

**REPORT**

and

**DETERMINATION**

under

**SECTION 14**

of the

**STATUTORY AND OTHER OFFICES**

**REMUNERATION ACT 1975**

**JUDGES, MAGISTRATES AND RELATED GROUP**

30 July 2010

[www.remtribunals.nsw.gov.au](http://www.remtribunals.nsw.gov.au)

## **JUDGES, MAGISTRATES AND RELATED GROUP**

### **Preamble**

#### **Tribunal Membership**

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.

#### **2009 Review**

1. On 2 November 2009, the Tribunal made its annual Report and Determination on the remuneration for the Judges, Magistrates and Related Group. In determining increases for this Group, the Tribunal has regard to increases determined by the Commonwealth Remuneration Tribunal (CRT). This is part of a long standing Council of Australian Government's (COAG) agreement that the remuneration of State Supreme Court Judges and Federal Court Judges should not exceed 85% of the remuneration of a High Court Judge. This agreement is commonly referred to as "the nexus".
2. For its 2009 Review, the CRT provided its normal annual increase to Federal Judges and Magistrates. For the 2009 period this was determined to be 3 percent.

3. On 13 October 2009, the CRT published its conclusions from a review of the work value assessment of Federal Courts. For the reasons stated in that Report, the CRT decided that it would provide a further increase of 6 per cent to Federal Judges and Magistrates payable in increments of 1.5 percent commencing 1 November 2009 and concluding by 1 May 2011. In determining these additional amounts the CRT commented on the impact of this decision on State/Territory Tribunals in the following terms.

*“...The Tribunal is aware that the remuneration of judicial offices in the states and territories is based on remuneration in the federal court system. In making its decision, the Tribunal has taken into consideration factors pertaining specifically to judicial offices in the federal sphere. Accordingly the Tribunal is of the view that any adjustment to the remuneration of judicial offices in the states and territories would need to be based on specific issues particular to each jurisdiction.”*

The CRT also commented on the impact of its decision on non-judicial office holders:

*“...The Tribunal also notes that adjustments to federal judicial remuneration have no bearing on the remuneration of the non-judicial offices in the federal system. The Tribunal anticipates that its policy in this regard will be taken into account by the relevant state and territory determining authorities.”*

4. SOORT had regard to the CRT’s Report and after conducting its own review determined that NSW Judges, Magistrates and Related Office Holders would receive an annual increase in remuneration of 3% effective from 1 October 2009.
5. In respect of the work value increase decided by the CRT, the Tribunal stated the following.

*“...In respect of the Commonwealth Tribunal’s Report of 13 October 2009, this Tribunal has noted (paragraphs 18 & 19 above) the comments in respect to the jurisdiction specific basis of the Commonwealth Tribunal’s deliberations. It is noted that the Determination will have to be tabled in the Federal Parliament and then either House may disallow the Determination within 15 sitting days of tabling.*

*If the Determination is not disallowed by Parliament that will represent a disturbance of relativities that have been agreed between all jurisdictions*

*since the inter governmental agreement reached in 1989. The NSW Government will need to give consideration to this issue and advise the Tribunal of what, if any, action it considers should be taken.”*

6. On 6 November 2009, the Attorney General, the Hon John Hatzistergos MLC wrote to the Minister for Public Sector Reform, the Hon John Robertson MLC on two matters.
7. First, the Attorney General expressed his view that remuneration for non judicial officers in the Group (Crown Prosecutors, Public Defenders, the Solicitor General, the Crown Advocate, the Director and Deputy Directors of Public Prosecutions etc) should not be determined with reference to judicial remuneration determinations because none of the officers perform judicial or quasi judicial functions. He asked that consideration be given to placing the non-judicial officers in the Group into a separate group for remuneration purposes. The Attorney General, in making such a recommendation, was not making a comment on the actual level of remuneration which he appropriately noted is a matter for the Tribunal. The history of the relativities within this Group will be discussed below.
8. Second, the Attorney General noted the special increases provided to Federal judicial officers by the CRT and sought a special reference on,
 

*“...the issue of whether there should be an adjustment to the remuneration of NSW judicial officers in light of the 1.5 percent increase awarded to Federal judicial officers.”*
9. The Attorney General also informed the Minister that NSW will be moving towards a dual system of commissions for State Supreme Court Judges and Federal Court Judges. In light of this potential development, the Attorney General expressed his support for the longstanding remuneration nexus between these groups of Judges and commented on whether this should be formalised through legislative arrangements similar to those which exist in Victoria and Queensland.
10. On 20 April 2010, the Minister issued a Special Reference to the Tribunal pursuant to section 14 of the Act. The Minister provided a copy of the

letter from the Attorney General on judicial and non judicial remuneration matters outlined above and indicated that those issues had been discussed with him. As a result, the Attorney General supported the following reference to the Tribunal.

