

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

JUDGES AND MAGISTRATES GROUP

12 October 2011

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JUDGES AND MAGISTRATES GROUP

Section 1: Background

1. Mr Alex Smith AO resigned as the Statutory and Other Offices Remuneration Tribunal effective from 30 June 2011. The Governor, pursuant to section 6(2) of the *Statutory and Other Offices Remuneration Act 1975* (the Act), appointed Ms Helen Wright as the new Tribunal for a term of three years from 12 July 2011.
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 2010 provided a general increase of 4.1 per cent for NSW Supreme Court Judges and related office holders with effect from 1 October 2010.

5. One outstanding issue was foreshadowed in the Tribunal's 2010 annual Report and Determination ie consideration of whether to pass on the final 2 instalments to the Judges Magistrates and Related Group, arising from the special determination made in July 2010. The background to this special determination was noted in the Tribunal's 2010 Annual Report and Determination,

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

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.

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.

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.

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."

6. The Tribunal did not receive a special reference for this purpose, therefore this matter will be considered as part of this review.

2011 Review

7. The 2011 annual review has been conducted against the background of a significant legislative change which impacts on the Tribunal's ability to determine remuneration increases for certain office holders.

8. On 27 June 2011, the Parliament passed the *Parliamentary, Local Council and Public Sector Executives Remuneration Legislation Amendment Act 2011*. Schedule 3 of the *Parliamentary, Local Council and Public Sector Executives Remuneration Legislation Amendment Act 2011* amends the SOOR Act by inserting a new Section to the Act (Section 6AA).

“6AA Tribunal to give effect to declared government policy on remuneration for public sector staff

(1) This section applies to the following determinations of the Tribunal:

- (a) the determination under Part 3 of any alteration in the remuneration to be paid to office holders,*
- (b) the determination under Part 3A of any alteration in the remuneration packages for executive office holders.*

This section does not apply to determinations relating to judicial officers (within the meaning of the [Judicial Officers Act 1986](#)) or to determinations relating to any office while held by a specified person.

(2) In making a determination to which this section applies, the Tribunal is to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission is required to give effect to under section 146C of the [Industrial Relations Act 1996](#) when making or varying awards or orders relating to the conditions of employment of public sector employees.”

9. This Act amends the NSW Remuneration Tribunals' legislation so as to apply the same public sector wages cap that binds the Industrial Relations Commission to determinations of the remuneration for Ministers and other Members of Parliament,

local Councillors and Mayors, statutory officers and public sector executives. These amendments however explicitly exclude Judicial Officers as defined by the *Judicial Officer Act 1986*.

10. This intent is confirmed by the Hon. Greg Pearce (Minister for Finance and Services, and Minister for the Illawarra) in the Minister's Second reading Speech: Legislative Council, *Parliamentary Debates* (Hansard), 22 June 2011 at p. 3101 on the amendments to the Act where he stated;

"I mention briefly that judges and magistrates have been excluded from the bill. Although the salaries of New South Wales judicial officers are determined by the Statutory and Other Offices Remuneration Tribunal, it is generally accepted that there should be broad consistency of pay between Federal and State judiciaries. That said, it is concerning that in recent times salary increases for judicial officers have significantly outpaced those for all other public sector officers. For the time being, it is appropriate that judicial officers, as defined, be excluded from the bill. This will ensure that appropriate relativities across Federal and State judiciaries can be maintained. We will, however, continue to monitor increases in judicial salaries to ensure that these do not place undue pressure on State finances."

11. Accordingly the Tribunal is not required to apply the same public sector wages cap that binds the Industrial Relations Commission when making decisions relating to remuneration for Judicial Office Holders. The *Judicial Officers Act 1986* defines judicial officers as follows:

3 Definitions

(1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

judicial officer means (except in Part 7A):

- (a) a Judge or associate Judge of the Supreme Court,*
- (b) a member (including a judicial member) of the Industrial Relations Commission,*
- (c) a Judge of the Land and Environment Court,*
- (d) a Judge of the District Court,*
- (e) the President of the Children's Court,*
- (f) a Magistrate, or*
- (g) the President of the Administrative Decisions Tribunal.*

Magistrate includes a Children's Magistrate and an industrial magistrate.

President means the President of the Commission.

12. The Tribunal has since 2002 for administrative practicalities grouped a number of court related office holders eg Solicitor General, Crown Prosecutor, Public Defenders, with the Judges and Magistrates for the purposes of determining remuneration. As a consequence of the amendments to the Act it is now necessary to separate these office holders into two groups for the purposes of determining remuneration. The non judicial office holders are now grouped together for remuneration purposes in the Court and Related Office Holders Group. Further information in relation to office holders in that group is available in the Court and Related Office Holders Group Determination.

Submissions Received

13. As part of the current review the Tribunal received 5 submissions from offices within the Judges and Magistrates Group. The Tribunal also met with a representative of the Supreme Court. Once again the Tribunal thanks the office holders for the time and effort they have put in to the current review.

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

15. The Chief Magistrate has requested that the remuneration for the Deputy Chief Magistrate be increased in recognition of the additional responsibilities associated with this role including assistance to the Chief Magistrate in the overall management of the Local Court and additional responsibilities associated with the *Coroners Act* 2009.

Government Submission

16. 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 considers that the 3rd and final instalments of the 6 per cent work value increase to Federal Judges should flow on to NSW Judicial Office Holders.

17. In respect of a proposed legislative link between the remuneration of NSW Judicial Office Holders and Federal Judges the Director General of the Department of Attorney General and Justice makes the following comments:

“... in relation to the proposed legislative link, while traditionally the Department would not have opposed it, such a link would seem incompatible with the wage restraint concerns of the NSW government, unless a way is found to take these concerns into account, possibly by a process of national consultation between remuneration tribunals.

