

Judges and Magistrates Group

Annual Determination

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

15 July 2024

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Section 1

Background

Legislative Framework

1. Section 13 of the *Statutory and Other Offices Remuneration Act 1975* (the Act) requires the Statutory and Other Offices Remuneration Tribunal (the Tribunal) to make an annual 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 paid in money.
2. The Judges and Magistrates Group comprises those public offices listed in the schedules of the 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 (SGC), are additional to the salary amount determined.

Government Wages Policy

3. The Tribunal is required, when making determinations under Part 3 of the Act, to give effect to any policy concerning the remuneration of office holders as declared by the regulations. Section 6AB of the 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 Act applies is declared in the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013* (the Regulation).
4. In accordance with clause 5A of the Regulation, the Tribunal is not to make a determination that has the effect of awarding an increase in remuneration that takes effect before 1 July 2025 to office holders covered by Part 3 of the Act.

Economic Analysis

5. As outlined in its 2024-25 Budget papers,¹ the Government noted that the outlook is consistent with a soft landing for the NSW economy, with economic growth forecast to be subdued in the very near term, before accelerating through the course of 2024-25 as cost-of-living pressures ease.
6. Cost-of-living pressures have weighed on household spending and slowed domestic economic growth in NSW. In particular, price growth for essential goods and services have continued to outpace discretionary items, constraining households' real purchasing power.
7. The softening in both spending growth and the labour market is helping to bring down inflation. Annual headline inflation in Sydney was 3.8 per cent through the year to the March 2024 quarter. This was higher than the national headline figure of 3.6 per cent. National underlying inflation rose by 4 per cent over the 12 months to the March 2024 quarter, which remains above the RBA's target band of 2-3 per cent despite easing from the peak of 6.8 per cent in December 2022.²
8. The Budget expected goods inflation to ease further in 2024 but elevated labour costs in the near term will keep services inflation high.
9. Labour supply has been boosted by international migration, driving a modest lift in the unemployment rate to 3.8 per cent in May 2024 from a low of 3.0 per cent in June 2023. The Budget papers noted that recent easing in the labour market was expected to continue with the unemployment rate rising to 4.5 per cent in the second half of 2025.
10. While the Budget provides for a 10.5 per cent increase to remuneration over 3 years for public sector workers, it notes that the wage freeze for Members of Parliament and Public Service senior executives continues to apply in 2024-25. By virtue of the Regulation, the freeze also applies to office holders with the Tribunal's remit.

¹ NSW Government. (2024). *NSW Budget 2024-25, Budget Paper No.01 Budget Statement*. <https://www.budget.nsw.gov.au/sites/default/files/2024-06/Budget-Paper-No.1-Budget-Statement-Budget-2024-25.pdf>

² Australian Bureau of Statistics. (2024). *CPI, Trimmed mean and Weighted median, Annual movement (%)*. <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>

2023 Determination

11. The Tribunal was required to give effect to the Regulation and the temporary wages policy, so on 26 July 2023, the Tribunal determined that no increase would apply to the salaries payable to office holders in the Judges and Magistrates Group with effect from 1 July 2023.
12. It was also determined that there would be no increase to the conveyance allowance with effect from 1 July 2023 in accordance with the Tribunal's methodology and the requirements of the Regulation.

2023-2024 Special Determinations

13. The Tribunal has made one special determination, pursuant to section 14(2) of the Act, since the making of the 2023 annual determination.
14. On 19 April 2024, the Tribunal determined the annual salary for three offices of the Industrial Relations Commission (IRC) re-established under the *Industrial Relations Act 1996* (IR Act) as amended by the *Industrial Relations Amendment Act 2023*. The Tribunal determined the annual salary for the President, IRC to be \$521,360, the Vice-President, IRC to be \$497,580, and the Deputy Presidents, IRC to be \$497,580. The Tribunal also determined the conveyance allowance for all three offices to be \$24,950.
15. The Tribunal further determined the salary for the Acting Judge, IRC to be the rate of the Acting Judge of the Supreme Court, being \$2,160 per day.
16. The determination is available on the NSW Remuneration Tribunals website.³

³ Located at <https://www.remtribunals.nsw.gov.au/>

Section 2

2024 Annual Review

17. On 7 February 2024, the Tribunal wrote to office holders advising of the commencement of the 2024 annual review, noting that the Tribunal is required by the Regulation not to award an increase in remuneration.

