

**REPORT**

**and**

**DETERMINATION**

**under**

**SECTION 14**

**of the**

**STATUTORY AND OTHER OFFICES**

**REMUNERATION ACT, 1975**

**JUDGES, MAGISTRATES AND RELATED GROUP**

**11 June 2003**

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

### **Preamble**

On 12 December 2002 the Tribunal made its annual determination on judicial remuneration. That determination, pursuant to section 13 of the Act took effect on and from 1 October 2002.

The Tribunal intended that the determination would be interim while it undertook a review of matters affecting judicial remuneration.

The Crown Solicitor has advised the Tribunal that it is not able to make an interim annual determination and that the determination of 12 December 2002 had to be regarded as the annual determination as required under the Act. He further advised that an additional determination would require a special reference from the Premier under Section 14 of the Act. Consequently the Tribunal sought and obtained a Special Reference from the Premier. For reasons outlined in the Report the Tribunal considers that this determination will take effect on and from 1 July 2003 thus phasing in the increases.

### **Section 1:                   Background**

1.     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. Section 13 of the Act provides for the Tribunal to make annual determinations (to take effect on and from 1 October each year); section 14 of the Act provides for the Tribunal to make special determinations at the request of the Minister. Under this section the Tribunal may set the operative date of its determination.

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. The offices have been grouped together by the Tribunal for remuneration purposes only.
  
3. On 27 November 2002 the Commonwealth Remuneration Tribunal (CRT) made its determination on judicial remuneration following an extensive review. That review, which took over 12 months to complete, 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
  
4. 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. While it foreshadowed these increases the actual determination made by the Tribunal was for an increase of 7 percent effective on and from 1 July 2002. It is assumed that the prospective increases will be determined as part of the Commonwealth Tribunal's annual review process.
  
5. On 12 December 2002 this Tribunal made what it stated to be an 'interim' annual determination on the remuneration of judges pursuant to section 13 of the Act. The reasons were stated in the Report in the following terms:

*“The Federal Tribunal Report results from a major and extensive review. It has set down guiding principles, it has stated a number of conclusions on important issues such as the market, performance pay, superannuation surcharge, salary sacrifice, pension arrangements. It has also set down key elements to be considered in determining adequate remuneration to ensure the basic independence of the Judiciary. The conclusions of this review will have a significant impact on Judicial remuneration throughout Australia and will require close examination.*

*This Tribunal will examine carefully the Federal Report and particularly the reasons behind the size of the increases and their applicability to New South Wales. It will consult with inter-State Remuneration Tribunals. Therefore submissions will be sought from the New South Wales Judiciary and other affected parties in relation to these matters. Because of Law vacations these submissions will not be required until 25<sup>th</sup> February, 2003.*

*The Federal Tribunal determination has not yet been tabled in the Federal Parliament where it will be subject to disallowance by either House of Parliament. It does not become operative until after the disallowance days have expired and because of the sitting pattern of the Federal Parliament this could be in March 2003 at the earliest.”*

*Because of these factors the Tribunal will not be making its final annual determination on judges’ remuneration until it has conducted its review of judicial remuneration in NSW and until the Federal Determination becomes operational. Because of this delay the Tribunal has decided to make an interim determination of 5 per cent effective from 1<sup>st</sup> October 2002.”*

6. On 16 December 2002 the Tribunal wrote to the head of each Jurisdiction seeking comment on the key findings of the CRT’s Determination.
7. The Tribunal has consistently since 1991 paid close regard to the decisions of the CRT to ensure that the recruitment and retention of Supreme Court Judges is not inhibited by marked differences between the salaries and conditions of Federal and Supreme Court Judges. A brief history of the events that led to an Agreement across Australia of capping of the salary of Federal and Supreme Court Judges to no more than 85% of the salary of a High Court Judge is set out in Appendix 1.

## **Section 2                      Review of Submissions**

8.        Submissions were received from each of the Courts, the Industrial Relations Commission and the group of related office holders. The submissions addressed in varying degrees of detail the five issues influencing the CRT's conclusions and provided comment on issues specific to judicial remuneration in NSW. These were;

- Retain the 85% nexus.
- Retain the internal relativities
- Timing of future increases should match federal increase timing ie 1 July each year.
- No adjustment should be made to the relativities because of the recent High Court case exempting State judges from the superannuation surcharge.
- Review the car allowance.

