

Judges and Magistrates Group

Annual
Determination

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

**27 August
2019**

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. Section 10A defines 'remuneration' 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

2018 Determination

4. On 7 August 2018, the Tribunal determined that officers in the Judges and Magistrates Group would receive an increase in salary of 2.5 per cent.
5. The Tribunal determined that there would be a minor adjustment to the quantum of the conveyance allowance as the annual percentage change from the 2017 March quarter to the 2018 March quarter in the CPI: Motor Vehicles – Sydney (Series ID A2328552A) had increased by 0.5 per cent.
6. The Tribunal considered a request from the Chief Commissioner of the Industrial Relations Commission (IRC) that the Tribunal determine a daily rate to be payable to an Acting Commissioner of the IRC similar to that made in the 2017 determination for the offices of Acting Magistrate of the Local Court and Acting Commissioner of the Land and Environment Court. The Tribunal found that it did not have jurisdiction to make a determination.
7. The Tribunal also repeated concerns about the operation of the SOOR Regulation.

Section 3

2019 Annual Review

8. On 23 March 2019, the Tribunal wrote to office holders advising of the commencement of the 2019 annual review. The Tribunal did not hold meetings with office holders as part of the 2019 review.

Office Holder Submissions

9. The Tribunal received four submissions from office holders in the Judges and Magistrates Group. All of the submissions have sought an increase of 2.5 per cent as this is the maximum that can be expected within the current constraints.
10. The submissions outline reasons to justify the maximum allowable increase under the SOOR Regulation. The submission from the Supreme Court notes that the relevant key economic indicators support a 2.5 per cent increase, as does the continuing high productivity of the Judges of the Court, despite their heavy workload. The Court also continues to deal with caseloads of the most complex kind dealt with by trial and appellate courts at its level in Australia, including criminal trials.
11. The submission from the Chief Judge of the District Court also highlights the workload and productivity of the District Court. In 2018 the criminal trial registrations decreased but registrations for sentences increased, enabling the Court to finalise more criminal trials than were registered and resulting in a reduction in the pending trial caseload.
12. The Chief Magistrate's submission notes the continuing rise in caseload over 2017/2018 and the addition of two positions to deal with two legislative initiatives – Early Appropriate Guilty Plea and Driver Licensing initiatives. Changes to legislation relating to sentencing, domestic violence and road traffic have had a significant impact on the Court.
13. The submission from the Chief Judge of the Land and Environment Court notes that the productivity of Judges has been maintained and continues to be expanded by new

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legislation as identified in previous submissions. There has been a significant increase in caseload over the past five years and the number of Judges and Commissioners of the Court has remained constant, and they have increased their productivity to hear and dispose of the increased caseload.

Government Submission

14. The Secretary NSW Treasury provided the Government submission to the Tribunal on 28 June 2019. 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.

15. The Tribunal again notes that the Government submission states that offices in the Judges and Magistrates 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 Judges and Magistrates 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

2019 Determination

General Increase

16. 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 for the Judges and Magistrates Group has not been required. 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.
17. 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 work essential to the maintenance of the rule of law, the proper administration of justice and the ongoing success of both the economy and the social fabric of the State.
18. The Tribunal notes additional work for the Courts associated with legislative change and a significant increase in case load. These claims are supported by data reported by the NSW Bureau of Crime Statistics and Research which reports significant increases in court finalisations over the last five years across all courts in NSW.

Conveyance Allowance

19. The annual percentage change from the 2018 March quarter to the 2019 March quarter in the CPI: Motor Vehicles – Sydney (Series ID A2328552A) is 0.10 per cent. To reflect this change there is a minor adjustment to the quantum of the conveyance allowance.

Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013 (SOOR Regulation)

20. As outlined in the 2018 annual determination the Tribunal sought advice from the Secretary of the Department of Premier and Cabinet (DPC) on the status of the SOOR Regulation. On 6 August 2018 the Secretary of DPC advised that the automatic repeal of

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the SOOR Regulation had been postponed for a period of one year on the basis that it was 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.

