

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

JUDGES, MAGISTRATES AND RELATED GROUP

28 September 2005

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JUDGES, MAGISTRATES AND RELATED GROUP

Section 1: Background

After nearly 10 years as the Tribunal, Mr Gerry Gleeson AC resigned on 12 December 2004. Effective from 13 December 2004 the Governor, pursuant to section 6(2) of the Act appointed Ms Helen Wright as the new Tribunal for a term of three years.

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 as 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 agreement between Federal and State Governments, reached in 1989, 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 remains at an appropriate level, and 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. The CRT has determined an increase in salary of 4.1 percent for federal Judges and Magistrates effective from 1 July 2005.

Section 2: 2005 Review

6. The Government has submitted that the longstanding nexus between State and Federal judicial remuneration be should maintained.
7. 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 seeking increases in remuneration for specific office holders or entitlements. These include:
 8. A submission from Deputy Presidents of the Workers Compensation Commission to review their remuneration. They again 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.
 9. The Solicitor for Public Prosecutions has written to the Tribunal seeking an increase in remuneration based on the changes in the role and responsibilities for this office since it was last reviewed in 1990. The Director of Public Prosecutions has also written supporting the Solicitor's submission.
10. The Chief Judge of the District Court supports the preservation of the current relativities between the judges of the Federal Court, the New South Wales Supreme Court and the District Court.
11. The Chief Judge has called for an increase in the daily travel allowance of \$247 to take account of increases in living costs and to reflect the increase in judicial salaries.

12. The Chief Magistrate supports the continued alignment of the remuneration of Magistrates at a level which is 80% per cent of that provided for a Judge of the District Court.
13. The Chief Magistrate has emphasised that the workload and productivity of the Court continues to increase both in terms of complexity and numbers particularly in criminal matters, mental health inquiries, civil actions, and defence hearings involving serious crime in the Children's Court.
14. The Tribunal has also received a number of submissions dealing with the Conveyance Allowance.
15. The Tribunal met with all correspondents who sought meetings to discuss their submissions. The Tribunal appreciates the time and effort expended by these officers as part of the 2005 annual review.

Deputy Presidents, Workers Compensation Commission

16. The Office of Deputy President of the Commission was added to the Schedules of the Act in 2002. The Tribunal undertook reviews of the role and responsibilities of the Deputy Presidents as part of the 2003 and 2004 annual review. On both occasions, the Tribunal concluded that the existing remuneration levels were adequate.
17. For the current review, the Deputy Presidents have provided no new information. They again contend that the breadth of work they undertake is analogous to that carried out by the former Judges of the Compensation Court. As in their previous submissions, they state that because they hear appeals, their work is at a level equivalent to that of the Judges of the Court of Appeal.
18. The Tribunal notes that the Deputy Presidents have been making the same claim for salary equivalence to Compensation Court Judges since 2002. The claim would represent an increase of 38 percent on their current remuneration.
19. This Tribunal has reviewed all the material presented in the past and for the current review. The Tribunal has reviewed the legislation and the Parliamentary Debates on

the legislation creating the Workers Compensation Commission and the office of Deputy President of the Commission.

20. As noted in previous reports the Workers Compensation Commission is a single jurisdiction agency and did not take over all of the functions of the former Compensation Court. Some of the jurisdiction of the former Compensation Court was transferred to the District Court and the Judges of the Compensation Court were transferred to the District Court.
21. The Workers Compensation Commission is new. The methods of determining compensation claims in the Commission are, if not new, then certainly refined. The scheme in place now is overwhelmingly a statutory scheme with a much more mechanistic approach to compensation settlement. The stated objective of the Government changes to workers compensation was to reduce costs.
22. Compensation Court Judges were classified as Judges and commissioned as such. The principal role of the Deputy Presidents is to hear appeals from the Arbitrators whose role it is to resolve claims between injured workers and employers/insurers. This is not to diminish the role of the Deputy Presidents but merely to point out that there are differences in the roles and responsibilities between them and the former Compensation Court Judges. If the Government had intended that they should receive judicial remuneration there would have been some reference in the Minister's Second Reading Speech or the ensuing debates about this matter. The Tribunal could find no such reference.
23. It should be noted that the Tribunal did not fix the rate for Compensation Court Judges. Section 9 of the Compensation Court Act provided that Compensation Court Judges would have the remuneration and rights of a Judge of the District Court.
24. The Tribunal can find no basis for supporting the Deputy Presidents' claims.

