

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

PUBLIC OFFICE HOLDERS

31 AUGUST 2000

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PUBLIC OFFICE HOLDERS

Section 1 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 amount. Employer on costs such as Superannuation Guarantee Levy are, unlike the Senior Executive Service, additional to the salary amount determined.
3. 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 1999 review the Tribunal determined a general increase of 2 percent for all office holders effective from 1 October 1999. For the current review the Tribunal wrote to Public Office Holders inviting submissions.

Section 2 2000 Review

Government Submission

4. As in previous years the Government has provided comparative information on salary movements for interstate and federal public office holders. The Government has asked the Tribunal to consider various factors, including the economic outlook and has recommended a 2 percent increase for this Group of Office Holders.

5. As the table below shows, since 1994, the Tribunal has determined significant real increases in remuneration for this Group, when compared with increases in the Consumer Price Index and Average Weekly Earnings.

YEAR	NSW Public Office Holders	Crown Employees	Consumer Price Index	Average Weekly Earnings
1994	6.00	3.00	1.70	4.30
1995	4.00	3.00	4.50	5.20
1996	4.50	3.00	3.10	3.80
1997	5.00	4.00	0.30	4.40
1998	5.50	7.00	0.70	4.20
1999	2.00	5.00	1.10	2.10
2000		2.00	3.20	4.60 (May 99 – May 00)
TOTAL	27.00	27.00	14.60	28.60

Other Submissions Received.

6. For this review the Tribunal has received submissions the Crown Prosecutors, Public Defenders, Commissioners, Land and Environment Court, The President, Guardianship Tribunal, Deputy Directors of Public Prosecutions, the Clerk of the Legislative Assembly, the Chairperson of the Local Land Boards and the Chairman of the Fair Trading Tribunal.

Section 3 2000 Tribunal Review

7. The Tribunal has considered each of the submissions received and met with those officers who specifically requested meeting the Tribunal. After considering the information presented and after consulting the Assessors the Tribunal considers those offices holders listed below should receive additional increases.

Deputy Directors of Public Prosecutions

8. The Tribunal was informed that the duties and responsibilities of the two Deputy Directors have increased as a result of delegations of authority approved by the Director of Public Prosecutions. These delegations apply to the Director's administrative powers under the Public Sector Management Act 1988, and, since February 2000, all the Director's powers under the Director of Public Prosecutions Act 1986. The Deputy Directors together with the Director now effectively manage the Office of the Director of Public Prosecutions. They are responsible for the management of the office in the Director's absence and are now undertaking a greater amount of High Court cases than was previously the case.
9. The Tribunal is of the view that the Deputy Directors now have a greater level of responsibility than has hitherto been the case and, on this basis the Tribunal has provided a special increase to reflect these changed circumstances.

President and Deputy President, Guardianship Tribunal

10. This is the first time that the Tribunal has been requested to review the remuneration of these office holders.
11. The President informed the Tribunal of the increase in the role and responsibilities of both the President and Deputy President that have occurred since 1989. The Tribunal was advised that in 1989 the Guardianship Tribunal comprised 45 Members and 9 staff whereas now it comprises 65 Members and a staff of 56 with an annual budget of \$5.7 million. It now deals with nearly 4 times the number of applications it received in 1989. The Tribunal was also informed of legislative changes that have both increased and broadened the role of the Guardianship Tribunal.
12. In 1994 the Tribunal was for the first time able to make financial management orders not related to guardianship orders and in 1998 the Tribunal's responsibilities were further enhanced with the ability to revoke and review financial management orders if the Tribunal considers it to be in the best interests of the person. Prior to these changes such orders were made through the Courts system.

13. These changes have resulted in a far broader range of applications coming to the Tribunal for consideration and the scope of the Tribunal's authority has been broadened from considering matters in the context of a guardianship application to considering applications which are "in the best interests of the person".
14. On the basis of the information provided as well as its own inquiries, the Tribunal is satisfied that there has been an increase in the role and responsibilities of these office holders and has provided an additional increase in remuneration.

Chairman Local Land Boards

15. The Tribunal was informed of changes to the role and responsibilities of this office holder arising from legislative changes particularly in respect of his powers under the Dividing Fences Act 1991. The Tribunal was advised of administrative changes, which now require all dividing fence matters to be heard by the Local Land Board. The Tribunal was also advised that the Chairman now has total responsibility and control of the Land Boards' budget.
16. The Tribunal considers that the role and responsibilities of the Chairman have increased and as a result has provided an additional increase in the remuneration of the office holder.

