

REPORT

and

DETERMINATIONS

Under

SECTION 14 (1)

and

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

JUDGES AND MAGISTRATES GROUP

11 July 2014

[NSW Remuneration Tribunals website](#)

Judges and Magistrates Group

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Section 1

Introduction

1. Section 13 of the *Statutory and Other Offices Remuneration Act 1975* (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 payable in money.
2. 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 Judges and Magistrates Group who, as a result of the disallowance of the 2013 Judges and Magistrates Determination, did not receive an increase with effect from 1 October 2013.
3. The special determination and the 2014 annual determination will be made concurrently. The special determination, pursuant to section 14 of the SOOR Act, will cover those office holders not eligible to receive a judicial pension, who did not receive the 2013 increase. For those office holders an increase will apply from 1 October 2013 to 30 June 2014. For office holders the subject of the special determination, increases provided in the 2014 annual determination, pursuant to section 13 of the SOOR Act, will be based on the rates determined in the special determination.
4. For judicial office holders who received an increase in 2013, as provided in the Tribunal's special determination of 19 December 2013, the 2014 annual determination will be based on those rates.

Section 2

2013 Review

Amendments to the SOOR Act

5. 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 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.
6. 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).
7. 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 be paid only if officer-related cost savings for the office 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)

8. 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 judicial office holders and other office holders eligible to receive a judicial pension (these office holders do not receive the SGC).

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9. 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 the Government's 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.

Nexus

10. Historically, 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 provided 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 the view 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 that the Tribunal should have regard to the base salary plus non-financial benefits (such as motor vehicles) when determining judicial remuneration.
11. Prior to making the 2013 determination the Tribunal had maintained the remuneration of a State Supreme Court Judge at approximately 85 per cent of the remuneration of a Justice of the High Court. However, the Tribunal found that the Government's decision to extend the wages cap to judicial officers was not consistent with the maintenance of salary relativities between judicial office holders in NSW and the Federal Courts as provided for in the intergovernmental agreement.
12. The Commonwealth Remuneration Tribunal determined that Federal Judges would receive an increase of 2.4 per cent with effect from 1 July 2013. While the SOOR Tribunal had regard to this decision, it found that the full increase of 2.5 per cent was warranted, and determined that it was payable to NSW Judges. The Tribunal requested that the Government clarify its view on the continued relevance of the nexus in its 2014 submission to the Tribunal.

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2013 Annual Determination

13. On 27 September 2013 the Tribunal determined that office holders in the Judges and Magistrates Group would receive an increase of 2.5 per cent. The Tribunal found that the maximum increase was warranted having regard to the significant role judicial office holders undertake in the State's justice system, including but not limited to, their achievements in delivering reforms and initiatives which have demonstrated productivity improvements. The Tribunal also noted that, while the Commonwealth Remuneration Tribunal determined an increase of 2.4 per cent for judicial office holders from 1 July 2014, the Commonwealth Remuneration Tribunal also proposed to review that determination later in the financial year, and in any event SOORT was not compelled to retain the nexus given the legislative constraints.
14. In making that determination the Tribunal had regard to the Government submission which advised that the SGC is not payable in respect of those judicial officers who are eligible for a pension under the *Judges' Pension Act 1953*.
15. The 2013 Judges and Magistrates Determination was made having regard to the law (a decision of the Industrial Relations Commission) as it stood at that time, but making no distinction between those officers who were and those officers who were not potentially entitled to a pension under the *Judges' Pension Act 1953*.

Disallowance of determinations

16. 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 Officers 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 determinations of 9 November 2012 continued in effect for all officers in that group. However, from 1 October 2013 up to the date of 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

17. 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).

18. 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.”

