

Public Office Holders Group

Annual
Determination

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

**7 September
2020**

Public Office Holders Group

Contents

Contents	1
Section 1	2
Background	2
Section 2	5
2019 Determination	5
Section 3	7
2020 Annual Determination	7
Section 4	10
Determinations	10
Determination No. 1-Public Office Holder Group	10

Section 1

Background

1. Section 13 of the *Statutory and Other Offices Remuneration Act 1975* (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 paid in money.
2. The Public Office Holders Group comprises those public offices, listed in the schedules of the SOOR Act (except for the Judges and Magistrates Group and the Court and Related Officers Group), which have been grouped together by the Tribunal for remuneration purposes. The remuneration for these office holders is determined as a fixed salary amount. Employer on-costs, such as the Superannuation Guarantee Contribution, are additional to the salary amount determined. This group also comprises any office holders who, pursuant to section 11A of the SOOR Act, have elected to receive, and for whom the Minister has approved access to, remuneration packaging arrangements that are provided to Public Service senior executives under the *Government Sector Employment Act 2013*.

Government Wages Policy

3. 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).
4. Until recently, in accordance with the clause 6 of the SOOR Regulation, any increase the Tribunal may determine in excess of 2.5 per cent, be it a general increase available to all

Public Office Holders Group

office holders, or an increase provided to an individual office holder or group of office holders based on changes in work value, could 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.

5. Since the introduction of the SOOR Regulation in 2013 office holders in the Public Office Holders Group have received general annual increases capped at 2.5 per cent. Members of the NSW Aboriginal Land Council received an additional increase of 7.5 per cent in 2019 as they were able to identify sufficient officer-related savings to offset the additional increase.
6. On 29 May 2020 the Premier, the Hon Gladys Berejiklian MP, made the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment (Temporary Wages Policy) Regulation 2020*. That regulation amended the SOOR Regulation to implement a temporary wages policy, being a 12-month pause on remuneration increases for office holders covered by Part 3 of the SOOR Act. The SOOR Regulation was amended by inserting a new Clause 5A and amending the existing Clause 6 as follows:

Clause 5A

Insert after clause 5 –

5A Temporary wages policy

- (1) *An office holder is not to be awarded increases in remuneration that would increase officer-related costs in the first 12 months after the determination is made.*
- (2) *This clause expires 12 months after it commences.*

Clause 6 and Other policies

Insert after clause 6(3) -

- (4) *The policies set out in subclause (1)(a) and (b) are not to be given effect to by the Tribunal when making a determination that applies to the period –*
 - (a) *starting on the commencement of the Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment (Temporary Wages Policy) Regulation 2020, and*
 - (b) *ending 12 months after that commencement.*

Public Office Holders Group

7. A similar regulation to give effect to a wages pause for employees subject to the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014* was disallowed by the Legislative Council on 2 June 2020. Neither House of Parliament passed a resolution to disallow the amendment to the SOOR Regulation and therefore the Tribunal is required to give effect to the temporary wages policy as provided for in Clauses 5A and 6(4) of the SOOR Regulation as amended.

Section 2

2019 Determination

8. On 27 August 2019, the Tribunal determined that office holders in the Public Office Holders Group would receive a general increase in salary of 2.5 per cent.
9. The Tribunal also considered a submission from the Chairperson, Deputy Chairperson and Members of the NSW ALC - together, Members of the NSW ALC. The Members of the NSW ALC requested an increase in salary of 10 per cent with effect from 1 July 2019.
10. The submission identified officer-related cost saving resulting from changes in work practices as referred to in subclause 7(1)(b)(iii) of the SOOR Regulation and from changes in personal appointment benefits as referred to in subclause 7(1)(b)(i) of the SOOR Regulation.
11. An initial increase of 6.5 per cent was granted from 1 July 2019 on the basis that sufficient officer-related savings had been identified at that time to offset the additional cost of more than 2.5 per cent.
12. The Tribunal also determined that a further increase of 3.5 per cent could be awarded if further additional savings could be identified. An overview of the request from the Members of the NSW ALC and the Tribunal's findings are outlined on pages 5 to 7 of the Public Office Holders Determination of 27 August 2019.
13. On 13 May 2020 the Chief Executive Officer of the NSW ALC wrote to the Tribunal and provided details of further additional savings. The Tribunal reviewed that request and found that the identified savings met the conditions required to provide for the additional increase. Those conditions being:
 - a) the additional savings were not savings already identified to fund the initial increase.
 - b) savings were achieved from the date that Members of the NSW ALC elected to move from travel allowances to reimbursement of expenses.