Senior Members and Members of the Fair Trading Tribunal(FTT)

17. The Tribunal reviewed the remuneration levels of these office holders as part of the 1999 Annual Review. As the FTT had, at that time, only recently commenced, the Tribunal felt a further review of these offices would be warranted after a sustained period of operation.
18. The Chairperson of the FTT has now provided further information in respect of the duties and responsibilities of these office holders and in particular the broadening of the administrative aspects of their duties. As a result of this submission the Tribunal considers that a further adjustment in the remuneration of the Senior Member and Member is now warranted.

Non Financial benefits

19. The Tribunal's 1999 Report highlighted the need for an examination of the nature and extent of non financial benefits available to Public Office Holders. The Tribunal's view was that these benefits should be applied uniformly to all office holders.
20. The Tribunal received a special reference from the Premier to review these benefits and has collected data on the nature and extent of these entitlements. The benefits available to public office holders can be grouped into two broad categories viz; additional leave entitlements and provision of motor vehicles.
21. Additional leave entitlements (ie beyond the normal 4 weeks annual leave) are available to the Deputy Directors of Public Prosecutions, Crown Prosecutors, Public Defenders, Clerks and Deputy Clerks of the Parliament
22. The Attorney General has the statutory power to determine the leave that may be granted to the Deputy Directors of Public Prosecutions, Crown Prosecutors and Public Defenders.
23. In 1987 the Attorney General, pursuant to section 12(2) of the Crown Prosecutors Act 1986, reduced the annual leave of Crown Prosecutors. Because of the reduced leave arrangements, the matter of remuneration was referred by the Premier to the Tribunal for a determination.
24. In its determination of 16 March 1988 the Tribunal determined that no change in the remuneration was warranted. It noted in its Report of that Determination

“...the salaries determined for them have been regarded as appropriate for up to 48 weeks' work per annum. Any holidays granted in excess of four weeks would, from the Tribunal's point of view, be seen as a privilege only.”
25. The additional entitlements for the Clerks and Deputy Clerks of the Parliament are derived from the Parliament House (Sessional and Other Staff) Conditions Award due in part to the requirement that they be in attendance at night sittings of Parliament.

26. The question of additional annual leave is a matter for the Attorney General and the Presiding Officers. The Tribunal would not wish to interfere in what are clearly matters beyond the Tribunal's jurisdiction.
27. The Tribunal therefore proposes to take no further action in respect of this matter but only to note that the question of additional leave is one factor it will have regard to when considering requests for special increases from these groups of office holders.
28. The other main area of non financial benefit examined by the Tribunal concerns the availability and financial treatment of motor vehicles.
29. A number of officers within the Public Office Holder Group are provided with a private plated motor vehicle at either no cost or minimal cost. These officers and the amount they pay for a Government leased private plated motor vehicle are.

President, Mental Health Review Tribunal	\$2,205pa
Deputy President, Mental Health Review Tribunal	\$2,205pa
President, Guardianship Tribunal	\$853pa
Deputy President, Guardianship Tribunal	\$853pa
Clerk, Legislative Assembly	NIL
Clerk, Legislative Council	NIL
Deputy Clerk, Legislative Assembly	\$634pa
Deputy Clerk, Legislative Council	\$634pa
Chairperson, Motor Vehicle Repair Industry Council	NIL
Deputy Chairperson, Fair Trading Tribunal	NIL
Senior Member, Fair Trading Tribunal	NIL
Chairman, Local Land Board	NIL

30. The annual amount is meant to cover the private use of the motor vehicle. The different rates used reflect the different methods of calculating these costs.
31. Private plated motor vehicles are available to the SES and to judges and magistrates for business and private use on a salary sacrifice basis. The principle adopted is that there should be no cost to the Government for the private use component. Thus an officer nominates the mix of business and private use and the cost of the private use is deducted from the officers package/salary. The most common private/business mix is 70/30.