19. 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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20. Judges are only eligible to receive a judicial pension if they satisfy the criteria applicable under the relevant legislation. Only on retirement, when their eligibility can be confirmed, will each officer be considered an excluded employee for the purposes of the *First State Superannuation Act 1992*. The Tribunal noted that it is possible some current officers will not qualify for a judicial pension (e.g. if they retire before 60) and that different superannuation arrangements will apply in such case/s.
21. The Tribunal therefore noted that it was not in a position to identify which of the existing office holders would in due course qualify for a judicial pension.
22. Differences in superannuation entitlements notwithstanding, under section 16(6) of the SOOR Act the Tribunal may not make a determination that applies differently between two or more persons holding the same office, for those offices listed in Schedule 1 of the SOOR Act. Schedule 1 includes the offices in the Judges and Magistrates Group.
23. Therefore the Tribunal concluded that the determination would apply to those offices which involve eligibility for a judges' pension, whether or not existing individual office holders eventually prove to be eligible.
24. On 19 December 2013 the Tribunal determined that the maximum increase of 2.5 per cent would apply. The increase also applied to the President of the Workers Compensation Commission who must be a judge of a court of record to hold that office.
25. Other judicial office holders as defined by the *Judicial Officers Act 1986* and other office holders within the Court and Related Officers Group and Public Office Holders Group are not eligible for a judicial pension and therefore, were not eligible for consideration under the terms of the Premier's special reference.
26. The Director of Public Prosecutions and Solicitor General were also the subject of the Tribunal's special determination, as these office holders are eligible to receive a judicial pension, and received a 2.5 per cent increase.

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2014 Annual Review

27. There have been no further amendments to SOOR Regulation 2013. 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.
28. The Tribunal notes that the SGC has increased from 9.25 per cent to 9.50 per cent from 1 July 2014. The SGC 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.

Nexus

29. On 21 May 2014 the Commonwealth Remuneration Tribunal determined that Holders of Public Office, including Judges and Related Offices, would receive no increase with effect from 1 July 2014. In making those determinations the Commonwealth Remuneration Tribunal noted, in its 2014 Review of Remuneration for Holders of Public Office Statement, that:

"The Tribunal has been briefed on the Government's recently released Workplace Bargaining Policy for new enterprise agreements in the APS and federal public sector generally. This policy indicates that pay adjustments in that sector will be predicated on clearly defined improvements to productivity.

For some months, noting the Government's policy, it has been evident that any wages movement in the APS and federal public sector would be restrained. Indeed, at its April Meeting, the Tribunal's preliminary conclusion was that it would determine no annual review increase for offices in its jurisdiction from 1 July 2014.

The conclusion has been supported by a submission from the Government to the Tribunal on its annual review, received last week in advance of today's scheduled Tribunal meeting. The Government considers that parliamentarians and Commonwealth office holders should lead by example in these matters. The Government's submission was that the Tribunal should not approve any increases in remuneration for any offices within the Tribunal's jurisdiction for at least one year.

DECISION

Taking into account these factors, especially the outlook for public sector remuneration, the Tribunal has decided to determine no annual adjustment to remuneration for offices in its jurisdiction from 1 July 2014."

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Office Holder Submissions

30. As is the usual practice, prior to making its Reports and Determinations, the Tribunal invited submissions from office holders. For the 2014 review office holders in the Judges and Magistrates 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.
31. As part of the current review the Tribunal received four submissions from office holders in the Judges and Magistrates Group. The Tribunal also met with Judges of the Supreme Court, the President of the Industrial Relations Commission, the Chief Judge of the District Court and the Chief Magistrate. Once again the Tribunal thanks the office holders for their time and the effort they have put in to their submissions.
32. The submission from the Supreme Court requested that the salary of Judges covered by the *Judges Pension Act 1953* be increased by 2.5 per cent from 1 July 2014 and also that the conveyance allowance be increased by the same amount.
33. The submission also noted the determination of the Commonwealth Remuneration Tribunal that there would be no annual adjustment from 1 July 2014 to all offices, including Federal judges, within its jurisdiction. It was submitted that it would be neither fair nor reasonable for this determination to impede a 2.5 per cent increase for Judges, with the submission noting that:
- “..The Government has abandoned the Nexus. The anomalous situation of the Government being permitted to adopt the Nexus when it may suit the Government’s position and reject it when it does not should not be tolerated...Should there be legislation for the Nexus to be reinstated and guaranteed, which the Judges continue to support, they would wish to make a submission at a suitable time.”*
34. The Supreme Court submission also noted that, while there has been a reduction in the number of permanent judges of the Supreme Court, the productivity of the Judges has increased including improved clearance rates for cases and reductions in caseloads across both the trial divisions and the Court of Appeal.

