

**REPORT**

**and**

**DETERMINATION**

**under**

**SECTION 13**

**of the**

**STATUTORY AND OTHER OFFICES**

**REMUNERATION ACT, 1975**

**JUDGES, MAGISTRATES AND RELATED GROUP**

**8 September 2003**

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## **JUDGES, MAGISTRATES AND RELATED GROUP**

### **Section 1: Background**

1. Section 13 of the *Statutory and Other Offices Remuneration Act 1975* (the Act), as amended, requires the Statutory and Other Offices Remuneration Tribunal (the Tribunal), 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 as salary or allowances paid in money.
2. The Judges Magistrates and Related Group comprises such officers who are listed in the Schedules of the Act and, in addition are defined as judicial officers (within the meaning of the Judicial Officers Act 1986) or offices which the Government considers should belong to that Group or are directly involved with the judicial system. The offices have been grouped together by the Tribunal for remuneration purposes only.
3. A principal feature of remuneration for Judges has been the longstanding Agreement between Federal and State Governments on the relativities between the remuneration of State Supreme Court Judges and Federal Court Judges with the remuneration of a Justice of the High Court. This was explained in the Tribunal's 2000 Report and is restated here for clarification purposes.

*"...At the Premier's Conference on 28 June 1990 the Prime Minister and Premiers discussed the salaries of Commonwealth and State Judges and agreed that the question of "leap-frogging" in judicial salaries should be jointly addressed. Arising from this the Chairman of the Commonwealth Remuneration Tribunal met with the Chairmen of the State and Territory Remuneration Tribunals on 23 August 1990, 7 February and 5 July 1991.*

*In these meetings consensus was reached on the following matters: that the Remuneration Tribunals should continue to consult on an informal basis before making decisions on judicial salaries; that salary reviews should take place at or about the same time each year; and that there was a need to avoid the appearance of "leap-frogging". Further, that historical and other material suggested that the salary of a Judge of the Federal Court and a Judge of the State Supreme Court should not exceed 85 per cent of the salary of a Justice of the High Court of Australia. This relativity however, was acceptable only if and whilst the remuneration of a Justice of the High Court of Australia remained at an acceptable level, and that the Remuneration Tribunals should have regard to the base salary plus non financial benefits (such as motor vehicles) when determining judicial remuneration."*

4. Since that time the New South Wales Tribunal has maintained the remuneration of a State Supreme Court Judge at approximately 85% of the remuneration of a Justice of the High Court.
5. Since the last review the Tribunal has made special determinations on domestic travel and subsistence allowances for Magistrates and determined the remuneration levels for the President and Deputy Presidents of the Workers Compensation Commission. In accordance with the Legislation both determinations were published in the Government Gazette and tabled in Parliament.
6. The Tribunal also received a special reference from the Premier on 27 May 2003 to review the remuneration of the Judges Magistrates and Related Group and followed from the significant determination made by the Commonwealth Remuneration Tribunal (CRT).
7. On 27 November 2002 the CRT made its determination on judicial remuneration following an extensive review over 12 months which examined in a most comprehensive manner all aspects of judicial remuneration. The results of that review were that federal judges were to receive increases totalling 17 per cent over the period 1 July 2002 to 30 June 2004, i.e., 24 months, as follows:
 

7%	payable on 1 July 2002
5%	payable on 1 July 2003
5%	payable on 1 July 2004
8. The CRT further determined that these increases were over and above any general economic adjustments that it determines as part of its normal annual reviews for the years 2003 and 2004. On 1 July 2003 this adjustment was a further 4 percent.
9. Following the CRT decision the Tribunal undertook an extensive review of its own to determine whether similar increases were warranted. For the reasons contained in its Report of 11 June 2003 the Tribunal determined that the 85 percent nexus should be retained and provided the appropriate increase to achieve this result. This Report and Determination was also published in the Government Gazette and tabled in both

Houses of Parliament. The Report and Determination is also available on the Tribunal's website.

