

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES  
REMUNERATION ACT, 1975

JUDGES, MAGISTRATES AND RELATED GROUP

2 November 2009

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

Ms Helen Wright's term of office expired on 30 June 2009. Effective from 1 July 2009 the Governor, pursuant to section 6(2) of the Statutory and Other Offices Remuneration Act 1975 (the Act), appointed Mr Christopher Raper as the new Tribunal for a term of three years.

The Governor, pursuant to section 7(1)(b) of the Act also appointed a new Assessor to the Tribunal. Ms Jade Novakovic has been appointed as the independent Assessor for a term of 3 years with effect from 1 July 2009. Ms Novakovic replaces Ms Anne Rein who served as Assessor to the Tribunal since 29 June 2005. Section 7(1) (a) of the Act provides that the Director General of the Department of Premier and Cabinet is the other Assessor appointed to assist the Tribunal. Section 7(4) of the Act provides that the Director General may appoint a deputy to act as Assessor. The Director General has advised that Ms Carolyn Walsh is the Director General's deputy in the role as Assessor to the Tribunal.

### **Section 1: Background**

1. The Judges Magistrates and Related Group comprise 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) and offices which the Government considers should belong to that Group. The Group also contains a number of other offices that are involved in the judicial system.
2. Section 13 of the Act, requires the Statutory and Other Offices Remuneration Tribunal (the Tribunal), each year, to make a determination on the remuneration to be paid to office holders on and from 1 October in that year. "Remuneration" is defined as salary or allowances paid in money.

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. The Tribunal has consistently held that this relativity 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 per cent of the remuneration of a Justice of the High Court. The Tribunal's determination of 2008 provided a general increase of 4.3 per cent for NSW Supreme Court Judges and related office holders with effect from 1 October 2008.

## **Section 2: Submissions Received**

As part of the current review the Tribunal received 11 submissions.

5. In making this determination the Tribunal has had regard to submissions received from office holders, the Government and the Department of Justice and Attorney General and the recent determination and Statements issued by the Commonwealth Remuneration Tribunal.
6. The Tribunal, as indicated in its 2008 Report, has also considered specific matters raised by particular office holders, including the relativities between the Local Court and the District Court. As part of the

current review the Tribunal requested that the Chief Magistrate provide details of the changes to the jurisdictions of the District Court and the Local Court, including any devolution of responsibilities from the District Court, over the previous 5 years.

7. Because the Commonwealth Tribunal delayed making its determination for Judges and Magistrates (see below), a number of the submissions, including those received from and on behalf of the Supreme Court, the District Court, the Local Court, the Industrial Relations Commission, and the Land and Environment Court requested that the Tribunal not adjust judicial remuneration until such time as the Commonwealth Tribunal made its determination on judicial salaries. This would allow the Tribunal to have regard to the Commonwealth Tribunal's decision when making its 2009 Determination.
8. The Tribunal also received submissions from the Crown Prosecutors, Public Defenders, Commissioners of the Land and Environment Court, Deputy Presidents of the Workers Compensation Commission and the Magistrates outlining changes in their respective jurisdictions and/or seeking an increase in remuneration.

### **Crown Prosecutors and Public Defenders**

9. The Crown Prosecutors have submitted that an increase in their remuneration and the conveyance allowance is warranted and have provided the Tribunal with a detailed submission outlining their roles and responsibilities and the changes that have occurred since the Tribunal last considered the relativities between the Local Court and District Court in 2002. The submission also notes that due to the present economic conditions it is not appropriate to seek an adjustment in the relativities at this time. The Crown Prosecutors will reconsider their position and are likely to seek further consideration of their claim during the 2010 review.

10. The Public Defenders have advised that they are at present satisfied with the existing salary parity with Crown Prosecutors and support the existing relativities with Judicial Office Holders.