Office Holder Submissions

18. The Tribunal received four submissions from office holders in the Judges and Magistrates Group. While most submissions acknowledged the current freeze in remuneration, they argued that the conveyance and travelling allowances are not captured. Some submissions also requested that the Tribunal should state what increase in remuneration would be awarded notwithstanding the restriction imposed by the Regulation. Two submissions were also received from the Magistrates Association of NSW (the Association).
19. The Chief Justice on behalf of the Supreme Court acknowledged the current remuneration freeze but submitted that the Tribunal should nonetheless determine what the increase would otherwise have been. The Supreme Court also submitted that there should be an increase to the conveyance and travel allowances as these do not form part of judicial remuneration and are not caught by the freeze. The submission noted the high rates of inflation over the past several years which has resulted in a reduction in real wages. It also asserted that salaries of Supreme Court judges have gone from a position of approximate parity with senior public servants in 2014 to a difference of almost \$200,000 per annum. The submission also said there was a growing gap between judicial remuneration levels when compared to private practitioners and federal judicial officers which deters the State's ability to recruit high quality judges and magistrates. The submission said that the maintenance of judicial remuneration as far as possible is ultimately essential to the maintenance of the rule of law and the administration of justice in NSW.
20. In the submission, the Supreme Court objected to the remuneration freeze on judicial office holders given effect to by clause 5A of the Regulation as it was made without notice or consultation with the State's judiciary. The submission also noted that the freeze on judicial officers' remuneration formed no part of the Government's election platform. It also pointed to the 7 per cent increase members of parliament received to the Electoral Allowance despite the freeze on the basic salary.

21. The submission also went into detail about workloads including extra-judicial work, productivity in the Supreme Court and a lack of increase in judicial resources.
22. The submission of the Supreme Court argued that the conveyance allowance is an expense-related allowance, pointing to the alteration in the basis upon which the allowance is adjusted as determined by the Tribunal in 2016. The submission further argued that the conveyance allowance is not remuneration within the meaning of clause 5A of the Regulation and that the Tribunal should award a significant increase to compensate the lack of increase last year, and reflect increasing car-related costs.
23. The Supreme Court also called for a review into the travel allowance as it is not caught by the remuneration freeze. The submission sought a substantial increase in the allowance in line with increases in regional accommodation and food costs.
24. On behalf of the judges of the Land and Environment Court of NSW, the Chief Judge adopted the submission of the judges of the Supreme Court. The submission asked the Tribunal to state what increase in remuneration would be awarded notwithstanding the restriction imposed by the Regulation. It also argued that the conveyance allowance is an expense-related allowance and not remuneration and sought a significant increase to address the lack of increase in 2023 and the associated increase in car-related costs.
25. The submission noted that there had been continued increases in registrations across all classes of the Court's jurisdiction with some classes now at the highest levels in history. The submission also highlighted that judges and commissioners have increased their productivity to hear and dispose of caseload despite not having the full complement available for extended periods.
26. The Chief Judge of the District Court's submission noted the current freeze on remuneration but argued that the conveyance and travelling allowances are expense-related allowances and so do not fall within Clause 5A of the Regulation. It submitted that allowances should be increased at the very least by the CPI percentage changes over the last 2 years. The submission highlighted the importance of travel and meal allowances for District Court Judges who travel extensively to regional courts and circuits, needing appropriate accommodation.
27. The Chief Magistrate of the Local Court made a submission seeking a meaningful increase to the rates of travel and meal allowances. The submission supported the Supreme Court's submission and noted that Magistrates' remuneration had been affected by high inflation and a reduction in real wages. The submission

pointed out that in 2022, Magistrates received a smaller 1.53 per cent increase in salary compared to Judges who received a 2 per cent increase. It mentioned the regular travel Magistrates undertake to sit in regional locations and that travel allowances have not kept pace with inflation and actual accommodation costs in regional NSW.

