

**REPORT**

and

**DETERMINATION**

under

**SECTION 13**

of the

**STATUTORY AND OTHER OFFICES**

**REMUNERATION ACT, 1975**

**JUDGES, MAGISTRATES AND RELATED GROUP**

**6 October 2006**

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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 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 Tribunal 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 Commonwealth Remuneration Tribunal has determined an increase in salary of 4.4 percent for federal Judges and Magistrates effective from 1 July 2006.

**Section 2: 2006 Review**

6. The Government has submitted that the longstanding nexus between State and Federal judicial remuneration be maintained.
7. The Tribunal has received a number of submissions for the current review. All support retention of the nexus with the federal judiciary and/or the retention of existing relativities. In addition a number of specific issues were raised. These include:
  8. A submission on behalf of Crown Prosecutors suggesting that a case may exist to increase the salary to a level equivalent to that of a Magistrate.
  9. A submission on behalf of the Supreme Court seeking an increase in the conveyance allowance to \$26,000. In addition, the Supreme Court has suggested that an amendment be made to the Act to enable the Tribunal's determination to take effect from 1 July instead of 1 October. These issues were also supported in the submission made on behalf of Members of the Industrial Relations Commission.
10. The submission on behalf of the Supreme Court in its support of parity with Judges of the Federal Court (nexus) has noted the similarities in the jurisdictions of the two Courts. The submission notes that the work of both Courts covers many common areas and major trials and appellate decision making are identical. Whereas the Supreme Court has a role in major crime and criminal appeal work the Federal Court does not. The submission concludes that the effective working of the relevant Courts would be seriously compromised should any disparity in remuneration emerge.
11. The Supreme Court submission points to continued efforts to reduce its current workload. Increased efficiencies in the Court and improved clearance rates which as reported in the most recent edition of the "Report on Government Services 2005-2006" stands at 97.2 percent.
12. The Chief Magistrate of the Local Court in his submission seeking to maintain existing relativities with the District Court Judges has also provided details of the workload of the Court.

13. In 2005, 205,344 criminal matters were commenced in the Local Court (1.6 percent increase since 2004) and 204,735 criminal matters were finalised (1.0 percent increase since 2004) Finalisation rates remained high with 95.00 percent of matters being finalised within 6 months and 99.33 percent of matters being finalised within 12 months.
14. Cases in the Local Court also continue to increase in complexity with the Director of Public Prosecutions (DPP) now prosecuting an increasing number of indictable offences to finality before the Local Court rather than in the District Court.
15. The Chief Magistrate has also pointed to the use of technology and developmental changes that are having a marked effect on the Court and the cost savings that are being generated. The increasing use of Audio Visual Link facilities for bail hearings and taking evidence from remote witnesses has been of great benefit to the administration of justice.
16. In January 2006 new administrative arrangements were put in place concerning Criminal Case Processing. These are designed to reduce the number of matters proceeding to the District Court by being concluded through the less expensive procedure of conferencing between the DPP and defence legal representatives within the Local Court system.
17. A submission from the President of the Workers Compensation Commission sought reconsideration of a previous request that Deputy Presidents receive remuneration equivalent to that of a District Court Judge.
18. A number of submissions sought an increase to the Conveyance Allowance, including those from the Crown Prosecutors, Public Defenders, the Chief Magistrates and the Chief Judge of the District Court.
19. The Chief Magistrate has also sought an increase in the daily travel allowances to take account of increases in living costs.

### **Supreme Court Judges: Determinations – Date of Taking Effect**

20. The submission on behalf of the Supreme Court has once again raised the matter of the effective commencing date of the Tribunal's determination. It proposes that the Tribunal's determinations should take effect from 1 July each year rather than 1 October each year. This would align the commencing date of the remuneration increases with those of Federal Judges.
21. Section 13 of the Act provides that the Tribunal's annual determinations take effect on and from 1 October each year. This date applies not only to Judges and Magistrates but all office holders listed in the Schedules of the Act and to the SES as well. As the date is set by the statute the Tribunal cannot itself vary the commencing date.
22. To alter the commencing date would require an amendment to the Act. This is a matter for the Parliament and not for the Tribunal. Unless and until the legislation is changed the Tribunal's annual determinations will continue to take effect on and from 1 October each year.

