

**REPORT**

**and**

**DETERMINATION**

**under**

**SECTION 13**

**of the**

**STATUTORY AND OTHER OFFICES**

**REMUNERATION ACT, 1975**

**JUDGES, MAGISTRATES AND RELATED GROUP**

**17 September 2004**

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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 or are directly involved with the judicial system. The offices have been grouped together by the Tribunal for remuneration purposes only.
3. A principal feature of remuneration for Judges has been 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 Agreement provides 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, remains acceptable only if and whilst the remuneration of a Justice of the High Court of Australia remained at an appropriate 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.
4. 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.

5. A feature of this year's Determination is the inclusion of the third instalment of the two year 17 percent special increase provided by the Commonwealth Remuneration Tribunal to federal Judges and Magistrates. The Commonwealth Tribunal's determination, following a comprehensive review, was made in November 2002. The results of that review were that federal judges were to receive increases totalling 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

6. The CRT further determined that these increases were over and above any general economic adjustments that it determines as part of its normal annual reviews for the years 2003 and 2004. On 1 July 2003 this adjustment was a further 4.0 percent and on 1 July 2004 it is 3.9 percent.

## **Section 2: 2004 Review**

7. The Government has submitted that the longstanding nexus between State and Federal judicial remuneration be maintained.
8. The Tribunal has received a number of submissions for the current review. All supported retention of the nexus with the federal judiciary and/or the retention of existing relativities. In addition the Tribunal received submissions on specific issues. These include:
- A submission from Deputy Presidents of the Workers Compensation Commission to review their remuneration. They contend that their remuneration should be equivalent to that of a District Court Judge. The President of the Commission also wrote to the Tribunal in support of the Deputy Presidents' submission.
  - A submission on behalf of the Supreme Court seeking an increase in the Conveyance Allowance of 7.9 percent to cover cost of living adjustments.

- A submission from the Chief Judge of the District Court seeking an increase in the Conveyance Allowance to that applicable to Supreme Court Judges; an increase in the daily rate for acting judges so that they are not disadvantaged regarding their superannuation arrangements; a review of the current daily meal allowance rate for circuit judges and a review of the travel provision where a judge staying in non commercial accommodation is paid one third of full daily rate. He considers that the rate should be increased to 50 percent of daily rate.
  - A submission from the Chief Judge of the Land and Environment Court suggesting that the Conveyance Allowance for judges of inferior courts should be established on different principles to support the distinction in rates.
  - The Senior Commissioner Land and Environment Court has sought an increase in the relativity with a Judge of the Land and Environment Court because of additional leadership and management responsibilities arising from administrative changes introduced by the Chief Judge. The Chief Judge has written to the Tribunal supporting the application of the Senior Commissioner.
  - The new Solicitor for Public Prosecutions has written to the Tribunal advising that, unlike his predecessor, he will not be electing to receive remuneration packaging, pursuant to section 11A of the Act. As a result, the Solicitor for Public Prosecutions is seeking a determination for the salary of his office.
9. The Tribunal met with the President and Deputy Presidents of the Workers Compensation Commission to discuss the issues raised in their submissions.

#### **Deputy Presidents, Workers Compensation Commission**

10. The Tribunal undertook a review of the role and responsibilities of the Deputy Presidents as part of the 2003 annual review. On that occasion, the Tribunal concluded that the existing remuneration levels were adequate.

11. For the current review, the Deputy Presidents, to support their claim contend that the breadth of work they undertake is analogous to that carried out by the former Judges of the Compensation Court. They also contend that because they hear appeals, their work is at level equivalent to that of the Judges of the Court of Appeal. The Deputy Presidents base this latter contention on the fact that formerly, appeals from Judges of the Compensation Court were to the Court of Appeal. They also provided statistical information showing that they hear on average one appeal each per week.
12. The Tribunal has given careful consideration to the Deputy Presidents' submission but can find no reason to support either contention. As a result, the existing relativities will be maintained.

### **Acting Judges**

13. For reasons outlined in the Tribunal's 2003 annual Report new rates for acting Judges took effect on and from 1 October 2003 for new acting judicial commissions. The Tribunal has been advised that, because the daily rates are lower than was previously the case this has resulted in lower superannuation payouts for these acting Judges. This does not apply to Acting Judges in receipt of a judicial pension.
14. The Tribunal notes the comments of the Acting Chief Judge of the District Court but considers that overall, the decision was fair and reasonable when all the circumstances of the decision are taken into consideration.

### **Conveyance Allowance**

15. The Tribunal has received a number of submissions dealing with the Conveyance Allowance. These submissions have sought, *inter alia*, clarification of the purpose of the Allowance, an increase in the Allowance and its application.
16. The Tribunal introduced the Allowance in its Special Determination of 11 June 2003. It replaced the former "Additional Amount" provided to Supreme Court Judges to compensate for the non financial benefits received by their federal counterparts. The principal non financial benefit provided to Federal Court Judges is a motor vehicle.

