

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

JUDGES, MAGISTRATES AND RELATED GROUP

15 September 2008

www.remtribunals.nsw.gov.au

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 offices as are listed in the Schedules of the Act and, in addition are defined as judicial offices (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 4.3 percent for Federal Judges and Magistrates effective from 1 July 2008.

Section 2: 2008 Review

6. In the 2007 Report the Tribunal indicated that, for the 2008 Review the Tribunal would be undertaking a fundamental review of the internal relativities within this Group to consider whether or not they are still appropriate.
7. The Government has submitted that the longstanding nexus between State and Federal judicial remuneration be maintained and that both the Government and the Attorney General's Department support the retention of the internal relativities.
8. The Tribunal has received a number of submissions for the current review from Judges Magistrates and other office holders in this group. Most sought retention of the nexus with the federal judiciary and also sought retention of the internal relativities.

Supreme Court Judges

9. The submission from the Judges of the Supreme Court recommends that judicial salaries should be increased by 4.3 percent to retain the 85% nexus with the salary of a High Court Judge.

In making this recommendation the Judges' submission points out that:

"...The Supreme Court continues to dispose of its significant workload and continues to work towards the reduction in backlogs as appears from the statistical annexure to the submission of filings, disposals and pending cases.

The demands on NSW Supreme Court Judges, in the busiest Supreme Court in Australia, are, we think, greater than in any other Court of equivalent jurisdiction."

President, Industrial Relations Commission

10. The President's submission also supports retaining the existing nexus between the remuneration of Federal and State Judges. The President has made the following additional comment:

"...[given] the positive economic outlook both at the national and State level and the growth in wages, a proper case exists for an increase of 4.3% in Judges' salaries and for those whose salaries are related thereto. This is justifiable on both economic grounds and having regard to the principles for the fixation of remuneration which has been adopted by the Tribunal."

Chief Judge of the District Court

11. The Chief Judge's submission considers the existing relativities between the salaries of Supreme Court Judges and District Court Judges to be appropriate as there has been no significant change in jurisdictional limits since the DCJ civil jurisdiction was increased to \$750,000. The Chief Judge notes that there has similarly been no change in the jurisdiction between the DCJ and the Local Court.
12. A number of office holders, Chief Magistrate (on behalf of the Magistrates and Deputy Chief Magistrates), Crown Prosecutors and Public Defenders and the Deputy Presidents of the Workers Compensation Commission sought adjustments. The Tribunal met with those office holders from this Group who wished to discuss their submissions.

Specific Issues Raised

Chief Magistrate

13. The Chief Magistrate has submitted that the relativities between his Office and those of Magistrates and Deputy Chief Magistrates should be increased. In support of his submission that Chief Magistrate points to:
- Court's criminal caseload has increased by 34.66% since 1994.
 - Increasing responsibility for finalisation of serious criminal matters that have previously been finalised by the District Court.
 - The increasing complexity of the work undertaken because these matters are more serious.
 - Direct involvement in therapeutic justice initiatives (i.e. MERIT, circle sentencing).
 - Increase in jurisdiction and caseload in the Court's civil jurisdiction, in particular in the children's care jurisdiction.
14. The Chief Magistrate has also drawn attention to the different salary relativities between Magistrates in NSW and Federal Court Magistrates. Remuneration for Federal Magistrates is 78% of a Federal Court Judge; by comparison remuneration for NSW Magistrates is currently 72% of the remuneration of a Supreme Court Judge.

Crown Prosecutors and Public Defenders

15. The submission from the Crown Prosecutors seeks an increase in relativities based on the change in work, responsibilities and accountabilities and their assessment of other position holders within the Group ie Magistrates. While not wishing to diminish the importance of the work of Magistrates, the submission notes that Crown Prosecutors and Public Defenders appear in the higher courts; Crown Prosecutors and Public Defenders are recruited from the ranks of barristers whereas in general Magistrates are drawn from the ranks of solicitors; and the cases they undertake are far more complex and onerous. The Crown Prosecutors submit that it is in the public interest to ensure that the salary of a Crown Prosecutor is at a level sufficient to attract and retain barristers of excellent calibre and that salaries remain competitive with the incomes earned at the private Bar.
16. The submission from the Public Defenders essentially provides arguments similar to those of the Crown Prosecutors.

Deputy Presidents, Workers Compensation Commission

17. Deputy Presidents again seek relativity with District Court Judges. The submission argues that the current relativity with the Deputy Senior Crown Prosecutor and the Deputy Senior Public Defender is anomalous. It is argued that these roles do not carry the responsibility of decision making, let alone decision making at an appellate level. Nor do they carry the responsibility for assisting in the management and policy development of a large tribunal such as the Workers Compensation Commission which deals with over 10,000 claims each year.

Conveyance Allowance

A number of submissions sought an increase to the Conveyance Allowance arising from the increase in motor vehicle costs particularly rises in fuel costs.

Salary Relativities

The Tribunal noted the background to the existing salary relativities in its 2007 review.