### **Crown Prosecutors.**

23. The Senior Crown and Deputy Senior Crown Prosecutor have made a joint submission on behalf of Crown Prosecutors. The submission seeks consideration of the suggestion that the salary of Crown Prosecutors should be the same as a Magistrate.
24. While not intending to diminish the role of the Magistrates, the submission argues that Crown Prosecutors prosecute much more serious levels of crime than those upon which Magistrates adjudicate. In addition, the submission argues that the retention of Crown Prosecutors has become an issue as experienced Crown Prosecutors are taking appointments as Magistrates where they receive a substantial increase in salary to deal with cases involving much simpler and less serious crime.
25. The current relativities between office holders in the Judges, Magistrates and Related Group were established in 2002 following an extensive review of specific office holders who work directly within the judicial system. Following that review the Tribunal determined that the remuneration for these office holders should be set in

relation with judicial remuneration levels. For remuneration purposes those office holders, including Crown Prosecutors, were removed from the Public Office Holders Group and listed within the Judges, Magistrates and Related Group.

26. The relativity issues with Magistrates raised by the Crown Prosecutor submission are not new. While the salary levels of the two groups were closer in the past there has never been a formal link between Magistrates and Crown Prosecutors. Increases in Magisterial remuneration have occurred only after a close examination of changes in work value. Similar considerations have been applied to the remuneration of the Crown Prosecutors whose most recent work value increase occurred in 2002 where they received an increase of 6 percent.
27. On this basis the Tribunal does not consider that a change to the salary paid to Crown Prosecutors is warranted at this time. Should the Senior Crown Prosecutor consider that significant changes to the role and responsibilities of Crown Prosecutors have occurred since 2002 then the Tribunal would be pleased to consider a detailed submission for consideration at the time of the next annual review.

#### **Deputy Presidents of the Workers Compensation Commission**

28. A submission from the President of the Workers Compensation Commission sought reconsideration of previous correspondence regarding the remuneration of the Deputy Presidents and the Registrar.
29. The Tribunal closely considered the issues raised in the President's submission for the 2005 review. The reasons for its determination were stated in the 2005 report.
30. No new information was provided by the President and there were no submissions from the Registrar or the Deputy Presidents and accordingly the Tribunal intends to take no further action in respect of the remuneration for these office holders.

### **Conveyance Allowance**

31. As noted above the Tribunal has received a number of submissions seeking to increase the Conveyance Allowance.
32. The Tribunal undertook a comprehensive review of the Conveyance Allowance during the last annual review. The findings of that review are outlined in the Tribunal's report and determination of 25 October 2005.
33. In determining the quantum of this allowance the Tribunal used the average of a range of costs associated with a range of vehicles. The range of vehicles reflected the vehicles which at the time were leased by NSW Judges and Magistrates. Costs associated with leasing motor vehicles were based on the method used in the NSW public sector to determine the annual costs to an officer who salary sacrifices to lease a motor vehicle.
34. Using the same methodology the Tribunal finds that an increase in the Conveyance Allowance is warranted. On this basis the Tribunal considers that an amount of \$22,000 is appropriate. Based on existing relativities, the second and third tier rates will increase to \$19,800 and \$15,840 respectively.

### **Travel Allowances**

35. The Tribunal has considered the request from the Chief Magistrate to increase travel and meal allowances payable to Magistrates for other than capital city travel.
36. In determining these rates the Tribunal has regard to travel rates as published in the Australian Taxation Office's Ruling 2006/43, rates adopted for the NSW Public Sector generally and the Tribunal's own survey of accommodation rates in regional New South Wales. The Taxation Office's Ruling provides reasonable upper limits for staying in Australian capital cities and for major country centres. The Tribunal's practice is to adopt the capital city rates and those for Newcastle and Wollongong but there is little guidance in those rates for regional NSW destinations.

