

Court and
Related
Officers
Group

Annual
Determination

*Report and determination under
section 13 of the Statutory and
Other Offices Remuneration Act
1975*

25 June
2015

Court and Related Officers Group

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Section 1

Introduction

1. The role of the Statutory and Other Offices Remuneration Tribunal (the Tribunal), pursuant to section 6 of the *Statutory and Other Offices Remuneration 1975* (the SOOR Act) was undertaken by Ms Helen Wright from 12 July 2011 until the expiration of her appointment on 11 July 2014. The Tribunal wishes to express its appreciation of Ms Wright's contributions over those years.
2. On 6 August 2014, Mr Richard Grellman AM was appointed to the role of Tribunal pursuant to section 6 of the SOOR Act. The two roles of Assessor assisting the Tribunal pursuant to sections 7 (1) (a) and 7 (1) (b) of the SOOR Act have been undertaken by Mr Blair Comley PSM, Secretary, Department of Premier and Cabinet and Mr Ken Baxter, respectively.

Background

3. Section 13 of the SOOR Act requires 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.
4. The Court and Related Officers Group comprises those public offices listed in the Schedules of the Act (except for the Judges and Magistrates Group and the Public Office Holders 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.

Government Wages Policy

5. The Tribunal is required, 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

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Commission is required to give effect to under section 146C of the *Industrial Relations Act 1996* (the IR Act).

6. 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* (the SOOR Regulation).
7. In accordance with SOOR Regulation 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.

Internal Salary Relativities

8. Historically, internal salary relativities have linked the remuneration paid to offices in the Court and Related Officers Group and the Judges and Magistrates Group. Those relativities have been altered due to a number of factors which include:
 - amendments to the SOOR Act in 2011
 - impact of the introduction of the SOOR Regulation in 2013
 - increases in the Superannuation Guarantee Contribution (SGC) in 2013 and 2014.
9. The Tribunal's findings in relation to the historical internal salary relativities are outlined in Section 3 of this report.

Section 2

2014 Determination

10. On 11 July 2014 the former Tribunal made its 2014 annual determination and concurrently a special determination for the Court and Related Officers Group.

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

11. The special determination was made following a direction from the Premier, the Hon Mike Baird MP, in respect to 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.
12. The special determination provided an increase in the salary payable to office holders of salary of 2.27 per cent for the period 1 October 2013 to 30 June 2014, in accordance with the Premier's direction.

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

13. The annual determination provided an increase of 1.88 for the Director of Public Prosecution and the Solicitor General, and an increase of 1.70 per cent for all other Court and Related office holders, on and from 1 July 2014.
14. The increases of 1.88 per cent and 1.70 per cent were discounted amounts to reflect the start date of 1 July rather than the later date of 1 October, at which date the Tribunal's previous determinations have taken effect. The Tribunal adjusted the increase to ensure the office holders salaries did not increase by more than 2.5 per cent over a twelve month period.

Section 3

2015 Annual Review

Invitation for Submissions

15. As is the usual practice, prior to making its Reports and Determinations, the Tribunal invited submissions from office holders on 20 March 2015 and from the Secretary NSW Treasury on 19 March 2015.
16. 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.
17. 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.
18. 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.

Office Holder Submissions

19. For the 2015 review the Tribunal received three submissions from office holders in the Court and Related Office Holders Group. The Tribunal also met with the Senior Crown Prosecutor and the Deputy Director, Office of the Director of Public Prosecutions. The Tribunal thanks the office holders for their time and effort they

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have put into their submissions.