17. The issues surrounding the Conveyance Allowance are quite complex and cannot be resolved within the time of the current annual review. The Tribunal therefore will make no adjustment to the Allowance at this time but will, immediately following the completion of the annual review, seek a special reference from the Premier to examine this matter fully. The Tribunal intends to seek the views of the Judiciary and the Attorney General's Department with a view to making a determination which, as far as is practicable, will resolve the issues surrounding the Allowance.

### **Travel Allowances**

18. The Tribunal has noted the Chief Judge of the District Court's contention that the daily rate of meal allowance for Judges is not adequate. The Chief Judge also contends that when a Judge travels intrastate and stays at his/her own private accommodation (rather than in commercial accommodation) the rate of travel allowance should be increased from 33 percent of the full daily rate of travel allowance to 50 percent of the daily rate. The reason given is that the Judge's private accommodation still requires maintenance and upkeep for which the 33 percent rate is insufficient.
19. The Tribunal cannot support either contention. The daily rate of travel allowance for intrastate travel is more generous than available to other public sector employees including the Chief and Senior Executive Services. Similarly meal allowances provided to judges are, in general, more generous than those available to other public sector employees.
20. The Tribunal's inquiries for the current review suggest that no change in the travel entitlements is necessary. The conditions pertaining to the use of non commercial accommodation are considered to be fair and reasonable and will be retained.

### **Senior Commissioner Land and Environment Court**

21. The Tribunal notes that the Senior Commissioner is now required to undertake additional responsibilities as a result of changes introduced by the Chief Judge of the Land and Environment Court.

22. The Tribunal considers that the changes have resulted in an increase in the responsibilities of the position and that an increase in remuneration for this office is warranted.

### **Solicitor for Public Prosecutions**

23. The Tribunal was recently advised that a new appointment had been made to the office of Solicitor for Public Prosecutions (SPP). The former office holder had made an election, pursuant to section 11A of the Act to be provided with employment benefits. As a result of that election the remuneration of SPP was expressed as an SES style remuneration package (ie all employer on costs included within the package) and received increases identical with other 11A office holders as listed in the Tribunal's reports and Determinations on the Chief and Senior Executive Services.
24. The new SPP has written to the Tribunal and advised that he will not be making an election pursuant to section 11A and would prefer to receive a salary rather than a remuneration package.
25. As a result of this advice the office of Solicitor for Public Prosecutions has been removed from the list of Section 11A office holders in the Report and Determination for the Chief and Senior Executive Services. As with other senior positions in the Office of the Director of Public Prosecutions it has been included in the Judges Magistrates and Related Group.
26. The former remuneration package amount has been re-calculated by removing the employer on costs contained within the package ie the Superannuation Guarantee Levy and annual leave loading.
27. The Tribunal is aware of the importance of this position to the functioning of the Office of the Director of Public Prosecutions. The Tribunal also notes that no review of the role and responsibilities of this office has been carried out for some time. The Tribunal will undertake a full review of the role and responsibilities of the SPP at the time of the next annual review.

### **Section 3      Conclusion**

28. The Federal Tribunal has recently determined an increase of 3.9 percent in respect of Federal Judges. This represents the 2004 cost of living increase. As noted earlier the Tribunal has also passed on the last instalment of the 5 percent from its special review as foreshadowed in its Report of November 2002. The overall result of this special review has been increase of 27 percent for Federal and State Judges for the 2 years 1 July 2002 to 30 June 2004. By any standards, this level of increase in such a short period of time is well beyond community standards. This situation is exacerbated when one considers that this increase flows automatically into the pensions of retired judges.
29. The Tribunal has consistently matched the increases determined by the Commonwealth Tribunal. The NSW Government has recommended that this be repeated for the 2004 determination.
30. The Tribunal will again maintain the 85 percent nexus, however, this practise will come under close scrutiny if the Commonwealth Tribunal grants another special increase beyond prevailing community standards. This scrutiny will particularly apply if the Commonwealth Tribunal does not openly and genuinely consult with this Tribunal.
31. The Tribunal is required to have regard to decisions of the Commonwealth Tribunal but not to automatically adopt its determinations. This Tribunal will make its own independent annual assessment as required under the Act.
32. To maintain the 85 percent nexus the Tribunal will be determining an increase similar to the Federal Tribunal's determination for NSW Judges. With the exception of the Senior Commissioner, Land and Environment Court the existing internal relativities will be retained.
33. Separate determinations have been made for Acting Judges.



34. 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 2004 shall be as set out in Determinations Nos 1-6.

35. The Tribunal has also made a Report and determination on Travel Allowances for NSW Judges and Magistrates. The Report and Determination are attached at Determination No 7.

**The Statutory and Other Offices  
Remuneration Tribunal**

**Gerry Gleeson**

Dated: 17 September 2004

**DETERMINATION No 1**

**REMUNERATION OF JUDGES – effective from 1 October 2004**

	<b>Salary \$ per annum</b>
Chief Justice of the Supreme Court	316,090
President of the Court of Appeal	295,975
President of the Industrial Relations Commission	295,975
President, Workers Compensation Commission (NOTE 1)	295,975
President, Workers Compensation Commission	282,475
Judge of the Supreme Court	282,475
Vice-President of the Industrial Relations Commission	282,475
Deputy President of the Industrial Relations Commission	282,475
Judge of the District Court	254,230
Master or acting Master (under the Supreme Court Act 1970)	254,230

NOTE 1: Rate applicable only while the Hon Justice Terry Sheahan holds the Office.

