

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

JUDGES AND MAGISTRATES GROUP

9 November 2012

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# Judges and Magistrates Group

## Introduction

Ms Jade Novakovic, who undertook the role of Assessor to the Tribunal (pursuant to section 7(1)(b) of the SOOR Act) did not seek reappointment when her term expired on 30 June 2012. This position is currently vacant and the Tribunal has undertaken the 2012 review without this additional assistance. The Tribunal would also like to acknowledge and express its appreciation of the considerable contribution of Mr Emanuel Sklavounos who undertook the role of Executive Officer to the Tribunal for a period of over ten years until his retirement in December 2011.

## Section 1: Background

1. 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 in Section 10A as salary or allowances payable in money.
2. 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 that the Tribunal should have regard to the base salary plus non financial benefits (such as motor vehicles) when determining judicial remuneration.
3. Since that Agreement was reached 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 2011

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provided a general increase of 6 per cent for NSW Supreme Court Judges and related office holders with effect from 1 October 2011. The 6 percent comprised the third and the final of four 1.5 per cent increases remaining from the 2009 work value increase for Federal Judges, plus the 3 per cent increase awarded to Federal Judges by the Commonwealth Remuneration Tribunal in 2011.

4. The Commonwealth Remuneration Tribunal has determined an increase in salary of 3 percent for Federal Judges and Magistrates effective from 1 July 2012. As is the usual practice, prior to the Tribunal making her Reports and Determinations, the Tribunal invited submissions from office holders. For the 2012 review office holders in the Judges and Magistrates Group were also asked to comment on matters raised in a letter received by the Tribunal from the President of the Commonwealth Remuneration Tribunal, Mr John Conde AO, in relation to the relativity between the salary of Supreme Court Judges and that of a High Court Judge. In that correspondence, Mr Conde proposed that Supreme Court salaries in NSW be linked to the Federal Court rather than to High Court salaries. The Director General of the Department of Attorney General and Justice, Mr Laurie Glanfield, was also asked to comment on the Commonwealth Remuneration Tribunal proposal.

## **Section 2 Submissions Received**

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5. As part of the current review the Tribunal received 5 submissions from offices within the Judges and Magistrates Group. The Tribunal also met with Judges of the Supreme Court. Once again the Tribunal thanks the office holders for their time and the effort they have put in to the current review.
6. Submissions have generally supported retaining the nexus between a Judge of the Supreme Court and the salary payable to a Justice of the High Court of Australia, an increase to the conveyance allowance, the provision of other benefits received by Judges in the Federal jurisdiction including as to the timing of annual increases, and support for the existing internal relativities within the Judges and Magistrates Group.

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### Commonwealth Remuneration Tribunal proposal

7. In respect of the proposal outlined in Mr Conde's letter, the Supreme Court judges oppose the proposal to link the salaries of Supreme Court judges to the Federal Court rather than the High Court.
8. As stated in the Supreme Court Judges' submission:

*"The 1989 agreement reflects the structure of the judicial system in Australia. The High Court exercises supervisory jurisdiction over both the Supreme Court and the Federal Court. That is why it was recognised that both the salaries of the State Supreme Court judges and the Federal Court judges should be fixed by reference to the salaries of High Court judges, while fixed at an appropriate level.*

*The relationship between the salaries of judicial officers at various levels in the New South Wales judicial hierarchy has been the subject of repeated consideration by the Tribunal in the past. The High Court sits at the apex of the Australian judiciary and the salary paid to the judges of that Court, is a matter which the Tribunal will have to consider in the future, as it has done in the past, in undertaking its statutory obligations in relation to the settling of the salaries of the judges of the Supreme Court.*

*It must be remembered that both Queensland and Victoria have legislated with knowledge of the existing agreement. If the relationship between a Federal Court judge's salary and the salary of a High Court judge is broken the assumption made by each State Parliament that the legislation would ensure their State judges will be adequately remunerated would prove unfounded.*

*Australia has a national judiciary under the High Court administering a single Australian common law. If Federal Court judges' salaries are in future to be fixed without maintaining relativity with the salary of a judge of the High Court and the salary of a State Supreme Court judge fixed by reference only to the salary of a judge of the Federal Court, the fundamental principles of the 1989 agreement will be lost. Mr Conde's letter does not address that issue. For that reason the judges of the New South Wales Supreme Court oppose Mr Conde's suggestion."*

9. Submissions received from the Chief Judge of the District Court and the President of the Industrial Relations Commission support the views expressed in the Supreme Court submission as they relate to Mr Conde's proposal. The Chief Judge of the Land and Environment Court also adopts that submission on behalf of the Judges of the Land and

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Environment Court, and has expressly supported retention of the existing salary relativity between judges of the Supreme Court and the High Court.

