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## **SPECIAL SUPPLEMENT**

REPORT

and

DETERMINATION

under

SECTION 24C

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT 1975

CHIEF EXECUTIVE AND SENIOR EXECUTIVE SERVICES

9 November 2012

## Chief Executive Service and Senior Executive Service

### Introduction

Ms Jade Novakovic, who undertook the role of Assessor to the Tribunal (pursuant to section 7(1)(b) of the SOOR Act) did not seek reappointment when her term expired on 30 June 2012. This position is currently vacant and the Tribunal has undertaken the 2012 review without this additional assistance. The Tribunal would also like to acknowledge and express its appreciation of the considerable contribution of Mr Emanuel Sklavounos who undertook the role of Executive Officer to the Tribunal for a period of over ten years until his retirement in December 2011.

### Section 1 Background

1. Section 24C of the *Statutory and Other Offices Remuneration Act 1975* (the SOOR Act) provides for the Tribunal to determine annual remuneration packages for the Chief Executive Service and Senior Executive Service (SES)<sup>1</sup> to take effect on and from 1 October in that year.
  
2. The SES was introduced in the NSW public sector in 1989. The key features of the SES are:
  - classification into 8 remuneration levels
  - minimum and maximum of each remuneration level determined by the Tribunal
  - conditions of employment being fixed by contract
  - individual performance agreements
  - annual increases in remuneration based on performance assessment

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<sup>1</sup> Unless otherwise stated, the Chief Executive Service and the Senior Executive Service are referred collectively in the Report and Determination as SES.

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- remuneration packages expressed as total cost of employment, whether the amount is monetary remuneration for the executive office holder, or partly that remuneration and partly as the cost to the employer of the executive office holder of employment benefits.

### Section 2 2011 Review

3. The 2011 annual review was conducted against the background of a significant legislative change which impacted on the Tribunal's ability to determine remuneration increases for certain office holders.
4. In determining the remuneration for SES officers, and following amendments to the SOOR Act in 2011, the Tribunal was required pursuant to Section 6AA to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission 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 employee.
5. The current policy on wages pursuant to section 146(1)(a) of the *Industrial Relations Act 1996* is specified in the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011. The effect of the Regulation is that public sector wages cannot increase by more than 2.5 per cent. Any increase beyond 2.5 per cent can only be awarded subject to the requirement that sufficient employee-related cost savings have been achieved to fully offset the increased employee-related costs.
6. The Tribunal noted that unlike other public sector employees, the SES is not an employee group which can achieve collective employee related savings. In previous years when the Tribunal has awarded increases in excess of the wage policy of 2.5 per cent these increases have been awarded on the basis that it is the SES, as leaders in the sector, who are responsible for driving savings outcomes.

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7. The Tribunal advised that it would seek advice and assistance from the Government in developing a methodology to assist in the assessment of employee-related cost savings that will be sufficiently robust for the Tribunal to be satisfied as to the quantum of employee-related cost savings that have been achieved, and which may justify an increase beyond 2.5 per cent where appropriate, and also how widely or narrowly the cost savings should be attributed within any given group.
8. The Tribunal's 2011 annual determination dated 12 October 2011 provided for a 2.5 per cent increase for each SES officer, subject to satisfactory performance.

### Section 3 Submissions

#### Government submission

9. The Government's Submission recommends that the Tribunal approve an increase of 2.5 per cent for the SES. This recommendation is consistent with NSW Wages Policy and reflects the NSW Government's intent, pursuant to section 6AA of the SOOR Act and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011.
10. The Government submission provides an overview of the recent economic performance and outlook for the State.
11. Leading in to the 2012-13 State Budget, there was a deterioration in the global economic outlook and a downgrade to the Australian outlook. Since mid-year, forecasts for Australian growth have also been revised down for 2013. The Reserve Bank of Australia at its October board meeting lowered the cash rate by 25 basis points and indicated that the 'labour market has generally softened somewhat in recent months' and 'on the back of international developments, the growth outlook for next year looked weaker'. For NSW, partial indicators of activity have

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lost momentum since mid-year and labour market conditions appear more subdued than was expected at Budget time.

12. The fiscal challenge faced by the Government, as highlighted in the Final Report of the Commission of Audit, is to return State finances to a sustainable position following a decade of expenses growth exceeding revenue growth. As the Commission of Audit report highlights:

*“In relation to expenditure the NSW Public Service has felt under siege since 2005-06. At that time the State budget began deteriorating significantly and continued to do so, given the growth in expenditure which is well in excess of the growth in revenue. In response the Government established the Commission of Audit to review and benchmark current operating and capital expenditure. The objective of the Commission has been to identify opportunities to deliver improved services to the people of NSW in a more efficient and cost effective manner and to provide a sustainable budget position going forward”<sup>2</sup>.*

13. The 2011-12 Budget introduced a series of savings initiatives which lowered the forecast expenses growth to levels not seen in the prior decade. For the 2011-12 fiscal year the government expected to achieve expense growth approaching 2 percentage points below what was forecast for 2011-12. Lower expenses growth is expected again in 2012-13, with increases averaging just 3.3 per cent per annum over the four years to 2015-16.
14. The turnaround is required to provide the capacity to meet the Government’s key objectives of providing high quality services, while rebuilding the State’s economic and social infrastructure within sustainable fiscal settings. The foundation of the Government’s fiscal strategy is the new *Fiscal Responsibility Act 2012*. The object of the new Act is to retain the State’s triple-A credit rating.

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<sup>2</sup> NSW Commission of Audit Government Expenditure, NSW Government, 4 May 2012, page 7.

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15. With employee related expenses accounting for nearly one-half of budget expenses, this area continues to be a key focus in the Government's expense restraint. Growth in this area of expenses is driven by increasing rates of pay, increased size of the workforce and changing composition of the workforce. The 2012-13 Budget provides for a further round of measures to better control employee expenses. The Labour Expense Cap strengthens the control over employee expense growth that started last year with the NSW Public Sector Wages Policy 2011.
16. The Government submission also makes the following comment about the challenges facing the SES over the coming year:

*"The challenge for Chief and Senior Executive Service Officers in the NSW public sector over the upcoming year is delivering improved citizen-centric services to the people of NSW in a more efficient and cost effective manner while at the same time delivering the major reforms contained in NSW 2021.*

*Meeting this challenge is necessary to enable the Government to return to a sufficiently large operating surplus to fund a significant part of capital expenditure, build a buffer against adversity and ensure a gradual decline in state debt and unfunded super.*

*In this regard, there is a need for the CES and SES, like the rest of the NSW public sector, to demonstrate wage restraint and contribute to containment of expense growth."*

17. The Government submission advises that the Public Service Commission is presently developing reform proposals for the executive structure of the NSW public service. The reforms are a response to the NSW Commission of Audit recommendation that the structure of executive employment required fundamental overhaul and that:

*"the Public Service Commission should present reform proposals to the Government regarding the executive structure of the NSW public service (SES, Senior Officer and other executives) to:*

- *establish a separate structure for clusters Directors General*

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- *create a new executive structure combining the SES and the Senior Officer classification and, as appropriate, other executive groupings' (Recommendation #45)."*
18. The Government has also advised that once the new executive arrangements are in place, consideration will be given to the development of a methodology to assist the Tribunal in assessing employee related savings that are advanced to justify an increase beyond 2.5 per cent for CES/SES.
19. The Government further recommends that there be no increase to the minimum and maximum rates of Recruitment and Retention Allowances.

## Section 4 2012 Review

20. The introduction of section 6AA to the SOOR Act has had a significant impact on the way this Tribunal makes its determinations. The effect of the amendments to the SOOR Act in 2011 is to remove the Tribunal's discretion to determine any increase beyond 2.5 per cent for office holders other than judicial officers (within the meaning of the *Judicial Officers Act 1986*) unless there are sufficient employee-related cost savings to offset the additional employee-related costs.
21. The validity of the amendments to the *Industrial Relations Act 1996* was considered by the Industrial Relations Commission during 2011. The Public Service Association (PSA) applied for a declaration that the Amendment Act, or alternatively the Regulation, was invalid. On 31 October 2011 the Full Bench of the Industrial Court (Walton, Kavanagh & Backman JJ) unanimously dismissed the PSA's application (*The Public Service Association & Professional Officers' Association Amalgamated of NSW v Director of Public Employment & ORS Industrial Court of NSW [2011] NSWIRComm 143*). The matter is presently the subject of consideration by the High Court: *The Public Service Association & Professional Officers' Association Amalgamated of NSW v Director of Public Employment & ORS (S127/2012)*, but unless and until the High Court decides

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- otherwise, the legislation has effect and the Tribunal is obliged to apply the same policies on increases in remuneration as the IRC is obliged to apply.
22. Complexities arise because of the differences in the nature and functioning of the Tribunal (which usually makes determinations 'on the papers') and the IRC (which makes orders and awards following arbitrated proceedings), as well as differences in the types of decisions they make. The IRC makes generally applicable orders and awards to broad categories of employees. The Tribunal does likewise in respect of the Senior Executive Service, but for some public and statutory offices it makes specific determinations for individual offices.
  23. During the 2011 review the Tribunal identified the need to develop a methodology to assess whether officers affected by this determination can and have achieved employee related costs savings which may justify increases beyond 2.5 per cent.
  24. Prior to the amendments to the legislation the Tribunal, in determining the annual general increase, had regard to a number of factors including salary adjustments across both public and private sectors and movements in key economic indicators.
  25. The Tribunal previously has been able to determine increases greater than 2.5 per cent, and those increases have been based on productivity savings achieved across an organisation.
  26. However Section 146C and Regulation 2011 require something different from and greater than the kind of productivity savings which in the past, may have been claimed to have been achieved. Savings attributable only to productivity factors will not be sufficient to meet the policy requirements specified in the Regulation.
  27. Paragraph 8 of the Regulation defines "employee-related costs" as "costs related to the salary, wages, allowances and other remuneration payable to the employees and the superannuation and other personal employment benefits payable to or in respect of the employees".



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28. Paragraph 9 defines "employee-related cost savings" and whilst the language used is directed to the particular processes of the Industrial Relations Commission, much of it can be given a purposive interpretation to apply to the deliberations of the Tribunal, and the Tribunal must apply the same policies as the IRC must apply. Paragraph 6(1)(b) clarifies that there must be sufficient employee-related cost savings to fully offset any increased employee-related costs. In other words, any pay increase beyond 2.5 per cent must be matched by cost savings which neutralise the cost of the increase. Paragraph 6(1)(c) suggests the kinds of employee-related cost savings which may be relevant, in that it contemplates reduction (with the agreement of the relevant parties) in "existing conditions of employment of the kind but in excess of the guaranteed minimum conditions of employment".
29. The Tribunal has sought legal advice and has also met with judicial members of the Industrial Relations Commission to discuss and consider how these matters or some of them might be addressed. The Tribunal places on record its thanks to the Hon Justice Michael Walton, Vice President, and the Hon Justice Conrad Staff, of the Industrial Relations Commission for their assistance.
30. In making a submission in support of any increase above 2.5 per cent, it appears that the SES will need to find employee-related costs savings, such as the elimination of leave loading, reduction of travelling allowances - anything which is not protected as a minimum condition of employment.
31. SES Officers are not employed under an industrial instrument. Their conditions of employment are outlined in the relevant legislation or in the contract of employment. Any changes to these conditions aimed at reducing employee-related costs and contributing to savings, would need to apply to all affected SES office holders, would require consent of those office holders, and may require legislative change.

