

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES
REMUNERATION ACT, 1975

PUBLIC OFFICE HOLDERS GROUP

12 October 2011

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PUBLIC OFFICE HOLDERS GROUP

Section 1: Introduction

1. Mr Alex Smith AO resigned as the Statutory and Other Offices Remuneration Tribunal effective from 30 June 2011. The Governor, pursuant to section 6(2) of the Statutory and Other Offices Remuneration Act 1975 (the Act), appointed Ms Helen Wright as the new Tribunal for a term of three years from 12 July 2011.
2. The 2011 annual review has been conducted against the background of a significant legislative change which impacts on the Tribunal's ability to determine remuneration increases for office holders.
3. On 27 June 2011, the Parliament passed the *Parliamentary, Local Council and Public Sector Executives Remuneration Legislation Amendment Act 2011*. This Act amends the NSW Remuneration Tribunals' legislation so as to apply the same public sector wages cap that binds the Industrial Relations Commission to determinations of the remuneration for Ministers and other Members of Parliament, local Councillors and Mayors, statutory officers and public sector executives. Schedule 3 of the Act amends the SOOR Act by inserting Section 6AA to give effect to the Government's wages policy. This matter will be discussed in detail below.

Section 2: Background

4. Section 13 of the Statutory and Other Offices Remuneration Act 1975, (the Act), requires the Statutory and Other Offices Remuneration Tribunal to make a determination of the remuneration to be paid to office holders on and from 1 October in that year. "Remuneration" is defined in section 10A as salary or allowances paid in money.
5. The Public Office Holders Group comprises those public offices, listed in the Schedules of the Act (except for the Judges and Magistrates Group and the Court Related Officers Group), which have been grouped together by the Tribunal for

remuneration purposes. The remuneration for the majority of this Group is determined as a fixed salary amount. Employer on costs, such as the Superannuation Guarantee Levy, are additional to the salary amount determined.

6. This Group also comprises office holders who, pursuant to Section 11A of the Act, have elected to receive, and the Minister has approved, access to remuneration packaging arrangements identical to the SES. These office holders, referred to collectively as 11A Office Holders, were previously listed in the Reports and Determinations for the Chief Executive Service and Senior Executive Service (SES). During the 2010 review the Tribunal considered that these office holders were more appropriately listed within the Public Office Holder Group, given the statutory nature of their appointment.
7. The Tribunal's Report and Determination of 2010 provided a general increase of 4 per cent to the Public Office Holders Group. Since then the Tribunal has made six special determinations for offices within the Public Office Holder Group.
8. The Tribunal made a determination in respect of the new position of Parliamentary Budget Officer on 22 November 2010. This position is constituted under the *Parliamentary Budget Officer Act 2010* and provides independent costs of election promises (including a budget impact statement) and, outside pre-election periods, independent costs of proposed policies of Members of Parliament.
9. On 25 February 2011 the Tribunal made a determination in respect of the office of Privacy Commissioner. The office of Privacy Commissioner is constituted under the *Privacy and Personal Information Protection Act 1998*. The Privacy Commissioner's principal role is to ensure the privacy of individuals is protected and that personal information is properly and accurately used and stored by agencies.
10. On 19 July 2011 the Tribunal made a determination in respect of the remuneration payable to the Chairperson of the Board of Infrastructure NSW. Infrastructure NSW is established under the provisions of the *Infrastructure NSW Act 2011*. Infrastructure NSW is required to develop a 20-year State Infrastructure Strategy

from which detailed 5 year infrastructure plans will be developed. The Chairperson's role is key in ensuring the strategic and policy direction of Infrastructure NSW is consistent with the 20-year State Infrastructure Strategy. The Chairperson is also required to work closely with government agencies and the private sector to ensure the smooth operation and progress of the state's largest infrastructure projects.

11. During 2011 both the Clerk of the Parliaments and the Clerk of the Legislative Assembly elected to receive employment benefits in accordance with section 11A of the SOOR Act. Those elections were approved by the Minister and the Tribunal determined appropriate remuneration packages for those office holders.
12. The Tribunal also determined on 19 September 2011 the remuneration payable to the Chairperson of the Board of the Aboriginal Housing Office. The office of Chairperson is established under the *Aboriginal Housing Act 1988*. The Chairperson is responsible for administering and providing advice on policies associated with Aboriginal housing in NSW.
13. The above special determinations of the Tribunal were published in the Government Gazette and tabled in Parliament.

