

Judges and Magistrates Group

Annual
Determination

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

**7 August
2018**

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. Section 10A defines 'remuneration' 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. 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).
3. In accordance with the 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

2017 Determination

4. On 29 August 2017, the Tribunal determined that officers in the Judges and Magistrates Group would receive an increase in salary of 2.5 per cent.
5. The Tribunal determined that there would no change to the quantum of the conveyance allowance as the annual percentage change from the 2016 March quarter to the 2017 March quarter in the CPI: Motor Vehicles – Sydney (Series ID A2328552A) had decreased by negative 3.7 per cent.
6. The Tribunal examined amendments to the *Local Court Act 2007* that allowed the Tribunal to determine the remuneration for an acting Magistrate of the Local Court. The Tribunal determined the rate of remuneration for an acting Magistrate of the Local Court would be \$1,340 per day.
7. The Tribunal also repeated concerns about the operation of the SOOR Regulation and indicated an intention to raise these concerns with the Premier as outlined in paragraphs 27 and 28 of the 2017 determination:
 27. *While the Tribunal did not receive a request for an increase of more than 2.5 per cent, it remains of 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. This position is confirmed following the assessment of a request for an increase in excess of 2.5 per cent for an office holder in the Public Office Holders Group.*
 28. *The Tribunal will again draw these matters to the Premier’s attention prior to the repeal of the SOOR Regulation in September 2018. Any new regulation should provide the Tribunal with greater flexibility in the undertaking of its statutory functions.*

Section 3

2018 Annual Review

8. On 26 March 2018, the Tribunal wrote to office holders advising of the commencement of the 2018 annual review. The Tribunal did not hold meetings with office holders as part of the 2018 review.

Office Holder Submissions

9. For the 2018 review, the Tribunal received five submissions from office holders in the Judges and Magistrates Group. All five submissions requested that the Tribunal determine an increase of 2.5 per cent.
10. In support of the increase the submission from the Supreme Court noted that the relevant key economic indicators support a 2.5 per cent increase, as does the productivity of the Judges of the Court, which remains high despite the ongoing complexity of work and significant workload.
11. The submission from the Chief Judge of the District Court also highlights the workload and productivity of the District Court. The Chief Judge refers to the previous three years' submissions which detail the substantial increase in the Court's criminal caseload and statistics on registrations and finalisations.
12. The Chief Magistrate's submission highlights the workload of Magistrates and productivity improvements achieved by the Court to fully justify the maximum increase allowable.
13. The submission from the Chief Judge of the Land and Environment Court notes that the productivity of Judges has been maintained and there are new jurisdictions of the court under legislative reforms, including strata schemes, coastal management, biodiversity conservation, local land services and fire and emergency services. The Chief Judge also requested that the 2.5 per cent increase apply to the conveyance allowance.

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14. The Chief Commissioner of the Industrial Relations Commission (IRC) requests that the 2.5 per cent increase apply to both the salaries and the conveyance allowance provided to members of the IRC. The Chief Commissioner also requests clarification on the remuneration determined for members of the IRC in the Tribunal's initial determination of 16 December 2016. The Chief Commissioner submits that the office of the Chief Commissioner undertakes functions previously the responsibility of the former President and Deputy President of the IRC and that the remuneration for the role should at least approximate that of the former office of Deputy President. In making this submission the Chief Commissioner notes the constraints imposed on the Tribunal by section 6AB of the SOOR Regulation but requests that the Tribunal consider this matter should those constraints be lifted or relaxed.
15. The Chief Commissioner of the IRC also requests that the Tribunal determine rates for an Acting Commissioner of the IRC.

Government Submission

16. The Secretary NSW Treasury provided the Government submission to the Tribunal on 9 July 2018. The submission outlines the applicability of the NSW Government's wages policy and provides an overview of the economic conditions of the State. Having regard to that advice the Tribunal considers that the budget position for the State of NSW supports an increase of 2.5 per cent. This increase is also consistent with wages growth for non-executive employees across the public sector.
17. The Tribunal notes that the Government submission states that offices in the public office holders group are subject to section 6AA of the SOOR Act which requires the Tribunal to give effect to the same policies as those that the Industrial Relations Commission (IRC) is required to give effect to under section 146C of the *Industrial Relations Act 1996* when making or varying awards or orders relating to the conditions of employment of public sector employees. Offices in the public office holders group are not subject to the provisions of section 6AA of the SOOR Act. Instead these office holders are subject to the provisions of section 6AB of the SOOR Act and the SOOR Regulation.