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32. Further, the Tribunal notes that the Industrial Relations Commission of NSW on 15 October 2012 ruled that any increases greater than 2.5 per cent in salaries payable on and from a particular date can only be offset by employee-related cost savings made after (not before) that date: *HSU East and Director-General, Department of Finance and Services [2012] NSWIRComm 112*. Para 36 of that ruling is as follows:

*"These provisions tend to indicate that the savings must be achieved in a period or at a time corresponding with any wage adjustment made in conformity with the Regulation. We note that in industrial parlance the expression "fully offset" means that a given wage increase would be matched by cost savings or other savings having the effect of neutralizing the cost of the adjustment after the commencement of its operation (which would normally be prospective)."*

33. The Tribunal understands that during the coming year the Government will provide assistance to the Tribunal to develop a methodology to assess employee-related cost savings which may justify a "general increase" above 2.5 per cent in appropriate circumstances. If and when an appropriate methodology is so established, the Tribunal will advise office holders. For the purposes of the 2013 review, and whether or not any such methodology has been established, but in order to provide office holders with sufficient opportunity to identify and demonstrate potential employee-related cost savings, the Tribunal will seek submissions much earlier in 2013 than has been past practice.

### Recruitment Allowance and Retention Allowance

34. There will be no increase in the minimum and maximum rates of the Recruitment Allowance or the Retention Allowance at this time.

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### Chief Executive Positions

35. During the 2011 annual review the Tribunal determined that three Chief Executive positions would receive remuneration in excess of the maximum of SES Level 8: the Director General of the Department of Premier and Cabinet, the Chief Executive Officer and Co-ordinator General of Infrastructure NSW and the Director General, Department of Trade and Investment, Regional Infrastructure and Services.
36. The Tribunal continues to support the view that additional remuneration for these positions is warranted and will determine an increase of 2.5 per cent consistent with section 6AA of the SOOR Act. The result of the Tribunal's determination in respect of these positions is contained in Determinations 2 to 4.

### Section 5 Conclusion

37. The Tribunal after considering the views of the Assessor and having regard to the provisions of section 6AA of the SOOR Act, determines an increase of 2.5 per cent for all SES officers, effective on and from 1 October 2012.
38. Payment of the increase is subject to certification of an officer's satisfactory performance by the officer's CEO or in the case of CEOs the relevant Minister.

### The Statutory and Other Offices Remuneration Tribunal

**Helen Wright**

Dated: 9 November 2012

## Determinations of the Remuneration Packages of the Chief Executive Service and Senior Executive Service Effective on and from 1 October 2012

### Determination No 1- Remuneration Package Ranges

The remuneration package ranges for executive office holders shall be:

CES/SES	Per annum range		
Remuneration Level 8	\$412,201	to	\$476,200
Remuneration Level 7	\$328,651	to	\$412,200
Remuneration Level 6	\$292,451	to	\$328,650
Remuneration Level 5	\$253,501	to	\$292,450
Remuneration Level 4	\$232,501	to	\$253,500
Remuneration Level 3	\$204,701	to	\$232,500
Remuneration Level 2	\$190,851	to	\$204,700
Remuneration Level 1	\$163,000	to	\$190,850

### Determination No 2 – Director General, Department of Premier and Cabinet

The Tribunal determines that the remuneration package for the Director General Department of Premier and Cabinet shall be \$545,800 pa effective on and from 1 October 2012.

### Determination No 3 – Chief Executive Officer and Co-ordinator General, Infrastructure NSW

The Tribunal determines that the remuneration package for the Chief Executive Officer and Co-ordinator General, Infrastructure NSW shall be \$525,315 pa effective on and from 1 October 2012.

## Determinations of the Remuneration Packages of the Chief Executive Service and Senior Executive Service Effective on and from 1 October 2012

### **Determination No 4 – Director General, Department of Trade and Investment, Regional Infrastructure and Services**

The Tribunal determines that the remuneration package for the Director General, Department of Trade and Investment, Regional Infrastructure and Services shall be \$521,375 pa effective on and from 1 October 2012.

### **Determination No 5 - Recruitment Allowance**

To the remuneration package amounts determined above there may be added a Recruitment Allowance up to the maximum for each level as set out hereunder, subject to the approval of the Public Service Commissioner. The Allowance will apply for new SES offices and appointment renewals, where it has been established that a specific skill is necessary for recruitment purposes and the performance of the duties of the position.

Officers in receipt of a Recruitment Allowance are not eligible for payment of a Retention Allowance.

CES/SES	Maximum Allowance	
Levels 7 and 8	up to	\$43,000
Levels 5 and 6	up to	\$30,000
Levels 3 and 4	up to	\$23,000
Levels 1 and 2	up to	\$19,000

## Determinations of the Remuneration Packages of the Chief Executive Service and Senior Executive Service Effective on and from 1 October 2012

### Determination No 6 - Retention Allowance

SES Officers shall be eligible for a Retention Allowance up to the maximum for each level as set out hereunder. The Allowance will apply on and from the date of approval by the Public Service Commissioner and will accrue on an annual basis or part thereof and the total amount will be payable upon the completion of the term of appointment.

Officers in receipt of a Retention Allowance are not eligible for payment of a Recruitment Allowance.

CES/SES	Maximum Allowance	
Levels 7 and 8	up to	\$43,000
Levels 5 and 6	up to	\$30,000
Levels 3 and 4	up to	\$23,000
Levels 1 and 2	up to	\$19,000

### Determination No 7 - Specialist Medical Skills

The Tribunal determines that the remuneration package ranges for offices identified as requiring specialist medical skills shall be:

Specialist Medical Skills	Per annum range		
Remuneration Level 6	\$301,250	to	\$369,000
Remuneration Level 5	\$299,950	to	\$355,500
Remuneration Level 4	\$294,800	to	\$342,200
Remuneration Level 3	\$281,300	to	\$326,450
Remuneration Level 2	\$264,000	to	\$306,350
Remuneration Level 1	\$243,500	to	\$279,550

## Determinations of the Remuneration Packages of the Chief Executive Service and Senior Executive Service Effective on and from 1 October 2012

### Determination No 8 – General Medical Skills

The Tribunal further determines that the remuneration package ranges for offices identified as requiring general medical skills shall be:

General Medical Skills	Per annum range		
Remuneration Level 2	\$211,950	to	\$245,950
Remuneration Level 1	\$194,850	to	\$223,600

### The Statutory and Other Offices Remuneration Tribunal

**Helen Wright**

Dated: 9 November 2012

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STATUTORY AND OTHER OFFICES

REMUNERATION ACT 1975

JUDGES AND MAGISTRATES GROUP

9 November 2012

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## Judges and Magistrates Group

### Introduction

Ms Jade Novakovic, who undertook the role of Assessor to the Tribunal (pursuant to section 7(1)(b) of the SOOR Act) did not seek reappointment when her term expired on 30 June 2012. This position is currently vacant and the Tribunal has undertaken the 2012 review without this additional assistance. The Tribunal would also like to acknowledge and express its appreciation of the considerable contribution of Mr Emanuel Sklavounos who undertook the role of Executive Officer to the Tribunal for a period of over ten years until his retirement in December 2011.

### Section 1: Background

1. Section 13 of the Act requires the Statutory and Other Offices Remuneration Tribunal (the Tribunal), each year, to make a determination on the remuneration to be paid to office holders on and from 1 October in that year. "Remuneration" is defined in Section 10A as salary or allowances payable in money.
2. A principal feature of remuneration for Judges has been the Agreement between Federal and State Governments, reached in 1989, on the relativities between the remuneration of State Supreme Court Judges and Federal Court Judges with the remuneration of a Justice of the High Court. This Agreement provides that the salary of a Judge of the Federal Court and a Judge of the State Supreme Court should not exceed 85 per cent of the salary of a Justice of the High Court of Australia. The Tribunal has consistently held that this relativity remains acceptable only if and whilst the remuneration of a Justice of the High Court of Australia remains at an appropriate level, and that the Tribunal should have regard to the base salary plus non financial benefits (such as motor vehicles) when determining judicial remuneration.
3. Since that Agreement was reached the New South Wales Tribunal has maintained the remuneration of a State Supreme Court Judge at approximately 85 per cent of the remuneration of a Justice of the High Court. The Tribunal's determination of 2011

## Judges and Magistrates Group

provided a general increase of 6 per cent for NSW Supreme Court Judges and related office holders with effect from 1 October 2011. The 6 percent comprised the third and the final of four 1.5 per cent increases remaining from the 2009 work value increase for Federal Judges, plus the 3 per cent increase awarded to Federal Judges by the Commonwealth Remuneration Tribunal in 2011.

4. The Commonwealth Remuneration Tribunal has determined an increase in salary of 3 percent for Federal Judges and Magistrates effective from 1 July 2012. As is the usual practice, prior to the Tribunal making her Reports and Determinations, the Tribunal invited submissions from office holders. For the 2012 review office holders in the Judges and Magistrates Group were also asked to comment on matters raised in a letter received by the Tribunal from the President of the Commonwealth Remuneration Tribunal, Mr John Conde AO, in relation to the relativity between the salary of Supreme Court Judges and that of a High Court Judge. In that correspondence, Mr Conde proposed that Supreme Court salaries in NSW be linked to the Federal Court rather than to High Court salaries. The Director General of the Department of Attorney General and Justice, Mr Laurie Glanfield, was also asked to comment on the Commonwealth Remuneration Tribunal proposal.

## Section 2 Submissions Received

### Judges and Magistrates Group

5. As part of the current review the Tribunal received 5 submissions from offices within the Judges and Magistrates Group. The Tribunal also met with Judges of the Supreme Court. Once again the Tribunal thanks the office holders for their time and the effort they have put in to the current review.
6. Submissions have generally supported retaining the nexus between a Judge of the Supreme Court and the salary payable to a Justice of the High Court of Australia, an increase to the conveyance allowance, the provision of other benefits received by Judges in the Federal jurisdiction including as to the timing of annual increases, and support for the existing internal relativities within the Judges and Magistrates Group.

