

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES
REMUNERATION ACT, 1975

PUBLIC OFFICE HOLDERS

29 AUGUST 1997

PUBLIC OFFICE HOLDERS

Background

1. Section 13 of the Statutory and Other Offices Remuneration Act 1975, as amended (the Act), requires the Statutory and Other Offices Remuneration Tribunal, not later than 31 August in each year, to make a determination of the remuneration to be paid to these office holders on and from 1 October 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 Magistrates and Related Group), which have been grouped together by the Tribunal for remuneration purposes. The remuneration for this Group is determined as a fixed salary and other employment benefits such as those enjoyed by the Senior Executive Service and in some cases the Judges, Magistrates and Related Group are not generally available to this Group.
3. The remuneration for the Public Office Holders Group has, over recent years been based on general wage and salary increases with no direct nexus with judicial or other rates of remuneration. The Government has repeatedly stated that while it recognises the strong relationship between the salaries of some public offices in this Group and judicial remuneration, it is not in favour of a direct nexus with the remuneration of the Judges Magistrates and Related Group. The Tribunal determined an increase of 4 percent for this Group from October 1995. For the 1996 Review the Tribunal determined a general increase of 3 percent for all office holders effective from 1 October 1996 with a further 1.5 percent increase from 1 January 1997. For the current review the Tribunal wrote to Public Office Holders inviting submissions.

1997 Review

Government Submission

4. The Government has again advised the Tribunal that it does not favour a nexus with judicial salaries. The Government submission based on "...movements in the market...economic relativity and the Consumer Price Index..." recommends that the Tribunal determine an increase of 4 percent for this Group.

Other Submissions Received.

a) Crown Prosecutors

5. The Crown Prosecutors' submission seeks an increase in remuneration in line with the Crown Employees (Public Sector Salaries 1997) Award. The submission also seeks an increase in the remuneration of the office of Senior Crown Prosecutor based on additional duties and responsibilities.

b) Chairman, Commercial Tribunal

6. The Chairman, Commercial Tribunal considers that it would be more appropriate for the offices of Chairman and Deputy Chairman, Commercial Tribunal to be transferred to the "Judges Magistrates and Related Group" because of the judicial nature of the Tribunal's duties.

c) Senior Assessor and Assessor, Land and Environment Court

7. The Senior Assessor, Land and Environment Court considers that the role of the Assessors is almost judicial in nature and considers, on this basis, that they should be included with the "Judges Magistrates and Related Group" and that their remuneration should be "...set at a level akin to that of the Magistrate of the Local Court."

d) Commissioners, Industrial Relations Commission

8. The Commissioners have submitted that significant changes have occurred in their role and responsibilities since the introduction of the Industrial Relations Act 1996. On this basis they argue that their remuneration should be increased to 85 percent of the rate of a Deputy President of the Industrial Relations Commission.

e) Commissioner, Law Reform Commission

9. The submission to the Tribunal argues that to attract suitably qualified people from the private sector the remuneration for Commissioners should be increased to that of a District Court Judge.

f) Clerk of the Parliament and Clerk of the Legislative Assembly

10. The Clerk of the Parliaments has again sought a review of his remuneration based on work value as, it is claimed, there has been a deterioration in the Clerks salary when compared with other Parliaments. He also argues that the remuneration of Clerks should be linked to their Federal counterparts less \$500 as is currently the case with the salaries of State and Federal Members of Parliament.
11. The Clerk of the Legislative Assembly considers that the Recruitment and Retention Allowance, applicable to the Senior Executive Service (SES), should also be payable to Public Office Holders as should the full performance pay component available to the SES. The Clerk also considers that the salary difference between the Clerks and Deputy Clerks should be widened from the present 12.5 percent to 25 percent.

1997 Tribunal Review

12. The Government's submission for the 1996 review advised of negotiations with the main public sector occupational groups which had either commenced or were about to commence on wage and salary increases. The Tribunal, cognisant of these developments, indicated in its 1996 Report that;

At the time of the next annual review the Tribunal will have regard to increases received in the NSW Public Sector.

13. The Government's submission has now provided details of the negotiated increases that are in place for some of the main occupational groups. These include the Crown Employees (Public Sector Salaries 1997) Award which provides for salary increases totalling 16 percent over three years, teachers (16 percent over 28 months), firefighters (18 percent over 40 months) and nurses (14 percent over 37 months). The Tribunal is also aware that these increases are partially funded in accordance with the Government's wages policy (3 percent per annum) the balance to be achieved through productivity savings.
14. The Government has also provided details of non financial benefits available to some public office holders which should be considered when assessing remuneration.