Section 4

2018 Determination

General Increase

18. 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.
19. 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.
20. 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 their achievements in delivering reforms and initiatives which have demonstrated productivity improvements.
21. 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 2018. Noting that while NSW has fewer judicial office holders per head of population than the other states and territories, the District, Local and Supreme Courts all achieved high clearance rates. This data is supported by information contained in the ABS Criminal Court publication (ABS 2017) which reports an increase in finalisations over the last five years across all courts in NSW.

Members of the Industrial Relations Commission

22. In determining the appropriate level of remuneration the Tribunal considers a number of factors, including the role and functions of the office, salary relativities with comparable offices, relevant comparators in other states, any recommendations made by the Minister or the Premier, the outcome of a job evaluation (if known), and the relativities between office holders within an organisation. The Tribunal's determination

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of the remuneration payable to the Chief Commissioner was based on information received at the time and consistent with the remuneration recommended by the Treasurer.

23. Historically as part of the annual determination, in addition to any general increase provided to all eligible office holders, the Tribunal was able to determine, where warranted, an additional increase for a particular office based on changes in role or responsibilities - a 'work value increase'. This is particularly important for new roles, which may evolve in both scope of responsibilities and workload, after appointments and normalisation of day to day operations.
24. However, the SOOR Regulation prevents the Tribunal from determining an increase based on changes in work value unless sufficient officer-related cost savings for the office holder have been achieved to fully offset the increased officer-related costs resulting from increased payment.
25. The Chief Commissioner has recognised this in his submission and requested that the Tribunal consider this matter should the constraints imposed by the SOOR Regulation be lifted or relaxed.
26. It is probable that many offices identified in the schedules of the SOOR Act have had some degree of change in their work value which would warrant a review of their remuneration. However, such reviews are currently not practical given the requirement that any increase above 2.5 per cent is to be offset by officer related cost savings.
27. If the remuneration for these offices does not adequately reflect the true work value of these roles the NSW Government may in future experience difficulty in attracting and retaining high calibre appointments to these offices. The Tribunal has previously discussed the difficulties associated with identifying and providing proof of officer related cost savings. The Tribunal has repeatedly raised concerns over the functionality of the SOOR Regulation.

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28. As outlined in the 2017 determination the Tribunal has again written to the Premier on this matter and has also written to the Secretary of the Department of Premier and Cabinet (DPC).
29. On 6 August 2018 the Secretary of DPC advised that the automatic repeal of the SOOR Regulation has been postponed for a period of one year on the basis that it is appropriate for the Government to consider the remake of the SOOR Regulation at the same time that it considers the remake of the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014*, which is due to be repealed on 1 September 2019.
30. This is a matter for the Government and the Tribunal will continue to operate within the legislative framework, notwithstanding the limitations discussed.
31. The Tribunal has also considered the Chief Commissioner's request to determine a daily rate to be payable to an Acting Commissioner of the IRC similar to that made in the 2017 determination for the offices of Acting Magistrate of the Local Court and Acting Commissioner of the Land and Environment Court.
32. It is important to note that while the Tribunal does make determinations for a number of other 'acting' offices those offices are listed in the schedules to the SOOR Act. For example, Acting Magistrate of the Local Court, Acting Commissioner of the Land and Environment Court, Acting Deputy President of the Workers Compensation Commission, Acting Judge of the Supreme Court or of the District Court, and so on.
33. The Tribunal considers that it does not have the authority to determine remuneration for an Acting Commissioner of the IRC. This office is not listed in Schedules 1, 2 or 3 of the SOOR Act and therefore the Tribunal does not have jurisdiction to make a determination. This office is also not an 'office holder' within the meaning of section 10A of the SOOR Act, and as such, the Tribunal is not empowered to make a determination under section 13 of the SOOR Act.

