

The following Report and Determination of the Statutory and Other Offices Remuneration Tribunal was disallowed by resolution of the Legislative Assembly on Tuesday 12 November 2013, pursuant to section 19A of the *Statutory and Other Offices Remuneration Act 1975*. The effect of the disallowance is that the Tribunal's previous year's determinations of 9 November 2012 continue in effect. However, from 1 October 2013 up to the date of disallowance (being 12 November 2013), remuneration will be paid in accordance with the disallowed 2013 determinations. The 2012 determinations (below) will apply from 12 November 2013.

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

COURT AND RELATED OFFICERS GROUP

27 September 2013

[NSW Remuneration Tribunals Website](#)

DISALLOWED

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Section 1

Introduction

Mr Ken Baxter was appointed to the role of Assessor to the Tribunal (pursuant to section 7(1)(b) of the *Statutory and Other Offices Remuneration Act 1975*, (the SOOR Act)) for a term of up to three years commencing 20 March 2013.

Background

1. Section 13 of the SOOR Act, requires the Statutory and Other Offices Remuneration Tribunal to make a determination of the remuneration to be paid to office holders on and from 1 October in that year. "Remuneration" is defined in section 10A as salary or allowances paid in money.
2. The Court and Related Officers Group comprises those public offices, listed in the Schedules of the Act (except for the Judges and Magistrates Group and the Public Office Holders Group), which have been grouped together by the Tribunal for remuneration purposes. The remuneration for these office holders is determined as a fixed salary amount. Employer on-costs, such as the Superannuation Guarantee Contribution, are additional to the salary amount determined.

Section 2

2012 Review

3. In undertaking the 2012 review the Tribunal was required (pursuant to Section 6AA) 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* (the IR Act) when making or varying awards or orders relating to the conditions of employment of public sector employees.

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4. The current policy on wages pursuant to section 146(1)(a) of the IR Act is articulated in the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011 (the IR Regulation 2011).
5. The Tribunal noted the significant impact that section 6AA of the SOOR Act had on the way the Tribunal made its determinations. The effect of the amendments to the SOOR Act in 2011 was to remove the Tribunal's discretion to determine any increase beyond 2.5 per cent for office holders unless there were sufficient employee-related cost savings to offset the additional employee-related costs.
6. In 2012 the Tribunal examined the issue of employee-related cost savings. As part of that review the Tribunal received legal advice and met with judicial members of the Industrial Relations Commission.
7. The Tribunal found that section 146C and the IR Regulation 2011 required a new approach to identifying savings not previously contemplated. Increases provided to individual office holders or groups of office holders based on productivity savings achieved across an organisation would no longer be sufficient to meet the policy requirements specified in the IR Regulation 2011.
8. Having regard to the definitions contained in the IR Regulation 2011 of "employee-related costs" and "employee-related cost savings", the Tribunal was of the view that any pay increase which may be awarded to the Court and Related Officers Group above 2.5 per cent must be matched by cost savings which neutralise the cost of the increase. Clause 6(1)(c) suggests the kinds of employee-related cost savings which may be relevant, in that it contemplates reduction (with the agreement of the relevant parties) in "existing conditions of employment of the kind but in excess of the guaranteed minimum conditions of employment".
9. In making a submission in support of any increase above 2.5 per cent, the Tribunal found that the court and related office holders would need to find employee-related costs savings, such as changes to leave entitlements, elimination of leave loading, reduction of travelling allowances etc.

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10. Office holders within the Court and Related Officers Group are not employed under an industrial instrument. Their conditions of employment are outlined in the relevant legislation or, in some instances, negotiated with the relevant Minister at the time of appointment. Any changes to these conditions aimed at reducing employee-related costs and contributing to savings, would need to be approved by the relevant Minister, and in some cases, may need to be effected by legislative amendment.
11. In 2012 the Tribunal identified, as it did during the 2011 review, the need to develop a methodology to assess employee-related cost savings which may warrant a “general increase” above 2.5 per cent in appropriate circumstances.
12. The Government's Submission for 2012 recommended that the Tribunal approve an increase of 2.5 per cent for the Court and Related Officer Group. That recommendation was consistent with the NSW Wages Policy and reflected the NSW Government's intent, pursuant to section 6AA and the IR Regulation 2011.
13. The Tribunal's 2012 annual determination dated 9 November 2012 provided for a 2.5 per cent increase for each court and related office holder.

