

REPORT
and
SPECIAL DETERMINATION
under
SECTION 14(1)
of the
STATUTORY AND OTHER OFFICES
REMUNERATION ACT, 1975

Judges, Acting Judges, Associate Judges,
the Director of Public Prosecutions
and the Solicitor General

19 December 2013

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Judges, Acting Judges, Associate Judges, the Director of Public Prosecutions and the Solicitor General

Section 1

Introduction

1. Section 13 of the *Statutory and Other Offices Remuneration Act 1975* (SOOR Act), requires the Statutory and Other Offices Remuneration Tribunal (the 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. In accordance with section 13 of the SOOR Act the Tribunal makes separate determinations for the following groups of office holders:
 - Judges and Magistrates
 - Court and Related Office Holders
 - Public Office Holders
3. On 27 September 2013 the Tribunal, after considering the views of the Assessors, determined that office holders in each of the three groups would receive an increase of 2.5 per cent with effect from 1 October 2013.
4. The reasons for determining the 2.5 per cent increase are outlined in the 2013 determinations, which were published in the Government Gazette on 12 November 2013 and are also published on the Remuneration Tribunal’s website.
5. On 12 November 2013, pursuant to section 19A of the SOOR Act, those determinations were disallowed by resolution of the Legislative Assembly. The effect of the disallowance was that the Tribunal’s previous year’s determinations of 9 November 2012 continue in effect. However, from 1 October 2013 up to the date of disallowance (being 12 November 2013), remuneration was to be paid in accordance with the disallowed 2013 determinations. The 2012 determinations apply from 12 November 2013.
6. On 20 November 2013 the Premier, the Hon Barry O’Farrell MP, wrote to the Tribunal, in regard to the remuneration payable to those judges and other related

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officers who are entitled upon retirement to receive a pension and therefore who are not eligible to receive the superannuation guarantee contribution (SGC).

7. The Premier wrote:

“The reason for disallowance is that there are currently Court proceedings on foot in which a question has arisen as to whether the Government Wages Policy, as reflected in the relevant Regulations, requires the 2.5 per cent limit on remuneration increases to also take into account increases in the SGC (Superannuation Guarantee Contribution).

The Annual Determinations proceeded on the basis that the limit did not need to take into account the increases in the SGC. However, the Government considers that it does and is making submission to that effect in the current Court proceedings.

The Government considers that it would be inappropriate for the Annual Determinations to operate until the question is finally determined by the Courts.

It is the Government’s intention, however, that once the Courts have finally resolved the question the Tribunal will be asked to make new determinations with effect from the date of disallowance.

In the meantime, there are a number of officers for whom the question of the interaction of the Government Wages Policy and the SGC changes does not apply. These are judges and other related officers, who, upon retirement, are entitled to a judicial pension and therefore who are not eligible to receive the SGC.

To ensure that those officers are not adversely affected, I request that the Tribunal now proceed immediately to make a new determination just for those officers.

The Tribunal’s determination should provide for relevant remuneration increase to be taken to have been effective from 1 October 2013.”

8. The Premier’s request is taken to be a special determination by direction, pursuant to section 14 (1) of the SOOR Act.

14 Special determinations: by direction

(1) Where the Minister so directs, the Tribunal, not later than the day specified in the direction as the day on or before which the determination is to be made, shall, after taking into consideration such matters as are specified in the direction and such other matters as the Tribunal thinks fit, make a determination as to whether, and (if so) how, any determination already made should be altered in relation to such office holders as are referred to in the direction.

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Background

9. The Tribunal's disallowed determinations of 27 September 2013 were made in accordance with the provisions of the amended SOOR Act and the Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013 (SOOR Regulation 2013).

Amendments to the SOOR Act

10. The SOOR Act was amended, with effect from 1 July 2013, to require the Tribunal, when making determinations under Part 3 of the SOOR Act, to give effect to any policy concerning the remuneration of office holders as declared by the regulations, rather than those policies that the Industrial Relations Commission is required to give effect to under section 146C of the *Industrial Relations Act 1996* (IR Act). In addition the policy declared by the regulations also extended to judicial office holders, who previously had been excluded under the SOOR Act.
11. The new section 6AB of the SOOR Act applies to the Tribunal's determinations in respect of office holders in the Judges and Magistrates Group, the Court and Related Officers Group and the Public Office Holders Group. Government policy concerning the remuneration of office holders to which Part 3 of the SOOR Act applies is declared in the SOOR Regulation 2013.
12. In accordance with the SOOR Regulation 2013 any increase the Tribunal may determine in excess of 2.5 per cent, be it a general increase available to all office holders, or an increase provided to an individual office holder or group of office holders based on changes in work value, can only be paid if sufficient officer-related cost savings for the office holder have been achieved to fully offset the increased officer-related costs resulting from increased payment.
13. These new arrangements do not apply to determinations under Part 3A – remuneration packages for CES and SES. For these determinations the Tribunal continues to be required to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission is required to give effect to under section 146C of the IR Act.