### **Commissioners, Land and Environment Court**

11. The submission from the Senior Commissioner seeks to retain the existing relativities between officers of the Land and Environment Court. However, the Commissioners will make a more detailed submission in 2010 outlining additional responsibilities associated with changes in the jurisdiction of the Land and Environment Court.

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

12. The Deputy Presidents have again submitted that the current salary relativity with the Deputy Senior Crown Prosecutor and the Deputy Senior Public Defender is inappropriate. It is suggested by the Deputy Presidents that the roles of Crown Prosecutors and Public Defenders do not carry the responsibility of decision making particularly at appellate level. Because the role of the Deputy Presidents is to hear appeals arising from decisions made by the Arbitrators of the Workers Compensation Commission, they submit that their remuneration should be equivalent to that of a District Court Judge or a comparable relativity differential between their salaries and those of the President.

### **Magistrates**

13. The Chief Magistrate has provided a detailed submission outlining the changes that have occurred in the jurisdiction of the Local Court in the last 5 years. In particular:

- An increase in jurisdiction associated with the 2004 amendment to section 58 of the *Crimes (Sentencing Procedure) Act 1999* which

increased the length of consecutive sentences that could be imposed by a Local Court from three to five years.

- An increase in the number of “Table offences” which are dealt with by the Local Court. In accordance with the *Criminal Procedure Act 1986* the defendant can elect to have certain matters heard in either the local or district court. Since 2003, 72 offences have been added to the *Criminal Procedure Act*, many of which are new, which has added to the jurisdiction of the local court.
- As of 1 January 2004, the Local Court’s civil jurisdiction limit increased from \$40,000 to \$60,000 (or \$72,000 by consent).

### **Government Submission**

14. The Government continues to support retention of the 85 per cent nexus between State and Federal judicial remuneration. In making this submission, the Government has advised that the retention of the nexus may only be appropriate as long as the Commonwealth Remuneration Tribunal does not propose large increases in federal judicial remuneration. The Government submission also recommends that the current internal relativities be retained.

### **Commonwealth Remuneration Tribunal**

15. The Commonwealth Tribunal ordinarily makes its Determinations on judicial remuneration in July each year. In its Statement of 19 May 2009, the Tribunal indicated that it would be delaying its determination for 2009 until after 30 September 2009. The reasons for this delay were to allow the Tribunal time to assess the state of the Australian economy arising from the Global Financial Crisis and to allow the Tribunal sufficient time to complete its review of changes to the jurisdictions of the Federal, Family and Magistrates Courts.

16. On 24 September 2009, the Federal Tribunal advised that it had determined an increase of 3 per cent, effective on and from 1 October 2009 for office holders within its jurisdiction, including Judges and Magistrates. The Tribunal also indicated that it had nearly completed its review of the Federal Courts.
17. On 13 October, the Tribunal issued a Report foreshadowing a work value increase of 6 per cent for Judges and Magistrates. The Tribunal noted that the present economic circumstances prevented the payment of the full increase at this time but that it was the Tribunal's intention to pass on 4 increases of 1.5 per cent the first taking effect on 1 November 2009 and the last being passed on by 1 May 2011.
18. The Tribunal also commented on the impact of this decision on State/Territory Tribunals in the following terms.

*"...The Tribunal is aware that the remuneration of judicial offices in the states and territories is based on remuneration in the federal court system. In making its decision, the Tribunal has taken into consideration factors pertaining specifically to judicial offices in the federal sphere. Accordingly the Tribunal is of the view that any adjustment to the remuneration of judicial offices in the states and territories would need to be based on specific issues particular to each jurisdiction."*

19. The Tribunal also commented on the impact of its decision on non judicial office holders:

*"...The Tribunal also notes that adjustments to federal judicial remuneration have no bearing on the remuneration of the non-judicial offices in the federal system. The Tribunal anticipates that its policy in this regard will be taken into account by the relevant state and territory determining authorities."*

### **Section 3: 2009 Review**

20. The submissions received from the Crown Prosecutors and the Commissioners of the Land and Environment Court seek no change in the relativities of remuneration paid to these office holders at the present time. They have indicated however, that more detailed submissions will be provided for consideration during the 2010 review process. The Tribunal will have regard to submissions made at that time.