Solicitor for Public Prosecutions (SPP)

25. This position was established in 1987 and this is the first fundamental review of the role and responsibilities of the office since that time. From 1990 until 2004 the

former office holder chose to receive remuneration benefits pursuant to section 11A of the Act. The new appointee has chosen to forego that arrangement and, as explained in the Tribunal's 2004 determination, the SPP was listed with the other office holders in the Office of the Director of Public Prosecutions (ODPP) ie the Judges Magistrates and Related Group.

26. The SPP provided a comprehensive submission to the Tribunal for the current review outlining the role and responsibilities of the Office and how it has changed since 1987.
27. The Director of Public Prosecutions (DPP) undertakes prosecutions on behalf of the Crown. The decision whether to conduct a prosecution rests with the DPP. The DPP is assisted by two Deputy Directors, the SPP, Crown Prosecutors and Solicitors. The SPP manages the largest branch within the ODPP.
28. In 1987 the Office of the SPP had a staff of 227 and there were 46 Crown Prosecutors. In 2005 the Office of the SPP comprises 473 staff. There are 94 Crown Prosecutors. The SPP supervises a multi-disciplinary team of lawyers, administrators and social workers (for the Witness Assistance Service) throughout Sydney and country NSW.
29. While this is the first review of the SPP since its establishment in 1987, the Tribunal has conducted several reviews of office holders within the ODPP since 1996, in particular the Deputy Directors of Public Prosecutions and the Crown Prosecutors.
30. In 1996, the Tribunal found that the ODPP restructure had resulted in increased managerial responsibilities for the two Deputy Directors of Public Prosecutions which warranted a 6% special adjustment. In 2000, the Tribunal awarded a special increase of 4.37% for the Deputy Directors based on increased responsibilities following the widening of delegations from the Director to the Deputy Directors.
31. In two separate determinations, the Tribunal also found that legislative reforms to criminal law had increased the work value of the Crown Prosecutors group.

32. In 1996, the Crown Prosecutors submitted that the introduction of the Evidence Act 1995 had resulted in the increased complexity of appeals. They also cited the introduction of the Victim's Rights Act in 1996 and the Charter of Victims Rights as markedly affecting their working environment along with the increasing level of appeal work and much greater public scrutiny of their roles.
33. The Tribunal awarded a special increase for Crown Prosecutors of 3% in 1996 and a further 3.12% 1998.
34. The Director of Public Prosecutions in his submission supporting an increase for the SPP has recommended that the SPP's remuneration should be equivalent to that of the Senior Crown Prosecutor ie an increase of over 20 percent. He has, however, provided no reason for such a level of increase.
35. The DPP in his 2005 letter to the Tribunal also acknowledged that some of his functions had been delegated to the SPP.
36. The Tribunal considers the role of the SPP is of critical importance to the efficient functioning of the office of the DPP. In the increased managerial responsibilities, the delegations received from the DPP and the fact that the legislative changes outlined above also impact on the role and responsibilities of the SPP it is considered appropriate that the SPP receive increases comparable to those of the Deputy Directors of Public Prosecutions.
37. If the Director of Public Prosecutions considers that a further increase in the remuneration of this office is warranted the Tribunal would be pleased to receive a submission at the time of the next annual review.

Conveyance Allowance

38. As noted above the Tribunal has again 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 and one submission questions the legality of the Conveyance Allowance.

39. A determination will issue shortly on the Conveyance Allowance and will be effective on and from 1 October 2005.

40. Travel Allowances

41. 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.