10. The Chief Magistrate made the following comments in respect of Mr Conde's proposal:

*"It is difficult to comment upon a proposal that is presented without knowing the basis upon which it is raised.*

*Mindful of that qualification I do not see any material difficulty in the proposal provided it does not result in financial detriment to the judiciary of New South Wales."*

11. The President of the Workers Compensation Commission has commented that:

*"I fail to see how the implementation of his suggestion would make any significant difference to current arrangements and for that reason would suggest that the status quo be preserved."*

12. The Director General of the Department of Attorney General and Justice, Mr Laurie Glanfield, in his letter of 12 September 2012, provided the following comments in relation to the Commonwealth Remuneration Tribunal proposal, and other matters:

*"The link between the remuneration of Federal Court judges and Supreme Court judges has underpinned the continued application of the practice that the salary of judges in Supreme Courts and in the Federal Court should not exceed 85% of the salary of a High Court judge. Given this existing link between the remuneration of Federal Court judges and Supreme Court judges, I agree with the proposal of the President of the CRT (Commonwealth Remuneration Tribunal).*

*However, the imposition of the 85% maximum was the result of an agreement between Federal and State Governments more than twenty years ago. It is not clear whether the proposal by the President of the CRT intends that this maximum no longer apply. If so, comments should also be sought from State, Territory and Federal governments.*

*Finally, and notwithstanding the above, the Government has now determined that the NSW Government Wages Policy should apply to judicial officers. The Government is of the view that the nexus between the NSW judiciary and its Federal counterparts should only be maintained provided the increases above the 2.5 per cent are offset by achieved savings."*

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### Government Submission

13. The Government submission contains the views of the Director General of the Department of Justice and Attorney General. His view, which is supported by the Government submission, is that the NSW Government Wages Policy should now apply to judicial officers. As articulated in the Government's submission to the Tribunal:

*"While the Department has traditionally supported the nexus with federal judges, in particular a link between the remuneration of Federal Court Judges and Supreme Court Judges, current circumstances give rise to a range of considerations that have not previously been present, including the government's wages policy.*

*"The Government is of the view that the nexus between the NSW judiciary and its Federal counterparts should only be maintained provided that the increases above 2.5 per cent are offset by achieved savings."*

### Section 3: 2012 Review

#### **Proposal to link the salaries of Supreme Court Judges to the Federal Court rather than the High Court.**

14. The current arrangement whereby 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, known as the Nexus, has existed since 1989. The history and reasoning behind the nexus has been published in the Tribunal's reports and determinations on numerous occasions since then. The retention of the Nexus has had the support of the Tribunal and successive Governments since its inception.

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15. The history of the Nexus was summarised most recently in the Tribunal's Report and Determination of the Judges, Magistrates and Related Group of 30 July 2010. An extract is provided below:

### ***"Section 2 The History of the Nexus***

*17. The Nexus has been in place since 1989. Australian Governments since 1989, have acknowledged that first, the Justices of the High Court should receive the highest level of judicial remuneration; secondly that State Supreme Courts and the Federal Court are superior courts of record and that the remuneration of judges of these courts should not exceed 85 per cent of the remuneration of a Justice of the High Court. Remuneration Tribunals across Australia have generally accepted these principles and continue to do so to the present time. This arrangement has had the desired effect of eliminating the former practice of leap frogging in judicial remuneration across jurisdictions. It has also ensured that remuneration differences between the two courts would not be an overriding factor in the minds of prospective candidates in considering appointments to the Bench. In NSW the Government has informed the Tribunal annually of its desire to maintain the 85 percent nexus.*

*18. It should be noted, however, that the 85 percent nexus is not absolute. The original agreement imposed two caveats ie the nexus would be maintained whilst ever the salaries of High Court Justices were deemed appropriate and that in considering the 85 percent 'cap' regard could be had to the differences in benefits provided to Federal Court Judges but not available to State Supreme Court Judges. The principal difference for NSW Judges was that Federal Court Judges received, and continue to have access to a fully maintained private plated motor vehicle whereas no such provision exists for the State. For this reason there has been determined by the Tribunal, since the introduction of the Nexus, an additional amount to cater for the motor vehicle. In NSW this is currently provided as the Conveyance Allowance. "*

