

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

JUDGES, MAGISTRATES AND RELATED GROUP

12 December 2002

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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), 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. Since the last review, however, the Tribunal has undertaken extensive reviews of specific office holders who work directly within the judicial system. The office holders concerned were, the Deputy Directors of Public Prosecutions, Crown Prosecutors, Public Defenders, Commissioners Land and Environment Court, Commissioners, Industrial Relations Commission and the Commissioners, Compensation Court.
4. These reviews revealed that increases in work value had occurred and as a result the Tribunal determined a new level of remuneration for the office holders concerned. The Tribunal also concluded that as a result of this review the remuneration for these office holders should be set in relationship with judicial remuneration levels. For remuneration purposes, therefore, these office holders, have been removed from the Public Office Holder Group and are now listed with the Judges Magistrates and Related Group.
5. In December 2001 the Parliament passed the Statutory and Other Offices Remuneration Amendment Act 2001. This Act amended Section 13 by removing the requirement for the Tribunal to make its annual determinations by 31 August. Section 13 now provides;

“The Tribunal shall, in each year, make a determination of the remuneration to be paid to office holders as on and from 1 October in that year.”

6. The Act was also amended to provide the Tribunal with the power to determine travel and subsistence allowance for a *“Judge or Acting Judge of a Court.”*

Section 2: 2002 Review

7. On 6 September 2002 the Tribunal issued a Statement advising that the annual determination for the Judges, Magistrates and Related Group would be delayed pending the completion of the Federal Tribunal’s review of judicial remuneration. The reason for the delay concerns the longstanding Agreement between Federal and State Governments on the relativities between the remuneration of State Supreme Court Judges and Federal Court Judges with the remuneration of a Justice of the High Court. This was explained in the Tribunal’s 2000 Report and is restated here for clarification purposes

“...At the Premier's Conference on 28 June 1990 the Prime Minister and Premiers discussed the salaries of Commonwealth and State Judges and agreed that the question of "leap-frogging" in judicial salaries should be jointly addressed. Arising from this the Chairman of the Commonwealth Remuneration Tribunal met with the Chairmen of the State and Territory Remuneration Tribunals on 23 August 1990, 7 February and 5 July 1991.

In these meetings consensus was reached on the following matters: that the Remuneration Tribunals should continue to consult on an informal basis before making decisions on judicial salaries; that salary reviews should take place at or about the same time each year; and that there was a need to avoid the appearance of "leap-frogging". Further, that historical and other material suggested that the salary of a Judge of the Federal Court and a Judge of the State Supreme Court should not exceed 85 per cent of the salary of a Justice of the High Court of Australia. This relativity however, was acceptable only if and whilst the remuneration of a Justice of the High Court of Australia remained at an acceptable level, and that the Remuneration Tribunals should have regard to the base salary plus non financial benefits (such as motor vehicles) when determining judicial remuneration.”

8. Since that time the New South Wales Tribunal has maintained the remuneration of a State Supreme Court Judge at approximately 85% of the remuneration of a Justice of the High Court. In addition it has determined an additional amount of \$13,400 to be added to the salary of a Supreme Court Judge to meet motor vehicle costs.

9. On 27 November 2002 the Federal Tribunal made its determination on judicial remuneration providing for increases of a total of 17 per cent over the period 1 July 2002 to 30 June 2004, i.e., 24 months, as follows:

7%	payable on 1 July 2002
5%	payable on 1 July 2003
5%	payable on 1 July 2004

10. It further determined that these increases are over and above any general increases that it determines as part of its normal annual reviews for the years 2003 and 2004. Federal Treasury has forecast wage increases of 3½ percent for each of these years. Therefore the total increase over the two years may exceed 24 per cent. The Federal Tribunal has also determined the reimbursement of private vehicle running costs incurred by Federal Judges up to \$8,000 pa.
11. In meetings with the Federal Tribunal this Tribunal, while supporting the retention of the 85% nexus, nevertheless emphasised that significant increases to the Federal Judiciary could have serious flow on effects to State Judges and it advised that a moderate approach should be taken.
12. The Tribunal notes that the Federal Government's submission to the Tribunal argued against a large increase for Federal Judges in part because:
- “Once judges in one jurisdiction had received a salary increase, the new rate would be seen as a benchmark for judges in other jurisdictions. The Government would not support a significant increase in federal judicial salaries as this would destroy existing relativities with the remuneration payable to judges of State and Territory Supreme Courts.”*
13. The Tribunal has maintained the 85% nexus but only after due consideration of other factors that must be taken into account. In particular, economic factors and the changes in salary movements for chief executives and public office holders in New South Wales. It has not accepted the automatic flow on of Federal Tribunal decisions.

