)	-	-	1
Australian Competition Tribunal	President (1)	402,880	-	1
Australian Law Reform Commission	President (Judicial)	402,880	-	1
Administrative Appeals Tribunal	President (1)	402,880	-	1
National Native Title Tribunal	President (Judicial)	402,880	-	1
Defence Force Discipline Appeal Tribunal	President	-	-	-

⁽¹⁾ An expense of office allowance of \$2,182 a year is payable to a sitting Judge who also holds this office on a part-time basis.

Table 2 RATES OF REMUNERATION – NON–JUDICIAL OFFICES
Effective on and from 1 July 2012

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>	<u>Column 4</u>	<u>Column 5</u>
Authority	Office	Full-Time Office Base Salary \$	Part-Time Office Daily Fee \$	Travel Tier
Federal Court of Australia	Registrar(1)	<i>(see table 3)</i>	993	1
	Assessor (Full-time)	199,120	-	2
	Assessor (Part-time)	-	921	1
Copyright Tribunal	Deputy President (non-Judicial) (1)	-	993	1
	Member (1)	-	993	1
Australian Competition Tribunal	Member (2)	-	921	1
Australian Law Reform Commission	President (non-Judicial)	331,640	-	1
	Deputy President	239,030	-	1
	Member (Full-time)	188,940	-	2
	Member (Part-time) (3)	-	921	1
Administrative Appeals Tribunal	Deputy President (1) (4)	<i>(see table 3)</i>	1,509	1
	Senior Member (1) (4)	<i>(see table 3)</i>	1,194	1
	Member (1) (4)	<i>(see table 3)</i>	1,002	1
National Native Title Tribunal	Deputy President (1)	<i>(see table 3)</i>	1,306	1
	Member (1)	<i>(see table 3)</i>	958	1
Defence Force Discipline Appeal Tribunal	Member	-	788	1
Australian Security Intelligence Organisation	Prescribed Authority	-	1,391	1

- (1) For part-time office holders a minimum annual payment of ten times the daily fee applies, whether the office holder receives a fee based on daily rates or on hourly rates (under 2.4).
- (2) For part-time office holders an additional annual payment of \$22,060 a year applies.
- (3) For part-time office holders an additional annual payment of \$22,060 a year applies.
- (4) In addition to fees specified a part-time member shall be paid a cancellation fee equivalent to 50 per cent of one day's fee for the cancellation of all work on a day with fewer than 5 working days' notice.

PART 5 – PROVISIONS FOR OFFICES ON TOTAL REMUNERATION

- 5.1 Coverage and definitions:** The provisions in this part of the Determination apply only to the offices listed in Table 3. For the purposes of this part of the Determination, the following definitions apply.
- 5.1.1 'Authority'** means the court, tribunal or other body to which the Office Holder is attached.
- 5.1.2 'Base Salary'** means the amount specified in column 3 of Table 3 of this Determination.
- 5.1.3 'Benefits'** means all non-monetary benefits provided at the Commonwealth's expense to or on behalf of an Office Holder as a personal benefit including a vehicle (where provided), the value attributed by the Remuneration Tribunal to the Commonwealth's superannuation contributions or Superannuation Support (refer clause 5.6) and any other benefits received by way of remuneration packaging (refer clause 5.4).
- 5.1.4 'Office Holder'** means a person appointed to an office listed in Table 3 of this Determination.
- 5.1.5 'Total Remuneration'** is the amount shown in Columns 4 and 5 of Table 3 representing the value, calculated at the total cost to the Commonwealth (including Fringe Benefits Tax where applicable), of:
- salary (including Base Salary), allowances or lump sum payments; and
 - benefits;
- but does not include:
- reimbursement of expenses incurred on geographic relocation following appointment as an Office Holder, in accordance with the authority's policies and practices where approved by the appropriate authority;
 - travelling allowances and expenditure referred to in Part 3;
 - any payment in lieu of recreation leave; and
 - any separation benefits in accordance with clauses 2.7 – 2.7.5.
- 5.2 Total Remuneration should not be supplemented:** The intention of this Determination is that the Total Remuneration amount payable to an office holder under Table 3 represents an exhaustive statement of the office holder's remuneration and significantly-related benefits, to the extent that the Tribunal is empowered to determine them. In other words, the intention is that the Total Remuneration amount to which an office holder is entitled under this part should not be supplemented by any other authority where that may be inconsistent with this Determination.
- 5.3** An office holder listed in Table 3 is eligible to receive the annual amount of Total Remuneration set out in Table 3 for the relevant office.
- 5.4 Remuneration packaging:** Subject to this part, an Office Holder may elect to receive the benefit of Total Remuneration as salary or a combination of salary and Benefits, in accordance with the authority's policies and procedures on salary packaging. The Office Holder must take at least 50 per cent of Total Remuneration as salary. Any election must be consistent with relevant taxation laws and rulings or guidelines applicable to salary packaging schemes issued by the Australian Taxation Office (ATO).
- 5.5 Superannuation salary:** Regardless of anything else in this Determination, salary for superannuation purposes is the Base Salary shown in Column 3 of Table 3 except where a relevant sub-clause (shown in Column 5 of that Table) varies that amount. This will be:
- the Office Holder's annual rate of salary for the purposes of the Superannuation (CSS) Regulations, (and therefore the superannuation

