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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

27 September 2013

Chief Executive Service and Senior Executive Service

Section 1

Introduction

Mr Ken Baxter was appointed to the role of Assessor to the Tribunal (pursuant to section 7(1)(b) of the *Statutory and Other Offices Remuneration Act 1975* (the SOOR Act)) for a term of up to three years commencing 20 March 2013.

Background

1. Section 24C of the SOOR Act provides for the Tribunal to determine annual remuneration packages for the Chief Executive Service and Senior Executive Service (SES)¹ 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
 - 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.

¹ 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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3. In determining the remuneration for SES officers, and following amendments to the SOOR Act in 2011, the Tribunal is 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* (the IR Act) when making or varying awards or orders relating to the conditions of employment of public sector employee.
4. The current policy on wages pursuant to section 146(1)(a) of the IR Act is specified in the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011 (the IR Regulation 2011). The effect of the IR Regulation 2011 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.

Section 2

2012 Review

5. In undertaking the 2012 review the Tribunal noted the significant impact that section 6AA of the SOOR Act had on the way the Tribunal made its determinations. The effect of the amendments to the SOOR Act in 2011 was to remove the Tribunal's discretion to determine any increase beyond 2.5 per cent for office holders unless there were sufficient employee-related cost savings to offset the additional employee-related costs.
6. In 2012 the Tribunal examined the issue of employee-related cost savings. As part of that review the Tribunal received legal advice and met with judicial members of the Industrial Relations Commission.

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7. The Tribunal found that section 146C and the IR Regulation 2011 required a new approach to identifying savings not previously contemplated. Increases provided on the basis of productivity savings achieved across an organisation, which was the basis for awarding previous increases across the SES Group, will not be sufficient to meet the policy requirements specified in the IR Regulation 2011.
8. Having regard to the definitions contained in the IR Regulation 2011 of "employee-related costs" and "employee-related cost savings", the Tribunal was of the view that any pay increase which may be awarded to the SES above 2.5 per cent must be matched by cost savings which neutralise the cost of the increase. Clause 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".
9. In making a submission in support of any increase above 2.5 per cent, the Tribunal found that the SES would 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.
10. As 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.
11. The Tribunal identified, as it did during the 2011 review, the need to develop a methodology to assess employee-related cost savings which may justify a "general increase" above 2.5 per cent in appropriate circumstances.

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12. Historically the Tribunal has not called for or received submissions from individual SES Officers. Instead, the Tribunal has regard to information contained in the Government's submission in respect of the SES.
13. The Government's Submission for 2012 recommended that the Tribunal approve an increase of 2.5 per cent for the SES. That recommendation was consistent with the NSW Wages Policy and reflected the NSW Government's intent, pursuant to section 6AA and the IR Regulation 2011.
14. The 2012 Government submission also advised that the Public Service Commission was developing reform proposals for the executive structure of the NSW public service. The reforms were 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*
- *create a new executive structure combining the SES and the Senior Officer classification and, as appropriate, other executive groupings'*

(Recommendation #45)."

15. The Government advised that once the new executive arrangements were in place, consideration would be given to the development of a methodology to assist the Tribunal in assessing employee related savings that were advanced to justify an increase beyond 2.5 per cent for the SES.

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16. The Tribunal's 2012 annual determination dated 9 November 2012 provided for a 2.5 per cent increase for each SES officer, subject to satisfactory performance.

Section 3

Government submission

17. The Government 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 IR Regulation 2011.
18. The Government submission notes that the challenge for the Chief and Senior Executive Service Officers in the NSW public sector over the upcoming year remains the delivery of 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*.
19. 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 expenses growth.
20. The Government submission provides an overview of the recent economic performance and outlook for the State and the Government's 2013-14 Budget.
21. For 2012-13, NSW real economic growth has been revised up by 0.5 of a percentage point to 2.5 per cent, due to stronger than expected growth in household consumption, engineering construction (mining related), net exports

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and non-residential building. Interest rate sensitive sectors of the economy have started to improve, as evident in partial indicators such as retail sales, investor housing finance and dwelling approvals. Growth in these indicators for NSW has generally outperformed national growth recently, in part reflecting the greater sensitivity of NSW households to interest rates. NSW economic growth is expected to improve in 2013-14 and remain steady in 2014-15.

22. Employment growth has been revised up by 0.75 of a percentage point to 1.5 per cent. Employment growth has been stronger than expected and above trend through 2012-13 to date, and stronger than it has been nationally, but is forecast to ease slightly in the near term, consistent with leading indicators of labor demand. The NSW unemployment rate remains relatively low by both historical standards and compared with most other states, averaging 5.2 per cent in 2012-13 to date.
23. The 2013-14 Budget delivers on the Government's fiscal strategy of returning the State's finances to a sustainable position, through continuing expense control, proceeds from asset transactions and modest revenue measures.
24. The Government's fiscal strategy is enshrined in the *Fiscal Responsibility Act 2012* with the key objective being to maintain operating balances and debt positions that are consistent with the State's triple-A credit rating.
25. The 2013-14 Budget forecasts modest traditional deficits in 2012-13 and 2013-14 before returning to surplus in 2014-15, with growing surpluses thereafter. The surpluses now in prospect reflect the benefits of improved financial management. Expenses growth has been brought under control by delivering on the expense savings measures announced in the previous two Budgets.
26. Controlling employee-related expenses continues to be a key focus in the Government's expense restraint. The 2013-14 Budget continues to deliver the

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benefits of the *NSW Public Sector Wages Policy 2011*. The policy provides for remuneration increases of 2.5 per cent per annum, with increases above this amount funded by realised employee-related cost savings. The Government has also implemented policies relating to better management of excess employees, a labour expense cap and more stringent controls on excessive annual leave accruals.

27. In 2013-14, employee expenses are estimated to be 47.5 per cent of the total expenses, including superannuation expenses (6.1 per cent) and other employee expenses (41.4 per cent) composed principally of wages and salaries.
28. The Government submission has also provided an overview of the current key economic indicators. The NSW Wages Price Index grew at a below trend annual rate of 3 per cent in the March quarter 2013, driven by below trend growth in both private sector and public sector wages. Wages growth is expected to be 3.25 per cent in 2013-14 before picking up to 3.5 per cent in 2014-15, in line with trend output growth, a solid labour market, and moderate inflation. The Government's wages policy will continue to assist in moderating public sector wages growth.
29. The latest Consumer Price Index (CPI) figures for the June quarter 2013 show annual CPI growth of 2.6 per cent in Sydney, and 2.4 per cent across the average of 8 capital cities. In year average terms, the Sydney CPI rose by 2.5 percent in 2011-12. Over the next two years, domestic price pressures are expected to ease slightly, consistent with moderate wages growth and the recent improvement in productivity growth. A lower exchange rate will offset this easing in domestic pressures. The outlook for headline inflation, according to NSW and Commonwealth Treasury forecasts, is for inflation to remain within the Reserve Bank of Australia's 2-3 per cent target band over the forecast period (with Commonwealth Treasury forecast at the lower end at 2.25 per cent.)

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30. The Government Submission also provides an overview of the reforms proposed to the executive structure of the NSW public sector, in response to the NSW Commission of Audit recommendations. The *Government Sector Employment Act 2013* (the GSE Act) was assented to on 25 June 2013 and reflects and builds on the Government's reform program for the public sector. The GSE Act provides a new and simpler statutory framework devoted solely to NSW Government sector employment and workforce management. It also introduces new structural and employment arrangements for all NSW Public Service senior executives. Further details in relation to these changes and their impact on the functions of the Tribunal are outlined in more detail in section 4 of this report.
31. The Government submission also addresses the impact of the Superannuation Guarantee Contribution (SGC) increase of 0.25 per cent with effect from 1 July 2013, in accordance with the *Superannuation Guarantee (Administration) Act 1992* (*C'wth*). The Government has advised that the SGC increase does not affect the Tribunal's ability to determine a remuneration increase of up to 2.5 per cent for chief and senior executive service officers as they receive a total remuneration package.
32. The Government further recommends that there be no increase to the minimum and maximum rates of Recruitment and Retention Allowances.

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Section 4

2013 Review

33. In January 2013 the Tribunal wrote to the Director General of the Department of Premier and Cabinet (DPC) and the Secretary of NSW Treasury to seek their assistance in the development of an appropriate methodology to assess employee-related cost savings, as they relate to office holders subject to the determinations of the Tribunal.
34. Subsequently the Tribunal met with officers from both the DPC and the Treasury to discuss the development of such a methodology. The Tribunal acknowledges the assistance given at that time.
35. In February 2013 the Government introduced into the Parliament the Statutory and Other Offices Remuneration Amendment (Judicial and Other Office Holders) Bill 2013. The Bill signalled the Government's intent to extend the wages policy to judicial office holders, who were exempt under the legislation at that time.
36. On 22 May 2013, the Parliament passed the amendments to the SOOR Act which now require the Tribunal, when making determinations under Part 3 of the Act, to give effect to any policy concerning the remuneration of office holders as declared by the regulations, rather than those policies that the Industrial Relations Commission is required to give effect to under section 146C of the IR Act. In addition, any policy concerning the remuneration of office holders as declared by the regulations will now also extend to judicial office holders, who previously had been excluded under the SOOR Act. The new provisions commenced on 1 July 2013.
37. New section 6AB of the SOOR Act applies to the Tribunal's determinations in respect of office holders in the Judges and Magistrates Group, the Court and

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Related Officers Group and the Public Office Holders Group. Government policy concerning the remuneration of office holders to which Part 3 of the SOOR Act applies is declared in the Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013 (the SOOR Regulation 2013).

38. The impact of the changes to the SOOR Act and the introduction of the SOOR Regulation 2013 on office holders to which Part 3 applies will be outlined in more detail in the determinations for those office holder groups.
39. These new arrangements do not apply to determinations under Part 3A - remuneration packages for chief executive and senior executive office holders. For these determinations the Tribunal will continue to be required 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 IR Act.
40. While the amendments to the SOOR Act and the SOOR Regulation 2013 have guided the Tribunal in the development of a methodology to assess office related cost savings for Part 3 office holders, it remains to be determined whether an appropriate methodology to assess employee-related cost savings for Part 3A Office Holders can be developed.
41. The Public Service Commission is presently developing reform proposals for the executive structure of the NSW Public Service. The Government has advised, as it did in 2011, 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 the SES.
42. The Tribunal acknowledges that since making its 2012 determination considerable progress has been made in relation to executive structure reform.

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43. The *Government Sector Employment Act 2013* (the GSE Act) is expected to commence early in 2014. The GSE Act introduces a new structure and employment arrangements for all NSW Public Service senior executives. Covered by the reforms will be the Chief and Senior Executive Service, Transport Senior Service and Senior Officer positions.
44. The existing Chief Executive Service, eight-level Senior Executive Service, and award-based Senior Officer structure and equivalents, will be replaced by a single executive structure across the public sector. The new executive structure will provide for a single NSW Public Service Senior Executive.
45. The Tribunal has been advised that, under the new legislation, the Premier will determine a new simpler executive structure which will comprise of four broad bands being;
- State Executive – Department Secretaries
 - Senior Executive Band 3 – Deputy Secretaries and Agency Heads
 - Senior Executive Band 2 – Executive Directors and Agency Heads
 - Senior Executive Band 1 – Directors
46. In accordance with section 40 of the GSE Act (to be proclaimed) the Tribunal will make annual determinations on the remuneration ranges for the Secretaries and for the senior executive bands. The SOOR Act will be amended to provide for a new Part 3B (Remuneration Packages for Public Service Senior Executives) to allow the Tribunal to make these determinations.
47. Until it is in a position to make the proposed new Part 3B determinations the Tribunal will continue to make determinations for the existing Senior Executive Service under Part 3A. The Tribunal will also continue to determine remuneration for a small number of specialist senior executive roles that need to be remunerated in line with global market rates.