9.        The major issues raised in submissions to the Tribunal are outlined hereunder.

### **NSW Supreme Court**

10.      In arguing for retention of the existing relativity with the Federal Court Judges, the submission from the Supreme Court Judges advised that the work of the NSW Supreme Court and the Federal Court covers many common areas (although the Supreme Court also deals with major crime or criminal appeal matters). It noted the changing role of the Supreme Court and the changes that the Court had introduced to meet these challenges. These changes include the reorganisation of the Court's resources and the introduction of case management techniques including the introduction of specialised Lists. Court Rules and time standards have also been introduced.

11.      The submission also provided details of the increasing complexity and workload of the judges in the various jurisdictions and in particular in the Appeal Court. It highlights the additional responsibilities placed on judges through the introduction of new legislation or amending legislation dealing with sentencing, the abolition of juries in most civil trials and the changes brought about in the area of personal injury matters and civil liability.

12. The submission also noted:
- the changes in community expectations and the Court actions to respond to its community obligations.
  - the additional amount provided for a motor vehicle had not altered since 2000.
  - the trend for judges to retire before the statutory retirement age and undertake other roles such as mediator arbiter, referee or Royal Commissioner. The opportunity for significantly higher remuneration is the reason for this trend.
  - 10 recently retired judges have gone on to undertake full time roles in such areas.
  - that unless the remuneration is kept at an appropriate level such retirements will continue with the consequence that the pool of experienced judges will diminish.
  - the timing of increases should match those of the Federal Judges ie 1 July rather than 1 October. The judges consider that the 3 month gap between 1 July and 1 October unfairly discounts the 85% nexus.
13. The Chief Judge of the Land and Environment Court and the Chief Judge of the Compensation Court supported the Submission of the Judges of the Supreme Court. The Chief Judge of the Compensation Court added that the additional amount should be reviewed because the provision of motor vehicles to Federal Court Judges provides a considerably higher benefit to them.

### **Industrial Relations Commission of NSW (IRC)**

14. The President of the Industrial Relations Commission provided a detailed submission and emphasised:
- that to ensure the recruitment and retention of appropriately qualified persons it was important that an appropriate level of remuneration is maintained.
  - Historically the Tribunal has maintained the salary relativity between Supreme Court Judges and Federal Court Judges and that it should continue.
  - The similarity of issues relevant to Superior Courts and compliance with work value principles.
  - Similar considerations apply to the Presidential Members of the IRC in respect to recruitment and retention as apply to the Federal judiciary.
  - The recent High Court decision regarding the Superannuation Surcharge should not have a bearing on the Tribunal's determination.
  - Support for an early review of the additional amount provided for the motor vehicle.
  - The effective date of determinations taking effect should be 1 July to coincide with the Federal Judiciary.

## District Court

15. The Chief Judge considers that the Federal Tribunal's key findings related to the changing nature of judicial work and the development of education programmes as well as improvements in productivity and efficiency.

The Chief Judge has emphasised:

- the devolution of responsibilities from the Supreme Court to the District Court particularly drug and sex offence cases.
- The impact on the workload of the Judges.
- The increase in the need to recruit appropriately qualified judges.
- There has been more significant change in the nature of judicial work in NSW than in the federal jurisdiction.
- The NSW District Court surpasses all other Courts in Australia in terms of productivity and efficiency improvement.
- Support for the submission of the Supreme Court Judges and Masters in respect to the maintenance of the salary relativity between Supreme Court Judges and Federal Court Judges.

## Local Court

16. The Chief Magistrate considers that the existing relativity between the State Supreme Court Judges and Federal Court Judges should be maintained and not be affected by the size of the increase determined for Federal Judges.

He has emphasised that:

- There be no alteration to the internal relativities other than on the basis of an appropriate work value investigation.
- There has been no significant change in the jurisdiction of the NSW Courts to warrant a change in existing relativities.
- Because of existing relativities, and the level of remuneration payable to Magistrates, the quality of candidates has improved by attracting applications from experienced members of the criminal and civil bar and Crown Prosecutors and Public Defenders.
- Maintaining appropriate levels of remuneration for the Magistracy would ensure continued attraction of experienced and qualified members of the Bar to the Local Court which ultimately will enhance the administration and application of justice in NSW.
- The changes in jurisdiction, the improvements in the performance of the Court and in particular the increasing number of matters being brought to finality in the Local Court.

- Concern that the Tribunal may be contemplating a lower level of increase for State Judges to compensate for the different superannuation surcharge treatment that now exists between State Judges and Federal Court Judges.
- The Magistracy is not exempt from the Surcharge either and this should be recognised if a lower increase is being contemplated to accommodate the surcharge disparity.
- The Chief Magistrate has noted that the recent High Court decision to exempt State Judges from the super surcharge has the effect of widening the disparity between the remuneration of Judges and the remuneration of Magistrates.