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35. The Chief Judge of the District Court provided the Tribunal with details of cost savings and productivity improvement by the District Court. The Chief Judge again expressed concern in relation to the erosion of the salary of District Court Judges to below 90 per cent of the salary of a Supreme Court Judge. The Chief Judge requested that the Tribunal consider what options are open to it to restore the historical relativities between these offices.
36. The Chief Magistrate's submission raised the disallowance of the 2013 annual determinations and the adverse impact this has had on salaries for Magistrates and the internal relativities in the judicial office holders group.
37. The submission also highlighted improved productivity in case load management and the achievement of productivity savings. In recognition of these achievements and the negative impact recent decisions have had on magistrates salaries, the submission requested:

“At the very least restoration of the cross jurisdictional nexus broken by the Tribunal in its 2012 determination warrants restoration so that the base against which a 2.5% constraint is measured is one that historically existed for many years. To apply it against the current basis of relativity continues to penalize the magistracy in a way that surely could not have been intended in the making of the 2012 determination.”

38. The President of the Industrial Relations Commission requested that the Tribunal increase the salaries of judicial members of the Industrial Court by 2.5 per cent and the conveyance allowance by the same amount. The President also requested that the historical nexus which existed between the judicial and non-judicial members of the Commission be restored.

Special Reference and Government Submission

39. 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 Judges and Magistrates Group 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

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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."

40. The Government submission outlines the Government's view of appropriate adjustments in respect of the special determination and the annual determination and provides the views of the Department of Justice.

41. The views of the Department of Justice are outlined in the Government submission as follows:

"The Department (Attorney General and Justice) notes that since the commencement on 1 July 2013 of the Statutory and Other Offices Remuneration Amendment (Judicial and Other Office Holders) Act 2013, SOORT is now required to give effect to declared Government policy concerning the remuneration of office holders, including judicial office holders. In effect this limits remuneration increases to 2.5 per cent, unless sufficient officer-related cost savings for the officer have been achieved to fully offset increased officer-related costs above 2.5 per cent.

However the Department advises that within the bounds of this limitation, they continue to support the nexus with Federal Court judges and Supreme Court judges.

Consistent with advice given in previous years, the Department is of the view that the internal relativities maintained between judges and magistrates up to 2012 remain appropriate. This is so notwithstanding whether there have been any changes in the productivity of particular courts. This remains the Department's position.

42. The Government submission also provides the following comment in respect of the SGC:

The Superannuation Guarantee Contribution (SGC) was increased by 0.25 per cent with effect from 1 July 2013, in accordance with the Superannuation Guarantee (Administration) Act 1992 (C'wth). The SGC will increase by 0.25 per cent with effect from 1 July 2014. As the SGC is not payable in respect of those judicial officers who are entitled to a pension under the Judges' Pension Act 1953, they will not receive the 0.25 per cent SGC increase separately to any increases determined by the Tribunal.

However, other judicial officers including magistrates (other than the Chief Magistrate), acting Supreme Court and District Court judges (not otherwise already

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in receipt of a judges pension) and judges who do not end up being eligible for a judges pension (because they do not meet the criteria, for instance if they retire before 60) will receive the 0.25 per cent SGC increase separately to any remuneration increases determined by the Tribunal.

Differences in superannuation entitlements notwithstanding, under section 16(6) of the SOOR Act 1975, the Tribunal cannot make a determination that applies differently between two or more persons holding the same office, for those offices listed in Schedule 1 of the SOOR Act 1975. Schedule 1 includes the offices in the Judges and Magistrates Group.

Magistrates, the Deputy President of the Industrial Relations Commission (not being a judicial member), and Commissioners, Industrial Relations Commission are currently entitled to leave loading on the same basis as employees of the NSW Public Service. Although superannuation is not payable on leave loading, the difference of 0.25 per cent on the capped leave loading amount is negligible and should not affect the determinations of the Tribunal in respect of this Group”.