salary for the purposes of the *Superannuation Act 1976* and the *Superannuation Act 1990*); or

- in the case of the holders of the offices of Chief Judge Advocate and Registrar of Military Justice, that office holder's annual rate of salary for the purposes of the *Defence Force Retirement and Death Benefits Act 1973*, the *Defence Force Retirement and Death Benefits (Annual Rate of Pay) Regulations*, the *Military Superannuation and Benefits Scheme Act 1991* and the Rules of the Military Superannuation and Benefits Scheme.

5.6 Value of Superannuation Support: The Total Remuneration of an Office Holder will be taken to include the value of the Superannuation Support provided or superannuation contributions made in respect of the Office Holder, determined in accordance with the following sub-clauses.

- (i) In the case of an Office Holder who may be eligible for defined benefits under a Commonwealth superannuation scheme, the value of Superannuation Support will be taken to be 15.4 per cent of Superannuation Salary (refer clause 5.5).
- (ii) In the case of an Office Holder participating in any other superannuation scheme, the value of the superannuation contributions made by the Commonwealth in respect of the Office Holder to the superannuation scheme will reflect the amounts actually made or liable to be made.
- (iii) Notwithstanding anything else in this part, the value attributable by virtue of sub-clauses 5.6 (i) or (ii) to Superannuation Support or superannuation contributions 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.

5.7 Vehicles: Where an Office Holder accepts an offer of an authority owned or leased vehicle for private use, the office holder's Total Remuneration will be reduced by the actual cost of the vehicle to the authority plus parking and fringe benefits taxation, less a reasonable amount (if any) reflecting business usage patterns. Where an Office Holder has access to an authority owned or leased vehicle for private use, the Office Holder will be considered to have accepted an offer of a vehicle for the purposes of this provision.

5.7.1 Any business usage amount is to be assessed on log book records for a 12 week representative period. Where the annual business kilometres are less than 5,000 it will be based on the 'cents per kilometre' method. Where business kilometres are 5,000 kilometres or more, the percentage of business use to total kilometres travelled per annum will be applied to the total cost of the vehicle.

5.8 Additional Provisions for Specified Officers

5.8.1 Chief Executive Officer, Family Court of Australia: Mr Richard Foster receives a personal loading of \$36,770, meaning that he receives \$284,230 Base Salary and \$389,360 Total Remuneration.

RATES OF REMUNERATION – OFFICES ON TOTAL REMUNERATION					
Table 3					
Effective on and from 1 July 2012					
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Authority	Office	Base Salary \$	Total Remuneration \$	Reference Clause	Travel Tier
High Court of Australia	Chief Executive and Principal Registrar	284,230	389,360		1
Federal Court of Australia	Registrar	284,230	389,360		1
Family Court of Australia	Chief Executive Officer	249,490	352,590	5.8.1	1
Federal Magistrates Court	Chief Executive Officer	223,270	318,920		1
Administrative Appeals Tribunal	Deputy President (non-judicial)	327,020	447,970		1
	Senior Member	258,110	353,580		1
	Member	217,150	297,640		1
National Native Title Tribunal	President (non-judicial)	300,240	414,290		1
	Deputy President	282,860	376,380		1
	Member	207,220	289,010		1
	Registrar	193,490	273,180		2
Military Justice System	Chief Judge Advocate	278,210	348,460		2
	Registrar of Military Justice	181,720	209,700		2

Signed this 19th day of June 2012.



John C Conde AO
PRESIDENT



John B Prescott AC
MEMBER



Jillian Segal AM
MEMBER