*"...Pursuant to section 14 of the Statutory and Other Offices Remuneration Act 1975, I direct you to review the Tribunal's determination of 2 November 2009 for the Judges, Magistrates and Related Group and make a special determination in light of the Federal Tribunal's decision, outlined in its Report of 13 October 2009, to pass on a total additional increase of 6 percent (in 1.5 percent increments) by May 2011. This review should have particular reference to salary relativity between Judges of the Federal Court of Australia and the Supreme Court of NSW as they relate to the salary of a Judge of the High Court."*

The Minister's reference continued as follows,

*"...In making your report and determination I would also appreciate your views on the appropriateness of legislating for salary parity between Supreme Court Judges and Federal Court Judges, similar to legislative provisions which currently exist in Victoria and Queensland, arising from the move to provide these Judges with dual commissions."*

11. As a result, and consistent with the Tribunal's normal procedures, requests for submissions were sent to all relevant office holders seeking submissions on the matters raised by the Minister and in particular efficiencies and changes in jurisdiction to warrant the Tribunal determining an additional increase of 6 percent. The Tribunal also sought comments on whether remuneration of State Court Judges and Federal Court Judges should be linked by way of legislation.

## **Section 1: The Role of the Tribunal**

12. The Statutory and Other Offices Remuneration Act 1975 (the Act), as amended, requires the Tribunal to make annual determinations of the remuneration to be paid to those office holders listed in the Schedules of the Act on and from 1 October in that year. "Remuneration" is defined as salary or allowances paid in money. All office holders contained in the Judges, Magistrates and Related Group appear in Schedules 1-3 of the Act.

13. Section 14 of the Act provides for the Tribunal to make special determinations at the request of the Minister. Section 14 of the Act provides:
- “(1)...Where the Minister so directs, the Tribunal, not later than the day specified in the direction as the day on or before which the determination is to be made, shall, after taking into consideration such matters as are specified in the direction and such other matters as the Tribunal thinks fit, make a determination as to whether, and (if so) how, any determination already made should be altered in relation to such office holders as are referred to in the direction.”*
14. As noted above, the Tribunal’s 2009 annual Report and Determination provided an increase of 3 percent to all office holders (both judicial and non-judicial) listed in this Group. The Minister’s reference seeks to have that determination altered having regard to the matters raised by the Minister ie the special increase determined by the CRT and, in particular, to have regard to the nexus between judges of the Federal Court and Judges of the Supreme Court.
15. While the Tribunal is required to take into consideration such matters as the Minister directs, the Tribunal may also have regard to other matters the Tribunal thinks fit in making its determination. The Tribunal cannot ignore the comments of the CRT regarding the non applicability of the Federal increase to non judicial officers in that jurisdiction, nor the comments of the Attorney General concerning this matter as outlined above.
16. While the Tribunal has not been asked specifically to consider the retention of the remuneration link between judicial and non judicial office holders in this Group, the Tribunal is of the view that such consideration must be given and will be doing so as part of this Report.

## **Section 2    The History of the Nexus**

17. The Nexus has been in place since 1989. Australian Governments since 1989, have acknowledged that first, the Justices of the High Court should receive the highest level of judicial remuneration; secondly that State Supreme Courts and the Federal Court are superior courts of record and that the remuneration of judges of these courts should not exceed 85

percent of the remuneration of a Justice of the High Court. Remuneration Tribunals across Australia have generally accepted these principles and continue to do so to the present time. This arrangement has had the desired effect of eliminating the former practice of leap frogging in judicial remuneration across jurisdictions. It has also ensured that remuneration differences between the two courts would not be an overriding factor in the minds of prospective candidates in considering appointments to the Bench. In NSW the Government has informed the Tribunal annually of its desire to maintain the 85 percent nexus.

18. It should be noted, however, that the 85 percent nexus is not absolute. The original agreement imposed two caveats ie the nexus would be maintained whilst ever the salaries of High Court Justices were deemed appropriate and that in considering the 85 percent 'cap' regard could be had to the differences in benefits provided to Federal Court Judges but not available to State Supreme Court Judges. The principle difference for NSW Judges was that Federal Court Judges received, and continue to have access to a fully maintained private plated motor vehicle whereas no such provision exists for the State. For this reason there has been determined by the Tribunal, since the introduction of the Nexus, an additional amount to cater for the motor vehicle. In NSW this is currently provided as the Conveyance Allowance.

