

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES
REMUNERATION ACT, 1975

PUBLIC OFFICE HOLDER GROUP

2 November 2009

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PUBLIC OFFICE HOLDERS GROUP

Ms Helen Wright's term of office expired on 30 June 2009. Effective from 1 July 2009 the Governor, pursuant to section 6(2) of the *Statutory and Other Offices Remuneration Act 1975* (the Act), appointed Mr Christopher Raper as the new Tribunal for a term of three years.

The Governor, pursuant to section 7(1)(b) of the Act also appointed a new Assessor to the Tribunal. Ms Jade Novakovic has been appointed as the independent Assessor for a term of 3 years with effect from 1 July 2009. Ms Novakovic replaces Ms Anne Rein who served as Assessor to the Tribunal since 29 June 2005. Section 7(1) (a) of the Act provides that the Director General of the Department of Premier and Cabinet is the other Assessor appointed to assist the Tribunal. Section 7(4) of the Act provides that the Director General may appoint a deputy to act as Assessor. The Director General has advised that Ms Carolyn Walsh is the Director General's deputy in the role as Assessor to the Tribunal.

Section 1: Background

1. Section 13 of the Statutory and Other Offices Remuneration Act 1975, (the Act), requires the Statutory and Other Offices Remuneration Tribunal to make a determination of the remuneration to be paid to office holders on and from 1 October in that year. "Remuneration" is defined in section 10A as salary or allowances paid in money.
2. The Public Office Holders Group comprises those public offices, listed in the Schedules of the Act (except for the Judges, Magistrates and Related Group), which have been grouped together by the Tribunal for remuneration purposes. The remuneration for the majority of this Group is determined as a fixed salary amount. Employer on costs such as the Superannuation Guarantee Levy are additional to the salary amount determined. This Group also comprises office holders who, pursuant to Section 11A of the Act, have elected to receive, and the Minister has approved, access to remuneration packaging arrangements identical to the SES. These office holders, referred to collectively as 11A Office Holders, have historically been listed in the

Reports and Determinations for the Chief Executive Service and Senior Executive Service (SES). The Tribunal considers that these office holders are more appropriately listed within the Public Office Holder Group, given the statutory nature of their appointment.

3. The Government considers that there should be no direct nexus with the remuneration of the Judges, Magistrates and Related Group. The Tribunal has supported this position in past Determinations.
4. The Tribunal's Report and Determination of 2008 provided a general increase of 3.9 per cent to the Public Office Holders Group.
5. The Tribunal undertook three special determinations during 2009.
6. The Tribunal made a determination in respect of the new position of Principal Claims Assessor under the Motor Accidents Compensation Act 1999. The Principal Claims Assessor is the head of the Claims Assessment and Resolution Service (CARS) of the Motor Accidents Authority.
7. The Tribunal also reviewed the remuneration payable the President and Deputy Presidents of the Mental Health Review Tribunal. Amendments to the Mental Health (Forensic Provisions) Act 1990 now require that when dealing with matters of patient release the Forensic Panel must be constituted with at least one member, being either the President or a Deputy President, who is the holder or former holder of judicial office. To reflect this new requirement the Mental Health Act 2007 was amended to expand the qualifications for the President and Deputy President to include a person who holds or has held the office of Supreme, District or Federal Court Judge.
8. The Tribunal also determined the remuneration payable to the new position of Information Commissioner. The Information Commissioner is a new independent statutory position accountable directly to the NSW Parliament. The Information Commissioner will act as an

independent champion of the new open government regime established by the Government Information (Public Access) Act 2009, which will replace the Freedom of Information Act in early 2010.

Section 2 Submissions Received

Government Submission

9. The Government has asked the Tribunal to consider a number of factors, including the key national economic indicators and salary movements across the NSW public sector. Particular emphasis is given to the Government's commitment to wage restraint as articulated in the 2008 Mini Budget and the 2009 Budget.
10. The Government submission recommends that this Group receive an increase similar to that recommended for the CES and SES.

Chairperson, Local Lands Board

11. The Chairperson of the Local Lands Board has sought an increase in remuneration to a level equivalent to that of a Senior Magistrate. In addition, the submission also seeks travel allowances and a conveyance allowance at the same level as that provided to Magistrates. The increase is sought on the basis that the Local Land Board shares much of its jurisdiction with the Local Court whose functions are exercised by a Magistrate. In addition to hearing and determining matters before the Board, the Senior Chairperson has a role in making recommendations for reform of the Local Land Board and the conduct and assigning of the functions of the role of chairing Board sittings.

