

Judges and Magistrates Group

Annual
Determination

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

**7 September
2020**

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 of 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.
2. The Judges and Magistrates Group comprises those public offices listed in the Schedules of the SOOR Act (except for the Court and Related Officers 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. Until recently, in accordance with the clause 6 of 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, could only be paid if officer-related cost savings

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for the office holder (or group of office holders) have been achieved to fully offset the increased officer-related costs resulting from increased payment.

5. Since the introduction of the SOOR Regulation in 2013 office holders in the Judges and Magistrates Group have received annual increases capped at 2.5 per cent.
6. On 29 May 2020 the Premier, the Hon Gladys Berejiklian MP, made the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment (Temporary Wages Policy) Regulation 2020*. That regulation amended the SOOR Regulation to implement a temporary wages policy, being a 12-month pause on remuneration increases for office holders covered by Part 3 of the SOOR Act. The SOOR Regulation was amended by inserting a new Clause 5A and amending the existing Clause 6 as follows:

Clause 5A

Insert after clause 5 –

5A Temporary wages policy

- (1) *An office holder is not to be awarded increases in remuneration that would increase officer-related costs in the first 12 months after the determination is made.*
- (2) *This clause expires 12 months after it commences.*

Clause 6 and Other policies

Insert after clause 6(3) -

- (4) *The policies set out in subclause (1)(a) and (b) are not to be given effect to by the Tribunal when making a determination that applies to the period –*
 - (a) *starting on the commencement of the Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment (Temporary Wages Policy) Regulation 2020, and*
 - (b) *ending 12 months after that commencement.*

7. A similar regulation to give effect to a wages pause for employees subject to the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014* was disallowed by the Legislative Council on 2 June 2020. Neither House of Parliament passed a resolution to disallow the amendment to the SOOR Regulation and therefore the Tribunal is required to give effect to the temporary wages policy as provided for in Clauses 5A and 6(4) of the SOOR Regulation as amended.

Section 2

2019 Determination

8. On 27 August 2019, the Tribunal determined that officers in the Judges and Magistrates Group would receive an increase in salary of 2.5 per cent with effect from 1 July 2019.
9. The Tribunal determined that there would be a minor adjustment to the quantum of the conveyance allowance as the annual percentage change from the 2018 March quarter to the 2019 March quarter in the CPI: Motor Vehicles – Sydney (Series ID A2328552A) had increased by 0.1 per cent.
10. The Tribunal also repeated concerns about the operation of the SOOR Regulation.

Section 3

2020 Determination

11. On 28 February 2020, the Tribunal wrote to office holders advising of the commencement of the 2020 annual review. The Tribunal did not hold meetings with office holders as part of the 2020 review.
12. The Tribunal received six submissions from office holders in the Judges and Magistrates Group.
13. The Chief Justice of the Supreme Court advised the Tribunal that given the current circumstances the Judges of the Supreme Court would not be seeking a pay rise. This view was supported by the Chief Judge of the District Court, the Chief Judge of the Land and Environment Court, the Chief Magistrate of the Local Court, and the President of the Workers Compensation Commission. The various submissions noting the current economic environment and the circumstances of the COVID-19 pandemic.
14. The Chief Commissioner of the Industrial Relations Commission (IRC) advised that the Commissioners of the IRC did not seek an annual remuneration review in light of the present circumstances.
15. These submissions were all received prior to the amendments to the SOOR Regulation which mandate no increase with effect from 1 July 2020.
16. The Secretary Department of Premier and Cabinet provided the Government submission to the Tribunal on 28 July 2020. Extracts appear below.
 - COVID-19 is having a profound impact on the NSW economy and the NSW budget position. Measures to stop the spread of the virus have included travel restrictions and social distancing rules which have led to business closures, modification to work arrangements and job losses. This year the Tribunal should have significant regard to the economic conditions of the State and the financial position of the state.