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48. All determinations of the Tribunal will apply from 1 July each year once the GSE Act commences. The SOOR Act will be amended upon proclamation of the GSE Act. Clause 7 of Schedule 6 of the GSE Act will amend section 13 of the SOOR Act to change the commencement date of the Tribunal's annual determinations from 1 October to 1 July. Section 17 of the SOOR Act will also be amended to allow the Tribunal to commence its inquiries on 1 January instead of 1 April.
49. The NSW Public Sector Wages Policy 2011 will continue to apply to determinations made in accordance with Part 3A and so far as the Tribunal is presently aware, will continue to apply to determinations made in accordance with Part 3B.
50. As advised in the 2013 Government submission, once the new executive arrangements are in place, consideration will again be given to the development of a methodology to assist the Tribunal in assessing employee related cost savings.
51. Given the complexity of the reforms it is appropriate that the Tribunal should delay further consideration of a methodology for this group until the new executive structure and the new legislation and amendments to the SOOR Act have commenced.
52. For the time being, and in the absence of any methodology to assess otherwise, the Tribunal will only consider what increase, if any, will apply to the SES up to the maximum permitted of 2.5 per cent.
53. In determining the appropriate increase the Tribunal has had regard to recent changes to the Superannuation Guarantee Contribution (SGC). The SGC – made in compliance with the *Superannuation Guarantee (Administration) Act 1992* (C'wth) – was increased by 0.25 per cent with effect from 1 July 2013.

Chief Executive Service and Senior Executive Service

54. In accordance with Section 24C of the SOOR Act the Tribunal determines remuneration packages for the SES. Section 24A of the SOOR Act provides for the following definition of a remuneration package for chief executive and senior executive office holders.

“s. 24A *remuneration package* means the annual amount payable under section 74 of the *Public Sector Employment and Management Act 2002* or section 46 of the *Police Act 1990*:

(a) as monetary remuneration for the executive office holder, or

(b) partly as that remuneration and partly as the cost to the employer of the executive office holder of employment benefits.”

55. Section 74 of the *Public Sector Employment and Management Act 2002* (PSEM Act) outlines the monetary remuneration and employment benefits for executive officers. These include:

“s. 74 (2) Contributions payable to a superannuation scheme by an executive officer’s employer in respect of the officer that are required to be made by the employer under a law of the State relating to superannuation are, until provided for by the officer’s contract of employment, taken to be an employment benefit provided in the contract.”

56. Section 73 of the PSEM Act defines employment benefits as:

“*employment benefit* means:

(a) contributions payable to a superannuation scheme by an executive officer’s employer in respect of the officer, including any liability of that employer to make any such contributions or to pay approved costs associated with that scheme, or...”

57. In May the Government advised that it was its intention that the SGC increase be funded from within the existing wages cap of 2.5 per cent. The Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, which had filed applications to vary the salaries of certain public sector awards by 2.5 per cent, opposed the SGC being funded from the existing

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wages cap of 2.5 per cent. This issue was referred to a Full Bench of the Industrial Relations Commission of New South Wales for determination.

58. In its decision made on 25 June 2013, the Full Bench found that the increases in remuneration or other conditions of employment, referred to in clause 6(1)(a) of the IR Regulation 2011, are only those increases resulting from an award or order made or varied by the Commission either by consent or in arbitration proceedings: *Re Crown Employees Wages Staff (Rates of Pay) Award 2011 & Ors* [2013] NSWIRComm 53.
59. Subsequent to the decision of the Full Bench on 28 June 2013 the Government amended the IR Regulation 2011 to make clear the Government's public sector policies for the purposes of section 146 of the IR Act, and to clarify the application of those policies in relation to the impact of increases in superannuation employment benefits.
60. The effect of the amendments to the IR Regulation 2011 was that SGC increases would be funded from within the existing wages cap of 2.5 per cent. It was intended that the cost of the SCG increase will be borne by the employee rather than the employer. Under the IR Regulation 2011, as amended, those arrangements applied to all public sector employees and office holders subject to the IR Regulation 2011, including Members of Parliament.
61. The amendments to the IR Regulation 2011, which clarified the application of the policies articulated in the IR Regulation 2011 in relation to the impact of increases in superannuation employment benefits, were disallowed by the Legislative Council on 21 August 2013. This has the effect of restoring the original *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011* immediately.
62. Similarly on 22 August 2013, the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment Regulation 2013*, which applied to

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those determinations of the Tribunal pursuant to Part 3A of the SOOR Act, was also disallowed by the Legislative Council.

63. Following the disallowance of the SOOR Amendment Regulation, the Tribunal received a supplementary submission from the Secretary of The Treasury, Mr Philip Gaetjens. The Supplementary submission states that:

“Notwithstanding the disallowance, the Government intends to ensure the 2.5 per cent remuneration policy requirement is met and is currently considering options available to it.”

64. As the SES receive remuneration packages which are inclusive of employment benefits, which pursuant to section 73 of the PSEM Act, include contributions payable to a superannuation scheme by an executive officer’s employer, the SES will be required to fund the 0.25 percentage increase from their total remuneration package. As the Tribunal is not able to determine an increase of more than 2.5 per cent, unless sufficient employee related costs are found to fund such an increase, the 0.25 per cent increase in the SGC must be absorbed into any increase awarded by the Tribunal.
65. An assessment of the key economic indicators would suggest that the maximum increase available to the Tribunal of 2.5 per cent is warranted. The Tribunal notes that the NSW Wages Price Index was 3 per cent for the March quarter 2013 and is expected to grow to 3.25 per cent in 2013-14 and 3.5 per cent in 2014-15. The Consumer Price Index (CPI) figures for the June quarter 2013 show annual CPI growth of 2.6 per cent in Sydney, and 2.4 per cent across the average of 8 capital cities. In year average terms, the Sydney CPI rose by 2.5 percent in 2011-12. The outlook for headline inflation, according to NSW and Commonwealth Treasury forecasts, is for inflation to remain within the Reserve Bank of Australia’s 2-3 per cent target band over the forecast period.

Chief Executive Service and Senior Executive Service

66. Having regard to the additional cost to employees of the SGC increase and the key economic indicators the Tribunal finds that the maximum increase of 2.5 per cent is appropriate and so determines.

Recruitment Allowance and Retention Allowance

67. There will be no increase in the minimum and maximum rates of the Recruitment Allowance or the Retention Allowance. Recruitment and Retention Allowances will not be available to new Public Service Senior executives under the GSE Act. While no new allowances will be offered, the Tribunal will continue to determine these allowances for existing SES officers currently in receipt of these allowances until such time as the transition arrangements are complete and Part 3 of the SOOR Act is repealed.

Chief Executive Positions

68. During the 2012 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.
69. The Tribunal continues to support the view that additional remuneration for these positions is warranted and determines 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.

Chief Executive Service and Senior Executive Service

2014 Review

70. The GSE Act was assented to on 25 June 2013 and reflects and builds on the Government's reform program for the public sector. The GSE Act provides a new and simpler statutory framework devoted solely to NSW Government sector employment and workforce management.
71. All determinations of the Tribunal will apply from 1 July each year once the GSE Act commences. The SOOR Act will be amended upon proclamation of the GSE Act. Clause 7 of Schedule 6 of the GSE Act will amend section 13 of the SOOR Act to change the commencement date of the Tribunal's annual determinations from 1 October to 1 July. Section 17 of the SOOR Act will also be amended to allow the Tribunal to commence its inquiries on 1 January instead of 1 April.
72. On that basis the Tribunal will commence the 2014 annual review earlier than usual (but not before 1 January) to ensure sufficient time is available to complete the determinations on or as close to 1 July 2014 as possible.

Section 5

Conclusion

73. The Tribunal after considering the views of the Assessors 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 2013. The new rates are as set out in Determinations Nos 1-8.
74. 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.

Chief Executive Service and Senior Executive Service

The Statutory and Other Offices Remuneration Tribunal

Helen Wright

Dated: 27 September 2013

Determinations of the Remuneration Packages of the Chief Executive Service and Senior Executive Service Effective on and from 1 October 2013

Determination No 1- Remuneration Package Ranges

The remuneration package ranges for executive office holders shall be:

CES/SES	Per annum range		
Remuneration Level 8	\$422,501	to	\$488,100
Remuneration Level 7	\$336,851	to	\$422,500
Remuneration Level 6	\$299,751	to	\$336,850
Remuneration Level 5	\$259,851	to	\$299,750
Remuneration Level 4	\$238,301	to	\$259,850
Remuneration Level 3	\$209,801	to	\$238,300
Remuneration Level 2	\$195,601	to	\$209,800
Remuneration Level 1	\$167,100	to	\$195,600

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 \$559,445 pa effective on and from 1 October 2013.

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 \$538,450 pa effective on and from 1 October 2013.

Determinations of the Remuneration Packages of the Chief Executive Service and Senior Executive Service Effective on and from 1 October 2013

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 \$534,410 pa effective on and from 1 October 2013.

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 2013

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	\$308,800	to	\$378,200
Remuneration Level 5	\$307,450	to	\$364,400
Remuneration Level 4	\$302,150	to	\$350,750
Remuneration Level 3	\$288,350	to	\$334,600
Remuneration Level 2	\$270,600	to	\$314,000
Remuneration Level 1	\$249,600	to	\$286,550

Determinations of the Remuneration Packages of the Chief Executive Service and Senior Executive Service Effective on and from 1 October 2013

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	\$217,250	to	\$252,100
Remuneration Level 1	\$199,700	to	\$229,200

The Statutory and Other Offices Remuneration Tribunal

Helen Wright

Dated: 27 September 2013

REPORT
and
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under
SECTION 13
of the
STATUTORY AND OTHER OFFICES
REMUNERATION ACT, 1975

COURT AND RELATED OFFICERS GROUP

27 September 2013

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Court and Related Officers Group

Section 1

Introduction

Mr Ken Baxter was appointed to the role of Assessor to the Tribunal (pursuant to section 7(1)(b) of the *Statutory and Other Offices Remuneration Act 1975*, (the SOOR Act)) for a term of up to three years commencing 20 March 2013.

Background

1. Section 13 of 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 Contribution, are additional to the salary amount determined.

Section 2

2012 Review

3. In undertaking the 2012 review 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* (the IR Act) 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 IR Act is articulated in the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011 (the IR Regulation 2011).
5. The Tribunal noted the significant impact that section 6AA of the SOOR Act had on the way the Tribunal made its determinations. The effect of the amendments to the SOOR Act in 2011 was to remove the Tribunal's discretion to determine any increase beyond 2.5 per cent for office holders unless there were sufficient employee-related cost savings to offset the additional employee-related costs.
6. In 2012 the Tribunal examined the issue of employee-related cost savings. As part of that review the Tribunal received legal advice and met with judicial members of the Industrial Relations Commission.
7. The Tribunal found that section 146C and the IR Regulation 2011 required a new approach to identifying savings not previously contemplated. Increases provided to individual office holders or groups of office holders based on productivity savings achieved across an organisation would no longer be sufficient to meet the policy requirements specified in the IR Regulation 2011.
8. Having regard to the definitions contained in the IR Regulation 2011 of "employee-related costs" and "employee-related cost savings", the Tribunal was of the view that any pay increase which may be awarded to the Court and Related Officers Group above 2.5 per cent must be matched by cost savings which neutralise the cost of the increase. Clause 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".
9. In making a submission in support of any increase above 2.5 per cent, the Tribunal found that the court and related office holders would need to find employee-related costs savings, such as changes to leave entitlements, elimination of leave loading, reduction of travelling allowances etc.

Court and Related Officers Group

10. Office holders within the Court and Related Officers Group are not employed under an industrial instrument. Their conditions of employment are outlined in the relevant legislation or, 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 amendment.
11. In 2012 the Tribunal identified, as it did during the 2011 review, the need to develop a methodology to assess employee-related cost savings which may warrant a "general increase" above 2.5 per cent in appropriate circumstances.
12. The Government's Submission for 2012 recommended that the Tribunal approve an increase of 2.5 per cent for the Court and Related Officer Group. That recommendation was consistent with the NSW Wages Policy and reflected the NSW Government's intent, pursuant to section 6AA and the IR Regulation 2011.
13. The Tribunal's 2012 annual determination dated 9 November 2012 provided for a 2.5 per cent increase for each court and related office holder.

Section 3

2013 Review

14. In January 2013 the Tribunal wrote to the Director General of the Department of Premier and Cabinet (DPC) and the Secretary of NSW Treasury to seek their assistance in the development of an appropriate methodology to assess officer-related cost savings as, as they related to office holders subject to the determinations of the Tribunal.
15. Subsequently, the Tribunal met with officers from both the DPC and the Treasury to discuss the development of such a methodology. The Tribunal acknowledges the assistance given at that time.