Government Submission

43. For Judges, Acting Judges and Associate Judges the Government submits the Tribunal should approve an increase of 1.88 per cent from 1 July 2014 for judicial officers who are potentially eligible for a pension under the *Judges’ Pension Act 1953*.
44. For judicial office holders not potentially eligible for a pension under the *Judges Pensions Act 1953* the Government submits an increase of 2.27 per cent from 1 October 2013 would be appropriate, as this group did not receive the 2013 increase, and an increase of 1.70 per cent from 1 July 2014.
45. The Government’s submitted increases for 2014 are discounted to have regard to the earlier commencement date of 1 July in 2014. Past determinations have 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.
46. 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.

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47. 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.”

48. For Judges, Acting Judges, Associated Judges and the President of the Workers

Compensation Commission, the submitted increase of 1.88 per cent is discounted from the maximum annual increase of 2.5 per cent. As these offices do not attract the employer on-cost of the SGC, over a twelve month period they would ordinarily be entitled to an increase of up to 2.5 per cent.

49. For judicial office holders not eligible to receive a pension under the *Judges’ Pension Act 1953*, being those office holders subject to 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. The Government submission has proposed that this group receive 2.27 per cent for 2013. The submitted increase has been discounted by 25 per cent to provide a general increase from 1 July 2014 of 1.70 per cent.

Section 4

Determinations

General comments

50. In undertaking the 2014 review the Tribunal advised office holders that it would consider a general increase for all judicial offices 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 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.
51. Under current legislation the Tribunal determines remuneration for office holders which is either a salary or a total remuneration package. For office holders the subject of the Judges and Magistrates and the Court and Related Offices determinations, the determinations also provide for a conveyance allowance and for Judges and Magistrates to also receive travelling allowances. 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.
52. 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.
53. 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

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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.

54. The Tribunal has not been asked to consider any increase, either a general increase or an increase based on work value assessment, in excess of 2.5 per cent, which detailed proposed 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.
55. 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 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.
56. The Tribunal is also aware that the erosion of long standing salary relativities, resulting from the decision in 2012 which limited some, but not all, judicial officer increases to 2.5 per cent, the disallowance of the 2013 determinations, and the impact of changes to the SGC, are matters of concern for office holders within the Judicial Office Holders Group. As previously stated the Tribunal's determinations in this regard were in no way intended to imply that the Tribunal considered that the role and standing of those offices had diminished in any way. On the contrary, the Tribunal is well aware of the continuing increased pressures on and improvements in productivity of the several Courts and other groups headed by officers within this group, and the commitment, skills and effort which those officers have demonstrated in that regard. But the Tribunal is presently very constrained in what it may do to recognise those increased pressures and improvements in productivity.
57. In determining appropriate adjustments for 2014 the Tribunal has considered what options, if any, are available to it to restore the historical relativities. The Tribunal found that most possible combinations of adjustments to remuneration could require that

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some office holders receive an annual increase of more than 2.5 per cent, and/or that some office holders receive a decrease. The Tribunal is unable to restore relativities using any of those possible combinations as an increase of more than 2.5 per cent is contrary to the provisions of the SOOR Regulation 2013, and section 21 of the SOOR Act prevents the Tribunal from making a determination which would reduce the remuneration payable to office holders in Schedule 1.

58. It is possible to restore the 2011 salary relativities for the 2014 determination if some office holder groups receive only a very minor increase. While it is open to the Tribunal to make such a determination, to do so would be restrictive on some groups which does not appear to be justified in the currently restrained environment.
59. 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 Court and Related Officer Group.
60. The Tribunal notes comments made in the Government submission in relation to continued support of the nexus. As the nexus is a link between Federal and State judicial salaries it would follow that the Government might well have submitted a recommendation for a nil increase, which was what the Commonwealth Remuneration Tribunal determined for Federal Judicial Office Holders from 1 July 2014. But the Government has submitted recommended increases of 1.70 per cent and 1.88 per cent (ie 2.5% or 2.25%, discounted for earlier implementation on 1 July rather than 1 October). The Government's position on the nexus is contradictory and this matter should be considered in detail by Government before it makes a submission in relation to retaining the nexus in 2015.
61. This determination will cover only those office holders defined as a "judicial officer" in accordance with the *Judicial Officers Act 1986* (with the exception of the President of the Workers Compensation Commission for the reasons outlined in paragraph 70 of this

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report). The 2014 annual determinations for the offices of the Director of Public Prosecutions and the Solicitor General, which were subject to the Tribunal's special determination of 19 December 2013, are provided for in the Court and Related Officers Determination.