14. The Federal Tribunal Report results from a major and extensive review. It has set down guiding principles, it has stated a number of conclusions on important issues such as the market, performance pay, superannuation surcharge, salary sacrifice, pension arrangements. It has also set down key elements to be considered in determining adequate remuneration to ensure the basic independence of the Judiciary. The conclusions of this review will have a significant impact on Judicial remuneration throughout Australia and will require close examination.
15. This Tribunal will examine carefully the Federal Report and particularly the reasons behind the size of the increases and their applicability to New South Wales. It will consult with inter-State Remuneration Tribunals. Therefore submissions will be sought from the New South Wales Judiciary and other affected parties in relation to these matters. Because of Law vacations these submissions will not be required until 25th February, 2003.
16. The Federal Tribunal determination has not yet been tabled in the Federal Parliament where it will be subject to disallowance by either House of Parliament. It does not become operative until after the disallowance days have expired and because of the sitting pattern of the Federal Parliament this could be in March 2003 at the earliest.
17. Because of these factors the Tribunal will not be making its final annual determination on judges' remuneration until it has conducted its review of judicial remuneration in NSW and until the Federal Determination becomes operational. Because of this delay the Tribunal has decided to make an interim determination of 5 per cent effective from 1st October 2002.
18. The Tribunal also notes that future Federal Tribunal's determinations are to take effect from 1 July each year. Unlike the Federal legislation, the NSW Act provides that annual determinations take effect on and from 1 October each year. This interval will allow for due consideration for New South Wales to bring down its determination by 31st August each year and to be operative from 1st October.

19. The Tribunal pursuant to Section 14 of the Statutory and Other Offices Remuneration Act made special determinations operative on and from 2nd April 2002 for the following positions:

Commissioners, Land and Environment Court
Commissioners, Industrial Relations Commission
Commissioners, Compensation Court
Deputy Directors, Public Prosecutions
Crown Prosecutors
Public Defenders

20. This determination established a fixed percentage relationship with the remuneration of those occupying higher offices within each of the above categories. In view of the significant increases determined by the Federal Tribunal it will now be necessary to review whether those percentages continue to be appropriate. Therefore, submissions will be invited from these groups, again closing on 25th February 2003.

Section 3 Conclusion

21. The Tribunal determines that the base rate of remuneration for a Supreme Court Judge should be increased on and from 1 October 2002 by 5 percent. The salary of a Judge of the Supreme Court will increase from \$220,840 to \$231,880 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.
22. 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 2002.
23. 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 2002.

24. 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 2002 shall be as set out in Annexures A to D.

25. The Tribunal has also made a Report and determination on Travel Allowances for NSW Judges. The Report and Determination are attached at Annexure E

**The Statutory and Other Offices
Remuneration Tribunal**

Gerry Gleeson
Dated: 12 December 2002

ANNEXURE A

**DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES
AND RELATED GROUP ON AND FROM 1 OCTOBER 2002**

<u>JUDGES</u>	Salary \$ per annum
Chief Justice of the Supreme Court	274,470
President of the Court of Appeal	257,005
President of the Industrial Relations Commission	257,005
Judge of the Supreme Court	231,880*
Vice-President of the Industrial Relations Commission	231,880*
Deputy President of the Industrial Relations Commission	231,880*
Judge of the District Court	220,750
Master or acting Master (under the Supreme Court Act 1970)	220,750

*** 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 2002**

<u>MAGISTRATES</u>	Salary \$ per annum
Chief Magistrate	220,750
Deputy Chief Magistrate	186,535
Chairperson of Licensing Court	186,535
State Coroner	186,535
Senior Children's Magistrate	186,535
Chief Industrial Magistrate	179,690
Deputy Chairperson, Licensing Court	179,690
Magistrate	176,600
Chairperson Victims Compensation Tribunal (NOTE 1)	176,600
Children's Magistrate	176,600
Licensing Magistrate	176,600
Deputy State Coroner	176,600

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 2002**

RELATED GROUP	Salary \$ per annum
Chairperson, Law Reform Commission	231,880*
Solicitor-General	231,880*
Director of Public Prosecutions	231,880*
Crown Advocate	220,750
Deputy Director of Public Prosecutions	220,750
Senior Crown Prosecutor	198,675
Senior Public Defender	198,675
Deputy Senior Crown Prosecutor	178,810
Deputy Senior Public Defender	178,810
Crown Prosecutor	163,355
Public Defender	163,355
Senior Commissioner Land and Environment Court	166,790
Commissioner Land and Environment Court	161,885
Commissioner Compensation Court	166,790
Commissioner Industrial Relations Commission	161,885

*** 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 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: 12 December 2002

ANNEXURE E

Report and Determination – Travel Allowances for NSW Judges**REPORT****a) Background:**

