

Court and
Related
Officers
Group

Annual
Determination

*Report and determination under
section 13 of the Statutory and
Other Offices Remuneration Act
1975*

**29 August
2017**

Court and Related Officers Group

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Section 1

Background

1. Section 13 of the *Statutory and Other Offices Remuneration Act 1975* (the SOOR Act) requires the Tribunal, each year, to make a determination on the remuneration to be paid to office holders on and from 1 July in that year. “Remuneration” is defined in section 10A as salary or allowances paid in money.
2. The Court and Related Officers Group comprises those public offices listed in the Schedules of the Act (except for the Judges and Magistrates Group and the Public Office Holders Group), which have been grouped together by the Tribunal for remuneration purposes. The remuneration for these office holders is determined as a fixed salary amount. Employer on-costs, such as the Superannuation Guarantee Contribution, are additional to the salary amount determined.

Government Wages Policy

3. The Tribunal is required, 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. 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 Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013 (the SOOR Regulation).
4. In accordance with the SOOR Regulation 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 officer-related cost savings for the office holder (or group of office holders) have been achieved to fully offset the increased officer-related costs resulting from increased payment.

Section 2

2016 Determination

5. On 15 July 2016 the Tribunal determined that officers in the Court and Related Officers Group would receive an increase in salary of 2.5 per cent and an increase in conveyance allowance of 2.1 per cent.
6. The Tribunal also determined that it would provide increases to the conveyance allowance based on a new methodology using the CPI: Motor Vehicles – Sydney (Series ID A2328552A) March quarter. As outlined in the 2016 report:

“45. In considering any adjustment the following conditions will apply:

- i. Should the March quarter data indicate a decrease in motor vehicle costs the conveyance allowance will remain unchanged (to comply with the requirements of section 21 of the SOOR Act).*
- ii. The annual adjustment will not exceed 2.5 per cent (to comply with section 6AB of the SOOR Act).”*

7. The Tribunal stated that it will continue to consider general increases of up to 2.5 per cent only, following the Government’s advice that it does not intend to repeal or amend the SOOR Regulation before its staged repeal in 2018.

“30. As the Government does not intend to repeal or amend the SOOR Regulation before 2018 it is likely that, until then, the Tribunal will continue to consider general increases of up to 2.5 per cent only. It will of course be open to office holders or groups of office holders to seek an increase based on work value assessment of more than 2.5 per cent if they are able to identify and propose to the Tribunal the officer-related cost savings which it or they intend to achieve.”

Amendment to the SOOR Act

8. The SOOR Act has been amended since the making of the 2016 annual

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determination. The *Justice Portfolio Legislation (Miscellaneous Amendments) Act 2016* amended Schedule 2, Public Offices, Part 1 by inserting the office of Acting Commissioner (under the *Land and Environment Court Act 1979*) commencing on 25 October 2016.

Section 3

2017 Annual Review

9. On 29 March 2017 the Tribunal wrote to office holders advising of the commencement of the 2017 annual review. Having regard to the Government's advice in respect to the SOOR Regulation, the Tribunal advised office holders that for 2017 it would consider a general increase of up to 2.5 per cent. Office holders were invited to make submissions on the quantum of the general increase. If office holders or groups of office holders felt they had a strong enough case to seek an increase based on work value assessment of more than 2.5 per cent it would be a matter for such office holders or groups of office holders to identify and propose to the Tribunal the officer-related cost savings which it or they intend to achieve.

Office Holder Submissions

10. For the 2017 review the Tribunal received three submissions from office holders in the Court and Related Officers Group. The Tribunal did not hold meetings with office holders as part of the 2017 review.
11. The Director and Deputy Directors of Public Prosecutions and Crown Prosecutors and Public Defenders made a group submission, noting the limitations placed on remuneration increases by section 6AB of the SOOR Act and that no formal submission would be made for an increase beyond the 2.5 per cent general increase. The submission also informed the Tribunal that the group had written to the Attorney General requesting that the Tribunal be directed by the Premier to make a special determination to restore the internal and general relativities of their remuneration with that of Judicial Officers. A copy of the letter was provided.

