

Judges and Magistrates Group

Annual
Determination

*Report and determination under
section 13 of the Statutory and
Other Offices Remuneration
Tribunal Act 1975*

**15 July
2016**

Judges and Magistrates Group

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Section 1

Background

1. Section 13 of the *Statutory and Other Offices Remuneration Act* (the SOOR Act) requires 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. "Remuneration" is defined in section 10A as salary or allowances payable in money.

Government Wages Policy

2. The Tribunal is required, 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* (the IR Act).
3. 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* (the SOOR Regulation).
4. In accordance with SOOR Regulation 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 holder (or group of office holders) have been achieved to fully offset the increased officer-related costs resulting from increased payment.

Section 2

2015 Determination

5. On 25 June 2015 the Tribunal determined that officers in the Judges and Magistrates Group would receive an increase in salary and conveyance allowance of 2.5 per cent.
6. The Tribunal also addressed the continued relevance of the “nexus” in determining judicial salaries noting:
 38. *The NSW Wages Policy as articulated in the SOOR Regulation will expire on 1 September 2018. The Tribunal is drawn to the conclusion that while ever the SOOR Regulation continues to apply in its current format 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 is not a relevant determinant for the Tribunal to consider.*
 39. *The Tribunal notes that as a consequence of the application of the SOOR Regulation to judicial officers in 2013, Supreme Court Judges in NSW now receive a higher level of remuneration than Federal Court Judges and equivalent judges in Victoria and Queensland. This is likely to continue whenever the CRT determines no annual increase for office holders within their jurisdiction. Should the Government consider that judicial salaries should retain a fixed relativity with Federal Judges, or judges in any other jurisdiction, it may wish to consider providing for this in legislation, as is the case with judges in Victoria and Queensland.*
7. The Tribunal also noted that long standing salary relativities have eroded both within the Judges and Magistrates Group and between the Judges and Magistrates Groups and office holders in the Court and Related Officers Group. This was a consequence of a decision in 2012 which limited some, but not all, judicial officer increases to 2.5 per cent, the application of the SOOR Regulation to all office holders in 2013, and the increases in the Superannuation Guarantee Contribution.
8. The Tribunal noted that restoring the original salary relativities would require adjustments of more than 2.5 per cent. The Tribunal is presently unable to make

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such a determination, unless office holders can offset any additional increase with officer-related cost savings.

9. The introduction of the SOOR Regulation has had a similar impact on the Tribunal's ability to determine increases across both the Court and Related Officers Group and the Public Office Holders Group. The Tribunal made the following comments in respect of the impact of the SOOR Regulation in the 2015 Judges and Magistrates Group determination:

51. The Tribunal has reviewed the intent of the SOOR Regulation and reviewed comments made by the former Tribunal in previous determinations. Having regard to the information before it, the Tribunal is drawn to the view that increases of more than 2.5 per cent may not be achievable as the SOOR Regulation, as presently constructed, would appear to make the identification and assessment of officer-related cost savings prohibitively complex and difficult.

52. The Tribunal notes that the Industrial Relations (Public Sector Conditions of Employment) Regulation 2014 and SOOR Regulation were introduced to require the Tribunal to give effect to the Government's wages policy and to require the same policies on increases in remuneration as apply to public service workers to also apply to those officers whose remuneration is determined by the Tribunal. However, as a consequence of a number of factors, increases have not been applied uniformly to all office holder groups and a possible unintended consequence has been the erosion of long standing salary relativities.

53. The Tribunal notes that the SOOR Regulation will expire on 1 September 2018. The Tribunal intends to write to the Premier to seek his views on the restoration of internal relativities and whether or not there is any intention to repeal, or amend, the SOOR Regulation before 2018 which may enable office holders to seek increases of more than 2.5 per cent and/or for the Tribunal to determine increases of more than 2.5 for the purpose of restoring long standing salary relativities.