37. For this reason the Tribunal conducts its own survey of NSW regional accommodation rates. This survey has found no significant increase in regional accommodation costs. While the findings suggest that accommodation rates are likely to be higher in larger regional centres these expenses are offset by the significantly lower cost of accommodation in smaller rural centres. The Tribunal has been previously informed that much of the travel undertaken by Magistrates in particular is to the smaller rural centres.
38. On this basis the Tribunal finds no change in the level of other than capital city travel allowance 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**

39. The Federal Tribunal has determined an increase of 4.4 percent in respect of Federal Judges. In previous determinations the Tribunal has, after conducting its own reviews, maintained the nexus by determining similar increases in the remuneration of State Judges provided by the Commonwealth Tribunal for Federal Judges. The NSW Government has recommended that that the nexus be retained for the 2006 determination. The Tribunal's own review of judicial remuneration supports the NSW Government's recommendation.
40. In maintaining the nexus the Tribunal is mindful of the need to attract and retain highly qualified individuals. While salary is not always the primary consideration in undertaking public employment, it is important that NSW judicial salaries remain competitive with other jurisdictions to avoid any erosion of value.
41. In making its determination the Tribunal has had regard to economic indicators, increases in remuneration for other groups in the State Public Sector as well as increases in judicial remuneration in other jurisdictions particularly in the Commonwealth jurisdiction. The Tribunal has also had regard to the efficiencies in the NSW Court system which remains the largest in Australia.
42. The Tribunal has also adjusted the Acting Judges rates and the Acting Deputy Presidents of the Workers Compensation Commission rates to reflect the daily equivalent of their full time counterparts.



43. 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 4.4 percent would be appropriate and so determines.
44. 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 2006 shall be as set out in Determinations Nos 1-6.
45. 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: 6 October 2006

**DETERMINATION No 1**

**REMUNERATION OF JUDGES – effective from 1 October 2006**

	<b>Salary \$ per annum</b>
Chief Justice of the Supreme Court	343,530
President of the Court of Appeal	321,670
President of the Industrial Relations Commission	321,670
President, Workers Compensation Commission (NOTE 1)	321,670
President, Workers Compensation Commission	306,990
Judge of the Supreme Court	306,990
Vice-President of the Industrial Relations Commission	306,990
Deputy President of the Industrial Relations Commission	306,990
Judge of the District Court	276,300
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	276,300

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

**DETERMINATION No 2****REMUNERATION OF MAGISTRATES – effective from 1 October 2006**

	<b>Salary \$ per annum</b>
Chief Magistrate	276,300
Deputy Chief Magistrate	233,470
Chairperson of Licensing Court	233,470
State Coroner	233,470
Senior Children's Magistrate	233,470
Chief Industrial Magistrate	224,900
Deputy Chairperson, Licensing Court	224,900
Magistrate	221,040
Chairperson Victims Compensation Tribunal (NOTE 2)	221,040
Children's Magistrate	221,040
Licensing Magistrate	221,040
Deputy State Coroner	221,040

**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 2006**

	<b>Salary \$ per annum</b>
Chairperson, Law Reform Commission	306,990
Solicitor-General	306,990
Director of Public Prosecutions	306,990
Crown Advocate	276,300
Deputy Director of Public Prosecutions	276,300
Senior Crown Prosecutor	248,670
Senior Public Defender	248,670
Deputy Senior Crown Prosecutor	223,800
Deputy Senior Public Defender	223,800
Solicitor for Public Prosecutions	223,800
Deputy Presidents, Workers Compensation Commission	223,800
Crown Prosecutor	204,460
Public Defender	204,460
Senior Commissioner Land and Environment Court	214,900
Commissioner Land and Environment Court	202,620
Commissioner Industrial Relations Commission	202,620

**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 \$1,330 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 \$1,197 per day

Workers Compensation Commission

Acting Deputy President of the  
Workers Compensation Commission \$930 per day

**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 \$22,000 pa.

Full time Office Holders receiving salary equivalent to a District Court Judge shall be entitled to a Conveyance Allowance of \$19,800 pa.

Full time Office Holders receiving salary below that of a District Court Judge shall be entitled to a Conveyance Allowance of \$15,840 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 2006****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: 6 October 2006

## **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 2006/43 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 include 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 2006/43.
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 2006.

**Statutory and Other Offices  
Remuneration Tribunal**

**Helen Wright**

Dated: 6 October 2006



**DETERMINATION No 7****TRAVEL ALLOWANCES FOR JUDGES AND MAGISTRATES- effective from 1 October 2006**

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 2006.

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

Adelaide, Canberra, Darwin, Hobart Brisbane, Perth	\$332.35
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Melbourne, Sydney	\$402.35
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<b>Newcastle and Wollongong</b>	\$288.35
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**Other areas**

Judges	\$247.10
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Magistrates	\$210.20
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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**

**Helen Wright**

Dated: 6 October 2006