

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

JUDGES, MAGISTRATES AND RELATED GROUP

28 AUGUST 1998

JUDGES, MAGISTRATES AND RELATED GROUP

Background:

1. Section 13 of the Statutory and Other Offices Remuneration Act 1975, as amended, requires the Statutory and other Offices Remuneration Tribunal, not later than 31 August in each year, to make a determination of the remuneration to be paid to these office holders on and from 1 October in that year. "Remuneration" is defined as salary or allowances paid in money.
2. The Judges Magistrates and Related Group comprises such officers who are listed in the Schedules of the Act and, in addition are defined as judicial officers, (within the meaning of the Judicial Officers Act 1986), or offices which the Government considers should belong to that Group. The offices have been grouped together by the Tribunal for remuneration purposes only.
3. At meetings held in 1990 by the Commonwealth Remuneration Tribunal with State and Territory Tribunals a consensus was reached on a number of matters dealing with the remuneration of judges. It was agreed that the Tribunals should continue to consult on an informal basis before making decisions on judicial salaries; that salary reviews should take place on or about the same time each year; that there was a need to avoid the appearance of "leap frogging" and that historical and other material suggested that the salary of a Judge of the Federal Court and a Judge of a State Supreme Court should not exceed 85 percent of the salary of a Justice of the High Court of Australia. This relativity was only acceptable whilst the remuneration of a Justice of the High Court of Australia was at an acceptable level, and regard was had to any major differences in benefits. Since 1990 the Tribunal has maintained the 85 percent relativity.
4. In its determination of 29 August 1997 the Tribunal increased the remuneration of a Supreme Court Judge by 5 percent to \$186,362 thus preserving the relationship with the salary of a Federal Court judge. The amount of \$10,362 which takes into account the difference in conditions of Federal Court Judges and Supreme Court Judges was maintained, making a total remuneration of \$196,725 per annum.

1998 Review

Government Submission

5. The Government has recommended that the Tribunal's determination have regard to "*... material presented in respect of the Superannuation surcharge and the 85% nexus in judicial salaries with the Federal High Court.*"

Chief Judge of the District Court

6. The Chief Judge of the District Court has sought an increase in remuneration for the Judges of the District Court to reflect changes in the role and responsibility of officers. These include the increase in jurisdiction effected by the District Court Amendment Act 1997 and the implementation of the District Courts Strategic Plan. The submission seeks a reduction in the margin between District and Supreme Court judges.

Magistrates

7. The Chief Magistrate has submitted to the Tribunal that Magistrates salaries be increased by 6% to correct anomalies/inequities that were claimed to be created in 1989 and 1990. In addition, they seek an annual loading of \$10,362 equivalent to that received by Supreme Court Judges in lieu of a motor vehicle.

Director of Public Prosecutions

8. The Director has submitted to the Tribunal that the salary nexus that currently exists with other office holders (ie Judges of the Supreme Court) is inappropriate given the conditions of employment, workload and responsibilities of the office.

1998 Tribunal Review

Judges of the District Court

9. The Tribunal has given careful consideration to the submission from the Chief Judge of the District Court. The Tribunal notes that comments made in relation to the District Court Amendment Act 1997 were considered by the Tribunal in its 1997 Determination. The current relativity has been long standing and it can only be expected that rules and responsibilities will change from time to time which impact on both the Supreme and District Courts. The Tribunal is not persuaded that salary relativities should also change.

Magistrates

10. The Tribunal has examined the salary history of Magistrates from 1981, particularly the claim that an anomaly or inequity was created in 1989/90.
11. In 1981 the salary for Magistrates was determined at 80% of a District Court Judge. This salary nexus was broken in July 1987 but restored in March 1988. In addition Judges and Magistrates received expenses allowances of \$6,019 and \$971 respectively.
12. In October 1989 the expense allowances paid to Supreme Court Judges, District Court Judges and Magistrates were incorporated into salary. As a result the remuneration (salary and allowance) for a Magistrate dropped back to 75.8% of the District Court Judges' remuneration.
13. While Magistrates may claim that they were disadvantaged in 1989, this claim fails to accept that prior to 1989 they did not receive 80% of remuneration but rather 80% of salary.
14. In August 1994 the Tribunal, having regard to work value, restored the Magistrates salary to 79.33 per cent and has been retained at this level in subsequent determinations.

15. This Tribunal does not accept the inequity/anomaly argument but will ensure in this determination the full 80% and not the 79.33% is paid.
16. An allowance of \$10,362 has been paid to Supreme Court Judges since 1990 to compensate for benefits in addition to salary paid to Federal Court Judges. It is primarily compensation for the provision of a car to such Judges. The allowances also counts for superannuation purposes.
17. In 1989 the Tribunal incorporated this allowance into salary and District Court Judges maintained 87% of the total remuneration. This same principle was applied to Magistrates.
18. It is an error therefore to claim that Magistrates have not been compensated for the \$10,362 allowance. They receive a percentage of this amount to maintain pre existing relativities.

Director of Public Prosecutions

19. The Director of Public Prosecutions has argued for an increased salary on the basis of increased workload and greater administrative and managerial responsibility. After consideration the Tribunal is not convinced that the nexus between the Director's salary and that of Judges of the Supreme Court should be broken.