16. In 2010 the Tribunal undertook a comprehensive review of the remuneration arrangements for office holders within the then Judges, Magistrates and Related Group. The findings of that review are outlined in the report and determination of 30 July 2010. The review was undertaken following a special reference from the then Minister for Public Sector Reform. The Minister's reference requested that the Tribunal consider a number of matters including, but not limited to:

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*“the appropriateness of legislating for salary parity between Supreme Court Judges and Federal Court Judges, similar to legislative provisions which currently exist in Victoria and Queensland, arising from the move to provide these Judges with dual commissions”*

17. In undertaking that review the Tribunal, consistent with normal procedures, sought submissions from all relevant office holders, and in particular, sought comments on whether the remuneration of State Court judges and Federal Court judges should be linked by way of legislation.
18. Submissions received from the Supreme Court, the Land and Environment Court, the Industrial Relations Commission and the District Court all indicated support for the introduction of legislation to establish parity of remuneration between the Supreme Court and the Federal Court.
19. At the request of the Minister, the Tribunal also provided comment to the Government on its views on a statutory link between the salaries of Federal Court Judges and State Supreme Court Judges. The Tribunal’s views were expressed as follows.

*“80. The Tribunal has been asked to express its view on the appropriateness of legislating for salary parity between Supreme Court Judges and Federal Court Judges arising from the move to provide State Judges with dual commissions. Similar legislative provisions currently exist in Victoria and Queensland.*

*81. The Tribunal has considered this matter carefully and has already noted how the Supreme Court also administers Commonwealth laws. The fact that the Supreme Court and Federal Court are both considered superior Courts of record also suggests a commonality between them. In addition, the Tribunal has noted that the Supreme Court and Federal Court recruit from the same group of barristers. Finally, while most State and Territory Tribunals make their own inquiries before determining judicial remuneration, none have ever made such determinations without having regard to the 85 percent Nexus. What the Tribunal is being asked to comment upon, in effect, is formalising the Nexus through legislation.*



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82. *This is not uncommon within the current remuneration framework for Judges in New South Wales. Judges of the Land and Environment Court and the Industrial Relations Commission are linked by statute to the remuneration of a Supreme Court Judge. Similar statutory arrangements are in place for the Chief Judge of the District Court.*

83. *It is envisaged that legislation introduced would formally link the salary of a Supreme Court Judge to a Federal Court Judge. There is also precedent for such cross jurisdictional arrangements. The salaries of Members of NSW Parliament are directly linked to the salaries of their federal counterparts. Section 4 of the Parliamentary Remuneration Act 1989 provides that,*

*“...The basic salary is, for the purposes of this Act, the amount of the annual allowance by way of salary payable under the law of the Commonwealth to a Member of the House of Representatives who is not entitled to any additional salary, less \$500.”*

84. *The Tribunal therefore supports linking the salaries of Supreme Court Judges to the salaries of Federal Court Judges by legislation. The Tribunal also considers that such linkage should apply to the other two Courts within the State jurisdiction i.e. the District Court and the Local Court. Given the interconnectedness of the court system in this State, the Tribunal considers there is a compelling case to link the salaries of the various Courts through legislation. The Tribunal would be prepared to offer its assistance in facilitating such an initiative. “*

20. It is not clear from Mr Conde’s proposal is if there is any intention to change the 85 per cent relativity between the salary of a High Court judge and that of a Federal Court Judge. Nor is it clear that the Commonwealth Remuneration Tribunal has adverted to the differences between non-salary benefits provided to Judges of the Federal Court and those available to Judges of the NSW Supreme Court.

21. The Tribunal agrees with Mr Glanfield’s submission, namely that if it is intended that the 85 per cent maximum no longer apply, then comments should be sought from the State, Territory and Federal governments.

22. Providing the Commonwealth Remuneration Tribunal with power to determine NSW salaries, or formally linking NSW salaries to those of the Federal Court as determined by the Commonwealth Remuneration Tribunal, will require legislation.