### **Section 3                    Judicial and non-Judicial Office Holders**

19. The State Supreme Court is the Superior Court of Record. The remuneration of the Judges of the Supreme Court is therefore the highest in NSW. Unlike the Federal jurisdiction however, NSW has a three tier judicial system. Below the Supreme Court is the District Court presided over by Judges of this Court and the Local Court presided over by Magistrates. All Officers who preside over these Courts are judicial officers within the meaning of the Judicial Officers Act 1986. The NSW judicial system also includes other Courts whose jurisdictions are limited to specific areas of law eg, the Land and Environment Court and the Industrial Relations Commission. The status and entitlements of these

Judges, including remuneration, are equivalent to Supreme Court Judges. Such arrangements are set by legislation.

20. Since 1975, the salaries of judicial officers in NSW have been set by the Tribunal as a percentage of the salary of a Supreme Court Judge. This relativity has been reviewed from time to time and where there have been changes in jurisdiction, the Tribunal has adjusted the relativity. This is in recognition of the devolution of jurisdiction from the Supreme Court to the District Court and from the District Court to the Local Court that has occurred over time.

21. Also included in the Group, for remuneration purposes, are office holders who, while not being judicial officers within the meaning of the Judicial Officers Act 1988, receive remuneration equivalent to either Supreme Court Judges or District Court Judges. These office holders, their date of inclusion and percentage relativity to judicial remuneration are shown below.

<b>Office</b>	<b>Date Included in the Judges, Magistrates and Related Group</b>	<b>Percentage Relativity SCJ = Supreme Court Judge DCJ = District Court Judge</b>
Chairperson Law Reform Commission	Pre 1975. Office holder historically a Supreme Court Judge	100% SCJ
Solicitor General	1978	100% SCJ
Director of Public Prosecutions	1986	100% SCJ
Crown Advocate	1987	100% DCJ

22. It should be noted that while the Solicitor General and the Director of Public Prosecutions are not judicial officers within the meaning of the Judicial Officers Act 1986, they are both eligible to receive a pension under the Judges Pension Act 1953.

23. The Judicial Officers and the related Office Holders mentioned above formed the Core Group of Office Holders for remuneration purposes.



24. The Judges, Magistrates and Related Group also includes a number of office holders who are not judicial officers and until 2002 were remunerated without direct reference or linkage to remuneration to that of the Core Group. These Office Holders included Deputy Directors of Public Prosecutions, Crown Prosecutors, Public Defenders, Commissioners of the Industrial Relations Commission and Commissioners Land and Environment Court. These office holders were listed within, and received identical increases in remuneration with the Public Office Holders Group.
25. The Tribunal has undertaken two fundamental reviews of the roles and responsibilities of these office holders. The first review was undertaken in 1990 and it was decided that they should be retained within the Public Office Holders Group.<sup>1</sup> A second review of these Office Holders was undertaken following a special reference from the Premier in late 2001. The Tribunal made its Reports and Special Determinations on 20 March 2002. In summary, the Tribunal reassessed its view that this group of Office Holders should not form part of the Judges, Magistrates and Related Group. The Tribunal's 2002 annual Report and Determination for the Judges, Magistrates and Related Group dated 2 December 2002 determined that the non-judicial officer holders should be linked to the remuneration of judicial officers rather than that of the Public Officer Holders. In that Report, the Tribunal stated

*"...Since the last review, however, the Tribunal has undertaken extensive reviews of specific office holders who work directly within the judicial system. The office holders concerned were, the Deputy Directors of Public Prosecutions, Crown Prosecutors, Public Defenders, Commissioners Land and Environment Court, Commissioners, Industrial Relations Commission and the Commissioners, Compensation Court.*

*These reviews revealed that increases in work value had occurred and as a result the Tribunal determined a new level of remuneration for the office holders concerned. The Tribunal also concluded that as a result of this review the remuneration for these office holders should be set in relationship with judicial remuneration levels. For remuneration purposes, therefore, these office holders, have been removed from the Public Office Holder Group and are now listed with the Judges Magistrates and Related Group."*

---

<sup>1</sup> Previously known as the Tribunals Court Officers and Related Group

26. This view arose from a recognition that this Group of Office Holders works intricately within the court structure in NSW and to a substantial degree contributes to the effectiveness and integrity of the judicial system in this State.

## **Section 4                      Submissions received**

27. As a result of the Special Reference the Tribunal wrote to all affected office holders and sought submissions on the special determination requested by the Minister and their views on whether there should be a statutory link between Federal Court Judges and Supreme Court Judges. The Tribunal also sought a submission from the Director General of the Department of Justice and Attorney General.

28. Submissions were received from each of the Courts, the Industrial Relations Commission and the group of related Office Holders.

