

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES  
REMUNERATION ACT, 1975

PUBLIC OFFICE HOLDERS GROUP

29 October 2010

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## **PUBLIC OFFICE HOLDERS GROUP**

Mr Chris Raper resigned as the Statutory and Other Offices Remuneration Tribunal effective from 15 February 2010. The Governor, pursuant to section 6(2) of the Statutory and Other Offices Remuneration Act 1975 (the Act), appointed Mr Alex Smith AM as the new Tribunal for a term of three years from 29 March 2010.

Section 7(1(a) of the Act provides that the Director General of the Department of Premier and Cabinet is an Assessor appointed to assist the Tribunal. Section 7(4) of the Act provides that the Director General may appoint a deputy to act in his place as the Assessor. The Director General has decided that he does not require a deputy and will be personally performing the role of Assessor to the Tribunal.

### **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 the majority of this Group is determined as a fixed salary amount. Employer on costs such as the Superannuation Guarantee Levy are additional to the salary amount determined. This Group also comprises office holders who, pursuant to Section 11A of the Act, have elected to receive, and the Minister has approved, access to remuneration packaging arrangements identical to the SES. These office holders, referred to collectively as 11A Office Holders, have historically been listed in the Reports and Determinations for the Chief Executive Service and Senior Executive Service (SES). The Tribunal considers that these office holders are more appropriately listed within the Public Office Holder Group, given the statutory nature of their appointment.

3. The Government considers that there should be no direct nexus with the remuneration of the Judges, Magistrates and Related Group. The Tribunal has supported this position in past Determinations.
4. The Tribunal's Report and Determination of 2009 provided a general increase of 3 per cent to the Public Office Holders Group.
5. The Tribunal undertook one special determination during 2010 in respect of the remuneration payable to the position of Assistant Commissioner, NSW Crime Commission.
6. The office of Assistant Commissioner is constituted under the *NSW Crime Commission Act 1985*. Various functions are conferred on the Assistant Commissioner. Most notably, the Assistant Commissioner can carry out all the functions of the Commissioner to assist the Commissioner. He has a responsibility, as a member of the Commission, for management of the Commission. The report and determination was published in the 20 August 2010 edition of the Government Gazette and tabled in Parliament on 1 September 2010.
7. On 30 September 2009, the Tribunal also made a recommendation to the Attorney General pursuant to section 10AA of the Act on the remuneration of the proposed full time Arbitrators and Senior Arbitrators of the Workers Compensation Commission. The Attorney General advised that following a review of the Workers Compensation Commission, the Government had decided to adopt the recommendation to create full time Senior Arbitrators and Arbitrators.
8. The Tribunal recommended two rates for legally qualified Senior Arbitrators and Arbitrators and for non-legally qualified Senior Arbitrators and Arbitrators as follows:

#### Legally qualified

|                   |           |
|-------------------|-----------|
| Senior Arbitrator | \$198,500 |
| Arbitrator        | \$171,000 |

Not legally qualified

|                  |           |
|------------------|-----------|
| Senor Arbitrator | \$188,805 |
| Arbitrator       | \$162,720 |

9. In making this recommendation the Tribunal noted that a review of the new structure of the Commission was to take place at the conclusion of 12 months of operation. The Tribunal considered that that might be the appropriate time to undertake a further review of remuneration for these offices.

## **Section 2 Submissions Received**

### **Government Submission**

10. The Government has asked the Tribunal to consider a number of factors, including the key national economic indicators and the Government's recommendations relating to its Wages Policy.
11. The Government submission recommends that this Group receive an increase similar to that recommended for the CES and SES ie 2.5 per cent.

### **Chairperson, Local Land Boards**

12. The Chairperson of the Local Land Boards has made a similar submission as last year. The Chairperson again seeks equivalence in remuneration with that of Magistrate. He bases this on the workload of the Local Land Boards, as well as the complexity of matters dealt with. The Chairperson claims that the Board shares much of its jurisdiction with the Local Court. He submits that the Board is a tribunal of fact and law, exercising duties which are substantially judicial in nature.

### **Arbitrators, Workers Compensation Commission**

13. The Arbitrators have provided a comprehensive submission on their roles and responsibilities. In terms of remuneration, the submission provides a detailed comparison of their roles and responsibilities with those of the former Commissioners Compensation Court and the Commissioners, Industrial

Relations Commission (IRC). The Arbitrators consider that their remuneration should be set at 66% of the salary of the President of the Commission based on assumptions of relativities in place for the Commissioners of the former Compensation Court and the relativities of the Commissioners IRC with judicial members of the IRC.