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23. Unless and until there is any such legislative change the Tribunal will continue to implement the existing intergovernmental agreement, whereby the salary of a judge of a State Supreme Court should not exceed 85 per cent of the salary of a Justice of the High Court of Australia.

### Application of the NSW Government Wages Policy

24. The Government submission and the submission from Mr Glanfield indicate that the Government is of the view that the NSW Government Wages Policy should now apply to judicial office holders. The Government is also of the view that the Nexus between the NSW judiciary and its Federal counterparts should only be maintained provided that any increases above 2.5 per cent are offset by "achieved savings". The Tribunal notes in passing that this language is not identical with the language of the legislation which applies to the IRC and, consequently, to the Tribunal.
25. In 2011 the SOOR Act was amended to require the Tribunal 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.
26. The current policy on wages pursuant to section 146(1)(a) of the *Industrial Relations Act 1996* is articulated in the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011. The effect of the Regulation is that public sector wages cannot increase by more than 2.5 per cent. Any increase beyond 2.5 per cent can only be awarded subject to the requirement that sufficient employee-related cost savings have been achieved to fully offset the increased employee-related costs.
27. However, these amendments explicitly exclude judicial officers as defined by the *Judicial Officer Act 1986*:

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### ***“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.”*

28. The Hon. Greg Pearce MLC (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, outlined the reason for excluding judges and magistrates from the bill:

*“I mention briefly that judges and magistrates have been excluded from the bill. Although the salaries of New South Wales judicial officers are determined by the Statutory and Other Offices Remuneration Tribunal, it is generally accepted that there should be broad consistency of pay between Federal and State judiciaries. That said, it is concerning that in recent times salary increases for judicial officers have significantly outpaced those for all other public sector officers. For the time being, it is appropriate that judicial officers, as defined, be excluded from the bill. This will ensure that appropriate relativities across Federal and State judiciaries can be maintained. We will, however, continue to monitor increases in judicial salaries to ensure that these do not place undue pressure on State finances.”*

29. There have been no further amendments to the SOOR Act, but the Government has made clear its position that the NSW Government Wages Policy should now apply to judicial office holders. Taking the Minister's Second Reading Speech as having indicated

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the basis on which the Parliament excluded judicial officers from the amendments to the SOOR Act, it is incumbent on the Tribunal to now consider the balance between maintaining appropriate relativities across Federal and State judiciaries, and "undue pressure on State finances".

30. As outlined in the Government submission:

*"With employee related expenses accounting for nearly one-half of budget expenses, this area continues to be a key focus in the Government's expense restraint. Growth in this area is driven by increasing rates of pay, increased size of the workforce and changing composition of the workforce. The 2012-13 Budget provides for a further round of measures to better control employee expenses.*

*The Labour Expense Cap strengthens the control over employee expense growth that started last year with the NSW Public Sector Wages Policy 2011."*

31. The Labour Expense Cap is explained in detail in the 2012-13 Budget Paper Number 2. In summary, the Labour Expense Cap has been introduced to limit employee related and contractor expenses across the whole of government. The cap will limit employee related and contractor expenses which account for almost half of all expenditure. The cap is expected to reduce the rate of growth and avoid additional labour costs of around \$2.2 billion over the forward estimates period, which equates to around 1.2 per cent per annum.

32. The Tribunal respects the Government's concern with fiscal rectitude and notes that wage restraints have been imposed by legislation across the whole of the public sector with the exception only of judicial officers. The Tribunal notes also that the current rate of inflation is unusually low and an increase of 2.5% in this year would appear to be quite reasonable.

33. The submission of the Judges of the Supreme Court includes the following:

*"If appointees to the Supreme Court do not continue to be lawyers, including commercial lawyers, of the highest caliber the standard of work of the Court would diminish, with the potential to damage the State in its aim to be an internationally recognized financial services centre. Confidence in the dispute resolution capacity of the Court is essential before overseas corporations will invest capital and conduct business within the jurisdiction. Sydney has begun to develop an international reputation in dispute resolution. If that reputation is to grow the work of the Supreme Court must be of the highest standard."*

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34. The Tribunal accepts that reasoning and again notes the comment in the Minister's Second Reading speech that the exclusion of judicial officers from the operation of Section 6AA was "to ensure that appropriate relativities across Federal and State judiciaries can be maintained". The reason for maintaining those relativities has not changed: potential appointees to the Supreme Court are drawn from the same pool of qualified persons as are potential appointees to the Federal Court, and it is in the interests of the State of New South Wales that the best available people will accept appointment to the Supreme Court.
35. The Tribunal will determine a 3 per cent increase in the salary of a Judge of the State Supreme Court, which is equivalent to that provided by the Commonwealth Remuneration Tribunal to federal judicial office holders in July 2012. This increase will necessarily flow to those judicial officers whose remuneration is linked by legislation to the remuneration of a Judge of the Supreme Court.