Court and Related Officers Group

16. In February 2013 the Government introduced into the Parliament the Statutory and Other Offices Remuneration Amendment (Judicial and Other Office Holders) Bill 2013. The Bill signalled the Government's intent to extend the wages policy to judicial office holders, who were exempt under the legislation at that time.
17. On 22 May 2013, the Parliament passed the amendments to the SOOR Act which now require the Tribunal, when making determinations under Part 3 of the Act, to give effect to any policy concerning the remuneration of office holders as declared by the regulations, rather than those policies that the Industrial Relations Commission is required to give effect to under section 146C of the IR Act. In addition, any policy concerning the remuneration of office holders as declared by the regulations will now also extend to judicial office holders, who previously had been excluded under the SOOR Act. The new provisions commenced on 1 July 2013.
18. New section 6AB of the SOOR Act applies to the Tribunal's determinations in respect of office holders in the Judges and Magistrates Group, the Court and Related Offices Group and the Public Office Holders Group.

6AB *Tribunal to give effect to declared government policy on remuneration of office holders under Part 3*

- 1) *This section applies to the determination under Part 3 (Remuneration of office holders (other than chief executive or senior executive office holders)) of any alteration in the remuneration to be paid to office holders within the meaning of that Part.*
- 2) *The Tribunal must, when making a determination to which this section applies, give effect to any policy concerning the remuneration of office holders:*
 - (a) that is declared by the regulations to be an aspect of government policy that is required to be given effect to by the Tribunal, and*
 - (b) that applies to the matter to which the determination relates.*
- 3) *Any such regulation may declare a policy by setting out the*

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policy in the regulation or by adopting a policy set out in a relevant document referred to in the regulation.

- 4) *This section extends to any inquiries that are pending in the Tribunal on the commencement of this section. A regulation made under this section extends to any inquiries that are pending in the Tribunal on the commencement of the regulation, unless the regulation otherwise provides.*
- 5) *This section has effect despite any other provisions of this Act (other than section 16(6) and 21) or any other Act.*

19. Government policy concerning the remuneration of office holders to which Part 3 of the SOOR Act applies is declared in the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013* (the SOOR Regulation 2013).

5 *Paramount policy*

It is declared that equal remuneration for men and women doing work of equal or comparable value is a paramount policy.

6 *Other policies*

- 1) *The following policies are also declared, but are subject to compliance with the declared paramount policy:*
 - (a) *an office holder may be awarded increases in remuneration that do not increase the officer-related costs for the office holder by more than 2.5% per annum,*
 - (b) *increases in remuneration that increase the officer-related costs for the office holder by more than 2.5% per annum can be awarded, but only if sufficient officer-related cost savings for the office holder have been achieved to fully offset the increased officer-related costs.*
- 2) *For the purposes of subclause (1) (b):*
 - (a) *whether relevant officer-related cost savings have been achieved is to be determined by the Tribunal, and*
 - (b) *the office, organisation or other agency for which the office holder is to be treated as belonging in connection with the relevant officer-related cost savings (the relevant agency for an office holder) is also to be determined by the Tribunal, and*
 - (c) *increases may be awarded before the relevant officer-related cost savings have been achieved, but are not payable until they are achieved, and*

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(d) the full officer-related cost savings are not required to be awarded as increases in remuneration.

- 3) *For the avoidance of doubt, the Tribunal may take into account any additional functions conferred or imposed on the office held by an office holder in determining the remuneration of the officer holder. However, any such additional functions cannot be used as a basis for awarding an office holder an increase in remuneration that increases the officer-related costs for the office holder by more than 2.5% per annum without offsetting relevant officer-related cost savings.*

7 *Meaning of "officer-related cost savings"*

- 1) *For the purposes of this Regulation, officer-related cost savings for an office holder are savings:*
- a) that are identified in the determination of the Tribunal that relies on those savings, and*
 - b) that involve any or all of the following:*
 - (i) savings resulting from a change in the work practices, terms of appointment, employment entitlements or personal appointment benefits of the office holder (other than savings from a reduction of the kind referred to in paragraph (c) (i)),*
 - (ii) savings resulting from structural changes to the relevant agency for the office holder, but only if the office holder managed the implementation of the whole or any part of those changes or participated in or otherwise contributed to those savings (whether directly or indirectly),*
 - (iii) savings resulting from changes to the work practices of the relevant agency for the office holder, or persons working for that agency, but only if the office holder managed the implementation of the whole or any part of those changes or participated in or otherwise contributed to those savings (whether directly or indirectly), and*
 - c) that are not achieved by a reduction in any of the following:*
 - (i) an amount payable or provided as a term of the appointment, or as an employment entitlement or personal appointment benefit, of the office holder if legislation requires that amount (or at least that amount) to be paid or provided to the office holder in connection with the officer's appointment,*
 - (ii) employment entitlements of any other persons working (whether as an employee or as an officer holder) in the same relevant agency for the office holder, and*
 - d) that are not existing savings (as defined in subclause (2)), and*
 - e) that are additional to whole of Government savings measures (such as efficiency dividends).*
- 2) *Savings are existing savings:*
- a) if and to the extent that:*

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- (i) *the savings have been identified in a determination of the Tribunal made under the Act before the relevant policy application day for the office holder concerned, and*
- (ii) *the savings have been relied on by that determination and the remuneration specified in the determination has been paid (whether or not the savings have been achieved and whether or not they were or are achieved during the term of the determination), or*

b) *if and to the extent that:*

- (i) *the savings have been identified in an industrial instrument of the Industrial Relations Commission made before the commencement of the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011 (or in an agreement contemplated by such an instrument), and*
- (ii) *the savings have been relied on by that instrument (whether or not the savings have been achieved and whether or not they were or are achieved during the term of the instrument).*

3) *In this clause:*

relevant policy application day for an office holder means:

- a) *in the case of a judicial officer within the meaning of the Judicial Officers Act 1986—the day on which this Regulation commenced, and*
- b) *in any other case—27 June 2011 (being the day on which the Parliamentary, Local Council and Public Sector Executives Remuneration Legislation Amendment Act 2011 commenced).*

20. In accordance with the SOOR Regulation 2013 any increase the Tribunal may determine in excess of 2.5 per cent, be it a general increase available to all office holders, or an increase provided to an individual office holder or group of office holders based on changes in work value, can only be paid if sufficient officer-related cost savings for the office holder have been achieved to fully offset the increased officer-related costs resulting from increased payment.

21. These new arrangements do not apply to determinations under Part 3A -remuneration packages for chief executive and senior executive office holders. For those determinations the Tribunal will continue to be required 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 IR Act.

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Changes to the Superannuation Guarantee Contribution

22. The Superannuation Guarantee Contribution (SGC) – made in compliance with the *Superannuation Guarantee (Administration) Act 1992* (C'wth) – was increased by 0.25 per cent with effect from 1 July 2013.

23. The SOOR Regulation 2013, which was first published on 21 June 2013, outlined the declared government policy on remuneration of office holders under Part 3. In accordance with Clause 6:

6 Other policies

(1) The following policies are also declared, but are subject to compliance with the declared paramount policy:

(a) an office holder may be awarded increases in remuneration that do not increase the officer-related costs for the office holder by more than 2.5% per annum,

(b) increases in remuneration that increase the officer-related costs for the office holder by more than 2.5% per annum can be awarded, but only if sufficient officer-related cost savings for the office holder have been achieved to fully offset the increased.

24. The policy, as drafted at the time, reflected the intent of the original IR Regulation 2011 which continues to apply to the SES determination, and previously applied to the Tribunal's determinations pursuant to section 6AA, with the exception of Judicial Office Holders.

25. In May 2013 the Government advised that it was its intention that the SGC increase be funded from within the existing wages cap of 2.5 per cent. The Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, which had filed applications to vary the salaries of certain public sector awards by 2.5 per cent, opposed the SGC being funded from the existing wages cap of 2.5 per cent. This issue was referred to a Full Bench of the Industrial Relations Commission of New South Wales for determination.

26. In its decision made on 25 June 2013, the Full Bench found that the increases in remuneration or other conditions of employment, referred to in clause 6(1)(a) of the IR Regulation 2011, are only those increases resulting from an award or order made or

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varied by the Commission either by consent or in arbitration proceedings: Re Crown Employees Wages Staff (Rates of Pay) Award 2011 & Ors [2013] NSWIRComm 53.

27. Subsequent to the decision of the Full Bench on 28 June 2013 the Government amended the IR Regulation 2011 to make clear the Government's public sector policies for the purposes of section 146 of the IR Act, and to clarify the application of those policies in relation to the impact of increases in superannuation employment benefits.

28. Clause 6 (1)(a) of the IR Regulation 2011 as amended provided;

"...Other policies

(1) *The following policies are also declared, but are subject to compliance with the declared paramount policies:*

(a) *Public sector employees may be awarded increases in remuneration or other conditions of employment, but only if employee-related costs in respect of those employees are not increased by more than 2.5% per annum as a result of the increases awarded and of any new or increased superannuation employment benefits provided (or to be provided) to the employees since their remuneration or other conditions of employment were last determined."*

29. Clause 8 of the IR Regulation 2011, as amended, provided;

".... Meaning of employee-related costs

(1) *For the purposes of this Regulation, employee-related costs are the costs to the employer of the employment of public sector employees, being 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.*

(2) *In subsection (1), superannuation benefits include any payments by the employer to a superannuation fund of an employee as a consequence of the enactment of or amendments to the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth or the State Authorities Non-contributory Superannuation Act 1987."*

30. The effect of the amendments to the IR Regulation 2011 was that SGC increases were to be funded from within the existing wages cap of 2.5 per cent. These arrangements applied to the Tribunal's determinations pursuant to Part 3A, the SES, and all other

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public sector employees and office holders subject to the IR Regulation 2011, including Members of Parliament.

31. To ensure the same conditions applied to the Tribunal's determination pursuant to Part 3 of the SOOR Act - being the Judges and Magistrates, Court and Related Officers and Public Office Holders - the Government also amended the SOOR Regulation 2013 on 9 August 2013 to re-declare the Government's policies the Tribunal is required to give effect to when determining the remuneration of office holders. The re-declaration clarified the application of those policies in relation to the impact of increases in superannuation employment benefits and followed the similar re-declaration in relation to public sector remuneration made by the IR Regulation 2011.
32. The amendments to the IR Regulation 2011, which clarified the application of the policies articulated in the IR Regulation 2011 in relation to the impact of increases in superannuation employment benefits, were disallowed by the Legislative Council on 21 August 2013. This had the effect of restoring the original *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011* immediately.
33. Similarly on 22 August 2013, the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment Regulation 2013*, which applied to those determinations of the Tribunal pursuant to Part 3A of the SOOR Act, was also disallowed by the Legislative Council. This had the effect of restoring the original *Statutory and Other Office Remuneration (Judicial and Other Office Holders) Regulation 2013* immediately.

Submissions Received

Government Submission

34. The Government submission recommends the Tribunal approve an increase of 2.25 per cent for the Court and Related Officers Group.
35. The Government submission states:

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"This recommendation is consistent with the NSW Wages Policy and reflects the NSW Governments' intent, pursuant to section 6AB of the SOOR Act and the SOOR Regulation 2013."

36. The Government recommends a 2.25 per cent increase, rather than a 2.5 per cent increase, to reflect the intent of the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment Regulation 2013*. That Regulation, now disallowed, provided that under section 6(1)(a):

"an office holder may be awarded increases in remuneration, but only if officer-related costs for the office holder are not increased by more than 2.5% per annum as a result of the increases awarded and of any new or increased superannuation employment entitlements provided (or to be provided) to the office holder since his or her remuneration was last determined."

37. Following the disallowance of the SOOR Amendment Regulation, the Tribunal received a supplementary submission from the Secretary of The Treasury, Mr Philip Gaetjens. The Supplementary submission states that:

"Notwithstanding the disallowance, the Government intends to ensure the 2.5 per cent remuneration policy requirement is met and is currently considering options available to it."