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Changes to the Superannuation Guarantee Contribution

14. The majority of office holders subject to the Tribunal's determinations are also affected by the changes to the SGC – which increased by 0.25 per cent with effect from 1 July 2013. The exceptions are judicial office holders and other office holders in receipt of a judicial pension (these office holders do not receive the SGC).
15. The Government, in its submission to the Tribunal, requested that the SGC increase be funded from within the existing wages cap of 2.5 per cent. Amendments to the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011 (IR Regulation 2011) and the SOOR Regulation 2013 clarified the application of those policies in relation to the impact of the increases in superannuation employment benefits. However, the amendments to the IR Regulation 2011 and the SOOR Regulation 2013 were disallowed by the Legislative Council on 21 August 2013.

2013 Annual Determinations (disallowed)

16. On 27 September 2013 the Tribunal determined that offices within the Judges and Magistrates Group would receive an increase of 2.5 per cent. The Tribunal found that the maximum increase was warranted having regard to the significant role judicial office holders undertake in the State's justice system, including but not limited to, their achievements in delivering reforms and initiatives which have demonstrated productivity improvements.
17. In making that determination the Tribunal had regard to the Government submission which advised that the SGC is not payable in respect of those judicial officers who are entitled to a pension under the *Judges' Pension Act 1953*.
18. The Tribunal also determined on 27 September 2013 that offices in the Court and Related Officers Group would receive an increase of 2.5 per cent. An assessment of the key economic indicators suggested that an increase of 2.5 per cent was warranted. Having regard to the Parliament's disallowance of the Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment Regulation 2013 and to the approach adopted by the Industrial Relations Commission in arbitration proceedings: *Re Crown Employees Wages Staff (Rates of Pay) Award 2011*

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& Ors [2013] NSWIRComm 53, the Tribunal understood that the intent of the Parliament was clear, and did not discount the increase in remuneration to take account of the increase in the SGC.

Section 2

Special Determination by direction

19. The Premier has directed that the Tribunal make a new determination for those office holders who are not eligible to receive the SGC. Those office holders include judges as defined within the meaning of the *Judges' Pensions Act 1953*, Associate Judges, the Director of Public Prosecutions, and the Solicitor General. Acting Judges will also be included for the purposes of this determination.

Eligible office holders

20. Judges, Associate Judges, the Director of Public Prosecutions and the Solicitor General are identified as excluded employees for the purposes of the *First State Superannuation Act 1992*. Section 10 provides:

"Section 10 Excluded employees

(1) The compulsory employer superannuation contribution is not payable for the following employees:

(b) an employee who is a Judge within the meaning of the Judges' Pensions Act 1953, a master within the meaning of the Supreme Court Act 1970, the Solicitor General or the Director of Public Prosecutions..."

21. These office holders may receive a judicial pension on retirement, subject to them meeting the various eligibility criteria as outlined in the relevant legislation.

22. Judges are eligible to receive a judicial pension in accordance with the *Judges' Pensions Act 1953*. Judges are defined under section 2 of the *Judges' Pensions Act 1953*, as follows:

Judges, Acting Judges, Associate Judges, the Director of Public Prosecutions and the Solicitor General

***Judge** means a person holding the office of Chief Justice or puisne judge of the Supreme Court of New South Wales, President of the Court of Appeal or Judge of Appeal, President or other member of the Industrial Commission of New South Wales, Judge of the Industrial Court, judicial member of the Industrial Relations Commission of New South Wales, Chief Judge or Judge of the Land and Environment Court, Chief Judge or Judge of the District Court, or Chief Judge or Judge of the Compensation Court of New South Wales.*