## **Section 2: 2003 Review**

10. The Government has submitted that the Tribunal should have regard to the longstanding nexus when determining the remuneration for this Group.
11. The Tribunal has received applications to review the remuneration of the President and Deputy President of the Workers Compensation Commission. The Tribunal also received submissions from the Chief Judge of the District Court and Acting Chief Judge of the Compensation Court, supporting retention of existing arrangements in respect of Acting Judges. The Tribunal also received submissions from other office holders in this Group supporting the existing nexus and/or internal relativities.
12. The Tribunal met with the Members of the Workers Compensation Commission and the Chief Judge to discuss the issues raised in their submissions.

### **President and Deputy Presidents, Workers Compensation Commission**

13. When the Workers Compensation Commission was established the remuneration for the President and Deputy Presidents were determined by the Minister. Amendments contained in the Compensation Court Repeal Act 2002 transferred statutory responsibility for remuneration setting for these offices to SOORT. This section of the Act came into effect on and from 4 October 2002.
14. The Tribunal recently made a special determination in respect of this Office which essentially retained the Minister's remuneration level but increased the amount in line with general increases determined since October 2001. In respect of the President the Tribunal noted the following:

“8 ...*The Minister initially determined a rate that was higher than that recommended by the Tribunal. The Minister had regard to the special qualifications and experience of the newly appointed President who has existing status of a Supreme Court Judge and of the critical role that the President needed to play in establishing the new Commission arising from the Workers Compensation reforms initiated by the Government.*

9. *The Tribunal considers that the rate set by the Minister is appropriate for the present occupant and that the rate should continue while the current President remains in office.*
10. *The Tribunal considers, however, that future appointees should receive remuneration equivalent to a Supreme Court Judge. In this regard it should be noted that the Chief Judge of the Compensation Court (which the Commission effectively replaces) and whose duties and responsibilities were at least equal to those of the President had the status and remuneration of a Supreme Court Judge.”*
15. This is the first opportunity to review the role and responsibilities of the Offices and determine whether the remuneration level is appropriate now that the Commission is has been operating for over 12 months.
16. The Deputy Presidents have sought salary parity with Judges of the District Court. The Tribunal has considered this request but notes that the breadth of matters coming before the District Court is far wider than that of the Workers Compensation Commission. The principal role of the Deputy Presidents is to hear appeals against decisions made by the Arbitrators. Where questions of law arise in proceedings before the Commission these are to be heard by the President of the Commission (who is required to be a Judge of a Court of Record). The legislation provides that the President may delegate this function to the Deputy Presidents but only where he considers it necessary to avoid a conflict of interest or the appearance of bias.
17. After consideration of the role and responsibilities of the Deputy Presidents, the Tribunal has concluded that the remuneration in this determination is fair and reasonable.
18. In respect of the President, the Tribunal will, in keeping with its earlier view, formally determine two rates for the office of President of the Workers Compensation Commission. One rate will apply while the present incumbent holds the Office. The other, lower rate, will apply only to future appointees to this Office.

### **Acting Judges**

19. The Tribunal's Report of 11 July 2003 did not increase the existing rate and stated that a further review would be undertaken of the Acting Judges rates at this time.