Public Office Holders Group

- c) savings relate to the identified change in personal appointment benefits being the reimbursement of travel expenses.
 - d) the identified savings exceeded the additional cost and were achieved prior to 30 June 2020.
14. On that basis the Tribunal gave approval for the second increase of 3.5 per cent to be awarded from the date requested by the CEO being 1 April 2020. The Tribunal being satisfied that sufficient officer-related savings were achieved to offset the additional increase by that date.
15. In accordance with the Tribunal's determination of 27 August 2019 the following salaries were applicable from 1 April 2020:
- Chairperson \$177,100
 - Deputy Chairperson \$169,050
 - Member \$161,000

Section 3

2020 Annual Determination

16. On 28 February 2020, the Tribunal wrote to office holders advising of the commencement of the 2020 annual review. The Tribunal did not hold meetings with office holders as part of the 2020 review.
17. The Tribunal received two submissions from office holders for consideration in the 2020 annual review.
18. The Crime Commissioner advised that officers within the Commission do not seek an adjustment of salary above the general increase of up to 2.5 per cent as part of the 2020 review.
19. The Executive Manager, Parliamentary Services indicated his intention, at a future date, to request a review of the office based on changes in work value. Any such request will need to be supported by evidence of officer-related savings to offset any additional increase. The Executive Manager also informed the Tribunal that the Governor has given approval for the title of the role to be changed from Executive Manager, Parliamentary Services to Chief Executive, Parliamentary Services. The Tribunal notes that the SOOR Act has not been amended to reflect this change and the Tribunal will continue to refer to this role as the Executive Manager, Parliamentary Services until such time as Schedule 2, Part 2 is amended.
20. These submissions were all received prior to the amendments to the SOOR Regulation which mandate no increase with effect from 1 July 2020.
21. The Secretary Department of Premier and Cabinet provided the Government submission to the Tribunal on 28 July 2020. Extracts appear below.
 - COVID-19 is having a profound impact on the NSW economy and the NSW budget position. Measures to stop the spread of the virus have included travel restrictions

Public Office Holders Group

and social distancing rules which have led to business closures, modification to work arrangements and job losses. This year the Tribunal should have significant regard to the economic conditions of the State and the financial position of the state.

- To assist in responding effectively to this situation, the NSW Government has announced its intention for a 12 month pause on wage increases for public sector employees. The pause will allow the Government to protect not only public sector jobs, but also provide temporary and targeted support to the broader economy and private sector jobs. This matter is currently before the Industrial Relations Commission (IRC) for determination.
- On 29 May 2020 the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment (Temporary Wages Policy) Regulation 2020* was made to implement a temporary wages policy, being a 12-month pause on remuneration increases for office holders covered by Part 3 of the *Statutory and Other Offices Remuneration Act 1975*.
- For those covered by Parts 3A and 3B, section 6AA of the *Statutory and Other Offices Remuneration Act 1975* requires the Tribunal to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission is required to give effect to when making or varying awards or orders. Relevantly in a recent decision of the Industrial Relations Commission it was confirmed that the tribunal may ‘...award increases in remuneration of 2.5% or less’ (see *Application for Crown Employees (Public Sector – Salaries 2020) Award and Other Matters [2020] NSWIRComm 1044*).
- It is recommended that a 12-month wage pause be applied to all employees and officers whose remuneration is determined by the *Statutory and Other Offices Remuneration Act 1975* regardless of the outcome of the IRC hearing. This includes, chief executive office holders; senior executive office holders; and government sector senior executives in the Public Service, NSW Police Service, NSW Health Service and the Transport Service.

Public Office Holders Group

- The provision applies to the following groups of employees and office holders covered under the *Statutory and Other Offices Remuneration Act 1975*:
 - Public Service Senior Executives
 - Chief and Senior Executive Officers (SES)
 - Judges and Magistrates Group
 - Court and Related Officers Group
 - Public Office Holders Group
- The 2020-21 NSW Budget has been deferred from June 2020 until later in the year following a recommendation by the National Cabinet of Commonwealth, State and Territory leaders on 20 March 2020.

