

STATUTORY AND OTHER OFFICES REMUNERATION ACT 1975

REPORT AND DETERMINATION PURSUANT TO SECTION 14 OF THE ACT - COMMISSIONERS OF THE LAND & ENVIRONMENT COURT

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 the Commissioners of the Land and Environment Court and to make determinations on the appropriate levels of remuneration.
2. The Tribunal invited submissions and these were received from the Commissioners, the Chief Judge of the Land & Environment Court, Mr Justice Sheahan and Mr Peter Jensen. Interviews were held with representatives of the Commissioners and the Tribunal visited the Court while hearings were in progress.
3. This review is a work value review and no regard has been given to the economic movements since the 2001 August determination.

Background:

4. The positions of Senior Assessor and Assessors, Land and Environment Court were first established in 1980. In 1999 these titles were changed to Senior Commissioner and Commissioner because of the changing duties and responsibilities of the positions.
5. In October 1996 there was a special adjustment of 3 per cent and in October 1998 a further special adjustment of 9.13 per cent. These adjustments had regard to the increased work values of the positions and complexities of the matters being dealt with and decided upon.
6. In 2000 the Commissioners sought an additional adjustment and parity with Magistrates but this was not granted in the 2000 and 2001 determinations of the Tribunal.
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 eligible to acquire cars on a salary sacrifice basis. The use of their personal car is not compulsory and for work away from their headquarters they have access to a departmental vehicle. If they use their private car for official purposes then car mileage allowances are paid.

Submissions from Commissioners:

8. The current submission points out, inter alia,
 - The judicial nature of the Commissioners' work;
 - The skills, qualifications, experience and expertise of Commissioners;
 - The increased workload;
 - The increased complexity of planning legislation and planning instruments;
 - The increasing range of expertise in the evidence before the Court;

- The independence and finality of the Commissioners' decisions;
 - The cost and significance of the projects determined by Commissioners
9. The Commissioners have sought parity with the remuneration of Magistrates.
10. The Chief Judge of the Court has emphasised the following important features of their role and responsibilities:
- The Commissioners are concerned with public law involving the citizen and local government;
 - Many of the developments with which they are concerned are of significant monetary value and have significant planning and environmental implications;
 - The technical planning matters with which they are concerned are complex and specialised;
 - The law which they are required to apply is also complex and voluminous.
11. Other matters put forward for the consideration of the Tribunal were:
- At the direction of the Chief Judge the Commissioners exercise the Court's jurisdiction in Classes 1, 2 and 3 matters either individually or with another Commissioner. These matters deal with development, building and valuation issues.
 - The Commissioners must carry out their duties in the manner of judicial officers. They operate under the umbrella of the Court and not as a lay tribunal. They are an integral part of the legislative framework for environmental decision-making.
 - Commissioners require expertise and experience developed over many years. Their qualifications show that they span a range of disciplines including law, town planning, architecture, environmental science, engineering and management.
 - The Court "stands in the shoes" of the local councils which have made the original determinations. An appeal involves a fresh hearing and the Court is not bound by the original decision of the consent authority.
 - The Environmental Planning and Assessment (Amendment) Act 1998, brought about a major reform of development control in the State. The Court is now the consent authority in relation to both planning and building matters.
 - There is a great variety of planning instruments. In addition the 173 local councils prepare development control plans designed to provide more detailed controls. The Court must often take into account several instruments which are sometimes inconsistent with one another.

Conclusions:

12. The Government has recently had a public review of the role of the Land and Environment Court and has reaffirmed the responsibilities of the Commissioners.
13. There is an increasing complexity within the many planning instruments and increasing public concern and sensitivity with planning matters. As a consequence, the Commissioners are under public scrutiny and carry heavy responsibilities in their decision making.

14. The issue for the Tribunal is whether the remuneration adjustments made in 1998 have adequately compensated for the increased work value and for changes since then.
15. 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).
16. Commissioners have consistently sought parity with Magistrates whose remuneration is fixed at 80 per cent of that of a District Court Judge. The Tribunal has not been prepared in the past to grant parity with the Magistrates and as a result of this review that opinion remains. Further, it has been the practice of the Tribunal not to set the remuneration as a percentage of judicial rates. However, the Tribunal has now concluded as a result of this work value review that the remuneration of Commissioners ought to be set in a relationship to Judges of the Land and Environment Court.
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, Land and Environment Court should be \$154,600. This sets the remuneration of Commissioners at 66 percent of that of a Judge of the Land and Environment Court. Since the remuneration of a Judge 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. In respect of the Senior Commissioner, Land and Environment Court, the Tribunal determines that the rate for this office shall be \$159,285. This sets the remuneration of the Senior Commissioner at 68 percent of that of a Judge of the Land and Environment Court.
19. The Tribunal also concludes that any further adjustment would require demonstration that there has been a significant net increase in work value 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 offices of Senior Commissioner and Commissioner, Land and Environment Court shall as follows with effect on and from 2 April 2002.

Senior Commissioner (Land and Environment Court)	\$159,285
Commissioner (Land and Environment Court)	\$154,600

Statutory and Other Offices Remuneration Tribunal