### **Crown Prosecutors**

The submission from the Crown Prosecutors has emphasised:

- The closeness of the relationship of Crown Prosecutors to the District Court.
- The remuneration should be sufficient to attract quality candidates to the ranks of Crown Prosecutors.
- Remuneration should remain at the present level of relativity to ensure continued high quality recruitment.
- If the level of any proposed increases is influenced by the recent High Court case in respect of the Superannuation Surcharge then the Tribunal should note that the Crowns have not been exempted from the Surcharge.
- The existing relativities between themselves and the Deputy Directors of Public Prosecutions should be retained.

### **Submissions from Other Office Holders**

17. Submissions from the Deputy Directors of Public Prosecutions, Commissioners, Land and Environment Court, Compensation Court and IRC all support retention of the existing relativities as the reasons for establishing them have not changed.

## **Section 3: Review of Salary Issues**

18. The Tribunal has considered the submissions carefully and concludes that in the main the findings of the CRT apply equally to the State judiciary. The Tribunal notes the increasing efficiencies within the judicial system in NSW and increased productivity that has been brought about by the introduction of newer case management techniques. Also that continuing changes demonstrate the determination of the NSW judiciary and the NSW Magistracy to make the judicial system more efficient and more accessible to the public.



### **Retention of the Nexus**

19. Notwithstanding the generous level of increase determined by the CRT, this Tribunal will retain the longstanding 85 percent nexus agreement between Governments whereby the remuneration of State Supreme Court Judges and Federal Court Judges should not exceed 85% of the remuneration of a Justice of the High Court.

### **Retention of Internal Relativities**

20. The Chief Judges of the District Court, the Chief Magistrate and the Commissioners of the various Courts have supported the current internal relativities. The Tribunal has been advised and its own investigations have revealed the District and Local Courts have had their jurisdictions expanded in recent years. These Courts also, have introduced procedures which have improved the efficiency of the respective jurisdictions.
21. The Deputy Directors of Public Prosecutions, the Crown Prosecutors and the Commissioners attached to the Courts have noted that the Tribunal had only recently introduced the new internal relativities for them and that nothing had changed that would warrant a change in the relativities.
22. The Supreme Court does not exercise its jurisdiction in isolation but forms part of the overall administration of justice in this State. The work of the lower courts and court officers contribute significantly to the efficiencies of the justice system. The relativities were established in part to recognise this arrangement. The CRT decision does not alter this view nor has the work of the courts below the Supreme Court changed.
23. On this basis, the internal relativities will be retained both on equity and work value grounds.

### **Operative Dates for Salary Adjustments**

24. The CRT has stated that future increases will take effect on and from 1 July each year. Determinations had normally taken effect from 1 October each year but the Act allows for the CRT to make annual determinations without reference to a fixed date, provided that they occur at intervals of not more than 12 months apart.
25. The NSW Act was recently amended to provide this Tribunal with greater flexibility on the timing of its Reports, however, the effective date of commencement of the Determinations remains fixed at 1 October each year as it does for Public Office Holders and the Senior Executive Service. The Tribunal considers that there is merit in having the one commencing date in NSW for both the Judicial Officers, Public Office Holders and the Senior Executive Service.
26. The Judges had requested that this determination be made retrospective to 1 October 2002. The Tribunal does not agree with their request but considers that the large increases should be phased in. By way of compensation, for this year only, the percentage increase foreshadowed (but not yet determined) by the CRT from 1 July 2003 will flow to State Judges from that date.
27. Thus from 1 July the \$13,400 p.a. additional sum will be incorporated into salary and a further 1.6% increase will be applied bringing State and Federal Judges to equivalent salaries. The further CRT economic adjustment to apply from 1 July 2003 will be considered when SOORT makes its annual determination from 1 October 2003.

### **High Court Decision Regarding the Superannuation Surcharge.**

28. Concern has been expressed that the Tribunal may use the recent High Court decision to exempt State Judges from the Superannuation Surcharge as a reason for reducing the quantum of increases determined for NSW office holders. These submissions noted that the exemption applies only to those in the Judges Pension Scheme and not other office holders eg Magistrates, Commissioners, Crown Prosecutors.

29. The Pension scheme for judges is basically uniform across Australia. The scheme is non contributory ie Judges are not required to contribute to the scheme. It is fully funded by Governments. A Judge, upon retirement, is provided with a pension of up to 60 percent of a serving Judge's salary. In addition this pension is increased annually by the same percentage increase granted to serving Judges.
30. Thus, the 17 percent plus economic adjustments determined by the CRT will be applied to the pension of retired Federal Court Judges and the percentage increases in this determination will be applied to the pensions of retired NSW Judges.
31. The recent High Court decision means that State Judges will no longer be required to pay the superannuation surcharge from their pensions. This decision affects State/Territory judges and is not applicable to Federal Judges.
32. The Tribunal will disregard the High Court decision. This is consistent with its policy of not taking taxation changes into account when making its determinations.