29. The submissions addressed the two issues in question ie the passing on of the 6 percent and the statutory link, for remuneration purposes, of the Federal Court and Supreme Court Judges. In summary, nearly all submissions considered that the 6 percent work value increase should be passed on to this Group and all supported the statutory link between Federal Court and Supreme Court Judges. Most supported the expansion of this statutory link to the District Court and Local Court as well. The Victorian and Queensland models were used as examples of how this may be achieved.

30. To support their submissions, details were provided to show increased work value, based on initiatives of government, increases in jurisdiction or changes to work practices which allow particular groups to perform expanded duties with lesser numbers of staff. The major issues raised in submissions to the Tribunal are outlined hereunder.

## **NSW Supreme Court**

31. The Submission from the Supreme Court Judges supports maintaining the nexus between the salary of a Federal Court Judge and that of a Supreme Court Judge and the passing on of the 6 percent increase to Supreme Court Judges and Associate Judges on the bases of,

- the importance of judicial remuneration in attracting and retaining appointees to the Supreme Court, supporting judicial movements between the courts and ensuring judicial independence;
- increases in efficiency of work practices resulting in capacity to manage increasing workloads as well as the complexity of litigation conducted in the Supreme Court.

32. The Tribunal was also advised that the Supreme Court not only administers Commonwealth laws but has a role in major crime and criminal appeal matters that does not exist in the Federal Court. The Submission also provided statistical information from the Court's 2008 Annual Review which shows the number of cases filed, completed and pending in its civil, criminal and appellate levels. It notes that the NSW Supreme Court is the busiest Superior Court in Australia, facing demands greater than those placed on other courts of equivalent jurisdiction.

33. On the issue of legislative link with Federal Court Judges, the Submission proposed that legislation be enacted that will guarantee remuneration parity between Judges of the Supreme Court and Judges of the Federal Court.

## **Land and Environment Court**

34. The submission from the Chief Judge supports the Supreme Court's submission to the Tribunal. He bases this view on the expanding jurisdiction of the court, increased efficiencies in administration and management and in the complexity of cases handled by the Court's Judges.

35. The Chief Judge also supports the introduction of legislation to address parity of remuneration. He notes that both Queensland and Victoria have such legislation in place.

### **Industrial Relations Commission of NSW (IRC)**

36. The President of the Industrial Relations Commission provided a detailed submission and emphasised:

- Changes to jurisdiction, complexity of work and increased efficiencies and productivity of the Commission. Examples include:
- Workload transfer of the Government and Related Employees Appeals Tribunal and the Transport Appeals Boards into the Commission, pending the passing of legislation before 1 July 2010.
- The significant contribution of the “Bluescope process” in increasing the efficiency with which major industrial cases are dealt with.
- Notes that such changes may place a significant strain on the Commission’s resources that has been reduced by 60 percent since 2006.
- Supports the proposal to legislate for salary parity between Supreme Court Judges and Federal Court Judges as is the case with Queensland and Victoria. In this regard he notes that,
- The Industrial Court is now an eligible court for the purposes of the *Fair Work Act 2009* with jurisdiction to deal with contravention of civil remedy matters. Three Judges of the Commission perform dual roles.
- 7 members of the Commission have been appointed as members of *Fair Work Australia*, making them dual appointees.

### **District Court**

37. The Chief Judge addresses the continuing efficiencies in the District Court over a number of years. He notes that by all objective criteria the NSW District Court is the busiest and yet the most efficient Court of equivalent jurisdiction in Australia.

38. The Chief Judge notes that the District Court has experienced an increase in complexity of its caseload both in criminal and in civil cases. He

therefore considers that the increase provided to the Federal Court should be passed on to the District Court.

39. The Chief Judge considers that the existing 90% relativity between the Judges of the District Court and the Supreme Court should be retained and the relativity should be legislated.

40. The Chief Judge supports the introduction of legislation and notes that such legislation introduced in Victoria and Queensland extends to the District and Local Courts in those States.

### **Local Court**

41. The Chief Magistrate supports the increase of 6 percent to the Local Court on the basis of improvements in efficiency and productivity within the Local Court over the last decade, despite increasing caseload and increased jurisdiction. He notes that the use of Table offences dealt with in the Local Court as opposed to trial or sentence in the District Court has significantly reduced the cost of administration of justice in NSW.

42. Like the Chief Judge of the District Court, the Chief Magistrate supports the extension of statutory linkage of judicial remuneration being extended to the District Court and Local Court.

### **Crown Prosecutors**

43. The submission from the Senior Crown Prosecutor (SCP) has emphasised that the role of the Crown Prosecutors is to represent the interests of the State in criminal trial matters.