21. The Tribunal has now been advised that the Government will recommend to the Premier that the repeal of the SOOR Regulation be postponed for a further period of 12 months, subject to the Governor's approval.
22. As previously stated, this is a matter for the Government and the Tribunal will continue to operate within the legislative framework.
23. The Tribunal acknowledges that the NSW Public Sector Wages Policy, and the application of that policy via the SOOR Regulation, supports the Government in managing employee expenses growth which is key to maintaining the State's strong fiscal position.
24. The State's leaders, key independent officer holders and judiciary play a crucial role in supporting the functions of the Government and providing services to the citizens of NSW.
25. While there are factors other than remuneration which attract people to public office, it is important that these roles are appropriately remunerated to ensure people of caliber apply and can be retained in these roles.
26. The remuneration for a role should as much as practical reflect the work value of that role. Office Holders should receive competitive and equitable remuneration that reflects the responsibilities and experience required of the roles.
27. While the Members of the NSW Aboriginal Land Council have been successful in demonstrating sufficient officer-related cost savings to provide for an increase of more than 2.5 cent, other officer holders and groups of office holders have found it difficult to identify the necessary officer-related savings required of the SOOR Regulation.

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28. The Tribunal continues to be of the view that the SOOR Regulation, as presently constructed, makes the identification and assessment of officer-related cost savings prohibitively complex and difficult. The Tribunal continues to encourage the Government to review these provisions with the view to providing the Tribunal with greater flexibility in determining appropriate remuneration based on work value.
29. Office holders should refer to the 2019 determination for the Public Office Holders Group for details of the determination made for Members of the NSW Aboriginal Land Council.

Conclusion

30. 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, a minor adjustment of 0.10 per cent is warranted in accordance with the Tribunal's methodology.
31. This determination is consistent with the Government's wages policy which the Tribunal is required to give effect to pursuant to the SOOR Regulation.
32. 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 2019 shall be as specified in Determination Nos. 1-5.

Statutory and Other Offices Remuneration Tribunal

Signed

Richard Grellman AM

Dated: 27 August 2019

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) *a Judge or Acting Judge of a court, or*
 - (b) *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.

2019 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 determination for 2019 being ATO TD2019/11.

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 and Magistrates who are required to travel away from

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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 TD2019/11. Non metropolitan accommodation rates and meal rates are also as set out in the Determination.
8. The Tribunal makes Determination No 6 effective on and from 1 July 2019.

Statutory and Other Offices Remuneration Tribunal

Signed

Richard Grellman AM

Dated: 27 August 2019

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Section 6

Determinations

Determination No. 1 - Remuneration of Judges effective on and from 1 July 2019

Position	Salary per annum	Conveyance Allowance (NOTE 1)
Chief Justice of the Supreme Court	\$532,560	\$23,745
President of the Court of Appeal	\$498,670	\$23,745
Chief Judge of the Land and Environment Court	\$498,670	\$23,745
Judge of the Supreme Court	\$475,920	\$23,745
Judge of the Land and Environment Court	\$475,920	\$23,745
President, Workers Compensation Commission	\$475,920	\$23,745
Judge of the District Court	\$426,250	\$21,365
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	\$426,250	\$21,365

Determination No. 2 - Remuneration of other Judicial Officers not referred to in determination No.1 effective on and from 1 July 2019

Position	Salary per annum	Conveyance Allowance (NOTE 1)
Chief Magistrate	\$424,540	\$21,365
Deputy Chief Magistrate	\$358,740	\$17,090
State Coroner	\$358,740	\$17,090
Chief Industrial Magistrate	\$345,580	\$17,090
Chief Commissioner Industrial Relations Commission	\$342,460	\$17,090
Magistrate	\$339,630	\$17,090
Children's Magistrate	\$339,630	\$17,090
Deputy State Coroner	\$339,630	\$17,090
Commissioner Industrial Relations Commission	\$311,330	\$17,090

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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. 3 - 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	\$2,060 per day
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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	\$1,850 per day
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Determination No. 4 - 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	\$1,410 per day
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Determination No. 5 - Annual leave loading

Determination of leave loading for Judicial Officers effective on and from 1 July 2019

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

Determination No. 6 - 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 2019.

A. Travel necessitating an overnight stay

Travel Allowances	
Capital City Rates	Amount
Adelaide	\$396.50
Brisbane	\$444.50
Canberra	\$433.50
Darwin	\$480.50
Hobart	\$383.50
Melbourne	\$452.50
Perth	\$452.50
Sydney	\$452.50
Other Centre Rates	
Newcastle	\$382.50
Wollongong	\$382.50
Other Centres	\$382.50

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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.

B. Travel not involving an overnight stay

Meal Allowances for travel NOT involving an overnight stay

Meal	Amount
Breakfast	\$36.10
Lunch	\$51.15
Dinner	\$71.55

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Signed

Richard Grellman AM

Dated: 27 August 2019