## Judges and Magistrates Group

### Commonwealth Remuneration Tribunal proposal

7. In respect of the proposal outlined in Mr Conde's letter, the Supreme Court judges oppose the proposal to link the salaries of Supreme Court judges to the Federal Court rather than the High Court.
8. As stated in the Supreme Court Judges' submission:

*"The 1989 agreement reflects the structure of the judicial system in Australia. The High Court exercises supervisory jurisdiction over both the Supreme Court and the Federal Court. That is why it was recognised that both the salaries of the State Supreme Court judges and the Federal Court judges should be fixed by reference to the salaries of High Court judges, while fixed at an appropriate level.*

*The relationship between the salaries of judicial officers at various levels in the New South Wales judicial hierarchy has been the subject of repeated consideration by the Tribunal in the past. The High Court sits at the apex of the Australian judiciary and the salary paid to the judges of that Court, is a matter which the Tribunal will have to consider in the future, as it has done in the past, in undertaking its statutory obligations in relation to the settling of the salaries of the judges of the Supreme Court.*

*It must be remembered that both Queensland and Victoria have legislated with knowledge of the existing agreement. If the relationship between a Federal Court judge's salary and the salary of a High Court judge is broken the assumption made by each State Parliament that the legislation would ensure their State judges will be adequately remunerated would prove unfounded.*

*Australia has a national judiciary under the High Court administering a single Australian common law. If Federal Court judges' salaries are in future to be fixed without maintaining relativity with the salary of a judge of the High Court and the salary of a State Supreme Court judge fixed by reference only to the salary of a judge of the Federal Court, the fundamental principles of the 1989 agreement will be lost. Mr Conde's letter does not address that issue. For that reason the judges of the New South Wales Supreme Court oppose Mr Conde's suggestion."*

9. Submissions received from the Chief Judge of the District Court and the President of the Industrial Relations Commission support the views expressed in the Supreme Court submission as they relate to Mr Conde's proposal. The Chief Judge of the Land and Environment Court also adopts that submission on behalf of the Judges of the Land and

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Environment Court, and has expressly supported retention of the existing salary relativity between judges of the Supreme Court and the High Court.

10. The Chief Magistrate made the following comments in respect of Mr Conde's proposal:

*"It is difficult to comment upon a proposal that is presented without knowing the basis upon which it is raised.*

*Mindful of that qualification I do not see any material difficulty in the proposal provided it does not result in financial detriment to the judiciary of New South Wales."*

11. The President of the Workers Compensation Commission has commented that:

*"I fail to see how the implementation of his suggestion would make any significant difference to current arrangements and for that reason would suggest that the status quo be preserved."*

12. The Director General of the Department of Attorney General and Justice, Mr Laurie Glanfield, in his letter of 12 September 2012, provided the following comments in relation to the Commonwealth Remuneration Tribunal proposal, and other matters:

*"The link between the remuneration of Federal Court judges and Supreme Court judges has underpinned the continued application of the practice that the salary of judges in Supreme Courts and in the Federal Court should not exceed 85% of the salary of a High Court judge. Given this existing link between the remuneration of Federal Court judges and Supreme Court judges, I agree with the proposal of the President of the CRT (Commonwealth Remuneration Tribunal).*

*However, the imposition of the 85% maximum was the result of an agreement between Federal and State Governments more than twenty years ago. It is not clear whether the proposal by the President of the CRT intends that this maximum no longer apply. If so, comments should also be sought from State, Territory and Federal governments.*

*Finally, and notwithstanding the above, the Government has now determined that the NSW Government Wages Policy should apply to judicial officers. The Government is of the view that the nexus between the NSW judiciary and its Federal counterparts should only be maintained provided the increases above the 2.5 per cent are offset by achieved savings."*

## Judges and Magistrates Group

### Government Submission

13. The Government submission contains the views of the Director General of the Department of Justice and Attorney General. His view, which is supported by the Government submission, is that the NSW Government Wages Policy should now apply to judicial officers. As articulated in the Government's submission to the Tribunal:

*"While the Department has traditionally supported the nexus with federal judges, in particular a link between the remuneration of Federal Court Judges and Supreme Court Judges, current circumstances give rise to a range of considerations that have not previously been present, including the government's wages policy.*

*"The Government is of the view that the nexus between the NSW judiciary and its Federal counterparts should only be maintained provided that the increases above 2.5 per cent are offset by achieved savings."*

### Section 3: 2012 Review

#### **Proposal to link the salaries of Supreme Court Judges to the Federal Court rather than the High Court.**

14. The current arrangement whereby the salary of a judge of the Federal Court and a judge of the State Supreme Court should not exceed 85 per cent of the salary of a Justice of the High Court of Australia, known as the Nexus, has existed since 1989. The history and reasoning behind the nexus has been published in the Tribunal's reports and determinations on numerous occasions since then. The retention of the Nexus has had the support of the Tribunal and successive Governments since its inception.

## Judges and Magistrates Group

15. The history of the Nexus was summarised most recently in the Tribunal's Report and Determination of the Judges, Magistrates and Related Group of 30 July 2010. An extract is provided below:

### ***"Section 2 The History of the Nexus***

*17. The Nexus has been in place since 1989. Australian Governments since 1989, have acknowledged that first, the Justices of the High Court should receive the highest level of judicial remuneration; secondly that State Supreme Courts and the Federal Court are superior courts of record and that the remuneration of judges of these courts should not exceed 85 per cent of the remuneration of a Justice of the High Court. Remuneration Tribunals across Australia have generally accepted these principles and continue to do so to the present time. This arrangement has had the desired effect of eliminating the former practice of leap frogging in judicial remuneration across jurisdictions. It has also ensured that remuneration differences between the two courts would not be an overriding factor in the minds of prospective candidates in considering appointments to the Bench. In NSW the Government has informed the Tribunal annually of its desire to maintain the 85 percent nexus.*

*18. It should be noted, however, that the 85 percent nexus is not absolute. The original agreement imposed two caveats ie the nexus would be maintained whilst ever the salaries of High Court Justices were deemed appropriate and that in considering the 85 percent 'cap' regard could be had to the differences in benefits provided to Federal Court Judges but not available to State Supreme Court Judges. The principal difference for NSW Judges was that Federal Court Judges received, and continue to have access to a fully maintained private plated motor vehicle whereas no such provision exists for the State. For this reason there has been determined by the Tribunal, since the introduction of the Nexus, an additional amount to cater for the motor vehicle. In NSW this is currently provided as the Conveyance Allowance. "*

16. In 2010 the Tribunal undertook a comprehensive review of the remuneration arrangements for office holders within the then Judges, Magistrates and Related Group. The findings of that review are outlined in the report and determination of 30 July 2010. The review was undertaken following a special reference from the then Minister for Public Sector Reform. The Minister's reference requested that the Tribunal consider a number of matters including, but not limited to:

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*“the appropriateness of legislating for salary parity between Supreme Court Judges and Federal Court Judges, similar to legislative provisions which currently exist in Victoria and Queensland, arising from the move to provide these Judges with dual commissions”*

17. In undertaking that review the Tribunal, consistent with normal procedures, sought submissions from all relevant office holders, and in particular, sought comments on whether the remuneration of State Court judges and Federal Court judges should be linked by way of legislation.
18. Submissions received from the Supreme Court, the Land and Environment Court, the Industrial Relations Commission and the District Court all indicated support for the introduction of legislation to establish parity of remuneration between the Supreme Court and the Federal Court.
19. At the request of the Minister, the Tribunal also provided comment to the Government on its views on a statutory link between the salaries of Federal Court Judges and State Supreme Court Judges. The Tribunal’s views were expressed as follows.

*“80. The Tribunal has been asked to express its view on the appropriateness of legislating for salary parity between Supreme Court Judges and Federal Court Judges arising from the move to provide State Judges with dual commissions. Similar legislative provisions currently exist in Victoria and Queensland.*

*81. The Tribunal has considered this matter carefully and has already noted how the Supreme Court also administers Commonwealth laws. The fact that the Supreme Court and Federal Court are both considered superior Courts of record also suggests a commonality between them. In addition, the Tribunal has noted that the Supreme Court and Federal Court recruit from the same group of barristers. Finally, while most State and Territory Tribunals make their own inquiries before determining judicial remuneration, none have ever made such determinations without having regard to the 85 percent Nexus. What the Tribunal is being asked to comment upon, in effect, is formalising the Nexus through legislation.*

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82. *This is not uncommon within the current remuneration framework for Judges in New South Wales. Judges of the Land and Environment Court and the Industrial Relations Commission are linked by statute to the remuneration of a Supreme Court Judge. Similar statutory arrangements are in place for the Chief Judge of the District Court.*
83. *It is envisaged that legislation introduced would formally link the salary of a Supreme Court Judge to a Federal Court Judge. There is also precedent for such cross jurisdictional arrangements. The salaries of Members of NSW Parliament are directly linked to the salaries of their federal counterparts. Section 4 of the Parliamentary Remuneration Act 1989 provides that,*

*“...The basic salary is, for the purposes of this Act, the amount of the annual allowance by way of salary payable under the law of the Commonwealth to a Member of the House of Representatives who is not entitled to any additional salary, less \$500.”*

84. *The Tribunal therefore supports linking the salaries of Supreme Court Judges to the salaries of Federal Court Judges by legislation. The Tribunal also considers that such linkage should apply to the other two Courts within the State jurisdiction i.e. the District Court and the Local Court. Given the interconnectedness of the court system in this State, the Tribunal considers there is a compelling case to link the salaries of the various Courts through legislation. The Tribunal would be prepared to offer its assistance in facilitating such an initiative. “*

20. It is not clear from Mr Conde’s proposal is if there is any intention to change the 85 per cent relativity between the salary of a High Court judge and that of a Federal Court Judge. Nor is it clear that the Commonwealth Remuneration Tribunal has adverted to the differences between non-salary benefits provided to Judges of the Federal Court and those available to Judges of the NSW Supreme Court.
21. The Tribunal agrees with Mr Glanfield’s submission, namely that if it is intended that the 85 per cent maximum no longer apply, then comments should be sought from the State, Territory and Federal governments.
22. Providing the Commonwealth Remuneration Tribunal with power to determine NSW salaries, or formally linking NSW salaries to those of the Federal Court as determined by the Commonwealth Remuneration Tribunal, will require legislation.



## Judges and Magistrates Group

23. Unless and until there is any such legislative change the Tribunal will continue to implement the existing intergovernmental agreement, whereby the salary of a judge of a State Supreme Court should not exceed 85 per cent of the salary of a Justice of the High Court of Australia.

### Application of the NSW Government Wages Policy

24. The Government submission and the submission from Mr Glanfield indicate that the Government is of the view that the NSW Government Wages Policy should now apply to judicial office holders. The Government is also of the view that the Nexus between the NSW judiciary and its Federal counterparts should only be maintained provided that any increases above 2.5 per cent are offset by "achieved savings". The Tribunal notes in passing that this language is not identical with the language of the legislation which applies to the IRC and, consequently, to the Tribunal.

25. In 2011 the SOOR Act was amended to require 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 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.

26. The current policy on wages pursuant to section 146(1)(a) of the *Industrial Relations Act 1996* is articulated in the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011. The effect of the Regulation is that public sector wages cannot increase by more than 2.5 per cent. Any increase beyond 2.5 per cent can only be awarded subject to the requirement that sufficient employee-related cost savings have been achieved to fully offset the increased employee-related costs.

