

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

JUDGES, MAGISTRATES AND RELATED GROUP

28 September 2007

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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 offices as are listed in the Schedules of the Act and, in addition are defined as judicial offices (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 agreement between Federal and State Governments, reached in 1989, 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 Agreement provides 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, remains acceptable only if and whilst the remuneration of a Justice of the High Court of Australia remains at an appropriate level, and the Remuneration Tribunal 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. The Commonwealth Remuneration Tribunal has determined an increase in salary of 4.2 percent for federal Judges and Magistrates effective from 1 July 2007.

Section 2: 2007 Review

6. The Government has submitted that the longstanding nexus between State and Federal judicial remuneration be maintained.
7. The Tribunal has received a number of submissions for the current review from Judges Magistrates and other office holders in this group seeking maintenance of the 85 percent relativity with Federal Court Judges and also internal relativities.

Specific Issues Raised

8. The Judges of the Supreme Court have requested that the effective date for the Tribunal's annual determination be changed to 1 July to coincide with that of the Federal Court.
9. The Chief Magistrate has requested that responsibility for setting Acting Magistrate rates be referred to the Tribunal. Acting Magistrate daily fees are currently set by the Attorney General.
10. The Tribunal has received submissions seeking an adjustment to the internal relativities of some office holders in this Group.
11. A number of submissions sought an increase to the Conveyance Allowance, including those from the Supreme Court Judges, the Industrial Relations Commission, Crown Prosecutors, and the Chief Judge of the District Court.
12. Included with the Government submission were matters raised by the Attorney General's Department. These include a request to review the daily rate paid to Acting Judges to ensure that it is no more than the daily equivalent of a full time Judge and a request for the Tribunal to provide further clarification of the intent of the travel and conveyance allowances

Effective Date of Determinations

13. The submission on behalf of the Supreme Court has again raised the matter of the effective commencing date of the Tribunal's determination. As has been noted previously, this is not a matter for the Tribunal. The Act provides that the effective date of the Tribunal's annual determinations is 1 October each year. As outlined in previous Tribunal Reports, any alteration to the commencing date would require an amendment to the Act. This is a matter for the Parliament and not for the Tribunal. Unless and until the legislation is changed the Tribunal's annual determinations will continue to take effect on and from 1 October each year.

Acting Magistrates

14. The daily rates for Acting Magistrates are currently determined by the Attorney General. This rate was last increased in 2004 and is the pro rata daily equivalent of the Magistrates full time salary for 2004.
15. The Chief Magistrate has requested that the Attorney General review these rates and refer the responsibility for setting Acting Magistrate rates to the Tribunal. The Tribunal requested but did not receive a submission from the Attorney General in respect of the Judges, Magistrates and Related group.

Salary Relativities

16. The current relativities between office holders in the Judges, Magistrates and Related Group were established in 2002 following an extensive review of specific office holders who work directly within the judicial system. This review included Commissioners of the Industrial Relations Commission, Commissioners of the Land and Environment Court, Crown Prosecutors, Public Defenders and the Deputy Director of Public Prosecutions.

17. Following that review the Tribunal determined that the remuneration for these office holders should be set in relation to judicial remuneration levels. For remuneration purposes these office holders were removed from the Public Office Holders Group and listed within the Judges, Magistrates and Related Group. The salaries of these office holders are linked to those paid to a Judge of the Supreme Court.
18. While a number of submissions have sought to retain the existing relativities between office holders within this group, the Tribunal has received a submission seeking to alter the existing relativities for some office holders in this group.
19. The Tribunal notes that the 85 percent relativity of Supreme Court judges with Judges of the High Court has been in place since 1990 and that internal relativities were last reviewed in 2002. The Tribunal considers that it is time to undertake a review of the internal relativities for this Group to assess their continued relevance and applicability. The Tribunal will, therefore, as part of the 2008 annual review be seeking detailed submissions from all affected office holders in this Group on this matter.