### **Acting Judges**

33. The current rate for Acting Judges was determined having regard to the then practise of appointing Barristers to these positions. This is no longer the case. Appointments are now made from the pool of retired judges who have retired either after 10 years service or some years below the statutory retiring age. These judges of course retain their full pension entitlements while serving as an acting judge.
34. In these circumstances the Tribunal has decided not to increase the current rates and to further examine this issue in its next annual determination.

## Section 4                      Review of Entitlements

35. During the review the Tribunal reached certain interim conclusions about the entitlements and particularly about financial assistance towards motor vehicle costs. Consequently it wrote to all parties that made earlier submissions in the following terms:-

*“The Tribunal wishes to acknowledge receipt of your submission of X date concerning Judicial remuneration in New South Wales following on from the decision of the Commonwealth Tribunal in December 2002.*

*The Commonwealth Tribunal’s determination granted significant percentage increases to Federal Judges and hence set a new standard for Judicial remuneration.*

*The various submissions received by this Tribunal have contained cogent reasons why those percentage increases should be adopted in New South Wales and this is now under serious consideration. The purpose of this letter is to alert you to a conclusion that the Tribunal has reached in relation to the provision of financial assistance for motor vehicles and to invite any further comment that you wish to make.*

*The current determination for Supreme Court Judges provides that an additional sum of \$13,400 is paid per annum as assistance towards motor vehicle costs. This sum, because it is paid as part of salary, is counted towards Judicial pension benefits. Judges will be aware that neither in the Commonwealth or in other States is financial assistance towards the cost of motor vehicles paid by way of salary and the Tribunal has concluded that this is no longer appropriate as New South Wales moves towards a new salary standard for Judges.*

*The Tribunal is therefore considering that, independent of a fixed salary, financial assistance towards motor vehicle costs may be provided by way of either an allowance and/or reimbursable expenses as provided in the Commonwealth determination.*

*The Tribunal would appreciate receiving any further comment from you or your colleagues in respect of this matter. Such comments should be received no later than 17 April 2003.*

*The Tribunal wishes to repeat its view that the remuneration of New South Wales Judges must be such so there continues to be no impediment in New South Wales to being able to appoint and retain in the future, high quality persons to Judicial positions.”*

36. The Tribunal received submissions from the Supreme Court, Compensation Court, the IRC and the Chief Magistrate. The Chief Judge of the Land and Environment Court expressed her support for the submission of the Judges of the Supreme Court.
37. The submissions from the Judges put forward the following matters:-  
The additional sum had been in place since 1990 and that it counted towards judicial pension.
- The Federal Court pension scheme was more generous to the widow or widower of a retired judge than the New South Wales scheme.
  - Removing the additional sum would reduce the benefit available to retired judges and widows or widowers.
  - The additional sum is not a true reflection of the actual costs of the benefits; the lower amount was accepted because it counted for pension purposes.
  - Removing or amending the additional sum would disadvantage judges and unravel a scheme that had worked well for thirteen years.
  - The additional amount is not only for motor vehicle costs but for benefits available for all Federal Court Judges. These benefits are of considerable monetary benefit and the Judges consider that the principle of equivalence requires that they should be compensated for all such benefits.
38. The President of the Industrial Relations Commission submitted that;
- if the allowance were removed from pensionable salary it would result in “...a significant ongoing loss for NSW judges.”
  - There be no change in the current arrangements or if there were to be change that the Tribunal consult the judiciary to determine exactly how much the new allowance should be after taking account of all the non financial benefits available to Federal Court Judges.
  - The removal of the allowance as part of salary would create an imbalance between NSW and Federal judicial salaries.
  - It would be contrary to public interest and could lead to a return to the leap frogging in salaries that plagued judicial salary fixing up to 1990.