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12. The Senior Commissioner of the Land and Environment Court supports a 2.5 per cent increase in salary and conveyance allowance based on the economic indicators and other matters referred to in the submission of the Supreme Court Justices in the Judges and Magistrates Group.
13. The Chief Judge of the Land and Environment Court also provided a submission in respect to an acting Commissioner of the Land and Environment Court. The Chief Judge notes that the *Land and Environment Court Act 1979* (L&EC Act) was amended commencing 25 October 2016 to allow the Tribunal to determine remuneration for an acting Commissioner. The Chief Judge provides background information and suggests a principle that could be adopted by the Tribunal to calculate appropriate remuneration for an acting Commissioner. This matter is discussed in Section 4.

Government Submission

14. The Secretary NSW Treasury provided the Government submission to the Tribunal on 25 August 2017. The Government submits that the Tribunal should determine an increase of 2.5 per cent for office holders in the Court and Related Officers Group. This recommendation is consistent with the NSW Wages Policy and reflects the NSW Government's intent, pursuant to section 6AB of the SOOR Act and the SOOR Regulation.

Section 4

2017 Determination

General Increase

15. The Tribunal has not been asked to consider an increase, either a general increase or an increase based on work value assessment, in excess of 2.5 per cent, and therefore a detailed assessment of whether or not officer-related costs savings have been achieved has not been required for this group of office holders.
16. It is open to the Tribunal to determine an increase of up to 2.5 per cent without the

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need for office holders to offset any additional increase with officer-related cost savings.

17. The Tribunal finds that an increase of 2.5 per cent is justified having regard to the significant role court and related officers undertake in the State's justice system.
18. The Tribunal notes the request from the Director, Deputy Directors of Public Prosecutions, Crown Prosecutors and Public Defenders group to the Attorney General seeking a special determination from the Tribunal to restore internal relativities. The Premier has not directed the Tribunal to make such a determination.
19. The Tribunal made the following comments in the 2016 report about the internal salary relativities within the Judges and Magistrates Groups and between the Judges and Magistrates Groups and office holders in the Court and Related Officers Group following the repeal of the SOOR Regulation:

"31. The Tribunal is also presently unable to restore the internal salary relativities that have eroded both within the Judges and Magistrates Group and between the Judges and Magistrates Groups and office holders in the Court and Related Officers Group. While the Government does not support increasing certain wages in order to match historical salary relativities the Tribunal will revisit this matter following the repeal of the SOOR Regulation."

20. As identified in the report of the 2015 determination the Tribunal identified that increases of more than 2.5 per cent would be required to restore the original salary relativities for office holders in this group. In accordance with the current legislative framework any increase in excess of 2.5 per cent could only be paid if sufficient officer-related cost savings for the office holder or relevant group had been achieved or were expected to be achieved, to fully offset the increased officer-related costs resulting from the increased payment.
21. In 2015 the Tribunal noted that it was drawn to the view that increases of more than 2.5 per cent may not be achievable as the SOOR Regulation, as presently constructed, would appear to make the identification and assessment of officer-related cost savings prohibitively complex and difficult. The Tribunal remains of this

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view having considered as part of this review a request for an increase in excess of 2.5 per cent for an office holder in the Public Office Holders Group.

22. The Tribunal will again draw these matters to the Premier's attention prior to the repeal of the SOOR Regulation in September 2018. Any new regulation should provide the Tribunal with greater flexibility in the undertaking of its statutory functions.

Conveyance Allowance

23. The annual percentage change from the 2016 March quarter to the 2017 March quarter in the CPI: Motor Vehicles – Sydney (Series ID A2328552A) is negative 3.7 per cent. The Tribunal notes that there has been a decrease since the 2016 review and on that basis determines that there will be no change to the quantum of the conveyance allowance.

Acting Commissioners of the Land and Environment Court

24. Section 13 of the L&EC Act sets out the appointment requirements and functions for an acting Commissioner:

13 Acting Commissioners

- (1) *The Governor may appoint any qualified person to act as a Commissioner of the Court for a time not exceeding 5 years to be specified in the instrument of appointment.*
- (2) *In subsection (1), qualified person means a person qualified for appointment as a Commissioner.*
- (3) *The person so appointed has and may exercise, for the time and subject to the conditions or limitations specified in the instrument of appointment, the functions of a Commissioner and is, for the purposes of this or any other Act, deemed to be:*
 - (a) *in the case of a person acting on a full-time basis—a full-time Commissioner, and*

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(b) in the case of a person acting on a part-time basis—a part-time Commissioner.

(4) An acting Commissioner is entitled to be paid:

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975, and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the acting Commissioner.

(5) The provisions of the Government Sector Employment Act 2013 do not apply to or in respect of the appointment of an acting Commissioner, and an acting Commissioner is not, in the acting Commissioner's capacity as such, subject to those provisions during the acting Commissioner's term of office...