14. The submission also compares the sessional fees paid to Arbitrators which reveal, on a full time equivalent (discounted for overheads) an annual rate of \$253,000pa.
15. The Arbitrators' submission also argues for inclusion in the Judges, Magistrates and Related Group.
16. The President of the Commission has also written to the Tribunal supporting an increase in the remuneration of the Senior Arbitrator and Arbitrator. The President is keen to ensure that he recruits Arbitrators with a high degree of technical competence in workers compensation law. Recent recruitments for full time positions has seen a number of positions left vacant because of the calibre of the candidates with some senior private practitioners not applying because the current remuneration level is not attractive to them.
17. The Tribunal has sought and received a submission from the Director General of the Department of Attorney General and Justice, Mr Laurie Glanfield on the remuneration of Arbitrators. Mr Glanfield's submission notes the following points.
18. The Workers Compensation Commission is not a court of law. Comparisons, therefore, with former Commissioners of the Workers Compensation Court are not entirely appropriate. The basis of the workers compensation reforms which resulted in the abolition of the Workers Compensation Court and the creation of the Workers Compensation Commission was to move away from judicially based dispute resolution service.
  - The former Compensation Court differs from the Workers Compensation Commission in terms of "... *their philosophical basis, [sic] structure and practical operation.*"

- The Workers Compensation Commission provides an independent dispute resolution service and was created to reduce administrative costs and provide a fair and cost effective system of dispute resolution.
- The introduction of full time Arbitrators was intended as a further reduction in costs.

19. Mr Glanfield concludes that the Government should recommend that the remuneration of Arbitrators should be consistent with the levels of remuneration received by Members of the Consumer Trader and Tenancy Tribunal with an adjustment for those Arbitrators and Senior Arbitrators who are legally qualified. He also notes that the review of the new structure of the WCC incorporating the new offices will be undertaken in June 2011 which will be 12 months for the implementation of the structure.

### **Mental Health Review Tribunal**

20. The submission from the President and Deputy Presidents of the Mental Health Review Tribunal seek a flow on of the adjustments recently made by the Tribunal in relation to the Judges, Magistrates and Related Group. They seek this relativity on the basis that the Tribunal in its forensic division is now required by the *Mental Health (Forensic Provisions) Act 1990* to be staffed by the President or Deputy President who must be, or have been a judge or qualified for judicial appointment.

21. Additionally, the submission argues that the increase will have regard to the additional recent responsibility for mental health enquiries previously undertaken by magistrates, which commenced on 21 June 2010.

## **Section 3      2010 Tribunal Review**

### **Senior Chairperson, Local Land Boards**

22. The Tribunal has again closely considered the issues raised in the Chairperson's submission. No new information was provided by the Chairperson since the 2009 submission. Accordingly, the Tribunal's reasons for its determination, as stated in the 2009 report, remain the same, ie

*“The Senior Chairperson’s submission does not demonstrate to the Tribunal’s satisfaction that there has been a significant change in the role and responsibilities for this position to warrant an additional increase. The amendments to the Crown Land Act 1989 and the Dividing Fences Act 1991 are administrative in nature and do not represent, in the Tribunal’s view, a change in the role and responsibilities of the office.*

*The Tribunal accepts that the complexity of matters now considered by the Senior Chairperson has increased, but considers that increased complexity of work is a feature across most areas of public sector employment and that it does not necessarily reflect a change in the nature of the role or overall responsibilities of the position.*

*While the Senior Chairperson does have similar jurisdictional responsibilities to the Local Court the office does not have the breadth of jurisdiction of a Magistrate. On the basis of the above the Tribunal does not consider a special increase is warranted.”*

23. The Chairperson does raise the issue of workload as a reason for increasing the remuneration of the office. Workload, of itself, is an insufficient reason for increasing remuneration. Workload is indicative of staffing arrangements. It is changes to the role and responsibilities of the office that carry greater weight in any remuneration review.

24. The Tribunal has considered the matters raised in the Chairperson’s submission and can find no reason to alter the existing arrangements.

### **Arbitrators, Workers Compensation Commission**

25. The 2001 amendments to the Workplace Injury Management and Workers Compensation Act 1998 established the WCC (s366). The Commission was established in 2002 to replace the Compensation Court and its role was to resolve disputes between injured workers and employees regarding workers compensation claims in a quick and cost efficient manner.

26. The Arbitrators were originally appointed by the President on a sessional basis. Arbitrators were paid from an event based fee schedule. This Schedule was originally determined by the Minister but in 2007 and 2008 SOORT made recommendations on the various event fees in the Schedule pursuant to section 10AA of the SOOR Act.

