

# Judges and Magistrates Group

Annual  
Determination

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

**5 August  
2021**

## Judges and Magistrates Group

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## Judges and Magistrates Group

# Section 1

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### Background

1. Section 13 of the *Statutory and Other Offices Remuneration Act* (the SOOR Act) requires the Tribunal, each year, to make a determination of 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.
2. The Judges and Magistrates Group comprises those public offices listed in the Schedules of the SOOR Act (except for the Court and Related Officers Group and the Public Office Holders Group), which have been grouped together by the Tribunal for remuneration purposes. The remuneration for these office holders is determined as a fixed salary amount. Employer on-costs, such as the Superannuation Guarantee Contribution, are additional to the salary amount determined.

### 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. 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 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

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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 Judges and Magistrates Group have received annual increases capped at 2.5 per cent, apart from 2020 when there was a temporary wage pause pursuant to Clause 5A of the SOOR Regulation commencing 29 May 2020 and ending 12 months after that date.

## Section 2

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### 2020 Determination

7. The Tribunal was required to give effect to the temporary wages policy which paused remuneration increases for 12 months and on 7 September 2021 determined that no increase would apply to the salaries of office holders in the Judges and Magistrates Group.
8. The Tribunal also determined that there would no adjustment to the quantum of the conveyance allowance as the relevant CPI index for 2020 was negative 0.6 per cent.

### Amendments to the SOOR Act

9. The SOOR Act has been amended since the making of the 2020 annual determination.
10. The Statute Law (Miscellaneous Provisions) Act 2019 No 1 amended Sections 11B and 11C commencing on 1 July 2019. New sub-clauses - 11B(4A) and 11C(4A) – were inserted enabling the Minister to delegate to the head of a Public Service Agency or a person employed in a Public Service agency responsible to the Minister the functions of approving and revoking certain salary sacrifice arrangements relating to motor vehicles for private use, employee superannuation contributions and living away from home expenses.
11. The Personal *Injury Commission Act 2020* (PIC Act) amended Schedule 2 commencing either on the date of proclamation or from 1 March 2021. The offices of President of the Personal Injury Commission; Deputy President of the Personal Injury Commission; Acting Deputy President of the Personal Injury Commission; Full-time non-presidential member of the Personal Injury Commission were inserted. The offices of President of the Workers Compensation Commission; Deputy President of the Workers Compensation Commission; Acting Deputy President of the Workers Compensation Commission; Registrar of the Workers Compensation Commission; Senior Arbitrator or other full-time Arbitrator of the Workers Compensation Commission; Principal Claims Assessor under

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the Motor Accidents Compensation Act 1999 and Principal Claims Assessor under the *Motor Accident Injuries Act 2017* were removed.

12. The Tribunal has amended the list of offices in the relevant determinations accordingly.

## **2020 – 2021 Special Determination**

13. The Tribunal has made one special determination since the making of the 2020 annual determination. On 23 October 2020, the Tribunal determined pursuant to section 14(2) of the SOOR Act, that the annual salary for the President of the Personal Injury Commission would be \$475,920 per annum with an annual conveyance allowance of \$23,745.
14. Special determinations are published on the NSW Remunerations Tribunals website.

## Section 3

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### 2021 Annual Review

15. On 3 March 2021, the Tribunal wrote to office holders advising of the commencement of the 2021 annual review. The Tribunal did not hold meetings with office holders as part of the 2021 review.

### Office Holder Submissions

16. The Tribunal received six submissions from office holders in the Judges and Magistrates Group, generally supporting a 2.5 per cent increase in salaries, providing various reasons including economic indicators. Some submissions noted the continued functioning of courts and tribunals through the COVID-10 pandemic, despite often difficult circumstances.
17. The submission of the Supreme Court noted that the work performed by the Judges is essential to the maintenance of the rule of law, the proper administration of justice and the ongoing success of both the economy and the social fabric of the State. The submission sought a 2.5 per cent increase, noting the continuing high productivity of the Judges of the Court, despite their heavy workload. A 2.5 per cent increase would also assist in ensuring that judicial remuneration is maintained at a level which will continue to ensure that persons of highest calibre can be attracted to accepting appointment of the Court and would support their ongoing retention. In respect to the conveyance allowance the submission sought an increase of at least 5.7 per cent as the motor vehicles expenses index rose in the 12 months to March 2021 by 5.7 per cent. If the Tribunal takes the view that the conveyance allowance is part of the Judges' remuneration, then an increase of 2.5 per cent is recommended in accordance with the SOOR Regulation.
18. The Chief Judge of the District Court referred to increases sought in the submission of the Supreme Court in respect to salaries and conveyance allowance and submitted that the same increases are appropriate for the Judges of the District Court. The submission

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noted that despite the pandemic the District Court has managed to conduct jury trials in 2020 and significantly reduced the number of pending cases. The District Court was the first court in Australia to resume jury trials after their suspension.