44. The SCP supports maintaining the linkage between Supreme Court Judges' salaries and that of Crown Prosecutors.

45. In this regard it was noted that many of the Crown Prosecutors appear almost exclusively in the Supreme Court and the Court of Criminal Appeal. In addition, the complexity of the law and the percentage of complex cases

within the Supreme Court has increased as has the complexity of matters prosecuted in the criminal jurisdiction within the District Court.

46. Figures provided by the SCP show that for the period 2007-2009 the total number of matters received increased by 12.6% whereas staff numbers had decreased. It was argued that the reason why the Crown Prosecutors are not falling behind is due to productivity improvements related to the efficiencies and effectiveness in the way cases are managed.

47. It was also pointed out to the Tribunal that recent legislative changes have meant that Crown Prosecutors no longer hold tenure but are appointed for periods of up to 7 years with the possibility of renewal. This has eroded the attractiveness of the office of Crown Prosecutor as a career choice for some barristers and if remuneration was to fall further behind other office holders it could mean that the quality of candidates could be diminished.

#### **Director of Public Prosecutions (DPP) and Solicitor General**

48. Both submissions argue for the retention of the existing arrangements linking their remuneration to that of a Supreme Court Judge on the basis of the historical salary relativity with the Supreme Court Judge and the fact that both the Director of Public Prosecutions and the Solicitor General are eligible for the Judges Pension Scheme. The DPP refers to the Second Reading Speech concerning the establishment of this office which provides reasons for the historical nexus.

#### **Crown Advocate**

49. The submission emphasised that the existing nexus between the salary of a Crown Advocate and that of a judge of the District Court should be retained. The submission also notes that traditionally the Crown Advocate has appeared in high profile and significant cases before the Supreme Court. Additionally, under section 10 of the *Crown Advocate Act 1979*, the Attorney General has delegated some of his powers, authorities, duties and functions to the Crown Advocate.

### **Submissions from Other Office Holders**

50. Submissions from the Deputy Directors of Public Prosecutions, Commissioners, Land and Environment Court, Solicitor for Public Prosecutions, the Senior Public Defender and the Workers Compensation Commission all support retention of the existing relativities.

51. The Other Office Holders presented similar arguments to justify a 6% increase in remuneration based on increased complexity of the law, improvements made to increase productivity of work output and issues related to attraction in situations where tenure has been removed

### **Submission on behalf of the Department of Justice and Attorney General**

The submission supports:

- The continuation of the 85% nexus between the salaries of State Supreme Court Judges and Federal Court Judges with salary of a High Court Judge.
- Supports the internal relativities for the judicial officers within the Judges Magistrates and Related Group.

Supports the flow on of the 6% to Supreme Court Judges on the bases of;

- the 85% nexus
- the complexity of cases dealt with by the Supreme Court
- the move to dual commissions for Federal Court and the Supreme Court judges

52. The Submission does not make a recommendation on whether the 6% should be passed on to other judicial officers in the Group (District Court Judges and Magistrates) but notes that if SOORT were to pass on this increase there would need to be a demonstrated “significant net increase” in workload, complexity and work value. In this regard the submission notes.

- There has been no material change in jurisdictions of the District and Local Courts in the last 12 months
- Both District and Local Courts have seen some changes in caseload volumes.

53. The Submission suggests that if the 6 percent were not to be passed on to the other Judicial Officers, then SOORT could provide a non pensionable “parity allowance” for Supreme Court Judges only thus maintaining the nexus as well internal relativities.

54. For the non judicial officers in the Group, the submission notes that they were not part of the CRT decision and that in other jurisdictions it is rare for non judicial officers’ salaries to be linked to judicial salaries (exceptions to this are in Victoria and WA for the office of DPP).

## Section 5 Review

55. The Tribunal in undertaking this review has considered the Report of the *Review of Remuneration Relativities among Australia’s Federal Courts* published in October 2009 by the CRT and notes that the underlying reason for passing on a 6 percent work value increase to Federal Court Judges was because:

*“...The role of the Federal Court had expanded significantly over the years, to an extent greater than the normal increase in workload and complexity. Such a ‘normal increase’ tends to be the lot of every office in the Tribunal’s jurisdiction. With respect to the Federal Court, the Tribunal noted the increased breadth of law, including the number of legal cases and factual issues both across the caseload and within individual cases, which a Federal Court Judge must now consider to fulfil his or her day to day duties.”*

As a result of this analysis

*“...The Tribunal concluded that there was a work value case to increase the remuneration of Judges of the Federal Court by 6%.”*

56. The CRT then proceeded to review the other judicial offices within its jurisdiction and, for reasons stated in its Report concluded that similar special increases should be passed on to these groups as well. In



other words all federal Judges and Magistrates received the special increase of 6 percent.