28. The Tribunal has also considered the first submission and subsequent further submission from the Association. The Association sought an immediate increase in remuneration at least in accordance with CPI plus an additional increase to restore judicial remuneration relativities and reflect work practice changes which it claims is entirely offset by officer-related cost savings.
29. The Association's submission maintains that its submissions from the past 3 years remain unaddressed and that the Tribunal is required to assess and recognise officer-related cost savings achieved each year.
30. The Association cited delivering savings of over \$50 million each year by finalising complex criminal work more cost effectively than previous jurisdictions. The submission maintained that the Magistrates preside over the most efficient court in the country. It also mentioned the erosion of Magistrates' remuneration relativity with higher court judges over the 3 decades since the Tribunal last assessed the work value of Magistrates. The submission noted that the rate of increase in remuneration has declined over the last 4 years with income being eroded by high inflation while savings to the Government have increased.
31. Both submissions also questioned the legality and validity of the requirement of the Regulation that the Tribunal not award an increase in remuneration. It was argued that the executive policy as expressed in clause 5A of the Regulation purports to deny the underlying statutory power any role or effect and impermissibly forbids consideration of relevant matters to determine whether to give an increase. They also questioned whether the freeze in remuneration fits the definition of a declared government policy for the purposes of section 6AB of the Act.

Government Submission

32. The Secretary, Premier's Department provided the Government submission. It was limited to noting the temporary 2-year freeze on increases in the remuneration of office holders under Parts 3, 3A and 3B of the Act, implemented by amendments to the Act in 2023.

Section 3

2024 Annual Determination

No Increase

33. The Tribunal thanks those office holders who made a submission, and acknowledges the concerns raised in those submissions.
34. In accordance with the Regulation and the temporary wages policy, there will be no increase in the salaries payable to office holders in the Judges and Magistrates Group with effect from 1 July 2024.
35. This determination is consistent with the temporary wages policy which the Tribunal is required to give effect to pursuant to the Regulation.
36. Several submissions requested that the Tribunal state what increase in remuneration would be awarded but for the restriction imposed by the Regulation. The Tribunal is not persuaded that this would be a productive exercise and this report will not therefore articulate hypothetical salary increases.
37. Multiple submissions challenged the consideration of the conveyance allowance as remuneration, arguing that it is an expense-related allowance and asserted that clause 5A of the Regulation does not apply to the allowance.
38. To clarify whether the conveyance allowance should be considered as remuneration, the Tribunal sought advice from the Crown Solicitor. Having received that advice, the Tribunal is satisfied that the conveyance allowance falls within the meaning of an allowance under section 10A of the Act. Being an allowance payable in money to office holders for the discharge of the functions of their office, the conveyance allowance falls within the definition of remuneration in section 10A of the Act. Therefore, it is a form of remuneration for the purposes of clause 5A of the Regulation.
39. The Tribunal notes that the Association has asserted that the Tribunal has not addressed its submissions over the past 3 years, regarding an increase in work value and the achievement of officer-related cost savings. The Tribunal notes the comments made in paragraph 40 of the 2022 report and determination, noting also that the Tribunal had the benefit of advice from the Crown Solicitor on that occasion.

40. In earlier determinations, the Tribunal has noted some erosion of relativities within the Judges and Magistrates Group and between the Judges and Magistrates Groups and office holders in the Court and Related Officers Group. Nevertheless, the Tribunal is required by legislation to give effect to the temporary wages policy, and it is therefore not open for the Tribunal to give meaningful consideration to this issue at present.
41. The Association's first submission questioned the validity of Clause 5A of the Regulation and called on the Tribunal to not apply the temporary wages policy in making its determination. The Association then supported this claim with a further submission noting legal advice the Association had obtained. It is sufficient to say that the Tribunal has approached the making of this annual determination on the basis that the Regulation is in force.
42. In making this determination, the Tribunal consulted with the Secretary, Premier's Department, in their capacity as assessor under the Act. The other assessor role is currently vacant.
43. Pursuant to section 13 of the Act, the Tribunal determines that the remuneration to be paid to office holders in the Judges and Magistrates Group, on and from 1 July 2024 shall be as specified in Determination Nos. 1-5.
44. The Tribunal has also made a Report and Determination on Travel Allowances for NSW Judges and Magistrates.

Conveyance Allowance

45. The Tribunal's methodology for considering increases to the conveyance allowance is based on the March quarter CPI: Motor Vehicles-Sydney (Series ID A2328552A), having regard to the percentage change from the corresponding quarter of the previous year. In considering any adjustment the following conditions will apply:
 - 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 Act)
 - The temporary wages policy (as set out in Clause 5A of the Regulation).

