

Court and Related Officers Group

Annual Determination

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

21 July 2022

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Section 1

Background

Legislative Framework

1. Section 13 of the *Statutory and Other Offices Remuneration Act 1975* (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. Section 10A defines 'remuneration' as salary or allowances paid in money
2. The Court and Related Officers Group comprises those public offices listed in the Schedules of the SOOR 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

3. 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. 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).
4. On 6 June 2022, the NSW Government announced a new public sector wages policy.¹ The two year policy offered non-executive employees a 3 per cent remuneration increase in 2022-23 and 2023-24, with a possible further 0.5 per cent on offer for employees that make a substantial contribution to productivity enhancing reforms. The Government also announced its position to limit executive remuneration increases to 2 per cent in the 2022-23 financial year.

¹ NSW Government. (2022). *NSW Government lifts wages and recognises health workers*. <https://www.nsw.gov.au/media-releases/budget-2022-public-sector-wages#:~:text=The%20new%20two%2Dyear%20policy,substantial%20contribution%20to%20productivity%20enhancing>

5. The *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014* was amended to reflect this policy but the SOOR Regulation was not amended. Therefore, in accordance with the clause 6 of the 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, could be awarded 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.
6. The Tribunal observes there have been few examples of officer-related cost savings being successfully identified. The Tribunal notes it remains open to receiving submissions that demonstrate the genuine achievement of officer-related cost savings.
7. Since the introduction of the SOOR Regulation in 2013 office holders in the Court and Related Office Holders Group have received general annual increases capped at 2.5 per cent, apart from 2020 when there was a temporary wage pause pursuant to Clause 5A of the SOOR Regulation commencing 29 May 2020 and ending 12 months after that date.

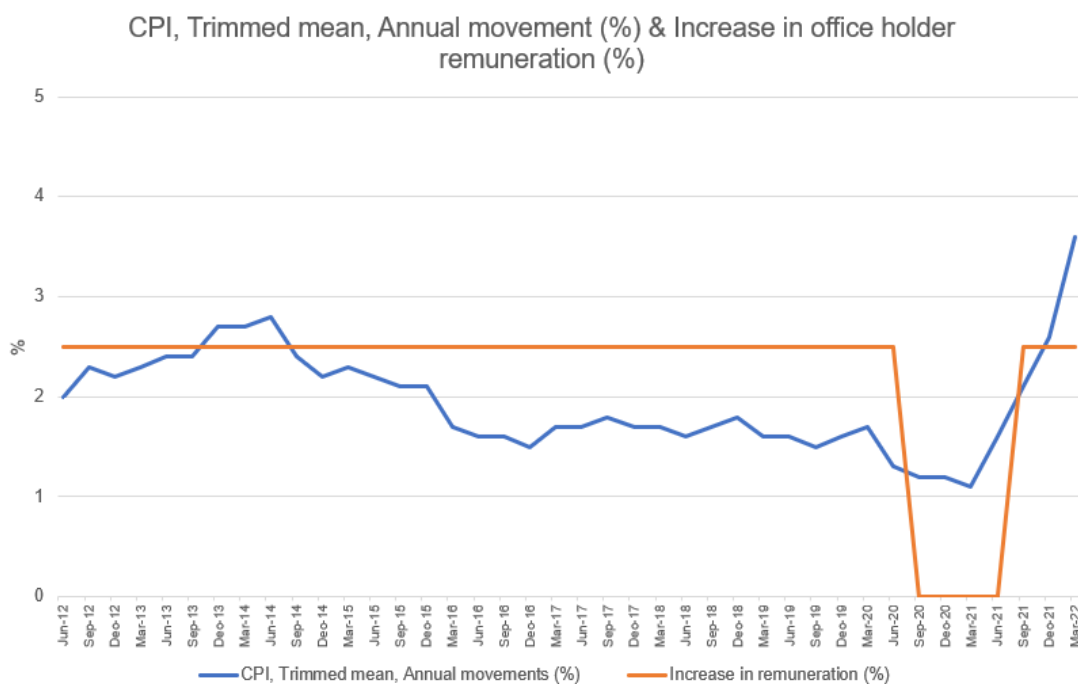
Economic Analysis

8. As outlined in its 2022-23 Budget papers,² the Government expects the economy to grow at an above-trend pace on average across the forecast horizon to 2025-26, supported by strong near-term momentum in the labour market and the resilient state of aggregate balance sheets.
9. A combination of global supply chain shocks and the impacts of COVID-19 has driven increases in inflation across most of the developed world. Underlying inflation, which excludes items that have particularly large price changes during a given period, point to broader inflationary pressures in the economy.
10. Annual headline inflation in Sydney was 4.4 per cent through the year to the March quarter 2022. This was lower than the national headline figure of 5.1 per cent. National underlying inflation rose by 3.5 per cent in the March 2022 quarter, which is above the RBA's target band of 2-3 per cent.

