

Public Office Holders Group

Annual
Determination

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

**29 August
2017**

Public Office Holders Group

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Section 1

Background

1. Section 13 of the *Statutory and Other Offices Remuneration Tribunal 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. “Remuneration” is defined in section 10A as salary or allowances paid in money.
2. The Public Office Holders Group comprises those public offices, listed in the Schedules of the 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. 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

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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

2016 Determination

5. On 15 July 2016 the Tribunal determined that officers in the Public Office Holders Group would receive an increase in salary and total remuneration package (where applicable) of 2.5 per cent.
6. The Tribunal stated that it will continue to consider general increases of up to 2.5 per cent only, following the Government's advice that it does not intend to repeal or amend the SOOR Regulation before its staged repeal in 2018.

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

Special Determinations

7. The Tribunal has made one special determination, pursuant to section 14(2) of the SOOR Act, since the making of the 2016 annual determination. On 18 November 2016 the Tribunal determined the annual salary for three members of the Law Enforcement Conduct Commission (LECC) established under the *Law Enforcement and Conduct Commission Act 2016*. The Tribunal determined that the Chief Commissioner of the LECC would receive an annual salary of \$475,000 and the two Full-time Commissioners would receive an annual salary of \$356,250.
8. Special determinations are published on the [NSW Remuneration Tribunals](#) website.

Section 3

2017 Annual Review

9. On 29 March 2017 the Tribunal wrote to office holders advising of the commencement of the 2017 annual review. Having regard to the Government's advice in respect to the SOOR Regulation, the Tribunal advised office holders that for 2017 it would 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

10. The Tribunal received one submission from an office holder requesting an increase in remuneration of more than 2.5 per cent. The request sought recognition of additional functions imposed on the office holder.
11. As required under Part 3 of the SOOR Act the Tribunal is required to give effect to the policies declared in the SOOR Regulation.
12. One of the declared policies is that an increase in an officer's remuneration that increases officer-related costs by more than 2.5 per cent can only be paid if "officer-related cost savings for the office holder have been achieved to fully offset the increased officer-related costs" (clause 6 of the SOOR Regulation). The officer-related cost savings for an office holder extend to savings from, among other things, changes in work practices of the agency to which the office-holder is treated as belonging (clause 7 of the SOOR Regulation).
13. The office holder in question sought to identify sufficient officer-related cost savings resulting from changes in work practices, as referred to in clause 7(1)(b)(iii) of the SOOR Regulation, to offset any additional officer-related costs associated with any

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increase in the office-holder's remuneration.

14. The savings put to the Tribunal relate to a new stream of work now undertaken by the agency of the office holder. The new stream of work was conferred on the agency via a change in legislation that took effect in October 2016. The change did not alter the agency's core business but instead increased the client base of the agency by an estimated 30 per cent over the client base it had before the legislation took effect.
15. Ordinarily the majority of the client-related activity of the agency is undertaken in house. To manage the additional workload associated with the new functions conferred on the office, the office holder decided that for the new work program the majority of its client-related activities would be outsourced. The office holder provided data which indicates that this model provides significant savings compared with what the costs of the agency's activities would have been if not for the outsourcing. These savings are expected to be identified for the 2016/17 financial year.
16. The Tribunal sought the advice of the Crown Solicitor to clarify whether the identified savings were "officer-related cost savings for the office holder [that] have been achieved" within the meaning of the SOOR Regulation. That advice also sought to clarify whether those savings could be used to offset any increase in officer-related costs for the office holder resulting from an increase in remuneration over 2.5 per cent.
17. The Crown Solicitor was of the view that the adoption of a new work program where a proportion of the work to be performed under the new function conferred on the agency is contracted out does not amount to a change in the agency's work practices as required by clause 7(1)(b)(iii) of the SOOR Regulation.
18. In addition, the Crown Solicitor's advice found that the identified savings are not officer-related cost savings within the meaning of clause 7(1)(b)(iii). The Crown Solicitor's advice made the following comment in respect of this matter:

"The "savings" relied upon by the office holder are incapable of being realised as the

