

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

PUBLIC OFFICE HOLDERS

27 AUGUST 1999

PUBLIC OFFICE HOLDERS

Section 1 Background

1. Section 13 of the Statutory and Other Offices Remuneration Act 1975, as amended (the Act), 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 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 Magistrates and Related Group), which have been grouped together by the Tribunal for remuneration purposes. The remuneration for this Group is determined as a fixed salary amount. Employer on costs such as Superannuation Guarantee Levy are, unlike the Senior Executive Service, additional to the salary amount determined.
3. The Government has repeatedly stated that while it recognises the strong relationship between the salaries of some public offices in this Group and judicial remuneration, it is not in favour of a direct nexus with the remuneration of the Judges Magistrates and Related Group. For the 1998 review the Tribunal determined a general increase of 5.5 percent for all office holders effective from 1 October 1998. For the current review the Tribunal wrote to Public Office Holders inviting submissions.
4. During the year the Tribunal received special references from the Minister to make determinations in respect of new office holders to this Group viz. Deputy Clerks of the Parliament, Inspector-General of Corrective Services, Chairperson, Aboriginal Housing Authority and Members of the Fair Trading Tribunal.

5. As the table below shows, since 1994, the Tribunal has determined significant real increases in remuneration for this Group, when compared with increases in the Consumer Price Index and Average Weekly Earnings.

YEAR	NSW Public Office Holders	Crown Employees	Consumer Price Index (June Qtr)	Average Weekly Earnings (August Qtr)
1994	6.00	3.00	1.70	4.30
1995	4.00	3.00	4.50	5.20
1996	4.50	3.00	3.10	3.80
1997	5.00	4.00	0.30	4.40
1998	5.50	7.00	0.70	4.20
1999		5.00	1.10	
TOTAL	25.00	25.00	11.40	21.90

Section 2 1999 Review

Government Submission

6. The Government has again expressed the view that it is not in favour of linking the remuneration for this group with that of judicial salaries and emphasising the need for flexibility in the determination of remuneration for such a diverse group of office holders.
7. The Government has provided comparative information on salary movements for interstate and federal public office holders. Details of the non-cash benefits available to some public office holders has also been provided. The Government has submitted that the Tribunal consider various factors including the economic outlook and has recommended that;

“...the Tribunal not grant an increase to the current remuneration for the Public Office Holders.”

Other Submissions Received.

Deputy Director of Public Prosecutions

8. The Deputy Director seeks a review of the salary of the office and an increase in remuneration to restore a salary distinction with other public office holders.
9. The Deputy Director considers that the work and responsibilities of his office have increased particularly since the abolition of the Senior Deputy Director of Public Prosecutions.

Full Time Members of the Fair Trading Tribunal

10. The Chairperson and Deputy Chairperson attended a meeting with the Tribunal to explain the structure of the new Fair Trading Tribunal and roles and responsibilities of its Members. The Chairperson explained that he currently holds the dual office of Chairperson of the Fair Trading Tribunal and President of the Administrative Decisions Tribunal.
11. The Fair Trading Tribunal was established by legislation and commenced operations in March 1999. It combines the jurisdictions of the Commercial Tribunal, the Consumer Claims Tribunal, the Building Disputes Tribunal and the Motor Vehicle Repair Disputes Committee. The new Tribunal will be divided into four Divisions corresponding approximately to the jurisdictions of the former Tribunals viz.; Commercial Division, Consumer Claims Division, Home Building Division and the Motor Vehicle Division.

12. The new Tribunal already has, in some areas (Commercial Division) exclusive jurisdiction whereas in other areas (home building disputes) the legislation aims at developing the Tribunal as the principal jurisdiction in NSW. In addition, the Tribunal will have its own administrative support.
13. In respect of the Tribunal Members, the Chairperson provided the following information.

I Deputy Chairperson

Because of the Chairperson's dual appointment the Deputy Chairperson is the day to day executive officer of the Tribunal. This office equates with the former Deputy Chairperson of the Commercial Tribunal but now carries a greater leadership role and has increased responsibilities particularly in respect to the administration of such a large multi divisional Tribunal.

