

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES
REMUNERATION ACT, 1975

JUDGES, MAGISTRATES AND RELATED GROUP

29 October 2010

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JUDGES, MAGISTRATES AND RELATED GROUP

Preamble

Mr Chris Raper resigned as the Statutory and Other Offices Remuneration Tribunal effective from 15 February 2010. The Governor, pursuant to section 6(2) of the Statutory and Other Offices Remuneration Act 1975 (the Act), appointed Mr Alex Smith AM as the new Tribunal for a term of three years from 29 March 2010.

Section 7(1(a) of the Act provides that the Director General of the Department of Premier and Cabinet is an Assessor appointed to assist the Tribunal. Section 7(4) of the Act provides that the Director General may appoint a deputy to act in his place as the Assessor. The Director General has decided that he does not require a deputy and will be personally performing the role of Assessor to the Tribunal.

Section 1: Background

1. The Judges, Magistrates and Related Group comprise 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) and offices which the Government considers should belong to that Group. The Group also contains a number of other offices that are involved in the judicial system.
2. Section 13 of the Act, requires the Statutory and Other Offices Remuneration Tribunal (the Tribunal), each year, to make a determination on the remuneration to be paid to office holders on and from 1 October in that year. "Remuneration" is defined as salary or allowances paid in money.

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. The Tribunal has consistently held that this relativity 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 per cent of the remuneration of a Justice of the High Court. The Tribunal's determination of 2009 provided a general increase of 3.0 per cent for NSW Supreme Court Judges and related office holders with effect from 1 October 2009.
5. On 30 July 2010, the Tribunal made its Special Report and Determination on the remuneration of the Judges, Magistrates and Related Group. The reasons why that Special Determination was undertaken are articulated in that Report and need not be repeated here, suffice it to say that it arose from a determination of the Commonwealth Remuneration Tribunal to provide additional increases, beyond the normal annual increases, of 6 percent for Commonwealth judicial officers in 4 increments of 1.5 percent. The first increase took effect on 1 November and the last is due to be made in May 2011.
6. After undertaking its own review of this matter, and for the reasons stated in the Report of 30 July 2010, the Tribunal determined an

increase in the remuneration of the Judges, Magistrates and Related Group of 3 percent.

7. At the request of the Minister, the Tribunal also provided comment to the Government on its views on a statutory link between the salaries of Federal Court Judges and State Supreme Court Judges. The Tribunal's views were expressed as follows.

“80. The Tribunal has been asked to express its view on the appropriateness of legislating for salary parity between Supreme Court Judges and Federal Court Judges arising from the move to provide State Judges with dual commissions. Similar legislative provisions currently exist in Victoria and Queensland.

81. The Tribunal has considered this matter carefully and has already noted how the Supreme Court also administers Commonwealth laws. The fact that the Supreme Court and Federal Court are both considered superior Courts of record also suggests a commonality between them. In addition, the Tribunal has noted that the Supreme Court and Federal Court recruit from the same group of barristers. Finally, while most State and Territory Tribunals make their own inquiries before determining judicial remuneration, none have ever made such determinations without having regard to the 85 percent Nexus. What the Tribunal is being asked to comment upon, in effect, is formalising the Nexus through legislation.

82. This is not uncommon within the current remuneration framework for Judges in New South Wales. Judges of the Land and Environment Court and the Industrial Relations Commission are linked by statute to the remuneration of a Supreme Court Judge. Similar statutory arrangements are in place for the Chief Judge of the District Court.

83. It is envisaged that legislation introduced would formally link the salary of a Supreme Court Judge to a Federal Court Judge. There is also precedent for such cross jurisdictional arrangements. The salaries of Members of NSW Parliament are directly linked to the salaries of their federal counterparts. Section 4 of the Parliamentary Remuneration Act 1989 provides that,

“...The basic salary is, for the purposes of this Act, the amount of the annual allowance by way of salary payable under the law of the Commonwealth to a Member of the House of Representatives who is not entitled to any additional salary, less \$500.”

84. *The Tribunal therefore supports linking the salaries of Supreme Court Judges to the salaries of Federal Court Judges by legislation. The Tribunal also considers that such linkage should apply to the other two Courts within the State jurisdiction i.e. the District Court and the Local Court. Given the interconnectedness of the court system in this State, the Tribunal considers there is a compelling case to link the salaries of the various Courts through legislation. The Tribunal would be prepared to offer its assistance in facilitating such an initiative.*
85. *In examining this issue the Tribunal has reviewed the range of benefits available to Judges in State and Federal jurisdictions. As in 2002, the Tribunal has concluded that overall the difference in benefits is not sufficient to warrant special consideration.*
86. *One benefit that will need further consideration if the statutory link is introduced, however, is the Conveyance Allowance. Federal Judges are provided with a private plated motor vehicle at no cost whereas Supreme Court Judges do not have access to such arrangements. It will be noted that this difference in availability of cars has been a long standing issue with the Tribunal providing Supreme Court Judges additional remuneration to compensate for the motor vehicle. The most recent iteration of this arrangement is the Conveyance Allowance.*
87. *In Queensland and Victoria where there is a statutory link with Federal Court Judges' salaries, Judges in those States also receive private plated motor vehicles at no cost or at minimal cost. Any similar link between Supreme Court Judges and Federal Court Judges will require an assessment of how the Conveyance Allowance will be accommodated. Again the Tribunal is prepared to assist in any such consideration."*

The Tribunal will comment further on this matter below.