19. The Chief Judge of Land and Environment Court of NSW, on behalf of the Judges of the Court adopted the submission of the Supreme Court Judges in respect of salary and conveyance allowance. Additionally, the submission noted an expansion of the jurisdiction of the Land and Environment Court along with an increased case load and more sitting days as indicators of the increased productivity of the Court's Judges and Commissioners. The submission noted that this productivity has been maintained through the year notwithstanding the constraints imposed by the COVID-19 pandemic.
20. The Chief Magistrate of the Local Court outlined factors which merit consideration of an increase in the remuneration for Magistrates. The submission noted that the impact of COVID-19 led to a surge of applications for release on bail and has been a considerable burden on the Court. The caseload of the Court continues to rise in both the criminal jurisdiction and in the special jurisdiction within which domestic and personal violence matters fall. The submission noted the achievements of the Court and in particular the role of the Local Court in managing the workload arising from the diversion of serious criminal offences from the District Court to the Local Court.
21. The President of the Personal Injury Commission (PIC) indicated that the PIC will accept whatever outcome the Tribunal determines in relation to the Judges and Magistrates Group. The President noted that the determination needs to be amended to delete the President of the Workers Compensation Commission and insert the President of the PIC in its place.
22. The Chief Commissioner of the Industrial Relations Commission (IRC) said it would not be appropriate for the IRC to make a submission on the quantum of a general increase given the IRC's role in determining salaries for public sector employees from 1 July 2021. Although no submission was made on the quantum of the general increase the Commissioner of the IRC submitted that the remuneration of Members of the Commission should be treated consistently with other judicial officers.



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### Government Submission

23. The Secretary, Department of Premier and Cabinet provided the Government submission to the Tribunal on 2 June 2021. That submission was replaced by another submission provided on 15 July 2021. The Government submission advised that on 21 June 2021, the Government announced changes to the existing Wages Policy to provide for increases in remuneration or other conditions of employment of up to 2.5 per cent (inclusive of superannuation) for public sector employees. The submission recommends the following increases having regard to the increase in the SGC from 1 July 2021:

*“In line with the revised Wages Policy it is now recommended that a 2.5 per cent increase in remuneration be applied to employees and other office holders whose total remuneration package (“TRP”) is determined by the Tribunal and an increase of 2.04 per cent for non-TRP employees and office holders effective from 1 July 2021.*

*The 2.04 per cent increase recommended for non-TRP employees and officers takes into account the increase to the Superannuation Guarantee Charge (“SGC”) of 0.5 percentage points from 1 July 2021 and uses the same methodology as applied when superannuation was last increased in 2014. This methodology recognises that superannuation is not payable on superannuation itself and as a result, the cost of the additional SGC is less than a 0.5 per cent pay increase. An increase of 2.04 per cent to salaries and 0.5 per cent to superannuation is consistent with the Wages Policy and does not increase employee related costs by more than 2.5 per cent*

*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”*

## Judges and Magistrates Group

### Conveyance Allowance

24. The annual percentage change from the 2020 March quarter to the 2021 March quarter in the CPI: Motor Vehicles – Sydney (Series ID A2328552A) is 6.4 per cent. Considering this change the Tribunal will adjust the conveyance allowance by the permissible maximum of 2.5 per cent per cent.

### Superannuation Guarantee Contributions

25. Information published on the Australian Taxation Office website confirms the previous and future percentage increases to the superannuation guarantee since 1 July 2002, when the general superannuation guarantee was 9.00 per cent:

| Date of increase | Percentage increase (%) | General super guarantee (%) |
|------------------|-------------------------|-----------------------------|
| 1 July 2013      | .25                     | 9.25                        |
| 1 July 2014      | .25                     | 9.50                        |
| 1 July 2021      | .50                     | 10.00                       |
| 1 July 2022      | .50                     | 10.50                       |
| 1 July 2023      | .50                     | 11.00                       |
| 1 July 2024      | .50                     | 11.50                       |
| 1 July 2025      | .50                     | 12.00                       |

26. The Tribunal reviewed the impact of the SGC increase on office holders in the 2014 Annual Determination for the Judges and Magistrates Group which was the last time that the SGC increased.

27. That determination refers to the special determination in respect of Judges, Acting Judges, Associate Judges, Director of Public Prosecutions and Solicitor General made on 15 December 2013. The special determination related 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 SGC. The special determination included Judges as defined within the meaning of the *Judges' Pension Act 1953*, Acting Judges, Associate Judges, Director of Public Prosecutions and Solicitor General, who are potentially entitled upon retirement to receive a judicial pension. The Tribunal determined that the SGC increase does not affect the Tribunal's

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ability to determine a remuneration increase of up to 2.5 per cent for these office holders.

28. In respect of those offices where a judges' pension does not apply, the Tribunal determined it is required to take account of the cost of SGC increases in its remuneration determination.
29. The Tribunal's previous determinations on the matter of SGC increases continue to apply. Accordingly, for the 2021 determination, for office holders in Determination No. 1, it is open to the Tribunal to determine an annual increase in remuneration of up to 2.5 per cent. For office holders in Determination No. 2, it is also open to the Tribunal to determine an annual increase in remuneration of up to 2.5 per cent but with salary increases adjusted accordingly to account for SGC increase.
30. The Government submission outlines the Government's view of appropriate adjustments in respect of the SGC.