1. Remuneration” is defined in the Statutory and Other Offices Remuneration Act 1975, as salary and allowances payable to office holders. Judges are holders of offices specified in Schedule 1 of the Act.
2. “Allowance” is defined as follows

“allowance does not include a travelling or subsistence allowance, but includes a travelling or subsistence allowance for travel within Australia by the holder of an office specified in Schedule 1 who is:

 - (a) a Judge or Acting Judge of a court, or*
 - (b) any other judicial officer (within the meaning of the Judicial Officers Act 1986) nominated by the Minister by notice in writing to the Tribunal for the purposes of this definition.*
3. On 11 April 2002 the Tribunal made its determination on domestic travel allowances for Judges. On 2 October 2002 the Commissioner for Taxation issued a Class Ruling (CR2002/75) which provides that the travel allowance rates determined by the Tribunal were reasonable for the purpose of exemption from substantiation under the Income Tax Assessment Act 1997.
4. The Tribunal in this determination will be setting rates for overnight stays in capital cities, for overnight stays in areas other than capital cities and meal rates for day or part of day absences from headquarters. The Tribunal has also determined the conditions upon which the rates are to be paid.

b) Current Review:

5. The review undertaken by the Tribunal found that while NSW Judges do travel interstate, most travel was to non metropolitan NSW, particularly by Judges of the District Court. Such circuit work involves extensive travel to various centres and judges can be away, depending on the trial list and trial duration, for up to four weeks at a time.
6. Advice from the District Court Registry is that the District Court is scheduled to sit for a minimum of 634 weeks of circuit sittings for 2002/2003 in non metropolitan NSW. The Tribunal understands that between 15-20 judges are on circuit at any given time. These statistics continue to testify to the importance of the District Court in the delivery and administration of justice in NSW.
7. For the present review the Tribunal has examined the current NSW Award Travel Rates, the Travel Rates for the NSW Senior Executive Service and other senior public sector employees as well as current rates payable to the Federal Judiciary. The Tribunal has also undertaken a survey of commercial accommodation in non metropolitan New South Wales.
8. The results of the survey reveal little change in the cost of accommodation in many country centres since the Tribunal's last review.

c) Principles Adopted

9. In making its determinations on travel allowance rates the Tribunal has adopted a number of guiding principles as set out hereunder.
 - Travelling allowances are intended to meet the costs necessarily incurred by Judges who are required to travel away from home/place of work on official business. Such costs cover accommodation, meals and incidental expenses.
 - Allowances are provided to ensure that an officer is not financially disadvantaged as a result of having to travel on official business.

- Office holders are not expected to gain or lose financially as a result of travelling on official business.
- Where an office holder is accommodated in private, non-commercial accommodation such as the home of a family member or friend, a rate of one third of the specified rate is payable, rounded upwards to the nearest dollar.
- The rates for accommodation across NSW vary considerably from town to town. There will be some country towns where the country daily rate will be of financial advantage to the Judge and there will be some (a much lesser number) where the Judge could be financially disadvantaged. On balance, the Tribunal is persuaded that with the exception of Newcastle and Wollongong a common rate should be applied for the remainder of NSW in the knowledge that across a year a Judge will most likely be neither financially advantaged or disadvantaged.

d) Conclusions:

10. The Tribunal has determined that the current capital city travel allowance rates contained in Taxation Ruling 2002/12 will also apply for NSW Judges.
11. Non metropolitan accommodation rates and meal allowance rates have not changed from the Tribunal's previous determination.
12. After reviewing the survey of accommodation and meal costs both inter and intra state, the Tribunal makes the following determination effective on and from 1 October 2002.

**Statutory and Other Offices
Remuneration Tribunal**

Gerry Gleeson
12 December

DETERMINATION

Pursuant to section 13 of the Act the Tribunal determines that the travel allowances for Judges will be as follows effective on and from 1 October 2002.

A Travel necessitating an overnight stay

1) Capital City Rates

Adelaide	\$296.15
Canberra	\$296.15
Darwin	\$296.15
Hobart	\$296.15
Brisbane	\$366.15
Melbourne	\$366.15
Perth	\$366.15
Sydney	\$366.15

2. Newcastle and Wollongong \$292.90

3. Other areas \$246.65

CONDITIONS

General conditions are to be as determined from time to time by the Attorney General. In addition the following specific conditions will apply.

- The full daily travel allowance rate is to be paid only where the judge stays overnight at commercial accommodation.
- Where the judge stays overnight at non commercial accommodation then one third of the daily rate is to be paid.
- Where travel is for a period in excess of 24 hours then meal expenses for the final part day are to be paid.

B Meal Allowances for travel NOT involving an overnight stay

Breakfast	\$20.00
Lunch	\$25.00
Dinner	\$45.00

Statutory and Other Offices Remuneration Tribunal

Gerry Gleeson

Dated: 12 December 2002