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46. The annual percentage change for the March quarter CPI: Motor Vehicles-Sydney (Series ID A2328552A) from 2023 to 2024 is 0 per cent.⁴ In accordance with the Regulation and the temporary wages policy there will be no increase to the conveyance allowance.

Superannuation Guarantee Contributions

47. From 1 July 2024, the general SGC increases from 11.00 per cent to 11.50 per cent.⁵
48. As the Tribunal is required to not award an increase in remuneration on this occasion, it is not necessary to deal with the SGC increase.

⁴ Australian Bureau of Statistics. (2024). *Table 10. CPI: Group, Sub-group and Expenditure Class, Percentage change from corresponding quarter of previous year by Capital City*. <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>

⁵ Australian Taxation Office. (2024). *Super guarantee percentage*. <https://www.ato.gov.au/tax-rates-and-codes/key-superannuation-rates-and-thresholds/super-guarantee>

Section 4

Report on travel allowances for NSW Judges and Magistrates

Background

49. 'Remuneration' is defined in the Act, as salary and allowances payable to office holders. Judges and Magistrates are holders of offices specified in Schedule 1 of the Act.
50. '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.'*
51. Determination 6 sets rates for overnight stays in capital cities and other centres and meal rates for travel not involving an overnight stay. The Tribunal has also determined some specific conditions for the payment of travel allowances.

2024 Review

52. 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 2024 being ATO TD2024/3.

Principles Adopted

53. In making its determinations on travel allowance rates the Tribunal has adopted guiding principles as set out below:
- (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.

54. 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

55. The Tribunal makes Determination No. 6 effective on and from 1 July 2024.

Statutory and Other Offices Remuneration Tribunal



The Hon. Greg Pearce

Dated: 15 July 2024

Section 5

Determinations

Determination No. 1 – Remuneration of Judges effective on and from 1 July 2024

Position	Salary per annum	Conveyance Allowance (Note 1)
Chief Justice of the Supreme Court	\$556,790	\$24,950
President of the Court of Appeal	\$521,360	\$24,950
President of the Industrial Relations Commission	\$521,360	\$24,950
Chief Judge of the Land and Environment Court	\$521,360	\$24,950
Judge of the Supreme Court	\$497,580	\$24,950
Vice-President of the Industrial Relations Commission	\$497,580	\$24,950
Judge of the Land and Environment Court	\$497,580	\$24,950
Deputy President of the Industrial Relations Commission	\$497,580	\$24,950
President of the Personal Injury Commission	\$497,580	\$24,950
Judge of the District Court	\$445,640	\$22,445
Associate Judge or acting Associate Judge (under the <i>Supreme Court Act 1970</i>)	\$445,640	\$22,445

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

Determination No. 2 – Remuneration of other Judicial Officers not referred to in determination No.1 effective on and from 1 July 2024

Position	Salary per annum	Conveyance Allowance (Note 1)
Chief Magistrate	\$439,830	\$22,445
Deputy Chief Magistrate	\$371,650	\$17,955
State Coroner	\$371,650	\$17,955
Chief Industrial Magistrate	\$358,020	\$17,955
Chief Commissioner of the Industrial Relations Commission	\$354,800	\$17,955
Magistrate	\$351,860	\$17,955
Children's Magistrate	\$351,860	\$17,955
Deputy State Coroner	\$351,860	\$17,955
Commissioner of the Industrial Relations Commission	\$322,540	\$17,955

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

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	\$2,160 per day
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Industrial Relations Commission

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 Industrial Relations Commission	\$2,160 per day
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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	\$1,930 per day
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Determination No. 4 – Acting Magistrates rates

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	\$1,460 per day
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Determination No. 5 – Annual leave loading

Determination of leave loading for Judicial Officers effective on and from 1 July 2024

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 NSW, to each of the following office holders:

- Magistrates
- Chief Commissioner of the Industrial Relations Commission
- Commissioners of the Industrial Relations Commission

Determination No. 6 – Travel allowances for Judges and Magistrates

Pursuant to section 13 of the Act the Tribunal determines that the travel allowances for Judges and Magistrates will be as per the rates on based on the reasonable travel allowances as determined by the ATO in TD2024/3 effective on and from 1 July 2024.

Statutory and Other Offices Remuneration Tribunal



The Hon. Greg Pearce

Dated: 15 July 2024