20. Acting Judges of the Supreme Court and the District Court are generally commissioned for periods of up to 12 months and receive a daily rate of remuneration for each day that they sit as a Judge.
21. The current rates for Acting Supreme Court and Acting District Court Judges have a direct relationship pro-rata with the full time rates.
22. When Acting Judges were first introduced in 1987 they were commissioned from the ranks of practising barristers. It was recognised at the time that these barristers had chambers to maintain, ongoing expenses associated with their practices and would not be able to obtain new briefs while sitting on the Bench. As a matter of equity it was decided that a loading (or an allowance) would be added to the judges' daily rate, to compensate barristers for their ongoing expenses and income foregone while serving on the Bench. This resulted in Acting Judges daily rates being set higher than the daily equivalent of a full time judge's salary.
23. The present practice is to commission Acting Judges almost exclusively from the ranks of retired State and/or Federal Judges who have neither chambers or practices to maintain. Further, these retired Judges receive pension entitlements that result in an inequity between their remuneration and that of serving full time Judges.
24. The Tribunal recognises that Acting Judges contribute significantly to the smooth working and effectiveness of the Court system and that they have become an essential feature of the system. However, what was determined for valid reasons many years ago simply cannot continue without review when the earlier circumstances no longer exist.
25. In addition, and distinct from the practice two decades ago, Judges are tending to take early retirement being eligible to full pension entitlement after completing ten years service. Thus an anomalous situation has developed that Acting Judges of both the Supreme and District Courts receive significantly greater remuneration than full time Judges.
26. This determination does not impede the continuing employment of Acting Judges. Nor does the determination act to reduce the existing remuneration of Judges currently commissioned. However, when new commissions are issued after 1 October 2003 the rates set out in separate Determination No. 5 shall apply. The Tribunal considers that these rates are just and reasonable and attractive to newly commissioned Acting Judges.

### **Section 3      Conclusion**

27. The Federal Tribunal has recently determined an increase of 4 percent in respect of Federal Judges. This represents the 2003 cost of living increase foreshadowed in its Report of November 2002.
28. To maintain the 85 percent nexus the Tribunal will be determining a similar increase for NSW Judges.
29. The Tribunal determines that the base rate of remuneration for a Supreme Court Judge should be increased on and from 1 October 2003 by 4 percent. The salary of a Judge of the Supreme Court will increase from \$249,000 to \$258,960 per annum.
30. The remuneration of the Heads of Jurisdiction of the Supreme Court, Court of Appeal and Industrial Relations Commission and all other office holders within this Group shall be proportionally increased to maintain existing relationships.
31. Separate determinations have been made for Acting Judges.
32. 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 the office holders in this Group on and from 1 October 2003 shall be as set out in Determinations Nos 1-7.
33. The Tribunal has also made a Report and determination on Travel Allowances for NSW Judges and Magistrates. The Report and Determination are attached at Determination No 8.

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

**Gerry Gleeson**

Dated: 8 September 2003

**DETERMINATION No 1**  
**REMUNERATION OF JUDGES – effective from 1 October 2003**

	<b>Salary \$ per annum</b>
Chief Justice of the Supreme Court	289,775
President of the Court of Appeal	271,340
President of the Industrial Relations Commission	271,340
President, Workers Compensation Commission (NOTE 1)	271,340
President, Workers Compensation Commission	258,960
Judge of the Supreme Court	258,960
Vice-President of the Industrial Relations Commission	258,960
Deputy President of the Industrial Relations Commission	258,960
Judge of the District Court	233,065
Master or acting Master (under the Supreme Court Act 1970)	233,065

NOTE 1: Rate applicable only while the Hon Justice Terry Sheahan holds the Office.

**DETERMINATION No 2****REMUNERATION OF MAGISTRATES – effective from 1 October 2003**

	<b>Salary \$ per annum</b>
Chief Magistrate	233,065
Deputy Chief Magistrate	196,940
Chairperson of Licensing Court	196,940
State Coroner	196,940
Senior Children's Magistrate	196,940
Chief Industrial Magistrate	189,715
Deputy Chairperson, Licensing Court	189,715
Magistrate	186,450
Chairperson Victims Compensation Tribunal (NOTE 2)	186,450
Children's Magistrate	186,450
Licensing Magistrate	186,450
Deputy State Coroner	186,450

NOTE 2: When a more senior Magistrate is appointed to the office then he or she shall retain his or her present salary level.