Other Submissions

38. As is the usual practice, prior to the Tribunal making her Reports and Determinations, the Tribunal invited submissions from office holders. For the 2013 review office holders in the Court and Related Officers Group were advised that if they wished to submit that an increase in excess of 2.5 per cent was warranted, it would be necessary for such office holder or group of office holders to identify and propose to the Tribunal the officer-related cost savings which it or they intend to achieve.
39. As part of the current review the Tribunal received four submissions from offices within the Court and Related Officers Group. Those submissions generally sought an increase of 2.5 per cent with an appropriate adjustment in the conveyance allowance. The Tribunal did not receive a request for an increase above 2.5 per cent.

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40. The submissions also addressed the impacts of the amendments to the SOOR Act, the IR Regulation 2011 (and now the SOOR Regulation 2013) and the relativities between office holders within the group.
41. The Solicitor General's submission acknowledges the Tribunal's obligations under s146C of the IR Act (now section 6AB of the SOOR Act). The Solicitor General seeks a restoration of the previous salary relativity between the remuneration paid to the Solicitor General and the Director of Public Prosecutions with that of a judge of the Supreme Court. Noting that there were good reasons for this alignment, including the status of the two offices in question and the fact that these are the only non-judicial offices that provide an entitlement to the judicial pension under the *Judges' Pensions Act 1953*.
42. The Public Defenders have expressed the view that parity in salary between Public Defenders and Crown Prosecutors should be maintained.

2013 Increase

43. The Tribunal did not receive any submissions requesting an increase of greater than of 2.5 per cent. On that basis the Tribunal will only consider what general increase, if any, of up to 2.5 per cent is warranted.
44. An assessment of the key economic indicators would suggest that an increase of 2.5 per cent is warranted. The Tribunal notes that the NSW Wages Price Index was 3 per cent for the March quarter 2013 and is expected to grow to 3.25 per cent in 2013-14 and 3.5 per cent in 2014-15. The Consumer Price Index (CPI) figures for the June quarter 2013 show annual CPI growth of 2.6 per cent in Sydney, and 2.4 per cent across the average of 8 capital cities. In year average terms, the Sydney CPI rose by 2.5 percent in 2011-12. The outlook for headline inflation, according to NSW and Commonwealth Treasury forecasts, is for inflation to remain within the Reserve Bank of Australia's 2-3 per cent target band over the forecast period.
45. Having regard to the Parliament's disallowance of the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment Regulation 2013* and to the approach adopted by the Industrial Relations Commission in arbitration proceedings:

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Re Crown Employees Wages Staff (Rates of Pay) Award 2011 & Ors [2013] NSWIRComm 53, the Tribunal understands that the intent of the Parliament is clear, and does not propose to discount any remuneration increase it determines in remuneration to take account of the increase in the Superannuation Guarantee Contribution.

46. Also, the Tribunal will not make any changes to the existing relativities between office holders in the Court and Related Officers Group. In respect of the Solicitor General's submission the Tribunal notes, as it has in previous years, that immediately the current climate of fiscal restraint is relaxed to any extent, it would review and consider restoring the original long-standing relativities that existed within the former Judges, Magistrates and Related Group, if legislation does not prohibit the Tribunal from so doing.

Conveyance Allowance

47. 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.
48. 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.

2014 Review

49. The *Government Sector Employment Act 2013* (the GSE Act) was assented to on 25 June 2013 and reflects and builds on the Government's reform program for the public sector. The GSE Act provides a new and simpler statutory framework devoted solely to NSW Government sector employment and workforce management.
50. All determinations of the Tribunal will apply from 1 July each year once the GSE Act commences. The SOOR Act will be amended upon proclamation of the GSE Act. Clause 7 of Schedule 6 of the GSE Act will amend section 13 of the SOOR Act to change the commencement date of the Tribunal's annual determinations from 1 October to 1 July.

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Section 17 of the SOOR Act will also be amended to allow the Tribunal to commence its inquiries on 1 January instead of 1 April.

51. On that basis the Tribunal will commence the 2014 annual review earlier than usual (but not before 1 January) to ensure sufficient time is available to complete the determinations on or as close to 1 July 2014 as possible.

Section 4

Conclusion

52. The amendments to the SOOR Act (Section 6AB) and the introduction of the SOOR Regulation 2013 had a further impact on the way this Tribunal makes its determinations. It is the obligation of the Tribunal to undertake its duties consistent with the legislation. On that basis the Tribunal, after considering the views of the Assessors, considers that an increase of 2.5 per cent is appropriate and so determines.

53. 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 2013 shall be as specified in Determination 1.

The Statutory and Other Offices

Remuneration Tribunal

Helen Wright

Dated: 27 September 2013

**Determination of the Remuneration of Court and Related Officers Group
Effective on and From 1 October 2013**

Determination No 1

Salary	\$ per annum	Conveyance Allowance (1)
Chairperson, Law Reform Commission	\$396,880	\$22,550
Director of Public Prosecutions	\$396,880	\$22,550
Solicitor-General	\$396,880	\$22,550
Crown Advocate	\$357,190	\$20,330
Deputy Director of Public Prosecutions	\$357,190	\$20,330
Senior Crown Prosecutor	\$321,470	\$16,235
Senior Public Defender	\$321,470	\$16,235
Deputy Presidents, Workers Compensation Commission	\$289,320	\$16,235
Deputy Senior Crown Prosecutor	\$289,320	\$16,235
Deputy Senior Public Defender	\$289,320	\$16,235
Solicitor for Public Prosecutions	\$289,320	\$16,235
Senior Commissioner Land and Environment Court	\$277,820	\$16,235
Crown Prosecutor	\$264,330	\$16,235
Public Defender	\$264,330	\$16,235
Commissioner Land and Environment Court	\$261,940	\$16,235
Acting Deputy President Workers Compensation Commission	\$1,200 per day	-

Conveyance Allowance

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

**Determination of the Remuneration of Court and Related Officers Group
Effective on and From 1 October 2013**

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

Dated: 27 September 2013

REPORT
and
DETERMINATION
under
SECTION 13
of the
STATUTORY AND OTHER OFFICES
REMUNERATION ACT, 1975

JUDGES AND MAGISTRATES GROUP

27 September 2013

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Judges and Magistrates Group

Section 1

Introduction

Mr Ken Baxter was appointed to the role of Assessor to the Tribunal (pursuant to section 7(1)(b) of the *Statutory and Other Offices Remuneration Act 1975* (the SOOR Act)) for a term of up to three years commencing 20 March 2013.

Background

1. Section 13 of the SOOR 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 provided 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 had 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

2012 Review

4. For the 2012 review the Tribunal, as is the usual practice, invited submissions from office holders. Office holders in the Judges and Magistrates Group were also asked to

Judges and Magistrates Group

make comment on the Commonwealth Remuneration Tribunal's proposal that Supreme Court salaries in NSW be linked to the Federal Court rather than to High Court salaries.

5. In respect of the Commonwealth Remuneration Tribunal's proposal, the Tribunal found that such an arrangement may require legislative change and unless and until such a change is made the Tribunal will continue to implement the existing intergovernmental agreement, whereby the salary of 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.
6. The Tribunal also had regard to the Government submission which expressed the view that the NSW Government Wages Policy should also apply to judicial office holders. The Government was 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".
7. The Tribunal noted that amendments to the SOOR Act requiring the Tribunal to give effect to the same public sector wages cap that binds the Industrial Relations Commission explicitly excluded Judicial officers as defined by the *Judicial officer Act 1986*. Also, that in making those amendments the Government, as outlined in the then Minister's second reading speech, expressed the view that there should be broad consistency of pay between Federal and State judiciaries and that relativities should be maintained. While the Tribunal acknowledged the Government's view that the NSW Government Wages Policy should now apply to judicial office holders, the Tribunal found good reason for maintaining relativities between Federal and State jurisdictions:

"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."

8. The Tribunal determined an increase of 3 per cent would apply to the salary of a Judge of the Supreme Court, an increase equivalent to that provided by the Commonwealth Remuneration Tribunal to federal judicial office holders in July 2012. This increase would

Judges and Magistrates Group

also apply to those judicial officers whose remuneration is linked by legislation to the remuneration of a Judge of the Supreme Court.

9. The Tribunal also reviewed the internal relativities within the Judges and Magistrates Group. The Tribunal noted that 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 or other judicial office holder, with reviews and adjustments from time to time. The Tribunal having regard to the economic climate, the need for fiscal restraint, and the effectiveness of the Government's implementation of its wages policy across the whole of the public sector, determined that increases for judicial officers other than the Supreme Court (and legislatively related judicial officers) would be restricted to 2.5 per cent. The Tribunal found that a determination to limit judicial officer increases to 2.5 per cent would open a slight relativity gap of less than 0.5 per cent.
10. In doing so the Tribunal noted that immediately the current climate of fiscal restraint is relaxed to any extent it would consider restoring the relativities which existed prior to the 2012 determination. The Tribunal would also consider restoring other long-standing relativities within the former Judges, Magistrates and Related Group which were altered in 2011 by the Section 6AA legislation, if legislation did not prohibit the Tribunal from doing so.
11. The Tribunal also noted that the Government indicated its intention to 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. While the Tribunal was not bound by the Government's wages policy in respect of the 2.5 per cent wages cap for judicial officers, it noted that any such methodology may assist the Tribunal to assess savings relating to the employee-related costs of judicial officers.

Judges and Magistrates Group

Section 2

Amendments to the Statutory and Other Offices Remuneration Act 1975

12. On 22 May 2013 the Parliament passed amendments to the SOOR Act which required the Tribunal, when making determinations under Part 3 of the Act, to give effect to any policy concerning the remuneration of office holders as declared by the regulations, rather than those policies that the Industrial Relations Commission is required to give effect to under section 146C of the *Industrial Relations Act 1996* (the IR Act). In addition, any policy concerning the remuneration of office holders as declared by the regulations would now also extend to judicial office holders, who previously had been excluded under the SOOR Act. The new provision commenced on 1 July 2013.
13. New section 6AB of the SOOR Act applies to the Tribunal's determinations in respect of office holders in the Judges and Magistrates Group, the Court and Related Offices Group and the Public Office Holders Group:

6AB *Tribunal to give effect to declared government policy on remuneration of office holders under Part 3*

- 1) *This section applies to the determination under Part 3 (Remuneration of office holders (other than chief executive or senior executive office holders)) of any alteration in the remuneration to be paid to office holders within the meaning of that Part.*
- 2) *The Tribunal must, when making a determination to which this section applies, give effect to any policy concerning the remuneration of office holders:*
 - (a) that is declared by the regulations to be an aspect of government policy that is required to be given effect to by the Tribunal, and*
 - (b) that applies to the matter to which the determination relates.*
- 3) *Any such regulation may declare a policy by setting out the policy in the regulation or by adopting a policy set out in a*

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relevant document referred to in the regulation.

- 4) *This section extends to any inquiries that are pending in the Tribunal on the commencement of this section. A regulation made under this section extends to any inquiries that are pending in the Tribunal on the commencement of the regulation, unless the regulation otherwise provides.*
- 5) *This section has effect despite any other provisions of this Act (other than section 16(6) and 21) or any other Act.*

14. The Government's decision to extend the wages cap to Judicial officers was outlined by the Hon Mike Baird MP (Treasurer and Minister for Industrial Relations) in the Treasurer's second reading speech: Legislative Assembly, Parliamentary Debates (Hansard), 21 February 2013 at p. 17862 on the amendments to the Act where he stated;

"In recent times judicial salary increases have significantly outpaced those of all other public sector officers. Since 2011, the Industrial Relations Commission and the Statutory and Other Offices Remuneration Tribunal [SOORT] have been required to apply the wages policy to salary determinations for the public service and certain statutory office holders, while an absolute cap of 2.5 per cent applies to increases of remuneration for members of Parliament, mayors and local councillors. Currently, however, the Statutory and Other Offices Remuneration Tribunal is not required to apply the wages policy when it determines the remuneration of judicial officers. It is appropriate to extend the wages policy to judicial officers who are also paid from the public purse and, therefore, to require the Statutory and Other Offices Remuneration Tribunal to apply the wages policy when it determines the remuneration of judicial officers. The bill will enable this to be done. The bill will amend the Statutory and Other Offices Remuneration Act 1975 to require the Statutory and Other Offices Remuneration Tribunal to give effect to any policy concerning the remuneration of office holders declared by the regulations when making certain determinations under part 3 of the Act regarding the remuneration of judicial and other office holders. A regulation is being prepared to declare the wages policy for this purpose. This will mean that, like public service and statutory office holders, the Statutory and Other Offices Remuneration Tribunal will only be able to award increases in remuneration for a judicial officer that increase certain costs by more than 2.5 per cent per annum, if sufficient savings for the judicial officer have been achieved to offset the increased cost

The Government supports an independent judiciary, and this bill does not affect their independence. I note that the Statutory and Other Offices Remuneration Tribunal is already required to apply the wages policy to other independent office holders, such

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as the Ombudsman and the Director of Public Prosecutions. In addition, the bill will maintain existing requirements to ensure that the Statutory and Other Offices Remuneration Tribunal cannot reduce the rate at which remuneration is paid to a judicial officer and cannot make a determination that applies differently to two or more persons holding the same judicial office. Given the pressures on the State's budget, it is fair then to extend the wages policy to judicial officers. It is important that persons paid from the public purse be subject to the wages policy in order to deliver fair wage increases while also ensuring that the State's budget can be brought under control to facilitate the delivery of infrastructure and services."