27. However, these amendments explicitly exclude judicial officers as defined by the *Judicial Officer Act 1986*:

## Judges and Magistrates Group

### ***“6AA Tribunal to give effect to declared government policy on remuneration for public sector staff***

*(1) This section applies to the following determinations of the Tribunal:*

- (a) the determination under Part 3 of any alteration in the remuneration to be paid to office holders,*
- (b) the determination under Part 3A of any alteration in the remuneration packages for executive office holders.*

*This section does not apply to determinations relating to judicial officers (within the meaning of the [Judicial Officers Act 1986](#)) or to determinations relating to any office while held by a specified person.*

*(2) In making a determination to which this section applies, the Tribunal is to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission is required to give effect to under section 146C.”*

28. The Hon. Greg Pearce MLC (Minister for Finance and Services, and Minister for the Illawarra) in the Minister’s Second Reading Speech: Legislative Council, *Parliamentary Debates* (Hansard), 22 June 2011 at p. 3101 on the amendments to the Act, outlined the reason for excluding judges and magistrates from the bill:

*“I mention briefly that judges and magistrates have been excluded from the bill. Although the salaries of New South Wales judicial officers are determined by the Statutory and Other Offices Remuneration Tribunal, it is generally accepted that there should be broad consistency of pay between Federal and State judiciaries. That said, it is concerning that in recent times salary increases for judicial officers have significantly outpaced those for all other public sector officers. For the time being, it is appropriate that judicial officers, as defined, be excluded from the bill. This will ensure that appropriate relativities across Federal and State judiciaries can be maintained. We will, however, continue to monitor increases in judicial salaries to ensure that these do not place undue pressure on State finances.”*

29. There have been no further amendments to the SOOR Act, but the Government has made clear its position that the NSW Government Wages Policy should now apply to judicial office holders. Taking the Minister's Second Reading Speech as having indicated

## Judges and Magistrates Group

the basis on which the Parliament excluded judicial officers from the amendments to the SOOR Act, it is incumbent on the Tribunal to now consider the balance between maintaining appropriate relativities across Federal and State judiciaries, and "undue pressure on State finances".

30. As outlined in the Government submission:

*"With employee related expenses accounting for nearly one-half of budget expenses, this area continues to be a key focus in the Government's expense restraint. Growth in this area is driven by increasing rates of pay, increased size of the workforce and changing composition of the workforce. The 2012-13 Budget provides for a further round of measures to better control employee expenses.*

*The Labour Expense Cap strengthens the control over employee expense growth that started last year with the NSW Public Sector Wages Policy 2011."*

31. The Labour Expense Cap is explained in detail in the 2012-13 Budget Paper Number 2. In summary, the Labour Expense Cap has been introduced to limit employee related and contractor expenses across the whole of government. The cap will limit employee related and contractor expenses which account for almost half of all expenditure. The cap is expected to reduce the rate of growth and avoid additional labour costs of around \$2.2 billion over the forward estimates period, which equates to around 1.2 per cent per annum.

32. The Tribunal respects the Government's concern with fiscal rectitude and notes that wage restraints have been imposed by legislation across the whole of the public sector with the exception only of judicial officers. The Tribunal notes also that the current rate of inflation is unusually low and an increase of 2.5% in this year would appear to be quite reasonable.

33. The submission of the Judges of the Supreme Court includes the following:

*"If appointees to the Supreme Court do not continue to be lawyers, including commercial lawyers, of the highest caliber the standard of work of the Court would diminish, with the potential to damage the State in its aim to be an internationally recognized financial services centre. Confidence in the dispute resolution capacity of the Court is essential before overseas corporations will invest capital and conduct business within the jurisdiction. Sydney has begun to develop an international reputation in dispute resolution. If that reputation is to grow the work of the Supreme Court must be of the highest standard."*

## Judges and Magistrates Group

34. The Tribunal accepts that reasoning and again notes the comment in the Minister's Second Reading speech that the exclusion of judicial officers from the operation of Section 6AA was "to ensure that appropriate relativities across Federal and State judiciaries can be maintained". The reason for maintaining those relativities has not changed: potential appointees to the Supreme Court are drawn from the same pool of qualified persons as are potential appointees to the Federal Court, and it is in the interests of the State of New South Wales that the best available people will accept appointment to the Supreme Court.
35. The Tribunal will determine a 3 per cent increase in the salary of a Judge of the State Supreme Court, which is equivalent to that provided by the Commonwealth Remuneration Tribunal to federal judicial office holders in July 2012. This increase will necessarily flow to those judicial officers whose remuneration is linked by legislation to the remuneration of a Judge of the Supreme Court.

### Retention of Internal Relativities

36. Given the Government's concerns with respect to the State's budget and its view that the NSW Government Wages Policy should now apply to judicial office holders, the Tribunal considers it appropriate to review the internal relativities within the Judges and Magistrates Group.
37. Several long-standing relativities in the Judges and Magistrates Group have already been severed by the 2011 Section 6AA amendments to the SOOR Act for officers who were not "judicial officers" as defined.
38. Since 1975 the salaries of judicial officers in NSW have been set by the Tribunal as a percentage of the salary of a Supreme Court Judge. The relativities between positions within the Judges and Magistrate Group have been reviewed from time to time, and where there have been changes in jurisdiction the Tribunal has adjusted the relativity. Those changes have recognised the devolutions of jurisdiction from the Supreme Court to the District Court and from the District Court to the Local Court that have occurred over time.

## Judges and Magistrates Group

39. In 2000 the Tribunal reduced the relativity gap between the District Court and the Supreme Court over two years, from 87 per cent of the Supreme Court to 90 per cent of the Supreme Court.
40. A determination to limit judicial officer increases to 2.5 per cent except for the Supreme Court (and legislatively related judicial officers) would open that gap again slightly, but by less than 0.5 per cent.
41. Notwithstanding its historical commitment to ensuring that remuneration relativities within the Judges and Magistrates Group should so far as possible reflect relative responsibilities, the Tribunal, having regard to the current economic climate and the need for fiscal restraint, and the effectiveness of the Government's implementation of its wages policy across the whole of the public sector, has determined that increases for judicial officers other than the Supreme Court (and legislatively related judicial officers) will be 2.5 per cent.
42. The following table outlines the salary relativities which will arise from such a determination for the current year.

Judicial Office Holders	2011 salary % with Supreme Court Judge	2012 salary % with Supreme Court Judge
Judge of the District Court	90.00%	89.56%
Associate Judge	90.00%	89.56%
Chief Magistrate	90.00%	89.56%
Deputy Chief Magistrate	76.05%	75.68%
State Coroner	76.05%	75.68%
Chief Industrial Magistrate	73.26%	72.90%
Magistrate	72.00%	71.65%
Chairperson Victims Compensation Tribunal	72.00%	71.65%
Children's Magistrate	72.00%	71.65%
Deputy State Coroner	72.00%	71.65%
Commissioner, Industrial Relations Commission	66.00%	65.68%

### Judges and Magistrates Group

43. The Tribunal notes that immediately the current climate of fiscal restraint is relaxed to any extent, it would intend to review the position in other States as it did in 2000, and to consider restoring the relativities which existed prior to this 2012 determination.
44. With respect to those other long-standing relativities within the former Judges, Magistrates and Related Group which were altered in 2011 by the Section 6AA legislation, again the Tribunal notes that, immediately the current climate of fiscal restraint is relaxed to any extent, it would be the Tribunal's intent to review and to consider restoring the original relativities, if legislation does not prohibit the Tribunal from so doing.

#### **Employee related cost savings: increases above 2.5 per cent**

45. The wages policy that applies to the IRC and to the Tribunal is that: *“Public sector employees may be awarded increases in remuneration or other conditions of employment that do not increase employee-related costs by more than 2.5 per cent per annum.”*
46. The question that arises is whether a work value increase, that is, an increase that the Tribunal considers appropriate because of a change in a particular office's role and responsibilities, is subject to the wages policy and, in particular, to the 2.5 per cent cap on remuneration increases.
47. Although not free from doubt, it seems that it is open to the Tribunal to approach its determinations on the basis that the 2.5 per cent cap does not necessarily apply in such cases.
48. The existence of the policy does not mean that any individual public sector employee or group of employees cannot receive an increase in remuneration above 2.5 per cent. For example, an individual public sector employee may be entitled to a greater than 2.5 per cent increase if the individual moves up within the salary band for his or her position, if his or her position is re-graded or if he or she is appointed to a more highly-graded position.

## Judges and Magistrates Group

49. By analogy, it would seem reasonable to the Tribunal that an increase in remuneration for a particular office that is attributable solely to a change in role or responsibilities is not different from a re-grading of a public sector position or, where the change is significant, a change of position.
50. On that basis, the Tribunal considers that it is not precluded from making a determination to increase the remuneration payable to a judicial office holder or group of office holders in an amount greater than 2.5 per cent, where changes in work value warrant an increase greater than 2.5 per cent.
51. Nevertheless the Tribunal is aware that, although Section 11(3) of the SOOR Act provides for an automatic appropriation from the Consolidated Fund to pay remuneration determined under the SOOR Act for office holders listed in Schedule 1, that does not necessarily mean that employee related budgets will be increased to take account of increased remuneration payable. Therefore a determination based on a "work value" increase will not necessarily cut across the objective of the Government's wages policy, because it may well be that an organisation's budget will not be increased by the amount of increased employee-related cost greater than 2.5 per cent that would result from a work value increase determined by the Tribunal, unless employee-related cost savings sufficient to offset that increase are found within the relevant organisation.
52. The Tribunal understands that during the coming year a review currently being undertaken by Government into the relativities between SES and Senior Officers will be finalised, and assistance will then be provided to the Tribunal to develop a methodology to assess employee-related cost savings (as defined in Regulation 2011) which may justify an increase above 2.5 per cent in appropriate circumstances. This methodology may also assist the Tribunal to assess savings relating to the employee-related costs of judicial officers, for the purposes of determining any increase above 2.5 per cent in their remuneration.

## Judges and Magistrates Group

53. In this regard the Tribunal notes that the Industrial Relations Commission of NSW on 15 October 2012 ruled that any increases greater than 2.5 per cent in salaries payable on and from a particular date can only be offset by employee-related cost savings made after (not before) that date: *HSU East and Director-General, Department of Finance and Services [2012] NSWIRComm 112*. Para 36 of that ruling is as follows:

*"These provisions tend to indicate that the savings must be achieved in a period or at a time corresponding with any wage adjustment made in conformity with the Regulation. We note that in industrial parlance the expression "fully offset" means that a given wage increase would be matched by cost savings or other savings having the effect of neutralizing the cost of the adjustment after the commencement of its operation (which would normally be prospective)."*

### Other matters

#### Workers Compensation Commission, President

54. The office of President, Workers Compensation Commission is not defined as a "judicial officer" in accordance with the *Judicial Officers Act 1986*. This is anomalous as the *Workplace Injury Management and Workers Compensation Act 1998* stipulates that to be eligible for appointment as President the person must be a Judge of a Court of Record, ie a judicial officer.

55. On that basis the Tribunal has included the office of President of the Workers Compensation Commission in the Judges and Magistrates Determination for the purpose of determining the remuneration for this office. The Tribunal highlighted this anomaly in its 2011 report and determination and again requests that the Government review the legislation to address this matter.

#### Conveyance Allowance

56. The Tribunal has undertaken a review of the conveyance allowance. In determining the quantum of this allowance the Tribunal applies the average of leasing, on road and running costs for a range of vehicles leased by NSW Judges and Magistrates.



