

Judges and Magistrates Group

Annual Determination

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

26 July 2023

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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 to make an annual determination of 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 Judges and Magistrates Group comprises those public offices listed in the schedules of the SOOR Act (except for the Court and Related Officers 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 (SGC), 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 Regulation).
4. On 30 May 2023, the NSW Government announced a new policy to freeze the remuneration for public sector senior executives and for judicial and non-judicial office holders for two years, in order to reduce expenditure and achieve budget savings.¹ The freeze would be in place for the 2023-24 and 2024-25 financial years.
5. The *Statutory and Other Offices Remuneration Amendment Act 2023* (SOOR Amendment Act) commenced on 1 June 2023. It amended the SOOR Act to

¹ NSW Government. (2023). *Minns Government acts to freeze NSW public sector senior executive and politicians' pay for 2 years*. <https://www.nsw.gov.au/media-releases/minns-government-acts-to-freeze-nsw-public-sector-senior-executive-and-politicians-pay-for-2-years>

provide for a temporary freeze on increases in remuneration for office holders under Part 3 and executive office holders and senior executives under Parts 3A and 3B.

6. Schedule 3 of the SOOR Amendment Act amended the Regulation by omitting the previous clause 5A of the regulation and inserting a new clause 5A imposing a temporary policy that the Tribunal is not to make a determination that has the effect of awarding an increase in remuneration that takes effect before 1 July 2025 to office holders covered by part 3 of the SOOR Act. Clause 5A was amended as follows:

Clause 5A

Omit the clause. Insert instead—

5A Temporary wages policy—Act, s 6AB(3)

(1) A policy that the Tribunal is not to make a determination that has the effect of awarding an increase in remuneration that takes effect before 1 July 2025 is declared.

(2) To avoid doubt, subclause (1) has effect despite clause 6.

(3) This clause expires at the end of the day on 30 June 2025.

Economic Analysis

7. As outlined in its 2022-23 Half-Yearly Review of the Budget,² the NSW Treasury noted that the NSW economy grew more strongly than expected at the time of the 2022-23 Budget. Strong momentum in the labour market has persisted with the near-record high participation rate and the unemployment rate near its lowest level in almost 50 years.
8. However, the economic growth outlook has been downgraded for 2022-23 to 2024-25 as the tightening of monetary policy moderates economic growth, with the full impact yet to flow through to economic activity.
9. Annual headline inflation in Sydney was 7.3 per cent through the year to the March quarter 2023. This was higher than the national headline figure of 7 per cent. National underlying inflation rose by 6.6 per cent in the March 2023 quarter,

² NSW Government. (2023). *2022-23 Half-Yearly Review*.
<https://www.budget.nsw.gov.au/sites/default/files/2023-02/2022-23-Half-Yearly-Budget-Review.pdf>

which is well above the Reserve Bank of Australia's (RBA) target band of 2-3 per cent and the highest rate since December 1990.³

10. The Half-Yearly Review expected inflation to have peaked in the December 2022 quarter and is forecast to decline over the next two years moderating back to the top of the RBA's 2-3 per cent inflation target in 2024. This reflects an anticipated gradual easing of inflationary pressures on both the demand and supply sides such as, the tightening of monetary policy by the RBA and other central banks, easing of supply chain pressures, downward trend on commodity prices and the Australian Government's intervention on energy prices.
11. While the Tribunal acknowledges the continued impacts of sustained higher than expected inflation and the difficulties associated with it, the Tribunal is required to give effect to the temporary wages policy and is unable to award any increases in remuneration for the Judges and Magistrates Group.

2022 Determination

12. After considering submissions received and the provisions of section 6AB of the SOOR Act the Tribunal found those office holders the subject of that determination should receive an increase of 2 per cent, adjusted to 1.53 per cent for those office holders to which the SGC increase applies. The increases were consistent with the increases recommended in the Government submission.
13. The conveyance allowance was also 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.