II Senior Members

Each Senior Member is expected to head a Division of the new Tribunal. Senior Members will be required to hear cases where the Tribunal has exclusive jurisdiction. The Chairperson considers that on this basis their remuneration should be above that of magistrates.

III Full-time Members

The Chairperson considers that these officers will serve in all Divisions and their work will involve case management, dispute resolution and hearings. He also considers that their duties approximate those performed by the Referees in the former Consumer Claims Tribunal but that they will be required to have "*legal and professional acumen*" to deal with more complex claims.

14. The Chairperson also informed the Tribunal of the difference in non salary entitlements Members brought with them to the new Tribunal. The former Chairperson and Deputy Chairperson, by Ministerial decision were each provided with a motor vehicle at no cost as well as an additional 4 weeks annual leave. Some other Members were also provided with motor vehicles at no cost. It was the Chairperson's view that the additional benefits should be 'cashed out' ie the monetary value of the benefits added to the remuneration of those particular Members.

Crown Prosecutors

15. The submission seeks a general increase in remuneration for Crown Prosecutors to preserve the value of increases previously determined. The submission also seeks an increase in the remuneration for the Senior Crown Prosecutor on the basis of additional administrative and financial delegations received from the Director of Public Prosecutions. The level of increase being sought would restore the former relativity between the Senior Crown Prosecutor and the Senior Public Defender.

Public Defenders

16. The Senior Public Defender has requested increases in the remuneration of all Public Defenders because of an expected increase in workload arising from new 'guideline sentencing' and increased complexities in research to prepare for such trials.
17. He submitted that the Deputy Senior Public Defender should receive an additional increase because of greater managerial responsibilities and having to undertake the duties of the Senior Public Defender, when necessary, without a higher duties allowance.

18. He also stated that Public Defenders are required, on more frequent occasions, to practice in the Supreme Court, which is more challenging, and to undertake matters referred by the Aboriginal Legal Service which require greater client management skills. Public Defenders are also required to travel to country courts to defend such matters.

Commissioners, Compensation Court of NSW

19. The Commissioners are seeking an increase in salary to reflect changes in their role and responsibilities brought about by amendments to the Workers Compensation Act 1987.

Senior Commissioner and Commissioners, Land and Environment Court

20. The Senior Commissioner has sought to have the percentage difference between his salary and that of the Commissioners restored to that which existed prior to the 1998 Determination.
21. The Commissioners have sought a further increase in remuneration based on legislative changes in 1997, 1998 and 1999. The Commissioners consider that these changes were only partially acknowledged by the Tribunal in the 1998 Determination.

Clerks and Deputy Clerks of the Parliament

22. The Clerk and Deputy Clerk of the Legislative Assembly have written submissions seeking an increase in their remuneration based on productivity achievements. They note that other officers of the Legislature received a 5 percent award increase effective from January 1999 because of efficiency gains. The Clerk and Deputy Clerk have submitted that they were also involved directly and indirectly in achieving the efficiencies underpinning that award increases.

23. The Clerk and Deputy Clerk of the Legislative Council have sought an increase in their remuneration on the basis of an increased workload and responsibilities arising from; the greater number of Independent Members in the Council; support for Committee activities; an increased number of Ministers in the Council and the impact of legal proceedings in respect of Council matters.

Chairperson of the Residential Tenancies Tribunal

24. The Chairperson of the Tribunal is seeking an increase in the remuneration of Members. She has asked that the Tribunal have regard to the increase granted to the Chairperson in 1998, in recognition of her additional accountabilities and considers that Members also share in this increase. The Chairperson has also advised that the position of Registrar of the RTT has been re graded (from Grade 12 to Senior Officer Grade 1) to reflect the increased responsibilities of that office.

