

REPORT

and

DETERMINATION

under

SECTION 14 (1)

and

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

PUBLIC OFFICE HOLDERS GROUP

11 July 2014

[NSW Remuneration Tribunals website](#)

Public Office Holders Group

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Section 1

Introduction

1. Section 13 of the *Statutory and Other Offices Remuneration Act 1979* (the SOOR 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 July in that year (formerly 1 October). “Remuneration” is defined in section 10A as salary or allowances paid in money.
2. 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 and Related Officers Group), which have been grouped together by the Tribunal for remuneration purposes. The remuneration for these office holders is determined as a fixed salary amount. Employer on-costs, such as the Superannuation Guarantee Contribution, are additional to the salary amount determined. This Group also comprises a small number of office holders who, pursuant to Section 11A of the Act, have elected to receive, and for whom the Minister has approved access to, remuneration packaging arrangements identical to the SES.
3. The Tribunal’s 2013 annual determination for the Public Office Holders Group was disallowed by the Legislative Assembly on 12 November 2013, pursuant to section 19 of the SOOR Act. The effect of the disallowance was that the Tribunal’s previous year’s determination of 9 November 2012 continued in effect. The impact of the disallowance was that office holders in the Public Office Holders Group effectively received no increase for 2013.
4. On 10 July 2014 the Premier, the Honourable Mike Baird MP, directed the Tribunal to make a special determination for office holders in the Public Office Holders Group who, as a result of the disallowance of the 2013 Public Office Holders Determination, did not receive an increase with effect from 1 October 2013.
5. The special determination and the 2014 annual determination will be made concurrently. The special determination, pursuant to section 14 of the SOOR Act, will apply from 1 October 2013 to 30 June 2014. Increases available in the 2014 annual

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determination, pursuant to section 13 of the SOOR Act, will be based on the rates determined in the special determination.

Section 2

2013 Review

Amendments to the SOOR Act

6. The SOOR Act was amended, with effect from 1 July 2013, to require the Tribunal, when making determinations under Part 3 of the SOOR Act, to give effect to any policy concerning the remuneration of office holders as declared by the regulations, rather than those policies that the Industrial Relations Commission is required to give effect to under section 146C of the *Industrial Relations Act 1996* (IR Act). In addition the policy declared by the regulations also extended to judicial office holders, who previously had been excluded under the SOOR Act.
7. Section 6AB of the SOOR Act applies to the Tribunal's determinations in respect of office holders in the Judges and Magistrates Group, the Court and Related Officers Group and the Public Office Holders Group. Government policy concerning the remuneration of office holders to which Part 3 of the SOOR Act applies is declared in the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013* (SOOR Regulation 2013).
8. In accordance with SOOR Regulation 2013 any increase the Tribunal may determine in excess of 2.5 per cent, be it a general increase available to all office holders, or an increase provided to an individual office holder or group of office holders based on changes in work value, can only be paid if officer-related cost savings for the office holder (or group of office holders) have been achieved to fully offset the increased officer-related costs resulting from increased payment.

Changes to the Superannuation Guarantee Contribution (SGC)

9. A number of office holders the subject of this Tribunal's determination were also affected by the changes to the SGC - which increased by 0.25 per cent with effect from 1 July 2013. The exceptions were office holders who elected to receive a total remuneration package pursuant to section 11A of the SOOR Act. Total remuneration

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packages include contributions payable to a superannuation scheme by an executive officer's employer. Consequently the 0.25 percentage increase in employer contributions payable to their superannuation must be funded from the total remuneration package.

10. In May 2013 the Government advised that its intention was that the SGC increase be funded from within the existing wages cap of 2.5 per cent. Amendments to SOOR Regulation 2013 passed in the Legislative Assembly clarified the application of Government policy in relation to the impact of increases in superannuation employment benefits. However, the amendments to SOOR Regulation 2013 were disallowed by the Legislative Council on 21 August 2013.