³ Australian Bureau of Statistics. (2023). *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>

Section 2

2023 Annual Review

14. On 6 March 2023, the Tribunal wrote to office holders advising of the commencement of the 2023 annual review.

Office Holder Submissions

15. The Tribunal received five submissions from office holders in the Judges and Magistrates Group, with most generally supporting a 2.5 per cent increase in salaries, the maximum allowable by the legislation of the time. An additional submission was also received from the Magistrates Association of NSW (the Association). These submissions were all received prior to the passing of the SOOR Amendment Act which mandate no increase before 1 July 2025.
16. A joint submission from the Supreme Court Judges noted that the judges did not seek an increase in 2020 on account of the pandemic and will face a drop in real wages given the current high levels of inflation. The submission cited the difficulty in attracting candidates for potential judicial appointments recently as well as the growing disparity between the remuneration levels of judges and senior public servants. The submission detailed the work performed by the Supreme Court, noting the increase in workload as the broader economy rebounded from the pandemic and the lack of increase in judicial resources.
17. In their submission, the Supreme Court Judges expressed their disappointment in having only received an increase of 2 per cent in the 2022 determination, as well as not having been provided a copy of the Government's submission and an opportunity to respond before the Tribunal made its determination.
18. On behalf of the judges of the Land and Environment Court of NSW, the Chief Judge adopted the submission of the judges of the Supreme Court. The submission noted that there had been continued increases in registrations across all classes of the Court's jurisdiction with some classes now at the highest levels in history. The submission noted the Court continued to operate through the COVID-19 pandemic through hybrid modes of hearing matters, now transitioning back to in-person hearings. The submission also highlighted that judges and commissioners have increased their productivity to hear and dispose of caseload through adoption of hybrid practices.
19. The President of the Personal Injury Commission (PIC) indicated that the PIC will accept whatever outcome the Tribunal determines in relation to the Judges and Magistrates Group.

20. The Chief Judge of the District Court's submission detailed the increase to the Judges' workload arising from the increase to the Court's general jurisdictional limit, and the Walama List, with no additional Judges appointed to deal with the workload. It noted that the Walama List established an alternative sentencing procedure for cases involving Aboriginal and Torres Strait Islander persons which effectively came into operation during April 2022. The aims of the list include the reduction in risk factors related to re-offending and the reduction in the overrepresentation of such persons in custody in NSW. The submission noted the gradually reduced challenges to the work of the Court from COVID-19 and associated prevention measures. The submission also highlighted the increase to work of District Court Judges who preside in the Dust Diseases Tribunal of NSW. A subsequent submission from the Chief Judge provided a calculation of the fortnightly net salary of District Court Judges in the period from June 2016 to March 2023 having reduced by 4.57 per cent after taking the effects of inflation into account.
21. The Tribunal has also considered a submission from the Association. The Association sought an immediate increase of no less than 4 per cent in remuneration to restore relativity to 80 per cent of District Judges remuneration which it claims has been eroded. The submission asserted that this erosion led to gender inequality emerging as more women have been appointed as Magistrates.
22. The Association's submission disagreed with findings of the Tribunal in its 2022 determination that savings attributed by the Association to the Local Court were in fact savings of the District Court and cannot be construed as officer-related savings attributable to the Magistrates of the Local Court. It argued that the Tribunal's rationale was legally wrong, and that the Tribunal should alter its findings. The Association asserted that it has received advice that should the Tribunal adopt the same findings that there may be potential for a judicial review.
23. The Association's submission claimed that any increase in the Magistrates' remuneration should not be reduced by the increase in SGC as this creates an inequitable outcome for Magistrates given Judges do not face the same reduction.
24. The Association also submitted that the Tribunal ought to conduct a new work value assessment for Magistrates as the work performed by Magistrates and the jurisdiction of the Local Courts have increased since the last work value assessment in 1994. The submission cited the Table Offences Reform, increase in criminal and family violence matters, introduction of the industrial jurisdiction in 2013 and the introduction of family protection orders in 2017.

