

Judges and Magistrates Group

Annual
Determination

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

**29 August
2017**

Judges and Magistrates Group

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Section 1

Background

1. Section 13 of the *Statutory and Other Offices Remuneration Act* (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 payable in money.

Government Wages Policy

2. 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).
3. 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

4. On 15 July 2016 the Tribunal determined that officers in the Judges and Magistrates Group would receive an increase in salary of 2.5 per cent and an increase in conveyance allowance of 2.1 per cent.
5. 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).”*

6. 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.”

7. The Tribunal also stated that it would revisit the matter of internal salary relativities within the Judges and Magistrates Groups and between the Judges and Magistrates

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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.”

Amendments to the SOOR Act

8. The SOOR Act has been amended since the making of the 2016 annual determination.
9. The *Justice Portfolio Legislation (Miscellaneous Amendments) Act 2016* (the JPL Act) amended Schedule 1 by inserting the office of Acting Magistrate (under the *Local Court Act 2007*) commencing on 25 October 2016.
10. The JPL Amendments Act also amended the SOOR Act to provide judicial officer holders to be provided with living away from home allowances as an employment benefit. An office holder can receive this benefit if they elect by notice in writing to the Minister to receive the benefit and the Minister approves that provision. When such an election is made the salary otherwise payable is reduced by the cost of the employment benefit. The Tribunal is not required to make a determination in respect of this matter.
11. The *Industrial Relations Amendment (Industrial Court) Act 2016* (the IR Amendment Act) amended Schedules 1 and 2 commencing on 8 December 2016. The office of the Chief Commissioner of the Industrial Relations Commission (IRC) was inserted in Schedule 2. The offices of President and Vice President of the IRC were removed from Schedule 1 and the office of Deputy President of the IRC was removed from Schedule 2. The Tribunal has amended the list of offices in the determination accordingly.

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Special Determination

12. The Tribunal has made one special determination since the making of the 2016 annual determination. On 14 December 2016, the Tribunal determined pursuant to section 14(2) of the Act, that the annual salary for the Chief Commissioner of the IRC would be \$318, 010 per annum with an annual conveyance allowance of \$16,990.
13. Special determinations are published on the NSW Remunerations Tribunals website.

Section 3

2017 Annual Review

14. 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

15. For the 2017 review the Tribunal received five submissions from office holders in the Judges and Magistrates Group. The Tribunal did not hold meetings with office holders as part of the 2017 review.
16. The submission from the Supreme Court requests that the salary of judges be increased by 2.5 per cent noting that relevant key economic indicators support a 2.5 per cent increase, as does the productivity of the judges of the Court, which remains high.
17. The submission from the Chief Judge of the District Court requests that the salary of judges be increased by 2.5 per cent. The Chief Judge refers to the 2015 and 2016 submissions which detail the substantial increase in the Court's criminal caseload and notes that the increase has continued to support the requested increase in salary.
18. The submission from the Chief Magistrate of the Local Court requests an increase of 2.5 per cent to the salary of magistrates, noting that this is the maximum that be expected within the current constraints. The Chief Magistrate's submission

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highlights the workload of magistrates and productivity improvements achieved by the Court to fully justify the maximum increase allowable.

19. The Chief Magistrate notes several changes to legislation relating to magistrates. The first is an amendment to the *Local Court Act 2007* (LC Act) to allow the Tribunal to determine remuneration for acting Magistrates. The Chief Magistrate provides background information and outlines a number of matters for the Tribunal's consideration when making its determination. The second relates to the "living away from home allowance".
20. The submission from the Chief Judge of the Land and Environment Court requests that the Tribunal award an increase of 2.5 per cent to both the salary and the conveyance allowance. The Chief Judge notes that the productivity of judges has been maintained and there are new jurisdictions of the court under legislative reforms, for example strata schemes and local land services.
21. The submission from the President of the Workers Compensation Commission (WCC) notes that it is appropriate for the equivalency of the President's remuneration to that of a Supreme Court Judge to continue.

Government Submission

22. 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 Judges and Magistrates 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, to the extent allowable under section 16(6) of the SOOR Act.