Conveyance Allowance

20. As noted above the Tribunal has received a number of submissions seeking to increase the Conveyance Allowance.
21. The Tribunal undertook a comprehensive review of the Conveyance Allowance during the last annual review. As a result of that review the Tribunal found that an increase in the conveyance allowance was warranted and increased the rates to \$22,000, \$19,800 and \$15,840 per annum.
22. In determining the quantum of this allowance the Tribunal used the average of a range of costs associated with a range of vehicles. The range of vehicles reflected the vehicles which at the time were leased by NSW Judges and Magistrates. Costs associated with leasing motor vehicles were based on the method used in the NSW public sector to determine the annual costs to an officer who salary sacrifices to lease a motor vehicle.

23. Using the same methodology used in previous years the Tribunal has reviewed the allowance. The review finds that there has been no substantial change in the cost of leasing the sample motor vehicles since 2006. On this basis, no further increase in the Conveyance Allowance is warranted.
24. As to the intent and purpose of the Conveyance Allowance the Tribunal has in previous reports sufficiently clarified the intent and purpose of this entitlement and does not restate it here.

Acting Judges

25. The Tribunal determines a daily sitting rate for Acting Judges. The rate for the Acting Supreme Court Judges reflects the daily equivalent of their full time counterparts. Acting District Court Judges receive 90% of the Acting Supreme Court Judges daily rate.
26. The Attorney General's Department has noted that retired judges who have subsequent to their retirement become Acting Judges, and who are in receipt of a judicial pension, continue to receive that pension in addition to the daily rate for Acting Judges determined by the Tribunal. This according to the submission creates a distortion where a retired judge in receipt of judicial pension and the daily rate receives a higher combined level of daily remuneration than his or her full time equivalent judge.
27. The Tribunal's role is to determine remuneration for office holders. The daily rate of remuneration for Acting Judges has had regard to the annual equivalent. Judicial pensions are paid in accordance with the Judges Pension Act 1953. The Tribunal does not consider it appropriate to make a determination in a way that nullifies the provisions of legislation. Nor is it a matter for consideration by the Tribunal whether or not a retired judge appointed as an Acting Judge should concurrently receive a judicial pension. These are matters for consideration by Parliament and at the time of appointment of Acting Judges.

Section 3 Conclusion

28. In previous determinations the Tribunal has, after conducting its own reviews, maintained the 85 per cent nexus by determining increases in the remuneration of State Judges similar to the increases provided by the Commonwealth Tribunal for Federal Judges. The NSW Government has recommended that the nexus be retained for the 2007 determination. The Tribunal's own review of judicial remuneration supports the NSW Government's recommendation.
29. In making its determination the Tribunal has had regard to economic indicators, increases in remuneration for other groups in the State Public Sector and increases in judicial remuneration in other jurisdictions, particularly in the Commonwealth jurisdiction. The Tribunal has also had regard to the efficiencies in the NSW Court system which remains the largest in Australia.
30. The Tribunal has also adjusted the Acting Judges rates and the Acting Deputy Presidents of the Workers Compensation Commission rates to reflect the daily equivalent of their full time counterparts.
31. The Tribunal, after considering the views of the Assessors, and having regard to increases determined for Federal Judges, the State's economic and budgetary outlook, key national economic indicators and increases flowing generally to public sector groups considers that an increase of 4.2 percent would be appropriate and so determines.
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 2007 shall be as set out in Determinations Nos 1-6.
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 7.

34. For the 2008 Review the Tribunal will undertake a fundamental review of the internal relativities within this Group to consider whether or not they are still appropriate. All office holders in this Group will be asked to provide detailed submissions. The Directors General of the Attorney General's Department and the Department of Premier of Cabinet will also be requested to provide submissions to this review.