39. The Chief Magistrate has advised that a Magistrate's salary is currently 72% of that of the gross Supreme Court Judge rate. Removing the \$13,400 will impact on the Magistrate's salary therefore there needs to be some equivalence with the \$13,400 in any final decision.
40. The Tribunal has reviewed the submissions and met with the authors of the submissions. The Tribunal has also had discussions with the Director General of the Attorney General's Department.
41. Given the nature of this review and in the context of a very significant percentage increase in salary the Tribunal considers it is time to stand back, review this \$13,400 payment afresh and examine the assumptions that led to the determination of the entitlement and whether those assumptions are applicable today.
42. The additional amount was introduced in 1990 to compensate for non financial benefits available to Federal Court Judges but not available to State Supreme Court Judges. The Tribunal has reviewed the historical overview provided by the Judges and has reviewed its own material as well. From its inception there has never been a definitive list of items that the additional amount was intended to cover. The Tribunal has previously given examples of the types of benefits not available to State Judges ie access to a car and driver or provision of a private plated self drive motor vehicle, first class travel for a judge's spouse when accompanying the judge on official travel and reimbursement of home telephone costs. Given the amount of material on file listing all the benefits available to judges in the Federal and State Jurisdictions there is little doubt that the Tribunal would have settled on the abovementioned three items as the ones worthy of compensation at that time.
43. Much has changed since 1990. The public sector has undergone enormous transformations in keeping up with these changes. The community has higher expectations of its public service and expects greater accountability and transparency than has hitherto been the case. Old practices are continually being scrutinised to ensure continued relevance. As the needs and aspirations of society change so Governments respond. New practices and procedures are introduced which reflect the needs and aspirations of the community which they serve. The judiciary is not immune from these requirements.

44. The Tribunal has examined closely all of the benefits or entitlements available to Federal and Supreme Court Judges. The most significant is the provision of a car and the conditions that apply. An allowance for a motor vehicle will be dealt with separately.
45. The other entitlements are not decisions of the Tribunal but by the Attorney General's Department. The Tribunal has no control over the various benefits to Judges.
46. The task for the Tribunal is to determine whether the differences between those applying to Federal and State Judges are such as to continue to merit a compensating allowance being paid to State Judges.
47. The Judges have submitted that there are significant differences particularly in relation to the provision of telephones, faxes and newspapers and have estimated the monetary value of these benefits to be as high as \$4,900pa. There are some benefits received by NSW Judges that do not apply to Federal Judges. For example in NSW Judges are provided with free public transport, an additional two weeks law vacation and \$50 per month stamp allowance.
48. At the most the differences, which have never been specified, are marginal and are outside the control of the Tribunal. Further, there is no uniformity across Federal and State jurisdiction. Each State has benefits specific to its jurisdiction.
49. In these circumstances the Tribunal considers that it is no longer justified or appropriate to pay a compensation sum for any such differences.

**Total Cost of Employment (TCE):**

50. The Commonwealth Tribunal reported that there was merit in adopting a TCE approach to judicial salaries whereby pension and all other entitlements could be amalgamated into a single package. The Judge would have the flexibility to decide the allocation of monies within the package between various entitlements.
51. The CRT decided that the pension arrangements and their application created an impediment to the TCE approach being applied. This Tribunal also would prefer a TCE but agrees with the CRT that it is not practical because of the pension scheme.

52. The Judges' Pension Scheme is not within the authority of this Tribunal. But with Judges being appointed at an early age and with many Judges retiring after the minimum qualifying period of ten years service the Tribunal considers that there would be merit in the Judges' Pension Scheme being reviewed.
53. In any such review consideration could be given to providing an option to new appointees to be paid under a total cost of employment scheme. Judges could remain within the current pension scheme if they so desire. Freedom of choice would prevail.
54. The Tribunal could assess the actuarial value of the pension and incorporate into a total cost of employment.

**Conveyance Arrangements:**

55. The Tribunal agrees that the one entitlement available to Federal Judges which is significantly different to the entitlements of Supreme Court Judges is that relating to transport arrangements.

The Commonwealth scheme entitles a Judge to either:

- A Commonwealth Car with driver service for travel to and from work;  
or
- a Commonwealth provided private plated vehicle in accordance with Commonwealth Executive Vehicle Scheme (EVS) guidelines; or
- reimbursement of private vehicle running costs incurred by the Judge up to \$8,000 p.a. plus petrol costs.

Under the EVS guidelines a salary sacrifice or annual payment of \$750 is paid by the Judge.