20. The submission from the Director of Public Prosecutions was made on behalf of the Director Public Prosecutions, Deputy Directors Public Prosecutions and Crown Prosecutors (the Applicants). The applicants requested that the internal salary relativities that previously existed between the remuneration of the applicants with that of a Supreme Court Justice (SCJ) be restored and also that the conveyance allowance be increased as the cost of maintaining a vehicle has increased since 2011.
21. The Applicants referred to the historical relativities when the remuneration of the Director Public Prosecutions was equivalent to the remuneration of a SCJ. The relativity was broken following the making of the 2011 determination and the loss in remuneration has amounted to 4 per cent. This has led to a similar loss in remuneration for the Deputy Directors and Crown Prosecutors as their remuneration is linked by percentage to the Director Public Prosecutions. Consequently, the most senior Crown Prosecutors are being remunerated at a level less than that of a Magistrate.
22. The Applicants also referred to the former Tribunal's statement in the 2014 Determination that the Tribunal would consider restoring the original relativities as soon as the current climate of fiscal restraint is relaxed to any extent, and if the existing legislation does not prohibit it doing so. The Applicants consider that the NSW Treasury's February 2015 Financial Statement support the view that the fiscal situation has relaxed.
23. The Applicants submitted that a number of structural changes within the Office of the Director of Public Prosecutions have achieved significant efficiencies not only within the Office of the Director of Public Prosecutions, but also the entire Criminal Justice System. The Applicants provided a brief summary of the structural changes.
24. The submission from the Public Defenders also requested that the Tribunal restore the internal salary relativities in similar terms to the Applicants and also to maintain the parity in salary between the Public Defenders and the Crown Prosecutors. The Public Defenders also requested that the Tribunal increase the conveyance

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allowance because the cost of maintaining a vehicle has increased since 2011.

25. The submission from the Commissioners of the Land and Environment Court requested a 2.5 per cent increase in remuneration and any adjustment to the conveyance allowance considered appropriate by the Tribunal. Similar to their submissions for the 2013 and 2014 annual reviews the Commissioners again note that the work of Commissioners has changed but does not warrant a work value submission. However, the Commissioners noted that recent changes to the *Mining Act 1992* and the non-replacement of a retired Commissioner have potential to support a future work value assessment.

Government Submission

26. The Secretary NSW Treasury provided the Government submission to the Tribunal on 7 May 2015. The Government submits that the Tribunal should determine an increase of 2.5 per cent for office holders in the Court and Related Officers Group, on the basis that it is consistent with the NSW Wages Policy and reflects the NSW Government's intent, pursuant to section 6AB of the SOOR Act and the SOOR Regulation.

Section 4

2015 Determination

Internal Salary Relativities

27. The Tribunal notes that no submissions have specifically requested an increase above 2.5 per cent. That being said, the submission from the Applicants and Public Defenders requested that the Tribunal restore the internal salary relativities, which to achieve would require an increase in excess of 2.5 per cent to office holders in the Court and Related Office Holders Group and also to certain officers in the Judges and Magistrates Group.
28. The Tribunal is aware that the erosion of long standing salary relativities is a significant matter of concern for office holders within the Court and Related Officers Group, and office holders articulated this issue in the 2015 annual review meetings

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with the Tribunal.

29. The Tribunal has reviewed the previous findings of the former Tribunal and identified the increases that would be required in both the Judges and Magistrates Group and the Court and Related Officers Group to restore the original salary relativities. Those increases are outlined in Table 1 below.

Table 1: Increases required to restore original 2010 salary relativities

Group	Office Holders	Increase required to restore original 2010 salary relativities
Judges and Magistrates Group	District Court Judges Associate Judge	3%
	Deputy President of the Industrial Relations Commission Chief Magistrate Deputy Chief Magistrate State Coroner Chief Industrial Magistrate Magistrate Children's Magistrate Deputy State Coroner Commissioners, Industrial Relations Commission	3.4%
Court and Related Officers Group	Director of Public Prosecutions Solicitor General	6.6%
	Chairperson, Law Reform Commission Crown Advocate Deputy Directors of Public Prosecution Senior Crown Prosecutor Senior Public Defender Deputy Senior Crown Prosecutor Deputy Senior Public Defender Solicitor for Public Prosecutions Crown Prosecutor Public Defender Deputy President, Workers Compensation Commission Senior Commissioner, Land & Environment Court Commissioner, Land & Environment Court	7.1%

