

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES
REMUNERATION ACT, 1975

JUDGES, MAGISTRATES AND RELATED GROUP

29 AUGUST 1997

JUDGES, MAGISTRATES AND RELATED GROUP

Background:

1. Section 13 of the Statutory and Other Offices Remuneration Act 1975, as amended, requires the Statutory and other Offices Remuneration Tribunal, not later than 31 August in each year, to make a determination of the remuneration to be paid to these office holders on and from 1 October in that year. "Remuneration" is defined as salary or allowances paid in money.
2. The Judges Magistrates and Related Group comprises such officers who are listed in the Schedules of the Act and, in addition are defined as judicial officers, (within the meaning of the Judicial Officers Act 1986), or offices which the Government considers should belong to that Group. The offices have been grouped together by the Tribunal for remuneration purposes only.
3. At meetings held in 1990 by the Commonwealth Remuneration Tribunal with State and Territory Tribunals a consensus was reached on a number of matters dealing with the remuneration of judges. It was agreed that the Tribunals should continue to consult on an informal basis before making decisions on judicial salaries; that salary reviews should take place on or about the same time each year; that there was a need to avoid the appearance of "leap frogging" and that historical and other material suggested that the salary of a Judge of the Federal Court and a Judge of a State Supreme Court should not exceed 85 percent of the salary of a Justice of the High Court of Australia. This relativity was only acceptable whilst the remuneration of a Justice of the High Court of Australia was at an acceptable level, and regard was had to any major differences in benefits. Since 1990 the Tribunal has maintained the 85 percent relativity.
4. In its determination of 31 August 1996 the Tribunal increased the remuneration of a Supreme Court Judge by 4.25 percent to \$177,488 thus preserving the relationship with the salary of a Federal Court judge. The amount of \$10,362 which takes into account the difference in conditions of Federal Court Judges and Supreme Court Judges was added, making a total remuneration of \$187,850 per annum.

1997 Review

Government Submission

5. The Government has recommended that the Tribunal determine an increase for the Judges Magistrates and Related Group totalling 4 percent. The Government submission also recommends that the Tribunal, *“...reconsider this matter following any increases determined by the Commonwealth Remuneration Tribunal Determination in August 1997.”*

Chief Judge of the District Court

6. The Chief Judge of the District Court has submitted;

“...The recent increase in the District Court’s jurisdiction has significantly increased the co-extensive jurisdiction of the two Courts. In our submission this warrants as a matter of principle a decrease in the percentage differential payable to judges of the District Court.”

Magistrates

7. The Chief Magistrate has submitted to the Tribunal that the Deputy Chief Magistrates’ salaries be higher than that of the State Coroner, Senior Children’s Magistrate and the Chairman of the Licensing Court.

1997 Tribunal Review

Judges of the District Court

8. The Tribunal has given careful consideration to the submission of the Chief Judge of the District Court. The Tribunal notes that the changes arising from the District Court Amendment Act 1997 effectively raised the monetary limit of its jurisdiction thus enabling the District Court to hear matters previously only dealt with by the Supreme Court.

9. Over recent years the District Court has had some of its criminal and civil jurisdiction devolved to the Local Court without affecting the remuneration of District Court Judges. The Tribunal has noted the comments of the Attorney-General in respect of this matter where he states,

“...the increase in the upper limits [of the District Court’s jurisdiction] reflects a proper adjustment to account for inflation over the recent years and the legal profession’s trend to commence less complex claims in the higher courts. Put simply there has been little substantive change in the legal complexity of the matters being heard, rather the monetary sums involved reflect changing economic circumstances.”

10. The Tribunal considers that at this early stage of implementation, there is insufficient evidence to warrant an additional increase for District Court Judges *vis-à-vis* Judges of the Supreme Court.

Deputy Chief Magistrate

11. The Tribunal has examined carefully the comments of the Chief Magistrate and notes that in the 1996 submission to the Tribunal he argued that the Deputy Chief Magistrates’ workload and responsibilities were greater than the other office holders.
12. For the current review the Chief Magistrate has advised that, in accordance with the Local Courts Act 1982, only a Deputy Chief Magistrate can occupy the vacant Chief Magistrate position.
13. The Tribunal has again considered this matter and notes that the Chief Magistrate has offered no substantially new reasons to warrant a further review of the Deputy Chief Magistrate’s remuneration.

General

14. The Commonwealth Remuneration Tribunal recently commenced its review of federal judicial remuneration but has yet to make its final determination. This Tribunal normally awaits the Federal decision to ensure its determination have full regard to the general principles concerning judicial remuneration outlined in paragraph 3 above.
15. While the Tribunal notes that the Government's recommendation supports maintaining the 85 percent nexus, hence the recommendation to consider judicial remuneration in light of the Commonwealth Tribunal's determination, this Tribunal has a statutory obligation to make a Report and Determination by 31 August 1997. The Tribunal has, on this occasion, made its determination prior to the federal decision.
16. The Tribunal, following the Commonwealth Remuneration Tribunal determination in 1996 granted judges in NSW an increase of 4.25 percent. This was lower than the increases received by the Public Office Holder Group (4.5 percent) and the Senior Executive Service where the maximums of the ranges were increased by 6 percent.
17. Since that determination the Tribunal is aware that other sections of the public sector have been or are continuing to negotiate salary increases. A feature of these Awards is their dependence on productivity savings to deliver increases beyond those contained in the State's budget forecasts (ie 3 percent per annum). The recently negotiated Crown Employees (Public Sector Salaries 1997) Award provides for salary increases totalling 16 percent over three years of which 7 percent is dependent upon agencies making productivity savings.
18. The Tribunal has noted the changes in Court administration directed at reducing the backlog of cases and at improving the productivity within the judicial system. In the District Court, for example, the new Strategic Plan has resulted in the "*...Elimination of the Court's backlog of civil cases...*" and the "*...Introduction of management processes designed to prevent the development of a new backlog.*" For this reason the Tribunal considers that an increase, on this occasion, beyond the Government's recommendation of 4 percent is appropriate.