23. In respect of the Director of Public Prosecution, eligibility to receive a judicial pension is outlined in clause 10 of Schedule 1 of the *Director of Public Prosecutions Act 1986*.
24. The Solicitor General is eligible to receive a judicial pension subject to the provisions of section 6 of the *Solicitor General Act 1969*.
25. Associate Judges (previously referred to as a master within the meaning of the Supreme Court Act 1970) may also be eligible in accordance with section 17 of the *Judges' Pensions Act 1953*.
26. The *Judges' Pensions Act 1953* does not currently apply to acting judges. However, any period in which a judge has served as an acting judge in accordance with section 8 (3) of the *Judges' Pensions Act 1953* is prior judicial service and must be taken into account when calculating the judge's pension under the *Judges' Pensions Act 1953*.
27. Current Judges, Acting Judges, Associate Judges, the Director of Public Prosecutions and the Solicitor General will only be eligible to receive a judicial pension if they satisfy the criteria applicable under the relevant legislation. Only on retirement, when their eligibility can be confirmed, will each officer be considered an excluded employee for the purposes of the *First State Superannuation Act 1992*. It is possible that some current officers will not qualify for a judicial pension (e.g. if they retire before 60) and that different superannuation arrangements will apply.
28. While the Tribunal has been directed to make a determination in respect of those judges and other related officers who are entitled upon retirement to receive a pension, and therefore who are not eligible to receive the SGC, the Tribunal is not in a position to determine conclusively which of the existing office holders would qualify.
29. Differences in superannuation entitlements notwithstanding, under section 16(6) of the SOOR Act 1975, the Tribunal cannot make a determination that applies differently

Judges, Acting Judges, Associate Judges, the Director of Public Prosecutions and the Solicitor General

between two or more persons holding the same office, for those offices listed in Schedule 1 of the SOOR Act 1975. Schedule 1 includes the offices in the Judges and Magistrates Group.

30. On that basis the Tribunal's determination in respect of this matter will apply to those offices to which a judges' pension applies, notwithstanding the eventual eligibility, or not, of existing office holders.
31. Other judicial office holders as defined by the *Judicial Officers Act 1986* and other office holders subject to the Court and Related Officers Group and Public Office Holders Group determinations are not eligible for a judicial pension and are therefore not eligible for consideration under the terms of the Premier's special reference.

Determination

32. The Premier's direction of 20 November 2013 did not make a recommendation in regard to the quantum of the increase that should apply to these office holders. The Tribunal has reviewed the matters considered during the 2013 annual review having regard to the legislation and regulation, the Government's submission, submissions received from and on behalf of individual office holders, legal advice and the views of the Assessors.
33. Having reviewed the original decision of 27 September 2013 the Tribunal finds that the maximum increase available of 2.5 per cent, without need for office holders to demonstrate officer-related cost savings, remains appropriate and so determines. This increase will apply to the following offices – Judges, Acting Judges, Associate Judges, the Director of Public Prosecutions and the Solicitor General.

Judges, Acting Judges, Associate Judges, the Director of Public Prosecutions and the Solicitor General

Other matters

Workers Compensation Commission, President

34. The office of President, Workers Compensation Commission is not defined as a “judicial officer” in accordance with the Judicial Officers Act 1986. This is anomalous as the Workplace Injury Management and Workers Compensation Act 1998 stipulates that to be eligible for appointment as President the person must be a Judge of a Court of Record, ie a judicial officer.

35. As a Judge the office holder would, subject to meeting the eligibility requirements, be eligible to receive a judicial pension. On that basis it is appropriate that this office holder also receives an increase of 2.5 per cent.

Section 3

Conclusion

36. The Tribunal, after considering the views of the Assessors, considers that an increase of 2.5 per cent is appropriate and so determines. The new rates are as set out in Determinations Nos 1-3 and are effective on and from 1 October, 2013.

37. The Tribunal has also made a Report and Determination on Travel Allowances for NSW Judges. The Report and Determination are as set out in Determination No 4.

38. As this determination is by special direction it only applies to the following office holders – Judges, Acting Judges, Associate Judges, the Director of Public Prosecutions and the Solicitor General.

39. The Tribunal is not able to consider the remuneration payable to other office holders affected by the disallowance of the 2013 determinations unless and until it receives a direction from the Premier. If no such direction is received, the remuneration for these office holders will be reviewed during the 2014 annual review.

**Judges, Acting Judges, Associate Judges, the Director of Public Prosecutions
and the Solicitor General**

**The Statutory and Other Offices
Remuneration Tribunal**

Helen Wright

Dated: 19 December 2013

Determinations for the Judges and Magistrates Group

Determination No 1

Effective on and from 1 October 2013

Position	Salary per annum	Conveyance Allowance (1)
Chief Justice of the Supreme Court	\$462,020	\$22,550
President of the Court of Appeal	\$432,620	\$22,550
President of the Industrial Relations Commission	\$432,620	\$22,550
Chief Judge of the Land and Environment Court	\$432,620	\$22,550
Judge of the Supreme Court	\$412,880	\$22,550
Vice-President of the Industrial Relations Commission	\$412,880	\$22,550
Judge of the Land and Environment Court	\$412,880	\$22,550
Deputy President of the Industrial Relations Commission (being a judicial member)	\$412,880	\$22,550
Judge of the District Court	\$369,790	\$20,330
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	\$369,790	\$20,330
Director of Public Prosecutions	\$396,880	\$22,550
Solicitor General	\$396,880	\$22,550

