

STATUTORY AND OTHER OFFICES REMUNERATION ACT 1975

REPORT AND DETERMINATION PURSUANT TO SECTION 14 OF THE ACT - CROWN PROSECUTORS

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 Crown Prosecutors and to make determinations on the appropriate levels of remuneration.

Background:

1. The last wide ranging review of the Crown Prosecutor classifications was made by the Tribunal in 1989.
2. Currently there are three classifications of Crown Prosecutor, namely,
Senior Crown Prosecutor (1 position)
Deputy Senior Crown Prosecutor (12 positions)
Crown Prosecutors (81 positions)
3. The functions of Crown Prosecutors as set out in Section 5 of the Crown Prosecutors Act 1986, are as follows:-
 - To conduct, and appear as counsel in proceedings on behalf of the Director of Public Prosecutions (the Director)
 - To find a bill in indictment in respect of an indictable offence, whether or not the person concerned has been committed for trial in respect of the offence;
 - To advise the Attorney General or Director in respect of any matter referred for advice by either of them; and
 - To carry out such other functions of counsel as the Attorney General or Director approves.
4. The 1986 Act provides that Crown Prosecutors are separate and distinct from the Director of Public Prosecution (DPP) and his or her officers. They continue to perform their functions of finding bills of indictment, appearing as counsel in the Supreme Court and District Court and providing expert advice on criminal matters. They perform these functions on behalf of DPP.
5. The Crown Prosecutors are statutory appointees. Their independence as counsel is preserved and this independence provides the necessary freedom to conduct trials as counsel and to provide advice on a professional and unfettered basis.
6. The Director of Public Prosecutions Act 1986 empowers the DPP to issue guidelines to Crowns but not as to individual cases.
7. The current remuneration of Crown Prosecutors is \$147,450. In addition Crown Prosecutors receive the superannuation guarantee levy of 8 per cent, to become 9 per cent on 1st July 2002, plus eight weeks annual leave.

Submissions from the Crown Prosecutors:

8. The submissions point out, inter alia,
- There have been further significant developments affecting their duties and the environment under which these duties are performed;
 - The personal responsibility of the Crown for the conduct of cases is becoming increasingly more difficult ;
 - The “Victims’ Rights” movement has markedly affected the Crowns’ working environment;
 - The practice of crime victims to express their dissatisfaction via the media is becoming more widespread;
 - The Crowns now find themselves at the forefront of the “Law and Order” issue and their work is subject to much greater public and government scrutiny;
 - There has been a large increase in appeals to the higher courts. There are now 8 Crowns engaged full time in the conduct of appeals at the NSW Court of Criminal Appeal. The Evidence Act 1995 has resulted in appeals becoming increasingly more complicated with the law of evidence now being much more technical;
 - The Criminal Procedure Amendment (Pre Trial Disclosure) Act 2001 which has as its purpose the pre trial disclosure between the prosecution and defence increases the need for more careful preparation in the first instance. The consequences of a mistake could be very serious and puts greater pressure on the Crown to get things right the first time in case the Court decides that the Crowns should not be allowed to change course.
 - The large disparity in salary between Magistrates and Crown Prosecutors cannot be justified. Magistrates simply are not involved in the higher areas of the criminal law other than in relation to committal proceedings.
 - The eight weeks leave of absence allowed to Crowns should not be seen as a factor to be weighed against Crowns having their salary properly increased. Many of the present Crowns would not be prepared to take their positions without this powerful incentive.
 - A report commissioned from Mercer Cullen Egan Dell recommends a salary for Prosecutors within the range of \$150,000 to \$170,000.

Conclusions:

9. Crown Prosecutors play a significant role in the effectiveness and in the integrity of the Criminal Justice system. The issue for determination is whether their current work value is adequately remunerated and whether the special adjustment of 3 per cent in October 1996 and 3.12 per cent in October 1998 have already given them adequate compensation for changes in work value.

10. Unlike the Senior Executive Service these officers are not eligible for Recruitment or Retention Allowance. Their remuneration is a fixed sum determined by the Tribunal plus the superannuation guarantee levy of \$8,416.
11. The Tribunal is satisfied that the legislative changes in 1999 and 2001 together with the increasing appellant work at the NSW Court of Criminal Appeal has resulted in the significant net addition to the work value to warrant increased remuneration.
12. The Tribunal has previously not agreed to a fixed relationship between Crown Prosecutors and Judges but has now concluded that a fixed percentage relationship is justified between Crown Prosecutors and the Deputy Directors of Public Prosecutions.
13. After considering the above and after having regard to the views of the Assessors, the Tribunal determines that the remuneration of the office of Senior Crown Prosecutor should be \$189,735. This sets the remuneration of Senior Crown Prosecutor at 90 percent of that of the Deputy Directors of Public Prosecutions.
14. The Tribunal further determines that the rate for the Deputy Senior Crown Prosecutor shall be \$170,760 and for a Crown Prosecutor it shall be \$156,000. This sets the remuneration of these office holders at 81 percent and 74 percent respectively of that of the Deputy Directors of Public Prosecutions.
15. 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 offices of Senior Crown Prosecutor, Deputy Senior Crown Prosecutor, and Crown Prosecutor shall be as follows with effect on and from 2 April 2002.

Senior Crown Prosecutor	\$189,735
Deputy Senior Crown Prosecutor	\$170,760
Crown Prosecutor	\$156,000

Statutory and Other Offices Remuneration Tribunal

Gerry Gleeson

Date: 20 March 2002