**The Statutory and Other Offices
Remuneration Tribunal**

Helen Wright

Dated: 28 September 2007

DETERMINATION No 1

REMUNERATION OF JUDGES – effective from 1 October 2007

	Salary \$ per annum
Chief Justice of the Supreme Court	357,950
President of the Court of Appeal	335,170
President of the Industrial Relations Commission	335,170
President, Workers Compensation Commission	319,880
Judge of the Supreme Court	319,880
Vice-President of the Industrial Relations Commission	319,880
Deputy President of the Industrial Relations Commission	319,880
Judge of the District Court	287,900
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	287,900

DETERMINATION No 2**REMUNERATION OF MAGISTRATES – effective from 1 October 2007**

	Salary \$ per annum
Chief Magistrate	287,900
Deputy Chief Magistrate	243,270
Chairperson of Licensing Court	243,270
State Coroner	243,270
Senior Children's Magistrate	243,270
Chief Industrial Magistrate	234,350
Deputy Chairperson, Licensing Court	234,350
Magistrate	230,320
Chairperson Victims Compensation Tribunal (NOTE 2)	230,320
Children's Magistrate	230,320
Licensing Magistrate	230,320
Deputy State Coroner	230,320

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 2007

	Salary \$ per annum
Chairperson, Law Reform Commission	319,880
Solicitor-General	319,880
Director of Public Prosecutions	319,880
Crown Advocate	287,900
Deputy Director of Public Prosecutions	287,900
Senior Crown Prosecutor	259,110
Senior Public Defender	259,110
Deputy Senior Crown Prosecutor	233,200
Deputy Senior Public Defender	233,200
Solicitor for Public Prosecutions	233,200
Deputy Presidents, Workers Compensation Commission	233,200
Crown Prosecutor	213,040
Public Defender	213,040
Senior Commissioner Land and Environment Court	223,920
Commissioner Land and Environment Court	211,120
Commissioner Industrial Relations Commission	211,120

DETERMINATION No 4**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	\$1,386 per day
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District Court

The following rate shall be paid for each ordinary court working day on which the Acting Judge is occupied in the performance of judicial duties as designated by the Chief Judge in the District Court.

Acting Judge of the District Court	\$1,247 per day
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Workers Compensation Commission

Acting Deputy President of the Workers Compensation Commission	\$968 per day
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DETERMINATION No 5**CONVEYANCE ALLOWANCE**

Full time Office Holders receiving salary equivalent to a Supreme Court Judge or higher shall be entitled to a Conveyance Allowance of \$22,000 pa.

Full time Office Holders receiving salary equivalent to a District Court Judge shall be entitled to a Conveyance Allowance of \$19,800 pa.

Full time Office Holders receiving salary below that of a District Court Judge shall be entitled to a Conveyance Allowance of \$15,840 pa.

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

DETERMINATION No 6**ANNUAL LEAVE LOADING OF JUDGES, MAGISTRATES AND RELATED GROUP ON – effective from 1 October 2007****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****Helen Wright**

Dated: 28 September 2007

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. 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 2007/21 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 include accommodation, meals and incidental expenses.
 - b. Allowances are provided to ensure that an officer is not financially disadvantaged as a result of having to travel on official business.

- c. Office holders are not expected to gain or lose financially as a result of travelling on official business.
 - 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 2007/21.
9. Non metropolitan accommodation rates and meal rates have also been adjusted as set out in the Determination.
10. After reviewing the survey of intra state accommodation and meal costs, the Tribunal makes the following determination (Determination No 7) effective on and from 1 October 2007.

**Statutory and Other Offices
Remuneration Tribunal**

Helen Wright

Dated: 28 September 2007

DETERMINATION No 7**TRAVEL ALLOWANCES FOR JUDGES AND MAGISTRATES- effective from 1 October 2007**

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 2007.

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

Adelaide, Canberra, Darwin, Hobart	\$334.45
Brisbane, Perth	\$355.45
Melbourne, Sydney	\$402.35
Newcastle and Wollongong	\$288.35

Other areas

Judges	\$247.10
Magistrates	\$210.20

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	\$20.20
Lunch	\$22.65
Dinner	\$38.95

**Statutory and Other Offices
Remuneration Tribunal**

Helen Wright

Dated: 28 September 2007