15. The Tribunal has noted that the Government's pre election commitment to establish an Administrative Decisions Tribunal (ADT) is nearing completion with the passage of the relevant legislation through Parliament earlier this year. This legislation provides, *inter alia*, that the Tribunal will have the power to make original decisions and to review certain other administrative decisions. It is further understood that the ADT will merge with certain other Tribunals or have some of their jurisdiction transferred to the ADT. These developments are of considerable interest because this Tribunal determines the remuneration of some of the office holders affected by these changes. Final details are yet to be determined, however, this Tribunal will need to examine closely the impact of such mergers on the role and responsibilities of office holders when reviewing their remuneration levels.
16. The Tribunal has examined carefully the matters raised in each submission received and in some cases met with office holders to discuss them further. Many of these matters are not new and have been dealt with previously, however, the Tribunal considers it important to re affirm its previous position.
17. The requests that certain office holders be included in the Judges Magistrates and Related Group has been sought on numerous occasions in the past.
18. Judicial remuneration setting over recent years has at its centre an agreement between States and the Commonwealth that the remuneration of a Federal Court Judge and a Supreme Court Judge should not exceed 85 percent of the remuneration of a Judge of the High Court. In New South Wales, as in other States, other judicial office holder remuneration is determined as a percentage of the Supreme Court Judge's remuneration.
19. The current grouping of Public Office Holders was administratively determined by the Tribunal in 1990. At that time the Public Office Holder Group was collectively known as the 'Tribunals Court Officers and Related Group.' Since that time the Government, has consistently expressed the view that while it recognises the relationship between the salaries of some public offices in this Group and judicial remuneration it is not in favour of a direct nexus with the remuneration of the Judges Magistrates and Related Group. This was reinforced in the Government's submission for the current review.
20. The Tribunal considers that while Public Office Holders may be involved in judicial activities, the breadth of judicial involvement is limited and, while in no way diminishing the importance of their duties and responsibilities, the jurisdictions of the Local, District and Supreme Courts are significantly greater. Moreover, any link with

judicial remuneration would significantly diminish the flexibility to fix remuneration for individual office holders in this Group.

21. Linking remuneration between different office holders is also not considered appropriate. As stated in the 1996 report (para 21) in the past, salaries of offices were linked either directly or indirectly with others. Remuneration setting at that time was based on relativities and an increase in remuneration usually meant a flow on to other offices.
22. During the past few years the Tribunal has increased the remuneration of individual office holders (over and above general economic increases granted to the Group as a whole) based on the changes that have occurred to the role and responsibilities of the office rather than increasing the remuneration to retain relativities.
23. The Tribunal has carefully considered each of the other submissions received as well as arguments put forward by those officers who attended interviews.
24. For the 1996 review the Tribunal increased the remuneration of the Deputy Senior Crown Prosecutors and Crown Prosecutors as a result of changes that had taken place in the role and responsibilities of these office holders. These changes were equally applicable to the Senior Crown Prosecutor, however, the Tribunal did not pass on a similar increase for this office as it was vacant at that time and the Minister had informed the Tribunal of his intention to abolish it.
25. Advice now received is that the position has not been abolished and in fact has been filled substantively. On this basis, the Tribunal considers that the remuneration of this office should be increased in line with the increases determined for the subordinate offices.
26. In respect of the Commissioners, Industrial Relations Commission, the Tribunal has received the views of the Attorney General, the Hon Jeff Shaw QC MLC. The Tribunal has also spoken to the President of the Industrial Relations Commission, the Hon Justice W K Fisher.
27. Both the Attorney-General and the President of the Industrial Relations Commission confirm that the new legislation allows the Commissioners to undertake a wider range of duties than was previously the case hence they both support an increase in remuneration. The Minister considers that any such increase in remuneration should reflect the “qualitative change” that has taken place.

28. The Tribunal's own investigations support the views of the Minister and the President. The new Industrial Relations Act 1996 has changed the role and responsibilities of the Commissioners to warrant an increase in remuneration. There is insufficient evidence however to support an increase of the magnitude sought.
29. The Tribunal has also noted carefully the comments of the Clerk of the Parliaments and the Clerk of the Legislative Assembly.
30. The Clerk of the Parliaments has submitted that remuneration should be equivalent to SES Level 3 as per the job evaluation undertaken by private consultants. The Tribunal referred the Clerks' job description details to Premier's Department for evaluation. Premier's Department evaluation places the position within the SES Level 2 however, when the non financial benefits received by the Clerks are added to their salary ie employer's contribution to superannuation (11 percent), motor vehicle (provided at no cost to the Clerks) and an additional 2 weeks annual leave then the total package falls well within SES Level 4 range.
31. The Tribunal similarly rejects the Clerk of the Legislative Assembly's view that the Tribunal should make available the SES Recruitment and Retention Allowance and performance pay to the Public Office Holder Group. Recruitment and Retention Allowance provides CEOs with additional flexibility to appoint SES officers to positions which require clearly identifiable skills and replaces the former specialist loading in the SES remuneration ranges. In respect of performance pay the Tribunal outlined its views on why it is inappropriate to extend performance pay to the Public Office Holder Group in the 1996 Report (paragraphs 31 -33). The Tribunal has not changed its view.
32. The Clerks have for many years sought to have their remuneration linked to their federal counterparts less \$500 as is currently the case with Members of Parliament. Both the former and current Tribunals have steadfastly rejected these requests as inappropriate for fixing remuneration of NSW Public Sector employees.
33. The problem of the salary difference between the Clerks and the Deputy Clerks has resulted from a decision by the Presiding Officers, in 1995, to link the remuneration of the Deputy Clerks to their federal counterparts. This decision has resulted in a situation where remuneration movements for the Commonwealth Deputy Clerks based on Commonwealth priorities and conditions are automatically flowed to the NSW Deputy Clerks. This Tribunal does not consider that it should pass on Commonwealth determined increases to maintain existing relativities between the Clerks and Deputy Clerks. Unless resolved this will continue to prove an on going problem.