On 24 August 2010, the Commonwealth Tribunal issued its Determination for 2010 and provided a general increase of 4.1 percent for office holders within its jurisdiction, including Federal Judges and Magistrates and non judicial officers.

Section 2: Submissions Received

8. As part of the current review the Tribunal received 11 submissions. The Tribunal met with those representatives of the Courts and Commissions who specifically sought meetings. Once again the Tribunal thanks the

office holders for the time and effort they have put in to the current review.

9. Submissions have generally supported the status quo in terms of the long standing 85 percent nexus with Federal Court Judges as well as the internal relativities within the Judges, Magistrates and Related Group. Some submissions also sought an increase in the Conveyance Allowance.

Deputy Presidents, Workers Compensation Commission

10. The Deputy Presidents have again submitted that the current salary relativity with the Deputy Senior Crown Prosecutor and the Deputy Senior Public Defender is inappropriate. Unlike these office holders, the Deputy Presidents argued, they are not advocates but rather sit and consider appeals against decisions of arbitrators. Because of this role, they submit that their remuneration should be equivalent to that of a District Court Judge or a comparable relativity differential between their salaries and those of the President.

Government Submission

11. The Government submission contains the views of the Director General of the Department of Justice and Attorney General. His view, which is supported by the Government submission is to continue the retention of the 85 per cent nexus between State and Federal judicial remuneration. The Director General also supports, in principle, the retention of the current internal relativities determined by SOORT for the Judges, Magistrates and Related Group. The Government's recommendation concludes,

"...The 85 percent nexus between State and Federal judicial remuneration and the internal relativities be maintained."

The Submission makes no comment on the Tribunal's recommendation that the remuneration of the NSW judicial officers be linked by way of statute to the remuneration of the Federal Court as currently occurs in Queensland and Victoria.

Section 3: 2010 Review

12. The Tribunal has once again reviewed the submissions received and considers that the nexus should be retained. The Tribunal will also retain the existing relativities within the Group.
13. In respect of the Deputy Presidents of the Workers Compensation Commission the Tribunal is aware that there has been a longstanding claim from these office holders for salary equivalence with District Court Judges. The Tribunal has considered the matters raised in the Deputy Presidents' submission and the oral submission of the President of the Commission and can find no new reasons to alter its original decision.
14. As has been stated previously, this Tribunal considers the remuneration of these office holders to be set at an appropriate level. As has also been stated previously, should the Minister consider that the remuneration is inappropriate or should be set at a level identical with that of a District Court Judge, then this can be achieved by way of legislative amendment. On the basis of the information provided the Tribunal can find no reason to alter the existing arrangements.

Conveyance Allowance

15. The Tribunal has again undertaken a review of the conveyance allowance. The methodology has been previously explained and at the forefront of the Tribunal's reasoning is the need to ensure that the costs of running a motor vehicle continue to trend upwards for a number of years rather than up one year and down the next. The Tribunal's analysis has shown a minor increase in running costs within the last 12

months but does not consider that the Allowance should be increased at this time. It will review the running costs as part of the 2011 annual review and make any adjustment at that time.

Final 3 percent from the Commonwealth Tribunal's 2009 Special Review

16. As noted above, the Commonwealth Tribunal, in its Report of 13 October 2009, signalled its intention to provide federal Judicial Officers with a work value increase of 6 percent. Four such increases (each of 1.5 percent) were to be provided – the first in November 2009 and the last in May 2011. Two increases have been made as noted in the Tribunal's 30 July 2010 Report. The Tribunal indicated in that Report its intention to indicate the timing of the final two instalments at the time of this current review.
17. To give effect to the Commonwealth Tribunal's intention of passing on the 6 percent increases by way of instalments requires the Tribunal to make separate determinations for each such instalment. As has already been noted two such instalments have been made. Following the making of such instalments, the Commonwealth legislation requires that such determinations be laid before the Federal Parliament for 15 sitting days. This is what is commonly known as the "disallowance period" where either House may disallow a Tribunal determination. Following the expiry of the disallowance period, the determination becomes effective from its operative date.
18. As at the time of making this Determination, the Commonwealth Tribunal has not made a determination on the third instalment of its special increase. When it does make this determination, it will be required to be tabled in Federal Parliament for 15 sitting days. Given that there are less than 15 sitting days left in the current session of Parliament any such determination will not become effective until some time when Federal Parliament returns in 2011. The fourth instalment when made would require a similar process.

