

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

JUDGES, MAGISTRATES AND RELATED GROUP

27 AUGUST 1999

JUDGES, MAGISTRATES AND RELATED GROUP

Section 1: 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 generally maintained the 85 percent relativity.

4. In its determination of 28 August 1998 the Tribunal increased the remuneration of a Supreme Court Judge by 5.5 percent to \$196,613. The amount of \$10,362 which takes into account the difference in conditions of Federal Court Judges and Supreme Court Judges was maintained, making a total remuneration of \$206,975 per annum.
5. As the table below shows, Federal and State Judges have, since July 1994, received significant real increases in remuneration when compared with the Consumer Price Index and Average Weekly Earnings.

YEAR	Federal Court Judge	NSW Supreme Court Judge	Crown Employees	Consumer Price Index (June Qtr)	Average Weekly Earnings (August Qtr)
1994	8.45	8.45	3.00	1.70	4.30
1995	4.00	4.00	3.00	4.50	5.20
1996	4.25	4.25	3.00	3.10	3.80
1997	4.50	5.00	4.00	0.30	4.40
1998	5.50	5.50	7.00	0.70	4.20
1999			5.00	1.10	
TOTAL	26.70	27.20	25.00	11.40	21.90

Section 2 1999 Review

Government Submission

6. The Government has recommended that the Tribunal “...not grant an increase in the remuneration to the Judges, Magistrates and Related Group.”

Chief Judge of the District Court

7. The Chief Judge of the District Court has requested that;

“...the margin of salary paid to Supreme Court Judges and District Court Judges should be decreased in order to reflect, among other relevant considerations, the substantial increase in jurisdiction both statutory and administratively by way of transfer of cases from the Supreme Court to the District Court for hearing.”

8. The Chief Judge also considers that the Tribunal should assess the productivity and effectiveness of the Court when assessing increases in Judges' remuneration.

Masters of the Supreme Court

9. The Masters are seeking an increase in their remuneration to compensate for the Commonwealth imposed superannuation surcharge levy. The Masters consider that they have been particularly disadvantaged and are seeking annual increases equivalent to the annual surcharge amount to overcome this.

Magistrates

10. The Chief Magistrate has again submitted to the Tribunal that magistrates' salaries be increased by 3.4% to correct an alleged “anomaly” following a determination of the Tribunal made in 1989. The Chief Magistrate also recommends that the internal relativities between his position and other magistrates be restored to that operating prior to a special increase determined for the Chief Magistrate in 1996.

11. The Chief Magistrate has also submitted that magistrates receive an increase in remuneration, over and above any general increase, to reflect productivity improvements resulting from increased workloads as well as an increase in remuneration to compensate them for their inability to access the judges' pension scheme.

Director of Public Prosecutions

12. The Director has submitted to the Tribunal that the remuneration of his office should be reviewed in order to increase the salary and to distinguish it from other office holders in the Group. The Director of Public Prosecutions considers that, based on his role and responsibilities the remuneration for his office should be more appropriately aligned with that of the Chairperson, NSW Crime Commission rather than a Judge of the Supreme Court. The Director has also drawn the Tribunal's attention to the impact the Federal Government's superannuation surcharge levy is likely to have on his pension.

Section 3 Review of Submissions

13. Over recent years the Tribunal has received submissions from individual officers and groups of office holders, within the Judges Magistrates and Related Group, seeking changes to existing relativities because of jurisdictional changes or increases in workload. These have been repeated again this year.
14. When such applications are received, the Tribunal assesses each on its merits to ascertain whether the changes described represent such a change in the work value which is so significant as to warrant an adjustment in the relativities.

15. A recurring issue for the Tribunal is determining whether and, if so, when jurisdictional changes justify disturbing existing relativities between the Supreme Court and District and the Magistracy. The Tribunal notes the views of the Attorney-General expressed in 1998 as follows;

“As the superior jurisdiction in New South Wales the Supreme Court is still responsible for hearing the most serious cases and those involving the largest financial claims. It also carries the ultimate responsibility for defining and interpreting the law relating to decisions of all other jurisdictions. Further the implications flowing from decisions of the Judges of the Supreme Court have arguably a greater impact on the judicial system than those taken in other jurisdictions.”

