

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT, 1975

PUBLIC OFFICE HOLDER GROUP

6 September 2002

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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, to make a determination of the remuneration to be paid to 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 view that there be no direct nexus with the remuneration of the Judges Magistrates and Related Group. The Tribunal has supported this position in past Determinations.
3. Since the last review, however, the Tribunal has undertaken extensive reviews of specific office holders who work directly within the judicial system. The office holders concerned were, the Deputy Directors of Public Prosecutions, Crown Prosecutors, Public Defenders, Commissioners Land and Environment Court and Commissioners, Industrial Relations Commission.
4. These reviews revealed that increases in work value had occurred and as a result the Tribunal determined a new level of remuneration for the office holders concerned. The Tribunal also concluded that as a result of this review the remuneration for these office holders should be set in relationship with judicial remuneration levels. For remuneration purposes, therefore, these office holders, have been removed from the Public Office Holder Group and are now listed with the Judges Magistrates and Related Group.

5. Since the last review the Tribunal has also made special determinations in respect of Members of the newly created Consumer Trader and Tenancy Tribunal. The Tribunal also made a new Determination in respect of the Motor Vehicle Allowance for those officers who, as part of their employment arrangements are provided with a motor vehicle at either no cost or minimal cost. In accordance with the Act all Reports and Determinations were tabled in Parliament and published in the Government Gazette.
6. In December 2001 the Parliament passed the Statutory and Other Offices Remuneration Amendment Act 2001. This Act amended Section 13 by removing the requirement for the Tribunal to make its annual determinations by 31 August. Section 13 now provides;

“The Tribunal shall, in each year, make a determination of the remuneration to be paid to office holders as on and from 1 October in that year.”
7. The Act was also amended to allow office holders in the Public Office Holder Group to elect to obtain motor vehicles on a salary sacrifice basis and the ability to elect to make additional employee contributions to superannuation from pre tax remuneration.
8. Both amendments provide access to schemes that are generally available to the public sector.

Section 2 2002 Review

Government Submission

9. The Government has asked the Tribunal to consider various factors, including the economic outlook and has recommended a 4.3 percent increase for this Group of Office Holders.

Other Submissions Received.

10. For this review the Tribunal has received submissions from the Ombudsman, the Acting Chairperson of the Consumer Trader and Tenancy Tribunal, the Chairperson Transport Appeals Board, and the Clerk and Deputy Clerk of the Legislative Assembly.

Section 3 2002 Tribunal Review

General

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.

Chairperson Transport Appeals Board (TAB)

12. The Chairperson is seeking an increase in remuneration on the basis that the jurisdiction functions and responsibilities of this office mirror those of the Senior Chairperson of the Government and Related Employees Appeal Tribunal (GREAT).

13. The Tribunal notes that for many years the role of Chairperson TAB was performed by the Chairperson GREAT. The current Chairperson TAB was appointed in January 1999 as a separate office holder.

14. The Tribunal notes that the functions performed by the Chairperson TAB are essentially the same as those performed by the Senior Chairperson GREAT except that in scope where jurisdiction is limited to hearing promotion and discipline appeals from the State Rail Authority and State Transit Authority.

15. The Tribunal does not consider that the remuneration for this position should be increased to that of the Senior Chairperson GREAT. The Tribunal does, however, note that there has been an increase in the jurisdiction of the TAB for which the Tribunal considers an adjustment to the Chairperson's remuneration is warranted.

Ombudsman

16. The Tribunal has again received a submission from the Ombudsman seeking an increase in remuneration following the integration of the Community Services Commission into the Ombudsman's Office and other changes.

17. The Tribunal last reviewed this Office in 2001 and, as a result of that review, provided a significant increase in remuneration for the Ombudsman. On this occasion the Tribunal is aware that the changes have only recently taken place and would prefer, to defer consideration of any increase until such time as the full impact of the changes to the office of the Ombudsman can be assessed. The Tribunal would prefer to review this again as part of the 2003 annual review but would be prepared to consider a special reference if an earlier review is considered appropriate.

Non Financial benefits

18. The 2001 Report foreshadowed that legislative amendments would be required to permit office holders to salary sacrifice for motor vehicles. As noted above the relevant changes have been made. In respect of those officers for whom the Tribunal had determined a motor vehicle allowance, the Tribunal stated that:

“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.

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.”

19. The Tribunal reviewed these arrangements and in its determination of 30 April 2002 provided that:

“In order for an officer to receive the Motor Vehicle Allowance it will be necessary for the officer to forgo the existing arrangements. At the 2002 annual review the allowance will be incorporated into the salary for superannuation purposes.

Following earlier Crown Solicitor’s advice, the Tribunal is not able to make determinations that over-ride any current agreement between a Public Office Holder and the Crown. Therefore, following this determination, the Director-General of the Premier’s Department will need to write to each Office Holder to obtain the officer’s written acceptance that he or she is prepared to forgo the existing motor vehicle arrangements and that in lieu of those existing arrangements the Officer is prepared to meet the private use cost of a motor vehicle on a salary sacrifice basis. The Premier’s Department will advise the Tribunal of those Officers who have accepted the new arrangements.