10. The Tribunal also undertook a review of the conveyance allowance and determined that the allowance would also increase by 2.5 per cent on and from 1 July 2015. The Tribunal indicated that during the 2016 review it would review the methodology for determining the quantum of increase to the conveyance allowance and consider if the general increase should apply irrespective of the adjustments in motor vehicle costs.

Section 3

2016 Annual Review

11. As foreshadowed in the 2015 determination, on 4 February 2016 the Tribunal wrote to the Premier, the Hon Mike Baird MP, to seek his views, if any, on how the Tribunal can restore the internal relativities before the repeal of the SOOR Regulation. In addition, whether there is any proposal to amend the SOOR Regulation to enable the Tribunal to consider an increase based on work value, where warranted, which may exceed 2.5 per cent (without the need to identify officer-related cost savings).
12. In the Premier's response of 27 April 2016 the Premier advised that the Government does not intend to repeal or amend the SOOR Regulation before its staged repeal in 2018. Also, that the Government does not support increasing certain wages in order to match historical salary relativities.
13. Having considered the Premier's response the Tribunal finds no reason to alter the view already expressed that increases of more than 2.5 per cent may not be achievable.
14. On 3 May 2016 the Tribunal wrote to office holders advising of the commencement of the 2016 annual review. Having regard to the advice received from the Premier, the Tribunal advised office holders that for 2016 it is practical to only consider a general increase of up to 2.5 per cent. Office holders were invited to make submissions on the quantum of the general increase. If office holders or groups of office holders felt they had a strong enough case to seek an increase based on work value assessment of more than 2.5 per cent it would be a matter for such office holders or groups of office holders to identify and propose to the Tribunal the officer-related cost savings which it or they intend to achieve.

Office Holder Submissions

15. For the 2016 review the Tribunal received six submissions from office holders in the

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16. The submission from the Supreme Court requested that the salary of Judges be increased by 2.5 per cent noting that relevant key economic indicators support a 2.5 per cent increase, as does the productivity of the judges of the Court, which remains high.
17. The submission from the Chief Judge of the District Court requested that the salary of Judges and the conveyance allowance be increased by at least 2.5 per cent. The Chief Judge referred to the increase in the Court's criminal caseload since 2011. Noting that the Judges of the District Court continued to work extremely hard in 2015 to deal with the increased caseload and to achieve such significant increases in finalisations. Noting that the substantial increase in the Court's criminal work justifies a "full" increase of 2.5 per cent to the salaries of the Judges of the District Court.
18. The submission from the Chief Magistrate of the Local Court noted that the Tribunal's independence remains constrained by the continued application of the SOOR Regulation. The Chief Magistrate's submission highlights the workload of magistrates and productivity improvements achieved by the Court. Requesting that the 2.5 per cent increase be applied to the remuneration of magistrates.
19. The submission from the President of the Industrial Relations Commission (IRC) requested that the Tribunal increase the salaries and allowances of judicial and non-judicial members of the IRC by 2.5 per cent. The President also requested that the historical nexus which existed between judicial and non-judicial members of the IRC should be restored.
20. The submission from the Chief Judge of the Land and Environment Court requested that the Tribunal award an increase of 2.5 per cent to both the salaries and allowances, including the conveyance allowance. While the Chief Judge has not sought an increase above 2.5 per cent based on a work value assessment or the achievement of officer-related cost savings, the submission notes that the productivity of judges has been maintained.

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21. The submission from the President of the Workers Compensation Commission (WCC) requested that the Tribunal continue to link the President's remuneration to that of a Supreme Court Judge. The President also informed the Tribunal that there is no longer a need for the Tribunal to make a separate determination for the position of President.
22. Prior to the passage of the *Statutory and Other Offices Remuneration Amendment (Judicial and Other Office Holders) Act 2013* and the introduction of section 6AB to the SOOR Act, judicial officers as defined by the *Judicial Officers Act 1986* (the Judicial Officers Act) were exempt from the application of Government policy on remuneration. By reason of an acknowledged anomaly, the definition of "Judicial Officer" did not include the President of the WCC. Therefore it was necessary for the Tribunal to make separate determination with respect to that office.
23. The need for separate determinations has now been overcome with the introduction of section 6AB. Section 10A of Part 3 defines an "office holder" to mean the holder of an office specified in schedule 1, 2 or 3 or the SOOR Act. The President of the WCC is listed under Part 1 of Schedule 2 to be a public office. It follows, so far as the application of the Government policy is concerned, there is no longer any distinction between "Judicial Officer" and the President of the WCC.