2013 Annual Determination

11. On 27 September 2013 the Tribunal determined that office holders in the Public Office Holders Group would receive an increase of 2.5 per cent which was consistent with increases provided to other offices, and groups of office holders, and was made having regard to the law (a decision of the Industrial Relations Commission) as it stood at that time.

Disallowance of determinations

12. On 12 November 2013, pursuant to section 19A of the SOOR Act, the Tribunal's determinations for the Judges and Magistrates Group, the Court and Related Office Holders Group and the Public Office Holders Group were disallowed by the Legislative Assembly. The effect of the disallowance was that the Tribunal's previous year's determination of 9 November 2012 continued in effect. However, from 1 October 2013 up to the date of the disallowance (being 12 November 2013), remuneration was to be paid in accordance with the disallowed 2013 determinations. The 2012 determinations applied from 12 November 2013. The Tribunal understands that not all office holders were paid an increase for that period.

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Special determination – Judges, Acting Judges, Associate Judges, Director of Public Prosecutions and Solicitor General

13. On 20 November 2013 the then Premier, the Hon Barry O'Farrell MP, wrote to the Tribunal requesting a special determination, in regard to the remuneration payable to those judges and other related officers who are potentially entitled upon retirement to receive a judicial pension and in respect of whom, therefore, the employer does not incur the cost of the superannuation guarantee contribution (SGC).
14. On 19 December 2013 the Tribunal determined that the Judges, Acting Judges, Associate Judges, the Director of Public Prosecutions, and the Solicitor General would receive an increase of 2.5 per cent with effect from 1 October 2013.
15. The special determination was not applicable to any office holder, or group of office holders, in the Public Office Holders Group.

Section 3

2014 Annual Review

16. Schedule 2 of the SOOR Act has been amended to remove a number of positions for which the Tribunal is no longer required to make determinations. These include: the full-time member and assessor of the Administrative Decisions Tribunal; the Chairperson, full-time and part-time members of the Consumer Trade and Tenancy Tribunal; the President and Deputy President of the Guardianship Tribunal; and the Chairperson of the Local Lands Board. The roles and responsibilities undertaken by those offices have been incorporated into the NSW Civil and Administrative Tribunal which commenced on 1 January 2014. The Tribunal is not responsible for determining the salaries or fees applicable to office holders of the NSW Civil and Administrative Tribunal.
17. There have been no further amendments to SOOR Regulation 2013.
18. The Tribunal notes that the SGC has increased from 9.25 per cent to 9.50 per cent from 1 July 2014. SOOR Regulation 2013 includes employer payments to employee superannuation schemes or funds within the definition of "**officer-related costs**",

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therefore the Tribunal will have regard to the impact of SGC increases in making this determination. The SGC increase does not affect the Tribunal's ability to determine a remuneration increase of up to 2.5 per cent for office holders who have elected to receive a total remuneration package pursuant to section 11A of the SOOR Act. Total remuneration packages include contributions payable to a superannuation scheme by an executive officer's employer. Consequently the 0.25 percentage increase in employer contributions payable to their superannuation must be funded from the total remuneration package.

Office Holder Submissions

19. As is the usual practice, prior to making its Reports and Determinations, the Tribunal invited submissions from office holders.
20. The Ombudsman's submission has requested that the Tribunal review the remuneration for this office having regard to changes that have occurred in the role and responsibilities since the Tribunal last reviewed the office in 2004. The Ombudsman has advised that in the ten years since the last review, there has been and continues to be, significant change to the role, including additional responsibilities as well as considerable legislative and structural change.
21. The Ombudsman has also advised that the Office has been required to make "efficiency savings". However these savings have not resulted in changed work practices, or savings from changes to employment entitlements, or from structural change, or from any of the other "officer- related cost savings" which are required to be identified, for a consideration of remuneration increases for offices the subject of remuneration determinations by the Tribunal. The submission noted that:

"Because of this, it is my understanding that any application to the Tribunal for consideration of work value increases for the NSW Ombudsman would fail, as savings required could not be appropriately demonstrated as required by the Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013. If savings cannot be identified in the form required, it does not mean that the work value of a position has not changed."