Those Office Holders who choose not to accept the new arrangements will be ineligible to receive the allowance.”

20. In keeping with this arrangement the Director General has written to the officers concerned. At the time of making this Determination, responses from some office holders were still outstanding. As such the allowances will not be incorporated into the officer's salary at this time. Once the Director General has received all the responses this matter could be referred to the Tribunal for review or await adjustment at the time of the next annual review.
21. The Tribunal has, therefore, decided that only those offices who elect to receive the Motor Vehicle Allowance will be eligible to do so effective from 1 October 2002. Officers electing to receive the Allowance after 1 October 2002 will be eligible to receive the allowance from the date of acceptance.
22. These office holders will be able to obtain a motor vehicle on a salary sacrifice basis with all private use costs being met by the officer. This arrangement brings the availability and costs of a motor vehicle into line with other officers in the public sector. Those officers who have chosen to retain their motor vehicles under their existing arrangements will not receive the allowance.
23. The Tribunal recommends that motor vehicles only be obtained on a salary sacrifice basis. Such an arrangement would ensure that future appointees to these positions will only be able to obtain motor vehicle on a salary sacrifice basis. This is a matter for the Government.

Section 4 Conclusion

24. 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 2002 was 2.8 percent and that the Wage Cost Index (WCI) for the 12 months ended June 2001 was 3.1 percent. The Tribunal has also noted the Crown Employees (Public Sector Salaries January 2000) Award which will provide a 4 percent increase to public servants from January 2003 and a further 5 percent increase from 1 July 2003.

25. 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 4.3 percent would be just and reasonable on this occasion and so determines.
26. 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 2002 shall be as specified in Annexure A.

**The Statutory and Other Offices
Remuneration Tribunal**

Gerry Gleeson
Dated: 6 September 2002

ANNEXURE A

**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE
HOLDERS GROUP ON AND FROM 1 OCTOBER 2002**

Salary	\$ per annum
Commissioner Police Integrity Commission	312,900
Ombudsman	229,460
President, Mental Health Review Tribunal	186,765
<i>Motor Vehicle Allowance</i>	<i>14,000</i>
Chairperson, Consumer Trader and Tenancy Tribunal	186,765
<i>Motor Vehicle Allowance</i>	<i>14,000</i>
Deputy Chairperson, Law Reform Commission	184,340
President, Guardianship Tribunal	183,135
<i>Motor Vehicle Allowance</i>	<i>14,000</i>
Deputy President Administrative Decisions Tribunal	176,790
Deputy Chairperson Consumer Trader and Tenancy Tribunal	171,680
<i>Motor Vehicle Allowance</i>	<i>14,000</i>
Senior Chairperson (Government and Related Employees Appeals Tribunal) - not being a judicial office holder.	169,530
Commissioner, Law Reform Commission	165,545
Deputy President Mental Health Review Tribunal	163,505
<i>Motor Vehicle Allowance</i>	<i>13,000</i>
Inspector General, Corrective Services	160,685
Deputy President, Guardianship Tribunal	153,790
<i>Motor Vehicle Allowance</i>	<i>13,000</i>
Clerk of the Legislative Assembly	144,800
<i>Motor Vehicle Allowance</i>	<i>14,000</i>
Clerk of the Parliaments	144,800
<i>Motor Vehicle Allowance</i>	<i>14,000</i>
Senior Member, Consumer Trader and Tenancy Tribunal	138,550
<i>Motor Vehicle Allowance</i>	<i>13,000</i>
Chairman, Transport Appeals Board	138,550

ANNEXURE A (CONT'D)

**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE
HOLDERS GROUP ON AND FROM 1 OCTOBER 2002**

Salary	\$ per annum
Chairperson, Government and Related Employees Appeals Tribunal <u>who is legally qualified</u> (not being the holder of a judicial office or a magisterial office)	130,605 (Note 1)
Member, Consumer Trader and Tenancy Tribunal	130,605
Assessor (Civil Claims)	130,605
Chairman, Local Land Boards	127,020
<i>Motor Vehicle Allowance</i>	<i>14,000</i>
Chairperson, Government and Related Employees Appeals Tribunal (not being the holder of a judicial office or a magisterial office)	123,315
Deputy Clerk, Legislative Assembly	123,315
<i>Motor Vehicle Allowance</i>	<i>13,000</i>
Deputy Clerk, Legislative Council	123,315
<i>Motor Vehicle Allowance</i>	<i>13,000</i>
Chairperson, Aboriginal Housing Authority	101,915
Member of the New South Wales Aboriginal Land Council	72,625 (Note 2)
<i>Motor Vehicle Allowance</i>	<i>13,000</i>
Assessor Civil Claims (daily rate)	\$530 per day

Note 1 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 2 The Chairperson shall receive an allowance of 5% (ie. a total of \$76,255 per annum) and the Secretary and Treasurer shall receive an allowance of 3% (ie. a total of \$74,805 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
6 September 2002