15. Government policy concerning the remuneration of office holders to which Part 3 of the SOOR Act applies is declared in the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013* (the SOOR Regulation 2013).

5 *Paramount policy*

It is declared that equal remuneration for men and women doing work of equal or comparable value is a paramount policy.

6 *Other policies*

1) *The following policies are also declared, but are subject to compliance with the declared paramount policy:*

(a) *an office holder may be awarded increases in remuneration that do not increase the officer-related costs for the office holder by more than 2.5% per annum,*

(b) *increases in remuneration that increase the officer-related costs for the office holder by more than 2.5% per annum can be awarded, but only if sufficient officer-related cost savings for the office holder have been achieved to fully offset the increased officer-related costs.*

2) *For the purposes of subclause (1) (b):*

(a) *whether relevant officer-related cost savings have been achieved is to be determined by the Tribunal, and*

(b) *the office, organisation or other agency for which the office holder is to be treated as belonging in connection with the relevant officer-related cost savings (the relevant agency for an office holder) is also to be determined by the Tribunal, and*

(c) *increases may be awarded before the relevant officer-related cost savings have been achieved, but are not payable until they are achieved, and*

(d) *the full officer-related cost savings are not required to be awarded as increases in remuneration.*

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3) *For the avoidance of doubt, the Tribunal may take into account any additional functions conferred or imposed on the office held by an office holder in determining the remuneration of the officer holder. However, any such additional functions cannot be used as a basis for awarding an office holder an increase in remuneration that increases the officer-related costs for the office holder by more than 2.5% per annum without offsetting relevant officer-related cost savings.*

7 *Meaning of "officer-related cost savings"*

- 1) *For the purposes of this Regulation, officer-related cost savings for an office holder are savings:*
- a) *that are identified in the determination of the Tribunal that relies on those savings, and*
 - b) *that involve any or all of the following:*
 - (i) *savings resulting from a change in the work practices, terms of appointment, employment entitlements or personal appointment benefits of the office holder (other than savings from a reduction of the kind referred to in paragraph (c) (i)),*
 - (ii) *savings resulting from structural changes to the relevant agency for the office holder, but only if the office holder managed the implementation of the whole or any part of those changes or participated in or otherwise contributed to those savings (whether directly or indirectly),*
 - (iii) *savings resulting from changes to the work practices of the relevant agency for the office holder, or persons working for that agency, but only if the office holder managed the implementation of the whole or any part of those changes or participated in or otherwise contributed to those savings (whether directly or indirectly), and*
 - c) *that are not achieved by a reduction in any of the following:*
 - (i) *an amount payable or provided as a term of the appointment, or as an employment entitlement or personal appointment benefit, of the office holder if legislation requires that amount (or at least that amount) to be paid or provided to the office holder in connection with the officer's appointment,*
 - (ii) *employment entitlements of any other persons working (whether as an employee or as an officer holder) in the same relevant agency for the office holder, and*
 - d) *that are not existing savings (as defined in subclause (2)), and*
 - e) *that are additional to whole of Government savings measures (such as efficiency dividends).*
- 2) *Savings are existing savings:*
- a) *if and to the extent that:*
 - (i) *the savings have been identified in a determination of the Tribunal made under the Act before the relevant policy application day for the office holder concerned, and*

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(ii) *the savings have been relied on by that determination and the remuneration specified in the determination has been paid (whether or not the savings have been achieved and whether or not they were or are achieved during the term of the determination), or*

b) *if and to the extent that:*

(i) *the savings have been identified in an industrial instrument of the Industrial Relations Commission made before the commencement of the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011 (or in an agreement contemplated by such an instrument), and*

(ii) *the savings have been relied on by that instrument (whether or not the savings have been achieved and whether or not they were or are achieved during the term of the instrument).*

3) *In this clause:*

relevant policy application day for an office holder means:

a) *in the case of a judicial officer within the meaning of the Judicial Officers Act 1986—the day on which this Regulation commenced, and*

b) *in any other case—27 June 2011 (being the day on which the Parliamentary, Local Council and Public Sector Executives Remuneration Legislation Amendment Act 2011 commenced).*

16. In accordance with the SOOR Regulation 2013 any increase the Tribunal may determine in excess of 2.5 per cent, be it a general increase available to all office holders, or an increase provided to an individual office holder or group of office holders based on changes in work value, can only be paid if sufficient officer-related cost savings for the office holder have been achieved to fully offset the increased officer-related costs resulting from increased payment.

17. These new arrangements do not apply to determinations under PART 3A -remuneration packages for chief executive and senior executive office holders. For those determinations the Tribunal will continue to be required 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 IR Act.

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Changes to the Superannuation Guarantee Contribution

18. The Superannuation Guarantee Contribution (SGC) – made in compliance with the *Superannuation Guarantee (Administration) Act 1992* (C'wth) – was increased by 0.25 per cent with effect from 1 July 2013.

19. The SOOR Regulation 2013, which was first published on 21 June 2013, outlined the declared government policy on remuneration of office holders under Part 3. In accordance with Clause 6:

6 Other policies

(1) The following policies are also declared, but are subject to compliance with the declared paramount policy:

(a) an office holder may be awarded increases in remuneration that do not increase the officer-related costs for the office holder by more than 2.5% per annum,

(b) increases in remuneration that increase the officer-related costs for the office holder by more than 2.5% per annum can be awarded, but only if sufficient officer-related cost savings for the office holder have been achieved to fully offset the increase.

20. The policy, as drafted at the time, reflected the intent of the original *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011* (the IR Regulation 2011) which continues to apply to the SES determination, and previously applied to the Tribunal's determinations pursuant to section 6AA, with the exception of Judicial Office Holders.

21. In May 2013 the Government advised that it was its intention that the SGC increase be funded from within the existing wages cap of 2.5 per cent. The Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, who had filed applications to vary the salaries of certain public sector awards by 2.5 per cent, opposed the SGC being funded from the existing wages cap of 2.5 per cent. This issue was referred to a Full Bench of the Industrial Relations Commission of New South Wales for determination.

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22. In its decision made on 25 June 2013, the Full Bench found that the increases in remuneration or other conditions of employment, referred to in clause 6(1)(a) of the IR Regulation 2011, are only those increases resulting from an award or order made or varied by the Commission either by consent or in arbitration proceedings: *Re Crown Employees Wages Staff (Rates of Pay) Award 2011 & Ors* [2013] NSWIRComm 53.
23. Subsequent to the decision of the Full Bench on 28 June 2013 the Government amended the IR Regulation 2011 to make clear the Government's public sector policies for the purposes of section 146 of the IR Act, and clarify the application of those policies in relation to the impact of increases in superannuation employment benefits.

24. Clause 6 (1)(a) of the IR Regulation 2011 as amended provided;

"...Other policies

- (1) *The following policies are also declared, but are subject to compliance with the declared paramount policies:*

- (a) *Public sector employees may be awarded increases in remuneration or other conditions of employment, but only if employee-related costs in respect of those employees are not increased by more than 2.5% per annum as a result of the increases awarded and of any new or increased superannuation employment benefits provided (or to be provided) to the employees since their remuneration or other conditions of employment were last determined."*

25. Clause 8 of the IR Regulation 2011, as amended, provided;

".... Meaning of employee-related costs

- (1) *For the purposes of this Regulation, employee-related costs are the costs to the employer of the employment of public sector employees, being 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.*
- (2) *In subsection (1), superannuation benefits include any payments by the employer to a superannuation fund of an employee as a consequence of the enactment of or amendments to the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth or the State Authorities Non-contributory Superannuation Act 1987."*

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26. The effect of the amendments to the IR Regulation 2011 was that SGC increases were to be funded from within the existing wages cap of 2.5 per cent. These arrangements applied to the Tribunal's determinations pursuant to Part 3A, the SES, and all other public sector employees and office holders subject to the IR Regulation, including Members of Parliament.
27. To ensure the same conditions applied to the Tribunal's determination pursuant to Part 3 of the SOOR Act - being the Judges and Magistrates, Court and Related Officers and Public Office Holders - the Government also amended the SOOR Regulation 2013 on 9 August 2013 to re-declare the Government's policies the Tribunal is required to give effect to when determining the remuneration of office holders. The re-declaration clarified the application of those policies in relation to the impact of the increases in superannuation employment benefits and followed the similar re-declaration in relation to public sector remuneration made by the IR Regulation 2011.
28. The amendments to the IR Regulation 2011, which clarified the application of the policies articulated in the IR Regulation 2011 in relation to the impact of increases in superannuation employment benefits, were disallowed by the Legislative Council on 21 August 2013. This had the effect of restoring the original *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011* immediately.
29. Similarly on 22 August 2013, the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment Regulation 2013*, which applied to those determinations of the Tribunal pursuant to Part 3A of the SOOR Act, was also disallowed by the Legislative Council. This had the effect of restoring the original *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013* immediately.

Submissions

30. As is the usual practice, prior to the Tribunal making her Reports and Determinations, the Tribunal invited submissions from office holders. For the 2013 review office holders in the Judges and Magistrates Group were advised that if they wished to submit that an

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increase in excess of 2.5 per cent was warranted, it would be necessary for such office holder or group of office holders to identify and propose to the Tribunal the officer-related cost savings which it or they intend to achieve.

31. As part of the current review the Tribunal received six submissions from offices within the Judges and Magistrates Group. The Tribunal also met with Judges of the Supreme Court, the President of the Industrial Relations Commission and the Chief Judge of the District Court. Once again the Tribunal thanks the office holders for their time and the effort they have put in to the current review.
32. 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, and increasing the conveyance and travelling allowances.
33. The submissions have also requested that the Tribunal defer finalisation of its determination until after the Commonwealth Remuneration Tribunal's 2013 review of judicial salaries has been concluded.
34. On 25 July 2013 the Commonwealth Remuneration Tribunal determined that Holders of Public Office, including Judges and Related Offices, would receive a remuneration increase of 2.4 per cent with effect from 1 July 2013. In making those determinations the Commonwealth Remuneration Tribunal noted, in its 2013 Review of Remuneration for Holders of Public Office Statement, that:

"The Tribunal will monitor remuneration outcomes in the coming months and will make a further assessment of the situation in December 2013 when the Tribunal expects to have finalised its review of remuneration in its part-time office jurisdiction and of some office holders. If the Tribunal decides that a further general increase is required before 1 July 2014, it will make an appropriate determination."

35. The submission from the Supreme Court Judges also addresses the policy as articulated in the Regulation and suggests

"12. It is respectfully submitted that the Tribunal's approach may be based on a misapprehension of the Regulation and warrants further consideration".

36. The Regulation defines officer related costs as follows:

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officer-related costs for an office holder are the costs to the State of the appointment of the office holder, being costs related to each of the following:

- (a) the remuneration payable to the office holder,*
- (b) the employment entitlements of the office holder,*
- (c) the personal appointment benefits of the office holder.*

37. The submission from the Supreme Court Judges notes that:

"14 The "costs to the State" that are "related to" the office holder's remuneration, employment entitlements and personal appointment benefits, will no doubt vary depending upon numerous matters including the financial reporting responsibilities of the relevant agencies and the way in which any increase in remuneration is structured. It is not presently possible to identify the limit of the increase in remuneration that would result in an increase in officer related costs for the office holder by more than 2.5 per cent per annum. These are matters that may require further submissions in due course."