² NSW Government. (2022). *NSW Budget 2022-23, No.01 Budget Statement Budget Paper*. https://www.budget.nsw.gov.au/sites/default/files/2022-06/2022-23_03_Budget-Paper-No-1-Budget-Statement.pdf

11. The Government expects inflation to peak at a lower rate than has been observed in various other countries. Growth in headline and underlying inflation is expected to peak in late 2022 before easing back to the top of the RBA’s 2-3 per cent inflation target by end of 2023. This reflects an anticipated gradual easing of inflationary pressures as global supply chain issues are resolved and the effects of monetary policy normalisation from the RBA, and other global central banks, flow through to the economy.

12. The Tribunal acknowledges the short-term impacts of higher than expected inflation. The Tribunal observes however that from June 2012 to June 2020, underlying inflation has for the most part³ grown at a lower pace than increases in remuneration for the Court and Related Office Holders Group.⁴



³ In 2014 the Tribunal awarded the equivalent of a 2.5 per cent annual increase in remuneration to public office holders. For salaried office holders, this was adjusted to 1.88 per cent, inclusive of the increase in the SGC that occurred that year. The lower rate was due to the determination coming into effect 1 July 2014, rather than 1 October as had applied in earlier determinations.

⁴ Australian Bureau of Statistics. (2022). *CPI, Trimmed mean and Weighted median, Annual movement (%)*. <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>

2021 Determination

13. After considering submissions received and provisions of section 6AB of the SOOR Act the Tribunal found those office holders the subject of that determination should receive the maximum permissible increase of 2.5 per cent, adjusted to 2.04 per cent for those office holders to which the Superannuation Contribution Guarantee (SGC) increase applies. The increases were consistent with the increases recommended in the Government submission.
14. The conveyance allowance was also increased by 2.5 per cent with effect from 1 July 2021 in accordance with the Tribunal's methodology and the requirements of the SOOR Act.

Section 2

2022 Annual Review

15. On 7 March 2022, the Tribunal wrote to office holders advising of the commencement of the 2022 annual review. The Tribunal did not hold meetings with office holders as part of this process.

Office Holder Submissions

16. The Tribunal received four submissions from office holders in the Court and Related Officers Group, generally supporting a 2.5 per cent increase in salaries. One submission also sought an increase in the conveyance allowance.
17. The Director, Deputy Director, and Acting Deputy Directors of Public Prosecutions sought an increase of 2.5 per cent in remuneration. The submission outlined significant resourcing impacts linked to the successful implementation of the Early Appropriate Guilty Plea (EAGP) reforms, along with further increases in workload linked to the pandemic.

The submission noted the effective prosecution of crime continued through the pandemic, with effective service delivery continuing as a result of the hard work of office holders. The role of office holders in making submissions to significant proceedings of higher courts, as well as to law reform inquiries was also highlighted.

18. The Acting Senior Crown Prosecutor, on behalf Crown Prosecutors submitted that both the salary paid to Crown Prosecutors, as well as the conveyance allowance, should be increased by the maximum amount of 2.5% with no reduction for the SGC. The submission argues that the Tribunal is required to take the 0.5% SGC increase into account, but that it is not the only relevant consideration – or indeed the overriding consideration.

The Acting Senior Crown Prosecutor submits that the combination of nil remuneration increase for office holders in FY 2020-21, and continued increases in the Consumer Price Index have resulted in net salary decreases in real terms. The submission states this is a relevant factor that needs to be considered, and that the Tribunal should not discount the otherwise appropriate increase. The submission cites significant changes to the NSW criminal justice system, including amendments to delegations, the EAGP reforms, and case management reforms that collectively have achieved cost savings yet resulted in significant increases to the workload of Crown Prosecutors. The submission argues these reforms, combined with the impacts of the pandemic, justify an increase of 2.5% exclusive of any reduction linked to the SGC increase.

