

REPORT

and

DETERMINATION

under

SECTION 14 (1)

and

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

COURT AND RELATED OFFICERS GROUP

11 July 2014

[NSW Remuneration Tribunals website](#)

Court and Related Officers Group

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Section 1

Introduction

1. Section 13 of the *Statutory and Other Offices Remuneration Act 1979* (the SOOR 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 July in that year (formerly 1 October). “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.
3. The Tribunal’s 2013 annual determination for the Court and Related Officers Group was disallowed by the Legislative Assembly on 12 November 2013, pursuant to section 19 of the SOOR Act. The effect of the disallowance was that the Tribunal’s previous year’s determination of 9 November 2012 continued in effect. The impact of the disallowance was that office holders in the Court and Related Officers Group effectively received no increase for 2013, with the exception of the Director of Public Prosecutions and the Solicitor General. The Director of Public Prosecutions and the Solicitor General received an increase of 2.5 per cent with effect from 1 October 2013 in accordance with the Tribunal’s special determination for Judges, Acting Judges, Associate Judges, Director of Public Prosecutions and Solicitor General of 19 December 2013.
4. On 10 July 2014 the Premier, the Honourable Mike Baird MP, directed the Tribunal to make a special determination for those office holders in the Court and Related Officers Group who, as a result of the disallowance of the 2013 Court and Related Officers Determination, did not receive an increase with effect from 1 October 2013.
5. The special determination and the 2014 annual determination will be made concurrently. The special determination, pursuant to section 14 of the SOOR Act, will

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cover those office holders in the Court and Related Officers Group who did not receive the 2013 increase. For those office holders an increase will apply from 1 October 2013 to 30 June 2014. Increases available in the 2014 annual determination, pursuant to section 13 of the SOOR Act, will be based on the rates determined in the special determination.

6. For the Director of Public Prosecutions and the Solicitor General the 2014 adjustments will be based on the salaries determined in the Tribunal's special determination of 19 December 2013.

Section 2

2013 Review

Amendments to the SOOR Act

7. The SOOR Act was amended, with effect from 1 July 2013, to require the Tribunal, when making determinations under Part 3 of the SOOR 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 (IRC) is required to give effect to under section 146C of the *Industrial Relations Act 1996* (IR Act). In addition the policy declared by the regulations also extended to judicial office holders, who previously had been excluded under the SOOR Act.
8. 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 Officers Group and the Public Office Holders Group. 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* (SOOR Regulation 2013).
9. In accordance with 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 officer-related cost savings for the office

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holder (or group of office holders) have been achieved to fully offset the increased officer-related costs resulting from increased payment.

Changes to the Superannuation Guarantee Contribution (SGC)

10. A number of office holders the subject of the Tribunal's determination were also affected by the changes to the SGC - which increased by 0.25 per cent with effect from 1 July 2013. The exceptions were Director of Public Prosecutions and the Solicitor General. These offices do not receive the SGC, instead they are eligible to receive a judicial pension.
11. In May 2013 the Government advised that its intention was that the SGC increase be funded from within the existing wages cap of 2.5 per cent. Amendments to SOOR Regulation 2013 passed in the Legislative Assembly clarified the application of Government policy in relation to the impact of increases in superannuation employment benefits. However, the amendments to SOOR Regulation 2013 were disallowed by the Legislative Council on 21 August 2013.

2013 Annual Determination

12. On 27 September 2013 the Tribunal determined that office holders in the Court and Related Office Holders Group would receive an increase of 2.5 per cent which was consistent with increases provided to other offices, and groups of office holders, and was made having regard to the law (a decision of the Industrial Relations Commission) as it stood at that time.

Disallowance of determinations

13. On 12 November 2013, pursuant to section 19A of the SOOR Act, the Tribunal's determinations for the Judges and Magistrates Group, the Court and Related Office Holders Group and the Public Office Holders Group were disallowed by the Legislative Assembly. The effect of the disallowance was that the Tribunal's previous year's determination of 9 November 2012 continued in effect. However, from 1 October 2013 up to the date of the disallowance (being 12 November 2013), remuneration was to be paid in accordance with the disallowed 2013 determinations. The 2012 determinations applied from 12 November 2013. The Tribunal understands that not all office holders were paid an increase for that period.

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Special determination – Judges, Acting Judges, Associate Judges, Director of Public Prosecutions and Solicitor General

14. On 20 November 2013 the then Premier, the Hon Barry O’Farrell MP, wrote to the Tribunal, in regard to the remuneration payable to those judges and other related officers who are potentially entitled upon retirement to receive a judicial pension and in respect of whom, therefore, the employer does not incur the cost of the superannuation guarantee contribution (SGC).