38. The Supreme Court Judges also submit that the relativities established by the intergovernmental agreement, "the nexus", remain relevant. In particular, that judicial remuneration in NSW should remain competitive in order to attract and retain Judges.

"38 The pool from which recent appointments to the Federal Court have been made, the ranks of the Judges of the Supreme Courts of Victoria and South Australia, underscores the ongoing importance of timely and adequate adjustments of judicial salaries in this State to prevent a diminution in the available pool of candidates for appointment and indeed a leakage to other jurisdictions."

39. The Supreme Court Judges also seek an adjustment in the conveyance allowance and request that the commencement date for determinations be changed to 1 July, instead of 1 October.

40. Submissions received from the Chief Judge of the District Court, the Chief Judge of the Land and Environment Court and the President of the Industrial Relations Commission support the views expressed in the Supreme Court submission.

41. The President of the Industrial Relations Commission also requested that the historical nexus which existed between the judicial and non-judicial members of the Commission be restored.

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42. The Chief Judge of the District Court provided the Tribunal with details of costs savings achieved by the District Court in the past 12 months. The submission advised that the District Court has assumed additional responsibilities, but there has been no appointment of extra judges to undertake this work. In addition, the number of District Court Judges decreased by one in 2012/13 and is expected to decrease by a further one in 2013/14 and again in 2014/15.
43. In addition, in response to the Tribunal's 2012 determination, which reduced the ratio of the salary of District Court Judges to Supreme Court Judges from 90% to 89.56%, the Chief Judge also requested that the relativities should be restored because of both extra work absorbed by the District Court and the demonstrated efficiency and cost effectiveness in the operations of the Court.
44. The Chief Magistrate's submission has acknowledged that the Tribunal is constrained in the breadth of its deliberations by section 6AB of its governing legislation. The Chief Magistrate has highlighted the difficulty in valuing the work of a magistrate. In particular, the work undertaken by the Local Courts and any savings resulting from that work being applied to "officer savings" referred to in the Regulation. The Chief Magistrate has also advised that the Magistracy has contributed over the years to mitigating the rising cost of criminal and civil litigation. Savings have been achieved through a combination of legislative change, Practice Notes and the use of technology. These and other initiatives represent recurrent savings in the administration of justice and contribute to the Court's demonstrated capacity to streamline court procedures. The Court's success in managing caseloads has been noted by the Productivity Commission which for 10 successive years identified the NSW Local Courts as the best performing Court against time standards within the Commonwealth. The Chief Magistrate has advised:

"I accept and understand the difficulty for the Tribunal in assessing individual work value for the judiciary in a hierarchical structure, it cannot be said that the magistracy has not made its presence felt in the areas of innovation and achievement over the years."

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45. The President of the Workers Compensation Commission has again requested that the remuneration payable to the President of the WCC should continue to be linked to that of a Supreme Court Judge. This position is consistent with the Tribunal's determination of 2012.

Government Submission

46. The Government submission was received on 22 August 2013 and, in respect of the Judges and Magistrate Group, reflects the views of the former Director General of the Department of Attorney General and Justice. As articulated in the Government's submission to the Tribunal:

"The Department (Attorney General and Justice) notes that since the commencement on 1 July 2013 of the Statutory and Other Offices Remuneration Amendment (Judicial and Other Office Holders) Act 2013, SOORT is now required to give effect to declared Government policy concerning the remuneration of office holders, including judicial office holders. In effect this limits remuneration increases to 2.5 per cent, unless sufficient officer-related cost savings for the officer have been achieved to fully offset increased officer-related costs above 2.5 per cent.

However the Department advises that within the bounds of this limitation, they continue to support the nexus with Federal Court judges and Supreme Court judges. The Department notes that while the Commonwealth Remuneration Tribunal has recently awarded Federal judicial officers a remuneration increase of 2.4 per cent, this is subject to further assessment in December 2013, with the possibility of another increase prior to 1 July 2014...

...Consistent with advice given in previous years, the Department is of the view that the internal relativities maintained between judges and magistrates up to 2012 remain appropriate, regardless of whether there have been any changes in the productivity of particular courts. The Department notes that the internal relativity between Supreme Court judges and District Court judges was changed by the Tribunal in 2012, although the Tribunal noted it would consider restoring the internal relativity in the future.

The Department also advised that the Tribunal should consider the increase in the compulsory superannuation guarantee rate from 9 per cent to 9.25 per cent in relation to acting judges who are not entitled to a pension under the Judges' Pension Act 1953, as necessary.

The Superannuation Guarantee Contribution (SGC) was increased by 0.25 per cent with effect from 1 July 2013, in accordance with the Superannuation Guarantee (Administration) Act 1992 (C'wth). As the SGC is not payable in respect of those judicial officers who are entitled to a pension under the Judges' Pension Act 1953,

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they will not receive the 0.25 per cent SGC increase separately to any increases determined by the Tribunal. However, other judicial officers including magistrates (other than the Chief Magistrate), acting Supreme Court and District Court judges (not otherwise already in receipt of a judges pension) and judges who do not end up being eligible for a judges pension (because they do not meet the criteria, for instance if they retire before 60) will receive the 0.25 per cent SCG increase separately to any remuneration increases determined by the Tribunal.

Differences in superannuation entitlements notwithstanding, under section 16(6) of the SOOR Act 1975, the Tribunal cannot make a determination that applies differently between two or more persons holding the same office, for those offices listed in Schedule 1 of the SOOR Act 1975. Schedule 1 includes the offices in the Judges and Magistrates Group.

Magistrates, the Deputy President of the Industrial Relations Commission (not being a judicial member), and Commissioners, Industrial Relations Commission are currently entitled to leave loading on the same basis as employees of the NSW Public Service. Although superannuation is not payable on leave loading, the difference of 0.25 per cent on the capped leave loading amount is negligible and should not affect the determinations of the Tribunal in respect of this Group”.

47. Given the issues outlined above, the Government submission proposed that the Tribunal should approve an increase of 2.4 per cent for judicial officers who are entitled to a pension under the *Judges’ Pension Act 1953* and an increase of 2.15 per cent for judicial officers who are not entitled to a pension under the *Judges’ Pension Act 1953*.
48. Following the disallowance of the SOOR Amendment Regulation, the Tribunal received a supplementary submission from the Secretary of The Treasury, Mr Philip Gaetjens. The Supplementary submission notes that:

“Notwithstanding the disallowance, the Government intends to ensure the 2.5 per cent remuneration policy requirement is met and is currently considering options available to it.”

2013 Review

49. The written and oral submissions raised a number of matters which required further clarification. In reviewing these matters the Tribunal is grateful for reasoning received from the Supreme Court and advice received from the Crown Solicitor’s Office.

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50. In respect of a general increase, judicial office holders have supported retaining the nexus between a Judge of the Supreme Court and the salary payable to a Justice of the High Court of Australia. The Commonwealth Remuneration Tribunal determined that holders of public office, which includes judicial office holders, would receive an increase of 2.4 per cent with effect from 1 July 2013. In making that determination the Commonwealth Remuneration Tribunal noted that it intends to review the economic and wage data available at the end of the calendar year, as well as forecasts, to assess whether any further increase should be determined before the next scheduled annual adjustment on 1 July 2014.
51. As the Commonwealth Remuneration Tribunal has indicated that it may undertake a further review, which may or may not alter the existing determination, the submissions have requested that the Tribunal make an "initial" determination of 2.4 per cent with effect from 1 October 2013 to reflect the Commonwealth Remuneration Tribunal's current determination and to maintain the nexus, and for the Tribunal to make a further and final determination after the completion of the Commonwealth Remuneration Tribunal's review if that review determines a further increase.
52. The Government submission also supported an increase of 2.4 per cent but it did not propose that the Tribunal delay making its determination to have regard to the outcome of any further Commonwealth Remuneration Tribunal review.
53. The Tribunal sought advice as to whether, in making its determinations under section 13 and section 24C of the SOOR Act, it may vary a determination after it has been made, or whether it may issue both an "interim" and a subsequent determination during the period from 1 October to 30 September the following year. The request for advice related to substantial variations and not minor amendments to correct or to clarify the terms of the original determination.
54. The Tribunal has been advised that it has no power to make a variation to a determination made under sections 13 or 24C of the SOOR Act. In his advice of 11 September 2013 the Acting Crown Solicitor, Mr Peter Anet, advised that the Tribunal does not have the power to make a variation to a determination made under section 13 or 24C of the SOOR Act.

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- “3.7 *The Act expressly provides that a determination (which includes a determination made under s. 13) may be altered by the Tribunal, where the Minister so directs pursuant to s. 14. Section 15 authorises the Tribunal to make a determination as to whether any determination already made should be altered.*
- 3.8 *Section 24D provides (in terms similar to s. 14) for the alteration of a determination of the remuneration packages for executive office holders under s.24C where the Minister so directs.*
- 3.9 *The fact that ss. 14, 15 and 23D specify particular circumstances in which a determination made under s. 13 or s. 24C can be altered is in my view indicative of a legislative "intention" contrary to the application of a more general, and apparently unconfined, power to amend or repeal an order under s. 43(2) of the Interpretation Act 1987.*
- 3.10 *This conclusion is in my view made plain by the terms of ss. 20 and 24J of the SOOR Act, which provide for the operation of determinations made by the Tribunal. The effect of s. 20 is that a determination made under s. 13 (the report of which is published in the Gazette under s. 19 (1)) shall:*
- (i) subject to the Act, come into force, or be deemed to have come into force, on 1 October in the year in which it is made (s. 20(1)(b));*
 - (ii) subject to the Act, remain in force until and including 30 September next (year) following the day on which it comes into force (s. 20(2)); and*
 - (iii) have effect subject to any alteration made to it by a determination that was made under section 14 or 15 and that is in force (ss. 20(2B); 20(3)),*

Similarly, the effect of s.24J is that a determination made under s.24C ("Annual Determinations") shall, subject to Part 3A of the Act:

- (i) come into force, or be deemed to have come into force, on 1 October in the year in which it is made (s. 24J(1)(b));*
 - (ii) continue in force until and including 30 September next (year) following the day on which it comes into force (s.24J(2); and*
 - (iii) have effect subject to any determination made under s. 24D and that is in force.*
- 3.11 *The Act therefore expressly provides for certain specified circumstances in which a determination under s. 13 or s.24C may be varied, and also that a determination under ss. 13 and 24C shall (subject to any alteration in the specified circumstances) remain in force for one year. In my view these specific provisions plainly demonstrate a contrary intention so as to exclude the operation of s. 43(2) of the Interpretation Act. In this context I do not think that Parliament*

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could be taken to have "intended" that the Tribunal could, at its general discretion, amend or repeal its determinations under s. 13 or s. 24C from time to time as the Tribunal thought fit

3.12 *I would add that, in case I am wrong about the application of s.43(2) of the Interpretation Act, and that s. 48 were to apply instead, I would reach the same conclusion as to a contrary intention".*

55. The Tribunal's 2014 annual determination is expected to take effect from 1 July 2014, assuming that the Government's proposed changes to the SOOR Act will be enacted. Consequently- the Tribunal will commence its 2014 determination earlier than previously it has done. That process will commence at approximately the same time as the Commonwealth Remuneration Tribunal will commence its proposed review. On that basis the Tribunal does not intend to defer the making of the 2013 determination. As the Tribunal is advised it is unable to make an interim determination and then a subsequent determination the 2013 determination will be made having regard to the information currently before the Tribunal. Should circumstances change in any significant way, it would be open to the Premier to request that the Tribunal make a special determination (pursuant to section 14(1)) to alter this determination.
56. In undertaking the 2013 review the Tribunal advised office holders that it would consider a general increase for all judicial offices of up to or, if warranted, above 2.5 per cent. It would also consider requests from individual office holders or groups of office holders for increases above 2.5 per cent based on work value assessment. Office holders were advised that in both instances, any increase in excess of 2.5 per cent could only be paid if sufficient officer-related cost savings for the office holder had been achieved or were expected to be achieved, to fully offset the increased officer-related costs resulting from the increased payment.
57. Office holders were advised that, should any office holder or group of office holders wish to submit that an increase in excess of 2.5 per cent was warranted, it would be necessary for such office holder or group of office holders to identify and propose to the Tribunal the "officer-related cost savings" (as defined) which it or they intended to

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achieve. In due course the Tribunal would be responsible for determining whether or not those savings had been achieved.

