

# Public Office Holders Group

Annual  
Determination

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

**7 August  
2018**

## Public Office Holders Group

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# Section 1

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## 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. Section 10A defines ‘remuneration’ as salary or allowances paid in money.
2. The Public Office Holders Group comprises those public offices, listed in the schedules of the SOOR Act (except for the Judges and Magistrates Group and the Court and Related Officers 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. This group also comprises any office holders who, pursuant to section 11A of the SOOR Act, have elected to receive, and for whom the Minister has approved access to, remuneration packaging arrangements that are provided to Public Service senior executives under the *Government Sector Employment Act 2013*.

## 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

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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

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### 2017 Determination

5. On 29 August 2017, the Tribunal determined that officers in the Public Office Holders Group would receive an increase in salary and total remuneration package (where applicable) of 2.5 per cent.
6. The Tribunal considered one submission from an office holder requesting an increase in remuneration of more than 2.5 per cent in recognition of additional functions imposed on the office holder. The office holder in question sought to identify sufficient officer-related cost savings resulting from changes in work practices, as referred to in clause 7(1)(b)(iii) of the SOOR Regulation, to offset any additional officer-related costs associated with any increase in the office-holder's remuneration.
7. Based on legal advice from the Crown Solicitor and Solicitor General the Tribunal found that it was not able to consider the office holder's request for an increase in remuneration in excess of 2.5 per cent as the claim did not satisfy the provisions of clause 7(1)(b)(iii) of the SOOR Regulation. The Tribunal made the following conclusion in respect to this matter:
  22. *The assessment of this request provides further evidence to support the Tribunal's previously stated view that increases of more than 2.5 per cent may not be achievable as the SOOR Regulation makes the identification and assessment of officer-related cost savings prohibitively complex and difficult.*
  23. *The Tribunal will write to the Premier prior to the staged repeal of the SOOR Regulation in 2018 to recommend that any new regulation should provide the Tribunal with greater flexibility in the undertaking of its statutory functions.*

## Section 3

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### 2018 Annual Review

8. On 26 March 2018, the Tribunal wrote to office holders advising of the commencement of the 2018 annual review. The Tribunal did not hold meetings with office holders as part of the 2018 review.

### Office Holder Submissions

9. For the 2018 review, the Tribunal received only one submission requesting an increase in remuneration beyond the maximum permissible increase of 2.5 per cent.
10. The Chief Commissioner of the Law Enforcement Conduct Commission (LECC) requests that consideration be given to determining remuneration for the office at a level equivalent to that of the Chief Commissioner of the Independent Commission Against Corruption (ICAC). The Chief Commissioner, LECC submits that the two offices are equivalent in terms of statutory powers, agency size and qualifications - being either qualified to be appointed or holding or having held judicial office in a superior court (supreme court or above) in any state or territory of Australia - but the remuneration is not equivalent.

### Amendment to Part 1 of Schedule 2 of SOOR Act

11. Part 2 of Schedule 2 of the SOOR Act has been amended to include the new office of Principal Claims Assessor under the *Motor Accident Injuries Act 2017*.

### Government Submission

12. The Secretary NSW Treasury provided the Government submission to the Tribunal on 9 July 2018. The submission outlines the applicability of the NSW Government's wages policy and provides an overview of the economic conditions of the State. Having regard to that advice the Tribunal considers that the budget position for the State of NSW supports an increase of 2.5 per cent. This increase is also consistent with wages growth for non-executive employees across the public sector.

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13. The Tribunal notes that the Government submission states that offices in the public office holders group are subject to section 6AA of the SOOR Act which requires the Tribunal to give effect to the same policies as those that the Industrial Relations Commission (IRC) is required to give effect to under section 146C of the *Industrial Relations Act 1996* when making or varying awards or orders relating to the conditions of employment of public sector employees. Offices in the public office holders group are not subject to the provisions of section 6AA of the SOOR Act. Instead these office holders are subject to the provisions of section 6AB of the SOOR Act and the SOOR Regulation.

## **Section 4**

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### **2018 Determination**

#### **General Increase**

14. The Tribunal, after consulting with the Assessors, considers that an increase of 2.5 per cent is appropriate for all office holders in this group and so determines.

#### **Section 11A office holders**

15. There is one office holder that has elected to receive employment benefits pursuant to section 11A – the Commissioner of the NSW Crime Commission. The remuneration package for this office is outlined in Determination No.2.
16. The Tribunal also makes a salary-only determination for an office where the office holder elects to receive a remuneration package. This ensures that a current determination exists for the role should the incumbent office holder revoke their election or vacate the office. The salary-only determination is outlined in Determination No. 1.