15. The Premier wrote:

“The reason for disallowance is that there are currently Court proceedings on foot in which a question has arisen as to whether the Government Wages Policy, as reflected in the relevant Regulations, requires the 2.5 per cent limit on remuneration increases to also take into account increases in the SGC (Superannuation Guarantee Contribution).

The Annual Determinations proceeded on the basis that the limit did not need to take into account the increases in the SGC. However, the Government considers that it does and is making submission to that effect in the current Court proceedings.

The Government considers that it would be inappropriate for the Annual Determinations to operate until the question is finally determined by the Courts.

It is the Government’s intention, however, that once the Courts have finally resolved the question the Tribunal will be asked to make new determinations with effect from the date of disallowance.

In the meantime, there are a number of officers for whom the question of the interaction of the Government Wages Policy and the SGC changes does not apply. These are judges and other related officers, who, upon retirement, are entitled to a judicial pension and therefore who are not eligible to receive the SGC.

To ensure that those officers are not adversely affected, I request that the Tribunal now proceed immediately to make a new determination just for those officers.

The Tribunal’s determination should provide for relevant remuneration increase to be taken to have been effective from 1 October 2013.”

16. The office holders referred to in the former Premier’s request include judges as defined within the meaning of the *Judges’ Pensions Act 1953*, Associate Judges, the Director of Public Prosecutions, and the Solicitor General. Acting Judges were also included for the purposes of this determination.

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17. While the Director of Public Prosecutions and the Solicitor General are not judicial office holders as defined by the *Judicial Officers Act 1986* these offices are eligible to receive a judicial pension. The office of the Director of Public Prosecution is eligible to receive a judicial pension in accordance with clause 10 of Schedule 1 of the *Director of Public Prosecutions Act 1986*. The office of Solicitor General is eligible to receive a judicial pension under section 6 of the *Solicitor General Act 1969*.
18. On 19 December 2013 the Tribunal determined that the Director of Public Prosecutions and the Solicitor General would receive an increase of 2.5 per cent with effect from 1 October 2013. This increase was consistent with increases provided to other office holders eligible to receive a judicial pension and the subject of the Tribunal's special determination.
19. Other office holders the subject of the Court and Related Officers Group determination were not eligible for consideration under the terms of the Premier's special reference.

Section 3

2014 Annual Review

20. There have been no further amendments to SOOR Regulation 2013.
21. The Tribunal notes that the SGC has increased from 9.25 per cent to 9.50 per cent from 1 July 2014. The SOOR Regulation 2013 includes employer payments to employee superannuation schemes or funds within the definition of "**officer-related costs**", therefore the Tribunal will have regard to the impact of SGC increases in making this determination. The SCG increase does not affect the Tribunal's ability to determine a remuneration increase of up to 2.5 per cent for office holders who potentially are entitled to a judge's pension.

Office Holder Submissions

22. As is the usual practice, prior to making its Reports and Determinations, the Tribunal invited submissions from office holders. No submissions were received from office holders in the Court and Related Offices Group for consideration during the 2014 review.

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Special Reference

23. On 10 July 2014 the Premier, the Honourable Mike Baird MP, directed the Tribunal to make a special determination for those office holders who did not receive an increase with effect from 1 October 2013 as a result of the disallowance of the 2013 Judges and Magistrates Determination, and that the new determinations should take effect from 1 October 2013.

“I write seeking Determinations from the Tribunal under section 14(1) of the Statutory and Other Offices Remuneration Act 1975 in regard to the remuneration payable to those office-holders who remain affected by the disallowance of the Tribunal’s 2013 Annual Determinations for Judges and Magistrates, Court and Related Officers and Public Office Holder Group....

....In these circumstances, it would appear appropriate that I direct the Tribunal to proceed immediately to make new Determinations for those office-holders still affected by the disallowance of the Tribunal’s 2013 Annual Determinations. The Tribunal’s new Determinations should provide for any relevant remuneration increases for 2013-2014 to be taken to have been effective from 1 October 2013.”

Government submission

24. The Government submission outlines the Government’s view of appropriate adjustments in respect of the special determination and the annual determination.
25. For the section 14 special determination the Government submits that the Tribunal should determine an increase of 2.27 with effect from 1 October 2013. The increase of 2.27 per cent for 2013 is equivalent to that which the Unions and the Industrial Relations Commission agreed upon for Public Sector Salaries Awards in 2013. The salary increase of 2.27 per cent was arrived at as, for that group of employees, the SGC increase is not payable in respect of overtime or leave loading and, as a result, the total employee-related cost of the additional SGC is less than 0.25 per cent.
26. For the section 13 annual determination the Government submits that the Tribunal should determine an increase of 1.88 per cent for the Director of Public Prosecutions and the Solicitor General and 1.70 per cent for other office holders in the Court and Related Officers Group, being those office holders subject to the section 14 special determination, with effect from 1 July 2014. The 2014 increase is discounted to have regard to the earlier commencement date of 1 July in 2014. Past determinations have

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provided increases in remuneration effective from 1 October each year. However, amendments to the SOOR Act have brought forward the date of effect from 1 October to 1 July.