Section 3 1999 Tribunal Review

25. When examining whether any increases are appropriate for this Group the Tribunal has had regard to a wide range of factors, principal among which have been the key economic indicators and award increases in the public sector. This approach has permitted the Tribunal to provide, on occasion, increases greater than those recommended by the Government eg in 1997 and 1998 where the Government recommended increases of 3 percent and 4 percent respectively the Tribunal, for the reasons stated in those Determinations, granted increases of 5 percent and 5.5 percent. The Tribunal also took into account that these officers are not eligible for performance pay as are officers of the Senior Executive Service.
26. On this occasion, however the Tribunal is making its determination in an environment where most public sector awards have expired and the Government is in varying stages of negotiation of new awards with the respective unions. The Tribunal will also be making its determination in circumstances where the key economic indicators do not support the granting of a significant increase.
27. The Tribunal has again received a number of submissions from Public Office Holders seeking an increase in salary above any general increase that may be granted. The Tribunal has examined carefully the matters raised in each submission and met those office holders requesting an interview.
28. As in previous years, the majority of submissions received by the Tribunal seek increases to retain former salary relativities with other officers, establish salary parity on the basis of existing similarities in role, or establish links with judicial remuneration. These matters have been addressed by the Tribunal in the past and the approach taken by the Tribunal is restated in paragraphs 29 and 30 below.

29. The Tribunal will not link the remuneration of these office holders with any in the Judges Magistrates and Related Group. Since the creation of the *'Tribunals Court Officers and Related Group'* in 1990 (now called the Public Office Holders Group), the Government has consistently expressed the view that while it recognises the relationship between the salaries of some public offices in this Group and judicial remuneration it is not in favour of a direct nexus with the remuneration of the Judges Magistrates and Related Group. This was reinforced in the Government's submission for the current review. The Tribunal has long agreed with this view and sees no reason why it should be amended.
30. Linking remuneration between different office holders, because of past relativities, is also not considered appropriate. Comparative wage justice was a feature of remuneration setting in Australia until the early 1980s when economic imperatives required new forms of wage fixing to be developed. Throughout the 1980s and 1990s changes in work value and productivity improvements have been used by remuneration fixing bodies to assess the movement in remuneration. Any specific increases awarded to industry groups or individuals have no flow on effect to other industry groups or individuals simply because of an historical salary relativity. This is consistent with the approach adopted by this Tribunal.
31. The Tribunal has had regard to the submission from the Deputy Director of Public Prosecutions but is of the view that an increase, based on the arguments presented, is not warranted. In 1997 the Tribunal made a special determination in respect of the Deputy Director of Public Prosecutions and determined an increase of 6 percent because of the additional responsibilities the office would assume following the abolition of the Senior Deputy Director of Public Prosecutions position.

32. The Tribunal has carefully noted the submission of the Chairperson of the Fair Trading Tribunal and recognises that there is a general increase in the responsibility of Members. The Tribunal has adjusted the remuneration of the Members on this occasion to reflect these changes. These increases are less than those recommended by the Chairperson because of the short duration the new Tribunal has been operating. This Tribunal would prefer to receive a submission for the 2000 review where the role and responsibilities of the Members can better be assessed.
33. The Tribunal accepts that the role and responsibilities of the Deputy Chairperson have increased when compared with the position's former responsibilities as Deputy Chairperson of the Commercial Tribunal. This is recognised in this determination. This has occurred, to a large extent, because the Chairperson also holds the office of President of the Administrative Decisions Tribunal. In this regard it is worthy to note that the Chairperson's remuneration is derived from his appointment as the President of the Administrative Decisions Tribunal and not as Chairperson to the Fair Trading Tribunal.
34. Because of the Chairperson's dual appointment as President of the Administrative Decisions Tribunal and Chairperson of the Fair Trading Tribunal, many of his day to day management functions are being delegated to the Deputy Chairperson. The Tribunal recognises this particular arrangement and an additional allowance has been determined for this purpose.
35. The Tribunal has considered the submissions from the Crown Prosecutors and the Public Defenders but believes that the arguments presented by both groups do not warrant an increase in remuneration.