### **Retention of Internal Relativities**

36. Given the Government's concerns with respect to the State's budget and its view that the NSW Government Wages Policy should now apply to judicial office holders, the Tribunal considers it appropriate to review the internal relativities within the Judges and Magistrates Group.
37. Several long-standing relativities in the Judges and Magistrates Group have already been severed by the 2011 Section 6AA amendments to the SOOR Act for officers who were not "judicial officers" as defined.
38. Since 1975 the salaries of judicial officers in NSW have been set by the Tribunal as a percentage of the salary of a Supreme Court Judge. The relativities between positions within the Judges and Magistrate Group have been reviewed from time to time, and where there have been changes in jurisdiction the Tribunal has adjusted the relativity. Those changes have recognised the devolutions of jurisdiction from the Supreme Court to the District Court and from the District Court to the Local Court that have occurred over time.

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39. In 2000 the Tribunal reduced the relativity gap between the District Court and the Supreme Court over two years, from 87 per cent of the Supreme Court to 90 per cent of the Supreme Court.
40. A determination to limit judicial officer increases to 2.5 per cent except for the Supreme Court (and legislatively related judicial officers) would open that gap again slightly, but by less than 0.5 per cent.
41. Notwithstanding its historical commitment to ensuring that remuneration relativities within the Judges and Magistrates Group should so far as possible reflect relative responsibilities, the Tribunal, having regard to the current economic climate and the need for fiscal restraint, and the effectiveness of the Government's implementation of its wages policy across the whole of the public sector, has determined that increases for judicial officers other than the Supreme Court (and legislatively related judicial officers) will be 2.5 per cent.
42. The following table outlines the salary relativities which will arise from such a determination for the current year.

Judicial Office Holders	2011 salary % with Supreme Court Judge	2012 salary % with Supreme Court Judge
Judge of the District Court	90.00%	89.56%
Associate Judge	90.00%	89.56%
Chief Magistrate	90.00%	89.56%
Deputy Chief Magistrate	76.05%	75.68%
State Coroner	76.05%	75.68%
Chief Industrial Magistrate	73.26%	72.90%
Magistrate	72.00%	71.65%
Chairperson Victims Compensation Tribunal	72.00%	71.65%
Children's Magistrate	72.00%	71.65%
Deputy State Coroner	72.00%	71.65%
Commissioner, Industrial Relations Commission	66.00%	65.68%

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43. The Tribunal notes that immediately the current climate of fiscal restraint is relaxed to any extent, it would intend to review the position in other States as it did in 2000, and to consider restoring the relativities which existed prior to this 2012 determination.
44. With respect to those other long-standing relativities within the former Judges, Magistrates and Related Group which were altered in 2011 by the Section 6AA legislation, again the Tribunal notes that, immediately the current climate of fiscal restraint is relaxed to any extent, it would be the Tribunal's intent to review and to consider restoring the original relativities, if legislation does not prohibit the Tribunal from so doing.

### **Employee related cost savings: increases above 2.5 per cent**

45. The wages policy that applies to the IRC and to the Tribunal is that: *“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 cent per annum.”*
46. The question that arises is whether a work value increase, that is, an increase that the Tribunal considers appropriate because of a change in a particular office’s role and responsibilities, is subject to the wages policy and, in particular, to the 2.5 per cent cap on remuneration increases.
47. Although not free from doubt, it seems that it is open to the Tribunal to approach its determinations on the basis that the 2.5 per cent cap does not necessarily apply in such cases.
48. The existence of the policy does not mean that any individual public sector employee or group of employees cannot receive an increase in remuneration above 2.5 per cent. For example, an individual public sector employee may be entitled to a greater than 2.5 per cent increase if the individual moves up within the salary band for his or her position, if his or her position is re-graded or if he or she is appointed to a more highly-graded position.