## Judges and Magistrates Group

57. Analysis has shown that there has been no substantial change in the total costs for leasing the sample motor vehicles over the last 12 months and consequently the Allowance will not be increased at this time.

### Section 4: Conclusion

58. The Tribunal, after carefully considering but notwithstanding the views of the Assessor (noting that there is presently only one Assessor, rather than two) and, pursuant to Section 13 of the *Statutory and Other Offices Remuneration Act 1975* as amended, determines that the remuneration to be paid to the office holders in Determination 1 will be increased by 3 per cent with effect from 1 October 2012. Office holders listed in Determination 2 will be provided with a 2.5 per cent increase with effect from 1 October 2012. The new rates are as set out in Determinations Nos 1-5.

59. The Tribunal has also made a Report and Determination on Travel Allowances for NSW Judges and Magistrates. The Report and Determination are as set out in Determination No 6.

### The Statutory and Other Offices Remuneration Tribunal

Helen Wright  
Dated: 9 November 2012

## Determinations for the Judges and Magistrates Group

### Determination No 1

**Determination of the Remuneration for Judicial Officers as Defined in the *Judicial Officers Act 1986* being judicial officers of the Supreme Court and judicial officers linked by legislation to the remuneration of the Supreme Court**

**Effective on and From 1 October 2012**

Salary	\$ per annum
Chief Justice of the Supreme Court	\$450,750
President of the Court of Appeal	\$422,070
President of the Industrial Relations Commission	\$422,070
Chief Judge of the Land and Environment Court	\$422,070
Judge of the Supreme Court	\$402,810
Vice-President of the Industrial Relations Commission	\$402,810
Judge of the Land and Environment Court	\$402,810
Deputy President of the Industrial Relations Commission (being a judicial member)	\$402,810

## Determinations for the Judges and Magistrates Group

### Determination No 2

**Determination of the Remuneration for Judicial Officers as Defined in the *Judicial Officers Act 1986* but not referred to in Determination 1**

**Effective on and From 1 October 2012**

Salary	\$ per annum
Deputy President of the Industrial Relations Commission (not being a judicial member)	\$400,860
Judge of the District Court	\$360,770
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	\$360,770
Chief Magistrate	\$360,770
Deputy Chief Magistrate	\$304,850
State Coroner	\$304,850
Chief Industrial Magistrate	\$293,670
Magistrate	\$288,620
Chairperson Victims Compensation Tribunal (NOTE 2)	\$288,620
Children's Magistrate	\$288,620
Deputy State Coroner	\$288,620
Commissioner Industrial Relations Commission	\$264,560

NOTE 2: When a more senior Magistrate is appointed to the office then he or she shall retain his or her present salary level.

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## Determinations for the Judges and Magistrates Group

### Determination No 3

**Determination of the Remuneration to be Paid to the President of the Workers Compensation Commission (Pursuant To Section 369 of the *Workplace Injury Management And Workers Compensation Act 1988*) Effective on and From 1 October 2012**

A person is eligible to be appointed as President only if the person is a Judge of a court of record. In accordance with Schedule 5 of the *Workplace Injury Management and Workers Compensation Act 1988*, when a judicial officer is holding office as member the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office are not affected.

On that basis the appointee shall receive a salary equivalent to the remuneration that applies to their judicial appointment.

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## Determinations for the Judges and Magistrates Group

### Determination No 4

#### ACTING JUDGES

##### 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	\$1,745 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	\$1,565 per day
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### Determination No 5

#### Conveyance Allowance

Full time Office Holders receiving salary equivalent to a Supreme Court Judge or higher shall be entitled to a Conveyance Allowance of \$22,550 pa.

Full time Office Holders receiving salary equivalent to a District Court Judge shall be entitled to a Conveyance Allowance of \$20,330 pa.

Full time Office Holders receiving salary below that of a District Court Judge shall be entitled to a Conveyance Allowance of \$16,235 pa.

The Conveyance Allowance determined here shall not count towards Judges' pension or for superannuation purposes.

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## Determinations for the Judges and Magistrates Group

### Determination No 6

#### Annual Leave Loading Of Judges, Magistrates and Related Group Effective on and From 1 October 2012

##### 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, as set out in Section 6-15.11 to 6-15.16 of the Personnel Handbook, to each of the following office holders:

- Magistrates
- Deputy President of the Industrial Relations Commission (not being a judicial member)
- Commissioners, Industrial Relations Commission

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

Helen Wright

Dated: 9 November 2012

## Report and Determination on Travel Allowances for NSW Judges and Magistrates

### Section 1 Background

1. 'Remuneration' is defined in the Statutory and Other Offices Remuneration Act 1975, as salary and allowances payable to office holders. Judges and magistrates are holders of offices specified in Schedule 1 of the 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.

### Section 2 2012 Review

4. Historically the Tribunal has 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 2012 (TD 2012/17) and these rates have been adopted for the NSW Public Sector. On that basis the Tribunal has determined the rates that are based on ATO TD 2012/17.

### Section 3 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 home/place of work on official business. Such costs include accommodation, meals and incidental expenses.

## Report and Determination on Travel Allowances for NSW Judges and Magistrates

- (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.
- (d) 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.

### Section 4 Conclusion

6. In making its determination the Tribunal has had regard to the current travel allowance rates contained in Taxation Ruling 2012/17. Non metropolitan accommodation rates and meal rates have also been adjusted as set out in the Determination.
7. After reviewing the survey of intra state accommodation and meal costs, the Tribunal makes the following determination (Determination No 7) effective on and from 1 October 2012.

### Statutory and Other Offices Remuneration Tribunal

**Helen Wright**

Dated: 9 November 2012



## Report and Determination on Travel Allowances for NSW Judges and Magistrates

### Determination No 7

#### Travel Allowances for Judges and Magistrates Effective on and From 1 October 2012

Pursuant to section 13 of the Act the Tribunal determines that the travel allowances for Judges and Magistrates will be as follows effective on and from 1 October 2012.

#### A. Travel necessitating an overnight stay

##### Travel Allowances

<b>Capital City Rates</b>	
Adelaide	\$372.05
Brisbane	\$399.05
Canberra	\$395.05
Hobart	\$358.05
Perth	\$472.05
Darwin	\$477.05
Melbourne, Sydney	\$428.05
Newcastle and Wollongong	\$353.05
<b>Other Areas</b>	\$353.05

##### 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.

## Report and Determination on Travel Allowances for NSW Judges and Magistrates

- 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

Breakfast	\$24.35
Lunch	\$27.35
Dinner	\$46.70

#### Statutory and Other Offices Remuneration Tribunal

Helen Wright

Dated: 9 November 2012

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT 1975

PUBLIC OFFICE HOLDERS GROUP

9 November 2012

[www.remtribunals.nsw.gov.au](http://www.remtribunals.nsw.gov.au)

## Public Office Holders Group

### Introduction

Ms Jade Novakovic, who undertook the role of Assessor to the Tribunal (pursuant to section 7(1)(b) of the SOOR Act) did not seek reappointment when her term expired on 30 June 2012. This position is currently vacant and the Tribunal has undertaken the 2012 review without this additional assistance. The Tribunal would also like to acknowledge and express its appreciation of the considerable contribution of Mr Emanuel Sklavounos who undertook the role of Executive Officer to the Tribunal for a period of over ten years until his retirement in December 2011.

### Section 1 Background

1. Section 13 of the *Statutory and Other Offices Remuneration Act 1975*, (the SOOR Act), requires the Statutory and Other Offices Remuneration Tribunal to make a determination of the remuneration to be paid to office holders on and from 1 October in that year. "Remuneration" is defined in section 10A as salary or allowances paid in money.
2. The Public Office Holders Group comprises those public offices listed in the Schedules of the Act (except for the Judges and Magistrates Group and the Court Related Officers Group), which have been grouped together by the Tribunal for remuneration purposes. The remuneration for the majority of office holders in this Group is determined as a fixed salary amount. Employer on-costs, such as the Superannuation Guarantee Levy, are additional to the salary amount determined. This Group also comprises a small number of office holders who, pursuant to Section 11A of the Act, have elected to receive, and for whom the Minister has approved access to, remuneration packaging arrangements identical to the SES.
3. In determining the remuneration for office holders in this group, and following amendments to the SOOR Act in 2011, the Tribunal is now required (pursuant to Section 6AA) to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission is required to give effect to under

## Public Office Holders Group

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.

4. The current policy on wages pursuant to section 146(1)(a) of the *Industrial Relations Act 1996* is articulated in the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011. The effect of the Regulation is that public sector wages cannot increase by more than 2.5 per cent. Any increase beyond 2.5 per cent can only be awarded subject to the requirement that sufficient employee-related cost savings have been achieved to fully offset the increased employee-related costs.
5. The Tribunal's Report and Determination of 2011 for the Public Office Holders Group provided a general increase of 2.5 per cent which was consistent with the NSW Wages Policy and reflected the NSW Government's intent, pursuant to section 6AA of the SOOR Act and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011.
6. During the past year the Tribunal has made three special determinations in respect of three new offices in the Public Office Holders Group: the Workcover Independent Review Officer, the Public Service Commissioner, and the Mental Health Commissioner.
7. The above special determinations of the Tribunal were published in the Government Gazette and tabled in Parliament.

### **Section 2      Submissions Received**

#### **Government Submission**

8. The Government's submission recommends that this Group receive an increase of 2.5 per cent.
9. That recommendation is consistent with the NSW Wages Policy and reflects the NSW Government's intent, pursuant to section 6AA of the SOOR Act and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011.

## Public Office Holders Group

### Ombudsman

10. The Ombudsman has requested that the Tribunal review the remuneration for this position having regard to changes that have occurred in the role and responsibilities since the Tribunal last reviewed the position in 2004. The Ombudsman submits that since 2004 significant changes, including new responsibilities associated with public interest disclosures and convening and supporting the NSW Child Death Review Team, have had an impact on both the office and the position of Ombudsman.

### Section 3      2012 Review

11. The introduction of section 6AA to the SOOR Act has had a significant impact on the way this Tribunal makes its determinations. The effect of the amendments to the SOOR Act in 2011 is to remove the Tribunal's discretion to determine any increase beyond 2.5 per cent for office holders other than judicial officers (within the meaning of the *Judicial Officers Act 1986*) unless there are sufficient employee-related cost savings to offset the additional employee-related costs.

12. The validity of the amendments to the *Industrial Relations Act 1996* was considered by the Industrial Relations Commission during 2011. The Public Service Association (PSA) applied for a declaration that the Amendment Act, or alternatively the Regulation, was invalid. On 31 October 2011 the Full Bench of the Industrial Court (Walton, Kavanagh & Backman JJ) unanimously dismissed the PSA's application (*The Public Service Association & Professional Officers' Association Amalgamated of NSW v Director of Public Employment & ORS Industrial Court of NSW [2011] NSWIRComm 143*). The matter is presently the subject of consideration by the High Court (*The Public Service Association & Professional Officers' Association Amalgamated of NSW v Director of Public Employment & ORS (S127/2012)*), but unless and until the High Court decides otherwise, the legislation has effect and the Tribunal is obliged to apply the same policies on increases in remuneration as the IRC is obliged to apply.