57. In undertaking this review of the Judges, Magistrates and Related Group, the Tribunal has reviewed the submissions received carefully. The Tribunal also met with those representatives of this Group who sought to discuss their submissions and issues in person. The Tribunal also met with the Acting Director General of the Department of Justice and Attorney General. The Tribunal wishes to place on record its appreciation for the work put in by the various office holders, taking time out from their busy schedules to prepare and provide their submissions on this matter.

58. The Tribunal concludes that in the main the findings of the Commonwealth Tribunal for the Federal Court apply equally to the State Supreme Court. The Tribunal notes that the Supreme Court administers Commonwealth laws as does the Federal Court, but also has a role in major crime and criminal appeal matters that does not apply to the Federal Court. In this regard therefore, the Supreme Court has a broader and more complex jurisdiction than the Federal Court.

### **Retention of Internal Relativities**

59. The question that now arises for the Tribunal is whether the special increase should be limited to the Supreme Court only or should be passed on to some or all of the other Office Holders in this Group. In other words should the Tribunal, after reviewing all the issues, retain the existing relativities, some of which have been in place since the establishment of this Tribunal in 1976 or whether, by limiting the increase to the Supreme Court, establish new relativities with the other Office Holders.

60. The principle that underpins the system of internal relativities in remuneration is that no one Court or court officer operates in isolation. While each Court has its own jurisdiction there is a cascade of judicial authority in the administration of justice in this State. The Supreme

Court is at the apex of the judicial system in NSW. Below it sits the District Court and below that sits the Local Court. Without these Courts the Supreme Court would not be able to operate effectively. The devolution of jurisdiction from the Supreme Court to the District Court and from the District Court to the Local Court means that the cases considered by the Supreme Court are, as is appropriate, the most serious. In the Tribunal's view, because of such devolution of jurisdiction, no one Court can be examined in isolation as there is interconnectedness between them.

61. The devolution of jurisdiction does not only mean that the Supreme Court considers only the most serious cases but conversely, the types of cases being considered by Judges and Magistrates in the District Court and Local Court respectively, are, increasingly more complex than was previously the case. This devolution also fuels efficiencies in the Courts and makes the administration of justice in NSW much less expensive and hence more accessible to the public.
62. In conclusion, the Tribunal considers that the work of the lower Courts contribute significantly to the ongoing and demonstrated efficiencies of the justice system in NSW and should therefore retain their existing relativities with the remuneration of the Supreme Court Judges.
63. The Tribunal has also noted the suggestion in the submission on behalf of the Department of Justice and Attorney General regarding the passing of a non pensionable allowance to retain the nexus as well as existing relativities.
64. The Judges Pension Scheme is an integral part of the overall remuneration available to judges. If judges' remuneration were to be reduced through the payment of non pensionable pay increases then its value would be diminished *vis-à-vis* remuneration for Federal Court Judges. This could ultimately impact on recruitment and retention of State Supreme Court Judges. It could also impact adversely on any

proposal to link the salaries of State Supreme Court Judges to Federal Court Judges (see below).

65. The submission on behalf of the Department of Justice and Attorney General points out that there has been no material change in jurisdiction in the last 12 months. While this may be the case, this review has had regard to changes that have occurred since the last special review was undertaken ie 2003.

### **Non-Judicial Office Holders**

66. While not specifically asked to review the retention of non-judicial officers within this Group, the Tribunal does note the comments of the Attorney General concerning this matter as well as those contained in the submission from the Department of Justice and Attorney General.

67. This Group falls into two broad categories ie the Core Group comprising, the Director of Public Prosecutions, the Solicitor General and the Crown Advocate and the balance of office holders in this Group, ie the Court Officer Group.

68. The Core Group, as noted above have been receiving judicial remuneration either since their creation (DPP and Crown Advocate) or since SOORT has been determining remuneration for office holders (Chairperson, Law Reform Commission).

69. The Office of the Director of Public Prosecutions was created as a result of the passing of the Director of Public Prosecutions Act 1986. In the Minister's Second Reading Speech on the Bill, he stated the following concerning the remuneration for this office.

*"...I wish to mention the conditions upon which the appointment of the director [of Public Prosecutions] will be made. To ensure that the community will be confident that the decisions of the director will be independent from political considerations, it is provided that the director will be appointed until the age of 65 years, with similar pension entitlements enjoyed by judges of this State. It is intended also that the*

*director will be paid the same salary and allowances as a Supreme Court judge.”*

70. The Premier’s special reference to the Tribunal in respect of the office of Solicitor General dated 31 May 1978 noted the following.

