

STATUTORY AND OTHER OFFICES REMUNERATION ACT 1975

REPORT AND DETERMINATION PURSUANT TO SECTION 14 OF THE ACT - COMMISSIONERS, INDUSTRIAL RELATIONS COMMISSION

1. The Premier of New South Wales, the Hon Bob Carr MP, by letter of 11th December 2001 has directed the Tribunal, pursuant to Section 14 of the Statutory and Other Offices Remuneration Act 1975 to review the duties and responsibilities of Commissioners, Industrial Relations Commission and to make determinations on the appropriate levels of remuneration.
2. The Tribunal invited submissions and these were received from the Commissioners with whom interviews were held. The President, the Hon Justice L Wright, was also interviewed.
3. This review is a work value review and no regard has been given to the economic movements since the August 2001 determination.

Background:

4. The last in depth review of the role and responsibilities of the Industrial Relations Commissioners was carried out in 1990 and at that time an evaluation was made by Cullen Egan Dell, remuneration consultants.
5. The Commissioners received special adjustments of 3 per cent in 1997 and 3.12 per cent in 1998. The Commissioners now seek an increase from \$147,450 to \$175,860 per annum, that is, 75 per cent of the remuneration of a Deputy President of the Industrial Relations Commission, and submit that this nexus should be determined by the Tribunal.
6. In 1996 the Commissioners were included as Judicial Officers pursuant to the Judicial Officers Act, 1986 and therefore they submit they are incorrectly and inappropriately grouped within the Public Office Holders Group rather than in the Judges, Magistrates and Related Group (as is a Deputy President whose statutory role and powers are common to those of Commissioners).
7. In addition to salary, Commissioners receive the superannuation guarantee levy of 8 per cent to become 9 per cent on 1st July. They are also entitled to four weeks annual leave and are rostered for work during the law vacations. The Commissioners are entitled to acquire motor vehicles on a salary sacrifice basis and be paid mileage allowance *in particular circumstances*. They are also paid mileage allowance if they use a private car. A limited use of pool cars is also available.

Submission:

8. The current submission from Commissioners points out, inter alia:
 - The workload of Commissioners continues to increase and diversify with significant and substantial increases to the range of duties and the level of responsibilities, particularly in recent years.
 - The role and responsibilities of Commissioners in NSW are greater than those of their counterparts in other States with some functions being unique to Commissioners in NSW.

- NSW Commissioners are least remunerated by reference to salary and motor vehicle provision when compared with their inter-State and Federal counterparts.
- In most jurisdictions the salary level of Commissioners is fixed as a percentage of the immediately more senior member of the Tribunal (who is known as a Deputy President).
- The principal legislation governing the role of Commissioners has changed twice over the last decade leading to enhanced jurisdiction, accountability and a quantitative increase in the central workload and country travel with the range of functions increased and diversified.
- Once the “significant net addition to work value” has been established as is the case of the Commissioners, the Tribunal is entitled to determine the Commissioners’ remuneration by reference to other positions whose role may be considered similar in task, accountability and the conditions under which it is performed.
- The changes to the principal legislation and other related legislation that requires Commissioners to continually update their knowledge and practice, for example over recent years:
 - *Industrial Relations Amendment Act 2000*
 - *Industrial Relations Amendment (Council Swimming Centres) Act 2000*
 - *Industrial Relations Leave Legislation Amendment (Bonuses) Act 2000*
 - *Evidence Act 1995*
 - *Privacy and Personal Information Protection Act 1998*
 - *Occupational Health and Safety Act 2000*
 - *Child Protection (Prohibited Employment) Act 1998*

9. Commissioners argue that their conditions suffer by way of comparison with Commonwealth Commissioners. The rate for a Deputy President contains a \$13,400 allowance primarily for acquisition of vehicle and therefore if the rate for a Commissioner is established with a percentage relationship to Deputy Presidents then this amount contains a contribution towards acquisition of a vehicle.

Conclusions:

10. The issue for the Tribunal is whether the remuneration adjustments made in October 1997 and October 1998 have adequately compensated for the increased work value in those years and for changes since 1998.
11. The Tribunal agrees that the remuneration of Commonwealth Commissioners is significant but less significant is the comparison with remuneration in other various States. For example, the remuneration of Deputy Presidents in the Commonwealth and some States, including NSW, varies considerably.
12. Unlike the Senior Executive Service, the Commissioners are not eligible for recruitment and retention allowances. Their remuneration is a fixed sum determined by the Tribunal plus the superannuation guarantee levy of 8 per cent (\$8,416).
13. Commissioners have emphasised that there is increased diversity work being undertaken. The statistics show that the number of disputes and the number of awards have remained fairly constant over the past five years. The large increase in work and which is currently being maintained is in relation to unfair dismissals. The nature of unfair dismissal cases is becoming more diverse.

14. One important addition to the role has been in the area of child protection where the Commissioners now have authority to arbitrate on applications for persons to be exempted from the Child Protection (Prohibited Employment) Act 1998. The President decides on the allocation of these matters and to date has referred applications to Deputy Presidents.
15. A major issue for consideration by the Tribunal is the comparison of the roles and responsibilities carried out by Commissioners *vis-à-vis* Deputy Presidents. The jurisdiction of Commissioners (and Deputy Presidents) include appeal benches where they sit as equal members on Full Benches considering appeals against decisions of a Presidential member or Commissioner sitting alone; State decisions where they sit as equal members on Full Benches considering such matters as State Wage Cases, Pay Equity and Enterprise Agreement principles; and Awards where they carry out conciliation and arbitration of applications for new awards or award variations.
16. Within the light of the foregoing the Tribunal has concluded that there has been a net addition to the work value in recent years. While the Tribunal in previous determinations has not been prepared to determine a link with the remuneration of the Deputy Presidents it has now concluded that a such percentage relationship with Deputy President would be appropriate.
17. After considering the above and after having regard to the views of the Assessors, the Tribunal determines that the remuneration of the office of Commissioner, Industrial Relations Commission should be \$154,600. This sets the remuneration of Commissioners at 66 percent of that of a Deputy President of the Industrial Relations Commission. Since the remuneration of a Deputy President includes the allowance of \$13,400 to assist with the provision of a motor vehicle, it means that remuneration for Commissioners also incorporates an amount of approximately \$8,800 for this purpose.
18. The Tribunal also concludes that any further adjustment would require demonstration that there has been a significant net increase in work value requirements after April 2002.

DETERMINATION

The Tribunal determines, pursuant to section 14 of the Statutory and Other Offices Remuneration Act 1975, that the remuneration of the office of Commissioner, Industrial Relations Commission shall be \$154,600 effective on and from 2 April 2002.

Statutory and Other Offices Remuneration Tribunal

Gerry Gleeson