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Special Reference

22. On 10 July 2014 the Premier, the Honourable Mike Baird MP, directed the Tribunal to make a special determination for those office holders who did not receive an increase with effect from 1 October 2013 as a result of the disallowance of the 2013 Public Office Holders Group Determination, and that a new determination should take effect from 1 October 2013.

"I write seeking Determinations from the Tribunal under section 14(1) of the Statutory and Other Offices Remuneration Act 1975 in regard to the remuneration payable to those office-holders who remain affected by the disallowance of the Tribunal's 2013 Annual Determinations for Judges and Magistrates, Court and Related Officers and Public Office Holder Group....

....In these circumstances, it would appear appropriate that I direct the Tribunal to proceed immediately to make new Determinations for those office-holders still affected by the disallowance of the Tribunal's 2013 Annual Determinations. The Tribunal's new Determinations should provide for any relevant remuneration increases for 2013-2014 to be taken to have been effective from 1 October 2013."

23. The Government submission outlines the Government's view of appropriate adjustments in respect of the special determination and the annual determination.

Government submission

24. For the section 14 special determination the Government submits that the Tribunal should determine an increase of 2.27 for office holders in receipt of a salary with effect from 1 October 2013. The increase of 2.27 per cent for 2013 is equivalent to that which the Unions and the Industrial Relations Commission agreed upon for Public Sector Salaries Awards in 2013. The salary increase of 2.27 per cent was arrived at as, for that group of employees, the SGC increase is not payable in respect of overtime or leave loading and, as a result, the total employee-related cost of the additional SGC is less than 0.25 per cent.
25. For the Office holders, who elect to receive a total remuneration package pursuant to section 11A of the SOOR Act, the Government submits that the increase should be 2.5 per cent with effect from 1 October 2013, as section 11A Office holders receive a total remuneration package, from which the cost of the SGC must be funded.

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26. For the section 13 annual determination the Government submits that office holders in receipt of a salary should receive a 1.70 per cent increase and office holders in receipt of a total remuneration package a 1.88 per cent increase, with effect from 1 July 2014. The 2014 increase is discounted to have regard to the earlier commencement date of 1 July in 2014. Past determinations have provided increases in remuneration effective from 1 October each year. However, amendments to the SOOR Act have brought forward the date of effect from 1 October to 1 July.
27. The result of the change is that any increases in remuneration will apply three months earlier than past increases, and would (if not taken into account) result in office holders receiving comparatively greater remuneration in 2014-15 than would have been paid based on the previous arrangements – leading to effectively higher wages growth than legislated under the NSW Public Sector Wages Policy 2011.
28. The Government submission includes the following example to clarify the issue:

“For example, an employee with a salary of \$200,000 who receives an increase of 2.5 per cent from 1 July 2014 would earn \$1,281 more in 2014-15 than if they received the same increase from 1 October 2014 (\$210,125 compared to \$208,844 for 2014-15). Salary growth over this year would effectively be 3.1 per cent in 2014-15.

It is therefore necessary to adjust any increase in remuneration to take account of this timing change by discounting the quantum of the increase by 25 per cent (i.e. one quarter representing three months out of 12 months). Under the above scenario, an increase of 1.88 per cent from 1 July 2014 results in the same remuneration being paid as applying a 2.5 per cent increase from 1 October.”