58. The submission from the Chief Justice of the Supreme Court has questioned the Tribunal's assumptions as to the meaning of "officer-related costs". The Acting Crown Solicitor, in his advice of 11 September 2013, has agreed with that submission and has advised that it would be open to the Tribunal to determine an increase in remuneration of more than 2.5 per cent that does not cause more than a 2.5 per cent per annum in officer-related costs.

59. The Regulation defines officer related costs as follows:

officer-related costs for an office holder are the costs to the State of the appointment of the office holder, being costs related to each of the following:

- (a) the remuneration payable to the office holder,*
- (b) the employment entitlements of the office holder,*
- (c) the personal appointment benefits of the office holder.*

60. Under the current arrangements the Tribunal only determines the salary, conveyance allowance and travelling allowances for officers in the Judges and Magistrates Group. Information on the employment entitlements and personal appointment benefits provided to individual judicial office holders, or to groups of office holders, has not been made available to the Tribunal.

61. To make an assessment of whether an increase in remuneration of more than 2.5 per cent would result in an increase in officer-related costs of more or less than 2.5 per cent would require an assessment of all officer-related costs.

62. The Acting Crown Solicitor has noted that:

"4.18 ...s. 6AB of the Act, in requiring the Tribunal to give effect to the policy declared by the regulations, is subject to s. 16(6) of the Act, which provides that, in relation to the offices specified in Schedule 1 (which includes judicial officers), a determination may not apply differently between two or more persons holding the same office.

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4.19 *In my view, in relation to these judicial officers, the "officer-related costs for the office holder" (and "officer-related costs savings" if appropriate) could only be determined on an average or aggregate basis for all judicial officers holding the same office. This construction (which might be supported on the basis that the singular includes the plural in the absence of any contrary intention) appears to be the only way in which clauses 6 and 7 can be given effect to for Schedule 1 office holders without infringing s. 16(6) of the Act."*

63. The Tribunal has not been asked to consider an increase, either a general increase or an increase based on work value assessment, in excess of 2.5 per cent. Consequently the Tribunal is not presently required to come to a concluded view on how officer-related costs and officer-related cost saving would be calculated for the purposes of determining any increase in remuneration of more than 2.5 per cent. The Tribunal will consider these matters further before calling for submissions for the 2014 annual review.

64. The Tribunal has consistently supported maintaining the 85 per cent nexus between the salary of a Supreme Court Judge and the salary of a High Court Judge. As outlined in the 2012 report and determination:

"34 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."

65. The Government submission has advised it also continues to support the nexus and has recommended an increase of 2.4 per cent which is equivalent to the increase the Commonwealth Remuneration Tribunal has awarded Federal judicial officers. For 2013 the retention of the nexus is possible as the recommended increase is below 2.5 per cent. Should the Commonwealth Remuneration Tribunal, at any stage, determine an increase of more than 2.5 percent, retention of the nexus will only be possible if judicial office holders can find sufficient officer-related cost savings sufficient to fund any additional increase.

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66. The Government's decision to extend the wages cap to judicial officers, effectively limiting increases in remuneration to 2.5 per cent unless sufficient officer-related savings can be found to offset any additional increase, would appear to contravene the long-standing intergovernmental agreement in relation to salary relativities between judicial office holders in NSW and the Federal Courts. Should the Government intend that the Tribunal no longer have regard to the long standing intergovernmental agreement, referred to as the nexus, and now having regard to the requirements of the SOOR Act and SOOR Regulation 2013, the Tribunal would appreciate clarification of the Government's position in relation to this matter. That clarification should be provided in the Government's submission to the Tribunal for the 2014 annual review.
67. In determining the general increase the Tribunal has had regard to the submissions received, the key economic indicators, the salary relativity with Commonwealth judicial office holders, and the impact of the amendments to the SOOR Act and the introduction of the SOOR Regulation 2013.
68. While the submissions have only requested an increase of 2.4 per cent, that request would appear to be based on an expectation that the Commonwealth Remuneration Tribunal may, before making its annual determination for 2014, provide a further increase to Federal judicial office holders, and that the Tribunal could reflect any such further increase in another or an amended determination.
69. Should the Commonwealth Remuneration Tribunal award Federal office holders a further increase, the Tribunal is advised it will not be able to make a new or alter its existing determination without a special reference from the Premier. Further should the increase be more than 2.5 per cent judicial office holders would be required to make sufficient officer-related cost savings to fund the additional increase.
70. The Tribunal finds that the amendments to the SOOR Act and the new SOOR Regulation 2013 will make it difficult for office holders, and in particular groups of office holders, to demonstrate that sufficient officer-related cost savings can be achieved to justify and increase of more than 2.5 per cent.

Judges and Magistrates Group

71. As it is open to the Tribunal to determine an increase of 2.5 per cent, without the need for office holders to demonstrate officer-related cost savings, the Tribunal finds that the maximum increase is appropriate and so determines.
72. A 2.5 per cent increase will result in a NSW supreme court judge receiving a salary which is \$330 more than that of a Federal Court Judge. However, the increase in NSW will not take effect until 1 October 2013 and the annual salary is not expected to exceed that of a federal court judge.
73. An increase of 2.5 per cent is warranted having regard to the significant role judicial office holders undertake in the State's justice system, including but not limited to, their achievements in delivering reforms and initiatives which have demonstrated productivity improvements. Those achievements are highlighted in the Australian Productivity Commission's Report on Government Services 2013 which, in related to the NSW Courts, states:

" NSW continues to improve its performance. The NSW Supreme Court reduced the percentage of civil appeal matters older than 12 and 24 months. District Court civil and criminal non-appeal 12 months backlogs declined. The Local and Children's Courts continued the excellent level of backlog performance for criminal matters achieved over the last two years. The Coroner's Court also continued the outstanding performance from last year, reducing by more than fifty per cent the percentage of matters older than 12 months. Overall clearance rates for all NSW Courts improved, with all NSW Courts achieving clearance rates in excess of 100 per cent. This is exceptional achievement, indicating the high level of efficiency within NSW Courts.

NSW continued to utilise technology to improve its quality of services. In 2011-12 over 63,000 videoconferencing sessions were held, and \$1.35 million was invested in remote witness facilities. The Multi-Court Remote Monitoring pilot program was launched, allowing up to four courts to be monitored simultaneously by one person, generating both productivity savings and opportunity for improvements in service delivery."

(Productivity Commission Report on Government Services 2013 Volume 1, Part C, Chapter 7 Courts.)

74. The 2.5 per cent will apply to all office holders in the Judges and Magistrates Group.
75. The Tribunal's 2012 determination, as a result of the Tribunal's decision to award an increase of 3 per cent to Judges of the Supreme Court (and legislatively related judicial

Judges and Magistrates Group

officers) and 2.5 per cent to other office holders, broke several long-standing salary relativities within the Judges and Magistrates Group.

76. While the Tribunal was not bound to the wages cap when making determinations for judicial office holders, the decision to limit the increase for some office holders to 2.5 per cent was made 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. The Government has now formalised its position in regard to wages policy through amendments to the SOOR Act and the introduction of the SOOR Regulation 2013.
77. The decision to limit judicial officer increases to 2.5 per cent, except for the Supreme Court (and legislatively related judicial officers), was in no way intended to imply that the Tribunal considered that the role and standing of those offices had diminished in any way.
78. As outlined in the Tribunal's 2012 determination as soon as the current climate of fiscal restraint is relaxed to any extent, and if the legislation does not prohibit the Tribunal from doing so, the Tribunal will immediately consider restoring the original relativities between office holders within this group and with those that existed with certain office holders in the Court and Related Officer Group

Other matters

Workers Compensation Commission, President

79. 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.

Judges and Magistrates Group

80. On that basis the Tribunal continues to include 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.

Conveyance Allowance

81. 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.

82. 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.

2014 Review

83. The *Government Sector Employment Act 2013* (the GSE Act) was assented to on 25 June 2013 and reflects and builds on the Government's reform program for the public sector. The GSE Act provides a new and simpler statutory framework devoted solely to NSW Government sector employment and workforce management.

84. All determinations of the Tribunal will apply from 1 July each year once the GSE Act commences. The SOOR Act will be amended upon proclamation of the GSE Act. Clause 7 of Schedule 6 of the GSE Act will amend section 13 of the SOOR Act to change the commencement date of the Tribunal's annual determinations from 1 October to 1 July. Section 17 of the SOOR Act will also be amended to allow the Tribunal to commence its inquiries on 1 January instead of 1 April.

85. On that basis the Tribunal will commence the 2014 annual review earlier than usual (but not before 1 January) to ensure sufficient time is available to complete the determinations on or as close to 1 July 2014 as possible.

Judges and Magistrates Group

Section 4

Conclusion

86. The amendments to the SOOR Act (Section 6AB) and the introduction of the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013* have had a further impact on the way this Tribunal makes its determinations. It is the obligation of the Tribunal to undertake its duties consistent with the legislation. On that basis the Tribunal, after considering the views of the Assessors, considers that an increase of 2.5 per cent is appropriate and so determines. The new rates are as set out in Determinations Nos 1-5.

87. 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: 27 September 2013

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 2013

Position	Salary per annum	Conveyance Allowance (1)
Chief Justice of the Supreme Court	\$462,020	\$22,550
President of the Court of Appeal	\$432,620	\$22,550
President of the Industrial Relations Commission	\$432,620	\$22,550
Chief Judge of the Land and Environment Court	\$432,620	\$22,550
Judge of the Supreme Court	\$412,880	\$22,550
Vice-President of the Industrial Relations Commission	\$412,880	\$22,550
Judge of the Land and Environment Court	\$412,880	\$22,550
Deputy President of the Industrial Relations Commission (being a judicial member)	\$412,880	\$22,550

Note 1 The Conveyance Allowance determined here shall not count towards pension or for superannuation purposes

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 2013

Position	Salary per annum	Conveyance Allowance (1)
Deputy President of the Industrial Relations Commission (not being a judicial member)	\$410,880	\$22,550
Judge of the District Court	\$369,790	\$20,330
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	\$369,790	\$20,330
Chief Magistrate	\$369,790	\$20,330
Deputy Chief Magistrate	\$312,470	\$16,235
State Coroner	\$312,470	\$16,235
Chief Industrial Magistrate	\$301,010	\$16,235
Magistrate	\$295,830	\$16,235
Chairperson Victims Compensation Tribunal (NOTE 2)	\$295,830	\$16,235
Children's Magistrate	\$295,830	\$16,235
Deputy State Coroner	\$295,830	\$16,235
Commissioner Industrial Relations Commission	\$271,180	\$16,235

Note 1 The Conveyance Allowance determined here shall not count towards pension or for superannuation purposes

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

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 2013

Position	Salary per annum	Conveyance Allowance (1)
President, Workers Compensation Commission	\$412,880	\$22,550

Note 1 The Conveyance Allowance determined here shall not count towards pension or for superannuation purposes

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 \$1,790 per day

District Court

The following rate shall be paid for each ordinary court working day on which the Acting Judge is occupied in the performance of judicial duties as designated by the Chief Judge in the District Court.

Acting Judge of the District Court \$1,600 per day

Determinations for the Judges and Magistrates Group

Determination No 5

Annual Leave Loading Of Judges, Magistrates and Related Group Effective on and From 1 October 2013

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: 27 September 2013

Report and Determination on Travel Allowances for NSW Judges and Magistrates

Section 1

Background

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

2013 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 2013 (TD 2013/16) and these rates will be adopted for the NSW Public Sector. On that basis the Tribunal has determined the rates that are based on ATO TD 2013/16.

Report and Determination on Travel Allowances for NSW Judges and Magistrates

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.
 - (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 2013/16. 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 2013.