19. This means that the Tribunal is not in a position to make any further determination on this matter. The Tribunal considers that the most appropriate course is to review this matter as part of the 2011 annual review where it is expected that the outcome of the payment of the two final instalments will be known. Alternatively, the Tribunal could review these special increases by way of special reference from the Minister.

Statutory Link of Judicial Officers

20. The Tribunal's view of this matter were expressed above. Given the interconnectedness of the Courts, the move to dual commissions between state and federal Courts, and the ongoing support for the retention of relativities between State Supreme Courts and the Federal Court as well as the current relativities between Judges and Magistrates, the overwhelming conclusion is that these informal arrangements should be made certain by way of legislation. The Tribunal continues to offer its assistance to facilitate such a change.

Section 4: Conclusion

21. The Tribunal, after considering the views of the Assessors and, 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 2010 shall be increased by 4.1 percent. The new rates are as set out in Determinations Nos 1-6.

22. 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.

23. 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**

(signed)

Alex Smith

Dated: 29 October 2010

DETERMINATION No 1**REMUNERATION OF JUDGES – effective from 1 October 2010**

	Salary \$ per annum
Chief Justice of the Supreme Court	\$412,390
President of the Court of Appeal	\$386,150
President of the Industrial Relations Commission	\$386,150
Judge of the Supreme Court	\$368,550
President, Workers Compensation Commission	\$368,550
Vice-President of the Industrial Relations Commission	\$368,550
Deputy President of the Industrial Relations Commission	\$368,550
Judge of the District Court	\$331,690
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	\$331,690

DETERMINATION No 2**REMUNERATION OF MAGISTRATES – effective from 1 October 2010**

	Salary \$ per annum
Chief Magistrate	\$331,690
Deputy Chief Magistrate	\$280,280
State Coroner	\$280,280
Chief Industrial Magistrate	\$269,990
Magistrate	\$265,350
Chairperson Victims Compensation Tribunal (NOTE 2)	\$265,350
Children's Magistrate	\$265,350
Deputy State Coroner	\$265,350

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 2010**

	Salary \$ per annum
Chairperson, Law Reform Commission	\$368,550
Solicitor-General	\$368,550
Director of Public Prosecutions	\$368,550
Crown Advocate	\$331,690
Deputy Director of Public Prosecutions	\$331,690
Senior Crown Prosecutor	\$298,520
Senior Public Defender	\$298,520
Deputy Senior Crown Prosecutor	\$268,660
Deputy Senior Public Defender	\$268,660
Solicitor for Public Prosecutions	\$268,660
Deputy Presidents, Workers Compensation Commission	\$268,660
Senior Commissioner Land and Environment Court	\$257,980
Crown Prosecutor	\$245,450

Public Defender	\$245,450
Commissioner Land and Environment Court	\$243,240
Commissioner Industrial Relations Commission	\$243,240

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 \$1,600 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 \$1,440 per day

Workers Compensation Commission

Acting Deputy President of the
Workers Compensation Commission \$1,115 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 2010

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 6-16.12 to 6-16.16 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**

(signed)

Alex Smith
Dated: 29 October 2010

Report and Determination – Travel Allowances for NSW Judges and Magistrates

REPORT

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 Judge or Acting Judge of a court, or
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.

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 2010/19 and the rates adopted for the NSW Public Sector generally.

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.

Conclusions:

6. In making its determination the Tribunal has had regard to the current travel allowance rates contained in Taxation Ruling 2010/19. Non metropolitan accommodation rates and meal rates have also been adjusted as set out in the Determination.
7. 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 2010.

**Statutory and Other Offices
Remuneration Tribunal**

(signed)

Alex Smith
Dated: 29 October 2010

DETERMINATION No 7

TRAVEL ALLOWANCES FOR JUDGES AND MAGISTRATES- effective from 1 October 2010

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 2010.

A Travel necessitating an overnight stay

Capital City Rates	
Adelaide	\$363.05
Brisbane	\$390.05
Canberra	\$384.05
Hobart	\$349.05
Perth	\$429.05
Darwin	\$419.05
Melbourne, Sydney	\$419.05
Newcastle and Wollongong	\$344.05
Other Areas	\$344.05

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.

Meal Allowances for travel NOT involving an overnight stay

Breakfast	\$23.10
Lunch	\$25.90
Dinner	\$44.50

**Statutory and Other Offices
Remuneration Tribunal**

(signed)

Alex Smith
Dated: 29 October 2010