

REPORT

and

DETERMINATION

under

SECTION 13

of the

**STATUTORY AND OTHER OFFICES
REMUNERATION ACT, 1975**

PUBLIC OFFICE HOLDER GROUP

29 AUGUST 2001

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PUBLIC OFFICE HOLDERS GROUP

Section 1 Background

1. Section 13 of the Statutory and Other Offices Remuneration Act 1975, (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. It is the Government's long held policy that there be no direct nexus with the remuneration of the Judges Magistrates and Related Group.
3. Since the last review the Tribunal has made special determinations in respect of The Deputy President of the Administrative Decision Tribunal, the Deputy Chairperson and Senior Member of the Residential Tribunal and the Assessor (under the Local Courts (Civil Claims) Act 1970 (annual and daily rates). These offices have been added to determination attached to this Report.

Section 2 2001 Review

Government Submission

4. The Government has asked the Tribunal to consider various factors, including the economic outlook and has recommended a 3 percent increase for this Group of Office Holders.
5. The Government has also asked the Tribunal to review its 2000 determination in respect of the motor vehicle allowance and the salary sacrifice provisions and to investigate the "anomalous" payment of leave loading to office holders.

Other Submissions Received.

6. For this review the Tribunal has received submissions from the Ombudsman, the Crown Prosecutors, Public Defenders, Commissioners, Land and Environment Court, Acting Chairperson, Residential Tribunal, and the President, Mental Health Review Tribunal.

Section 3 2001 Tribunal Review

General

7. The Tribunal is aware that there are changes and reviews which have taken place or are taking place which impact in the overall duties and responsibilities of many office holders in this Group. In this regard the Tribunal notes the proposed merger of the Fair Trading Tribunal and the Residential Tribunal is due to take place early in 2002 and that there is currently a review of the role and functions of the Land and Environment Court. In addition there have been changes that have taken place in the industrial relation area and there continue to be changes made to the judicial processes and procedures which impact, in a fundamental way on the duties and responsibilities of such groups as the Crown Prosecutors and Public Defenders.
8. The Tribunal notes that there has not been an in depth review of the role and responsibilities of this group of office holders since 1990. That review was undertaken by external consultants on behalf of the Tribunal. On this occasion, the Tribunal would prefer to undertake its own review but notes that there are time constraints during the annual review process.
9. The Tribunal will therefore approach the Government to provide it with special references to review specific groups within the Public Office Holder Group. The Tribunal proposes to seek a reference to conduct two reviews. The first would be to examine the duties and responsibilities of Deputy Directors of Public Prosecutions, Crown Prosecutors and Public Defenders. The second review would be to examine the role and responsibilities of the Commissioners, Land and Environment Court, Compensation Court and the Industrial Relations Commission and the Members of the new Consumer Trader and Tenancy Tribunal.

10. Following completion of these reviews the Tribunal would progressively undertake further reviews of other office holders in the Public Office Holder Group. The Tribunal will seek a special reference to commence the first two reviews early in 2002.
11. For the present review, the Tribunal has considered each of the submissions received and met with those officers who specifically requested meeting the Tribunal. After considering the information presented and after consulting the Assessors the Tribunal considers those offices holders listed below should receive additional increases.

Ombudsman

12. The Government also supports the review of the Ombudsman's remuneration in light of his broadened responsibilities, management and budgetary accountabilities.
13. The last review of this position occurred in 1990. Since then, the role and responsibilities of the Ombudsman have increased significantly particularly the review, monitoring and oversight roles in respect of child protection, protected disclosures, law enforcement controlled operations, and telephone surveillance. The Tribunal also noted that since 1990 the Ombudsman's budget had doubled and there had been a 60 percent increase in staff numbers.
14. The Tribunal, after examining the information provided by the Ombudsman, and its own investigations of his significantly increased duties and responsibilities has set a new rate for this office.
15. Based on submissions received and discussions held, the Tribunal has also provided additional increases for the Senior Crown Prosecutor and the Members of the Residential Tribunal to better reflect their responsibilities.

Non Financial benefits

16. The Tribunal's 2000 review found that office holders generally were excluded from obtaining motor vehicles on a salary sacrifice basis by section 11A of the Act and that some office holders were provided with motor vehicles at either no cost or minimal cost as part of their conditions of employment. The Tribunal tried to remedy this situation administratively in its 2000 determination.

17. Advice provided to the Tribunal suggests that for office holders generally it would be necessary to amend the Act to specifically allow office holders to salary sacrifice for motor vehicles. The Tribunal supports this amendment and strongly urges the Government to introduce relevant legislation at the earliest time.
18. Once the legislation has been passed, those office holders for whom the Tribunal determines a motor vehicle allowance will need to accept, in writing, the allowance in lieu of their existing arrangements. Once such an election has been made the Tribunal will add the allowance into the officer's salary and he/she will then meet the costs of their motor vehicle from their "grossed up" salary.
19. The Director General of the Premier's Department is in the Tribunal's view the most appropriate person to obtain such written acceptances. The Tribunal would need a special reference from the Minister to gross up the applicable salaries.
20. Salary sacrifice for superannuation for up to 30% of salary has been available to non-SES public sector employees since 1998 and for members of Government Boards and Committees since 1999. The Tribunal understands that a similar amendment to the legislation would be required to allow office holders to salary sacrifice for superannuation. The Tribunal supports this amendment.