42. The Tribunal cannot support this contention. The daily rate of travel allowance for intrastate travel for Judges is more generous than available to other public sector employees including the Chief and Senior Executive Services.

43. 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.

Section 3 Conclusion

44. The Federal Tribunal has determined an increase of 4.1 percent in respect of Federal Judges. The Tribunal has consistently matched the increases determined by the Commonwealth Tribunal. The NSW Government has recommended that this be repeated for the 2005 determination.

45. The Tribunal, after considering the views of the Assessors, and having regard to increases determined by for Federal Judges, the state's economic and budgetary outlook, key national economic indicators and increases flowing generally to public sector groups considers that an increase of 4.1 percent would be appropriate and so determines.

46. 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 2005 shall be as set out in Determinations Nos 1-6.

47. 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**

Helen Wright

Dated: 28 September 2005

DETERMINATION No 1

REMUNERATION OF JUDGES – effective from 1 October 2005

	Salary \$ per annum
Chief Justice of the Supreme Court	329,050
President of the Court of Appeal	308,110
President of the Industrial Relations Commission	308,110
President, Workers Compensation Commission (NOTE 1)	308,110
President, Workers Compensation Commission	294,055
Judge of the Supreme Court	294,055
Vice-President of the Industrial Relations Commission	294,055
Deputy President of the Industrial Relations Commission	294,055
Judge of the District Court	264,650
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	264,650

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

DETERMINATION No 2**REMUNERATION OF MAGISTRATES – effective from 1 October 2005**

	Salary \$ per annum
Chief Magistrate	264,650
Deputy Chief Magistrate	223,630
Chairperson of Licensing Court	223,630
State Coroner	223,630
Senior Children's Magistrate	223,630
Chief Industrial Magistrate	215,425
Deputy Chairperson, Licensing Court	215,425
Magistrate	211,720
Chairperson Victims Compensation Tribunal (NOTE 2)	211,720
Children's Magistrate	211,720
Licensing Magistrate	211,720
Deputy State Coroner	211,720

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 2005

	Salary \$ per annum
Chairperson, Law Reform Commission	294,055
Solicitor-General	294,055
Director of Public Prosecutions	294,055
Crown Advocate	264,650
Deputy Director of Public Prosecutions	264,650
Senior Crown Prosecutor	238,185
Senior Public Defender	238,185
Deputy Senior Crown Prosecutor	214,365
Deputy Senior Public Defender	214,365
Deputy Presidents, Workers Compensation Commission	214,370
Crown Prosecutor	195,840
Public Defender	195,840
Solicitor for Public Prosecutions	214,365
Senior Commissioner Land and Environment Court	205,840
Commissioner Land and Environment Court	194,075
Commissioner Industrial Relations Commission	194,075

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 \$1,135 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 \$1,021 per day

DETERMINATION No 5**CONVEYANCE ALLOWANCE**

A determination on the Conveyance Allowance will issue shortly and take effect on and from 1 October 2005.

DETERMINATION No 6**ANNUAL LEAVE LOADING OF JUDGES, MAGISTRATES AND RELATED GROUP ON – effective from 1 October 2005****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**

Helen Wright

Dated: 28 September 2005

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 2005/32 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 2005/32.
9. Non metropolitan accommodation rates and meal rates have also been adjusted as set out in the Determination.
10. After reviewing the survey of intra state accommodation and meal costs, the Tribunal makes the following determination (Determination No 7) effective on and from 1 October 2005.

**Statutory and Other Offices
Remuneration Tribunal**

Helen Wright

Dated: 28 September 2005

DETERMINATION No 7**TRAVEL ALLOWANCES FOR JUDGES AND MAGISTRATES- effective from 1 October 2005**

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 2005.

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

Adelaide, Canberra, Darwin, Hobart Brisbane, Perth	\$331.75
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Melbourne, Sydney	\$401.75
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Newcastle and Wollongong	\$282.75
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Other areas

Judges	\$247.10
Magistrates	\$210.20

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**

Helen Wright

Dated: 28 September 2005