Government Submission

24. The Secretary NSW Treasury provided the Government submission to the Tribunal on 11 July 2016. The Government submits that the Tribunal should determine an increase of 2.5 per cent for office holders in the Judges and Magistrates Group. This recommendation is consistent with the NSW Wages Policy and reflects the NSW Government's intent, pursuant to section 6AB of the SOOR Act and the SOOR Regulation, to the extent allowable under section 16(6) of the SOOR Act.
25. In respect to the nexus the Government submission provides the following comment:

"NSW Treasury did not seek comments from the Department of Justice in relation to the nexus between Federal and State judicial salaries in respect of the Government's submission for the 2016 SOORT Determination."

Section 4

2016 Determination

General Increase

26. 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, and therefore a detailed assessment of whether or not officer-related costs savings have been achieved has not been required for this group of office holders.
27. It is open to the Tribunal to determine an increase of up to 2.5 per cent without the need for office holders to offset any additional increase with officer-related cost savings.
28. The Tribunal finds that an increase of 2.5 per cent is justified 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.
29. A number of productivity improvements were articulated in the submissions to the Tribunal and have been highlighted in the Australian Productivity Commission's Report on Government Services 2016. Noting that the Local Court, the Supreme Court and the Coroner's Court all achieved clearance rates of over 100 per cent. The Tribunal also notes the Government's investment in court infrastructure and services to ensure NSW remains a national leader in justice services, including the appointment of additional judges to the District Court to address criminal trial backlog.
30. As the Government does not intend to repeal or amend the SOOR Regulation before 2018 it is likely that, until then, the Tribunal will continue to consider general increases of up to 2.5 per cent only. It will of course be open to office holders or groups of office holders to seek an increase based on work value assessment of more than 2.5 per cent if they are able to identify and propose to the Tribunal the

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officer-related cost savings which it or they intend to achieve.

31. The Tribunal is also presently unable to restore the internal salary relativities that have eroded both within the Judges and Magistrates Group and between the Judges and Magistrates Groups and office holders in the Court and Related Officers Group. While the Government does not support increasing certain wages in order to match historical salary relativities the Tribunal will revisit this matter following the repeal of the SOOR Regulation.

32. In respect of the “nexus” the Tribunal continues to support the view articulated in the 2015 report which is outlined as follows:

...The Tribunal is drawn to the conclusion that while ever the SOOR Regulation continues to apply in its current format 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 is not a relevant determinant for the Tribunal to consider.

33. The Tribunal notes that Supreme Court Judges in NSW continue to receive a higher level of remuneration than Federal Court Judges and equivalent judges in Victoria and Queensland. That difference will increase further in favor of NSW Judges following the implementation of this determination.

Workers Compensation Commission President

34. With the exception of the President of the WCC, the offices listed in the Judges and Magistrates determination are defined as “judicial officers” in accordance with the Judicial Officers Act. The President has been included in this group 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, i.e. a judicial officer.

35. For the reasons outlined in the President’s submission the Tribunal agrees that the inclusion of the President of the WCC in the definitions of the Judicial Officers Act is no longer required for the role to be considered with the Judges and Magistrates Group for the purposes of making the annual determination pursuant to section 13 of the SOOR Act. The SOOR Regulation amended section 6AB of the SOOR Act to

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remove the references to “judicial officers’ and to apply the section to all office holders listed in Schedules to the SOOR Act.