34. To overcome this situation the Tribunal suggests that either the Deputy Clerks be added to the Schedule 2 of the SOOR Act to ensure consistency in remuneration setting. Alternatively, the Clerks could be removed from the Schedule 2 of the SOOR Act and the responsibility for setting their remuneration be transferred to the Presiding Officers. Either way it is this Tribunal's view that remuneration setting for similar offices should be consistent.
35. The Tribunal has also given careful consideration to the other submissions received but the Tribunal was not convinced that increases in remuneration were warranted for these office holders.

Conclusion

36. The Tribunal in making its determination has had regard to key national economic indicators, to material provided on the State's economic and budgetary outlook, private sector executive remuneration movements and the salary increases received by other groups in the NSW Public Sector and in particular the 16 percent increase negotiated between the Government and the unions through the three year Crown Employees (Public Sector Salaries 1997) Award. In this regard the Tribunal notes that this Award requires productivity improvements to ensure salary increases, beyond the budgeted 3 percent per annum, over its duration are available to public servants.
37. The Tribunal considers that this Group of office holders will, either directly or indirectly, contribute to the productivity increases therefore an increase on this occasion beyond the Government's recommendation of 4 percent is appropriate.
38. While the Tribunal notes that performance reward is not a feature of this Group of Officer Holders' remuneration, and as figures (provided by the Government) suggest that very few SES officers actually received the 1996 maximum performance based increase, an increase of the magnitude determined for the SES is not considered appropriate.

39. Having regard to these matters and, after considering the views of the Assessors, the Tribunal determines that a 5 percent increase should be granted on and from 1 October 1997 to all office holders in this Group.
40. Pursuant to Section 13 of the Statutory and Other Offices Remuneration Act 1975, as amended, the Tribunal determines that the remuneration to be paid to office holders on and from 1 October 1997 shall be as specified in Annexure A.

**The Statutory and Other Offices
Remuneration Tribunal**

Gerald Gleeson

Dated: 29 August 1997

ANNEXURE A

**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE
HOLDERS GROUP ON AND FROM 1 OCTOBER 1997**

	Salary \$ per annum
Ombudsman	160,970
Deputy Director of Public Prosecutions	154,230
Senior Public Defender	154,230
Chairman, Commercial Tribunal of New South Wales	154,230
Deputy Chairman, Law Reform Commission	152,230
President, Mental Health Review Tribunal	151,030
Senior Crown Prosecutor	147,440
Senior Chairperson (Government and Related Employees Appeals Tribunal) - not being a judicial office holder.	139,955
President, Guardianship Board	139,955
Commissioner, Law Reform Commission	136,710
Deputy Senior Crown Prosecutor	136,710
Deputy Senior Public Defender	136,710
Deputy Chairman, Commercial Tribunal of New South Wales	135,020
Deputy President Mental Health Review Tribunal	132,460
Commissioner (under the Compensation Court Act 1984)	129,765
Crown Prosecutor	123,160
Public Defender	123,160
Senior Assessor (under the Land and Environment Court Act 1979)	123,160
Commissioner, (Industrial Relations Commission)	123,160
Chairperson, Residential Tenancies Tribunal	121,205

ANNEXURE A (CONT'D)

DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE HOLDERS GROUP ON AND FROM 1 OCTOBER 1997

	Salary \$ per annum
Deputy President, Guardianship Board	119,570
Clerk of the Legislative Assembly	119,570
Clerk of the Parliaments	119,570
Assessor (under the Land and Environment Court Act 1979)	116,370
Senior Referee, Consumer Claims Tribunals	107,845
Chairman, Transport Appeals Board	107,845
Chairperson, Government and Related Employees Appeals Tribunal <u>who is legally qualified</u> (not being the holder of a judicial office or a magisterial office)	107,845 (Note 1)
Chairperson, Government and Related Employees Appeals Tribunal (not being the holder of a judicial office or a magisterial office)	101,830
Chairman, Local Land Boards	101,830
Referee, Consumer Claims Tribunals	101,830
Member, Residential Tenancies Tribunal	101,830
Chairman, Motor Vehicle Repair Industry Council	101,830
Member of the New South Wales Aboriginal Land Council	59,970 (Note 2)

Note 1 This rate of remuneration is payable only to those Chairpersons who are barristers admitted by, or solicitors of, the Supreme Court of NSW or who hold equivalent qualifications.

Note 2 The Chairperson shall receive an allowance of 5% (i.e. a total of \$62,970 per annum) and the Secretary and Treasurer shall receive an allowance of 3% (i.e. a total of \$61,770 per annum).

**The Statutory and Other Offices
Remuneration Tribunal****Gerald Gleeson**

29 August 1997

12