**DETERMINATION No 2****REMUNERATION OF MAGISTRATES – effective from 1 October 2004**

	<b>Salary \$ per annum</b>
Chief Magistrate	254,230
Deputy Chief Magistrate	214,825
Chairperson of Licensing Court	214,825
State Coroner	214,825
Senior Children's Magistrate	214,825
Chief Industrial Magistrate	206,945
Deputy Chairperson, Licensing Court	206,945
Magistrate	203,385
Chairperson Victims Compensation Tribunal (NOTE 2)	203,385
Children's Magistrate	203,385
Licensing Magistrate	203,385
Deputy State Coroner	203,385

NOTE 2: When a more senior Magistrate is appointed to the office then he or she shall retain his or her present salary level.

**DETERMINATION No 3**

**REMUNERATION OF RELATED OFFICE HOLDERS – effective from 1 October 2004**

	<b>Salary \$ per annum</b>
Chairperson, Law Reform Commission	282,475
Solicitor-General	282,475
Director of Public Prosecutions	282,475
Crown Advocate	254,230
Deputy Director of Public Prosecutions	254,230
Senior Crown Prosecutor	228,805
Senior Public Defender	228,805
Deputy Senior Crown Prosecutor	205,925
Deputy Senior Public Defender	205,925
Deputy Presidents, Workers Compensation Commission	205,925
Crown Prosecutor	188,130
Public Defender	188,130
Solicitor for Public Prosecutions	186,440
Senior Commissioner Land and Environment Court	197,735
Commissioner Land and Environment Court	186,435
Commissioner Industrial Relations Commission	186,435

**DETERMINATION No 4****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 \$1,090 per day

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 \$980 per day

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**DETERMINATION No 5****CONVEYANCE ALLOWANCE**

Full time Office Holders receiving salary equivalent to a Supreme Court Judge or higher shall be entitled to a Conveyance Allowance of \$18,000 pa.

Full time Office Holders receiving salary equivalent to a District Court Judge shall be entitled to a Conveyance Allowance of \$15,000 pa.

Full time Office Holders receiving salary below that of a District Court Judge shall be entitled to a Conveyance Allowance of \$13,000 pa.

The Conveyance Allowance determined here shall not count towards Judges' pension or for superannuation purposes.

**DETERMINATION No 6****ANNUAL LEAVE LOADING OF JUDGES, MAGISTRATES AND RELATED GROUP ON – effective from 1 October 2003****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 Determination No 2  
Office Holders listed in Determination No 3 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: 17 September 2004

## **Report and Determination – Travel Allowances for NSW Judges and Magistrates**

### **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 and magistrates 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. 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. For the current review the Tribunal has had regard to movements in the travel rates as published in the Australian Taxation Office’s Ruling 2004/19 and the rates adopted for the NSW Public Sector generally. The Tribunal also undertook a survey of accommodation rates in regional New South Wales.

#### **c) Principles Adopted**

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

- c. Office holders are not expected to gain or lose financially as a result of travelling on official business.
  - d. 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.
7. 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 or Magistrate could be financially disadvantaged. On balance, the Tribunal is persuaded that with the exception of Newcastle and Wollongong a common rate for Judges and a common rate for Magistrates should be applied for the remainder of NSW in the knowledge that across a year a Judge or Magistrate will most likely be neither financially advantaged or disadvantaged.

**d) Conclusions**

8. In making its determination the Tribunal has had regard to the current travel allowance rates contained in Taxation Ruling 2004/19.
9. Non metropolitan accommodation rates and meal allowance rates have not changed from the Tribunal's previous determination.
10. After reviewing the survey of intra state accommodation and meal costs, the Tribunal makes the following determination effective on and from 1 October 2004.

**Statutory and Other Offices  
Remuneration Tribunal**

**Gerry Gleeson**  
Dated: 17 September 2004



**DETERMINATION No 7****TRAVEL ALLOWANCES FOR JUDGES AND MAGISTRATES- effective from 1 October 2004**

Pursuant to section 13 of the Act the Tribunal determines that the travel allowances for Judges and Magistrates will be as follows effective on and from 1 October 2004.

**A Travel necessitating an overnight stay****Capital City Rates**

Adelaide, Canberra, Darwin, Hobart Brisbane, Perth	\$324
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Melbourne, Sydney	\$394
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<b>Newcastle and Wollongong</b>	\$293
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**Other areas**

Judges	\$247
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Magistrates	\$210
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**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/magistrate stays overnight at commercial accommodation.

Where the judge/magistrate 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
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Lunch	\$25.00
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Dinner	\$45.00
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**Statutory and Other Offices  
Remuneration Tribunal**

**Gerry Gleeson**

Dated: 17 September 2004