36. The Tribunal will continue to make a determination for this office in this determination.

Conveyance Allowance

37. As foreshadowed in the 2015 annual determination the Tribunal has reviewed the methodology for determining the quantum of increase to the conveyance allowance.
38. The allowance is calculated on the basis of the cost of leasing a motor vehicle. The allowance is differentiated between officer groups to reflect the percentage difference in salary between Judges of the Supreme Court and District Court and Magistrates.
39. The allowance has been increased on only four occasions since it was introduced in 2003. The level of increase, if any, was determined having regard to adjustments in actual lease costs of motor vehicles (having regard to the sample vehicles considered by Tribunal). As these costs vary from year to year, increases were only applied if the data indicated an upward trend in costs. Adjustments in 2011 and 2015 were capped at 2.5 per cent in keeping with the Government’s wages policy.
40. The Tribunal has reviewed the methodology for considering adjustments, having regard to arrangements in other jurisdictions and alternative data sources.
41. The Tribunal found that the current methodology provides a consistent basis for determining lease costs. However, the means of calculating lease costs is cumbersome and reliant on data from a third party.
42. As an alternative the Tribunal has reviewed the impact of providing adjustments based on the annual general increase and adjustments based on movements in prices as published by the Australian Bureau of Statistics (ABS).
43. The Tribunal found that an annual adjustment equivalent to the general increase (currently 2.5 per cent) would increase the conveyance allowance over time to an

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amount which exceeds the reasonable cost of leasing a motor vehicle.

44. The Tribunal has examined a number of indexes available under the Consumer Price Index (CPI) and found that the index CPI: Motor Vehicles – Sydney (Series ID A2328552A) which reflects, among other things, the change in purchase and long term hire/lease costs of new cars, to be the most appropriate indicator.
45. The Tribunal found that adjustments over time based on this component of the CPI would have provided for adjustments comparable with the current methodology. While it is open to the Tribunal to determine increases to this allowance of up to 2.5 per cent the Tribunal finds that the original intent of the conveyance allowance should be maintained and that the allowance should continue to reflect the reasonable cost of leasing a motor vehicle. For that reason, the Tribunal will provide increases to the conveyance allowance based on the CPI: Motor Vehicles – Sydney (Series ID A2328552A) March quarter - having regard to the percentage change from the corresponding quarter of the previous year. In considering any adjustment the following conditions will apply:
 - i. Should the March quarter data indicate a decrease in motor vehicle costs the conveyance allowance will remain unchanged (to comply with the requirements of section 21 of the SOOR Act).
 - ii. The annual adjustment will not exceed 2.5 per cent (to comply with section 6AB of the SOOR Act).
46. For the 2016 determination, having regard to the annual percentage change from the March quarter (CPI: Motor Vehicles – Sydney (Series ID A2328552A)), the conveyance allowance has been increased by 2.1 per cent.

Conclusion

47. The Tribunal is obligated to undertake its duties consistent with the legislation. On that basis the Tribunal, after considering the views of Assessors, considers that an increase of 2.5 per cent in remuneration and 2.1 per cent in the conveyance allowance is appropriate and so determines.
48. Pursuant to section 13 of the SOOR Act the Tribunal determines that the

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remuneration to be paid to office holders in the Judges and Magistrates Group, on and from 1 July 2016 shall be as specified in Determination Nos. 1-5.

The Statutory and Other Offices Remuneration Tribunal

(Signed)

Richard Grellman AM

Dated: 15 July 2016

Section 5

Report on travel allowances for NSW Judges and Magistrates

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 SOOR 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.

2016 Review

4. Historically the Tribunal has had regard to movements in the travel rates as adopted for the NSW Public Sector generally. These rates are based on the reasonable travel

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allowances as determined by the Australian Taxation Office (ATO). The ATO has made a new determination for 2016 (TD2016/13) 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 TD2016/13.

