

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

PUBLIC OFFICE HOLDERS

28 AUGUST 1998

PUBLIC OFFICE HOLDERS

Background

1. Section 13 of the Statutory and Other Offices Remuneration Act 1975, as amended (the Act), 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 in section 10A as salary or allowances paid in money.
2. The Public Office Holders Group comprises those public offices, listed in the Schedules of the Act (except for the Judges Magistrates and Related Group), which have been grouped together by the Tribunal for remuneration purposes. The remuneration for this Group is determined as a fixed salary and other employment benefits such as those enjoyed by the Senior Executive Service and in some cases the Judges, Magistrates and Related Group are not generally available to this Group.
3. The remuneration for the Public Office Holders Group has, over recent years been based on general wage and salary increases with no direct nexus with judicial or other rates of remuneration. The Government has repeatedly stated that while it recognises the strong relationship between the salaries of some public offices in this Group and judicial remuneration, it is not in favour of a direct nexus with the remuneration of the Judges Magistrates and Related Group. For the 1996 Review the Tribunal determined a general increase of 3 percent for all office holders effective from 1 October 1996 with a further 1.5 percent increase from 1 January 1997. In 1997 the Tribunal determined an increase of 5 percent for this Group effective from 1 October 1997. For the current review the Tribunal wrote to Public Office Holders inviting submissions.

1998 Review

Government Submission

4. The Government has reiterated its previous view that it is not in favour of linking the remuneration for this group with that of judicial salaries and emphasising the need for flexibility in the determination of remuneration for such a diverse group of office holders.

5. Comparative information has been provided on salary movements for interstate and Federal public office holders. In addition, details of the non-cash benefits available to some public office holders has also been provided. The Government submission based on “...*forecast average weekly earnings, remuneration movements in the private sector and general increases in public sector salary awards*” recommends that the Tribunal determine an increase of 3 percent for this group.

Other Submissions Received.

Crown Prosecutors

6. The Crown Prosecutors’ submission seeks an increase in remuneration to reflect the relativity of their salary to that of District Court Judges. The submission also seeks the reinstatement of the former salary parity between Senior Crown Prosecutors and Senior Public Defenders. In addition, the Tribunal is also asked to consider the salary increases awarded to officers in 1998 under the Crown Employees (Public Sector Salaries) 1997 Award.

Senior Assessor and Assessor, Land and Environment Court

7. Both Assessors and Senior Assessors of the Land and Environment Court have again sought a salary increased on the basis of changes to the role and responsibilities of the positions arising from legislative changes.

Commissioners, Industrial Relations Commission

8. The Commissioners have submitted that significant changes have occurred in their role and responsibilities since the introduction of the Industrial Relations Act 1996. On this basis they argue that their remuneration should be increased to a rate equivalent to that received by Commissioners under the Compensation Court Act 1984.

Clerk of the Parliament and Clerk of the Legislative Assembly

9. The Clerk of the Legislative Assembly has sought an increase in remuneration based on work value as, it is claimed, there has been a deterioration in the Clerks salary when compared with other Parliaments. In addition, the Clerk seeks to redress the perceived salary compression occurring between Clerks and Deputy Clerks and Clerks and Senior Officers of the Parliament. The Clerk has also refuted claims made by the Tribunal in the 1997 Determination regarding the provision of non-cash benefits. The Clerk has argued that these additional benefits are not equivalent to those received by the CES/SES and should not be considered in any analysis of current remuneration.
10. The Clerk of the Parliament has sought a review of his remuneration based on a number of issues, including a recent restructure and an independent job evaluation. The Clerk of the Parliament has reiterated a number of other issues previously raised with the Tribunal and also referred to by the Clerk of the Legislative Assembly, these include salary compression and non-cash benefits. In addition, the Tribunal is also asked to consider the salary increases awarded to officers in 1998 under the Crown Employees (Public Sector Salaries) 1997 Award.

Chairperson of the Residential Tenancies Tribunal

11. The Chairperson considers that the role and responsibilities of the position have increased to reflect the Tribunals expanded jurisdiction. The Chairperson has sought to reestablish a salary nexus established in 1989 between the initial position of Chairperson and Magistrates. It should be noted that the former Chairperson was a Magistrate, and in 1989 there was a salary parity with the Chairperson's remuneration and that of Magistrates. This nexus was broken however, with the specific increases granted to Judges and Magistrates later in 1989 and the Government's view expressed in a letter to the Tribunal dated 7 December 1989 was that there should not be a permanent nexus between the "quasi judicial group and Judges and Magistrates".