Section 4

2014 Increase

29. In undertaking the 2014 review the Tribunal advised office holders that it would consider a general increase for all office holders of up to or, if warranted, above 2.5 per cent. It would also consider requests from individual office holders or groups of office holders for increases above 2.5 per cent based on work value assessment. Office holders were advised that in both instances, any increase in excess of 2.5 per cent could only be paid if sufficient officer-related cost savings for the office holder or relevant group had been achieved or were expected to be achieved, to fully offset the increased officer-related costs resulting from the increased payment.
30. Under current legislation the Tribunal determines remuneration for office holders, which is either a salary or a total remuneration package. Information on other employment entitlements and/or personal appointment benefits provided to individual office holders or groups of office holders by their employer is not readily available to the Tribunal. Further, the overall cost to the State of engaging these office holders is not readily quantifiable by the Tribunal.
31. Should office holders, or groups of office holders, consider that the Tribunal in determining whether officer-related cost savings will or have been achieved, should have regard to other employment entitlements and/or personal appointment benefits, the types and costs of those entitlements would need to be made available (and independently verified) to the Tribunal.
32. Office holders were advised that, should any office holder or group of office holders wish to submit that an increase in excess of 2.5 per cent was warranted, it would be necessary for such office holder or group of office holders to identify and propose to the Tribunal the "officer-related cost savings" (as defined) which it or they intended to achieve. In due course the Tribunal would be responsible for determining whether or not those savings had been achieved.

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33. The Tribunal has not been asked to consider an increase, either a general increase or an increase based on work value assessment, in excess of 2.5 per cent, which detailed proposed officer-related cost savings. Consequently the Tribunal is not presently required to come to a view on how officer-related costs and officer-related cost savings would be calculated for the purposes of determining any increase in remuneration of more than 2.5 per cent.
34. As noted in the 2013 annual determination (disallowed) the Tribunal finds that amendments to the SOOR Act and SOOR Regulation 2013 make it difficult for office holders, and, in particular, groups of office holders, to demonstrate that sufficient officer-related cost savings can be achieved to justify an increase of more than 2.5 per cent. The Ombudsman has also highlighted these difficulties in his submission.
35. After considering submissions received, the Premier's special direction, the Government submission, and key economic indicators, the Tribunal finds those office holders the subject of this determination should receive the maximum permissible increase, although taking into account the impact of the SGC where necessary, and the changed commencement date.
36. It is the obligation of the Tribunal to undertake its duties consistently with the legislation and court decisions as they presently stand with regard to that legislation. On that basis the Tribunal, after considering the views of the Assessors, has made the following special determination for 2013 and annual determinations for 2014.

Special Determination (pursuant to section 14 of the SOOR Act)

37. The Tribunal welcomes the Premier's direction to make a special determination for office holders who did not receive an annual adjustment following the disallowance of the 2013 determination - being those office holders who were not the subject of the Tribunal's special determination of 19 December 2013.
38. The special determination will provide an increase for office holders in receipt of a salary of 2.27 per cent, and office holders in receipt of a total remuneration package of 2.5 per cent, for the period 1 October 2013 to 30 June 2014, in accordance with the Premier's direction, as specified in Determinations No. 1 and No. 2. The increase is consistent with

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the Government's position on the treatment of SGC increases and the law on that matter as it presently stands.

39. The special determination goes some way to restoring salary relativities within the group and will enable affected office holders to receive back pay. Officers were eligible to receive the 2013 annual increase of 2.5 per cent from 1 October up until the date of disallowance, being 12 November 2013. If such payments have been made then appropriate adjustments should be made when applying the 2.27 per cent increase to office holders in receipt of a salary from 1 October 2013.

Annual determinations (pursuant to section 13 of the SOOR Act)

40. Pursuant to Section 13 of the SOOR Act the Tribunal determines that an increase of 1.70 per cent will apply to office holders in receipt of a salary, and an increase of 1.88 per cent for office holders in receipt of a total remuneration package, on and from 1 July 2014 as specified in Determinations No. 3 and No. 4.

Section 11A Office Holders

41. Historically, when an officer has elected to receive employment benefits pursuant to section 11A of the SOOR Act, the Tribunal has determined a total remuneration package payable to that office holder. Determinations which provide for a total remuneration package are listed separately (Determinations No. 2 and No. 4) from those determinations which are expressed as a salary only (Determinations No. 1 and No. 3).
42. For the special determination and 2014 determination the Tribunal continues to identify, in Determinations No.2 and No.4 those offices which are held by individuals who have elected to receive a total remuneration package pursuant to section 11A. The Tribunal will also make a salary-only determination for those particular offices and list that salary in the general determination for Public Office Holders in Determinations No. 1 and No. 3. This is to ensure that a current determination exists for these roles should the incumbent officer revoke his/her election or if a new officer is appointed to the role.