22. In accordance with the SOOR Regulation and the temporary wages policy there will be no general increase in the salaries payable to office holders in the Public Office Holders Group with effect from 1 July 2020. The Tribunal notes that the amendments to the SOOR Regulation provide for no increase for 12 months only. It will be open to the Tribunal to consider an increase, if any, of up to 2.5 per cent with effect from 1 July 2021.

23. This determination is consistent with the temporary wages policy which the Tribunal is required to give effect to pursuant to the SOOR Regulation.

24. The Tribunal consulted with the Assessors prior to making this determination.

25. Pursuant to section 13 of the SOOR Act the Tribunal determines that the remuneration to be paid to office holders in the Public Office Holders Group on and from 1 July 2020 shall be as specified in Determination No. 1.

Statutory and Other Offices Remuneration Tribunal

Signed

Richard Grellman AM

Dated: 7 September 2020

Public Office Holders Group

Section 4

Determinations

Determination No. 1-Public Office Holder Group

Annual determination of the remuneration of the Public Office Holder Group effective on and from 1 July 2020

Public Office Holder	Salary per annum
Public Service Commissioner	\$541,365
Chief Commissioner of the Law Enforcement Commission	\$511,520
Auditor General	\$503,605
Ombudsman	\$502,300
Commissioner, NSW Crime Commission	\$498,410
Assistant Commissioner, NSW Crime Commission	\$472,180
President, Mental Health Review Tribunal	\$407,570
Electoral Commissioner	\$391,995
Full-time Commissioner for Integrity of the Law Enforcement Conduct Commission	\$383,640
Full-time Commissioner for Oversight of the Law Enforcement Conduct Commission	\$383,640
Valuer General	\$362,625
Workers Compensation Independent Review Officer	\$361,850
Deputy President Mental Health Review Tribunal	\$356,590
Information Commissioner	\$353,600
Privacy Commissioner	\$341,230
Mental Health Commissioner	\$328,075
Parliamentary Budget Officer	\$323,365
Principal Claims Assessor (<i>Motor Accidents Compensation Act 1999</i>), and Principal Claims Assessor (<i>Motor Accidents Injuries Act 2017</i>) (while ever these offices are held concurrently by the same person)	\$322,115
Inspector of Custodial Services	\$311,840
Small Business Commissioner	\$307,225
Deputy Chairperson, Law Reform Commission	\$304,165
Commissioner, Law Reform Commission	\$289,430
Clerk of the Legislative Assembly	\$283,990
Clerk of the Parliaments	\$283,990
Executive Manager, Parliamentary Services	\$283,990
Registrar Workers Compensation Commission	\$283,990
Senior Arbitrator, Workers Compensation Commission (legally qualified)	\$263,590
Deputy Mental Health Commissioner	\$262,685
Deputy Clerk, Legislative Assembly	\$243,785
Deputy Clerk, Legislative Council	\$243,785

Public Office Holders Group

Public Office Holder	Salary per annum
Senior Arbitrator, Workers Compensation Commission (not legally qualified)	\$242,760
Arbitrator, Workers Compensation Commission (legally qualified)	\$232,730
Registrar, Aboriginal Land Rights Act 1983	\$225,220
Assessor (<i>Local Court Act 2007</i>)	\$215,495
Arbitrator, Workers Compensation Commission (not legally qualified)	\$209,225
Chairperson, Board of the Aboriginal Housing Office	\$168,155
Part-time Chairperson of a Board of Governors of a Corporation constituted by the <i>Electricity Retained Interest Corporations Act 2015</i>	\$165,575
Member of the New South Wales Aboriginal Land Council (Note 1)	\$161,000
Part-time Member of a Board of Governors of a Corporation constituted by the <i>Electricity Retained Interest Corporations Act 2015</i>	\$88,305
Chairperson, Infrastructure NSW	\$86,545
President Mental Health Review Tribunal (part time daily rate)	\$1,690
Deputy President Mental Health Review Tribunal (part time daily rate)	\$1,480
Assessor <i>Local Court Act 2007</i> (daily rate)	\$895

Note 1	The Chairperson shall receive an allowance of 10% (i.e. a total of \$177,100 per annum) and the Deputy Chairperson shall receive an allowance of 5% (i.e. a total of \$169,050 per annum).
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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.

Statutory and Other Offices Remuneration Tribunal

Signed

Richard Grellman AM

Dated: 7 September 2020