27. The legislation establishing the full time office passed Parliament on 11 May 2010 and was assented to on 18 May 2010 and the Arbitrators and Senior Arbitrators were added to the Schedules of the SOORT Act.
28. In this current review, the Tribunal has reviewed the role and responsibilities of the arbitrators and has noted no change since the establishment of the Commission. It should also be noted that full time Arbitrators were first appointed in March 2010 and Senior Arbitrators in August 2010.
29. It is clear from the comments of the President that the current remuneration is insufficient to attract and retain suitably qualified applicants to this role. On this basis alone an increase in the current level of remuneration is warranted.
30. The Arbitrators' argument that the remuneration should be based on remuneration levels of the former Commissioners, Compensation Court and the Commissioners IRC is not entirely appropriate. The Compensation Court was abolished and in its place was established the Workers Compensation Commission whose primary role is the administration of the new statutory workers compensation scheme.
31. The WCC was established as a new body intended to introduce a new way of settling workers compensation disputes. The emphasis was placed on avoiding court settlements in favour of less costly mediation.
32. For this reason the Tribunal can see no reason to base remuneration for Arbitrators on that received by the former Commissioners Compensation Court or of the Commissioners IRC. The Commissioners IRC operate in a different jurisdiction and under different arrangements. Their duties and responsibilities, while similar in some areas are different in others.
33. The Arbitrators comparison with the sessional rates is also not an entirely appropriate measure for the remuneration of full time Arbitrators. As the Arbitrators' submission acknowledges, those rates had regard to a loading for personal expenses and overheads. What the submission does not acknowledge is the discount that would need to be applied for a tenured position *vis-a-vis* sessional arrangements.

34. In setting the remuneration for this office the Tribunal has had regard to the remuneration of the Deputy Presidents and, more importantly, the remuneration of the Registrar. These are the two offices in the Commission which impact directly on the activities of the Arbitrators.
35. Deputy Presidents handle appeals against decisions of the Arbitrators. If there is an appeal based on a question of law that appeal can only be heard by the President. The President may delegate this function to a Deputy President only to avoid conflict of interest or the appearance of bias (s351).
36. The Registrar can perform the duties of the Arbitrator, can direct the Arbitrators and has general responsibilities for the administrative functions of the Commission. Section 371 of the Act provides that the Registrar,
- (1) *“... has and may exercise all the functions of an Arbitrator.*
  - (2) *The Registrar can delegate to any member or member of staff of the Commission any of the Registrar’s functions under the Workers Compensation Acts, except this power of delegation.*
  - (3) *The Registrar may exercise any of the functions of the Commission constituted by an Arbitrator to dismiss proceedings before the Commission.”*
37. In setting the remuneration of the Arbitrators, the Tribunal has also had regard to the newly formed position of Senior Arbitrator. The Position Description of the Senior Arbitrator provides the additional responsibilities;
- “... They also participate in professional development, mentoring, and appraisal activities for Arbitrators and assist the Commission in case management and the development of practice and procedure.”*
38. In considering the remuneration for the Arbitrators and Senior Arbitrators, the Tribunal has had regard to the comments of the Director General, Department of Justice and Attorney General that a review of the new structure will take place in June 2011. The Tribunal also notes that in its letter to the Minister it

suggested that an appropriate time to review the remuneration for these office holders was 12 months after implementation.

39. In conclusion, the Tribunal had considered retaining the current recommended salaries for the legally and non legally qualified Senior Arbitrators and Arbitrators and review the remuneration levels in 12 months time when the structural review is complete. The President's submission, however, suggests that the Tribunal should make some adjustment beyond the general increase for the positions which require legal qualifications which may provide some additional capacity for him to recruit suitable candidates.
40. The Tribunal will undertake a final review of these offices at the time of the 2011 annual review taking into account the completed review of the structure of the Commission, if available.
41. The Tribunal has also considered the Arbitrators argument that they be placed with the Judges, Magistrates and Related Group.
42. The Tribunal firmly believes that the Arbitrators would be better placed in the Public Office Holder Group as they are not judicial officers and do not work within the Court System. Furthermore the Act clearly provides a compatibility of role with that of the Registrar who is listed within the Public Office Holders Group.

#### **Section 4: Conclusion**

43. In determining the general increase for this group of office holders, the Tribunal has had regard to a number of factors including key economic indicators and the Government's recommendations relating its wages policy.
44. As the Tribunal has previously noted this group of office holders (including the Section 11 A office holders, like the SES, are responsible for driving the Government's expenditure reduction targets and reform agenda through their particular jurisdictions. On that basis the Tribunal, after considering the views of the Assessors, considers that an increase of 4 per cent is appropriate and so determines.