Section 3 Submissions Received

Government Submission

14. The Government's submission recommends that this Group receive an increase of 2.5 per cent.
15. This recommendation is consistent with the NSW Wages Policy and reflects the NSW Government's intent, pursuant to section 6AA of the SOOR Act and the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011*.

Ombudsman

16. The Ombudsman has requested that the Tribunal review the remuneration for this role having regard to changes that have occurred in the role and responsibilities since the Tribunal last reviewed the position in 2004. Since then the Ombudsman submits that significant changes have occurred that have impacted on both office and the position of Ombudsman, including new responsibilities associated with public interest disclosures and convening and supporting the NSW Child Death Review Team.

Independent Pricing and Regulatory Tribunal

17. The submission seeks to review the remuneration payable to the office of Chief Executive Officer and Full Time Member. Since the remuneration was last reviewed by the Tribunal in 2005 IPART has assume new responsibilities associated with the administration of the Water Industry Competition Act, the administration of the Energy Savings Scheme and the determination of rates for councils and the assessment of development contributions by councils. The submission argues that the combined impact of these legislative changes is to substantially increase the scope and complexity of IPARTs role, and the CEO/Full Time Member's role, in licensing and particularly in the areas of compliance monitoring, reporting and enforcement. The expansion in responsibilities is also reflected in the growth in overall staff numbers and budget for IPART.

Mental Health Review Tribunal

18. The submission seeks that the increases to be provided in judicial salaries flow through to the President and Deputy Presidents so as to preserve relativity with those salaries initially determined by the Tribunal in 2009.

19. They seek this relativity on the basis that the Tribunal in its forensic division is now required by the *Mental Health (Forensic Provisions) Act 1990* to be staffed by the President or Deputy President who must be, or have been a judge or qualified for judicial appointment.

Consumer, Trader and Tenancy Tribunal

20. The Chairperson of the Consumer, Trader and Tenancy Tribunal (CTTT) has requested that the Tribunal make a determination in regard to the remuneration payable to the part time members of the CTTT. While the Tribunal makes a determination on the level of remuneration payable to the full time Members (Chairperson, Deputy Chairperson, Senior Members and Members), it has up until now, not had the authority to determine fees for the part time members. With effect from 21 September 2011 part time Senior Members and part time Members have been added to Schedule 2 of the SOOR Act and the Tribunal is now able to make a determination in respect of this matter.

Arbitrators, Workers Compensation Commission

21. The Tribunal has received submissions from the President of the Workers Compensation Commission, the Senior Arbitrators and the Arbitrators in respect of this review. The Tribunal also met with representatives of the Senior Arbitrators and Arbitrators.

22. The Tribunal first determined the remuneration for the roles of Arbitrators and Senior Arbitrators of the Workers Compensation Commission during the 2010 annual review. During that review the Tribunal received advice that the structure of the Workers Compensation Commission would be reviewed during 2011. In response to that advice the Tribunal indicated that it would undertake a further review of these offices during the 2011 annual review taking into account the completed review of the structure of the Commission if available.

23. The submission from the Arbitrators has requested that the Tribunal finalise its review now that the structural review is complete. In support of that request the Arbitrators have suggested a number of alternative fees structures, including seeking relativity with the remuneration paid to full time members of the Consumer Trader

and Tenancy Tribunal and requesting payment of the conveyance allowance, to more adequately reflect their roles and responsibilities.

24. The submission from the Senior Arbitrators seeks to increase the margin between the remuneration paid to Senior Arbitrators and Arbitrators to reflect the additional roles and responsibilities associated with being a Senior Arbitrator. These include providing leadership to a team of Arbitrators, participation in corporate and strategic management programs and the delivery of professional development talks/seminars both internally and in the wider legal community.

25. In support of the both the Senior Arbitrators and Arbitrators the President of the Workers Compensation Commission has reiterated the arguments he made in 2010 in support of increased fees. The President has also provided a copy of an independent report of the recent reforms implemented in the Commission. That report found that there was increased stakeholder satisfaction with the Commission's services and that arbitrator decisions have become more durable and the resolution of matters more effective. The report also recommends that there be an increase in the number of Arbitrators.

Section 4 2011 Tribunal Review

Amendments to the Statutory and Other Offices Remuneration Act 1975.