#### **Chief Commissioner, Law Enforcement Conduct Commission**

17. On 18 November 2016, the Tribunal made a determination for the new offices of Chief Commissioner and two full-time Commissioners of the LECC. In determining the appropriate level of remuneration the Tribunal considers a number of factors including, the role and functions of the office, salary relativities with comparable offices, relevant comparators in other states, the outcome of a job evaluation (if known), the relativities between office holders within an organisation and any recommendations made by the Minister and Premier. The Tribunal's determination of the remuneration payable to the Chief Commissioner and full-time Commissioners was based on information received at the time and consistent with the remuneration recommended by the Deputy Premier.
18. It is important to note that the Tribunal does not determine the remuneration for the Chief Commissioner and Commissioners of the ICAC. The remuneration for these offices

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is determined by the Governor under the *Independent Commission Against Corruption Act 1988*.

19. The Tribunal recognises that the LECC has only been in operation for 18 months and accepts that in the future the members of the LECC are likely to experience changes in the work value of their offices. Historically as part of the annual determination, in addition to any general increase provided to all eligible office holders, the Tribunal was able to determine, where warranted, an additional increase for a particular office based on changes in role or responsibilities - a 'work value increase'. This is particularly important for new roles, which may evolve in both scope of responsibilities and workload, after newly appointed office holders work in the roles and normalise day to day operations.
20. However, the SOOR Regulation 2013 prevents the Tribunal from determining an increase based on changes in work value unless sufficient officer-related cost savings for the office holder have been achieved to fully offset the increased officer-related costs resulting from increased payment.
21. Should a case exist for the Chief Commissioner and other members of the LECC to receive additional remuneration which would result in any increase of more than 2.5 per cent, any increase can only be paid if 'officer-related cost savings for the office holder have been achieved to fully offset the increased officer-related costs' (see clause 6 of the SOOR Regulation).
22. The Chief Commissioner has not provided sufficient details on how the requested increase will be funded through officer related savings.
23. The Tribunal has previously discussed the difficulties associated with identifying and providing proof of officer related cost savings. The Tribunal has repeatedly raised concerns over the functionality of the SOOR Regulation.
24. As outlined in the 2017 determination the Tribunal has again written to the Premier on this matter and has also written to the Secretary of the Department of Premier and Cabinet (DPC).

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25. On 6 August 2018 the Secretary of DPC advised that the automatic repeal of the SOOR Regulation has been postponed for a period of one year on the basis that it is appropriate for the Government to consider the remake of the SOOR Regulation at the same time that it considers the remake of the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014*, which is due to be repealed on 1 September 2019.
26. This is a matter for the Government and the Tribunal will continue to operate within the legislative framework, notwithstanding the limitations discussed.

### Principal Claims Assessor under the *Motor Accidents Injuries Act 2017*

27. The *Motor Accidents Injuries Act 2017* (the MAI Act) commenced on 1 December 2017. It replaces the current compulsory third-party motor accidents scheme under the *Motor Accidents Compensation Act 1999* (the MAC Act). A new scheme under the MAI Act will cover persons injured in motor accidents after December 2017.
28. The MAI Act created a new office of the Principal Claims Assessor (the PCA 2017) to exercise statutory decision making powers as a Claims Assessor, and to exercise general control and direction of claims assessors appointed to determine claims assessment disputes including damages, liability, exemptions from assessment and costs. For remuneration purposes the new office is listed in Schedule 2 of the SOOR Act as the 'Principal Claims Officer under the *Motor Accident Injuries Act 2017*'.
29. The Tribunal notes that there are now two Principal Claims Officers listed in Schedule 2 of the SOOR Act – the PCA 2017 and the 'Principal Claims Officer under the *Motor Accidents Compensation Act 1999*' (the PCA 1999). The salary for the PCA 1999 is \$306,595 per annum effective from 1 July 2017.
30. The PCA 2017 has a broadly equivalent role to that of the PCA 1999. While the MAI Act commenced on 1 December 2017, the provisions of the MAC Act continue to apply to motor vehicle accidents that occurred before that date. Therefore, both PCA roles will continue for the foreseeable future.

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31. The Tribunal understands that recruitment is underway for the PCA 1999 and PCA 2017 and one person will be appointed to perform the functions of both offices. Also, that the salary for the PCA 1999 will apply to this single appointment as it is not intended that the office holder receive double the salary for undertaking both roles. On that basis, this determination will provide for both offices to receive the one salary while ever these offices are held concurrently by the same person.
32. The Tribunal may make a determination for each office in the future if it is decided to appoint a different person to each office.