45. 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 2010 shall be as specified in Annexure A in respect of the Public Office Holders and Annexure B in respect of Section 11A Office Holders.

**The Statutory and Other Offices  
Remuneration Tribunal**

(signed)

Alex Smith  
Dated: 29 October 2010

**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE  
HOLDERS GROUP ON AND FROM 1 OCTOBER 2010**

| <b>Salary</b>  | <b>\$ per annum</b> |
|--|---------------------|
| Commissioner Police Integrity Commission                                   | \$417,585           |
| Auditor General  | \$407,330           |
| Ombudsman  | \$406,285           |
| Assistant Commissioner, NSW Crime Commission                               | \$381,920           |
| President, Mental Health Review Tribunal                                   | \$329,665           |
| Deputy President Mental Health Review Tribunal                             | \$288,425           |
| Information Commissioner   | \$286,000           |
| Chairperson, Consumer Trader and Tenancy Tribunal                          | \$267,935           |
| President, Guardianship Tribunal   | \$262,340           |
| Principal Claims Assessor (Motor Accidents Compensation Act)               | \$260,535           |
| Deputy Chairperson Consumer Trader and Tenancy Tribunal                    | \$247,805           |
| Deputy Chairperson, Law Reform Commission                                  | \$246,015           |
| Deputy President Administrative Decisions Tribunal                         | \$235,945           |
| Commissioner, Law Reform Commission  | \$235,945           |
| Registrar Workers Compensation Commission                                  | \$229,705           |
| Clerk of the Legislative Assembly  | \$229,705           |
| Clerk of the Parliaments   | \$229,705           |
| Senior Arbitrator, Workers Compensation Commission (legally qualified)     | \$213,200           |
| Deputy President, Guardianship Tribunal                                    | \$205,250           |
| Senior Member, Consumer Trader and Tenancy Tribunal                        | \$202,250           |
| Deputy Clerk, Legislative Assembly   | \$197,185           |
| Deputy Clerk, Legislative Council  | \$197,185           |
| Senior Arbitrator, Workers Compensation Commission (not legally qualified) | \$196,355           |
| Arbitrator, Workers Compensation Commission (legally qualified)            | \$188,240           |
| Chairman, Local Land Boards  | \$188,200           |
| Registrar, Aboriginal Land Rights Act 1983                                 | \$182,165           |
| Arbitrator, Workers Compensation Commission (not legally qualified)        | \$169,230           |

**ANNEXURE A (CONT'D)**

**DETERMINATION OF THE REMUNERATION OF THE PUBLIC OFFICE  
HOLDERS GROUP ON AND FROM 1 OCTOBER 2010**

|  |           |
|--|-----------|
| Member, Consumer Trader and Tenancy Tribunal                             | \$174,305 |
| Assessor (Civil Claims)  | \$174,305 |
| Member of the New South Wales Aboriginal Land Council<br>(Note 1)        | \$121,340 |
| President Mental Health Review Tribunal (part time daily rate)           | \$1,365   |
| Deputy President Mental Health Review Tribunal (part time<br>daily rate) | \$1,195   |
| Assessor Civil Claims (daily rate)                                       | \$725     |

Note 1      The Chairperson shall receive an allowance of 10% (i.e. a total of \$133,475 per annum) and the Deputy Chairperson shall receive an allowance of 5% (i.e. a total of \$127,410 per annum).

**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 6-16.12 to 6-16.16 of the 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**

| [\(signed\)](#)

Alex Smith

Dated: 29 October 2010

**ANNEXURE B****DETERMINATION OF REMUNERATION OF PUBLIC OFFICE HOLDERS WHO HAVE ELECTED TO BE PROVIDED WITH EMPLOYMENT BENEFITS PURSUANT TO SECTION 11A OF THE ACT EFFECTIVE ON AND FROM 1 OCTOBER 2010**

The Tribunal determines that the remuneration packages per annum for Public Office Holders who have elected to be provided with employment benefits pursuant to section 11A of the Act shall be:

| <b><u>Public Office Holder</u></b>                                    | <b><u>Remuneration</u></b> |
|---|----------------------------|
| Commissioner, NSW Crime Commission                                    | \$420,405                  |
| Full time Member and CEO, Independent Pricing and Regulatory Tribunal | \$379,660                  |
| Electoral Commissioner  | \$333,640                  |
| Valuer General  | \$309,880                  |
| Executive Manager Parliamentary Services                              | \$244,520                  |

**The Statutory and Other Offices  
Remuneration Tribunal**

| [\(signed\)](#)

Alex Smith  
Dated: 29 October 2010