**DETERMINATION No 3**  
**REMUNERATION OF RELATED OFFICE HOLDERS – effective from 1 October 2003**

	<b>Salary \$ per annum</b>
Chairperson, Law Reform Commission	258,960
Solicitor-General	258,960
Director of Public Prosecutions	258,960
Crown Advocate	233,065
Deputy Director of Public Prosecutions	233,065
Senior Crown Prosecutor	209,760
Senior Public Defender	209,760
Deputy Senior Crown Prosecutor	188,785
Deputy Senior Public Defender	188,785
Deputy Presidents, Workers Compensation Commission	188,785
Crown Prosecutor	172,470
Public Defender	172,470
Senior Commissioner Land and Environment Court	176,095
Commissioner Land and Environment Court	170,915
Commissioner Compensation Court	176,095
Commissioner Industrial Relations Commission	170,915



**DETERMINATION No 7****ANNUAL LEAVE LOADING OF JUDGES, MAGISTRATES AND RELATED GROUP ON – effective from 1 October 2003****Annual 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, as set out in Section 6-17.12 to 6-17.17 of the Premier's Department Personnel Handbook, to each of the following office holders:

Magistrates Group listed in Determination No 2  
Office Holders listed in Determination No 3 of this Determination  
Deputy President of the Industrial Relations Commission (not being a judicial member)

**The Statutory and Other Offices  
Remuneration Tribunal**

**Gerry Gleeson**

Dated: 8 September 2003

## **Report and Determination – Travel Allowances for NSW Judges and Magistrates**

### **REPORT**

#### **a) Background:**

1. Remuneration” is defined in the Statutory and Other Offices Remuneration Act 1975, as salary and allowances payable to office holders. Judges and magistrates are holders of offices specified in Schedule 1 of the 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. On 16 June 2003 the Tribunal made its determination on domestic travel allowances for Magistrates. Because of the similarities of conditions and rates with those of Judges, the Tribunal intends to make one determination in respect of both Groups.
4. 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.

#### **b) Current Review:**

5. For the current review the Tribunal has had regard to movements in the travel rates as published in the Australian Taxation Office’s Ruling 2003/7 and the rates adopted for the NSW Public Sector generally. The Tribunal also undertook a survey of accommodation rates in regional New South Wales.

#### **c) Principles Adopted**

6. 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 home/place of

work on official business. Such costs cover 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.
  - d. 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.
7. The rates for accommodation across NSW vary considerably from town to town. There will be some country towns where the country daily rate will be of financial advantage to the Judge and there will be some (a much lesser number) where the Judge or Magistrate could be financially disadvantaged. On balance, the Tribunal is persuaded that with the exception of Newcastle and Wollongong a common rate for Judges and a common rate for Magistrates should be applied for the remainder of NSW in the knowledge that across a year a Judge or Magistrate will most likely be neither financially advantaged or disadvantaged.

**d) Conclusions**

- 8. In making its determination the Tribunal has had regard to the current travel allowance rates contained in Taxation Ruling 2003/7.
- 9. Non metropolitan accommodation rates and meal allowance rates have not changed from the Tribunal's previous determination.
- 10. After reviewing the survey of intra state accommodation and meal costs, the Tribunal makes the following determination effective on and from 1 October 2003.

**Statutory and Other Offices  
Remuneration Tribunal**

**Gerry Gleeson**  
Dated: 8 September 2003

**DETERMINATION No 8****TRAVEL ALLOWANCES FOR JUDGES AND MAGISTRATES- effective from 1 October 2003**

Pursuant to section 13 of the Act the Tribunal determines that the travel allowances for Judges and Magistrates will be as follows effective on and from 1 October 2003.

**A Travel necessitating an overnight stay****Capital City Rates**

Adelaide, Canberra, Darwin, Hobart	\$300
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Brisbane, Melbourne, Perth, Sydney	\$370
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<b>Newcastle and Wollongong</b>	\$293
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**Other areas**

Judges	\$247
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Magistrates	\$196
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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 Meal Allowances for travel NOT involving an overnight stay**

Breakfast	\$20.00
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Lunch	\$25.00
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Dinner	\$45.00
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**Statutory and Other Offices  
Remuneration Tribunal**

**Gerry Gleeson**

Dated: 8 September 2003