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49. By analogy, it would seem reasonable to the Tribunal that an increase in remuneration for a particular office that is attributable solely to a change in role or responsibilities is not different from a re-grading of a public sector position or, where the change is significant, a change of position.
50. On that basis, the Tribunal considers that it is not precluded from making a determination to increase the remuneration payable to a judicial office holder or group of office holders in an amount greater than 2.5 per cent, where changes in work value warrant an increase greater than 2.5 per cent.
51. Nevertheless the Tribunal is aware that, although Section 11(3) of the SOOR Act provides for an automatic appropriation from the Consolidated Fund to pay remuneration determined under the SOOR Act for office holders listed in Schedule 1, that does not necessarily mean that employee related budgets will be increased to take account of increased remuneration payable. Therefore a determination based on a "work value" increase will not necessarily cut across the objective of the Government's wages policy, because it may well be that an organisation's budget will not be increased by the amount of increased employee-related cost greater than 2.5 per cent that would result from a work value increase determined by the Tribunal, unless employee-related cost savings sufficient to offset that increase are found within the relevant organisation.
52. The Tribunal understands that during the coming year a review currently being undertaken by Government into the relativities between SES and Senior Officers will be finalised, and assistance will then be provided to the Tribunal to develop a methodology to assess employee-related cost savings (as defined in Regulation 2011) which may justify an increase above 2.5 per cent in appropriate circumstances. This methodology may also assist the Tribunal to assess savings relating to the employee-related costs of judicial officers, for the purposes of determining any increase above 2.5 per cent in their remuneration.



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53. In this regard the Tribunal notes that the Industrial Relations Commission of NSW on 15 October 2012 ruled that any increases greater than 2.5 per cent in salaries payable on and from a particular date can only be offset by employee-related cost savings made after (not before) that date: *HSU East and Director-General, Department of Finance and Services [2012] NSWIRComm 112*. Para 36 of that ruling is as follows:

*"These provisions tend to indicate that the savings must be achieved in a period or at a time corresponding with any wage adjustment made in conformity with the Regulation. We note that in industrial parlance the expression "fully offset" means that a given wage increase would be matched by cost savings or other savings having the effect of neutralizing the cost of the adjustment after the commencement of its operation (which would normally be prospective)."*

### Other matters

#### Workers Compensation Commission, President

54. The office of President, Workers Compensation Commission is not defined as a "judicial officer" in accordance with the *Judicial Officers Act 1986*. This is anomalous as the *Workplace Injury Management and Workers Compensation Act 1998* stipulates that to be eligible for appointment as President the person must be a Judge of a Court of Record, ie a judicial officer.

55. On that basis the Tribunal has included the office of President of the Workers Compensation Commission in the Judges and Magistrates Determination for the purpose of determining the remuneration for this office. The Tribunal highlighted this anomaly in its 2011 report and determination and again requests that the Government review the legislation to address this matter.

#### Conveyance Allowance

56. 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 leased by NSW Judges and Magistrates.

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57. Analysis has shown that there has been no substantial change in the total costs for leasing the sample motor vehicles over the last 12 months and consequently the Allowance will not be increased at this time.

### **Section 4: Conclusion**

58. The Tribunal, after carefully considering but notwithstanding the views of the Assessor (noting that there is presently only one Assessor, rather than two) and, pursuant to Section 13 of the *Statutory and Other Offices Remuneration Act 1975* as amended, determines that the remuneration to be paid to the office holders in Determination 1 will be increased by 3 per cent with effect from 1 October 2012. Office holders listed in Determination 2 will be provided with a 2.5 per cent increase with effect from 1 October 2012. The new rates are as set out in Determinations Nos 1-5.

59. The Tribunal has also made a Report and Determination on Travel Allowances for NSW Judges and Magistrates. The Report and Determination are as set out in Determination No 6.