The NSW scheme entitles a Judge to:

- Free public transport.
  - Hire cars and taxis when travelling to suburban courts or on circuit.
  - \$400 p.a. for the use of hire cars or taxis.
  - An additional sum of \$13,400 p.a. which is substantially available for the use of a vehicle.
  - The acquisition of a car under the Judicial Car Scheme by way of salary sacrifice.
56. Unlike the Commonwealth Government the NSW Government no longer provides motor vehicles to senior public officials for whom vehicles are available only on a salary sacrifice basis.
57. The Tribunal acknowledges that the additional sum of \$13,400 to Supreme Court Judges is paid by way of salary and hence counts towards the calculation of pension under the Judges Pension Scheme. This is not the case for Commonwealth Judges or for Judges in any Australian State. Since the compensatory sum in this determination is solely to assist towards transport costs it is no longer appropriate that the compensation be by way of salary but instead by way of an allowance.
58. Further, it is not appropriate that retired judges be compensated in their pension indexation arrangements for transport costs incurred by serving Judges.
59. Presently, less than half the number of Supreme Court Judges take advantage of the salary sacrifice scheme administered by the Attorney-General's Department. The remaining Judges may use the additional sum to make private car arrangements but the choice is their own as to how the additional sum is used.
60. The issue for the Tribunal is how to ensure equity between those Judges who acquire a vehicle under salary sacrifice, those who make private arrangements and for several who do not use a vehicle.
61. Having regard to the provisions abovementioned for transport for Supreme Court Judges the Tribunal has decided that an allowance of \$18,000 p.a. should be available to all Supreme Court Judges.

62. For District Court Judges an allowance of \$15,000 p.a. shall apply. Magistrates and other Office Holders shall be entitled to an allowance of \$13,000 p.a. This allowance will not count for pension or superannuation purposes.

## **Section 5:            Contravention of the Constitution**

63. The Judges from the Supreme Court and the Industrial Relations Commission have raised the issue of possible contravention of the Constitution. At the outset let it be absolutely clear that this determination does not contravene the Constitution or the Act. The Supreme Court submission reminds the Tribunal that:

*“Section 72(iii) of the Commonwealth Constitution provides that Justices of the High Court and of other Courts created by the Parliament shall receive such remuneration as the Parliament may fix, but the remuneration shall not be diminished during their continuance in office.”*

It further states that:

*“...the constitutional principle is recognised in New South Wales in specific legislation. Section 21(1) of the Statutory and Other Offices Remuneration Act 1975 provides that, notwithstanding any other section of the Act, a determination does not operate so as to reduce the rate at which remuneration is payable to the holder of an office specified in Schedule 1.*

*To remove the additional sum from the salary of Judicial officers without making the same amount available to all Judges and Masters by way of allowance regardless of whether or not they acquire motor vehicles, is to act contrary to the fundamental principle that Judicial salaries are not to be reduced and contrary to s 21(1) of the Statutory and Other Offices Remuneration Act 1975.”*

64. The submission from the Industrial Relations Commission of NSW states:

*“...that a decision by the Tribunal changing the character of the allowance so that it no longer constituted part of salary would be in contravention – if not the letter then certainly the spirit – of s 21 of the Statutory and Other Offices Remuneration Act 1975. That section provides:*

*(1) Notwithstanding any other section of this Act, a determination does not operate so as to reduce the rate at which remuneration is payable to the holder of an office specified in Schedule 1.”*

65. The actual remuneration specified in the determination demonstrates that there will be no reduction in remuneration for Supreme Court Judges.
66. On the contrary, from 1 July a Supreme Court Judge will move from remuneration of \$231,880 + \$13,400 p.a., that is, \$245,280 p.a., to \$249,000 + \$18,000 p.a. allowance.
67. The President of the Industrial Relations Commission asserts that,
- “...If the NSW Tribunal is persuaded, therefore, to follow the Commonwealth Tribunal in terms of salary increases but, nevertheless, changes the character of the allowance so that it is no longer to be regarded as salary for the purpose of calculating pensions, the result would be that New South Wales judges would suffer a significant reduction in their current benefits.”*
68. This assertion is false. From 1 October 2002 the pension increase was 5%. On 1 July 2003 there will be a further increase of 1.6% and on 1 October 2003 there will be a further economic adjustment.

## **Section 6            Conclusions**

69. The Commonwealth Remuneration Tribunal on 27<sup>th</sup> November 2002 determined an increase of 7% effective on and from 1 July 2002. It foreshadowed a further 5% increase plus an economic adjustment to operate from 1 July 2003. The disallowance period of the Commonwealth has now expired and the determination can be implemented.
70. This Tribunal on 12 December 2002 determined a 5 percent increase from 1 October 2002 in the remuneration of NSW Supreme Court Judges and consequential increases to other office holders in the Judges Magistrates and Related Group.