32. As a comparison it should be noted that the current annual cost of an average motor vehicle Ford Fairmont/Holden Berlina on a 70 percent private basis would be approximately \$12,000 per annum. It can be clearly seen that the abovementioned officers are in receipt of benefits way beyond business and community standards.
33. Section 11A of the Act provides the mechanism for Public Office Holders to be provided with employment benefits. This section was introduced to permit remuneration packaging on the SES type model ie total employment cost and includes provision for the employer's contribution to superannuation to be included in that package. This is not what is envisaged by this proposal.
34. The Tribunal considers that in relation to the provision of motor vehicles there should be a consistent policy between Public Office Holders, Senior Executive Service and Judges and Magistrates, that is that motor vehicles be provided on a salary sacrifice basis. In relation to the Public Office Holders generally, and those named in paragraph 29 specifically, this arrangement should be implemented administratively. If there are any legal doubts about this then a minor amendment should be made to the Act to permit salary sacrifice for motor vehicles only.
35. For those office holders listed above who are currently provided with a motor vehicle at either no cost or at a reduced cost the Tribunal will be providing a specific Motor Vehicle Allowance. This Allowance is to be used to meet the costs of the motor vehicle on terms and conditions applicable to the Senior executive Service and Judges and Magistrates.
36. The rate has been set at \$12,000 which represents the average cost of a motor vehicle on a 70 percent private basis. This allowance will not be superable. The allowance will only be available to the current appointees and will lapse upon their retirement/resignation. New appointees to these offices will only have access to motor vehicles on a salary sacrifice basis.
37. The Tribunal is making this arrangement to bring consistency and transparency in the provision of motor vehicles to public office holders. The Tribunal would strongly urge the Government to ensure that in future motor vehicles are only provided on a salary sacrifice basis.

Section 4 Conclusion

38. 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 2000 was 3.2 percent and that the Average Weekly Ordinary Time Earnings for the 12 months ended May 2000 was 4.6 percent. The Tribunal has also had regard to the recent Crown Employees (Public Sector Salaries January 2000) Award which commenced in January 2000 and which has provided 2 percent increase from 1 January 2000 and which will provide a further 2 percent from January 2001 to public servants.

39. In the above circumstances the Tribunal cannot agree with the views of the Government as expressed through the Treasury Submission that an increase of 2 per cent for the next 12 months is just and reasonable. An increase of 2 per cent would further compress the remuneration between the Public Office Holders and public servants and this is not considered to be in the best interests of promoting an efficient and effective public service.

40. 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 2000 shall be as specified in Annexure A.

41. The Tribunal further determines that the remuneration to be paid to office holders on and from 1 April 2001 shall be as specified in Annexure B.

The Statutory and Other Offices Remuneration Tribunal

Gerry Gleeson

Dated: 31 August 2000

ANNEXURE A

**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE
HOLDERS GROUP ON AND FROM 1 OCTOBER 2000**

Salary	\$ per annum
Ombudsman	176,690
Deputy Director of Public Prosecutions	176,690
Senior Public Defender	169,290
President, Mental Health Review Tribunal	169,290
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Deputy Chairperson, Law Reform Commission	167,095
Senior Crown Prosecutor	166,000
President, Guardianship Tribunal	166,000
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Deputy Chairperson Fair Trading Tribunal	155,615
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
	(Note 1)
Senior Chairperson (Government and Related Employees Appeals Tribunal) - not being a judicial office holder.	153,665
Deputy Senior Crown Prosecutor	153,665
Deputy Senior Public Defender	153,665
Commissioner, Law Reform Commission	150,055
Deputy President Mental Health Review Tribunal	148,205
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Inspector General, Corrective Services	145,650
Commissioner, Compensation Court	142,440
Chairperson, Residential Tenancies Tribunal	142,440
Senior Commissioner Land and Environment Court	142,440
Crown Prosecutor	139,400
Public Defender	139,400
Commissioner, Industrial Relations Commission	139,400

ANNEXURE A (CONT'D)

**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE
HOLDERS GROUP ON AND FROM 1 OCTOBER 2000**

Salary	\$ per annum
Commissioner, Land and Environment Court	139,400
Deputy President, Guardianship Tribunal <i>Motor Vehicle Allowance</i>	139,400 12,000
Clerk of the Legislative Assembly <i>Motor Vehicle Allowance</i>	131,250 12,000
Clerk of the Parliaments <i>Motor Vehicle Allowance</i>	131,250 12,000
Senior Member, Fair Trading Tribunal <i>Motor Vehicle Allowance</i>	125,590 12,000
Chairman, Transport Appeals Board	118,380
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)	118,380 (Note 2)
Member, Fair Trading Tribunal	118,380
Member, Residential Tenancies Tribunal	115,135
Chairman, Local Land Boards <i>Motor Vehicle Allowance</i>	115,135 12,000
Chairperson, Government and Related Employees Appeals Tribunal (not being the holder of a judicial office or a magisterial office)	111,775
Deputy Clerk, Legislative Assembly <i>Motor Vehicle Allowance</i>	111,775 12,000
Deputy Clerk, Legislative Council <i>Motor Vehicle Allowance</i>	111,775 12,000
Chairman, Motor Vehicle Repair Industry Council <i>Motor Vehicle Allowance</i>	111,775 12,000
Chairperson, Aboriginal Housing Authority	92,380
Member of the New South Wales Aboriginal Land Council	65,830 (Note 3)

