

**REPORT**

**and**

**DETERMINATION**

**under**

**SECTION 13**

**of the**

**STATUTORY AND OTHER OFFICES**

**REMUNERATION ACT, 1975**

**JUDGES, MAGISTRATES AND RELATED GROUP**

**29 AUGUST 2001**

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## **JUDGES, MAGISTRATES AND RELATED GROUP**

### **Section 1: Background**

1. Section 13 of the *Statutory and Other Offices Remuneration Act 1975* (the Act), as amended, requires the Statutory and other Offices Remuneration Tribunal (the 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.

### **Section 2: 2001 Review**

#### Government Submission

3. The Government has reviewed judicial remuneration around Australia and noted that in most jurisdictions increases varied from 3.7% to 5.5% in 2000/2001. The Government has submitted that any increase should retain the 85 percent nexus between salaries of State Supreme Court Judges and that of the Justice of the High Court of Australia.
4. In addition, the Government submission has also raised the issue of the payment of leave loading. The Government has noted that an anomaly exists in that some officers receive this allowance and others do not.

*“The impact of the anomaly is heightened in a comparison of the remuneration of Deputy Presidents and Vice Presidents of the Industrial Relations Commission. While under the SOORT Determination both groups of officers are remunerated at the same level, the Deputy Presidents’ total salary will be greater as a result of the payment of annual leave loading.”*

### Other Submissions

5. Submissions were received from the Chief Justice of the Supreme Court, two judges from the Supreme Court, the Chief Judge of the District Court, the Chief Magistrate and the Director of Public Prosecutions.
6. Submissions sought the preservation of the 85 percent nexus between salaries of State Supreme Court Judges with the Justice of the High Court; consideration of the impact of the superannuation surcharge on pensions and consideration of the different conditions applicable to judicial pensions between the State and Federal schemes.
7. The Tribunal has examined all the material carefully and had regard to the views of the Assessors in making its determination.

## **Section 3 2001 Tribunal Review**

### **Salary relativities between Judges of the Supreme Court and the Federal Court**

8. The Tribunal has noted carefully the Government's comments in regard to the retention of the 85 percent nexus. The Tribunal's determinations have consistently aimed at retaining the nexus and will continue to do so while the Tribunal considers it appropriate.
9. One problem that arises in maintaining the nexus is the statutory obligation on the Tribunal to make its report and determination by 31 August each year. This means that unless the Federal Remuneration Tribunal makes its determinations before 31 August each year this Tribunal is required to obtain a special reference from the Premier, if the Federal Tribunal's subsequent determination provides for a higher increase. This occurred in 2000.
10. The Tribunal understands that the Government will be amending the Act by removing the statutory time in which the Tribunal is required to make its annual determinations for Judges and Magistrates. The Tribunal strongly supports such an amendment as it would allow the Tribunal to make its determination in respect of the Judges, Magistrates and Related Group at a later date thus providing the Tribunal with the opportunity to consider the Federal Tribunal's determinations prior to making its own.

### **Superannuation Surcharge**

11. The Tribunal has previously addressed the issue of the impact of the superannuation surcharge on judicial pensions. The Tribunal has consistently maintained that it is inappropriate to compensate officers for the impact of a tax such as the superannuation surcharge which is applied to the general community.
12. Judges pension entitlements are subject to the provisions of the Judges Pension Act 1953. Any changes to the scheme would require an amendment to the legislation. This is a matter for the Government and not this Tribunal.

### **Travelling Allowances for Judges**

13. Then Director General of the Premier's Department has written to the Tribunal on behalf of the Premier advising the Government's support to the Attorney General's proposal that the Tribunal determine travelling allowance rates within Australia for the NSW judiciary.
14. Pursuant to s10A of the Act the Tribunal is specifically excluded from making determinations on travelling or subsistence allowances. The Tribunal has been advised that the Government intends to amend this section of the Act to remove the exclusion. The Tribunal would support an amendment to the Act to provide for such a determination.
15. When the Amendment has been completed the Tribunal would seek a special reference from the Premier to make the necessary determination.

### **Leave Loading**

16. The Tribunal has examined the history of this matter and has noted that from 1976 to 1989 it was the Tribunal that made annual determinations on leave loading. The Tribunal also notes that leave loading is provided to officers in receipt of specified and approved annual leave either through an Award, Agreement or Determination or by way of Ministerial approval. For Judges, however, there is no approval for personal leave. Since its introduction, therefore, leave loading has not been available to Judges.