21. In respect of the Deputy Presidents of the Workers Compensation Commission the Tribunal is aware that there has been a longstanding claim from these office holders for salary equivalence with District Court Judges. The Tribunal has considered the matters raised in the Deputy Presidents' submission and reviewed previous submissions and the findings of the Tribunal. On the basis of the information provided the Tribunal can find no reason to alter the existing arrangements.
22. As foreshadowed in the 2008 review the Tribunal has also undertaken a review of the responsibilities of the Magistrates having regard to any changes in the jurisdictions of the District Court and the Local Courts.
23. The Tribunal has been informed that there is evidence of some change in the proportion of certain offences being disposed of in the Local Court relative to the District Court in the 5 year period 2004 to 2008. At the same time the Tribunal has examined material provided by the Department of Justice and Attorney General that has been compiled from the Commonwealth Government's Reports on Government Services showing civil and criminal lodgements in the Local Courts and District Court in NSW for the same period. The submission from the Department of Justice and Attorney General shows that there has been no significant case load change either within each jurisdiction or between them. The submission has also advised that there has not been a significant devolution of jurisdiction from the District Court to the Local Court.
24. The Tribunal has reviewed all the material carefully and considers that there is not sufficient justification to warrant an adjustment to the existing relativities of the Magistrates.

### **Conveyance Allowance**

25. The Tribunal has undertaken a review of the conveyance allowance. In determining the quantum of this allowance the Tribunal applies the

average of leasing, on road and running costs for a range of vehicles which may be leased by NSW Judges and Magistrates. These costs are not arbitrary but are based on NSW public sector leasing methodology. While the lease and running costs may go up in one year, they may also go down the next. In setting any rate where there is a wide range of options, the most equitable approach is to provide for the average of all the relevant rates.

26. The Tribunal considers this methodology is consistent with that used for similar purposes across the public sector and therefore is appropriate for calculating the Conveyance Allowance. The Tribunal's review suggests that there is no need to increase the Conveyance Allowance.

#### **Section 4: Conclusion**

27. As the Commonwealth Tribunal's did not make its determination until 23 September 2009 the Tribunal has received and had regard to supplementary submissions received from the Supreme Court, the District Court and the Industrial Relations Commission.

28. The Submission from the Supreme Court has requested that the Tribunal increase judicial salaries by 3 per cent in line with the increase granted by the Commonwealth Tribunal. In addition, if the Commonwealth Tribunal makes a further determination for an increase in the salary of a High Court Judge before the Tribunal's 2010 annual determination, the Minister should direct the Tribunal to make a determination as to whether, and if so how, its 2009 determination should be altered. This position has been supported by both the Chief Judge of the District Court and the President of the Industrial Relations Commission. The three supplementary submissions have also provided details on the jurisdiction of these courts and the increasing complexity of matters dealt with by them.

29. The Tribunal has completed its review and is not convinced on the material before it that significant workload, complexity or work value changes have occurred within the Group as a whole to warrant any increase above that which maintains the current nexus arrangements agreed in 1989.
30. Consequently the Tribunal will award an increase to office holders in the Group that maintains the relativities that existed prior to the release of the Commonwealth Tribunal's *Report on its Review of Remuneration Relativities among Australia's Federal Courts* on 13 October. On the basis of the above the Tribunal considers that an increase of 3 per cent is appropriate and so determines.
31. In respect of the Commonwealth Tribunal's Report of 13 October 2009, this Tribunal has noted (paragraphs 18 & 19 above) the comments in respect to the jurisdiction specific basis of the Commonwealth Tribunal's deliberations. It is noted that the Determination will have to be tabled in the Federal Parliament and then either House may disallow the Determination within 15 sitting days of tabling.
32. If the Determination is not disallowed by Parliament that will represent a disturbance of relativities that have been agreed between all jurisdictions since the inter governmental agreement reached in 1989. The NSW Government will need to give consideration to this issue and advise the Tribunal of what, if any, action it considers should be taken.
33. 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 2009 shall be as set out in Determinations Nos 1-6.
34. 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.