16. From time to time the Tribunal has undertaken work value reviews and, because of the significant changes that have occurred, it has adjusted the relativities accordingly. Such adjustments were made in 1987 for the District Court Judges and in 1994 for the magistrates. On these occasions the Tribunal was satisfied that the significant changes did merit a change in relativity.
17. After examination of the jurisdictional changes the Tribunal considers that the current relativities are appropriate and would look to make future changes to them only in circumstances where there have been significant changes in work value.

Judges of the District Court

18. The Tribunal has again given careful consideration to the submission from the Chief Judge of the District Court. This issue arises from provisions contained in the District Court Amendment Act 1997 which raised the monetary limit of its jurisdiction from \$250,000 to \$750,000 for personal injury cases and an unlimited amount where injuries occur as a result of motor vehicle accidents. The result has been an increase in the number of cases now being heard in the District Court.

19. When this matter was first reviewed in 1997, the Tribunal noted that some of the District Court's civil and criminal jurisdictions had been devolved to the Local Court. The Tribunal is also aware of the increased efficiencies of the District Court and these have been borne out by statistics. The Tribunal does note that the Government also provided additional resources for the District Court to help it achieve these efficiencies. It should also be noted that in 1997 the Tribunal provided increases to the Judges Magistrates and Related Group of 5 percent because of,

“...changes in Court administration directed at reducing the backlog of cases and at improving the productivity within the judicial system.”

20. Similarly in 1998 the Tribunal determined increases of 5.5 percent for this Group which, in part, acknowledged the productivity savings achieved in the judicial system.
21. The Tribunal has again carefully considered whether the salary differential between Judges of the District Court and Judges of the Supreme Court should be reduced.

Masters of the Supreme Court

22. The Tribunal has considered the submission received from the Masters of the Supreme Court and agrees that their exclusion from liability to pay the superannuation surcharge levy disadvantages them *vis a vis* those Judges who were exempted because their appointments preceded the legislation.
23. The judges' pension scheme is a non contributory scheme and provides for a maximum pension benefit equivalent to 60 percent of a judge's salary. There are no lump sum provisions and the pension is indexed to increases in judges salaries.

24. In December 1997 the Federal Government introduced an amendment to the legislation which exempted all serving judges at that time from liability to pay the surcharge. Only judges appointed after December 1997 will be liable for the surcharge levy. Serving Masters, however, were not included in the exemption hence they are currently liable for the annual surcharge levy. The Tribunal understands that representations had been made to the Federal Attorney General to rectify this anomaly but were not approved.
25. The Tribunal accepts that the Masters appointed before the date of the legislation are disadvantaged under the current arrangements and would urge the Attorney-General to examine this issue with a view to making further representations to his federal counterpart on behalf of the Masters. The Tribunal, for its part, can only reiterate its stated position, ie that it will not compensate any group of office holders who consider themselves disadvantaged because of a new tax that has been imposed upon the general community.

Magistrates

26. The Tribunal in its 1998 determination set out the reasons why there is no validity to the claim of an alleged “anomaly” following the 1989 determination. As the Chief Magistrate has raised this matter, yet again, the Tribunal will again re-state the reasons but any further submissions on this matter will be disregarded.
27. Magistrates’ salaries, historically, have been set as a percentage of the salary of a District Court Judge. This relativity was first established in 1973 by Justice Beattie of the Industrial Relations Commission and was set at 75 percent.

28. Allowances, however, paid at that time to both groups were not linked . Justice Beattie when making his final points regarding salary relativities between magistrates and District Court Judges stated in respect of allowances paid to them;

“I have made no reference to the allowance which District Court Judges receive. I think that should not be taken into account The calculations I have made relate only to salary.”