13. Complexities arise because of the differences in the nature and functioning of the Tribunal (which usually makes determinations 'on the papers') and the IRC (which makes orders and awards following arbitrated proceedings), as well as differences in the types of decisions they make. The IRC makes generally applicable orders and

## Public Office Holders Group

awards to broad categories of employees. The Tribunal does likewise in respect of the Senior Executive Service, but for some public and statutory offices it makes specific determinations for individual offices.

14. During the 2011 review the Tribunal identified the need to develop a methodology to assess whether officers affected by this determination can and have achieved employee related costs savings which may justify increases beyond 2.5 per cent. The Tribunal also identified the need to address whether the amendments to the SOOR Act preclude the Tribunal from making any further adjustments in remuneration based on changes in work value. Historically, the annual determination has provided for a general increase to all eligible office holders ("general increase") and, where warranted, an additional increase for a particular office based on changes in its role or responsibilities ("work value increase").
15. Prior to the amendments to the legislation the Tribunal, in determining the annual general increase, had regard to a number of factors including salary adjustments across both public and private sectors and movements in key economic indicators.
16. The Tribunal previously has been able to determine increases greater than 2.5 per cent, and those increases may have been granted to individual office holders or groups of office holders based on productivity savings achieved across an organisation. Submissions received this year from individual office holders and on behalf of groups of office holders argued that increases beyond 2.5 per cent could be funded from a reduction in employee related costs and/or productivity savings.
17. However Section 146C and Regulation 2011 require something different from and greater than the kind of productivity savings which, in the past, may have been claimed to have been achieved. Submissions outlining savings attributable only to productivity factors will not be sufficient to meet the policy requirements specified in the Regulation.
18. Paragraph 8 of the Regulation defines "employee-related costs" as "costs related to the salary, wages, allowances and other remuneration payable to the employees and the superannuation and other personal employment benefits payable to or in respect of the employees".

## Public Office Holders Group

19. Paragraph 9 defines "employee-related cost savings" and whilst the language used is directed to the particular processes of the Industrial Relations Commission, much of it can be given a purposive interpretation to apply to the deliberations of the Tribunal, and the Tribunal must apply the same policies as the IRC must apply. Paragraph 6(1)(b) clarifies that there must be sufficient employee-related cost savings to fully offset any increased employee-related costs. In other words, any pay increase beyond 2.5 per cent must be matched by cost savings which neutralise the cost of the increase. Paragraph 6(1)(c) suggests the kinds of employee-related cost savings which may be relevant, in that it contemplates reduction (with the agreement of the relevant parties) in "existing conditions of employment of the kind but in excess of the guaranteed minimum conditions of employment".
20. In finding savings sufficient to fund increases above 2.5 per cent, it appears that public office holders will need to find employee-related costs savings, such as changes to leave entitlements, elimination of leave loading, reduction of travelling allowances etc.
21. Office holders within the Public Office Holders Group are not employed under an industrial instrument. Their conditions of employment are determined by the relevant legislation and, in some instances, negotiated with the relevant Minister at the time of appointment. Any changes to these conditions aimed at reducing employee-related costs and contributing to savings, would need to be approved by the relevant Minister and, in some cases, may need to be effected by legislative amendments.
22. Further, the Tribunal notes that the Industrial Relations Commission of NSW on 15 October 2012 ruled that any increases greater than 2.5 per cent in salaries payable on and from a particular date can only be offset by employee-related cost savings made after (not before) that date: *HSU East and Director-General, Department of Finance and Services [2012] NSWIRComm 112*. Para 36 of that ruling is as follows:

*"These provisions tend to indicate that the savings must be achieved in a period or at a time corresponding with any wage adjustment made in conformity with the Regulation. We note that in industrial parlance the expression "fully offset" means that a given wage increase would be matched by cost savings or other savings having the effect of neutralizing the cost of*



## Public Office Holders Group

*the adjustment after the commencement of its operation (which would normally be prospective)."*

23. The Tribunal has sought legal advice and has also met with judicial members of the Industrial Relations Commission to discuss and consider how these matters or some of them might be addressed. The Tribunal places on record its thanks to the Hon Justice Michael Walton, Vice President, and the Hon Justice Conrad Staff, of the Industrial Relations Commission for their assistance.
24. No office holder has made a submission regarding employee-related cost savings for consideration by the Tribunal in its 2012 review. The Tribunal understands that during the coming year the Government will provide assistance to the Tribunal to develop a methodology to assess employee-related cost savings which may justify a "general increase" above 2.5 per cent in appropriate circumstances. If and when an appropriate methodology is so established, the Tribunal will advise office holders. For the purposes of the 2013 review, and whether or not any such methodology has been established, but in order to provide office holders with sufficient opportunity to identify and demonstrate potential employee-related cost savings, the Tribunal will seek submissions much earlier in 2013 than has been past practice.
25. In respect of whether the Tribunal may, having regard to the amendments to the SOOR Act, also consider any possible increase in remuneration based on a "work value increase" as distinct from a "general increase" Mr Chris Eccles, Director General of the Department of Premier and Cabinet, in correspondence of 18 October 2012, provided the following views in his capacity as Assessor assisting the Tribunal:

*"As you will be aware, the objective of the Government's wages policy is to limit the increase in overall public sector employee-related costs to 2.5 per cent, and to apply this policy equitably across all public sector employees and other public officials.*

*With that in mind, the Government considers that it would be open to the SOORT to determine a 'work value' increase in the remuneration for a particular office holder beyond the 2.5 per cent where this is appropriate having regard to significant changes in the particular office's role and responsibilities.*

*However, to ensure consistency with the wages policy, any such increase will not of itself result in any corresponding increase in the allocation for*

## Public Office Holders Group

*employee-related costs provided to the relevant organisation. In effect, this means that while a work value increase beyond 2.5 per cent may be made, it would need to be offset by employee-related costs savings elsewhere."*

26. The wages policy that applies to the IRC and to the Tribunal is that: *"Public sector employees may be awarded increases in remuneration or other conditions of employment that do not increase employee-related costs by more than 2.5 per cent per annum"*.
27. The question that arises is whether a work value increase, that is, an increase that the Tribunal considers appropriate because of a change in a particular office's role and responsibilities, is subject to the wages policy and, in particular, to the 2.5 per cent cap on remuneration increases.
28. Although not free from doubt, it seems that it is open to the Tribunal to approach its determinations on the basis that the 2.5 per cent cap does not necessarily apply in such cases.
29. The existence of the policy does not mean that any individual public sector employee or group of employees cannot receive an increase in remuneration above 2.5 per cent. For example, an individual public sector employee may be entitled to a greater than 2.5 per cent increase if the individual moves up within the salary band for his or her position, if his or her position is re-graded or if he or she is appointed to a more highly-graded position.
30. By analogy it would seem reasonable to the Tribunal that an increase in remuneration for a particular office that is attributable solely to a change in role or responsibilities is not different from a re-grading of a public sector position or, where the change is significant, even a change of position.
31. On that basis, the Tribunal considers that it is not precluded from making a determination to increase the remuneration payable to a public office holder or group of office holders in an amount greater than 2.5 per cent, where changes in work value warrant an increase greater than 2.5 per cent.

## Public Office Holders Group

32. Nevertheless the Tribunal is aware that, although Section 11(3) of the SOOR Act provides for an automatic appropriation from the Consolidated Fund to pay remuneration determined under the SOOR Act (for office holders listed in Schedule 1), that does not necessarily mean that employee related budgets will be increased to take account of increased remuneration payable. Therefore a determination based on a “work value’ increase will not necessarily cut across the objective of the Government’s wages policy, because an organisation’s budget may not be increased by the amount of increased employee-related cost greater than 2.5 per cent that would result from a work value increase determined by the Tribunal, unless employee-related cost savings sufficient to offset that increase are found within the relevant organisation.
33. The Tribunal will, as requested by the Ombudsman, engage external experts to carry out a work value assessment of the current role of the Ombudsman. This may take some time and it would be appropriate for the result of that review to be considered during the 2013 review (which will commence earlier than previously), together with those requests deferred during the 2011 review if the relevant office holders choose to again lodge submissions for consideration.

### **Section 11A Office Holders**

34. Historically, when an officer has elected to receive employment benefits pursuant to section 11A of the SOOR Act, the Tribunal has determined a total remuneration package payable to that office holder. Determinations which provide for a total remuneration package are listed separately (Determination No.2) from those determinations which are expressed as a salary only (Determination No.1).
35. For the 2012 determination the Tribunal will continue to identify, in Determination No.2 of the Public Office Holders report and determination, those offices which are held by individuals who have elected to receive a total remuneration package pursuant to section 11A. The Tribunal will also make a salary-only determination for those particular offices and list that salary in the general determination for Public Office Holders in Determination No. 1. This is to ensure that a current determination exists for these roles should the incumbent officer revoke his/her election or if a new officer is appointed to the role.

## Public Office Holders Group

### Section 4 Conclusion

36. Section 6AA has had a significant impact on the way this Tribunal makes its determinations. The Tribunal, after considering the views of the Assessor, considers that an increase of 2.5 per cent is appropriate and so determines.

37. Pursuant to Section 13 of the Statutory and Other Offices Remuneration Act 1975, as amended, the Tribunal determines that the remuneration to be paid to office holders on and from 1 October 2012 shall be as specified in Determination 1 in respect of the Public Office Holders and Determination 2 in respect of Section 11A Office Holders.