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cost of performing the new activities in-house has never been incurred by the agency. The only costs incurred in the current financial year relating to the new activities are the outsourcing costs. While it may be more efficient to outsource the work, there has been no reduction in actual costs incurred by the agency nor will there be in the future. “

19. Following receipt of this advice the Tribunal sought an opinion from the Solicitor General.
20. The Solicitor General agreed with the Crown Solicitor in that the outsourcing of functions is not a change to work practices for the purposes of clause 7(1)(b)(iii) of the SOOR Regulation. Also, the Solicitor General advised that, in his view, the savings claimed in this case are hypothetical rather than actual.
21. Based on the legal advice the Tribunal finds that it is not able to consider the office holder's request for an increase in remuneration in excess of 2.5 per cent as the claim does not satisfy the provisions of clause 7(1)(b)(iii) of the SOOR Regulation.
22. However, the Tribunal is satisfied that the office holder has had a genuine and significant increase in workload and that the office holder has managed the implementation of the change. While it could be argued that the office holder's decision to outsource the additional functions, and the resulting savings from this decision, demonstrate effective and efficient business practices, there is no doubt that these additional functions have broadened the scale and scope of the office holder's role. Had the Tribunal not been required to have regard to the provisions of the SOOR Regulation in considering this matter it is very likely the Tribunal would have found that a case does exist for this office holder to receive an increase in salary of more than 2.5 per cent.
23. The assessment of this request provides further evidence to support the Tribunal's previously stated view that increases of more than 2.5 per cent may not be achievable as the SOOR Regulation makes the identification and assessment of officer-related cost savings prohibitively complex and difficult.
24. The Tribunal will write to the Premier prior to the staged repeal of the SOOR Regulation in 2018 to recommend that any new regulation should provide the

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Tribunal with greater flexibility in the undertaking of its statutory functions.

Government Submission

25. The Secretary NSW Treasury provided the Government submission to the Tribunal on 25 August 2017. The Government submits that the Tribunal should determine an increase of 2.5 per cent for office holders in the Public Office Holders Group, both office holders in receipt of a salary and those who have elected to receive a remuneration package pursuant to section 11A of the SOOR Act. 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.

Section 4

2017 Determination

General Increase

26. The requirements of the SOOR Act and the SOOR Regulation limit the way this Tribunal makes its determinations. It is the obligation of the Tribunal to undertake its duties consistent with the legislation. On that basis the Tribunal, after consulting with the Assessors, considers that an increase of 2.5 per cent is appropriate and so determines.
27. The Tribunal is no longer required to make a determination for the Commissioner of the Police Integrity Commission. That role was abolished with effect from 1 July 2017 and removed from Schedule 1 of the SOOR Act. The responsibilities of the Police Integrity Commission are now undertaken by the Law Enforcement Conduct Commission.
28. The Tribunal is also not required to make a determination for the President of the Mental Health Review Tribunal (when that office holder is a Judge of the District Court of NSW or Judge of the Supreme Court of NSW and holds the office of President and continues to be remunerated for their judicial role). The *Mental Health Act 2007* (the MH Act) was amended in September 2016 to make clear that a President who is a full-time member of the Mental Health Review Tribunal and a judge (other than an acting judge) is not, while receiving a salary or allowance as a judge, entitled to remuneration under the MH Act.

Section 11A office holders

29. For the 2017 determination the Tribunal will continue to identify, in Determination No.2 of the Public Office Holders report and determination, those offices which are held by individuals who have elected to receive a total remuneration package pursuant to section 11A of the SOOR Act. Currently only the Commissioner of the NSW Crime Commission has elected to receive employment benefits pursuant to

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section 11A.

30. The Tribunal will also make a salary-only determination and list that salary in the general determination for Public Office Holders in Determination No. 1. This is to ensure that a current determination exists for these role(s) should the incumbent officer revoke his/her election or if a new officer is appointed to the role.

Conclusion

31. 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 2017 shall be as specified in Determination Nos. 1 and 2.