*“...It is the Government’s view that the remuneration of the Solicitor General must be upgraded in order to attract suitable senior members of the Bar to accept appointments as Solicitor General. With this in mind an increase to the level of Puisne [Supreme] Court Judge would be appropriate.”*

71. The Office of Solicitor General is the senior Crown law officer of New South Wales. As noted in the former Premier’s submission to the Tribunal, recruitment to this office is from the Senior Bar, ie the same pool of barristers considered for appointment to the Bench. The Tribunal also notes that this office, pursuant to section 3 of the Solicitor General Act 1969, may;

*“... (a) act as Counsel for Her Majesty and may perform such other duties and functions of Counsel as the Attorney General directs, when the office of Attorney General is vacant, or the Attorney General is absent from the State or is by reason of illness unable to exercise and discharge his or her powers, authorities, duties and functions, exercise and discharge any powers, authorities, duties and functions conferred or imposed on the Attorney General by or under any Act or incident by law to the office of the Attorney General”(emphasis added).*

72. Similarly the remuneration of the Crown Advocate has been linked to that of a District Court Judge following representations to the Tribunal by the Government in 1987. This arose from the widening of the responsibilities of this office from a primary focus on criminal matters to civil matters as well. As was noted in the Government’s submission concerning this office,

*“...As a result there has been an inevitable increase in the frequency of proceedings in which Government Departments, authorities or agencies require representation, by counsel instructed by the Crown Solicitor’s Office. The Crown Advocate is, after the Solicitor General, the most appropriate senior Counsel to represent the interests of the Crown in such proceedings and there has therefore been a concomitant accretion in the general civil law complexion of the appearance and advisings work of the Office.”*

73. These three office holders are the highest law offices representing the Crown and in each case the Government normally seeks appointment from senior barristers. There is a recognition therefore that the remuneration for each office not only reflects their standing, but is set at a level that will attract the best possible candidates. It is the Tribunal's view that any disturbance of the remuneration relativities for these offices would compromise this position. On this basis the Tribunal can see no reason why these long standing relativities should be disturbed.
74. The remaining office holders in this Group were included in Judges, Magistrates and Related Group in 2002. They were included because at the time there was a clear recognition by the Tribunal of the important role that these office holders played in the administration of justice in this State and by extension, their contribution to the efficiencies in the various Courts.
75. The submissions to the Tribunal as part of this review have reinforced this general view and it is the Tribunal's firm view that the existing relativities should not be disturbed on this occasion.
76. In coming to this view, the Tribunal has noted the comments of the Attorney General, but considers that the broad principles concerning the administration of justice in NSW remain valid. The Tribunal, therefore, considers that the view of the Attorney General is a statement of opinion but does not form part of the overall Government view. Otherwise the Tribunal would have been asked to specifically review these internal relativities.
77. The Tribunal also notes the CRT's comments concerning the non applicability of the special increase to non-judicial officers within the federal system of law and the CRT's expectation that this policy would be taken into account by State and Territory Tribunals.
78. While the federal system of judicial administration may support the conclusions of the CRT, it does not necessarily follow that such

conclusions are applicable in the NSW system. Comment has already been made that the Federal Court does not consider murder trials which are exclusively State matters for judicial hearing and where the State is represented by Crown Prosecutors. Furthermore, Commissioners in the Industrial Relations Commission, and Commissioners in the Land and Environment Court consider matters arising in their respective jurisdictions. This has been confirmed by both the President of the Industrial Relations Commission and the Chief Judge of the Land and Environment Court.

79. For these reasons, the Tribunal concludes that any increase passed on to Supreme Court Judges must also be applied to the Judges of the District Court and to Magistrates and the other non-judicial officers in this Group because they too contribute to the effective operation and administration of justice in this State.

## **Section 6      Linking Salaries of Supreme Court Judges to Federal Court Judges by way of Legislation**

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.

## **Section 7      Conclusions**

88. The Commonwealth Remuneration Tribunal on 1 November 2009 determined an additional increase of 6 percent over the 18 month period between November 2009 and May 2011 to be paid in 1.5 percent increases every 6 months. The disallowance period of the Commonwealth Parliament has now expired and the determination has been implemented. Two such increases have already been paid which means that the salary of a Federal Court Judge is 3 percent higher than that of a Supreme Court Judge.

89. The Tribunal, after considering the views of the Assessors, will make a determination increasing the remuneration of the Judges, Magistrates and Related Group by 3 percent (2x1.5%) effective on and from the date of the Special Reference from the Minister i.e. 20 April 2010. The Tribunal will consider the timing of the remaining 3 percent at the time of the annual review which takes effect on and from 1 October 2010.