### **Conclusion**

33. Pursuant to section 13 of the SOOR Act the Tribunal determines that the remuneration to be paid to office holders in the Public Office Holders Group on and from 1 July 2018 shall be as specified in Determination Nos. 1 and 2.

### **The Statutory and Other Offices Remuneration Tribunal**

*Signed*

**Richard Grellman AM**

**Dated:** 7 August 2018

## Public Office Holders Group

# Section 5

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## Determinations

### Determination No. 1-Public Office Holder Group

**Annual determination of the remuneration of the Public Office Holder Group effective on and from 1 July 2018**

Public Office Holder (list updated)	Salary per annum
Public Service Commissioner	\$528,160
Chief Commissioner of the Law Enforcement Commission	\$499,045
Auditor General	\$491,320
Ombudsman	\$490,050
Commissioner, NSW Crime Commission (Note 1)	\$486,255
Assistant Commissioner, NSW Crime Commission	\$460,665
Full time Member and CEO, Independent Pricing and Regulatory Tribunal	\$437,940
President, Mental Health Review Tribunal	\$397,630
Electoral Commissioner	\$382,435
Full-time Commissioner for Integrity of the Law Enforcement Conduct Commission	\$374,285
Full-time Commissioner for Oversight of the Law Enforcement Conduct Commission	\$374,285
Valuer General	\$353,780
Workers Compensation Independent Review Officer	\$353,025
Deputy President Mental Health Review Tribunal	\$347,895
Information Commissioner	\$344,975
Privacy Commissioner	\$332,905
Mental Health Commissioner	\$320,075
Parliamentary Budget Officer	\$315,480
Principal Claims Assessor ( <i>Motor Accidents Compensation Act 1999</i> ), and Principal Claims Assessor ( <i>Motor Accidents Injuries Act 2017</i> ) (while ever these offices are held concurrently by the same person)	\$314,260
Inspector of Custodial Services	\$304,235
Small Business Commissioner	\$299,730
Deputy Chairperson, Law Reform Commission	\$296,745

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Public Office Holder (list updated)	Salary per annum
Commissioner, Law Reform Commission	\$282,370
Clerk of the Legislative Assembly	\$277,065
Clerk of the Parliaments	\$277,065
Registrar Workers Compensation Commission	\$277,065
Executive Manager, Parliamentary Services	\$277,065
Senior Arbitrator, Workers Compensation Commission (legally qualified)	\$257,160
Deputy Mental Health Commissioner	\$256,280
Deputy Clerk, Legislative Assembly	\$237,840
Deputy Clerk, Legislative Council	\$237,840
Senior Arbitrator, Workers Compensation Commission (not legally qualified)	\$236,840
Arbitrator, Workers Compensation Commission (legally qualified)	\$227,055
Registrar, Aboriginal Land Rights Act 1983	\$219,725
Assessor ( <i>Local Court Act 2007</i> )	\$210,240
Arbitrator, Workers Compensation Commission (not legally qualified)	\$204,120
Chairperson, Board of the Aboriginal Housing Office	\$164,055
Part-time Chairperson of a Board of Governors of a Corporation constituted by the <i>Electricity Retained Interest Corporations Act 2015</i>	\$161,535
Member of the New South Wales Aboriginal Land Council (Note 2)	\$146,365
Part-time Member of a Board of Governors of a Corporation constituted by the <i>Electricity Retained Interest Corporations Act 2015</i>	\$86,150
Chairperson, Infrastructure NSW	\$84,435
President Mental Health Review Tribunal (part time daily rate)	\$1,650
Deputy President Mental Health Review Tribunal (part time daily rate)	\$1,445
Assessor <i>Local Court Act 2007</i> (daily rate)	\$875

Note 1 The Public Office Holders of these public offices have elected to be provided with employment benefits pursuant to section 11A of the Act and the remuneration packages are listed in Determination 2.

Note 2 The Chairperson shall receive an allowance of 10% (i.e. a total of \$161,000 per annum) and the Deputy Chairperson shall receive an allowance of 5% (i.e. a total of \$153,685 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.

## Public Office Holders Group

### Determination No. 2-Public Office Holder Group, Section 11a

**Determination of the remuneration of Public Office Holders who have elected to be provided with employment benefits pursuant to section 11a of the SOOR Act effective on and from 1 July 2018**

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 SOOR Act shall be:

Public Office Holder	Remuneration
Commissioner, NSW Crime Commission	\$509,125

**The Statutory and Other Offices Remuneration Tribunal**

*Signed*

**Richard Grellman AM**

**Dated:** 7 August 2018