“...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. This review included Commissioners of the Industrial Relations Commission, Commissioners of the Land and Environment Court, Crown Prosecutors, Public Defenders and the Deputy Director of Public Prosecutions.

Following that review the Tribunal determined that the remuneration for these office holders should be set in relation to judicial remuneration levels. For remuneration purposes these office holders were removed from the Public Office Holders Group and listed within the Judges, Magistrates and Related Group. The salaries of these office holders are linked to those paid to a Judge of the Supreme Court.

The Tribunal notes that the 85 percent relativity of Supreme Court judges with Judges of the High Court has been in place since 1990 and that internal relativities were last reviewed in 2002. The Tribunal considers that it is time to undertake a review of the internal relativities for this Group to assess their continued relevance and applicability. The Tribunal will, therefore, as part of the 2008 annual review be seeking detailed submissions from all affected office holders in this Group on this matter.”

18. For the current review the Tribunal has had regard to the submissions received and the views of the Government and the Attorney General’s Department. The Tribunal has also been informed both by the Government, and in discussions with office holders with whom it met, that there were no issues surrounding recruitment. Retention was raised as an issue by the Crown Prosecutors but it was noted that suitably qualified candidates were being recruited into their ranks.

Chief Magistrate Submission

19. The Chief Magistrate considers that the relativities should be increased on the basis of increased workload, increased responsibilities and interstate comparisons. These changes, the Chief Magistrate argues, have taken place since 1994 (the time of the last relativity adjustment for Magistrates).
20. The relativities for Magistrates were last reviewed in 2003. At that time the Chief Magistrate argued that the existing relativities were appropriate and should not be adjusted. The Tribunal, in its Report of June 2003, summarised the Chief

Magistrate's submission in respect of internal relativities, jurisdiction and recruitment in the following terms

"...The Chief Magistrate considers that the existing relativity between the State Supreme Court Judges and Federal Court Judges should be maintained and not be affected by the size of the increase determined for Federal Judges.

He has emphasised that:

There be no alteration to the internal relativities other than on the basis of an appropriate work value investigation.

There has been no significant change in the jurisdiction of the NSW Courts to warrant a change in existing relativities.

Because of existing relativities, and the level of remuneration payable to Magistrates, the quality of candidates has improved by attracting applications from experienced members of the criminal and civil bar and Crown Prosecutors and Public Defenders.

Maintaining appropriate levels of remuneration for the Magistracy would ensure continued attraction of experienced and qualified members of the Bar to the Local Court which ultimately will enhance the administration and application of justice in NSW.

The changes in jurisdiction, the improvements in the performance of the Court and in particular the increasing number of matters being brought to finality in the Local Court."

21. The Tribunal also notes the comments of the Chief Judge of the District Court that there has been no change in the jurisdiction between the District Court and the Local Court. The Tribunal will examine whether there have been changes in the jurisdiction between these two Courts since 2003. If significant changes in responsibility have occurred then the Tribunal would be willing to review the question of relativities between the Local Court and the District Court again in the 2009 Determination.. Prior to that Determination the Tribunal will undertake its own research into this matter to investigate whether changes appear to be necessary.
22. The Tribunal rejects any attempt to provide increases to Magistrates on the basis of interstate comparisons. This approach can only lead to "leap frogging". The relativities between interstate and federal local courts and magistracies are a matter for those specific bodies and may have regard to factors that are not applicable in NSW. In the Federal jurisdiction, for example, there is no District Court.
23. The Tribunal also notes that there has been no shortage of qualified applicants to fill vacant Magistrate positions.

Crown Prosecutors and Public Defenders

24. The Crown Prosecutors and Public Defender submissions have raised nothing new to support their case. Comparison with salaries of other office holders is not a valid approach to remuneration setting. The salaries of Magistrates have been set having regard to the role and responsibilities of that office. A similar approach was adopted for the Crown Prosecutors and Public Defenders. The Tribunal reviewed the remuneration of these office holders in 2003 and submissions since that time have not demonstrated a compelling case to change the existing relativities on the basis of increased responsibilities. As with Magistrates, the Tribunal has received no evidence to suggest that recruitment to the ranks of the Crowns or Public Defenders is an issue. That some Crowns choose to become Magistrates may be a reflection of a number of matters beyond remuneration levels. On the information provided, the Tribunal cannot support an increase in the internal relativities for these two groups.

Deputy Presidents Workers Compensation Commission

25. The office holders have made repeated representations to the Tribunal since the creation of these positions seeking parity with Judges of the District Court. This proposal has not been supported by the former Tribunal or the current Tribunal. The salary rate for the office of Deputy President is related to the role and responsibilities of the position rather than any link with similarly remunerated offices.

26. The Tribunal has considered this matter exhaustively and can find no reason to link the Deputy Presidents of the Workers Compensation Commission to District Court Judges. The Tribunal notes that if the President is dissatisfied with this assessment then he may wish to seek an amendment to the legislation to formally link the Deputy Presidents with District Court Judges. In this regard the Tribunal notes that the remuneration of the Judges of the former Compensation Court was established by statute rather than by any determination of this Tribunal.