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

Helen Wright  
Dated: 9 November 2012

## Determinations for the Judges and Magistrates Group

### Determination No 1

**Determination of the Remuneration for Judicial Officers as defined in the *Judicial Officers Act 1986* being judicial officers of the Supreme Court and judicial officers linked by legislation to the remuneration of the Supreme Court**

**Effective on and from 1 October 2012**

<b>Position</b>	<b>Salary per annum</b>	<b>Conveyance Allowance (1)</b>
Chief Justice of the Supreme Court	\$450,750	\$22,550
President of the Court of Appeal	\$422,070	\$22,550
President of the Industrial Relations Commission	\$422,070	\$22,550
Chief Judge of the Land and Environment Court	\$422,070	\$22,550
Judge of the Supreme Court	\$402,810	\$22,550
Vice-President of the Industrial Relations Commission	\$402,810	\$22,550
Judge of the Land and Environment Court	\$402,810	\$22,550
Deputy President of the Industrial Relations Commission (being a judicial member)	\$402,810	\$22,550

Note 1 The Conveyance Allowance determined here shall not count towards pension or for superannuation purposes

## Determinations for the Judges and Magistrates Group

### Determination No 2

**Determination of the Remuneration for Judicial Officers as defined in the *Judicial Officers Act 1986* but not referred to in Determination 1**

**Effective on and from 1 October 2012**

<b>Position</b>	<b>Salary per annum</b>	<b>Conveyance Allowance (1)</b>
Deputy President of the Industrial Relations Commission (not being a judicial member)	\$400,860	\$22,550
Judge of the District Court	\$360,770	\$20,330
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	\$360,770	\$20,330
Chief Magistrate	\$360,770	\$20,330
Deputy Chief Magistrate	\$304,850	\$16,235
State Coroner	\$304,850	\$16,235
Chief Industrial Magistrate	\$293,670	\$16,235
Magistrate	\$288,620	\$16,235
Chairperson Victims Compensation Tribunal (NOTE 2)	\$288,620	\$16,235
Children's Magistrate	\$288,620	\$16,235
Deputy State Coroner	\$288,620	\$16,235
Commissioner Industrial Relations Commission	\$264,560	\$16,235

Note 1 The Conveyance Allowance determined here shall not count towards pension or for superannuation purposes

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

## Determinations for the Judges and Magistrates Group

### Determination No 3

**Determination of the Remuneration to be Paid to the President of the Workers Compensation Commission (Pursuant To Section 369 of the *Workplace Injury Management And Workers Compensation Act 1988*) Effective on and from 1 October 2012**

Position	Salary per annum	Conveyance Allowance (1)
President, Workers Compensation Commission	\$402,810	\$22,550

Note 1 The Conveyance Allowance determined here shall not count towards pension or for superannuation purposes

### 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 \$1,745 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 \$1,565 per day

## **Determinations for the Judges and Magistrates Group**

### **Determination No 5**

#### **Annual Leave Loading Of Judges, Magistrates and Related Group Effective on and From 1 October 2012**

##### **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 6-15.11 to 6-15.16 of the Personnel Handbook, to each of the following office holders:

- Magistrates
- Deputy President of the Industrial Relations Commission (not being a judicial member)
- Commissioners, Industrial Relations Commission

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

Helen Wright

Dated: 9 November 2012

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

## Section 1 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 Judge or Acting Judge of a court, or*

*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.

## Section 2 2012 Review

4. Historically the Tribunal has regard to movements in the travel rates as adopted for the NSW Public Sector generally. These rates are based on the reasonable travel allowances as determined by the Australian Taxation Office (ATO). The ATO has made a new determination for 2012 (TD 2012/17) and these rates have been adopted for the NSW Public Sector. On that basis the Tribunal has determined the rates that are based on ATO TD 2012/17.

## Section 3 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.

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

- (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.

### **Section 4 Conclusion**

6. In making its determination the Tribunal has had regard to the current travel allowance rates contained in Taxation Ruling 2012/17. Non metropolitan accommodation rates and meal rates have also been adjusted as set out in the Determination.
7. 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 2012.

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

**Helen Wright**

Dated: 9 November 2012



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

## Determination No 7

### Travel Allowances for Judges and Magistrates Effective on and From 1 October 2012

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 2012.

#### A. Travel necessitating an overnight stay

##### Travel Allowances

Capital City Rates	
Adelaide	\$372.05
Brisbane	\$399.05
Canberra	\$395.05
Hobart	\$358.05
Perth	\$472.05
Darwin	\$477.05
Melbourne, Sydney	\$428.05
Newcastle and Wollongong	\$353.05
<b>Other Areas</b>	\$353.05

##### 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

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

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. Travel not involving an overnight stay**

#### **Meal Allowances for travel NOT involving an overnight stay**

Breakfast	\$24.35
Lunch	\$27.35
Dinner	\$46.70

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

**Helen Wright**

Dated: 9 November 2012