Section 4

2017 Determination

General Increase

23. 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.
24. It is open to the Tribunal to determine an increase of up to 2.5 per cent without the need for office holders to offset any additional increase with officer-related cost savings.
25. The Tribunal finds that an increase of 2.5 per cent is justified 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.
26. A number of productivity improvements were articulated in the submissions to the Tribunal and have been highlighted in the Australian Productivity Commission's Report on Government Services 2017. Noting that while NSW has fewer judicial office holders per head of population than the other states and territories, the District, Local and Supreme Courts all achieved high clearance rates.
27. While the Tribunal did not receive a request for an increase of more than 2.5 per cent, it remains of 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. This position is confirmed following the assessment of a request for an increase in excess of 2.5 per cent for an office holder in the Public Office Holders Group.
28. The Tribunal will again draw these matters to the Premier's attention prior to the

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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

29. 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 Magistrate of the Local Court

30. Section 16 of the LC Act sets out the appointment requirements for an acting Magistrate:

16 Acting Magistrates

- (1) The Governor may, by commission under the public seal of the State, appoint any person who is qualified for appointment as a Magistrate under section 13 to act as a Magistrate for a term not exceeding 5 years to be specified in the commission.*
- (2) A person who holds, or has held, a judicial office of this State, or of the Commonwealth, another State or Territory, may be appointed under this section even if he or she has reached the age of 72 years (or will have reached that age before the appointment expires) but may not be so appointed for any period extending beyond the day on which he or she reaches the age of 77 years.*
- (3) Part 4 of Schedule 1 has effect with respect to acting Magistrates.*

31. Schedule 1, Part 4, clause 12 of the LC Act sets out the role and functions of an Acting Magistrate:

12 Acting Magistrates

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- (1) An acting Magistrate has the powers and authorities of a Magistrate, is to fulfil the duties of a Magistrate and for the purposes of this or any other Act (other than the Statutory and Other Offices Remuneration Act 1975) is taken to be a Magistrate.*
- (2) A person appointed as an acting Magistrate may, despite the expiration of the person's term of office, complete or otherwise continue to hear and determine and otherwise deal with any proceedings that have been heard, or partly heard, by the person before the expiration of that term.*
- (3) While a person continues to deal with or determine, under subclause (2), any proceedings that have been heard or partly heard by the person before the expiration of the person's term of office, the person has all the entitlements and functions of a Magistrate and, for the purposes of those proceedings, is taken to continue to be a Magistrate.*
- (4) A person appointed as an acting Magistrate is entitled to be paid remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975.*

32. The Tribunal notes that the wording contained in clause 12(4) above reflects an amendment that commenced on 25 October 2016, to allow the Tribunal to determine remuneration for an acting Magistrate of the Local Court. The former clause provided for the Governor to determine remuneration for an acting Magistrate:

Former Clause 12(4)

A person appointed as an acting Magistrate is entitled to be paid such remuneration as the Governor considers appropriate and such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Magistrate.

33. The remuneration for an acting Magistrate determined under the former clause 12(4) is \$1,018.98 per day with effect 1 July 2016. The Tribunal notes that this rate is

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less than the daily equivalent of a full-time Magistrate salary with effect 1 July 2016 (\$315,380 per annum). Information provided to the Tribunal indicates that the daily rate for an acting Magistrate was previously equivalent to the full-time Magistrate salary. However, parity has not been maintained as the acting Magistrate rate has not been increased in line with all of the annual increases determined by the Tribunal for a full-time Magistrate.

34. The Local Court of NSW Annual Review 2015 provides further information about the role and contribution of acting Magistrates to the administration of justice:

“The Court could not continue to achieve the outstanding service to the administration of justice that makes it a leader within the Commonwealth without the energy and assistance of acting magistrates. Recently retired magistrates may be commissioned as acting magistrates under s 16 of the Local Court Act 2007 for a limited tenure. Acting magistrates are used to preside at weekend bail courts. They may also be used to cover absences on sick leave and extended leave.”

35. The submission of the Chief Magistrate of the Local Court requests that the Tribunal in making its determination for the remuneration of acting Magistrates consider a number of matters including, but not limited, to:

- an acting magistrate undertakes exactly the same duties and has the same obligations as a permanent magistrate.
- without the use of acting magistrates to cover sudden absences of permanent magistrates on sick leave scheduled hearings of the Local Court would have to be abandoned. The flexibility of being able to call on an acting magistrate at short notice has been of significant advantage in maintaining access to justice. The cost to administration of justice, to parties, witnesses and other stakeholders of abandoning sittings is difficult to calculate but when noted that during 2016 acting magistrates were called upon for over 1400 sittings their value is self-evident.

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36. The Tribunal determines the daily rate for an acting Judge of the Supreme Court, an acting Judge of the District Court and an acting Commissioner of the Land and Environment Court. The 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.
37. The Tribunal considers that the remuneration for an acting Magistrate should reflect the daily equivalent of the full-time Magistrate rate, noting that acting Magistrates exercise the same functions as full-time Magistrates. On that basis the Tribunal determines the rate of remuneration for acting Magistrates shall be \$1,340 per day.