Leave Loading

21. The Tribunal has examined the history of this matter and notes that from 1976 to 1989 it made annual determination on leave loading. The Tribunal also notes that leave loading is provided to officers in receipt of annual recreation leave and is not related to other conditions of employment. Officers on remuneration packages such as the SES and Section 11A office holders have had leave loading included in their remuneration packages, hence they do not receive leave loading over and above their annual remuneration package amounts.
22. The Tribunal notes that leave loading is paid under local arrangements but that some office holders have been excluded. Although the Tribunal has not made specific determinations in respect of leave loading since 1989 the Tribunal would be prepared to make annual determinations in respect of leave loading for office holders in this Group as this will provide certainty and uniformity in the eligibility of leave loading.

Section 4 Conclusion

23. 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 2001 was 6 percent and that the Wage Cost Index (WCI) for the 12 months ended June 2001 was 3.7 percent. The Tribunal notes that the WCI is now the principal wage and salary movement indicator and has been adopted by the Federal Remuneration Tribunal in its deliberations. The Tribunal is also aware that Crown Employees (Public Sector Salaries January 2000) Award which will provide a further 3 percent from January 2002 to public servants.
24. As these office holders are on fixed rates with no progression range and as Recruitment Allowance and Retention Allowance are not available to them, the Tribunal considers that in light of all the circumstances an increase of 3.7 percent would be just and reasonable on this occasion and so determines.
25. 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 2001 shall be as specified in Annexure A.

The Statutory and Other Offices Remuneration Tribunal

Gerry Gleeson

Dated: 29 August 2001

DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE HOLDERS GROUP ON AND FROM 1 OCTOBER 2001

	\$ per annum
Ombudsman	220,000
Deputy Director of Public Prosecutions	186,895
Senior Crown Prosecutor	179,065
Senior Public Defender	179,065
President, Mental Health Review Tribunal	179,065
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Deputy Chairperson, Law Reform Commission	176,740
President, Guardianship Tribunal	175,585
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Deputy President Administrative Decisions Tribunal	169,500
Deputy Chairperson Fair Trading Tribunal	164,600
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Senior Chairperson (Government and Related Employees Appeals Tribunal) - not being a judicial office holder.	162,540
Deputy Senior Crown Prosecutor	162,540
Deputy Senior Public Defender	162,540
Commissioner, Law Reform Commission	158,720
Deputy President Mental Health Review Tribunal	156,765
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Inspector General, Corrective Services	154,060
Commissioner, Compensation Court	150,665
Chairperson, Residential Tenancies Tribunal	150,665
Senior Commissioner Land and Environment Court	150,665
Crown Prosecutor	147,450
Public Defender	147,450

ANNEXURE A (CONT'D)**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE HOLDERS GROUP ON AND FROM 1 OCTOBER 2001**

Salary	\$ per annum
Commissioner, Industrial Relations Commission	147,450
Commissioner, Land and Environment Court	147,450
Deputy President, Guardianship Tribunal	147,450
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Clerk of the Legislative Assembly	138,830
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Clerk of the Parliaments	138,830
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Deputy Chairperson, Residential Tribunal	135,600
Senior Member, Fair Trading Tribunal	132,840
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Senior Member, Residential Tribunal	128,065
Chairman, Transport Appeals Board	125,220
Chairperson, Government and Related Employees Appeals Tribunal who is legally qualified (not being the holder of a judicial office or a magisterial office)	125,220 (Note 2)
Member, Fair Trading Tribunal	125,220
Member, Residential Tenancies Tribunal	125,220
Assessor (Civil Claims)	125,220
Chairman, Local Land Boards	121,785
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Chairperson, Government and Related Employees Appeals Tribunal (not being the holder of a judicial office or a magisterial office)	118,230
Deputy Clerk, Legislative Assembly	118,230
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Deputy Clerk, Legislative Council	118,230
<i>Motor Vehicle Allowance</i>	<i>12,000</i>

ANNEXURE A (CONT'D)**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE HOLDERS GROUP ON AND FROM 1 OCTOBER 2001**

Chairman, Motor Vehicle Repair Industry Council	118,230
<i>Motor Vehicle Allowance</i>	<i>12,000</i>
Chairperson, Aboriginal Housing Authority	97,715
Member of the New South Wales Aboriginal Land Council	69,630 (Note 3)
Assessor Civil Claims (daily rate)	\$510 per day

Note 1: The Deputy Chairperson Fair Trading Tribunal shall receive remuneration equivalent to \$179,065pa 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% (ie. a total of \$73,110 per annum) and the Secretary and Treasurer shall receive an allowance of 3% (ie. a total of \$71,720 per annum).

Motor Vehicle Allowance

Those office holders for whom the allowance is determined will be required to accept, in writing, the allowance in lieu of their existing motor vehicle arrangements.

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, as set out in Section 6-17.12 to 6-17.17 of the Premier's Department Personnel Handbook, to each of the office holders listed above who are provided, as a condition of their employment with approved annual leave.

The Statutory and Other Offices Remuneration Tribunal

Gerry Gleeson
29 August 2001