Principles Adopted

5. In making its determinations on travel allowance rates the Tribunal has adopted a number of guiding principles as set out hereunder.
 - (a) Travelling allowances are intended to meet the costs necessarily incurred by Judges and Magistrates who are required to travel away from home/place of work on official business. Such costs include accommodation, meals and incidental expenses.
 - (b) Allowances are provided to ensure that an officer is not financially disadvantaged as a result of having to travel on official business.
 - (c) Office holders are not expected to gain or lose financially as a result of travelling on official business.
6. 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

7. In making its determination the Tribunal has had regard to the current travel allowance rates contained in Taxation Ruling TD2016/13. Non metropolitan accommodation rates and meal rates are also as set out in the Determination.
8. The Tribunal makes Determination No 6 effective on and from 1 July 2016.

The Statutory and Other Offices Remuneration Tribunal

(Signed)

Richard Grellman AM

Dated: 15 July 2016

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Section 6

Determinations

Determination No. 1-Remuneration of Judges effective on and from 1 July 2016

Position	Salary per annum	Conveyance Allowance (NOTE 1)
Chief Justice of the Supreme Court	\$494,530	\$23,600
President of the Court of Appeal	\$463,060	\$23,600
President of the Industrial Relations Commission	\$463,060	\$23,600
Chief Judge of the Land and Environment Court	\$463,060	\$23,600
Judge of the Supreme Court	\$441,940	\$23,600
Vice-President of the Industrial Relations Commission	\$441,940	\$23,600
Judge of the Land and Environment Court	\$441,940	\$23,600
Deputy President of the Industrial Relations Commission (being a judicial member)	\$441,940	\$23,600
President, Workers Compensation Commission	\$441,940	\$23,600
Judge of the District Court	\$395,810	\$21,240
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	\$395,810	\$21,240

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

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Determination No. 2- Remuneration of other Judicial Officers not referred to in determination No.1 effective on and from 1 July 2016

Position	Salary per annum	Conveyance Allowance (NOTE 1)
Deputy President of the Industrial Relations Commission (not being a judicial member)	\$438,040	\$23,600
Chief Magistrate	\$394,230	\$21,240
Deputy Chief Magistrate	\$333,120	\$16,990
State Coroner	\$333,120	\$16,990
Chief Industrial Magistrate	\$320,900	\$16,990
Magistrate	\$315,380	\$16,990
Children's Magistrate	\$315,380	\$16,990
Deputy State Coroner	\$315,380	\$16,990
Commissioner Industrial Relations Commission	\$289,100	\$16,990

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

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Determination No. 4-Acting Judges rates

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 \$1,910 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 \$1,710 per day

Determination No. 5-Annual leave loading

Determination of leave loading for Judicial Officers effective on and from 1 July 2016

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

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Determination No. 6-Travel allowances for Judges and Magistrates

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 2016.

A. Travel necessitating an overnight stay

Travel Allowances	
Capital City Rates	
Adelaide	\$385.55
Brisbane	\$433.55
Canberra	\$422.55
Darwin	\$463.55
Hobart	\$371.55
Melbourne	\$441.55
Perth	\$441.55
Sydney	\$441.55
Other Centre Rates	
Newcastle	\$371.55
Wollongong	\$371.55
Other Centres	\$371.55

Conditions

General conditions are to be as determined from time to time by the Attorney General.

In addition the following specific conditions will apply.

- The full daily travel allowance rate is to be paid only where the judge/magistrate stays overnight at commercial accommodation. Where the judge/magistrate stays overnight at non-commercial accommodation then one third of the daily rate is to be paid.
- Where travel is for a period in excess of 24 hours then meal expenses for the final part day are to be paid.

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B. Travel not involving an overnight stay

Meal Allowances for travel NOT involving an overnight stay

Meal	Amount
Breakfast	\$26.45
Lunch	\$29.75
Dinner	\$50.70

The Statutory and Other Offices Remuneration Tribunal

(Signed)

Richard Grellman AM

Dated: 15 July 2016