90. The Tribunal further considers that the remuneration of the Supreme Court Judges should be linked through legislation with the remuneration of Federal Court Judges. The Tribunal also considers



that there is a compelling case to similarly link the remuneration of District Court Judges and Magistrates to the remuneration of a Supreme Court Judge. Any such link will be a matter for Parliament and would need to have due regard to the treatment of the Conveyance Allowance. The simplest approach is to replace the Allowance with private plated motor vehicles ensuring no net cost to the State. This issue is a matter for the Government.

91. As this was a review of the special increase determined by the Commonwealth Tribunal, no consideration has been given as to the quantum of the Conveyance Allowance at this time. As is normally the case, the Allowance will be reviewed at the time of annual review. The Tribunal has, however, noted that there has been some movement in travelling allowances and has adjusted these in line with the current Australian Taxation Office rates.

**Statutory and Other Offices  
Remuneration Tribunal**

**Alex Smith**  
Dated: 30 July 2010

## ANNEXURE A

## DETERMINATION No 1

## REMUNERATION OF JUDGES – effective on and from 20 April 2010

	Salary \$ per annum
Chief Justice of the Supreme Court	\$396,150
President of the Court of Appeal	\$370,940
President of the Industrial Relations Commission	\$370,940
Judge of the Supreme Court	\$354,030
President, Workers Compensation Commission	\$354,030
Vice-President of the Industrial Relations Commission	\$354,030
Deputy President of the Industrial Relations Commission	\$354,030
Judge of the District Court	\$318,630
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	\$318,630

**DETERMINATION No 2****REMUNERATION OF MAGISTRATES – effective on and from 20 April 2010**

	Salary \$ per annum
Chief Magistrate	\$318,630
Deputy Chief Magistrate	\$269,240
State Coroner	\$269,240
Chief Industrial Magistrate	\$259,360
Magistrate	\$254,900
Chairperson Victims Compensation Tribunal (NOTE 2)	\$254,900
Children's Magistrate	\$254,900
Deputy State Coroner	\$254,900

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 on and from 20 April 2010**

	Salary \$ per annum
Chairperson, Law Reform Commission	\$354,030
Solicitor-General	\$354,030
Director of Public Prosecutions	\$354,030
Crown Advocate	\$318,630
Deputy Director of Public Prosecutions	\$318,630
Senior Crown Prosecutor	\$286,760
Senior Public Defender	\$286,760
Deputy Senior Crown Prosecutor	\$258,080
Deputy Senior Public Defender	\$258,080
Solicitor for Public Prosecutions	\$258,080
Deputy Presidents, Workers Compensation Commission	\$258,080
Senior Commissioner Land and Environment Court	\$247,820
Crown Prosecutor	\$235,780
Public Defender	\$235,780

Commissioner Land and Environment Court	\$233,660
Commissioner Industrial Relations Commission	\$233,660

#### **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 \$1,535 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 \$1,380 per day

###### Workers Compensation Commission

Acting Deputy President of the  
Workers Compensation Commission \$1,070 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 OF THE REMUNERATION OF JUDGES, MAGISTRATES AND RELATED GROUP ON AND FROM 20 April 2010**

**DETERMINATION No 6**

**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 Annexure B of this Determination  
Office Holders listed in Annexure C of this Determination  
Deputy President of the Industrial Relations Commission (not being a judicial member)

**The Statutory and Other Offices  
Remuneration Tribunal**

Alex Smith  
Dated: 30 July 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 2009/15 and the rates adopted for the NSW Public Sector generally. In particular, the daily rates for travel to Wollongong and Newcastle have been updated for both Judges and Magistrates.

5. The Tribunal also undertook a survey of accommodation rates in regional New South Wales.

#### **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.

**Conclusions:**

- 7. In making its determination the Tribunal has had regard to the current travel allowance rates contained in Taxation Ruling 2009/15. 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 20 April 2010.

**Statutory and Other Offices  
Remuneration Tribunal**

Alex Smith  
Dated: 30 July 2010



## DETERMINATION No 7

**TRAVEL ALLOWANCES FOR JUDGES AND MAGISTRATES- effective from 20 April 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 20 April 2010.

## A Travel necessitating an overnight stay

<b>Capital City Rates</b>	
Adelaide	\$358.55
Brisbane	\$380.55
Canberra	\$379.35
Hobart	\$344.55
Perth	\$424.55
Darwin	\$414.15
Melbourne, Sydney	\$414.55
Newcastle and Wollongong	\$339.55
<b>Other Areas</b>	\$339.55

## 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	\$22.30
Lunch	\$25.00
Dinner	\$43.00

**Statutory and Other Offices  
Remuneration Tribunal**

Alex Smith  
Dated: 30 July 2010