Conveyance Allowance

27. As noted above the Tribunal has received a number of submissions seeking to increase the Conveyance Allowance.

28. The Tribunal undertook a comprehensive review of the Conveyance Allowance during the 2006 annual review. As a result of that review the Tribunal found that an increase in the conveyance allowance was warranted and increased the rates to \$22,000, \$19,800 and \$15,840 per annum.
29. 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. In the case of the Supreme Court Judges, given their nexus with Federal Court Judges, the Tribunal in its 2009 annual review will consider whether this methodology continues to be appropriate for Supreme Court Judges.
30. Using the same methodology used in previous years the Tribunal has reviewed the allowance. The review finds that there has been no substantial change in the cost of leasing the sample motor vehicles since 2007. On this basis, no further increase in the Conveyance Allowance is warranted at this time. It should also be noted that as a matter of principle the Tribunal is not minded to increase an allowance on the basis of temporary increases in vehicle running costs when such relief is not available to the wider community.

Section 3 Conclusion

31. The Tribunal has completed its own review of judicial remuneration and can see no reason at this time to change either the external relativities or the internal relativities for this Group. The Tribunal's own review of judicial remuneration supports the Government's recommendation.
32. In making its determination the Tribunal has had regard to economic indicators, increases in remuneration for other groups in the State Public Sector and 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.

33. 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.
34. The Tribunal, after considering the views of the Assessors, and having regard to increases determined for Federal Judges considers that an increase of 4.3 percent would be appropriate and so determines.
35. 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 2008 shall be as set out in Determinations Nos 1-6.
36. 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: 15 September 2008

DETERMINATION No 1

REMUNERATION OF JUDGES – effective from 1 October 2008

	Salary \$ per annum
Chief Justice of the Supreme Court	373,340
President of the Court of Appeal	349,580
President of the Industrial Relations Commission	349,580
Judge of the Supreme Court	333,630
President, Workers Compensation Commission	333,630
Vice-President of the Industrial Relations Commission	333,630
Deputy President of the Industrial Relations Commission	333,630
Judge of the District Court	300,270
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	300,270

DETERMINATION No 2**REMUNERATION OF MAGISTRATES – effective from 1 October 2008**

	Salary \$ per annum
Chief Magistrate	300,270
Deputy Chief Magistrate	253,730
Chairperson of Licensing Court	253,730
State Coroner	253,730
Senior Children's Magistrate	253,730
Chief Industrial Magistrate	244,420
Deputy Chairperson, Licensing Court	244,420
Magistrate	240,220
Chairperson Victims Compensation Tribunal (NOTE 2)	240,220
Children's Magistrate	240,220
Deputy State Coroner	240,220

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 2008**

	Salary \$ per annum
Chairperson, Law Reform Commission	333,630
Solicitor-General	333,630
Director of Public Prosecutions	333,630
Crown Advocate	300,270
Deputy Director of Public Prosecutions	300,270
Senior Crown Prosecutor	270,240
Senior Public Defender	270,240
Deputy Senior Crown Prosecutor	243,220
Deputy Senior Public Defender	243,220
Solicitor for Public Prosecutions	243,220
Deputy Presidents, Workers Compensation Commission	243,220
Senior Commissioner Land and Environment Court	233,540
Crown Prosecutor	222,200
Public Defender	222,200
Commissioner Land and Environment Court	220,200
Commissioner Industrial Relations Commission	220,200

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	\$1,445 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	\$1,300 per day
------------------------------------	-----------------

Workers Compensation Commission

Acting Deputy President of the Workers Compensation Commission	\$1,010 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 2008****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 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: 15 September 2008

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:

4. For the current review the Tribunal has had regard to movements in the travel rates as published in the Australian Taxation Office’s Ruling 2007/21 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

5. 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.
6. 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. With the exception of Newcastle and Wollongong a common rate for Judges and a common rate for Magistrates should be maintained 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

7. In making its determination the Tribunal has had regard to the current travel allowance rates contained in Taxation Ruling 2007/21. Non metropolitan accommodation rates and meal rates have also been adjusted as set out in the Determination.
8. 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 2008.

**Statutory and Other Offices
Remuneration Tribunal**

Helen Wright

Dated: 15 September 2008

DETERMINATION No 7**TRAVEL ALLOWANCES FOR JUDGES AND MAGISTRATES- effective from 1 October 2008**

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 2008.

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

Adelaide	\$350.00
Brisbane	\$372.00
Canberra	\$357.00
Darwin, Hobart	\$336.00
Perth	\$416.00
Melbourne, Sydney	\$406.00
Newcastle and Wollongong	\$288.35
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	\$21.10
Lunch	\$23.65
Dinner	\$40.65

**Statutory and Other Offices
Remuneration Tribunal**

Helen Wright

Dated: 15 September 2008