35. 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.

**The Statutory and Other Offices  
Remuneration Tribunal**

Chris Raper  
Dated: 2 November 2009

**DETERMINATION No 1****REMUNERATION OF JUDGES – effective from 1 October 2009**

	Salary \$ per annum
Chief Justice of the Supreme Court	\$384,530
President of the Court of Appeal	\$360,060
President of the Industrial Relations Commission	\$360,060
Judge of the Supreme Court	\$343,640
President, Workers Compensation Commission	\$343,640
Vice-President of the Industrial Relations Commission	\$343,640
Deputy President of the Industrial Relations Commission	\$343,640
Judge of the District Court	\$309,280
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	\$309,280

**DETERMINATION No 2****REMUNERATION OF MAGISTRATES – effective from 1 October 2009**

	Salary \$ per annum
Chief Magistrate	\$309,280
Deputy Chief Magistrate	\$261,340
State Coroner	\$261,340
Chief Industrial Magistrate	\$251,750
Magistrate	\$247,420
Chairperson Victims Compensation Tribunal (NOTE 2)	\$247,420
Children's Magistrate	\$247,420
Deputy State Coroner	\$247,420

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 2009**

	Salary \$ per annum
Chairperson, Law Reform Commission	\$343,640
Solicitor-General	\$343,640
Director of Public Prosecutions	\$343,640
Crown Advocate	\$309,280
Deputy Director of Public Prosecutions	\$309,280
Senior Crown Prosecutor	\$278,350
Senior Public Defender	\$278,350
Deputy Senior Crown Prosecutor	\$250,510
Deputy Senior Public Defender	\$250,510
Solicitor for Public Prosecutions	\$250,510
Deputy Presidents, Workers Compensation Commission	\$250,510
Senior Commissioner Land and Environment Court	\$240,550
Crown Prosecutor	\$228,860

Public Defender	\$228,860
Commissioner Land and Environment Court	\$226,800
Commissioner Industrial Relations Commission	\$226,800

#### **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 \$1,490 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 \$1,340 per day

###### Workers Compensation Commission

Acting Deputy President of the  
Workers Compensation Commission \$1,040 per day

#### **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 2009**

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 6-16.12 to 6-16.16 of the 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**

Chris Raper

Dated: 2 November 2009

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

### **REPORT**

#### a) Background:

“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.

“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.*

1. 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:**

2. For the current review the Tribunal has had regard to movements in the travel rates as published in the Australian Taxation Office’s Ruling 2009/15 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**

5. 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.

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. With the exception of Newcastle and Wollongong a common rate for Judges and a common rate for Magistrates should be maintained 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

In making its determination the Tribunal has had regard to the current travel allowance rates contained in Taxation Ruling 2009/15. Non metropolitan accommodation rates and meal rates have also been adjusted as set out in the Determination.

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 2009.

**Statutory and Other Offices  
Remuneration Tribunal**

Chris Raper  
Dated: 2 November 2009

## DETERMINATION No 7

**TRAVEL ALLOWANCES FOR JUDGES AND MAGISTRATES- effective from 1 October 2009**

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 2009.

## A Travel necessitating an overnight stay

Capital City Rates	
Adelaide	\$358.55
Brisbane	\$380.55
Canberra	\$379.35
Hobart	\$344.55
Perth	\$424.55
Darwin	\$414.15
Melbourne, Sydney	\$414.55
Newcastle and Wollongong	\$339.55
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	\$22.30
Lunch	\$25.00
Dinner	\$43.00

**Statutory and Other Offices  
Remuneration Tribunal**

Chris Raper  
Dated: 2 November 2009