36. The Tribunal has again considered the submissions from the Senior Commissioner and Commissioners of the Land and Environment Court. In the 1998 review the Tribunal examined the role of the Senior Commissioner and Commissioners. The Tribunal's determination was made knowing that the existing relativities would be altered. In respect of the Commissioners' submission, the Tribunal's considers that the increases granted in 1998 were fair and reasonable and do not warrant further review at this time. Similarly, the Tribunal has reviewed the changes in the responsibilities of the Commissioner, Workers Compensation Court but does not consider they warrant a special increase on this occasion.
37. The Tribunal has carefully noted the comments of the Clerk and Deputy Clerk of the Legislative Assembly. In respect of the award increases granted to other officers in the Legislature, the Tribunal notes that the terms of that award were that only 2 percent of the 5 percent received was to be provided if specific efficiencies were achieved. The Tribunal was aware of the terms of that award where, in its 1998 Report where it stated that it had regard to;

"...the salary increases received by other groups in the NSW Public Sector, in particular the 16 percent increase negotiated between the Government and the unions through the three year Crown Employees (Public Sector Salaries 1997) Award. In this regard the Tribunal notes that this Award requires productivity improvements to ensure salary increases, beyond the budgeted 3 percent per annum, over its duration are available to public servants.

Given that this Group of office holders will, either directly or indirectly, contribute to the productivity increases an increase on this occasion beyond the Government's recommendation of 3% is appropriate." The Tribunal determined a 5.5 percent increase for the Group in 1998.

38. The Tribunal does not accept the arguments put forward by the Clerk and Deputy Clerk of the Legislative Council. It does not accept the view that the current political makeup of the Council or the number of Ministers in the Council should warrant a special increase. By this reasoning, if at the next election fewer Independents were elected as Members of the Legislative Council, or there were fewer Ministers, then the remuneration of the Clerk and Deputy Clerk should consequently be reduced.
39. The Tribunal has given careful consideration to the comments of the Chairperson of the Residential Tenancies Tribunal. The Tribunal accepts that the role and responsibilities of the Members of the Tribunal have increased particularly in relation to caravan parks and manufactured home estates, retirement villages and strata schemes and has increased their remuneration accordingly. The percentage increase is less than that that previously determined for the Chairperson because that decision also recognised the significant increase in the Chairperson's responsibilities as CEO of the Tribunal.

Non Financial Benefits

40. Both the Government, in its submission to the Tribunal, and the Chairperson, Fair Trading Tribunal, have referred to the non financial benefits received by some office holders in this Group. These relate primarily to cars and additional leave. As these entitlements have been granted by various Ministers over a period of time, the terms and conditions of their availability to officers have varied considerably.
41. The Tribunal believes that there should be a uniform approach to the availability of non financial benefits to members of this Group. For this reason the Tribunal is not prepared to act on the suggestion of the Chairperson of the Fair Trading Tribunal of cashing out the non monetary entitlements of Members of his Tribunal at this time.

42. The Tribunal recommends that the Government review this matter with a view to adopting a standard approach for such entitlements. Should the Government prefer, the Tribunal is prepared to undertake such a review if provided with a special reference from the Minister to do so. Either way, this matter should be resolved before the next annual review.

Section 4 Conclusion

43. As indicated above, the Tribunal has taken into consideration, the economic and budgetary outlook, key national economic indicators which show that the annual underlying inflation rate for Australia to June 1999 was 1.7 percent whereas the annual headline inflation rate for Australia was 1.1 percent and for Sydney was 1.3 percent. The Tribunal has also had regard to the NSW Treasury's economic forecasts contained within the Government's submission which point to;

- Continued low inflation expected to provide growth in real average wages
- Moderation of economic activity due to the flow through of weaker world economic growth
- The Reserve Bank's Semi Annual Statement on monetary policy which suggests an absence of any general upward pressure on wages growth. The Reserve Bank has also noted that the pace of growth of executive remuneration is also easing. The rate of increase over the year to March 1999 was 4.7 percent.
- A NSW budget strategy which places strong emphasis on restraining growth in recurrent outlays.

44. Given that economic forecasts suggest low inflation is now a normal part of Australia's economic environment, increases such as those achieved in previous years by the public sector cannot be sustained. As the Table on page 2 shows, this Group has achieved significant real increases in remuneration since 1994.