Conclusion

38. 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.
39. Pursuant to section 13 of the SOOR Act the Tribunal determines that the remuneration to be paid to office holders in the Judges and Magistrates Group, on and from 1 July 2017 shall be as specified in Determination Nos. 1-6.

The Statutory and Other Offices Remuneration Tribunal

(signed)

Richard Grellman AM

Dated: 29 August 2017

Section 5

Report on travel allowances for NSW Judges and Magistrates

Background

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

2017 Review

4. Historically the Tribunal has had 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 2017 (TD2017/19) 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 TD2017/19.

Principles Adopted

5. In making its determinations on travel allowance rates the Tribunal has adopted a number of guiding principles as set out hereunder.

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- (a) Travelling allowances are intended to meet the costs necessarily incurred by Judges and Magistrates 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.
6. 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.

Conclusion

- 7. In making its determination the Tribunal has had regard to the current travel allowance rates contained in Taxation Ruling TD2017/19. Non metropolitan accommodation rates and meal rates are also as set out in the Determination.
- 8. The Tribunal makes Determination No 7 effective on and from 1 July 2017.

The Statutory and Other Offices Remuneration Tribunal

(signed)

Richard Grellman AM

Dated: 29 August 2017

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Section 6

Determinations

Determination No. 1-Remuneration of Judges effective on and from 1 July 2017

| Position | Salary per annum | Conveyance Allowance (NOTE 1) |
|--|------------------|-------------------------------|
| Chief Justice of the Supreme Court | \$506,890 | \$23,600 |
| President of the Court of Appeal | \$474,640 | \$23,600 |
| Chief Judge of the Land and Environment Court | \$474,640 | \$23,600 |
| Judge of the Supreme Court | \$452,990 | \$23,600 |
| Judge of the Land and Environment Court | \$452,990 | \$23,600 |
| President, Workers Compensation Commission | \$452,990 | \$23,600 |
| Judge of the District Court | \$405,710 | \$21,240 |
| Associate Judge or acting Associate Judge (under the Supreme Court Act 1970) | \$405,710 | \$21,240 |

Determination No. 2- Remuneration of other Judicial Officers not referred to in determination No.1 effective on and from 1 July 2017

| Position | Salary per annum | Conveyance Allowance (NOTE 1) |
|--|------------------|-------------------------------|
| Chief Magistrate | \$404,080 | \$21,240 |
| Deputy Chief Magistrate | \$341,450 | \$16,990 |
| State Coroner | \$341,450 | \$16,990 |
| Chief Industrial Magistrate | \$328,920 | \$16,990 |
| Chief Commissioner Industrial Relations Commission | \$325,960 | \$16,990 |
| Magistrate | \$323,270 | \$16,990 |
| Children's Magistrate | \$323,270 | \$16,990 |
| Deputy State Coroner | \$323,270 | \$16,990 |
| Commissioner Industrial Relations Commission | \$296,330 | \$16,990 |

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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 percentage change from the corresponding quarter of the previous year. 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).

Determination No. 4-Acting Judges rates

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 \$1,960 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 \$1,760 per day

Determination No. 5-Acting Magistrate rate

Local Court

The following rate shall be paid for each ordinary court working day on which the acting Magistrate is occupied in the performance of duties of a Magistrate.

Acting Magistrate of the Local Court \$1,340 per day

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Determination No. 6-Annual leave loading

Determination of leave loading for Judicial Officers effective on and from 1 July 2017

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, to each of the following office holders:

- Magistrates
- Chief Commissioner, Industrial Relations Commission
- Commissioners, Industrial Relations Commission

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Determination No. 7-Travel allowances for Judges and Magistrates

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 July 2017.

A. Travel necessitating an overnight stay

| Travel Allowances | |
|---------------------------|----------|
| Capital City Rates | |
| Adelaide | \$389.45 |
| Brisbane | \$437.45 |
| Canberra | \$426.45 |
| Darwin | \$467.45 |
| Hobart | \$375.45 |
| Melbourne | \$445.45 |
| Perth | \$445.45 |
| Sydney | \$445.45 |
| Other Centre Rates | |
| Newcastle | \$375.45 |
| Wollongong | \$375.45 |
| Other Centres | \$375.45 |

Conditions

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/magistrate stays overnight at commercial accommodation. Where the judge/magistrate 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.

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B. Travel not involving an overnight stay

Meal Allowances for travel NOT involving an overnight stay

| Meal | Amount |
|-----------|---------|
| Breakfast | \$27.05 |
| Lunch | \$30.45 |
| Dinner | \$51.85 |

The Statutory and Other Offices Remuneration Tribunal

(signed)

Richard Grellman AM

Dated: 29 August 2017