Section 3

2013 Review

14. In January 2013 the Tribunal wrote to the Director General of the Department of Premier and Cabinet (DPC) and the Secretary of NSW Treasury to seek their assistance in the development of an appropriate methodology to assess officer-related cost savings as, as they related to office holders subject to the determinations of the Tribunal.
15. Subsequently, the Tribunal met with officers from both the DPC and the Treasury to discuss the development of such a methodology. The Tribunal acknowledges the assistance given at that time.
16. In February 2013 the Government introduced into the Parliament the Statutory and Other Offices Remuneration Amendment (Judicial and Other Office Holders) Bill 2013.

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The Bill signalled the Government's intent to extend the wages policy to judicial office holders, who were exempt under the legislation at that time.

17. On 22 May 2013, the Parliament passed the amendments to the SOOR Act which now require the Tribunal, when making determinations under Part 3 of the Act, to give effect to any policy concerning the remuneration of office holders as declared by the regulations, rather than those policies that the Industrial Relations Commission is required to give effect to under section 146C of the IR Act. In addition, any policy concerning the remuneration of office holders as declared by the regulations will now also extend to judicial office holders, who previously had been excluded under the SOOR Act. The new provisions commenced on 1 July 2013.
18. New section 6AB of the SOOR Act applies to the Tribunal's determinations in respect of office holders in the Judges and Magistrates Group, the Court and Related Offices Group and the Public Office Holders Group.

6AB Tribunal to give effect to declared government policy on remuneration of office holders under Part 3

- 1) *This section applies to the determination under Part 3 (Remuneration of office holders (other than chief executive or senior executive office holders)) of any alteration in the remuneration to be paid to office holders within the meaning of that Part.*
- 2) *The Tribunal must, when making a determination to which this section applies, give effect to any policy concerning the remuneration of office holders:*
 - (a) that is declared by the regulations to be an aspect of government policy that is required to be given effect to by the Tribunal, and*
 - (b) that applies to the matter to which the determination relates.*
- 3) *Any such regulation may declare a policy by setting out the policy in the regulation or by adopting a policy set out in a relevant document referred to in the regulation.*

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- 4) *This section extends to any inquiries that are pending in the Tribunal on the commencement of this section. A regulation made under this section extends to any inquiries that are pending in the Tribunal on the commencement of the regulation, unless the regulation otherwise provides.*
- 5) *This section has effect despite any other provisions of this Act (other than section 16(6) and 21) or any other Act.*

19. Government policy concerning the remuneration of office holders to which Part 3 of the SOOR Act applies is declared in the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013* (the SOOR Regulation 2013).

5 *Paramount policy*

It is declared that equal remuneration for men and women doing work of equal or comparable value is a paramount policy.

6 *Other policies*

- 1) *The following policies are also declared, but are subject to compliance with the declared paramount policy:*
 - (a) *an office holder may be awarded increases in remuneration that do not increase the officer-related costs for the office holder by more than 2.5% per annum,*
 - (b) *increases in remuneration that increase the officer-related costs for the office holder by more than 2.5% per annum can be awarded, but only if sufficient officer-related cost savings for the office holder have been achieved to fully offset the increased officer-related costs.*
- 2) *For the purposes of subclause (1) (b):*
 - (a) *whether relevant officer-related cost savings have been achieved is to be determined by the Tribunal, and*
 - (b) *the office, organisation or other agency for which the office holder is to be treated as belonging in connection with the relevant officer-related cost savings (the relevant agency for an office holder) is also to be determined by the Tribunal, and*
 - (c) *increases may be awarded before the relevant officer-related cost savings have been achieved, but are not payable until they are achieved, and*
 - (d) *the full officer-related cost savings are not required to be awarded as increases in remuneration.*
- 3) *For the avoidance of doubt, the Tribunal may take into account any additional functions conferred or imposed on the office held by an office holder in determining the remuneration of the officer holder. However, any such additional functions cannot be used as a basis for awarding an office*

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holder an increase in remuneration that increases the officer-related costs for the office holder by more than 2.5% per annum without offsetting relevant officer-related cost savings.