Note 1 The Conveyance Allowance determined here shall not count towards pension or for superannuation purposes

Determinations for the Judges and Magistrates Group

Determination No 2

Determination of the Remuneration to be paid to the President of the Workers Compensation Commission (Pursuant To Section 369 of the *Workplace Injury Management And Workers Compensation Act 1988*) Effective on and from 1 October 2013

Position	Salary per annum	Conveyance Allowance (1)
President, Workers Compensation Commission	\$412,880	\$22,550

Note 1 The Conveyance Allowance determined here shall not count towards pension or for superannuation purposes

Determination No 3

Effective on and from 1 October 2013

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 \$1,790 per day

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 \$1,600 per day

The Statutory and Other Offices Remuneration Tribunal

Helen Wright

Dated: 19 December 2013

Section 1

Background

1. 'Remuneration' is defined in the SOOR Act, as salary and allowances payable to office holders. Judges are holders of offices specified in Schedule 1 of the Act.
2. 'Allowance' is defined as follows:

allowance does not include a travelling or subsistence allowance, but includes a travelling or subsistence allowance for travel within Australia by the holder of an office specified in Schedule 1 who is:

a Judge or Acting Judge of a court, or

any other judicial officer (within the meaning of the Judicial Officers Act 1986) nominated by the Minister by notice in writing to the Tribunal for the purposes of this definition.

3. The Tribunal in this determination will be setting rates for overnight stays in capital cities, for overnight stays in areas other than capital cities and meal rates for day or part of day absences from headquarters. The Tribunal has also determined the conditions upon which the rates are to be paid.

Section 2

2013 Review

4. Historically the Tribunal has regard to movements in the travel rates as adopted for the NSW Public Sector generally. These rates are based on the reasonable travel allowances as determined by the Australian Taxation Office (ATO). The ATO has made a new determination for 2013 (TD 2013/16) and these rates will be adopted for the NSW Public Sector. On that basis the Tribunal has determined the rates that are based on ATO TD 2013/16.

Section 3

Principles Adopted

5. In making its determinations on travel allowance rates the Tribunal has adopted a number of guiding principles as set out hereunder.
 - (a) Travelling allowances are intended to meet the costs necessarily incurred by Judges who are required to travel away from home/place of work on official business. Such costs include accommodation, meals and incidental expenses.
 - (b) Allowances are provided to ensure that an officer is not financially disadvantaged as a result of having to travel on official business.
 - (c) Office holders are not expected to gain or lose financially as a result of travelling on official business.
 - (d) Where an office holder is accommodated in private, non-commercial accommodation such as the home of a family member or friend, a rate of one third of the specified rate is payable, rounded upwards to the nearest dollar.

Section 4

Conclusion

6. In making its determination the Tribunal has had regard to the current travel allowance rates contained in Taxation Ruling 2013/16. Non metropolitan accommodation rates and meal rates have also been adjusted as set out in the Determination.
7. After reviewing the survey of intra state accommodation and meal costs, the Tribunal makes the following determination (Determination No 7) effective on and from 1 October 2013.

Report and Determination on Travel Allowances for NSW Judges

Statutory and Other Offices
Remuneration Tribunal

Helen Wright

Dated: 19 December 2013

Determination No 4

Travel Allowances for Judges Effective on and From 1 October 2013

Pursuant to section 13 of the SOOR Act the Tribunal determines that the travel allowances for Judges and Magistrates will be as follows effective on and from 1 October 2013.

A. Travel necessitating an overnight stay

Travel Allowances

Capital City Rates	
Adelaide	\$375.70
Brisbane	\$418.70
Canberra	\$412.70
Hobart	\$361.70
Perth	\$492.70
Darwin	\$450.70
Melbourne, Sydney	\$431.70
Newcastle and Wollongong	\$356.70
Other Areas	\$356.70

Conditions

Report and Determination on Travel Allowances for NSW Judges

General conditions are to be as determined from time to time by the Attorney General.

- In addition the following specific conditions will apply.

The full daily travel allowance rate is to be paid only where the judge stays overnight at commercial accommodation. Where the judge stays overnight at non commercial accommodation then one third of the daily rate is to be paid.

- Where travel is for a period in excess of 24 hours then meal expenses for the final part day are to be paid.

B. Travel not involving an overnight stay

Meal Allowances for travel NOT involving an overnight stay

Breakfast	\$24.90
Lunch	\$28.00
Dinner	\$47.75

Statutory and Other Offices Remuneration Tribunal

Helen Wright

Dated: 19 December 2013