ANNEXURE A (CONT'D)**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE
HOLDERS GROUP ON AND FROM 1 OCTOBER 2000**

- Note 1: The Deputy Chairperson Fair Trading Tribunal shall receive remuneration equivalent to \$169,290pa while ever the Chairperson of the Fair Trading Tribunal holds a dual appointment.
- Note 2 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 3 The Chairperson shall receive an allowance of 5% (ie. a total of \$69,120 per annum) and the Secretary and Treasurer shall receive an allowance of 3% (ie. a total of \$67,805 per annum).

Motor Vehicle Allowance

Motor vehicles available to Public Office Holders on similar terms and conditions to the Chief and Senior Executive Services, that is on a salary sacrifice basis.

**The Statutory and Other Offices
Remuneration Tribunal**

Gerry Gleeson
31 August 2000

ANNEXURE B

**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE
HOLDERS GROUP ON AND FROM 1 APRIL 2001**

Salary	\$ per annum
Ombudsman	180,225
Deputy Director of Public Prosecutions	180,225
Senior Public Defender	172,675
President, Mental Health Review Tribunal	172,675
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Deputy Chairperson, Law Reform Commission	170,435
Senior Crown Prosecutor	169,320
President, Guardianship Tribunal	169,320
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Deputy Chairperson Fair Trading Tribunal	158,725
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
	(Note 1)
Senior Chairperson (Government and Related Employees Appeals Tribunal) - not being a judicial office holder.	156,740
Deputy Senior Crown Prosecutor	156,740
Deputy Senior Public Defender	156,740
Commissioner, Law Reform Commission	153,055
Deputy President Mental Health Review Tribunal	151,170
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Inspector General, Corrective Services	148,565
Commissioner, Compensation Court	145,290
Chairperson, Residential Tenancies Tribunal	145,290
Senior Commissioner Land and Environment Court	145,290
Crown Prosecutor	142,190
Public Defender	142,190
Commissioner, Industrial Relations Commission	142,190

ANNEXURE B (CONT'D)

**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE
HOLDERS GROUP ON AND FROM 1 APRIL 2001**

Salary	\$ per annum
Commissioner, Land and Environment Court	142,190
Deputy President, Guardianship Tribunal	142,190
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Clerk of the Legislative Assembly	133,875
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Clerk of the Parliaments	133,875
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Senior Member, Fair Trading Tribunal	128,100
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Chairman, Transport Appeals Board	120,750
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)	120,750 (Note 2)
Member, Fair Trading Tribunal	120,750
Member, Residential Tenancies Tribunal	117,440
Chairman, Local Land Boards	117,440
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Chairperson, Government and Related Employees Appeals Tribunal (not being the holder of a judicial office or a magisterial office)	114,010
Deputy Clerk, Legislative Assembly	114,010
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Deputy Clerk, Legislative Council	114,010
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Chairman, Motor Vehicle Repair Industry Council	114,010
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Chairperson, Aboriginal Housing Authority	94,230
Member of the New South Wales Aboriginal Land Council	67,145 (Note 3)

ANNEXURE B (CONT'D)**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE HOLDERS GROUP ON AND FROM 1 APRIL 2001**

- Note 1: The Deputy Chairperson Fair Trading Tribunal shall receive remuneration equivalent to \$172,675pa while ever the Chairperson of the Fair Trading Tribunal holds a dual appointment.
- Note 2 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 3 The Chairperson shall receive an allowance of 5% (ie. a total of \$70,500 per annum) and the Secretary and Treasurer shall receive an allowance of 3% (ie. a total of \$69,160 per annum).

Motor Vehicle Allowance

Motor vehicles available to Public Office Holders on similar terms and conditions to the Chief and Senior Executive Services, that is on a salary sacrifice basis.

**The Statutory and Other Offices
Remuneration Tribunal**

Gerry Gleeson
31 August 2000