26. On 27 June 2011, the Parliament passed amendments to the SOOR Act to apply the same government public sector wages cap that binds the Industrial Relations Commission to the determination of the remuneration for Ministers and other members of Parliament, local councillors, statutory officers, public sector executives and hospital visiting medical officers.

27. For the SOOR Act the amendments provide for the addition of a new section, Section 6AA.

“6AA Tribunal to give effect to declared government policy on remuneration for public sector staff

(1) *This section applies to the following determinations of the Tribunal:*

- (a) *the determination under Part 3 of any alteration in the remuneration to be paid to office holders,*
- (b) *the determination under Part 3A of any alteration in the remuneration packages for executive office holders.*

This section does not apply to determinations relating to judicial officers (within the meaning of the Judicial Officers Act 1986) or to determinations relating to any office while held by a specified person.

(2) *In making a determination to which this section applies, the Tribunal is to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission is required to give effect to under section 146C of the Industrial Relations Act 1996 when making or varying awards or orders relating to the conditions of employment of public sector employees.”*

28. Section 146C of the IR Act provides

“...146C Commission to give effect to certain aspects of government policy on public sector employment

(1) *The Commission must, when making or varying any award or order, give effect to any policy on conditions of employment of public sector employees:*

- (a) *that is declared by the regulations to be an aspect of government policy that is required to be given effect to by the Commission, and*
- (b) *that applies to the matter to which the award or order relates.*

(2) *Any such regulation may declare a policy by setting out the policy in the regulation or by adopting a policy set out in a relevant document referred to in the regulation.”*

29. The current policy on wages pursuant to section 146C (1)(a) of the IR Act is articulated in the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011. Clause 6 of the Regulation provides;

“...Other policies

(1) *The following policies are also declared, but are subject to compliance with the declared paramount policies:*

- (a) *Public sector employees may be awarded increases in remuneration or other conditions of employment that do not increase employee-related costs by more than 2.5% per annum.*

- (b) *Increases in remuneration or other conditions of employment that increase employee-related costs by more than 2.5% per annum can be awarded, but only if sufficient employee-related cost savings have been achieved to fully offset the increased employee-related costs. For this purpose:*
 - (i) *whether relevant savings have been achieved is to be determined by agreement of the relevant parties or, in the absence of agreement, by the Commission, and*
 - (ii) *increases may be awarded before the relevant savings have been achieved, but are not payable until they are achieved, and*
 - (iii) *the full savings are not required to be awarded as increases in remuneration or other conditions of employment.*
- (c) *For the purposes of achieving employee-related cost savings, existing conditions of employment of the kind but in excess of the guaranteed minimum conditions of employment may only be reduced with the agreement of the relevant parties in the proceedings."*

30. Accordingly the Tribunal, when making a determination, must now apply the same public sector wages cap that binds the Industrial Relations Commission when making decisions relating to public sector wages. The effect of the Regulation is that public sector wages cannot increase by more than 2.5 per cent. Any increases beyond 2.5 per cent per annum can be awarded by the Industrial Relations Commission but subject to the requirement that:

"...sufficient employee-related cost savings have been achieved to fully offset the increased employee-related costs."

31. This intent was confirmed by the Hon. Greg Pearce (Minister for Finance and Services, and Minister for the Illawarra) in the Minister's Second reading Speech: Legislative Council, *Parliamentary Debates* (Hansard), 22 June 2011 at p. 3101 on the amendments to the Act where he stated;

"This bill will extend the Government's public sector wages policy to elected officials, State parliamentarians and local mayors and councillors, senior executives in the public service and statutory office holders. The Government's public sector wages policy is about delivering fair wage increases to hardworking public servants. It is also about ensuring that the State budget can be brought under control. This legislation means that we can get on with the business of delivering the infrastructure and services which this State

needs and which its people deserve. Last week this Parliament passed the Industrial Relations Amendment (Public Sector Conditions of Employment) Bill 2011. That legislation requires the Industrial Relations Commission to give effect to the Government's wages policy when making decisions relating to public sector salaries. The reasons that bill was necessary are the very same reasons that it is now appropriate to extend the policy to other office holders who are paid from the public purse. If the policy is good enough for public servants it is certainly also good enough for senior executives and for elected officials. That is why, for the first time, the Government's wages policy will be formally extended to apply to elected officials and senior bureaucrats.