62. After considering submissions received, the Premier's special direction, the Government submission, and key economic indicators, the Tribunal finds that 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.
63. 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.

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

64. 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 judicial office holders who were not the subject of the Tribunal's special determination of 19 December 2013.
65. 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. 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.
66. 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.

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

67. Judges, Acting Judges, Associate Judges and the President of the Workers Compensation Commission will receive an annual increase of 1.88 per cent with effect from 1 July 2014.
68. For judicial office holders not eligible to receive a pension under the *Judges' Pension Act 1953*, being those office holders the subject of the section 14 special determination, the Tribunal has determined that an increase of 1.70 per cent will apply from 1 July 2014 as specified in Determinations Nos. 2 to 6.
69. The Tribunal has also made a Report and Determination on Travel Allowances for NSW Judges and Magistrates and the rates are specified in Determination No. 8.

Other matters

Workers Compensation Commission, President

70. The office of President, Workers Compensation Commission is not defined as a "judicial officer" in accordance with *the Judicial Officers Act 1986*. 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.
71. The Tribunal continues to include 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.
72. The President will receive the same annual increase as applies to other judicial office holders eligible to receive a judicial pension, being 1.88 per cent with effect from 1 July 2014.

Conveyance Allowance

73. 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 leased by NSW Judges and Magistrates.

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74. Analysis has shown that there has been no substantial change in the total costs for leasing the sample motor vehicles over the last 12 months and consequently the Allowance will not be increased at this time.

2015 Review

75. 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

Judges and Magistrates Group

Determination No. 1 - Special Determination (Pursuant to section 14 of the SOOR Act) effective on and from 1 October 2013

**Determination of the Remuneration for the following Judicial Officers effective on and
from 1 October 2013**

Position	Salary per annum	Conveyance Allowance (NOTE 1)
Deputy President of the Industrial Relations Commission (not being a judicial member)	\$409,960	\$22,550
Chief Magistrate	\$368,960	\$20,330
Deputy Chief Magistrate	\$311,770	\$16,235
State Coroner	\$311,770	\$16,235
Chief Industrial Magistrate	\$300,330	\$16,235
Magistrate	\$295,170	\$16,235
Chairperson Victims Compensation Tribunal (NOTE 2)	\$295,170	\$16,235
Children's Magistrate	\$295,170	\$16,235
Deputy State Coroner	\$295,170	\$16,235
Commissioner Industrial Relations Commission	\$270,570	\$16,235

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

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 - Annual Leave Loading of Judges, Magistrates and Related Group Effective on and from 1 October 2013

**Determination of Leave Loading for Judicial Officers referred to in Determination No 1
effective on and from 1 October 2013**

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, to each of the following office holders:

- Magistrates
- Deputy President of the Industrial Relations Commission (not being a judicial member)
- Commissioners, Industrial Relations Commission

Judges and Magistrates Group

Determination No. 3 - Judicial Officers Not Referred to in Determination No. 5 Effective on and from 1 July 2014

Annual Determination (Pursuant to section 13 of the SOOR Act) for the following Judicial Officers Effective on and from 1 July 2014

Position	Salary per annum	Conveyance Allowance (NOTE 1)
Chief Justice of the Supreme Court	\$470,700	\$22,550
President of the Court of Appeal	\$440,750	\$22,550
President of the Industrial Relations Commission	\$440,750	\$22,550
Chief Judge of the Land and Environment Court	\$440,750	\$22,550
Judge of the Supreme Court	\$420,640	\$22,550
Vice-President of the Industrial Relations Commission	\$420,640	\$22,550
Judge of the Land and Environment Court	\$420,640	\$22,550
Deputy President of the Industrial Relations Commission (being a judicial member)	\$420,640	\$22,550
Judge of the District Court	\$376,740	\$20,330
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	\$376,740	\$20,330