25. The submission also cited an increased risk to the health and safety of Magistrates. The Tribunal wants to be clear that questions of health and safety should be dealt with through the appropriate health and safety mechanisms and are not a matter for the Tribunal.
26. In support of its submission, the Association has provided information and data it has sourced from the Judicial Commission of NSW, and the NSW Bureau and Crime Statistics and Research. The submission includes an extensive discussion of various datapoints, which for brevity are not replicated here.
27. The Chief Magistrate of the Local Court submitted support for the Association's submission and that the Tribunal ought to determine an immediate increase to magistrates' remuneration of 4 per cent to restore relativity with District Court Judges, and that any increase in remuneration should not be reduced by the increase in SGC. The submission highlighted that the last work value assessment of magistrates was in 1994 and the increase in the caseload of the Local Court. It also reiterated the Association's submission that magistrates have demonstrated officer related cost savings due to changes in work practices and argued for a work value increase.
28. The Tribunal will address these office holder submissions in Section 3.

Government Submission

29. The Secretary, Premier's Department provided the Government submission to the Tribunal on 17 July 2023. The submission noted the recent amendments to the SOOR Act by the Government to provide for a temporary two-year freeze on increases in remuneration for office holders under Part 3 and executive office holders and senior executives under Parts 3A and 3B. Excerpts appear below:

"The effect of the amendments to the Act is that the Statutory and Other Offices Remuneration Tribunal (Tribunal) is to give effect to declared government policy set out in regulations made under the Act. Namely, that the Tribunal is not to make determinations that have the effect of awarding an increase in remuneration for Executive Offices and Officers that takes effect before 1 July 2025.

Accordingly, the extent of the NSW Government's submission for 2023 annual determinations is limited to noting the recent amendments to the Act which provide for a two year freeze to increases to the remuneration of Executive Offices and Officers."

Conveyance Allowance

30. The annual percentage change from the 2022 March quarter to the 2023 March quarter in the CPI: Motor Vehicles – Sydney (Series ID A2328552A) is 7.6 per cent.⁴ In accordance with the Regulation and the temporary wages policy there will be no increase to the conveyance allowance.

Superannuation Guarantee Contributions

31. From 1 July 2023, the general SGC increases from 10.50 per cent to 11.00 per cent.⁵
32. As the Tribunal is required to not award an increase in remuneration on this occasion, it is not necessary to deal with the SGC increase.

⁴ Australian Bureau of Statistics. (2023). *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>

⁵ Australian Taxation Office. (2023). *Super guarantee percentage*. https://www.ato.gov.au/Rates/Key-superannuation-rates-and-thresholds/?=redirected_SuperRate&anchor=Superguaranteepercentage#Superguaranteepercentage

Section 3

2023 Annual Determination

No Increase

33. The Tribunal thanks those office holders that made a submission, and acknowledges the difficult circumstances caused by the current high inflationary environment. The Tribunal also acknowledges the challenging situations in which office holders have operated during and after the pandemic as courts returned to full operation.
34. In accordance with the Regulation and the temporary wages policy there will be no general increase in the salaries payable to office holders in the Judges and Magistrates Group with effect from 1 July 2023.
35. This determination is consistent with the temporary wages policy which the Tribunal is required to give effect to pursuant to the Regulation.
36. The Tribunal notes the Supreme Court Judges' disappointment with the outcome and process of the 2022 determination but reiterates that it has not been the Tribunal's practice to share submissions with office holders, noting that all submissions are considered as required by the SOOR Act.
37. The Tribunal notes that the Association has submitted that the Tribunal was wrong in its 2022 determination about the attribution of officer-related savings. The Tribunal made its decision in 2022 after receiving advice from the Crown Solicitor and will not debate that decision.
38. In earlier determinations, the Tribunal has noted some erosion of relativities within the Judges and Magistrates Group and between the Judges and Magistrates Groups and office holders in the Court and Related Officers Group. The current relativity between a Magistrate and a District Court Judge's remuneration is 79 per cent.
39. The Tribunal notes that the Association has raised questions of work value and gender equality related to an erosion of relativities. However, as the Tribunal is required by legislation to give effect to the temporary wages policy, it is not open for the Tribunal to give meaningful consideration to these issues at present.

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40. In fulfilling its functions, the Tribunal consulted with the Secretary, Premier's Department, in their capacity as Assessor under the SOOR Act. The other assessor role is currently vacant.
 41. Pursuant to section 13 of the SOOR Act, the Tribunal determines that the remuneration to be paid to office holders in the Judges and Magistrates Group, on and from 1 July 2023 shall be as specified in Determination Nos. 1-5.
 42. The Tribunal has also made a Report and Determination on Travel Allowances for NSW Judges and Magistrates, and the rates are specified in Determination No. 6.