7 Meaning of “officer-related cost savings”

- 1) *For the purposes of this Regulation, officer-related cost savings for an office holder are savings:*
 - a) *that are identified in the determination of the Tribunal that relies on those savings, and*
 - b) *that involve any or all of the following:*
 - (i) *savings resulting from a change in the work practices, terms of appointment, employment entitlements or personal appointment benefits of the office holder (other than savings from a reduction of the kind referred to in paragraph (c) (i)),*
 - (ii) *savings resulting from structural changes to the relevant agency for the office holder, but only if the office holder managed the implementation of the whole or any part of those changes or participated in or otherwise contributed to those savings (whether directly or indirectly),*
 - (iii) *savings resulting from changes to the work practices of the relevant agency for the office holder, or persons working for that agency, but only if the office holder managed the implementation of the whole or any part of those changes or participated in or otherwise contributed to those savings (whether directly or indirectly), and*
 - c) *that are not achieved by a reduction in any of the following:*
 - (i) *an amount payable or provided as a term of the appointment, or as an employment entitlement or personal appointment benefit, of the office holder if legislation requires that amount (or at least that amount) to be paid or provided to the office holder in connection with the officer’s appointment,*
 - (ii) *employment entitlements of any other persons working (whether as an employee or as an officer holder) in the same relevant agency for the office holder, and*
 - d) *that are not existing savings (as defined in subclause (2)), and*
 - e) *that are additional to whole of Government savings measures (such as efficiency dividends).*
- 2) *Savings are existing savings:*
 - a) *if and to the extent that:*
 - (i) *the savings have been identified in a determination of the Tribunal made under the Act before the relevant policy application day for the office holder concerned, and*
 - (ii) *the savings have been relied on by that determination and the remuneration specified in the determination has been paid (whether or not the savings have been achieved and whether or not they were or are achieved during the term of the determination), or*

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- b) *if and to the extent that:*
 - (i) *the savings have been identified in an industrial instrument of the Industrial Relations Commission made before the commencement of the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011 (or in an agreement contemplated by such an instrument), and*
 - (ii) *the savings have been relied on by that instrument (whether or not the savings have been achieved and whether or not they were or are achieved during the term of the instrument).*
- 3) *In this clause:*

relevant policy application day for an office holder means:

- a) *in the case of a judicial officer within the meaning of the Judicial Officers Act 1986—the day on which this Regulation commenced, and*
- b) *in any other case—27 June 2011 (being the day on which the Parliamentary, Local Council and Public Sector Executives Remuneration Legislation Amendment Act 2011 commenced).*

20. In accordance with the SOOR Regulation 2013 any increase the Tribunal may determine in excess of 2.5 per cent, be it a general increase available to all office holders, or an increase provided to an individual office holder or group of office holders based on changes in work value, can only be paid if sufficient officer-related cost savings for the office holder have been achieved to fully offset the increased officer-related costs resulting from increased payment.
21. These new arrangements do not apply to determinations under Part 3A -remuneration packages for chief executive and senior executive office holders. For those determinations the Tribunal will continue to be required 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 IR Act.

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Changes to the Superannuation Guarantee Contribution

22. The Superannuation Guarantee Contribution (SGC) – made in compliance with the *Superannuation Guarantee (Administration) Act 1992 (C'wth)* – was increased by 0.25 per cent with effect from 1 July 2013.
23. The SOOR Regulation 2013, which was first published on 21 June 2013, outlined the declared government policy on remuneration of office holders under Part 3. In accordance with Clause 6:

6 Other policies

(1) The following policies are also declared, but are subject to compliance with the declared paramount policy:

(a) an office holder may be awarded increases in remuneration that do not increase the officer-related costs for the office holder by more than 2.5% per annum,

(b) increases in remuneration that increase the officer-related costs for the office holder by more than 2.5% per annum can be awarded, but only if sufficient officer-related cost savings for the office holder have been achieved to fully offset the increased.