Guardianship Tribunal

12. The submission from the Presidential Members of the Guardianship Tribunal has argued that there has been a significant increase in the workload and the jurisdiction of the Guardianship Tribunal since the remuneration was last reviewed in 2000.

13. The submission has provided details in regard to the increased workload and associated legislative changes which have impacted upon the role and responsibilities. The submission also argues that the Guardianship Tribunal has a much broader jurisdiction than the Mental Health Review Tribunal and that the range and complexity of fact situations facing the Guardianship Tribunal are greater than those confronting the Mental Health Review Tribunal.
14. In recognition of these changes the Presidential Members of the Guardianship Tribunal now seek parity with the Presidential Members of the Mental Health Review Tribunal.

Section 11A Office Holders

Auditor General

15. The Minister for Public Sector Reform, the Hon John Robertson MLC, has advised the Tribunal that the Auditor General has revoked his election to receive employment benefits in accordance with section 11A of the *Statutory and Other Offices Remuneration Act 1975*.

Chief Executive Officer and Independent Member, Independent Pricing and Regulatory Tribunal (IPART)

16. The former Chairman of IPART has written to the Tribunal requesting that the Tribunal review the remuneration payable to the Chief Executive Officer and Independent Member having regard to an increase in responsibilities since the position was last reviewed by Tribunal in 2005.
17. Since 2005 IPART has gained additional responsibilities associated with amendments to the Water Industry Competition Act which extends IPARTs pricing powers to the private sector. In addition the Electricity Supply Amendment (Energy Savings) Bill 2009, which commenced on 1 July 2009, introduces the new Energy Savings Scheme. IPART is

responsible for administering the Scheme and its associated Regulation and Rules. The expansion of IPART's roles and responsibilities is also reflected in the growth of IPART's establishment and an increase in the Budget .

Public Trustee

18. Clause 10 of Schedule 1 of the NSW Trustee and Guardian Act 2009 abolished the office of Public Trustee. The office has therefore been removed from the Schedule of 11A office holders.

Section 3 2009 Tribunal Review

Senior Chairperson, Local Lands Board

19. The Senior Chairperson's submission does not demonstrate to the Tribunal's satisfaction that there has been a significant change in the role and responsibilities for this position to warrant an additional increase. The amendments to the *Crown Land Act* 1989 and the *Dividing Fences Act* 1991 are administrative in nature and do not represent, in the Tribunal's view, a change in the role and responsibilities of the office.
20. The Tribunal accepts that the complexity of matters now considered by the Senior Chairperson has increased, but considers that increased complexity of work is a feature across most areas of public sector employment and that it does not necessarily reflect a change in the nature of the role or overall responsibilities of the position.
21. While the Senior Chairperson does have similar jurisdictional responsibilities to the Local Court the office does not have the breadth of jurisdiction of a Magistrate. On the basis of the above the Tribunal does not consider a special increase is warranted.

Guardianship Tribunal

22. The Tribunal has considered the matters raised by the Presidential Members of the Guardianship Tribunal and has found that there is not sufficient justification to increase remuneration to those levels recently provided to the Mental Health Review Tribunal.

23. The information provided indicates that there has been an increase in workload since 2000 but as the Tribunal has stated on many occasions, an increase in workload alone does not reflect a significant change in the nature of the work undertaken and hence does not support an increase in remuneration. While there have been some additional responsibilities associated with legislative amendments, the Tribunal considers that, on balance, these do not significantly increase the role and responsibilities of the President and Deputy Presidents to warrant an increase in remuneration at this time.

Auditor General

24. The Auditor General's decision to revoke his election to receive employment benefits means that the remuneration for this position will be reduced by an amount equivalent to the employer benefits (employer's contribution to superannuation and leave loading) which formed part of the Auditor General's remuneration package. The Tribunal has adjusted the remuneration payable to the Auditor General to reflect these changed arrangements.

Chief Executive Officer and Independent Member, Independent Pricing and Regulatory Tribunal

25. The Tribunal and Assessors met with the Chief Executive Officer and Independent Member to discuss the claim for additional remuneration as outlined in the former Chairperson's submission.
26. While legislative changes have increased the scope of IPART's operations, these additional activities do not demonstrate to the Tribunal a significant change in the role or responsibilities of the position or the complexity of the work performed. The Tribunal accepts that these additional activities have increased the workload for this position; however workload alone does not reflect a significant change in the nature of the work undertaken. The Tribunal notes that IPART has been provided with additional funding and resources to undertake responsibilities associated with the Water Industry Competition and the Energy Saving Scheme.
27. On the basis of the above the Tribunal does not consider a special increase is warranted.