Section 4

Report on travel allowances for NSW Judges and Magistrates

Background

44. 'Remuneration' is defined in the SOOR Act, as salary and allowances payable to office holders. Judges and Magistrates are holders of offices specified in Schedule 1 of the SOOR Act.
45. '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) *a Judge or Acting Judge of a court, or*
 - (b) *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.'*
46. Determination 6 sets rates for overnight stays in capital cities and other centres and meal rates for travel not involving an overnight stay. The Tribunal has also determined some specific conditions for the payment of travel allowances.

2023 Review

47. Historically the Tribunal has had 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 determination for 2023 being ATO TD2023/3.

Principles Adopted

48. In making its determinations on travel allowance rates the Tribunal has adopted guiding principles as set out below:
 - (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.

- (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.

49. 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.

Conclusion

50. The Tribunal makes Determination No 6 effective on and from 1 July 2023.

Statutory and Other Offices Remuneration Tribunal



The Hon. Greg Pearce

Dated: 26 July 2023

Section 5

Determinations

Determination No. 1 – Remuneration of Judges effective on and from 1 July 2023

Position	Salary per annum	Conveyance Allowance (Note 1)
Chief Justice of the Supreme Court	\$556,790	\$24,950
President of the Court of Appeal	\$521,360	\$24,950
Chief Judge of the Land and Environment Court	\$521,360	\$24,950
Judge of the Supreme Court	\$497,580	\$24,950
Judge of the Land and Environment Court	\$497,580	\$24,950
President, Personal Injury Commission	\$497,580	\$24,950
Judge of the District Court	\$445,640	\$22,445
Associate Judge or acting Associate Judge (under the <i>Supreme Court Act 1970</i>)	\$445,640	\$22,445

Determination No. 2 – Remuneration of other Judicial Officers not referred to in determination No.1 effective on and from 1 July 2023

Position	Salary per annum	Conveyance Allowance (Note 1)
Chief Magistrate	\$439,830	\$22,445
Deputy Chief Magistrate	\$371,650	\$17,955
State Coroner	\$371,650	\$17,955
Chief Industrial Magistrate	\$358,020	\$17,955
Chief Commissioner Industrial Relations Commission	\$354,800	\$17,955
Magistrate	\$351,860	\$17,955
Children's Magistrate	\$351,860	\$17,955
Deputy State Coroner	\$351,860	\$17,955
Commissioner Industrial Relations Commission	\$322,540	\$17,955

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 temporary wages policy (to comply with Clause 5A of the Regulation).

Determination No. 3 – Acting Judges rates

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	\$2,160 per day
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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	\$1,930 per day
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Determination No. 4 – Acting Magistrates rates

Local Court

The following rate shall be paid for each ordinary court working day on which the acting Magistrate is occupied in the performance of duties of a Magistrate.

Acting Magistrate of the Local Court	\$1,460 per day
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Determination No. 5 – Annual leave loading

Determination of leave loading for Judicial Officers effective on and from 1 July 2023

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, to each of the following office holders.:

- Magistrates
- Chief Commissioner, Industrial Relations Commission
- Commissioners, Industrial Relations Commission

Determination No. 6 – Travel allowances for Judges and Magistrates

Pursuant to section 13 of the SOOR Act the Tribunal determines that the travel allowances for Judges and Magistrates will be as follows effective on and from 1 July 2023

A. Travel necessitating an overnight stay

Travel Allowances	
Capital City Rates	Amount
Adelaide	\$414.80
Brisbane	\$460.80
Canberra	\$449.80
Darwin	\$496.80
Hobart	\$438.80
Melbourne	\$468.80
Perth	\$468.80
Sydney	\$468.80
Other Centre Rates	
Newcastle	\$398.80
Wollongong	\$398.80
Other Centres	\$398.80

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 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

Meal	Amount
Breakfast	\$38.90
Lunch	\$55.00
Dinner	\$77.00

Statutory and Other Offices Remuneration Tribunal



The Hon. Greg Pearce

Dated: 26 July 2023