24. The policy, as drafted at the time, reflected the intent of the original IR Regulation 2011 which continues to apply to the SES determination, and previously applied to the Tribunal's determinations pursuant to section 6AA, with the exception of Judicial Office Holders.
25. In May 2013 the Government advised that it was its intention that the SGC increase be funded from within the existing wages cap of 2.5 per cent. The Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, which had filed applications to vary the salaries of certain public sector awards by 2.5 per cent, opposed the SGC being funded from the existing wages cap of 2.5 per cent. This issue was referred to a Full Bench of the Industrial Relations Commission of New South Wales for determination.
26. In its decision made on 25 June 2013, the Full Bench found that the increases in remuneration or other conditions of employment, referred to in clause 6(1)(a) of the IR Regulation 2011, are only those increases resulting from an award or order made or

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varied by the Commission either by consent or in arbitration proceedings: *Re Crown Employees Wages Staff (Rates of Pay) Award 2011 & Ors* [2013] NSWIRComm 53.

27. Subsequent to the decision of the Full Bench on 28 June 2013 the Government amended the IR Regulation 2011 to make clear the Government's public sector policies for the purposes of section 146 of the IR Act, and to clarify the application of those policies in relation to the impact of increases in superannuation employment benefits.

28. Clause 6 (1)(a) of the IR Regulation 2011 as amended provided;

"...Other policies

(1) The following policies are also declared, but are subject to compliance with the declared paramount policies:

(a) Public sector employees may be awarded increases in remuneration or other conditions of employment, but only if employee-related costs in respect of those employees are not increased by more than 2.5% per annum as a result of the increases awarded and of any new or increased superannuation employment benefits provided (or to be provided) to the employees since their remuneration or other conditions of employment were last determined."

29. Clause 8 of the IR Regulation 2011, as amended, provided;

".... Meaning of employee-related costs

(1) For the purposes of this Regulation, employee-related costs are the costs to the employer of the employment of public sector employees, being costs related to the salary, wages, allowances and other remuneration payable to the employees and the superannuation and other personal employment benefits payable to or in respect of the employees.

(2) In subsection (1), superannuation benefits include any payments by the employer to a superannuation fund of an employee as a consequence of the enactment of or amendments to the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth or the State Authorities Non-contributory Superannuation Act 1987."

30. The effect of the amendments to the IR Regulation 2011 was that SGC increases were to be funded from within the existing wages cap of 2.5 per cent. These arrangements applied to the Tribunal's determinations pursuant to Part 3A, the SES, and all other

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public sector employees and office holders subject to the IR Regulation 2011, including Members of Parliament.

31. To ensure the same conditions applied to the Tribunal's determination pursuant to Part 3 of the SOOR Act - being the Judges and Magistrates, Court and Related Officers and Public Office Holders - the Government also amended the SOOR Regulation 2013 on 9 August 2013 to re-declare the Government's policies the Tribunal is required to give effect to when determining the remuneration of office holders. The re-declaration clarified the application of those policies in relation to the impact of increases in superannuation employment benefits and followed the similar re-declaration in relation to public sector remuneration made by the IR Regulation 2011.
32. The amendments to the IR Regulation 2011, which clarified the application of the policies articulated in the IR Regulation 2011 in relation to the impact of increases in superannuation employment benefits, were disallowed by the Legislative Council on 21 August 2013. This had the effect of restoring the original *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011* immediately.
33. Similarly on 22 August 2013, the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment Regulation 2013*, which applied to those determinations of the Tribunal pursuant to Part 3A of the SOOR Act, was also disallowed by the Legislative Council. This had the effect of restoring the original *Statutory and Other Office Remuneration (Judicial and Other Office Holders) Regulation 2013* immediately.