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2015 Review

43. The Tribunal does not propose to discount any remuneration increase it determines for the 2015 annual review as the change in commencement date for annual determinations has been addressed in the 2014 annual determination.

The Statutory and Other Offices

Remuneration Tribunal

(Signed)

Helen Wright

Dated: 11 July 2014

Public Office Holders Group

**Determination No. 1 - Special Determination
Effective on and from 1 October 2013**

Special determination of the remuneration of the Public Office Holder Group effective on and from 1 October 2013

Public Office Holder	Salary per annum
Public Service Commissioner	\$ 470,490
Commissioner Police Integrity Commission	\$ 448,685
Auditor General	\$ 437,670
Ombudsman	\$ 436,545
Commissioner, NSW Crime Commission (Note 1)	\$433,155
Assistant Commissioner, NSW Crime Commission	\$410,365
Full time Member and CEO, Independent Pricing and Regulatory Tribunal (Note 1)	\$390,125
President, Mental Health Review Tribunal	\$354,215
Electoral Commissioner (Note 1)	\$340,675
Valuer General (Note 1)	\$315,145
Workcover Independent Review Officer	\$314,480
Deputy President Mental Health Review Tribunal	\$309,905
Information Commissioner	\$307,300
Privacy Commissioner	\$296,555
Chairperson, Consumer Trader and Tenancy Tribunal	\$287,890
Mental Health Commissioner	\$285,130
President, Guardianship Tribunal	\$281,880
Parliamentary Budget Officer	\$281,030
Principal Claims Assessor (Motor Accidents Compensation Act)	\$279,940
Inspector of Custodial Services	\$271,015
Small Business Commissioner	\$267,000
Deputy Chairperson Consumer Trader and Tenancy Tribunal	\$266,260
Deputy Chairperson, Law Reform Commission	\$264,340
Commissioner, Law Reform Commission	\$253,515
Deputy President Administrative Decisions Tribunal	\$253,515
Clerk of the Legislative Assembly	\$246,810
Clerk of the Parliaments	\$246,810

Public Office Holders Group

Determination No 1 (continued)

Public Office Holder	Salary per annum
Executive Manager, Parliamentary Services	\$246,810
Registrar Workers Compensation Commission	\$246,810
Senior Arbitrator, Workers Compensation Commission (legally qualified)	\$229,080
Deputy President, Guardianship Tribunal	\$ 220,535
Senior Member, Consumer Trader and Tenancy Tribunal	\$217,315
Deputy Clerk, Legislative Assembly	\$211,875
Deputy Clerk, Legislative Council	\$211,875
Senior Arbitrator, Workers Compensation Commission (not legally qualified)	\$210,980
Arbitrator, Workers Compensation Commission (legally qualified)	\$202,260
Chairperson, Local Land Boards	\$202,220
Registrar, Aboriginal Land Rights Act 1983	\$195,735
Assessor (<i>Local Court Act 2007</i>)	\$187,280
Member, Consumer Trader and Tenancy Tribunal	\$187,280
Arbitrator, Workers Compensation Commission (not legally qualified)	\$181,830
Chairperson, Board of the Aboriginal Housing Office	\$146,140
Member of the New South Wales Aboriginal Land Council (Note 2)	\$130,380
Chairperson, Infrastructure NSW	\$75,215
President Mental Health Review Tribunal (part time daily rate)	\$1,470
Deputy President Mental Health Review Tribunal (part time daily rate)	\$1,285
Senior Member, Consumer Trader and Tenancy Tribunal (part time daily rate)	\$900
Assessor <i>Local Court Act 2007</i> (daily rate)	\$780
Member, Consumer Trader and Tenancy Tribunal (part time daily rate)	\$780

Note 1 The Public Office Holders of these public offices have elected to be provided with employment benefits pursuant to section 11A of the Act and the remuneration packages are listed in Determination 2.