Section 4: Conclusion

28. In determining the general increase for this group of office holders, the Tribunal has had regard to a number of factors including key economic indicators and the Government's recommendations relating its wages policy. The policy provides for a 2.5 per cent increase with increases beyond 2.5 per cent to be matched by productivity improvements.
29. As the Tribunal has previously noted this group of office holders, like the SES is responsible for driving the Government's expenditure reduction targets and reform agenda through their particular jurisdictions. On that basis the Tribunal considers that an increase of 3 per cent is appropriate and so determines.

30. 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 office holders on and from 1 October 2009 shall be as specified in Annexure A.

**The Statutory and Other Offices
Remuneration Tribunal**

Chris Raper

Dated: 2 November 2009

**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE
HOLDERS GROUP ON AND FROM 1 OCTOBER 2009**

Salary	\$ per annum
Commissioner Police Integrity Commission	\$401,525
Auditor General	\$391,665
Ombudsman	\$390,660
President, Mental Health Review Tribunal	\$316,985
Deputy President Mental Health Review Tribunal	\$277,330
Information Commissioner	\$275,000
Chairperson, Consumer Trader and Tenancy Tribunal	\$257,630
President, Guardianship Tribunal	\$252,250
Principal Claims Assessor (Motor Accidents Compensation Act)	\$250,515
Deputy Chairperson Consumer Trader and Tenancy Tribunal	\$238,275
Deputy Chairperson, Law Reform Commission	\$236,555
Deputy President Administrative Decisions Tribunal	\$226,870
Registrar Workers Compensation Commission	\$220,870
Clerk of the Legislative Assembly	\$220,870
Clerk of the Parliaments	\$220,870
Senior Chairperson (Government and Related Employees Appeals Tribunal) - not being a judicial office holder	\$217,550
Commissioner, Law Reform Commission	\$226,870
Deputy President, Guardianship Tribunal	\$197,355
Senior Member, Consumer Trader and Tenancy Tribunal	\$194,470
Deputy Clerk, Legislative Assembly	\$189,600
Deputy Clerk, Legislative Council	\$189,600
Chairman, Transport Appeals Board	\$180,960
Chairman, Local Land Boards	\$180,960
Registrar, Aboriginal Land Rights Act 1983	\$175,160

ANNEXURE A (CONT'D)

**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE
HOLDERS GROUP ON AND FROM 1 OCTOBER 2009**

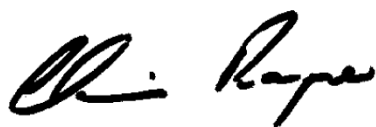
Chairperson, Government and Related Employees Appeals Tribunal who is legally qualified (not being the holder of a judicial office or a magisterial office)	\$167,600
Member, Consumer Trader and Tenancy Tribunal	\$167,600
Assessor (Civil Claims)	\$167,600
Chairperson, Government and Related Employees Appeals Tribunal (not being the holder of a judicial office or a magisterial office)	\$158,245
Member of the New South Wales Aboriginal Land Council (Note 1)	\$116,675
President Mental Health Review Tribunal (part time daily rate)	\$1,315
Deputy President Mental Health Review Tribunal (part time daily rate)	\$1,150
Assessor Civil Claims (daily rate)	\$695

Note 1 The Chairperson shall receive an allowance of 10% (i.e. a total of \$128,340 per annum) and the Secretary and Treasurer shall receive an allowance of 5% (i.e. a total of \$122,510 per annum).

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 6-16.12 to 6-16.16 of the Personnel Handbook, to each of the office holders listed above who are provided, as a condition of their employment with approved annual leave.

**The Statutory and Other Offices
Remuneration Tribunal**



Chris Raper
Dated: 2 November 2009

ANNEXURE B**DETERMINATION OF REMUNERATION OF PUBLIC OFFICE HOLDERS WHO HAVE ELECTED TO BE PROVIDED WITH EMPLOYMENT BENEFITS PURSUANT TO SECTION 11A OF THE ACT EFFECTIVE ON AND FROM 1 OCTOBER 2009**

The Tribunal determines that the remuneration packages per annum for Public Office Holders who have elected to be provided with employment benefits pursuant to section 11A of the Act shall be:

<u>Public Office Holder</u>	<u>Remuneration</u>
Commissioner, NSW Crime Commission	\$404,235
Full time Member and CEO, Independent Pricing and Regulatory Tribunal	\$365,060
Electoral Commissioner	\$320,810
Valuer General	\$297,960
Executive Manager Parliamentary Services	\$235,115

**The Statutory and Other Offices
Remuneration Tribunal**

Chris Raper
Dated: 2 November 2009