17. If remuneration comparisons are to be made between judicial and non judicial members of the Industrial Relations Commission then the cost of all entitlements provided to the two groups should be added to the salary. While non judicial Deputy Presidents, may receive leave loading (approx. \$1,100 pa.) they do not have access to the non contributory judicial pension scheme available to judicial Deputy Presidents and Vice Presidents of the Industrial Relations Commission. The cost of this benefit is tens of thousands of dollars greater than the dollar value of annual leave loading.
18. The Tribunal notes that leave loading is paid under local arrangements but that some office holders with similar leave conditions to others have been excluded. Although the Tribunal has not made specific determinations in respect of leave loading since 1989, the Tribunal will make annual determinations in respect of leave loading for eligible office holders in this Group This will provide certainty and uniformity in the application of leave loading.

#### **Section 4 Conclusion**

19. While the Tribunal wishes to maintain the 85 percent nexus, at the time of making this determination the Federal Remuneration Tribunal had not made its annual determination of federal judicial salaries.
20. For this determination, the Tribunal has taken into consideration the economic and budgetary outlook, including key national economic indicators which show that the annual underlying inflation rate for Australia to June 2001 was 6 percent and the Wage Cost Index (WCI) for the 12 months ended June 2001 of 3.7 percent. The Tribunal notes that the WCI is now the principal wage and salary movement indicator and has been adopted by the Federal Remuneration Tribunal in its deliberations.
21. The Tribunal considers that in light of all the circumstances an increase of 3.7 percent would be just and reasonable on this occasion and so determines.
22. The Tribunal will consider the Federal Tribunal's determinations and, to ensure the 85 percent nexus is generally maintained, will seek a special reference from the Government if it is considered appropriate.

23. The Tribunal determines that the base rate of remuneration for a Supreme Court Judge should be increased on and from 1 October 2001 by 3.7 percent. The salary of a Judge of the Supreme Court will increase from \$212,960 to \$220,840 per annum. The Tribunal also determines an additional amount of \$13,400 per annum to bring consistency between NSW Judges and Federal and Inter-State Judges in relation to the provision of a motor vehicle.
24. The remuneration of the Heads of Jurisdiction of the Supreme Court, Court of Appeal and Industrial Relations Commission and 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 2001.
25. 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 2001.
26. 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 2001 shall be as set out in Annexures A to D.

**The Statutory and Other Offices  
Remuneration Tribunal**

Gerry Gleeson  
Dated: 29 August 2001

## ANNEXURE A

**DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES  
AND RELATED GROUP ON AND FROM 1 OCTOBER 2001**

<b><u>JUDGES</u></b>	<b>Salary \$ per annum</b>
Chief Justice of the Supreme Court	262,115
President of the Court of Appeal	245,435
President of the Industrial Relations Commission	245,435
Judge of the Supreme Court	220,840*
Vice-President of the Industrial Relations Commission	220,840*
Deputy President of the Industrial Relations Commission	220,840*
Judge of the District Court	210,815
Master or acting Master (under the Supreme Court Act 1970)	210,815

**\* An additional amount of \$13,400 to be added to the salary of the office holder. The resultant total amount shall be the salary fixed for pension leave and other administrative purposes.**

## ANNEXURE B

**DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES  
AND RELATED GROUP ON AND FROM 1 OCTOBER 2001**

<b><u>MAGISTRATES</u></b>	<b>Salary \$ per annum</b>
Chief Magistrate	210,815
Deputy Chief Magistrate	178,140
Chairperson of Licensing Court	178,140
State Coroner	178,140
Senior Children's Magistrate	178,140
Chief Industrial Magistrate	171,605
Deputy Chairperson, Licensing Court	171,605
Magistrate	168,650
Chairperson Victims Compensation Tribunal (NOTE 1)	168,650
Children's Magistrate	168,650
Licensing Magistrate	168,650
Deputy State Coroner	168,650

**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 C

**DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES  
AND RELATED GROUP ON AND FROM 1 OCTOBER 2001**

<b>RELATED GROUP</b>	<b>Salary \$ per annum</b>
Chairperson, Law Reform Commission	220,840*
Solicitor-General	220,840*
Director of Public Prosecutions	220,840*
Crown Advocate	210,815

**\* An additional amount of \$13,400 to be added to the salary of the office holder. The resultant total amount shall be the salary fixed for pension leave and other administrative purposes.**

**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	\$1,170 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	\$1,050 per day
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**ANNEXURE D****DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES  
AND RELATED GROUP ON AND FROM 1 OCTOBER 2001****Annual Leave Loading**

An annual leave loading shall be payable on the same terms and conditions as are applicable to officers and employees of the Public Service of New South Wales, as set out in Section 6-17.12 to 6-17.17 of the Premier's Department Personnel Handbook, to each of the following office holders:

Magistrates Group listed in Annexure B of this Determination  
Office Holders listed in Annexure C of this Determination  
Deputy President of the Industrial Relations Commission (not being a judicial member)

**The Statutory and Other Offices  
Remuneration Tribunal**

Gerry Gleeson  
Dated: 29 August 2001