27. The result of the change is that any increases in remuneration will apply three months earlier than past increases, and would (if not taken into account) result in office holders receiving comparatively greater remuneration in 2014-15 than would have been paid based on the previous arrangements – leading to effectively higher wages growth than legislated under the NSW Public Sector Wages Policy 2011.
28. The Government submission includes the following example to clarify the issue:

“For example, an employee with a salary of \$200,000 who receives an increase of 2.5 per cent from 1 July 2014 would earn \$1,281 more in 2014-15 than if they received the same increase from 1 October 2014 (\$210,125 compared to \$208,844 for 2014-15). Salary growth over this year would effectively be 3.1 per cent in 2014-15.

It is therefore necessary to adjust any increase in remuneration to take account of this timing change by discounting the quantum of the increase by 25 per cent (i.e. one quarter representing three months out of 12 months). Under the above scenario, an increase of 1.88 per cent from 1 July 2014 results in the same remuneration being paid as applying a 2.5 per cent increase from 1 October.”

29. For the Director of Public Prosecutions and the Solicitor General the submitted increase of 1.88 per cent is discounted from the maximum annual increase of 2.5 per cent. As these office holders do not receive the SGC, over a twelve month period they would ordinarily be entitled to an increase of up to 2.5 per cent.

Section 4

2014 Increase

30. In undertaking the 2014 review the Tribunal advised office holders that it would consider a general increase for all office holders of up to or, if warranted, above 2.5 per cent. It would also consider requests from individual office holders or groups of office holders for increases above 2.5 per cent based on work value assessment. Office holders were advised that in both instances, any increase in excess of 2.5 per cent could

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only be paid if sufficient officer-related cost savings for the office holder or relevant group had been achieved or were expected to be achieved, to fully offset the increased officer-related costs resulting from the increased payment.

31. Under current legislation the Tribunal determines remuneration for office holders, which is either a salary or a total remuneration package. For office holders subject to Court and Related Offices determinations, the determinations also provide for a conveyance allowance. Information on other employment entitlements and/or personal appointment benefits provided to individual office holders, or groups of office holders, by their employer is not readily available to the Tribunal. Further, the overall cost to the State of engaging these office holders is not readily quantifiable by the Tribunal.
32. Should office holders, or groups of office holders, consider that the Tribunal, in determining whether officer-related cost savings will or have been achieved, should have regard to other employment entitlements and/or personal appointment benefits, the types and costs of these entitlements would need to be made available (and independently verified) to the Tribunal.
33. Office holders were advised that, should any office holder or group of office holders wish 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" (as defined) which it or they intended to achieve. In due course the Tribunal would be responsible for determining whether or not those savings had been achieved.
34. The Tribunal has not been asked to consider an increase, either a general increase or an increase based on work value assessment, in excess of 2.5 per cent, which detailed officer-related cost savings. Consequently the Tribunal is not presently required to come to a view on how officer-related costs and officer-related cost savings would be calculated for the purposes of determining any increase in remuneration of more than 2.5 per cent.
35. As noted in the 2013 annual determination (disallowed) the Tribunal finds that amendments to the SOOR Act and SOOR Regulation 2013 make it difficult for office

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holders, and, in particular, groups of office holders, to demonstrate that sufficient officer-related cost savings can be achieved to justify an increase of more than 2.5 per cent.

36. The Tribunal is also aware that the erosion of long standing salary relativities and the impact of changes to the SGC, are matters of concern for office holders within the Court and Related Officers Group.
37. As outlined in the Tribunal's 2012 and 2013 determinations, as soon as the current climate of fiscal restraint is relaxed to any extent, and if the legislation in existence at the time (noting that the current legislation has an expiry date) does not prohibit the Tribunal from doing so, the Tribunal will immediately consider restoring the original relativities both between office holders within this group and with certain office holders in the Judges and Magistrates Group.
38. Having regard to the Government submission, SGC requirements, key economic indicators, the special reference restoring the disallowed 2013 increases, and the earlier commencement date for determinations, the Tribunal proposes to apply an appropriate discount to remuneration increases it determines, in respect of office holders in the Court and Related Offices Group.
39. After considering submissions received, the Premier's special direction, the Government submission, and key economic indicators, the Tribunal finds those office holders the subject of this determination should receive the maximum permissible increase, although taking into account the impact of the SGC, where necessary, and the changed commencement date.
40. It is the obligation of the Tribunal to undertake its duties consistently with the legislation and court decisions as they presently stand with regard to that legislation. On that basis the Tribunal, after considering the views of the Assessors, has made the following special determination for 2013 and annual determinations for 2014.