Submissions Received

Government Submission

34. The Government submission recommends the Tribunal approve an increase of 2.25 per cent for the Court and Related Officers Group.
35. The Government submission states:

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“This recommendation is consistent with the NSW Wages Policy and reflects the NSW Governments’ intent, pursuant to section 6AB of the SOOR Act and the SOOR Regulation 2013.”

36. The Government recommends a 2.25 per cent increase, rather than a 2.5 per cent increase, to reflect the intent of the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment Regulation 2013*. That Regulation, now disallowed, provided that under section 6(1)(a):

“an office holder may be awarded increases in remuneration, but only if officer-related costs for the office holder are not increased by more than 2.5% per annum as a result of the increases awarded and of any new or increased superannuation employment entitlements provided (or to be provided) to the office holder since his or her remuneration was last determined.”

37. Following the disallowance of the SOOR Amendment Regulation, the Tribunal received a supplementary submission from the Secretary of The Treasury, Mr Philip Gaetjens. The Supplementary submission states that:

“Notwithstanding the disallowance, the Government intends to ensure the 2.5 per cent remuneration policy requirement is met and is currently considering options available to it.”

Other Submissions

38. As is the usual practice, prior to the Tribunal making her Reports and Determinations, the Tribunal invited submissions from office holders. For the 2013 review office holders in the Court and Related Officers Group were advised that if they wished to submit that an increase in excess of 2.5 per cent was warranted, it would be necessary for such office holder or group of office holders to identify and propose to the Tribunal the officer-related cost savings which it or they intend to achieve.
39. As part of the current review the Tribunal received four submissions from offices within the Court and Related Officers Group. Those submissions generally sought an increase of 2.5 per cent with an appropriate adjustment in the conveyance allowance. The Tribunal did not receive a request for an increase above 2.5 per cent.

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40. The submissions also addressed the impacts of the amendments to the SOOR Act, the IR Regulation 2011 (and now the SOOR Regulation 2013) and the relativities between office holders within the group.
41. The Solicitor General's submission acknowledges the Tribunal's obligations under s146C of the IR Act (now section 6AB of the SOOR Act). The Solicitor General seeks a restoration of the previous salary relativity between the remuneration paid to the Solicitor General and the Director of Public Prosecutions with that of a judge of the Supreme Court. Noting that there were good reasons for this alignment, including the status of the two offices in question and the fact that these are the only non-judicial offices that provide an entitlement to the judicial pension under the *Judges' Pensions Act 1953*.
42. The Public Defenders have expressed the view that parity in salary between Public Defenders and Crown Prosecutors should be maintained.

2013 Increase

43. The Tribunal did not receive any submissions requesting an increase of greater than of 2.5 per cent. On that basis the Tribunal will only consider what general increase, if any, of up to 2.5 per cent is warranted.
44. An assessment of the key economic indicators would suggest that an increase of 2.5 per cent is warranted. The Tribunal notes that the NSW Wages Price Index was 3 per cent for the March quarter 2013 and is expected to grow to 3.25 per cent in 2013-14 and 3.5 per cent in 2014-15. The Consumer Price Index (CPI) figures for the June quarter 2013 show annual CPI growth of 2.6 per cent in Sydney, and 2.4 per cent across the average of 8 capital cities. In year average terms, the Sydney CPI rose by 2.5 percent in 2011-12. The outlook for headline inflation, according to NSW and Commonwealth Treasury forecasts, is for inflation to remain within the Reserve Bank of Australia's 2-3 per cent target band over the forecast period.
45. Having regard to the Parliament's disallowance of the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment Regulation 2013* and to the approach adopted by the Industrial Relations Commission in arbitration proceedings:

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Re Crown Employees Wages Staff (Rates of Pay) Award 2011 & Ors [2013] NSWIRComm 53, the Tribunal understands that the intent of the Parliament is clear, and does not propose to discount any remuneration increase it determines in remuneration to take account of the increase in the Superannuation Guarantee Contribution.