Note 2 The Chairperson shall receive an allowance of 10% (i.e. a total of \$143,418 per annum) and the Deputy Chairperson shall receive an allowance of 5% (i.e. a total of \$136,899 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.

Public Office Holders Group

Determination No. 2 - Section 11a Office Holders Effective on and from 1 October 2013

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 2013

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:

Public Office Holder	Remuneration
Commissioner, NSW Crime Commission	\$452,730
Electoral Commissioner	\$359,295
Valuer General	\$333,705

The Statutory and Other Offices

Remuneration Tribunal

(Signed)

Helen Wright

Dated: 11 July 2014

Public Office Holders Group

Determination No. 3 - Annual Determination Effective on and from 1 July 2014

Annual determination of the remuneration of the Public Office Holder Group effective on and from 1 July 2014

Public Office Holder	Salary per annum
Public Service Commissioner	\$478,490
Commissioner Police Integrity Commission	\$456,315
Auditor General	\$445,110
Ombudsman	\$443,965
Commissioner, NSW Crime Commission (Note 1)	\$440,520
Assistant Commissioner, NSW Crime Commission	\$417,340
Full time Member and CEO, Independent Pricing and Regulatory Tribunal (Note 1)	\$396,755
President, Mental Health Review Tribunal	\$360,235
Electoral Commissioner (Note 1)	\$346,465
Valuer General (Note 1)	\$320,500
Workcover Independent Review Officer	\$319,825
Deputy President Mental Health Review Tribunal	\$315,175
Information Commissioner	\$312,525
Privacy Commissioner	\$301,595
Mental Health Commissioner	\$289,975
Parliamentary Budget Officer	\$285,810
Principal Claims Assessor (Motor Accidents Compensation Act)	\$284,700
Inspector of Custodial Services	\$275,620
Small Business Commissioner	\$271,540
Deputy Chairperson, Law Reform Commission	\$268,835
Commissioner, Law Reform Commission	\$257,825
Clerk of the Legislative Assembly	\$251,005
Clerk of the Parliaments	\$251,005
Executive Manager, Parliamentary Services	\$251,005
Registrar Workers Compensation Commission	\$251,005
Senior Arbitrator, Workers Compensation Commission (legally qualified)	\$232,975
Deputy Clerk, Legislative Assembly	\$215,475
Deputy Clerk, Legislative Council	\$215,475
Senior Arbitrator, Workers Compensation Commission (not legally qualified)	\$214,565

Public Office Holders Group

Determination No 3 continued

Public Office Holder	Salary per annum
Arbitrator, Workers Compensation Commission (legally qualified)	\$205,700
Registrar, Aboriginal Land Rights Act 1983	\$199,060
Assessor (<i>Local Court Act 2007</i>)	\$190,465
Arbitrator, Workers Compensation Commission (not legally qualified)	\$184,920
Chairperson, Board of the Aboriginal Housing Office	\$148,625
Member of the New South Wales Aboriginal Land Council (Note 2)	\$132,595
Chairperson, Infrastructure NSW	\$76,495
President Mental Health Review Tribunal (part time daily rate)	\$1,495
Deputy President Mental Health Review Tribunal (part time daily rate)	\$1,310
Assessor <i>Local Court Act 2007</i> (daily rate)	\$790

Note 1 The Public Office Holders of these public offices have elected to be provided with employment benefits pursuant to section 11A of the Act and the remuneration packages are listed in Determination 4.

Note 2 The Chairperson shall receive an allowance of 10% (i.e. a total of \$145,854 per annum) and the Deputy Chairperson shall receive an allowance of 5% (i.e. a total of \$139,225 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.

Public Office Holders Group

**Determination No. 4 - Section 11a Office Holders
Effective on and from 1 July 2014**

Determination of the 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 July 2014

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:

Public Office Holder	Remuneration
Commissioner, NSW Crime Commission	\$461,240
Electoral Commissioner	\$366,050
Valuer General	\$339,980

The Statutory and Other Offices

Remuneration Tribunal

(Signed)

Helen Wright

Dated: 11 July 2014