19. The submission from the Senior Public Defender also argued for the maximum salary increase of 2.5%, without any reduction accounting for the increase in the SGC. The submission cites upward pressures on transport and fuel costs, and also asks that consideration be given to further increases in the conveyance allowance. The Senior Public Defender refers to comments by the Premier to deal with the deteriorating wages conditions for government sector employees in the 2022 Budget process, and notes they would welcome the Tribunal's determination after this process has concluded.

The Senior Public Defender also commended the submission from the Senior Crown Prosecutors to the Tribunal, underscoring the impacts of the EAGP reforms on Public Defenders. Reference was made to the volume of adult and child sexual assault matters, and impacts of Government policy initiatives linked to the pandemic, as further justification for the proposed salary increase.

20. The Senior Commissioner of the Land and Environment Court referenced the submissions made on behalf of the Supreme Court of NSW, as well as that made by the Chief Judge of the Land and Environment Court of NSW. The Senior Commissioner submits that the Tribunal should award a general increase of 2.5% in salary (exclusive of any increase to the SGC), and an increase of at least 2.5% in the conveyance allowance. The submission argues that taking into account the increase in the SGC in making the determination would not take into account the salary increase foregone by office holders in 2020, or the productivity of the commissioners and acting commissioners.

The submission states that increasing the commissioner's salary by 2.5% will assist in maintaining remuneration at a level which partly compensates for increased cost of living pressures, and in doing so will ensure that persons of the highest calibre are not discouraged from accepting appointment to the Court. The submission refers to the challenges of the pandemic, and notes that the adaptability of commissioners in meeting these challenges has facilitated a greater number of matters being heard and disposed of. The submission further argues that the allowances (including the conveyance allowance) should be increased, and that there is no basis for not increasing this allowance. An increase of at least 2.5% would reflect the fact that cost of living pressures have increase.

Government Submission

21. The Secretary, Department of Premier and Cabinet provided the Government submission to the Tribunal on 8 July 2022. The submission recommends the following increases having regard to the increase in SGC from 1 July 2022:

“With the impact of the COVID-19 pandemic on the NSW economy coupled with inflation, limiting increases to these groups to 2.0 per cent contributes to restoring the budget to a sustainable position to ensure public services can continue to be delivered to the community. This approach also sends a good message to the community, whose main concerns are focussed on front-line workers such as nurses and teachers.

An increase of 2.0 per cent in remuneration, effective from 1 July 2022, is recommended for all employees and office holders whose total remuneration package (“TRP”) is determined by the Tribunal and an increase of 1.53 per cent for non-TRP employees and office holders, for the following groups of employees and office holders covered under the Statutory and Other Offices Remuneration Act 1975:

- *Public Service Senior Executives (including government sector senior executives in the NSW Police Service, NSW Health Service, and the Transport Service)*
- *Public Office Holders Group*
- *Chief and Senior Executive Officers (SES)*
- *Judges and Magistrates Group*
- *Court and Related Officers Group*

The discounted increases of 1.53 per cent is recommended for non-TRP employees and office holders as this discounted amount takes into account the increase to the Superannuation Guarantee Charge (“SGC”) of 0.5 percentage points from 1 July 2022 and uses the same methodology as applied when superannuation was last increased in 2021. This methodology recognises that superannuation is not payable on superannuation itself and as a result, the cost of the additional SGC is less than a 0.5 per cent pay increase.”

Conveyance Allowance

22. The annual percentage change from the 2021 March quarter to the 2022 March quarter in the CPI: Motor Vehicles – Sydney (Series ID A2328552A) is 6.3 per cent.⁵ Considering this change the Tribunal will adjust the conveyance allowance by the permissible maximum of 2.5 per cent per cent.

⁵ Australian Bureau of Statistics. (2022). *Table 10. CPI: Group, Sub-group and Expenditure Class, Percentage change from corresponding quarter of previous year by Capital City.* <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>

Superannuation Guarantee Contributions

23. From 1 July 2022, the general Superannuation Guarantee Contribution (SGC) increases from 10.00% to 10.50%.⁶
24. The Tribunal reviewed the impact of the SGC increase on office holders in the 2014 Annual Determination for the Court and Related Officers. In respect to office holders in the Court and Related Officers Group, apart from the Director of Public Prosecutions and Solicitor General, the Tribunal determined it is required to take account of the cost of SGC increases in its remuneration determination.
25. Whilst the Tribunal acknowledges submissions from office holders about the application of the SGC, the Tribunal's previous determinations on the matter of SGC increases continue to apply. Accordingly, for the 2022 determination, there will be no discounting of the general increase for office holders in Determination No. 1 as there is no cost impact from the SGC for officers who are entitled to a Judges pension. For office holders in Determination No. 2, the general increase will be adjusted to account for the SGC increase.
26. The Government submission outlines the Government's view of appropriate adjustments in respect of the SGC.