45. The Tribunal does not accept that remuneration should be adjusted annually in accordance with the CPI but considers that the CPI is one important factor to be taken into account along with other economic indicators. Also, the Tribunal is mindful that performance pay is inappropriate for these office holders and hence the remuneration determined is fixed. In these circumstances the Tribunal considers that, based on the current and projected economic circumstances, a modest increase in remuneration is appropriate for this review.
46. Having regard to these matters and, after considering the views of the Assessors, the Tribunal considers, in all the circumstances that a 2 percent increase should be granted on and from 1 October 1999 to all office holders in this Group.
47. 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 office holders on and from 1 October 1999 shall be as specified in Annexure A.
48. The list of office holders in Annexure A have been amended to reflect the changes that have occurred over the previous 12 months.

The Statutory and Other Offices

Remuneration Tribunal

Gerald Gleeson

Dated: 27 August 1999

ANNEXURE A

**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE
HOLDERS GROUP ON AND FROM 1 OCTOBER 1999**

Salary	\$ per annum
Ombudsman	173,225
Deputy Director of Public Prosecutions	165,970
Senior Public Defender	165,970
President, Mental Health Review Tribunal	165,970
Deputy Chairman, Law Reform Commission	163,820
Senior Crown Prosecutor	162,745
Deputy Chairperson Fair Trading Tribunal	152,565 (Note 1)
Senior Chairperson (Government and Related Employees Appeals Tribunal) - not being a judicial office holder.	150,610
President, Guardianship Tribunal	150,610
Deputy Senior Crown Prosecutor	150,610
Deputy Senior Public Defender	150,610
Commissioner, Law Reform Commission	147,115
Deputy President Mental Health Review Tribunal	145,300
Inspector General, Corrective Services	142,795
Commissioner, Compensation Court	139,645
Chairperson, Residential Tenancies Tribunal	139,645
Senior Commissioner Land and Environment Court	139,645
Crown Prosecutor	136,665
Public Defender	136,665

ANNEXURE A (CONT'D)

**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE
HOLDERS GROUP ON AND FROM 1 OCTOBER 1999**

Salary	\$ per annum
Commissioner, (Industrial Relations Commission)	136,665
Commissioner, Land and Environment Court	136,665
Deputy President, Guardianship Tribunal	128,675
Clerk of the Legislative Assembly	128,675
Clerk of the Parliaments	128,675
Senior Member, Fair Trading Tribunal	119,540
Chairman, Transport Appeals Board	116,060
Chairperson, Government and Related Employees Appeals Tribunal who is legally qualified (not being the holder of a judicial office or a magisterial office)	116,060 (Note 2)
Member, Fair Trading Tribunal	112,875
Member, Residential Tenancies Tribunal	112,875
Chairperson, Government and Related Employees Appeals Tribunal (not being the holder of a judicial office or a magisterial office)	109,585
Deputy Clerk, Legislative Assembly	109,585
Deputy Clerk, Legislative Council	109,585
Chairman, Local Land Boards	109,585
Chairman, Motor Vehicle Repair Industry Council	109,585
Chairperson, Aboriginal Housing Authority	90,570
Member of the New South Wales Aboriginal Land Council	64,540 (Note 3)

ANNEXURE A (CONT'D)

**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE
HOLDERS GROUP ON AND FROM 1 OCTOBER 1999**

- Note 1: The Deputy Chairperson Fair Trading Tribunal shall receive remuneration equivalent to \$162,745pa while ever the Chairperson of the Fair Trading Tribunal holds a dual appointment.
- Note 2 This rate of remuneration is payable only to those Chairpersons who are barristers admitted by, or solicitors of, the Supreme Court of NSW or who hold equivalent qualifications.
- Note 3 The Chairperson shall receive an allowance of 5% (i.e. a total of \$67,765 per annum) and the Secretary and Treasurer shall receive an allowance of 3% (i.e. a total of \$66,475 per annum).

**The Statutory and Other Offices
Remuneration Tribunal**

Gerald Gleeson
27 August 1999