71. The Tribunal has decided that the 85% nexus with the High Court Judge should be phased in with the percentage increases operative from 1 July 2003 and a further economic adjustment from 1 October 2003. The \$13,400 additional sum will be incorporated into salary proper plus a further increase of 1.6% from 1 July 2003. The 2003 annual determination will be made before 31 August and it is proposed to pass on an economic adjustment at that time. Thus by 1 October 2003 the full effects of the CRT decisions for 2002 and 2003 will be phased in.
72. The determination has been made operative prior to that of the Federal Judges so as to provide some compensation to NSW Judges for the phasing in. After 2003, the annual determinations will operate from 1 October, the first being 1 October 2004.
73. 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, as set out in the attached Determination on and from 1 July 2003.
74. The rates for Acting Judges of the Supreme Court and the District Court shall also be as set out in the attached Determination on and from 1 July 2003.
75. The Tribunal has also decided that there will be no monetary compensation for benefits and/or entitlement differences between Federal and State Judges because on close examination the differences are marginal and some benefits that apply to one group do not apply to the other and vice versa.
76. The one benefit where there is a significant difference is in the assistance towards motor vehicle and conveyance arrangements.
77. This determination will provide for an allowance which will minimise the differences in conveyance arrangements between Federal and State jurisdictions and at the same time make it more transparent.

78. An allowance of \$18,000 p.a. has been determined for the Supreme Court Judges; \$15,000 p.a. for District Court Judges and \$13,000 p.a. for Magistrates and other Office Holders specified in this determination.

**Statutory and Other Offices  
Remuneration Tribunal**

**Gerry Gleeson**  
Dated: 11 June 2003

## ANNEXURE A

**DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES  
AND RELATED GROUP ON AND FROM 1 JULY 2003**

<b><u>JUDGES</u></b>	<b>Salary \$ per annum</b>
Chief Justice of the Supreme Court	278,630
President of the Court of Appeal	260,900
President of the Industrial Relations Commission	260,900
Judge of the Supreme Court	249,000
Vice-President of the Industrial Relations Commission	249,000
Deputy President of the Industrial Relations Commission	249,000
Judge of the District Court	224,100
Master or acting Master (under the Supreme Court Act 1970)	224,100

## ANNEXURE B

**DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES  
AND RELATED GROUP ON AND FROM 1 JULY 2003**

<b><u>MAGISTRATES</u></b>	<b>Salary \$ per annum</b>
Chief Magistrate	224,100
Deputy Chief Magistrate	189,365
Chairperson of Licensing Court	189,365
State Coroner	189,365
Senior Children's Magistrate	189,365
Chief Industrial Magistrate	182,415
Deputy Chairperson, Licensing Court	182,415
Magistrate	179,280
Chairperson Victims Compensation Tribunal (NOTE 1)	179,280
Children's Magistrate	179,280
Licensing Magistrate	179,280
Deputy State Coroner	179,280

**NOTE 1.** When a more senior Magistrate is appointed to the office then he or she shall retain his or her present salary level.

## ANNEXURE C

**DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES  
AND RELATED GROUP ON AND FROM 1 JULY 2003**

<b>RELATED GROUP</b>	<b>Salary \$ per annum</b>
Chairperson, Law Reform Commission	249,000
Solicitor-General	249,000
Director of Public Prosecutions	249,000
Crown Advocate	224,100
Deputy Director of Public Prosecutions	224,100
Senior Crown Prosecutor	201,690
Senior Public Defender	201,690
Deputy Senior Crown Prosecutor	181,520
Deputy Senior Public Defender	181,520
Crown Prosecutor	165,835
Public Defender	165,835
Senior Commissioner Land and Environment Court	169,320
Commissioner Land and Environment Court	164,340
Commissioner Compensation Court	169,320
Commissioner Industrial Relations Commission	164,340



**ANNEXURE D****ACTING JUDGES**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 \$1,230 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 \$1,107 per day

**CONVEYANCE ALLOWANCE**

Full time Office Holders receiving salary equivalent to a Supreme Court Judge or higher shall be entitled to a Conveyance Allowance of \$18,000 pa.

Full time Office Holders receiving salary equivalent to a District Court Judge shall be entitled to a Conveyance Allowance of \$15,000 pa.

Full time Office Holders receiving salary below that of a District Court Judge shall be entitled to a Conveyance Allowance of \$13,000 pa.

The Conveyance Allowance determined here shall not count towards Judges pension or for superannuation purposes.