#### The Statutory and Other Offices

#### Remuneration Tribunal

**Helen Wright**

Dated: 9 November 2012

## Determinations for the Public Office Holders Group

### Determination No 1

#### Determination of the remuneration the Public Office Holders Group Effective on and from 1 October 2012

Salary	\$ per annum
Public Service Commissioner	\$460,045
Commissioner Police Integrity Commission	\$438,725
Auditor General	\$427,955
Ombudsman	\$426,855
Commissioner, NSW Crime Commission (Note 1)	\$423,540
Assistant Commissioner, NSW Crime Commission	\$401,255
Full time Member and CEO, Independent Pricing and Regulatory Tribunal (Note 1)	\$381,465
President, Mental Health Review Tribunal	\$346,355
Electoral Commissioner (Note 1)	\$333,115
Valuer General (Note 1)	\$308,150
Workcover Independent Review Officer	\$307,500
Deputy President Mental Health Review Tribunal	\$303,025
Information Commissioner	\$300,480
Privacy Commissioner	\$289,975
Chairperson, Consumer Trader and Tenancy Tribunal	\$281,500
Mental Health Commissioner	\$278,800
President, Guardianship Tribunal	\$275,625
Parliamentary Budget Officer	\$274,790
Principal Claims Assessor (Motor Accidents Compensation Act)	\$273,725
Deputy Chairperson Consumer Trader and Tenancy Tribunal	\$260,350
Deputy Chairperson, Law Reform Commission	\$258,475
Commissioner, Law Reform Commission	\$247,890
Deputy President Administrative Decisions Tribunal	\$247,890
Clerk of the Legislative Assembly	\$241,330
Clerk of the Parliaments	\$241,330
Executive Manager, Parliamentary Services	\$241,330

### Determinations for the Public Office Holders Group

Salary	\$ per annum
Registrar Workers Compensation Commission	\$241,330
Senior Arbitrator, Workers Compensation Commission (legally qualified)	\$223,995
Deputy President, Guardianship Tribunal	\$215,640
Senior Member, Consumer Trader and Tenancy Tribunal	\$212,490
Deputy Clerk, Legislative Assembly	\$207,170
Deputy Clerk, Legislative Council	\$207,170
Senior Arbitrator, Workers Compensation Commission (not legally qualified)	\$206,295
Arbitrator, Workers Compensation Commission (legally qualified)	\$197,770
Chairperson, Local Land Boards	\$197,730
Registrar, Aboriginal Land Rights Act 1983	\$191,390
Assessor (Civil Claims)	\$183,125
Member, Consumer Trader and Tenancy Tribunal	\$183,125
Arbitrator, Workers Compensation Commission (not legally qualified)	\$177,795
Chairperson, Board of the Aboriginal Housing Office	\$142,895
Member of the New South Wales Aboriginal Land Council (Note 2)	\$127,485
Chairperson, Infrastructure NSW	\$73,545
President Mental Health Review Tribunal (part time daily rate)	\$1,440
Deputy President Mental Health Review Tribunal (part time daily rate)	\$1,260
Senior Member, Consumer Trader and Tenancy Tribunal (part time daily rate)	\$880
Assessor Civil Claims (daily rate)	\$760
Member, Consumer Trader and Tenancy Tribunal (part time daily rate)	\$760

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 \$140,230 per annum) and the Deputy Chairperson shall receive an allowance of 5% (i.e. a total of \$133,860 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, as set out in Section 6-15.11 to 6-15.16 of the Personnel Handbook, to each of the office holders listed above who are provided, as a condition of their employment with approved annual leave.

## Determinations for the Public Office Holders Group

### Determination No 2

#### **Determination of Remuneration of Public Office Holders Who Have Elected to be Provided With Employment Benefits Pursuant to Section 11a of the Act Effective on and from 1 October 2012**

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 Act shall be:

<b>Public Office Holder</b>	<b>Remuneration</b>
Commissioner, NSW Crime Commission	\$441,690
Full time Member and CEO, Independent Pricing and Regulatory Tribunal	\$398,880
Electoral Commissioner	\$350,530
Valuer General	\$325,565

#### **The Statutory and Other Offices**

##### **Remuneration Tribunal**

**Helen Wright**

Dated: 9 November 2012

REPORT

and

DETERMINATION

under

SECTION 13

of the

STATUTORY AND OTHER OFFICES

REMUNERATION ACT 1975

COURT AND RELATED OFFICERS GROUP

9 November 2012

[www.remtribunals.nsw.gov.au](http://www.remtribunals.nsw.gov.au)



## Court and Related Officers Group

### Introduction

Ms Jade Novakovic, who undertook the role of Assessor to the Tribunal (pursuant to section 7(1)(b) of the SOOR Act) did not seek reappointment when her term expired on 30 June 2012. This position is currently vacant and the Tribunal has undertaken the 2012 review without this additional assistance. The Tribunal would also like to acknowledge and express its appreciation of the considerable contribution of Mr Emanuel Sklavounos who undertook the role of Executive Officer to the Tribunal for a period of over ten years until his retirement in December 2011.

### Section 1 Background

1. Section 13 of the *Statutory and Other Offices Remuneration Act 1975*, (the SOOR Act), requires the Statutory and other Offices Remuneration Tribunal to make a determination of the remuneration to be paid to office holders on and from 1 October 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 Levy, are additional to the salary amount determined.
3. In determining the remuneration for office holders in this group, and following amendments to the SOOR Act in 2011, the Tribunal is now required (pursuant to Section 6AA) to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission 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.

### Court and Related Officers Group

4. The current policy on wages pursuant to section 146(1)(a) of the *Industrial Relations Act 1996* is articulated in the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011. The effect of the Regulation is that public sector wages cannot increase by more than 2.5 per cent. Any increase beyond 2.5 per cent can only be awarded subject to the requirement that sufficient employee-related cost savings have been achieved to fully offset the increased employee-related costs.
5. Prior to the 2011 determinations, the court and related office holders, such as the Director of Public Prosecutions and the Crown Prosecutors, were included in the Judges, Magistrates and Related Group for remuneration purposes. As a consequence of that grouping the court and related office holders received remuneration increases identical to the percentage increases received by judges and magistrates.
6. The amendments to the SOORT Act, which provide for the Tribunal to apply the same public sector wages cap that binds the Industrial Relations Commission, explicitly exclude Judicial Office Holders as defined by the *Judicial Officers Act 1986*. For this reason, for the 2011 determinations the Tribunal separated the officers previously grouped as the Judges, Magistrates and Related Group into two separate groups being those defined as judicial office holders by the *Judicial Officers Act 1986* in the Judges and Magistrates Group, and the remaining office holders forming the new Court and Related Officers Group.
7. The Tribunal's Report and Determination of 2011 for the Court and Related Officers Group provided a general increase of 2.5 per cent which was consistent with the NSW Wages Policy and reflected the NSW Government's intent, pursuant to section 6AA of the SOOR Act and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011.

## Court and Related Officers Group

### Section 2 Submissions Received

#### Government Submission

8. The Government submission recommends the Tribunal approve an increase of 2.5 per cent for the Court and Related Officers Group.
9. This recommendation is consistent with the NSW Wages Policy and reflects the NSW Governments' intent, pursuant to section 6AA of the SOOR Act and the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011.

#### Director of Public Prosecutions

10. The Director of Public Prosecutions has requested that the offices of the Director of Public Prosecutions and the Solicitor General receive the same salary as a Supreme Court Judge. This arrangement would reinstate the previous salary relativity that existed between these positions but has subsequently been broken as a result of the provisions of section 6AA. This salary relativity had existed since the creation of the position in 1986. The Director of Public Prosecutions has advised that there are good reasons for that historical nexus and for continuing it into the future. The Director of Public Prosecutions also submits that it is not practical for individual office holders, such as himself and the Solicitor General, to demonstrate employee-related cost savings.

*"It is clear from the Regulation that the demonstration of employee-related savings would normally occur in the context of proceedings on behalf of large groups of employees before the Industrial Relations Commission. Such proceedings will never be commenced by single statutory office holders such as the Director of Public Prosecutions and the Solicitor General."*

#### Solicitor General

11. The Solicitor General's submission states that it would be highly desirable to re-align the remuneration of the Solicitor General and the Director of Public Prosecutions with that of a judge of the Supreme Court. There were good reasons for this alignment including the status of the two offices in question and the fact that these

## Court and Related Officers Group

are the only non-judicial offices that provide an entitlement to the judicial pension under the *Judges' Pensions Act 1953*.

### Deputy Directors of Public Prosecutions, Crown Prosecutors

12. The Deputy Directors submit their appropriate remuneration should be the same as the percentage relative to judicial office holders before the enactment of section 6AA of the SOOR Act. This would have equated to the remuneration level of a District Court Judge.
13. The Senior Crown Prosecutor, Deputy Senior Crown Prosecutors and Crown Prosecutors submit their appropriate remuneration should be at the same percentage level as previously existed relative to the remuneration of the Director of Public Prosecutions.
14. The joint submission highlights that the salary relativities which previously existed between officers in the Judges and Magistrates Group and the Court and Related Officers Group were severed following the 2011 amendments to the SOORT Act. The submission makes the following statement in respect of how those changes have impacted upon the relativities within the Court and Related Officers Group:

*"The Director of Public Prosecutions has always (until last year) been remunerated at the same level of a Justice of the Supreme Court. Deputy Directors were remunerated at 90% of the Directors remuneration. This percentage equated to the remuneration of a District Court Judge. Without any consultation the amending legislation has resulted in a substantial difference in the remuneration levels between the Deputy Directors and District Court Judges. The difference occurred without any identifiable change in our "work value or responsibilities" when compared to that of judicial officers."*

15. The submission also states:

*"SOORT recognised that the Government's legislation had altered the status quo by removing us from the judicial category. SOORT also raised, but left unanswered, the question of how and in what circumstances employee-related cost savings could be demonstrated, so as to justify an increase above the 2.5% ceiling...."*

## Court and Related Officers Group

*We respectfully ask SOORT to undertake a work value assessment between the various office holders or alternatively devise a system consistent with the intentions outlined in last year's determination."*

### Solicitor for Public Prosecutions

16. The submission outlines the role of the Solicitor for Public Prosecutions and details operational efficiencies that have been achieved. Mr Kavanagh also advised:

*"The fact that we have been able to meet these increased demands with reduced resources is indicative of greater efficiency in the allocation of resources. I am confident that savings in real terms in employee-related costs will be readily identifiable whichever system of methodology is ultimately adopted...."*

*It is hoped that in the near future the Tribunal will work with Government to develop such a methodology, and that the process will enable the Tribunal to undertake a retrospective assessment for the 2011-2012 year as well as for the future."*

The Tribunal notes from Mr. Kavanagh's submission that the Office of the Director of Public Prosecutions has since 2008 been implementing recommendations made by the Auditor General to describe, count, measure and analyse its work to better explain its efficiency, and by 2010 the Public Accounts Committee was able to report that *"The Committee considers that the changes that have been made in relation to improving information management and management practices places the ODPP in a better position to be able to demonstrate its efficiency and encourages the Office to continue"*. The Public Defenders have given an example of changes in work practices which have achieved significant cost savings over the alternative of using private barristers funded by Legal Aid.

## Court and Related Officers Group

### Section 3 2012 Review

17. The introduction of section 6AA to the SOOR Act has had a significant impact on the way this Tribunal makes its determinations. The effect of the amendments to the SOOR Act in 2011 is to remove the Tribunal's discretion to determine any increase beyond 2.5 per cent for office holders other than judicial officers (within the meaning of the *Judicial Officers Act 1986*) unless there are sufficient employee-related cost savings to meet the additional employee-related costs.
18. The validity of the amendments to the *Industrial Relations Act 1996* was considered by the Industrial Relations Commission during 2011. The Public Service Association (PSA) applied for a declaration that the Amendment Act, or alternatively the Regulation, was invalid. On 31 October 2011 the Full Bench of the Industrial Court (Walton, Kavanagh & Backman JJ) unanimously dismissed the PSA's application (*The Public Service Association & Professional Officers' Association Amalgamated of NSW v Director of Public Employment & ORS Industrial Court of NSW [2011] NSWIRComm 143*). The matter is presently the subject of consideration by the High Court (*The Public Service Association & Professional Officers' Association Amalgamated of NSW v Director of Public Employment & ORS (S127/2012)*), but unless and until the High Court decides otherwise, the legislation has effect and the Tribunal is obliged to apply the same policies on increases in remuneration as the IRC is obliged to apply.
19. Complexities arise because of the differences in the nature and functioning of the Tribunal (which usually makes determinations 'on the papers') and the IRC (which makes orders and awards following arbitrated proceedings), as well as differences in the types of decisions they make. The IRC makes generally applicable orders and awards to broad categories of employees. The Tribunal does likewise in respect of the Senior Executive Service, but for some public and statutory offices it makes specific determinations for individual offices.
20. During the 2011 review the Tribunal identified the need to develop a methodology to assess whether officers affected by this determination can and have achieved employee related costs savings which may justify increases beyond 2.5 per cent. The

## Court and Related Officers Group

Tribunal also identified the need to address whether the amendments to the SOOR Act preclude the Tribunal from making any further adjustments in remuneration based on changes in work value. Historically, the annual determination has provided for a general increase to all eligible office holders ("general increase") and, where warranted, an additional increase for a particular office based on changes in its role or responsibilities ("work value increase").