The Statutory and Other Offices Remuneration Tribunal

(signed)

Richard Grellman AM

Dated: 29 August 2017

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Section 5

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 2017

Public Office Holder (list updated)	Salary per annum
Public Service Commissioner	\$515,280
Chief Commissioner of the Law Enforcement Commission	\$486,875
Auditor General	\$479,335
Ombudsman	\$478,100
Commissioner, NSW Crime Commission (Note 1)	\$474,395
Assistant Commissioner, NSW Crime Commission	\$449,430
Full time Member and CEO, Independent Pricing and Regulatory Tribunal	\$427,260
President, Mental Health Review Tribunal	\$387,930
Electoral Commissioner	\$373,105
Full-time Commissioner for Integrity of the Law Enforcement Conduct Commission	\$365,155
Full-time Commissioner for Oversight of the Law Enforcement Conduct Commission	\$365,155
Valuer General	\$345,150
Workers Compensation Independent Review Officer	\$344,415
Deputy President Mental Health Review Tribunal	\$339,410
Information Commissioner	\$336,560
Privacy Commissioner	\$324,785
Mental Health Commissioner	\$312,270
Parliamentary Budget Officer	\$307,785
Principal Claims Assessor (<i>Motor Accidents Compensation Act 1999</i>)	\$306,595
Inspector of Custodial Services	\$296,815
Small Business Commissioner	\$292,420
Deputy Chairperson, Law Reform Commission	\$289,505
Commissioner, Law Reform Commission	\$275,485
Clerk of the Legislative Assembly	\$270,305

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Public Office Holder (list updated)	Salary per annum
Clerk of the Parliaments	\$270,305
Registrar Workers Compensation Commission	\$270,305
Executive Manager, Parliamentary Services	\$270,305
Senior Arbitrator, Workers Compensation Commission (legally qualified)	\$250,890
Deputy Mental Health Commissioner	\$250,030
Deputy Clerk, Legislative Assembly	\$232,040
Deputy Clerk, Legislative Council	\$232,040
Senior Arbitrator, Workers Compensation Commission (not legally qualified)	\$231,065
Arbitrator, Workers Compensation Commission (legally qualified)	\$221,515
Registrar, Aboriginal Land Rights Act 1983	\$214,365
Assessor (<i>Local Court Act 2007</i>)	\$205,110
Arbitrator, Workers Compensation Commission (not legally qualified)	\$199,140
Chairperson, Board of the Aboriginal Housing Office	\$160,055
Part-time Chairperson of a Board of Governors of a Corporation constituted by the <i>Electricity Retained Interest Corporations Act 2015</i>	\$157,595
Member of the New South Wales Aboriginal Land Council (Note 2)	\$142,795
Part-time Member of a Board of Governors of a Corporation constituted by the <i>Electricity Retained Interest Corporations Act 2015</i>	\$84,050
Chairperson, Infrastructure NSW	\$82,375
President Mental Health Review Tribunal (part time daily rate)	\$1,610
Deputy President Mental Health Review Tribunal (part time daily rate)	\$1,410
Assessor <i>Local Court Act 2007</i> (daily rate)	\$850

Note 1 The Public Office Holders of these public offices have elected to be provided with employment benefits pursuant to section 11A of the Act and the remuneration packages are listed in Determination 2.

Note 2 The Chairperson shall receive an allowance of 10% (i.e. a total of \$157,075 per annum) and the Deputy Chairperson shall receive an allowance of 5% (i.e. a total of \$149,935 per annum).

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.

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Determination No. 2-Public Office Holder Group, Section 11a

Determination of the remuneration of Public Office Holders who have elected to be provided with employment benefits pursuant to section 11a of the SOOR Act effective on and from 1 July 2017

The Tribunal determines that the remuneration packages per annum for Public Office Holders who have elected to be provided with employment benefits pursuant to section 11A of the SOOR Act shall be:

Public Office Holder	Remuneration
Commissioner, NSW Crime Commission	\$484,590

The Statutory and Other Offices Remuneration Tribunal

(signed)

Richard Grellman AM

Dated: 29 August 2017