... Finally, schedule 3 to the bill extends the policy to determinations of executive remuneration made by the Statutory and Other Offices Remuneration Tribunal, SOORT. This means that the Government's wages policy will apply to the Chief Executive Service, the Senior Executive Service and statutory office holders whose remuneration is determined by the Statutory and Other Offices Remuneration Tribunal Act... As with other public servants, any increase above 2.5 per cent will be payable only where productivity savings have been achieved. To pass on any increase the tribunal will need to be satisfied that these savings have been achieved and are attributable, at least in part, to the category of officers concerned."

32. The intent of Parliament is clear. The 2.5 per cent pay increase cap is to apply to all office holders in the Public Office Holders Group. The effect of the amendments to the Act is to remove the Tribunal's discretion to determine any increase beyond 2.5 per cent for officers other than judicial officers (within the meaning of the *Judicial Officers Act 1986*) unless there are sufficient employee related cost savings to meet the additional employee related costs.
33. The legislation came into effect in July 2011. The Tribunal understands that the validity of the legislation is currently before the Industrial Relations Commission and that the Commission has held hearings and has reserved its decision. Further, if the legislation remains in place it will fall on the Tribunal to ascertain whether sufficient employee-related cost savings have been achieved. The Tribunal will need to develop a robust methodology to make such assessments. It will also be necessary for the Tribunal to address the apparent anomalies of office holders who cannot demonstrate, at least in relation to their own particular offices, employee-related cost savings. This has particular significance to the Public Office Holders Group as many of the office holders affected by this determination are single office holders such as the Ombudsman and Auditor General. A further question which will arise is -

where employee-related cost savings have been achieved in a particular group - how broadly the application of those savings should be spread. For example if Members of the Consumer Trader and Tenancy Tribunal can demonstrate employee-related cost savings sufficient to fully offset the increased employee-related costs of any increase greater than 2.5% if given to Members, is it fair and reasonable (and the intent of the legislation) that the particular group alone should benefit accordingly. Or should the Tribunal's methodology take into account also the employee-related costs of the Senior Members, Deputy Chairperson and Chairperson of the Consumer Trader and Tenancy Tribunal, given that they all operate within (and the employee-related cost savings have been achieved within) the same office and perhaps they should all benefit. Offices listed under the Court and Related Officers Group are impacted similarly by the amendments to the Act. It will be apparent that there are many issues for the Tribunal to address.

34. The Tribunal will seek advice and assistance from the Government in developing a methodology to assist in the assessment of employee-related cost savings that will be sufficiently robust for the Tribunal to be satisfied as to the quantum of employee-related cost savings that have been achieved, and which may justify an increase beyond 2.5 per cent where appropriate, and also how widely or narrowly the cost savings should be attributed within any given group.
35. Further, the amendments would also appear to preclude the Tribunal from making any further adjustments in remuneration based on changes in work value. The Tribunal will also seek advice from the Government in regard to this issue. Until this matter is resolved, the Tribunal cannot make an assessment on the relevant claims made in the submissions received from the Ombudsman or the CEO and Independent Member of IPART who both seek an increase in remuneration, over and above any general increase, based on changes in role and responsibility.

Workers Compensation Commission, Arbitrators

36. The Tribunal has reviewed the submissions provided by and on behalf of the Senior Arbitrators and Arbitrators. The Tribunal has also had regard to the independent report which reviewed the Workers Compensation Commission's organisation change program. Based on the information provided, the Tribunal finds that the remuneration structure determined during the 2010 annual review is adequate and that no additional remuneration, outside of the general increase, is warranted at this time.

Mental Health Review Tribunal

37. An increase in remuneration equivalent to that determined for the Judges and Magistrate Group is not applicable to the President or Deputy President of the Mental Health Review Tribunal as those positions are not judicial office holders as specified in the Judicial Officers Act.

Consumer, Trader and Tenancy Tribunal

38. The Tribunal has determined for the first time the daily rate payable to the Part time Senior Members and Members of the Consumer Trader and Tenancy Tribunal. Those rates are a pro rata equivalent of the full time salaries and are listed in annexure A of the report.

Section 5: Conclusion

39. Section 6AA has had a significant impact on the way this Tribunal makes its determination. The Tribunal notes that the legislation has been passed by Parliament and it is the role of the Tribunal to undertake its duties consistently with the legislation. On that basis the Tribunal, after considering the views of the Assessors, considers that an increase of 2.5 per cent is appropriate and so determines.