Court and Related Officers Group

Special Determination (pursuant to section 14 of the SOOR Act)

41. The Tribunal welcomes the Premier's direction to make a special determination for office holders who did not receive an annual adjustment following the disallowance of the 2013 determination - being those court and related officers who were not the subject of the Tribunal's special determination of 19 December 2013.
42. The special determination will provide an increase for these office holders of 2.27 per cent for the period 1 October 2013 to 30 June 2014, in accordance with the Premier's direction, as specified in Determination No.1 and Determination No.2. The increase is consistent with the Government's position on the treatment of SGC increases and the law on that matter as it presently stands.
43. The special determination goes some way to restoring salary relativities within the group and will enable affected office holders to receive back pay. Officers were eligible to receive the 2013 annual increase of 2.5 per cent from 1 October up until the date of disallowance, being 12 November 2013. If such payments have been made then appropriate adjustments should be made when applying the 2.27 per cent increase from 1 October 2013.

Annual determinations (pursuant to section 13 of the SOOR Act)

44. Pursuant to Section 13 of the SOOR Act the Tribunal determines that an increase of 1.88 per cent will apply to the Director of Public Prosecution and the Solicitor General, and an increase of 1.70 per cent will apply for all other Court and Related offices, on and from 1 July 2014 as specified in Determination No. 3 and Determination No. 4.

Conveyance Allowance

45. 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.

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46. 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.

2015 Review

47. The Tribunal does not propose to discount any remuneration increase it determines for the 2015 annual review as the change in commencement date for annual determinations has been addressed in the 2014 annual determination.

The Statutory and Other Offices

Remuneration Tribunal

(Signed)

Helen Wright

Dated: 11 July 2014

Court and Related Officers Group

Determination No. 1 - Special Determination Effective on and from 1 October 2013

Special determination of the Remuneration for the following Court and Related Officer Holders effective on and from 1 October 2013

Position	Salary per annum	Conveyance Allowance (1)
Chairperson, Law Reform Commission	\$395,990	\$22,550
Crown Advocate	\$356,390	\$20,330
Deputy Director of Public Prosecutions	\$356,390	\$20,330
Senior Crown Prosecutor	\$320,750	\$16,235
Senior Public Defender	\$320,750	\$16,235
Deputy Presidents, Workers Compensation Commission	\$288,670	\$16,235
Deputy Senior Crown Prosecutor	\$288,670	\$16,235
Deputy Senior Public Defender	\$288,670	\$16,235
Solicitor for Public Prosecutions	\$288,670	\$16,235
Senior Commissioner Land and Environment Court	\$277,190	\$16,235
Crown Prosecutor	\$263,730	\$16,235
Public Defender	\$263,730	\$16,235
Commissioner Land and Environment Court	\$261,350	\$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.

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**Determination No. 2 - Annual Leave Loading
Effective on and from 1 October 2013**

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

The Statutory and Other Offices

Remuneration Tribunal

(Signed)

Helen Wright

Dated: 11 July 2014

Court and Related Officers Group

Determination No. 3 - Annual Determination Effective on and from 1 July 2014

Annual Determination of the Remuneration of the Court and Related Officers Group Effective on and from 1 July 2014

Position	Salary per annum	Conveyance Allowance (1)
Director of Public Prosecutions	\$404,340	\$22,550
Solicitor-General	\$404,340	\$22,550
Chairperson, Law Reform Commission	\$402,720	\$22,550
Crown Advocate	\$362,450	\$20,330
Deputy Director of Public Prosecutions	\$362,450	\$20,330
Senior Crown Prosecutor	\$326,200	\$16,235
Senior Public Defender	\$326,200	\$16,235
Deputy Presidents, Workers Compensation Commission	\$293,580	\$16,235
Deputy Senior Crown Prosecutor	\$293,580	\$16,235
Deputy Senior Public Defender	\$293,580	\$16,235
Solicitor for Public Prosecutions	\$293,580	\$16,235
Senior Commissioner Land and Environment Court	\$281,900	\$16,235
Crown Prosecutor	\$268,210	\$16,235
Public Defender	\$268,210	\$16,235
Commissioner Land and Environment Court	\$265,790	\$16,235
Acting Deputy President Workers Compensation Commission	\$1,220 per day	-

Conveyance Allowance

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

Determination No. 4 - Annual Leave Loading Effective on and from 1 July 2014

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.

The Statutory and Other Offices

Remuneration Tribunal

(Signed)

Helen Wright

Dated: 11 July 2014