29. In 1980, following representations from the Chief Magistrate to link the allowances of magistrates and judges, the Public Service Board wrote to the Chief Magistrate advising that based on Justice Beattie’s comments the allowance received by District Court Judges should not be taken into consideration when setting allowances for magistrates.
30. In 1981, the magistrates presented a work value case that resulted in the Public Service Board determining an 80 percent relativity. This new salary relativity was adopted by the Tribunal in subsequent determinations.
31. When the Tribunal reviewed magistrates’ remuneration in 1989 it was specifically requested by the Government not to exceed;

*“...the traditional percentage nexus between **the salary** of Magistrates and that of Judges of the District Court.” (Tribunal emphasis)*

32. Prior to the 1989 determination the allowance rates were \$6,681 for judges and \$1,078 for magistrates. In the 1989 determination, when the salaries and allowances for judges and salaries and allowances for magistrates were combined into a single remuneration amount they produced a different relativity viz. 76 percent.

33. Had the Tribunal retained the 80 percent relativity after the amalgamation of salaries and allowances it would have, in a *de facto* sense approved the increase in allowances which had previously and consistently been refused.
34. The new remuneration relativity of 76 percent remained in place until 1994 when the Tribunal granted magistrates an increase of approximately 4 percent, based on a demonstrated significant increase in work value of the Local Court. It had nothing to do with restoring relativities or addressing “anomalies” as has been suggested by the Chief Magistrate.
35. The Tribunal does not accept that it should compensate magistrates for not being included in the judges pension scheme. The decision as to whether magistrates should or should not be in this scheme is a matter for Government.
36. In 1996 the Tribunal determined a special increase for the Chief Magistrate because of the circumstances explained at that time in the knowledge that a new relativity between the Magistracy and the Chief Magistrate was being sought. There is no basis for changing that relativity.
37. The Tribunal acknowledges that efficiencies have been achieved in the Local Courts and that the Magistracy is an integral part of providing affordable justice to the people of New South Wales. But, as with the District Court, so with the Local Court, the Tribunal granted significant increases to magistrates including a total of 10.5 percent over the last two years partly for the efficiencies being achieved.

38. The Director of Public Prosecutions has again argued for an increased salary on the basis of increased workload and greater administrative and managerial responsibility. The Director has noted that the workload of his office has increased since its creation in 1986 and he considers that his remuneration should be equivalent to that of the NSW Crime Commissioner.
39. When the position was first established the Government explicitly requested the Tribunal consider linking the remuneration of this office to that of a Supreme Court Judge. The Government has not since expressed a contrary view and the Tribunal can see no reason for altering the existing arrangements.
40. While the Tribunal accepts that there has been an increase in the workload the Tribunal also notes that the salary of the Director of Public Prosecutions has increased by 10.5 percent over the past two years.
41. The remuneration of the NSW Crime Commissioner is expressed as a total cost of employment. This package includes the employer's contribution to superannuation cost of motor vehicle and any other employer related benefit.
42. As with the Masters, the Director of Public Prosecutions has access to the judges pension scheme for which he is not required to make any contribution. In accordance with Clause 10, Schedule 1 of the Director of Public Prosecutions Act 1986 the Director is eligible for the maximum pension amount (equivalent to 60 percent of his salary)

43. In 1994 the Federal Remuneration Tribunal inquired into the cost of this benefit. The figures were actuarially determined and were based on a range of factors including length of service, age at retirement and life expectancy. It was estimated that the cost of the pension, for a judge who retired after 15 years service, was worth 62 percent of a judge's annual salary. This represents on current salary an additional amount of approximately \$128,300 per annum. To this amount should be added the additional cost of a motor vehicle provided by the Government to the Director and the cost of an additional 2 weeks leave. On this basis the Director of Public Prosecutions total package would be valued at approximately \$350,000 per annum. These are significant additional benefits available to the Director of Public Prosecutions which should be considered when comparing the remuneration of his office with that of the Chairperson NSW Crime Commission.

44. As with the Masters of the Supreme Court, the Tribunal is not prepared to compensate the Director of Public Prosecutions for changes to the pension entitlements arising from the Federal Government's superannuation surcharge levy.