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

Judges and Magistrates Group

Determination No. 4 - President of the Workers Compensation Commission Effective on and from 1 July 2014

Determination of the 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 on and from 1 July 2014

Position	Salary per annum	Conveyance Allowance (NOTE 1)
President, Workers Compensation Commission	\$420,640	\$22,550

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

Determination No. 5 - Judicial Officers Not Referred to in Determination No 3 Effective on and from 1 July 2014

Determination of the Remuneration for Judicial Officers as defined in the *Judicial Officers Act 1986* but not referred to in Determination No 3 effective on and from 1 July 2014

Position	Salary per annum	Conveyance Allowance (NOTE 1)
Deputy President of the Industrial Relations Commission (not being a judicial member)	\$416,930	\$22,550
Chief Magistrate	\$375,230	\$20,330
Deputy Chief Magistrate	\$317,070	\$16,235
State Coroner	\$317,070	\$16,235
Chief Industrial Magistrate	\$305,440	\$16,235
Magistrate	\$300,180	\$16,235
Chairperson Victims Compensation Tribunal (NOTE 2)	\$300,180	\$16,235
Children's Magistrate	\$300,180	\$16,235
Deputy State Coroner	\$300,180	\$16,235
Commissioner Industrial Relations Commission	\$275,170	\$16,235

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

NOTE 2 When a more senior Magistrate is appointed to the office then he or she shall retain his or her present salary level.

Judges and Magistrates Group

Determination No. 6 - Acting Judges Rates Effective on and from 1 July 2014

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 \$1,820 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 \$1,630 per day

Determination No. 7 - Annual Leave Loading of Judges, Magistrates and Related Group Effective on and from 1 July 2014

Determination of Leave Loading for Judicial Officers referred to in Determination No 5 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, 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: 11 July 2014

Report and Determination on Travel Allowances for NSW Judges and Magistrates

Report

Background

1. 'Remuneration' is defined in the SOOR Act, 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.

2014 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). The ATO has made a new determination for 2014 (TD2014/19) and these rates will be adopted for the NSW Public Sector. On that basis the Tribunal has determined the rates that are based on ATO TD 2014/19.

Principles Adopted

5. In making its determinations on travel allowance rates the Tribunal has adopted a number of guiding principles as set out hereunder.

Judges and Magistrates Group

- (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.

Conclusion

- 6. In making its determination the Tribunal has had regard to the current travel allowance rates contained in Taxation Ruling 2014/19. Non metropolitan accommodation rates and meal rates have also been adjusted as set out in the Determination.
- 7. The Tribunal makes the following determination (Determination No 7) effective on and from 1 July 2014.

Statutory and Other Offices Remuneration Tribunal

(Signed)

Helen Wright

Dated: 11 July 2014

Judges and Magistrates Group

Determination No. 8 - Travel Allowances for Judges and Magistrates Effective on and from 1 July 2014

Pursuant to section 13 of the SOOR Act the Tribunal determines that the travel allowances for Judges and Magistrates will be as follows effective on and from 1 July 2014.

A. Travel necessitating an overnight stay

Travel Allowances

Capital City Rates	
Adelaide	\$379.00
Brisbane	\$427.00
Canberra	\$416.00
Darwin	\$457.00
Hobart	\$365.00
Melbourne	\$435.00
Perth	\$469.00
Sydney	\$435.00
Other Centre Rates	
Newcastle	\$360.00
Wollongong	\$360.00
Other Centres	\$360.00

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.

Judges and Magistrates Group

B. Travel not involving an overnight stay

Meal Allowances for travel NOT involving an overnight stay

Breakfast	\$25.35
Lunch	\$28.55
Dinner	\$48.65

Statutory and Other Offices Remuneration Tribunal

(Signed)

Helen Wright

Dated: 11 July 2014