25. The Tribunal notes that the wording contained in section 13(4) above reflects an amendment that commenced on 25 October 2016, to allow the Tribunal to determine remuneration for an acting Commissioner of the Land and Environment Court. The former section provided for the Governor to determine remuneration for an acting Commissioner:

Former Section 13(4)

An acting Commissioner is entitled to receive such remuneration and allowances as the Governor may determine.

26. The remuneration for an acting Commissioner determined under the former Clause 13(4) is \$774 per day, with effect 1 July 2014. The Tribunal notes that this rate is less than the daily equivalent of a full-time Commissioner salary with effect 1 July 2016 (\$279,240 per annum). Information provided to the Tribunal indicates that the daily rate for an acting Commissioner was previously equivalent to a full-time Commissioner salary. However, parity has not been maintained as the acting Commissioner rate has not been increased in line with all of the annual increases determined by the Tribunal for a full-time Commissioner.

27. The Tribunal determines the daily rate for an acting Judge of the Supreme Court, an acting Judge of the District Court and an acting Magistrate of the Local Court. The

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daily rates are calculated from the full-time rates for the respective offices. The Tribunal considers that the same principle should be adopted in this instance.

28. The Tribunal considers that the remuneration for an acting Commissioner should reflect the daily equivalent of the full-time Commissioner rate, noting that an acting Commissioner exercises the same functions as a full-time Commissioner. On that basis the Tribunal determines the rate of remuneration for an acting Commissioner of the Land and Environment Court shall be \$1,190 per day.

Conclusion

29. The Tribunal is obligated to undertake its duties consistent with the legislation. On that basis the Tribunal, after consulting with the Assessors, considers that an increase of 2.5 per cent in remuneration is appropriate and so determines. In respect to the conveyance allowance, no adjustment is warranted in accordance with the Tribunal's methodology and the 2016 amounts continue to apply.
30. Pursuant to section 13 of the SOOR Act the Tribunal determines that the remuneration to be paid office holders in the Court and Related Officers Group, on and from 1 July 2017 shall be as specified in Determination Nos. 1-2.

The Statutory and Other Offices Remuneration Tribunal

(signed)

Richard Grellman AM

Dated: 29 August 2017

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Section 5

Determinations

Determination No. 1- Annual Determination of Remuneration

Annual determination of the remuneration of the Court and Related Officers Group effective on and from 1 July 2017

Position	Salary per annum	Conveyance Allowance (NOTE 1)
Director of Public Prosecutions	\$435,430	\$23,600
Solicitor-General	\$435,430	\$23,600
Chairperson, Law Reform Commission	\$433,690	\$23,600
Crown Advocate	\$390,320	\$21,240
Deputy Director of Public Prosecutions	\$390,320	\$21,240
Senior Crown Prosecutor	\$351,290	\$16,990
Senior Public Defender	\$351,290	\$16,990
Deputy Presidents, Workers Compensation Commission	\$316,150	\$16,990
Deputy Senior Crown Prosecutor	\$316,150	\$16,990
Deputy Senior Public Defender	\$316,150	\$16,990
Solicitor for Public Prosecutions	\$316,150	\$16,990
Senior Commissioner Land and Environment Court	\$303,570	\$16,990
Crown Prosecutor	\$288,830	\$16,990
Public Defender	\$288,830	\$16,990
Commissioner Land and Environment Court	\$286,220	\$16,990
Acting Deputy President Workers Compensation Commission	\$1,315 per day	-
Acting Commissioner Land and Environment Court	\$1,190 per day	-

Conveyance Allowance

NOTE 1: The Conveyance Allowance determined here shall not count towards pension or for superannuation purposes.

METHODOLOGY: The Tribunal provides increases to the conveyance allowance based on the CPI: Motor Vehicles – Sydney (Series ID A2328552A) March quarter - having regard to the

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percentage change from the corresponding quarter of the previous year. In considering any adjustment the following conditions will apply:

- Should the March quarter data indicate a decrease in motor vehicle costs the conveyance allowance will remain unchanged (to comply with the requirements of section 21 of the SOOR Act).
- The annual adjustment will not exceed 2.5 per cent (to comply with section 6AB of the SOOR Act).

Determination No. 2- Annual Leave Loading

Leave Loading

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.

The Statutory and Other Offices Remuneration Tribunal

(signed)

Richard Grellman AM

Dated: 29 August 2017