President of the Mental Health Review Tribunal

12. The submission to the Tribunal seeks an increase for both the President and Deputy President of the Tribunal based on change in role and responsibility resulting from legislative changes, increased workload and broadened jurisdiction.

1998 Tribunal Review

13. The Tribunal received a number of submissions from Public Office Holders seeking an increase in salary above any general increase that may be granted. The Tribunal has examined carefully the matters raised in each submission and met those office holders requesting an interview. Discussions have also been had with the Attorney General.
14. The majority of submissions received by the Tribunal base their claim for increased salary on either former salary relativity with other officers, establishing salary parity on the basis of existing similarities in role, or establishing links with judicial remuneration.
15. These matters are not new and have been dealt with previously, however, the Tribunal considers it important to re affirm its previous position. The direct linking of remuneration between different office holders or establishing links with judicial remuneration is not considered appropriate and would diminish the flexibility to establish remuneration for these office holders.
16. Since establishing the 'Tribunals Court Officers and Related Group' in 1990, the Government has consistently expressed the view that while it recognises the relationship between the salaries of some public offices in this Group and judicial remuneration it is not in favour of a direct nexus with the remuneration of the Judges Magistrates and Related Group. This was reinforced in the Government's submission for the current review.

17. Linking remuneration between different office holders is also not considered appropriate. As outlined in the 1996 and 1997 Report and Determinations the Tribunal will consider a review of individual office holders remuneration (over and above general economic increases granted to the Group as a whole) based on the changes that have occurred to the role and responsibilities of the office rather than increasing the remuneration to retain relativities. Thus requests for increased remuneration based solely on former or perceived salary relativities with other officers or links with officers in the Judicial Officers Groups will not be granted.
18. When regard is had to general salary movements in both public and private sectors, there is clearly a justified case for a greater increase greater than the 3% submitted by the Government. There are some positions for which a special increase is warranted and these are now discussed.
19. The Tribunal considers that there is sufficient evidence to support an increase in remuneration for both the President and Deputy President of the Mental Health Review Tribunal. The Tribunal considers that amendments to the Mental Health Act 1997 have resulted in a substantial increase in the role and responsibilities of both the President and Deputy President.
20. The Minister has identified that the Residential Tenancies Tribunal has undergone significant change in recent years with additional responsibilities in relation to caravan parks and manufactured home estates, retirement villages and strata schemes. The Tribunal considers that the Chairperson's remuneration should be increased to reflect the additional accountabilities and responsibility for the overall operations and administration.
21. The Tribunal has assessed further the role and responsibilities of the Crown Prosecutors, Deputy Senior Crown Prosecutors, Senior Crown Prosecutors and Senior Public Defenders. On the basis of their significant contribution to the Justice system, special increases have been determined.

22. The Tribunal has made a special examination of the work of the Assessors of the Land and Environment Court. Their responsibilities far exceed those initially envisaged to the point where the title Assessor is not, in the view of the Tribunal, appropriate in regard to their work. As a consequence special increases have been determined.
23. The Tribunal has again reviewed the work of the Commissioners of the Industrial Relations Commission and discussed their changing role with the President. Consideration had been given to the new 1996 Industrial Relations Act in the 1997 Tribunal determination when a special increase was granted.
24. The appointment of a new President has led to greater accountability of Commissioners and increased autonomy. The re-introduction of the panel system and other procedural reforms should result in closer scrutiny of the role of individual Commissioners. For these reasons a further special increase has been determined.
25. The Tribunal has carefully noted the comments of the Clerk of the Parliaments and the Clerk of the Legislative Assembly. While no increase has been determined for the Clerks, the Deputy Clerks are to be added to Schedule 2 of the SOOR Act to ensure consistency in remuneration setting. It is expected that the Tribunal will make a special determination in relation to the Deputy Clerks' salary when the necessary legislative amendments have been made.
26. The Tribunal has also given careful consideration to the other submissions received but was not convinced that special increases in remuneration were warranted for those office holders.