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34. It may be appropriate for the Government to amend the SOOR Act to provide for the inclusion of this office in the schedules to empower the Tribunal to make a determination.

Conveyance Allowance

35. The annual percentage change from the 2017 March quarter to the 2018 March quarter in the CPI: Motor Vehicles – Sydney (Series ID A2328552A) is 0.50 per cent. To reflect this change there is a minor adjustment to the quantum of the conveyance allowance.

Conclusion

36. The Tribunal, after consulting with the Assessors, considers that an increase of 2.5 per cent in remuneration is appropriate and so determines. In respect to the conveyance allowance, an adjustment of 0.50 per cent is warranted in accordance with the Tribunal's methodology.

37. Pursuant to section 13 of the SOOR Act the Tribunal determines that the remuneration to be paid to office holders in the Judges and Magistrates Group, on and from 1 July 2018 shall be as specified in Determination Nos. 1-6.

The Statutory and Other Offices Remuneration Tribunal

Signed

Richard Grellman AM

Dated: 7 August 2018

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.

2018 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 allowances as determined by the Australian Taxation Office (ATO). The determination for 2018 being ATO TD2018/11.

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

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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 TD2018/11. Non metropolitan accommodation rates and meal rates are also as set out in the Determination.
8. The Tribunal makes Determination No 7 effective on and from 1 July 2018.

The Statutory and Other Offices Remuneration Tribunal

Signed

Richard Grellman AM

Dated: 7 August 2018

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Section 6

Determinations

Determination No. 1-Remuneration of Judges effective on and from 1 July 2018

Position	Salary per annum	Conveyance Allowance (NOTE 1)
Chief Justice of the Supreme Court	\$519,570	\$23,720
President of the Court of Appeal	\$486,510	\$23,720
Chief Judge of the Land and Environment Court	\$486,510	\$23,720
Judge of the Supreme Court	\$464,310	\$23,720
Judge of the Land and Environment Court	\$464,310	\$23,720
President, Workers Compensation Commission	\$464,310	\$23,720
Judge of the District Court	\$415,850	\$21,345
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	\$415,850	\$21,345

Determination No. 2- Remuneration of other Judicial Officers not referred to in determination No.1 effective on and from 1 July 2018

Position	Salary per annum	Conveyance Allowance (NOTE 1)
Chief Magistrate	\$414,180	\$21,345
Deputy Chief Magistrate	\$349,990	\$17,075
State Coroner	\$349,990	\$17,075
Chief Industrial Magistrate	\$337,150	\$17,075
Chief Commissioner Industrial Relations Commission	\$334,110	\$17,075
Magistrate	\$331,350	\$17,075
Children's Magistrate	\$331,350	\$17,075
Deputy State Coroner	\$331,350	\$17,075
Commissioner Industrial Relations Commission	\$303,730	\$17,075

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Conveyance Allowance

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

METHODOLOGY: The Tribunal provides 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).

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 \$2,010 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 \$1,800 per day

Determination No. 5-Acting Magistrate rate

Local Court

The following rate shall be paid for each ordinary court working day on which the acting Magistrate is occupied in the performance of duties of a Magistrate.

Acting Magistrate of the Local Court \$1,380 per day

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Determination No. 6-Annual leave loading

Determination of leave loading for Judicial Officers effective on and from 1 July 2018

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
- Chief Commissioner, Industrial Relations Commission
- Commissioners, Industrial Relations Commission

Determination No. 7-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 2018.

A. Travel necessitating an overnight stay

Travel Allowances	
Capital City Rates	
Adelaide	\$392.70
Brisbane	\$440.70
Canberra	\$429.70
Darwin	\$476.70
Hobart	\$379.70
Melbourne	\$448.70
Perth	\$448.70
Sydney	\$448.70
Other Centre Rates	
Newcastle	\$378.70
Wollongong	\$378.70
Other Centres	\$378.70

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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.

B. Travel not involving an overnight stay

Meal Allowances for travel NOT involving an overnight stay

Meal	Amount
Breakfast	\$35.40
Lunch	\$50.05
Dinner	\$70.05

The Statutory and Other Offices Remuneration Tribunal

Signed

Richard Grellman AM

Dated: 7 August 2018