21. Prior to the amendments to the legislation the Tribunal, in determining the annual general increase, had regard to a number of factors including salary adjustments across both public and private sectors and movements in key economic indicators.
22. The Tribunal previously has been able to determine increases greater than 2.5 per cent, and those increases may have been granted to individual office holders or groups of office holders based on productivity savings achieved across an organisation. Submissions received this year from individual office holders and on behalf of groups of office holders argued that increases beyond 2.5 per cent could be funded from a reduction in employee related costs and/or productivity savings.
23. However Section 146C and Regulation 2011 require something different from and greater than the kind of productivity savings which, in the past, may have been claimed to have been achieved. Submissions outlining savings attributable only to productivity factors will not be sufficient to meet the policy requirements specified in the Regulation.
24. Paragraph 8 of the Regulation defines "employee-related costs" as "costs related to the salary, wages, allowances and other remuneration payable to the employees and the superannuation and other personal employment benefits payable to or in respect of the employees".
25. Paragraph 9 defines "employee-related cost savings" and whilst the language used is directed to the particular processes of the Industrial Relations Commission, much of it can be given a purposive interpretation to apply to the deliberations of the Tribunal, and the Tribunal must apply the same policies as the IRC must apply. Paragraph 6(1)(b) clarifies that there must be sufficient employee-related cost savings to fully

## Court and Related Officers Group

offset any increased employee-related costs. In other words, any pay increase beyond 2.5 per cent must be matched by cost savings which neutralise the cost of the increase. Paragraph 6(1)(c) suggests the kinds of employee-related cost savings which may be relevant, in that it contemplates reduction (with the agreement of the relevant parties) in "existing conditions of employment of the kind but in excess of the guaranteed minimum conditions of employment".

26. In finding savings sufficient to fund increases above 2.5 per cent, it appears that court and related office holders will need to find employee-related costs savings, such as changes to leave entitlements, elimination of leave loading, reduction of travelling allowances etc.
27. Office holders within the Court and Related Officers Group are not employed under an industrial instrument. Their conditions of employment are determined by the relevant legislation and, in some instances, negotiated with the relevant Minister at the time of appointment. Any changes to these conditions aimed at reducing employee-related costs and contributing to savings, would need to be approved by the relevant Minister and, in some cases, may need to be effected by legislative amendments.
28. Further, the Tribunal notes that the Industrial Relations Commission of NSW on 15 October 2012 ruled that any increases greater than 2.5 per cent in salaries payable on and from a particular date can only be offset by employee-related cost savings made after (not before) that date: *HSU East and Director-General, Department of Finance and Services [2012] NSWIRComm 112*. Para 36 of that ruling is as follows:

*"These provisions tend to indicate that the savings must be achieved in a period or at a time corresponding with any wage adjustment made in conformity with the Regulation. We note that in industrial parlance the expression "fully offset" means that a given wage increase would be matched by cost savings or other savings having the effect of neutralizing the cost of the adjustment after the commencement of its operation (which would normally be prospective)."*



## Court and Related Officers Group

29. The Tribunal has sought legal advice and has also met with judicial members of the Industrial Relations Commission to discuss and consider how these matters or some of them might be addressed. The Tribunal places on record its thanks to the Hon Justice Michael Walton, Vice President, and the Hon Justice Conrad Staff, of the Industrial Relations Commission for their assistance.
30. The Tribunal understands that during the coming year the Government will provide assistance to the Tribunal to develop a methodology to assess employee-related cost savings which may justify a "general increase" above 2.5 per cent in appropriate circumstances. If and when an appropriate methodology is so established, the Tribunal will advise office holders. For the purposes of the 2013 review, and whether or not any such methodology has been established, but in order to provide office holders with sufficient opportunity to identify and demonstrate potential employee-related cost savings, the Tribunal will seek submissions much earlier in 2013 than has been past practice.
31. In respect of whether the Tribunal may, having regard to the amendments to the SOOR Act, also consider any possible increase in remuneration based on a "work value increase" as distinct from a "general increase", the following views were provided in correspondence of 18 October 2012 by Mr Chris Eccles, Director General of the Department of Premier and Cabinet, in his capacity as Assessor assisting the Tribunal:

*"As you will be aware, the objective of the Government's wages policy is to limit the increase in overall public sector employee-related costs to 2.5 per cent, and to apply this policy equitably across all public sector employees and other public officials.*

*With that in mind, the Government considers that it would be open to the SOORT to determine a 'work value' increase in the remuneration for a particular office holder beyond the 2.5 per cent where this is appropriate having regard to significant changes in the particular office's role and responsibilities.*

*However, to ensure consistency with the wages policy, any such increase will not of itself result in any corresponding increase in the allocation for employee-related costs provided to the relevant organisation. In effect, this*

## Court and Related Officers Group

*means that while a work value increase beyond 2.5 per cent may be made, it would need to be offset by employee-related costs savings elsewhere."*

32. The wages policy that applies to the IRC and to the Tribunal is that: *"Public sector employees may be awarded increases in remuneration or other conditions of employment that do not increase employee-related costs by more than 2.5 per cent per annum"*.
33. The question that arises is whether a work value increase, that is, an increase that the Tribunal considers appropriate because of a change in a particular office's role and responsibilities, is subject to the wages policy and, in particular, to the 2.5 per cent cap on remuneration increases.
34. Although not free from doubt, it seems that it is open to the Tribunal to approach its determinations on the basis that the 2.5 per cent cap does not necessarily apply in such cases.
35. The existence of the policy does not mean that any individual public sector employee or group of employees cannot receive an increase in remuneration above 2.5 per cent. For example, an individual public sector employee may be entitled to a greater than 2.5 per cent increase if the individual moves up within the salary band for his or her position, if his or her position is re-graded or if he or she is appointed to a more highly-graded position.
36. By analogy it would seem reasonable to the Tribunal that an increase in remuneration for a particular office that is attributable solely to a change in role or responsibilities is not different from a re-grading of a public sector position or, where the change is significant, a change of position.
37. On that basis, the Tribunal considers that it is not precluded from making a determination to increase the remuneration payable to a court and related office holder or group of office holders in an amount greater than 2.5 per cent, where changes in work value warrant an increase greater than 2.5 per cent.

## Court and Related Officers Group

38. Nevertheless the Tribunal is aware that, although Section 11(3) of the SOOR Act provides for an automatic appropriation from the Consolidated Fund to pay remuneration determined under the SOOR Act (for office holders listed in Schedule 1), that does not necessarily mean that employee related budgets will be increased to take account of increased remuneration payable. Therefore a determination based on a “work value’ increase will not necessarily cut across the objective of the Government's wages policy, because an organisation’s budget may not be increased by the amount of increased employee-related cost greater than 2.5 per cent that would result from a work value increase determined by the Tribunal, unless employee-related cost savings sufficient to offset that increase are found within the relevant organisation.

### Workers Compensation Commission, President

39. The office of President, Workers Compensation Commission is not defined as a “judicial officer” in accordance with the *Judicial Officers Act 1986*. This is anomalous as the *Workplace Injury Management and Workers Compensation Act 1998* stipulates that to be eligible for appointment as President the person must be a Judge of a Court of Record, ie a judicial officer.

40. While this office is not a judicial officer within the definition contained in the *Judicial Officers Act 1983*, it is clear that the office holder must be a judicial officer to hold the appointment as President of the Commission. The Tribunal considers, therefore that the exclusion of the President from the definition in the *Judicial Officers Act 1986* is clearly an anomaly and would again urge the Government to review this matter. The Tribunal has determined an annual increase for this office consistent with the levels of increase provided to other judicial officers. The remuneration for the President of the Workers Compensation Commission is listed in the Judges and Magistrates Determination.

## Court and Related Officers Group

### Conveyance Allowance

41. The Tribunal has undertaken a review of the conveyance allowance. In determining the quantum of this allowance the Tribunal applies the average of leasing, on road and running costs for a range of vehicles which may be leased by office holders in the Court and Related Officers Group.
42. The Tribunal's analysis has shown that there has been no substantial change in the costs for leasing the sample motor vehicles over the last 12 months and considers that the Allowance should not be increased at this time.

## Section 4 Conclusion

43. Section 6AA has had a significant impact on the way this Tribunal makes its determination. The Tribunal notes that the legislation has been passed by Parliament and it is the obligation of the Tribunal to undertake its duties consistently with the legislation. On that basis the Tribunal, after considering the views of the Assessor, considers that an increase of 2.5 per cent is appropriate and so determines.
44. Pursuant to Section 13 of the *Statutory and Other Offices Remuneration Act 1975* the Tribunal determines that the remuneration to be paid to office holders on and from 1 October 2012 shall be as specified in Determination 1.

### The Statutory and Other Offices

#### Remuneration Tribunal

Helen Wright

9 November 2012

**Determination of the Remuneration of Court and Related Officers Group  
Effective on and From 1 October 2012**

**Determination No 1**

Salary	\$ per annum	Conveyance Allowance (1)
Chairperson, Law Reform Commission	\$387,200	\$22,550
Director of Public Prosecutions	\$387,200	\$22,550
Solicitor-General	\$387,200	\$22,550
Crown Advocate	\$348,480	\$20,330
Deputy Director of Public Prosecutions	\$348,480	\$20,330
Senior Crown Prosecutor	\$313,630	\$16,235
Senior Public Defender	\$313,630	\$16,235
Deputy Presidents, Workers Compensation Commission	\$282,260	\$16,235
Deputy Senior Crown Prosecutor	\$282,260	\$16,235
Deputy Senior Public Defender	\$282,260	\$16,235
Solicitor for Public Prosecutions	\$282,260	\$16,235
Senior Commissioner Land and Environment Court	\$271,040	\$16,235
Crown Prosecutor	\$257,880	\$16,235
Public Defender	\$257,880	\$16,235
Commissioner Land and Environment Court	\$255,550	\$16,235
Acting Deputy President Workers Compensation Commission	\$1,170 per day	-

**Conveyance Allowance**

- (1) The Conveyance Allowance determined here shall not count towards pension or for superannuation purposes.

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## Determination of the Remuneration of Court and Related Officers Group Effective on and From 1 October 2012

### Determination No 2

#### 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, as set out in Section 6-15.11 to 6-15.16 of the Personnel Handbook, to each of the office holders listed above who are provided, as a condition of their employment with approved annual leave.

#### The Statutory and Other Offices

##### Remuneration Tribunal

**Helen Wright**

9 November 2012

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