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- To assist in responding effectively to this situation, the NSW Government has announced its intention for a 12 month pause on wage increases for public sector employees. The pause will allow the Government to protect not only public sector jobs, but also provide temporary and targeted support to the broader economy and private sector jobs. This matter is currently before the Industrial Relations Commission (IRC) for determination.
- On 29 May 2020 the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment (Temporary Wages Policy) Regulation 2020* was made to implement a temporary wages policy, being a 12-month pause on remuneration increases for office holders covered by Part 3 of the *Statutory and Other Offices Remuneration Act 1975*.
- For those covered by Parts 3A and 3B, section 6AA of the *Statutory and Other Offices Remuneration Act 1975* requires the Tribunal to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission is required to give effect to when making or varying awards or orders. Relevantly in a recent decision of the Industrial Relations Commission it was confirmed that the tribunal may ‘...award increases in remuneration of 2.5% or less’ (see Application for Crown Employees (Public Sector – Salaries 2020) Award and Other Matters [2020] NSWIRComm 1044).
- It is recommended that a 12-month wage pause be applied to all employees and officers whose remuneration is determined by the *Statutory and Other Offices Remuneration Act 1975* regardless of the outcome of the IRC hearing. This includes, chief executive office holders; senior executive office holders; and government sector senior executives in the Public Service, NSW Police Service, NSW Health Service and the Transport Service.
- The provision applies to the following groups of employees and office holders covered under the *Statutory and Other Offices Remuneration Act 1975*:
 - Public Service Senior Executives
 - Chief and Senior Executive Officers (SES)

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- Judges and Magistrates Group
 - Court and Related Officers Group
 - Public Office Holders Group
- The 2020-21 NSW Budget has been deferred from June 2020 until later in the year following a recommendation by the National Cabinet of Commonwealth, State and Territory leaders on 20 March 2020.
17. In accordance with the SOOR Regulation and the temporary wages policy there will be no general increase in the salaries payable to office holders in the Judges and Magistrates Group with effect from 1 July 2020. The Tribunal notes that the amendments to the SOOR Regulation provide for no increase for 12 months only. It will be open to the Tribunal to consider an increase, if any, of up to 2.5 per cent with effect from 1 July 2021.
18. There is no increase in the Conveyance Allowance which is consistent with the methodology outlined on page 12. The annual percentage change from the 2019 March quarter to the 2020 March quarter in the CPI: Motor Vehicles – Sydney (Series ID A2328552A) is negative 0.6 per cent.
19. Notwithstanding the impact of the amendment to the SOOR Regulation, the Tribunal continues to acknowledge 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.
20. 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.
21. This determination is consistent with the temporary wages policy which the Tribunal is required to give effect to pursuant to the SOOR Regulation.

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22. The Tribunal consulted with the Assessors prior to making this determination.
23. 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 2020 shall be as specified in Determination Nos. 1-5.

Statutory and Other Offices Remuneration Tribunal

Signed

Richard Grellman AM

Dated: 7 September 2020

Section 4

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.

2020 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 2020 being ATO TD2020/5.

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 TD2020/5. Non-metropolitan accommodation rates and meal rates are also as set out in the Determination.
8. The Tribunal makes Determination No 5 effective on and from 1 July 2020.

Statutory and Other Offices Remuneration Tribunal

Signed

Richard Grellman AM

Dated: 7 September 2020

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Section 5

Determinations

Determination No. 1 - Remuneration of Judges effective on and from 1 July 2020

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 2020

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 2020

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 2020.

A. Travel necessitating an overnight stay

Travel Allowances	
Capital City Rates	Amount
Adelaide	\$400.30
Brisbane	\$448.30
Canberra	\$437.30
Darwin	\$484.30
Hobart	\$387.30
Melbourne	\$456.30
Perth	\$456.30
Sydney	\$456.30
Other Centre Rates	
Newcastle	\$386.30
Wollongong	\$386.30
Other Centres	\$386.30

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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	\$36.80
Lunch	\$52.20
Dinner	\$73.10

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Signed

Richard Grellman AM

Dated: 7 September 2020