19. The Tribunal's 1997 determination for the SES provides for an increase of up to 6 percent based on performance.
20. As performance reward is not appropriate consideration for judicial remuneration and as figures (provided by the Government) suggest that very few SES officers actually received the 1996 maximum performance based increase, an increase of that magnitude for this Group is not considered appropriate.
21. Taking the above into consideration as well as the economic and budgetary outlook, key national economic indicators, expected private sector executive remuneration increases of between 5 percent and 7 percent and increases awarded in NSW, federal and other State public sectors the Tribunal considers that a 5 percent increase in the remuneration of a Judge of the Supreme Court would be appropriate and so determines.
22. If this determination breaches the 85 percent nexus in the short term, as has occurred in Western Australia, then this factor will be taken into account in the 1998 Determination.

Conclusion

23. The Tribunal, after considering the views of the Assessors, determines that the base rate of remuneration for a Supreme Court Judge should be increased on and from 1 October 1997 by 5 percent from \$177,488 to \$186,362 per annum. The Tribunal also determines that the amount to be added to take into account of the difference in conditions of Supreme Court Judges and Federal Court Judges should remain at \$10,362 thus making the total remuneration of a Supreme Court Judge \$196,725 per annum.
24. From the recent meeting of the State and Commonwealth Tribunals it was clear that, unlike the situation in NSW, Judges are provided with motor vehicles at either no cost or minimal cost. When comparing judicial remuneration between the Federal Court Judges and State Supreme Court Judges, therefore, the allowance provided to NSW Judges for motor vehicles should be disregarded.

25. The Tribunal further determines that the Heads of Jurisdiction of the Supreme Court, Court of Appeal, Industrial Court and Industrial Relations Commission should also be increased by 5 percent. The remuneration of all other office holders within this Group shall be proportionally increased to maintain existing relationships, as set out in the attached Determination on and from 1 October 1997. The rates for Magistrates have been similarly increased.
26. The rates for Acting Judges of the Supreme Court and the District Court shall also be as set out in the attached Determination on and from 1 October 1997.
27. Pursuant to Section 13 of the Statutory and Other Offices Remuneration Act 1975, as amended, the Tribunal determines that the remuneration to be paid to the office holders in this Group on and from 1 October 1997 shall be as set out in Annexure A.
28. The Tribunal has noted the recent comments by the Chief Justice of New South Wales concerning steps to encourage senior judges to remain on the Bench and the impact of changes to the taxation on judicial pensions. These matters have remuneration implications and, if the Government is reviewing such matters, then the Tribunal is available to participate.

The Statutory and Other Offices
Remuneration Tribunal

Gerald Gleeson

Dated: 29 August 1997

ANNEXURE A**DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES AND RELATED GROUP OF OFFICE HOLDERS ON AND FROM 1 OCTOBER 1997**

	Salary \$ per annum
<u>JUDGES</u>	
Chief Justice of the Supreme Court	217,980
President of the Court of Appeal	204,105
Chief Judge of the Industrial Court	204,105
President of the Industrial Relations Commission	204,105
Judge of the Supreme Court	196,725
Deputy Chief Judge of the Industrial Court	196,725
Vice-President of the Industrial Relations Commission	196,725
Deputy President of the Industrial Relations Commission	196,725
Judge of the District Court	171,150
Master or acting Master (under the Supreme Court Act 1970)	171,150

**ANNEXURE A
(CONT'D)**

**DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES AND
RELATED GROUP OF OFFICE HOLDERS ON AND FROM 1 OCTOBER 1997**

	Salary \$ per annum
 <u>MAGISTRATES</u>	
Chief Magistrate (under the Local Courts Act 1982)	171,150
Deputy Chief Magistrate (under the Local Courts Act 1982)	144,970
Chairman of Licensing Courts (under the Liquor Act 1912)	144,970
State Coroner	144,970
Senior Children's Magistrate	144,970
Chief Industrial Magistrate	139,650
Deputy Chairman, Licensing Courts (under the Liquor Act 1912)	139,650
Magistrate, (under the Local Courts Act 1982)	136,115
Chairperson Victims Compensation Tribunal (NOTE 1)	136,115
Children's Magistrate	136,115
Licensing Magistrate (under the Liquor Act 1912)	136,115
Deputy State Coroner	136,115

NOTE 1. When a more senior Magistrate is appointed to the office then he or she shall retain his or her present salary level.

**ANNEXURE A
(CONT'D)**

**DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES AND
RELATED GROUP OF OFFICE HOLDERS ON AND FROM 1 OCTOBER 1997**

	Salary \$ per annum
 <u>RELATED GROUP</u>	
Chairman, Law Reform Commission	196,725
Solicitor-General	196,725
Director of Public Prosecutions	196,725
Crown Advocate	171,150

ACTING JUDGES

A) Supreme Court

The following rate shall be paid for each ordinary court working day on which the Acting Judge is occupied in the performance of judicial duties.

Acting Judge of the Supreme Court	\$1,050 per day
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B) District Court

The following rate shall be paid for each ordinary court working day on which the Acting Judge is occupied in the performance of judicial duties as designated by the Chief Judge in the District Court.

Acting Judge of the District Court	\$815 per day
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**The Statutory and Other Offices
Remuneration Tribunal**

Gerald Gleeson

Dated: 29 August 1997