30. In accordance with the current legislative framework 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.

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31. In inviting submissions from office holders the Tribunal clearly articulated the information requirements in respect to any submission for an increase in excess of 2.5 per cent, including the following statement:
- “In making submissions office holders will need to have careful regard to the definitions contained within the Regulation and the meaning of “officer-related cost savings” as provided for in clause 7 of the Regulation. And in particular, that any identified officer-related cost savings are not nullified or excluded by reason of subclauses 7(c) to 7(e).”*
32. The Tribunal has reviewed the information submitted by the Applicants and Public Defenders and finds that it does not have sufficient regard to the requirements specified in the SOOR Regulation. While the Applicant have put forward productivity savings, it would appear to the Tribunal that these savings are of a type which would not satisfy the requirements of the SOOR Regulation should they be relied upon to justify officer-related cost savings (as defined by the Regulation).
33. As noted by the former Tribunal the amendments to the SOOR Act and SOOR Regulation 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.
34. The Tribunal has reviewed the intent of the SOOR Regulation and reviewed comments made by the former Tribunal in previous determinations. Having regard to the information before it, the Tribunal is drawn to the view that increases of more than 2.5 per cent may not be achievable as the SOOR Regulation, as presently constructed, would appear to make the identification and assessment of officer-related cost savings prohibitively complex and difficult.
35. The Tribunal notes that the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014* and SOOR Regulation were introduced to require the Tribunal to give effect to the Government’s wages policy and to require the same policies on increases in remuneration as apply to public service workers to also apply to those officers whose remuneration is determined by the Tribunal. However, as a consequence of a number of factors, increases have not been applied

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uniformly to all office holder groups and a possible unintended consequence has been the erosion of long standing salary relativities.

36. The Tribunal notes that the SOOR Regulation will expire on 1 September 2018. The Tribunal intends to write to the Premier to seek his views on the restoration of internal relativities and whether or not there is any intention to repeal, or amend, the SOOR Regulation before 2018 which may enable office holders to seek increases of more than 2.5 per cent and/or for the Tribunal to determine increases of more than 2.5 for the purpose of restoring long standing salary relativities.

Conveyance Allowance

37. The Tribunal has undertaken a review of the conveyance allowance and determined that the allowance will increase by 2.5 per cent on and from 1 July 2015.
38. As part of the 2016 Annual Review the Tribunal intends to review the methodology for determining the quantum of increase to conveyance allowance and will consider if the general increase should apply irrespective of the adjustments in motor vehicle costs.

Conclusion

39. The Tribunal is obligated to undertake its duties consistent with the legislation. On that basis the Tribunal, after considering the views of Assessors, considers that an increase of 2.5 per cent in remuneration and the conveyance allowance is appropriate and so determines.
40. Pursuant to Section 13 of the SOOR Act the Tribunal determines that the remuneration to be paid office holders in the Court and Related Officers Group, on and from 1 July 2015 shall be as specified in Determination No. 1.

The Statutory and Other Offices Remuneration Tribunal

(Signed)

Richard Grellman AM

Dated: 25 June 2015

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Section 5

Determinations

Determination No. 1- Annual Determination of Remuneration

Annual determination of the remuneration of the Court and Related Officers Group effective on and from 1 July 2015

Position	Salary per annum	Conveyance Allowance (NOTE 1)
Director of Public Prosecutions	\$414,450	\$23,115
Solicitor-General	\$414,450	\$23,115
Chairperson, Law Reform Commission	\$412,790	\$23,115
Crown Advocate	\$371,510	\$20,805
Deputy Director of Public Prosecutions	\$371,510	\$20,805
Senior Crown Prosecutor	\$334,360	\$16,645
Senior Public Defender	\$334,360	\$16,645
Deputy Presidents, Workers Compensation Commission	\$300,920	\$16,645
Deputy Senior Crown Prosecutor	\$300,920	\$16,645
Deputy Senior Public Defender	\$300,920	\$16,645
Solicitor for Public Prosecutions	\$300,920	\$16,645
Senior Commissioner Land and Environment Court	\$288,950	\$16,645
Crown Prosecutor	\$274,920	\$16,645
Public Defender	\$274,920	\$16,645
Commissioner Land and Environment Court	\$272,430	\$16,645
Acting Deputy President Workers Compensation Commission	\$1,250 per day	-

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

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Determination No. 2- Annual Leave Loading

Leave Loading

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.

The Statutory and Other Offices Remuneration Tribunal

(Signed)

Richard Grellman AM

Dated: 25 June 2015