## ANNEXURE E

**DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES  
AND RELATED GROUP ON AND FROM 1 JULY 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 Annexure B of this Determination  
Office Holders listed in Annexure C 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: 11 June 2003

## APPENDIX 1

## HISTORY OF THE NEXUS

In its review of judicial remuneration in 1976 the Commonwealth Remuneration Tribunal (CRT) articulated its reasons for setting the remuneration of the Judges of the High Court above all other jurisdictions. It stated that:

*“...this [High] Court is the pre eminent Court in Australia, and the only Court set up by the Constitution. It decides questions as to the relative constitutional powers of the Commonwealth and of the other States as between themselves. The High Court is empowered, by the Constitution, to hear appeals from the courts of the States, and such appeals, now final in all matters, range over the whole spectrum of the law, civil and criminal. Decisions made by the Court in the exercise of its jurisdiction bind all state Courts, so that the High Court performs the function of bringing uniformity to the common law throughout Australia and uniformity in statutory construction.*

*We are of the opinion that the salaries and allowances of members of the High Court should have a reasonable margin above those paid to Federal and State puisne judges.”*

The CRT concluded its review by stating the following:

*“...we believe that by any standard it is appropriate that the Chief Justice of the High Court should be remunerated at a rate higher than the holder of any other judicial office in Australia; ...”*

The *Federal Court of Australia Act 1976* established the Federal Court which began exercising its jurisdiction on 1 February 1977. From the time of its establishment until 1990 the remuneration level of remuneration for the NSW Supreme Court Judge was higher than that of a Federal Court Judge.

On 18 November 1988 the CRT made recommendations for significant increases in the remuneration of Federal Judges (>70 percent).

In response to these recommendations, the Federal Minister for Industrial Relations, the Hon Peter Morris MP wrote to the Chairman of the CRT, the Hon Mr Justice Mahoney, on 5 May 1989 in the following terms;

*“While the Government accepts that adjustments to the level of judicial remuneration should be made, it is mindful of the restraint that has been exercised by the rest of the community and is unable to accept the level of increases recommended in the current economic climate. It considers however that an inequity in the remuneration exists between the remuneration of Federal and State Court Judges and that the former should at least be equated with the highest paid Supreme Court Judge*

*Noting that the Tribunal has met its statutory obligation the Government has decided to ask the individual Members of the Tribunal for a special report on judicial remuneration within the context and timing constraints of the current principles of wage fixation. In particular the Government wishes the members to consider as soon as possible, for report in June:*

- (a) the Government's view that there is an inequity in the remuneration in terms of the inequities clause of the National Wage Case Principles between Federal and State Court Judges noting that the total rate for a Queensland Supreme Court Judge is \$120,150;*
- (b) adjustments of 3% and \$10 as provided for in the National Wage decision of August 1988;*
- (c) absorption of expense of office allowance into the salary;*
- (d) the date of effect of an increases noting that the Tribunal's earlier recommendations were to take effect from 1 March."*

In June 1989 the Members of the Tribunal found that an inequity did exist and having regard to the level of salary received by the Qld Supreme Court Judge recommended increases of approx. 20 percent (inclusive of the previous NWC decisions, ie. 3% + \$10pw.). The Tribunal expressed the view that;

*"...the Government should not accept that the principle on which the remuneration of the Federal Court of Australia or of any Federal court should be fixed is that it should be, or be at least, that of the highest State Supreme Court. Such a principle is wrong and would lead to difficulty."*

In July 1989 the Federal Government approved the above increases.

On 6 August 1990 the Federal Minister for Industrial Relations, the Hon Peter Morris MP requested that the Fed Tribunal convene a meeting of State/Territory Tribunals to discuss the issue of judicial remuneration leap-frogging.

Federal, State and territory, Tribunals met in August 1990 to informally discuss these matters. The meeting resolved that:

Salary of a judge of a Supreme Court should not exceed 85% of the salary of a Justice of the High Court provided that;

- The salary of the Justice of the High Court was at an acceptable level.
- The difference in benefits between state judges and federal judges could be compensated for in fixing the salary rates of judges.

The meeting also noted that the perception of leap-frogging had arisen primarily because of the timing of determinations by the Federal and State Tribunals. To overcome this problem the Tribunals should;

- Confer on an informal basis before making any decisions on judicial remuneration.
- Tribunals should review judicial remuneration around the same time each year (October or November).

A Special Heads of Government meeting was held on 30-31 October 1990 in Brisbane. The Communiqué on this issue stated.

*“Heads of Government also agreed to pursue arrangements for the co-ordination of future increases in judicial remuneration. They emphasised that these arrangements would be aimed at setting maximum remuneration, with the clear understanding that remuneration levels within these maxima could vary significantly between States.”*

A formal meeting of Tribunals took place in Feb 1991. At that meeting the decisions of the earlier meeting were ratified. The first meeting of Tribunals to informally discuss judicial remuneration took place in July 1991.

The Tribunal's 1991 determination had regard to the new arrangements. Since then the Tribunal has maintained the nexus and participated in the annual meetings of the Remuneration Tribunals.