## Section 4

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### 2021 Annual Determination

#### General Increase

31. After considering submissions received and the provisions of section 6AB of the SOOR Act the Tribunal finds those office holders the subject of this determination should receive the maximum permissible increase of 2.5 per cent, although adjusted to 2.04 per cent for some office holders to take into account the SGC increase. The increases are consistent with the increases recommended in the Government submission.
32. The Tribunal finds that an increase to the maximum extent possible under the SOOR Act is justified having regard to the significant role judicial office holders undertake in the State's justice system.
33. The Tribunal also notes the submissions made by and on behalf of office holders and acknowledges the difficult and uncertain circumstances in which office holders have had to contend due to the impact of the COVID-19 pandemic
34. The adjustment to take account of the SGC increase is consistent with the Tribunal's previous determinations and with the methodology set out in the Governments submission.
35. Judges, Acting Judges and Associate Judges will receive an annual increase of 2.5 per cent with effect from 1 July 2021.
36. Judicial office holders not eligible to receive a pension under the *Judges' Pension Act 1953*, will receive an annual increase of 2.04 per cent with effect from 1 July 2021.
37. The conveyance allowance is increased by 2.5 per cent with effect from 1 July 2021 in accordance with the Tribunal's methodology and the requirements of the SOOR Act.
38. The Tribunal consulted with the Assessors prior to making this determination.

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39. 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 2021 shall be as specified in Determination Nos. 1-5.
40. 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. 6.

### **Statutory and Other Offices Remuneration Tribunal**

*Signed*

**Richard Grellman AM**

**Dated:** 5 August 2021

## Section 5

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### 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) *a Judge or Acting Judge of a court, or*
  - (b) *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.

#### 2021 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 2021 being ATO TD2021/6.

#### 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 TD2021/6. 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 2021.

### **Statutory and Other Offices Remuneration Tribunal**

*Signed*

**Richard Grellman AM**

**Dated:** 5 August 2021

## Judges and Magistrates Group

# Section 6

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### Determinations

#### Determination No. 1 - Remuneration of Judges effective on and from 1 July 2021

| Position   | Salary per annum | Conveyance Allowance (NOTE 1) |
|--|------------------|-------------------------------|
| Chief Justice of the Supreme Court   | \$545,870        | \$24,340                      |
| President of the Court of Appeal   | \$511,140        | \$24,340                      |
| Chief Judge of the Land and Environment Court                                | \$511,140        | \$24,340                      |
| Judge of the Supreme Court   | \$487,820        | \$24,340                      |
| Judge of the Land and Environment Court                                      | \$487,820        | \$24,340                      |
| President, Personal Injury Commission  | \$487,820        | \$24,340                      |
| Judge of the District Court  | \$436,910        | \$21,900                      |
| Associate Judge or acting Associate Judge (under the Supreme Court Act 1970) | \$436,910        | \$21,900                      |

#### Determination No. 2 - Remuneration of other Judicial Officers not referred to in determination No.1 effective on and from 1 July 2021

| Position   | Salary per annum | Conveyance Allowance (NOTE 1) |
|--|------------------|-------------------------------|
| Chief Magistrate                                   | \$433,200        | \$21,900                      |
| Deputy Chief Magistrate                            | \$366,050        | \$17,515                      |
| State Coroner                                      | \$366,050        | \$17,515                      |
| Chief Industrial Magistrate                        | \$352,620        | \$17,515                      |
| Chief Commissioner Industrial Relations Commission | \$349,450        | \$17,515                      |
| Magistrate   | \$346,560        | \$17,515                      |
| Children's Magistrate                              | \$346,560        | \$17,515                      |
| Deputy State Coroner                               | \$346,560        | \$17,515                      |
| Commissioner Industrial Relations Commission       | \$317,680        | \$17,515                      |



## Judges and Magistrates Group

### 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. 3 - 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 | \$2,110 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 | \$1,890 per day |
|------------------------------------|-----------------|

### Determination No. 4 - 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 | \$1,440 per day |
|--------------------------------------|-----------------|

## Judges and Magistrates Group

### Determination No. 5 - Annual leave loading

Determination of leave loading for Judicial Officers effective on and from 1 July 2021

#### 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. 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 2021.

#### A. Travel necessitating an overnight stay

| Travel Allowances  |          |
|--------------------|----------|
| Capital City Rates | Amount   |
| Adelaide           | \$403.35 |
| Brisbane           | \$451.35 |
| Canberra           | \$440.35 |
| Darwin             | \$487.35 |
| Hobart             | \$390.35 |
| Melbourne          | \$459.35 |
| Perth              | \$459.35 |
| Sydney             | \$459.35 |
| Other Centre Rates |          |
| Newcastle          | \$389.35 |
| Wollongong         | \$389.35 |
| Other Centres      | \$389.35 |

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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 | \$37.50 |
| Lunch     | \$53.10 |
| Dinner    | \$74.30 |

#### Statutory and Other Offices Remuneration Tribunal

*Signed*

**Richard Grellman AM**

**Dated:** 5 August 2021