In this respect, the Department supports a process whereby SOORT consults with other State, Territory and the Commonwealth remuneration tribunals with a view to nationally agreed judicial wage constraint more in line with the positions of the Federal and State governments. This may require consultation with the Federal Government and other State governments, with a view to enabling the position of the NSW government, that increases should be limited to 2.5%, to be taken into account by the Commonwealth Remuneration Tribunal in setting the remuneration of federal Judicial Officers.”

Section 3: 2011 Review

18. The Tribunal has once again reviewed the submissions received and considers that the nexus should be retained. On that basis Judges and Magistrates will receive the 3rd and final 1.5 per cent increases remaining from work value increase for Federal

Judges, plus the 3 per cent increase awarded to Federal Judges by the Commonwealth Remuneration Tribunal in June 2011.

Statutory Link of Judicial Officers

19. The Tribunal notes the comments made in the Government submission however continues to support a statutory link between the salaries of Supreme Court Judges to the salaries of Federal Court Judges. 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.

20. The Tribunal does not support the Director General of the Department of Attorney General and Justice's argument that any legislative link would necessarily be incompatible with wage restraint. Judicial Office Holders are exempt from the 2.5 per cent wages cap and the Government continues to support the continuation of the nexus between the salary paid to NSW Supreme Court Judges and Federal Court Judges. Given the unique arrangement that now apply to Judicial Office Holders it would be appropriate for the remuneration arrangement to be formalised in legislation.

Workers Compensation Commission, President

21. The submission from the President notes that the office of President, Workers Compensation Commission is not defined as a "judicial officer" in accordance with the Judicial Officers Act 1986. Therefore the position is not exempt from the provisions of section 6AA of the SOOR Act. The submission notes that this is anomalous as the Workplace Injury Management and Workers Compensation Act 1998 stipulates that to be eligible for appointment as President the person must be a Judge of a Court of Record ie a judicial officer.

22. On that basis the Tribunal has included the office of President of the Workers Compensation Commission in the Judges and Magistrates Determination for the purpose of determining the remuneration for this office. The Tribunal requests that the Government review the legislation to address this anomaly.

Conveyance Allowance

23. The Tribunal has undertaken a review of the Conveyance Allowance and found that an increase is warranted. On that basis the allowances have been increased by 2.5 per cent.

Section 4: Conclusion

24. 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 2011 shall be increased by 6 per cent. The 6 per cent comprises the 3rd and final 1.5 per cent increases remaining from work value increase for Federal Judges, plus the 3 per cent increase awarded to Federal Judges by the Commonwealth Remuneration Tribunal in 2011. The new rates are as set out in Determinations Nos 1-5.

25. 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 6.

The Statutory and Other Offices Remuneration Tribunal

(signed)

Helen Wright
Dated: 12 October 2011

DETERMINATION No 1**REMUNERATION for Judicial Officers as defined in the Judicial Officers Act 1986 – effective from 1 October 2011**

	Salary \$ per annum
Chief Justice of the Supreme Court	\$437,620
President of the Court of Appeal	\$409,770
President of the Industrial Relations Commission	\$409,770
Judge of the Supreme Court	\$391,080
Vice-President of the Industrial Relations Commission	\$391,080
Deputy President of the Industrial Relations Commission	\$391,080
Judge of the District Court	\$351,970
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	\$351,970
Chief Magistrate	\$351,970
Deputy Chief Magistrate	\$297,420
State Coroner	\$297,420
Chief Industrial Magistrate	\$286,510
Magistrate	\$281,580

Chairperson Victims Compensation Tribunal (NOTE 2)	\$281,580
Children's Magistrate	\$281,580
Deputy State Coroner	\$281,580
Commissioner Industrial Relations Commission	\$258,110

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 2

REMUNERATION to be paid to the President of the Workers Compensation Commission
 (pursuant to section 369 of the *Workplace Injury Management and Workers Compensation Act 1988*) – **effective from 1 October 2011**

President, Workers Compensation Commission	\$391,080
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DETERMINATION No 3

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 \$1,695 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 \$1,525 per day

DETERMINATION No 4

CONVEYANCE ALLOWANCE

Full time Office Holders receiving salary equivalent to a Supreme Court Judge or higher shall be entitled to a Conveyance Allowance of \$22,550 pa.

Full time Office Holders receiving salary equivalent to a District Court Judge shall be entitled to a Conveyance Allowance of \$20,330 pa.

Full time Office Holders receiving salary below that of a District Court Judge shall be entitled to a Conveyance Allowance of \$16,235 pa.

The Conveyance Allowance determined here shall not count towards Judges' pension or for superannuation purposes.

DETERMINATION No 5

ANNUAL LEAVE LOADING OF JUDGES, MAGISTRATES AND RELATED GROUP ON – effective from 1 October 2011

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

Deputy President of the Industrial Relations Commission (not being a judicial member)

Commissioners, Industrial Relations Commission

The Statutory and Other Offices Remuneration Tribunal

(signed)

Helen Wright

Dated: 12 October 2011

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. Historically the Tribunal has regard to movements in the travel rates as adopted for the NSW Public Sector generally. These rates are based on the reasonable travel allowances as determined by the Australian Taxation Office (ATO). While the ATO has made a new determination for 2011 (TD 2011/17) these rates have yet to be adopted for the NSW Public Service. On that basis the Tribunal will continue to determine the rates that applied in 2010 which are based on ATO TD 2010/19.

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 2011.

Statutory and Other Offices Remuneration Tribunal

(signed)

Helen Wright
Dated: 12 October 2011

DETERMINATION No 6

TRAVEL ALLOWANCES FOR JUDGES AND MAGISTRATES- effective from 1 October 2011

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 2011.

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)

Helen Wright

Dated: 12 October 2011