Conclusion

27. The Tribunal in making its determination has had regard to key national economic indicators, to material provided on the State's economic and budgetary outlook, private sector executive remuneration movements and the salary increases received by other groups in the NSW Public Sector, in particular the 16 percent increase negotiated between the Government and the unions through the three year Crown Employees (Public Sector Salaries 1997) Award. In this regard the Tribunal notes that this Award requires productivity improvements to ensure salary increases, beyond the budgeted 3 percent per annum, over its duration are available to public servants.
28. Given that this Group of office holders will, either directly or indirectly, contribute to the productivity increases an increase on this occasion beyond the Government's recommendation of 3% is appropriate.
29. The Tribunal does not consider it appropriate that a performance pay component be incorporated into the remuneration payable to these office holders. However, consideration has been given to the performance based increases granted to both the SES and public servants
30. In determining salary movements the Tribunal has had regard to other benefits received by some officers, for example the provision of motor vehicles at no or minimal cost. While these additional benefits are outside the parameters of the Tribunal's determination, it is the Tribunal's intention to further investigate the extent and value of these additional benefits in relation to an officers total remuneration.

31. Having regard to these matters and, after considering the views of the Assessors, the Tribunal determines that a 5.5 percent increase should be granted on and from 1 October 1998 to all office holders in this Group.

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 office holders on and from 1 October 1998 shall be as specified in Annexure A.

The Statutory and Other Offices

Remuneration Tribunal

Gerald Gleeson

Dated: 28 August 1998

ANNEXURE A
DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE
HOLDERS GROUP ON AND FROM 1 OCTOBER 1998

Salary

\$ per annum

Ombudsman	169,825
Deputy Director of Public Prosecutions	162,715
Senior Public Defender	162,715
Chairman, Commercial Tribunal of New South Wales	162,715
President, Mental Health Review Tribunal	162,715
Deputy Chairman, Law Reform Commission	160,605
Senior Crown Prosecutor	159,550
Senior Chairperson (Government and Related Employees Appeals Tribunal) - not being a judicial office holder.	147,695
President, Guardianship Tribunal	147,695
Deputy Senior Crown Prosecutor	147,695
Deputy Senior Public Defender	147,695
Commissioner, Law Reform Commission	144,230
Deputy Chairman, Commercial Tribunal of New South Wales	142,450
Deputy President Mental Health Review Tribunal	142,450
Commissioner (under the Compensation Court Act 1984)	136,905
Chairperson, Residential Tenancies Tribunal	136,905
Senior Assessor (under the Land and Environment Court Act 1979)	136,905
Crown Prosecutor	133,985
Public Defender	133,985
Commissioner, (Industrial Relations Commission)	133,985

ANNEXURE A (CONT'D)

DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE HOLDERS GROUP ON AND FROM 1 OCTOBER 1998**Salary****\$ per annum**

Assessor (under the Land and Environment Court Act 1979)	133,985
Deputy President, Guardianship Tribunal	126,150
Clerk of the Legislative Assembly	126,150
Clerk of the Parliaments	126,150
Senior Referee, Consumer Claims Tribunals	113,780
Chairman, Transport Appeals Board	113,780
Chairperson, Government and Related Employees Appeals Tribunal <u>who is legally qualified</u> (not being the holder of a judicial office or a magisterial office) (Note 1)	113,780
Chairperson, Government and Related Employees Appeals Tribunal (not being the holder of a judicial office or a magisterial office)	107,435
Chairman, Local Land Boards	107,435
Referee, Consumer Claims Tribunals	107,435
Member, Residential Tenancies Tribunal	107,435
Chairman, Motor Vehicle Repair Industry Council	107,435
Member of the New South Wales Aboriginal Land Council	63,270 (Note 2)

Note 1 This rate of remuneration is payable only to those Chairpersons who are barristers admitted by, or solicitors of, the Supreme Court of NSW or who hold equivalent qualifications.

Note 2 The Chairperson shall receive an allowance of 5% (i.e. a total of \$66,435 per annum) and the Secretary and Treasurer shall receive an allowance of 3% (i.e. a total of \$65,170 per annum).

The Statutory and Other Offices Remuneration Tribunal

Gerald Gleeson
28 August 1998