General

20. The Tribunal attended the recent meeting of Federal and State Judicial Remuneration Tribunals which examined remuneration of Judges across the country. Subsequently the Commonwealth Remuneration Tribunal has advised that the remuneration of Federal Court Judges will be increased by 5.5%.
21. The Commonwealth decision is consistent with the percentage increase that this Tribunal considers to be appropriate on this occasion.

22. In so doing, the Tribunal took into account the impact of salary increases received by other groups in the NSW Public Sector, particularly the SES and the Crown Employees (Public Sector Salaries 1997) Award. Both these salary increases have included a component based on productivity savings. The Tribunal acknowledges that productivity savings have also been achieved in the Judicial system.
23. As stated in the Tribunal's 1997 determination performance based rewards are not appropriate for inclusion within judicial remuneration.
24. The Tribunal has also considered the impact of the introduction of the Superannuation Contributions Surcharge as applying to Judges appointed after 7 December 1997. While the Tribunal acknowledges that newly appointed officers will be affected by the implementation of the tax, the Superannuation surcharge is a Commonwealth tax on total package benefits not a salary reduction imposed upon Judges by the State of NSW. It is not the Tribunal's intention to compensate officers for tax changes.
25. Taking the above into consideration, as well as the economic and budgetary outlook, key national economic indicators, comments received from the Attorney-General and increases awarded in NSW, Federal and other State public sectors, the Tribunal considers that a 5.5 percent increase in the remuneration of a Judge of the Supreme Court would be appropriate and so determines.

Conclusion

26. The Tribunal, after considering the views of the Assessors, determines that the base rate of remuneration for a Supreme Court Judge should be increased on and from 1 October 1998 by 5.5 percent from \$186,362 to \$196,613 per annum. The Tribunal also determines that the amount to be added to take into account of the difference in conditions of Supreme Court Judges and Federal Court Judges remain at \$10,362 thus making the total remuneration of a Supreme Court Judge \$206,975 per annum.

27. The Tribunal further determines that the Heads of Jurisdiction of the Supreme Court, Court of Appeal, Industrial Court and Industrial Relations Commission should also be increased by 5.5 percent. The remuneration of all other office holders within this Group shall be proportionally increased to maintain existing relationships, as set out in the attached Determination on and from 1 October 1998. The rates for Magistrates have been similarly increased but rounded up to 80% of a District Court Judge.
28. The rates for Acting Judges of the Supreme Court and the District Court shall also be as set out in the attached Determination on and from 1 October 1998.
29. Pursuant to Section 13 of the Statutory and Other Offices Remuneration Act 1975, as amended, the Tribunal determines that the remuneration to be paid to the office holders in this Group on and from 1 October 1998 shall be as set out in Annexure A.

The Statutory and Other Offices

Remuneration Tribunal

Gerald Gleeson

Dated: 28 August 1998

ANNEXURE A**DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES
AND RELATED GROUP OF OFFICE HOLDERS ON AND FROM 1 OCTOBER
1998****Salary****\$ per annum****JUDGES**

Chief Justice of the Supreme Court	229,970
President of the Court of Appeal	215,330
Chief Judge of the Industrial Court	215,330
President of the Industrial Relations Commission	215,330
Judge of the Supreme Court	206,975
Deputy Chief Judge of the Industrial Court	206,975
Vice-President of the Industrial Relations Commission	206,975
Deputy President of the Industrial Relations Commission	206,975
Judge of the District Court	180,070
Master or acting Master (under the Supreme Court Act 1970)	180,070

**ANNEXURE A
(CONT'D)**

**DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES
AND RELATED GROUP OF OFFICE HOLDERS ON AND FROM 1 OCTOBER
1998**

**Salary
\$ per annum**

MAGISTRATES

Chief Magistrate (under the Local Courts Act 1982)	180,070
Deputy Chief Magistrate (under the Local Courts Act 1982)	152,105
Chairperson of Licensing Court (under the Liquor Act 1982)	152,105
State Coroner	152,105
Senior Children's Magistrate	152,105
Chief Industrial Magistrate	146,540
Deputy Chairperson, Licensing Court (under the Liquor Act 1982)	146,540
Magistrate, (under the Local Courts Act 1982)	144,055
Chairperson Victims Compensation Tribunal (NOTE 1)	144,055
Children's Magistrate	144,055
Licensing Magistrate (under the Liquor Act 1982)	144,055
Deputy State Coroner	144,055

NOTE 1. When a more senior Magistrate is appointed to the office then he or she shall retain his or her present salary level.

**ANNEXURE A
(CONT'D)**

**DETERMINATION OF THE REMUNERATION OF JUDGES, MAGISTRATES
AND RELATED GROUP OF OFFICE HOLDERS ON AND FROM 1 OCTOBER
1998**

**Salary
\$ per annum**

RELATED GROUP

Chairperson, Law Reform Commission	206,975
Solicitor-General	206,975
Director of Public Prosecutions	206,975
Crown Advocate	180,070

ACTING JUDGES

Supreme Court

The following rate shall be paid for each ordinary court working day on which the Acting Judge is occupied in the performance of judicial duties.

Acting Judge of the Supreme Court	\$1,110 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	\$965 per day
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**The Statutory and Other Offices
Remuneration Tribunal**

Gerald Gleeson
Dated: 28 August 1998