Section 4 General Matters

45. The Tribunal attended the recent meeting of Federal and State Judicial Remuneration Tribunals which examined remuneration of Judges across the country. Unlike other years, however, at the time of making this determination the Commonwealth Tribunal had not made its annual determination. Consequently this Tribunal makes this determination without the prior knowledge of the level of increase to be provided to Federal Court Judges, if any.

46. For this review the Tribunal has taken into consideration, the economic and budgetary outlook, key national economic indicators which show that the annual underlying inflation rate for Australia to June 1999 was 1.7 percent whereas the annual headline inflation rate for Australia was 1.1 percent and for Sydney was 1.3 percent. The Tribunal has also had regard to comments received from the Attorney-General and the NSW Treasury's economic forecasts contained within the Government's submission which point to;

- Continued low inflation expected to provide growth in real average wages
- Moderation of economic activity due to the flow through of weaker world economic growth
- The Reserve Bank's Semi Annual Statement on monetary policy which suggests an absence of any general upward pressure on wages growth. The Reserve Bank has also noted that the pace of growth of executive remuneration is also easing. The rate of increase over the year to March 1999 was 4.7 percent.
- A NSW budget strategy which places strong emphasis on restraining growth in recurrent outlays

47. The Tribunal does not accept that remuneration should be adjusted annually in accordance with the CPI but considers that the CPI is one important factor to be taken into account along with other economic indicators. Also, the Tribunal is mindful that performance pay is inappropriate for these office holders and hence the remuneration determined is fixed. In these circumstances the Tribunal considers that, based on the current and projected economic circumstances, a modest increase in remuneration is appropriate for this review.

Section 5 Conclusion

48. 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 1999 by 2 percent from \$196,613 to \$200,543 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 remain at \$10,362 thus making the total remuneration of a Supreme Court Judge \$210,905 per annum.
49. The Tribunal further determines that the Heads of Jurisdiction of the Supreme Court, Court of Appeal and Industrial Relations Commission should also be increased by 2 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 1999.
50. 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 1999.
51. 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 1999 shall be as set out in Annexure A.

The Statutory and Other Offices

Remuneration Tribunal

Gerald Gleeson

Dated: 27 August 1999

ANNEXURE A**DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES
AND RELATED GROUP OF OFFICE HOLDERS ON AND FROM 1 OCTOBER
1999**

	Salary \$ per annum
<u>JUDGES</u>	
Chief Justice of the Supreme Court	234,570
President of the Court of Appeal	219,635
President of the Industrial Relations Commission	219,635
Judge of the Supreme Court	210,905
Deputy Chief Judge of the Industrial Court	210,905
Vice-President of the Industrial Relations Commission	210,905
Deputy President of the Industrial Relations Commission	210,905
Judge of the District Court	183,485
Master or acting Master (under the Supreme Court Act 1970)	183,485

(CONT'D)

**DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES
AND RELATED GROUP OF OFFICE HOLDERS ON AND FROM 1 OCTOBER
1999**

	Salary \$ per annum
<u>MAGISTRATES</u>	
Chief Magistrate	183,485
Deputy Chief Magistrate	155,050
Chairperson of Licensing Court	155,050
State Coroner	155,050
Senior Children's Magistrate	155,050
Chief Industrial Magistrate	149,355
Deputy Chairperson, Licensing Court	149,355
Magistrate	146,790
Chairperson Victims Compensation Tribunal (NOTE 1)	146,790
Children's Magistrate	146,790
Licensing Magistrate	146,790
Deputy State Coroner	146,790

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
1999**

<u>RELATED GROUP</u>	Salary \$ per annum
Chairperson, Law Reform Commission	210,905
Solicitor-General	210,905
Director of Public Prosecutions	210,905
Crown Advocate	183,485

ACTING JUDGES

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	\$1,130 per day
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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	\$985 per day
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**The Statutory and Other Offices
Remuneration Tribunal**

Gerald Gleeson

Dated: 27 August 1999