46. Also, the Tribunal will not make any changes to the existing relativities between office holders in the Court and Related Officers Group. In respect of the Solicitor General's submission the Tribunal notes, as it has in previous years, that immediately the current climate of fiscal restraint is relaxed to any extent, it would review and consider restoring the original long-standing relativities that existed within the former Judges, Magistrates and Related Group, if legislation does not prohibit the Tribunal from so doing.

Conveyance Allowance

47. The Tribunal has undertaken a review of the conveyance allowance. In determining the quantum of this allowance the Tribunal applies the average of leasing, on road and running costs for a range of vehicles which may be leased by office holders in the Court and Related Officers Group.
48. The Tribunal's analysis has shown that there has been no substantial change in the costs for leasing the sample motor vehicles over the last 12 months and considers that the Allowance should not be increased at this time.

2014 Review

49. The *Government Sector Employment Act 2013* (the GSE Act) was assented to on 25 June 2013 and reflects and builds on the Government's reform program for the public sector. The GSE Act provides a new and simpler statutory framework devoted solely to NSW Government sector employment and workforce management.
50. All determinations of the Tribunal will apply from 1 July each year once the GSE Act commences. The SOOR Act will be amended upon proclamation of the GSE Act. Clause 7 of Schedule 6 of the GSE Act will amend section 13 of the SOOR Act to change the commencement date of the Tribunal's annual determinations from 1 October to 1 July.

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Section 17 of the SOOR Act will also be amended to allow the Tribunal to commence its inquiries on 1 January instead of 1 April.

51. On that basis the Tribunal will commence the 2014 annual review earlier than usual (but not before 1 January) to ensure sufficient time is available to complete the determinations on or as close to 1 July 2014 as possible.

Section 4

Conclusion

52. The amendments to the SOOR Act (Section 6AB) and the introduction of the SOOR Regulation 2013 had a further impact on the way this Tribunal makes its determinations. It is the obligation of the Tribunal to undertake its duties consistent with the legislation. On that basis the Tribunal, after considering the views of the Assessors, considers that an increase of 2.5 per cent is appropriate and so determines.

53. Pursuant to Section 13 of the *Statutory and Other Offices Remuneration Act 1975* the Tribunal determines that the remuneration to be paid to office holders on and from 1 October 2013 shall be as specified in Determination 1.

The Statutory and Other Offices

Remuneration Tribunal

(Signed)

Helen Wright

Dated: 27 September 2013

**Determination of the Remuneration of Court and Related Officers Group
Effective on and From 1 October 2013**

Determination No 1

Salary	\$ per annum	Conveyance Allowance (1)
Chairperson, Law Reform Commission	\$396,880	\$22,550
Director of Public Prosecutions	\$396,880	\$22,550
Solicitor-General	\$396,880	\$22,550
Crown Advocate	\$357,190	\$20,330
Deputy Director of Public Prosecutions	\$357,190	\$20,330
Senior Crown Prosecutor	\$321,470	\$16,235
Senior Public Defender	\$321,470	\$16,235
Deputy Presidents, Workers Compensation Commission	\$289,320	\$16,235
Deputy Senior Crown Prosecutor	\$289,320	\$16,235
Deputy Senior Public Defender	\$289,320	\$16,235
Solicitor for Public Prosecutions	\$289,320	\$16,235
Senior Commissioner Land and Environment Court	\$277,820	\$16,235
Crown Prosecutor	\$264,330	\$16,235
Public Defender	\$264,330	\$16,235
Commissioner Land and Environment Court	\$261,940	\$16,235
Acting Deputy President Workers Compensation Commission	\$1,200 per day	-

Conveyance Allowance

- (1) The Conveyance Allowance determined here shall not count towards pension or for superannuation purposes.

DISALLOWED

**Determination of the Remuneration of Court and Related Officers Group
Effective on and From 1 October 2013**

Determination No 2

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 6-15.11 to 6-15.16 of the Personnel Handbook, to each of the office holders listed above who are provided, as a condition of their employment with approved annual leave.

The Statutory and Other Offices

Remuneration Tribunal

(Signed)

Helen Wright

Dated: 27 September 2013

Disallowed