⁶ Australian Taxation Office. (2022). *Super guarantee percentage*. https://www.ato.gov.au/Rates/Key-superannuation-rates-and-thresholds/?=redirected_SuperRate&anchor=Superguaranteepercentage#Superguaranteepercentage

Section 3

2022 Annual Determination

General Increase

27. The Tribunal thanks those office holders that made a submission, and acknowledges the difficult and uncertain circumstances in which office holders have operated during the course of the pandemic.
28. After considering submissions received and the provisions of section 6AB of the SOOR Act the Tribunal finds those office holders the subject of this determination should receive an increase of 2 per cent, adjusted to 1.53 per cent for some office holders to take into account the SGC increase.
29. This is consistent with the increases recommended in the Government submission. The Tribunal agrees that limiting the increase to 2 per cent will assist in restoring the budget to a sustainable position, and ensure that public services can continue to be delivered to the community.
30. The adjustment to take account of the SGC increase is consistent with the Tribunal's previous determinations and the methodology set out in the Government's submission.
31. The Director of Public Prosecutions and Solicitor General will receive an annual increase of 2 per cent with effect from 1 July 2022.
32. All other office holders in the Court and Related Officer Group will receive an annual increase of 1.53 per cent with effect from 1 July 2022.
33. The conveyance allowance is increased by 2.5 per cent with effect from 1 July 2022 in accordance with the Tribunal's methodology and the requirements of the SOOR Act.
34. In fulfilling its functions, the Tribunal consulted with the Secretary of the Department of Premier and Cabinet, in their capacity as Assessor under the SOOR Act. The other assessor role is currently vacant.
35. 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 2022 shall be as specified in Determination Nos. 1-3.

Statutory and Other Offices Remuneration Tribunal

Signed

The Hon. Greg Pearce

Dated: 21 July 2022

Section 4

Determinations

Determination No. 1 – Remuneration of office holders eligible for a Judges' pension. Effective on and from 1 July 2022

Position	Salary per annum	Conveyance Allowance (Note 1)
Director of Public Prosecutions	\$478,300	\$24,950
Solicitor-General	\$478,300	\$24,950

Determination No. 2 – Remuneration of other office holders not referred to in determination No.1. Effective on and from 1 July 2022

Position	Salary per annum	Conveyance Allowance (Note 1)
Chairperson, Law Reform Commission	\$472,050	\$24,950
Crown Advocate	\$424,850	\$22,445
Deputy Director of Public Prosecutions	\$424,850	\$22,445
Senior Crown Prosecutor	\$382,360	\$17,955
Senior Public Defender	\$382,360	\$17,955
Deputy Senior Crown Prosecutor	\$344,120	\$17,955
Deputy Senior Public Defender	\$344,120	\$17,955
Solicitor for Public Prosecutions	\$344,120	\$17,955
Senior Commissioner Land and Environment Court	\$330,430	\$17,955
Crown Prosecutor	\$314,380	\$17,955
Public Defender	\$314,380	\$17,955
Commissioner Land and Environment Court	\$311,530	\$17,955
Acting Commissioner Land and Environment Court	\$1,295 per day	-

Conveyance Allowance

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

METHODOLOGY: The Tribunal provides increases to the conveyance allowance based on the CPI: Motor Vehicles – Sydney (Series ID A2328552A) March quarter - having regard to the percentage change from the corresponding quarter of the previous year. In considering any adjustment the following conditions will apply:

- Should the March quarter data indicate a decrease in motor vehicle costs the conveyance allowance will remain unchanged (to comply with the requirements of section 21 of the SOOR Act).
- The annual adjustment will not exceed 2.5 per cent (to comply with section 6AB of the SOOR Act).

Determination No. 3 – Annual Leave Loading

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.

Statutory and Other Offices Remuneration Tribunal

Signed

The Hon. Greg Pearce

Dated: 21 July 2022