40. Pursuant to Section 13 of the *Statutory and Other Offices Remuneration Act 1975*, as amended, the Tribunal determines that the remuneration to be paid to office holders on and from 1 October 2011 shall be as specified in Annexure A in respect of the Public Office Holders and Annexure B in respect of Section 11A Office Holders.

**The Statutory and Other Offices
Remuneration Tribunal**

(signed)

Helen Wright

Dated: 12 October 2011

ANNEXURE A

DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE HOLDERS GROUP ON AND FROM 1 OCTOBER 2011

Salary	\$ per annum
Commissioner Police Integrity Commission	\$428,025
Auditor General	\$417,515
Ombudsman	\$416,445
Assistant Commissioner, NSW Crime Commission	\$391,470
President, Mental Health Review Tribunal	\$337,905
Deputy President Mental Health Review Tribunal	\$295,635
Information Commissioner	\$293,150
Privacy Commissioner	\$282,900
Chairperson, Consumer Trader and Tenancy Tribunal	\$274,635
President, Guardianship Tribunal	\$268,900
Principal Claims Assessor (Motor Accidents Compensation Act)	\$267,050
Parliamentary Budget Officer	\$268,090
Deputy Chairperson Consumer Trader and Tenancy Tribunal	\$254,000
Deputy Chairperson, Law Reform Commission	\$252,170
Deputy President Administrative Decisions Tribunal	\$241,845
Commissioner, Law Reform Commission	\$241,845
Registrar Workers Compensation Commission	\$235,445
Clerk of the Legislative Assembly	\$235,445
Clerk of the Parliaments	\$235,445
Executive Manager, Parliamentary Services	\$235,445
Senior Arbitrator, Workers Compensation Commission (legally qualified)	\$218,530
Deputy President, Guardianship Tribunal	\$210,380
Senior Member, Consumer Trader and Tenancy Tribunal	\$207,305
Deputy Clerk, Legislative Assembly	\$202,115
Deputy Clerk, Legislative Council	\$202,115
Senior Arbitrator, Workers Compensation Commission (not legally qualified)	\$201,265

Arbitrator, Workers Compensation Commission (legally qualified)	\$192,945
Chairman, Local Land Boards	\$192,905
Registrar, Aboriginal Land Rights Act 1983	\$186,720
Arbitrator, Workers Compensation Commission (not legally qualified)	\$173,460
Member, Consumer Trader and Tenancy Tribunal	\$178,660
Assessor (Civil Claims)	\$178,660
Chairperson, Board of the Aboriginal Housing Office	\$139,410
Member of the New South Wales Aboriginal Land Council (Note 1)	\$124,375
Chairperson, Infrastructure NSW	\$71,750
President Mental Health Review Tribunal (part time daily rate)	\$1,405
Deputy President Mental Health Review Tribunal (part time daily rate)	\$1225
Senior Member, Consumer Trader and Tenancy Tribunal (part time daily rate)	\$860
Member, Consumer Trader and Tenancy Tribunal (part time daily rate)	\$740
Assessor Civil Claims (daily rate)	\$740

Note 1 The Chairperson shall receive an allowance of 10% (i.e. a total of \$136,810 per annum) and the Deputy Chairperson shall receive an allowance of 5% (i.e. a total of \$130,595 per annum).

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 office holders listed above who are provided, as a condition of their employment with approved annual leave.

The Statutory and Other Offices Remuneration Tribunal

(signed)

Helen Wright

Dated: 12 October 2011

DETERMINATION OF REMUNERATION OF PUBLIC OFFICE HOLDERS WHO HAVE ELECTED TO BE PROVIDED WITH EMPLOYMENT BENEFITS PURSUANT TO SECTION 11A OF THE ACT EFFECTIVE ON AND FROM 1 OCTOBER 2011

The Tribunal determines that the remuneration packages per annum for Public Office Holders who have elected to be provided with employment benefits pursuant to section 11A of the Act shall be:

<u>Public Office Holder</u>	<u>Remuneration</u>
Commissioner, NSW Crime Commission	\$430,915
Full time Member and CEO, Independent Pricing and Regulatory Tribunal	\$389,150
Electoral Commissioner	\$341,980
Valuer General	\$317,625
Clerk of the Parliaments	\$250,635
Clerk of the Legislative Assembly	\$250,635

**The Statutory and Other Offices
Remuneration Tribunal**

(signed)

Helen Wright
Dated: 12 October 2011