Report and Determination on Travel Allowances for NSW Judges and Magistrates

Statutory and Other Offices
Remuneration Tribunal

Helen Wright

Dated: 27 September 2013

Determination No 7

Travel Allowances for Judges and Magistrates Effective on and From 1 October 2013

Pursuant to section 13 of the SOOR Act the Tribunal determines that the travel allowances for Judges and Magistrates will be as follows effective on and from 1 October 2013.

A. Travel necessitating an overnight stay

Travel Allowances

Capital City Rates	
Adelaide	\$375.70
Brisbane	\$418.70
Canberra	\$412.70
Hobart	\$361.70
Perth	\$492.70
Darwin	\$450.70
Melbourne, Sydney	\$431.70
Newcastle and Wollongong	\$356.70
Other Areas	\$356.70

Report and Determination on Travel Allowances for NSW Judges and Magistrates

Conditions

General conditions are to be as determined from time to time by the Attorney General.

- In addition the following specific conditions will apply.

The full daily travel allowance rate is to be paid only where the judge/magistrate stays overnight at commercial accommodation. Where the judge/magistrate stays overnight at non commercial accommodation then one third of the daily rate is to be paid.

- Where travel is for a period in excess of 24 hours then meal expenses for the final part day are to be paid.

B. Travel not involving an overnight stay

Meal Allowances for travel NOT involving an overnight stay

Breakfast	\$24.90
Lunch	\$28.00
Dinner	\$47.75

Statutory and Other Offices Remuneration Tribunal

Helen Wright

Dated: 27 September 2013

REPORT
and
DETERMINATION
under
SECTION 13
of the
STATUTORY AND OTHER OFFICES
REMUNERATION ACT, 1975

PUBLIC OFFICE HOLDERS GROUP

27 September 2013

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Public Office Holders Group

Section 1

Introduction

Mr Ken Baxter was appointed to the role of Assessor to the Tribunal (pursuant to section 7(1)(b) of the *Statutory and Other Offices Remuneration Act 1975*, (the SOOR Act)) for a term of up to three years commencing 20 March 2013.

Background

1. Section 13 of 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 Contribution, 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. During the past year the Tribunal has made two special determinations in respect of two new offices in the Public Office Holders Group: the Inspector of Custodial Services, Corrective Services NSW and the Small Business Commissioner.
4. The above special determinations of the Tribunal were published in the Government Gazette and tabled in Parliament.
5. The special determination for the Small Business Commissioner was made on 12 September 2013. Given the proximity of the special determination to the 2013 annual review, in considering the appropriate remuneration for the Small Business Commissioner the Tribunal had regard to - amongst other factors - the likely

Public Office Holders Group

general increase to be provided across the public office holder group. Therefore, the office of Small Business Commissioner will receive no further increase with effect from 1 October 2013.

Section 2

2012 Review

6. In undertaking the 2012 review 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* (the IR Act) when making or varying awards or orders relating to the conditions of employment of public sector employees.
7. The current policy on wages pursuant to section 146(1)(a) of the IR Act is articulated in the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011* (IR Regulation 2011).
8. The Tribunal noted the significant impact that section 6AA of the SOOR Act had on the way the Tribunal made its determinations. The effect of the amendments to the SOOR Act in 2011 was to remove the Tribunal's discretion to determine any increase beyond 2.5 per cent for office holders unless there were sufficient employee-related cost savings to offset the additional employee-related costs.
9. In 2012 the Tribunal examined the issue of employee-related cost savings. As part of that review the Tribunal received legal advice and met with judicial members of the Industrial Relations Commission.
10. The Tribunal found that section 146C and the IR Regulation 2011 required a new approach to identifying savings not previously contemplated. Increases provided to individual office holders or groups of office holders based on productivity savings achieved across an organisation would no longer be sufficient to meet the policy requirements specified in the IR Regulation 2011.
11. Having regard to the definitions contained in the IR Regulation 2011 of "employee-related costs" and "employee-related cost savings", the Tribunal was of the view

Public Office Holders Group

that any pay increase which may be awarded to the Public Office Holders Group above 2.5 per cent must be matched by cost savings which neutralise the cost of the increase. Clause 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".

12. In making a submission in support of any increase above 2.5 per cent, the Tribunal found that public office holders would need to find employee-related costs savings, such as changes to leave entitlements, elimination of leave loading, reduction of travelling allowances etc.
13. Office holders within the Public Office Holders Group are not employed under an industrial instrument. Their conditions of employment are outlined in the relevant legislation or, 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 amendment.
14. In 2012 the Tribunal identified, as it did during the 2011 review, the need to develop a methodology to assess employee-related cost savings which may warrant a "general increase" above 2.5 per cent in appropriate circumstances.
15. The 2012 Government submission recommended that the Tribunal approve an increase of 2.5 per cent for the Public Office Holders Group. That recommendation was consistent with the NSW Wages Policy and reflected the NSW Government's intent, pursuant to section 6AA and the IR Regulation 2011.
16. The Tribunal's 2012 annual determination dated 9 November 2012 provided for a 2.5 per cent increase for each public office holder.

Public Office Holders Group

Section 3

2013 Review

17. In January 2013 the Tribunal wrote to the Director General of the Department of Premier and Cabinet (DPC) and the Secretary of NSW Treasury to seek their assistance in the development of an appropriate methodology to assess officer-related cost savings, as they relate to the office holders subject to the determinations of the Tribunal.
18. Subsequently the Tribunal met with officers from both the DPC and the Treasury to discuss the development of such a methodology. The Tribunal acknowledges the assistance given at that time.
19. In February 2013 the Government introduced into the Parliament the Statutory and Other Offices Remuneration Amendment (Judicial and Other Office Holders) Bill 2013. The Bill signalled the Government's intent to extend the wages policy to judicial office holders, who were exempt under the legislation at that time.
20. On 22 May 2013, the Parliament passed the amendments to the SOOR Act which now require the Tribunal, when making determinations under Part 3 of the Act, to give effect to any policy concerning the remuneration of office holders as declared by the regulations, rather than those policies that the Industrial Relations Commission is required to give effect to under section 146C of the IR Act. In addition, any policy concerning the remuneration of office holders as declared by the regulations will now also extend to judicial office holders, who previously had been excluded under the SOOR Act. The new provisions commenced on 1 July 2013.
21. New section 6AB of the SOOR Act applies to the Tribunal's determinations in respect of office holders in the Judges and Magistrates Group, the Court and Related Officers Group and the Public Office Holders Group.

6AB *Tribunal to give effect to declared government policy on remuneration of office holders under Part 3*

- 1) *This section applies to the determination under Part 3 (Remuneration of office holders (other than chief executive or*

Public Office Holders Group

senior executive office holders)) of any alteration in the remuneration to be paid to office holders within the meaning of that Part.

- 2) *The Tribunal must, when making a determination to which this section applies, give effect to any policy concerning the remuneration of office holders:

 - (a) *that is declared by the regulations to be an aspect of government policy that is required to be given effect to by the Tribunal, and*
 - (b) *that applies to the matter to which the determination relates.**
- 3) *Any such regulation may declare a policy by setting out the policy in the regulation or by adopting a policy set out in a relevant document referred to in the regulation.*
- 4) *This section extends to any inquiries that are pending in the Tribunal on the commencement of this section. A regulation made under this section extends to any inquiries that are pending in the Tribunal on the commencement of the regulation, unless the regulation otherwise provides.*
- 5) *This section has effect despite any other provisions of this Act (other than section 16(6) and 21) or any other Act.*

22. Government policy concerning the remuneration of office holders to which Part 3 of the SOOR Act applies is declared in the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013* (the SOOR Regulation 2013).

5 *Paramount policy*

It is declared that equal remuneration for men and women doing work of equal or comparable value is a paramount policy.

6 *Other policies*

- 1) *The following policies are also declared, but are subject to compliance with the declared paramount policy:

 - (a) *an office holder may be awarded increases in remuneration that do not increase the officer-related costs for the office holder by more than 2.5% per annum,*
 - (b) *increases in remuneration that increase the officer-related costs for the office holder by more than 2.5% per annum can be awarded, but only if sufficient officer-related cost savings for the office holder have been achieved to fully offset the increased officer-related costs.**
- 2) *For the purposes of subclause (1) (b):*

Public Office Holders Group

- (a) *whether relevant officer-related cost savings have been achieved is to be determined by the Tribunal, and*
 - (b) *the office, organisation or other agency for which the office holder is to be treated as belonging in connection with the relevant officer-related cost savings (the relevant agency for an office holder) is also to be determined by the Tribunal, and*
 - (c) *increases may be awarded before the relevant officer-related cost savings have been achieved, but are not payable until they are achieved, and*
 - (d) *the full officer-related cost savings are not required to be awarded as increases in remuneration.*
- 3) *For the avoidance of doubt, the Tribunal may take into account any additional functions conferred or imposed on the office held by an office holder in determining the remuneration of the officer holder. However, any such additional functions cannot be used as a basis for awarding an office holder an increase in remuneration that increases the officer-related costs for the office holder by more than 2.5% per annum without offsetting relevant officer-related cost savings.*

7 *Meaning of "officer-related cost savings"*

- 1) *For the purposes of this Regulation, officer-related cost savings for an office holder are savings:*
- a) *that are identified in the determination of the Tribunal that relies on those savings, and*
 - b) *that involve any or all of the following:*
 - (i) *savings resulting from a change in the work practices, terms of appointment, employment entitlements or personal appointment benefits of the office holder (other than savings from a reduction of the kind referred to in paragraph (c) (i)),*
 - (ii) *savings resulting from structural changes to the relevant agency for the office holder, but only if the office holder managed the implementation of the whole or any part of those changes or participated in or otherwise contributed to those savings (whether directly or indirectly),*
 - (iii) *savings resulting from changes to the work practices of the relevant agency for the office holder, or persons working for that agency, but only if the office holder managed the implementation of the whole or any part of those changes or participated in or otherwise contributed to those savings (whether directly or indirectly), and*
 - c) *that are not achieved by a reduction in any of the following:*
 - (i) *an amount payable or provided as a term of the appointment, or as an employment entitlement or personal appointment benefit, of the office holder if legislation requires that amount (or at least that amount) to be paid or provided to the office holder in connection with the officer's appointment,*

Public Office Holders Group

- (ii) *employment entitlements of any other persons working (whether as an employee or as an officer holder) in the same relevant agency for the office holder, and*
 - d) *that are not existing savings (as defined in subclause (2)), and*
 - e) *that are additional to whole of Government savings measures (such as efficiency dividends).*
- 2) *Savings are existing savings:*
- a) *if and to the extent that:*
 - (i) *the savings have been identified in a determination of the Tribunal made under the Act before the relevant policy application day for the office holder concerned, and*
 - (ii) *the savings have been relied on by that determination and the remuneration specified in the determination has been paid (whether or not the savings have been achieved and whether or not they were or are achieved during the term of the determination), or*
 - b) *if and to the extent that:*
 - (i) *the savings have been identified in an industrial instrument of the Industrial Relations Commission made before the commencement of the Industrial Relations (Public Sector Conditions of Employment) Regulation 2011 (or in an agreement contemplated by such an instrument), and*
 - (ii) *the savings have been relied on by that instrument (whether or not the savings have been achieved and whether or not they were or are achieved during the term of the instrument).*
- 3) *In this clause:*
- relevant policy application day*** *for an office holder means:*
- a) *in the case of a judicial officer within the meaning of the Judicial Officers Act 1986—the day on which this Regulation commenced, and*
 - b) *in any other case—27 June 2011 (being the day on which the Parliamentary, Local Council and Public Sector Executives Remuneration Legislation Amendment Act 2011 commenced).*

23. In accordance with the SOOR Regulation 2013 any increase the Tribunal may determine in excess of 2.5 per cent, be it a general increase available to all office holders, or an increase provided to an individual office holder or group of office holders based on changes in work value, can only be paid if sufficient officer-related cost savings for the office holder have been achieved to fully offset the increased officer-related costs resulting from increased payment.

24. These new arrangements do not apply to determinations under Part 3A - remuneration packages for chief executive and senior executive office holders. For those determinations the Tribunal will continue to be required to give effect to the

Public Office Holders Group

same policies on increases in remuneration as those that the Industrial Relations Commission is required to give effect to under section 146C of the IR Act.

Changes to the Superannuation Guarantee Contribution

25. The Superannuation Guarantee Contribution (SGC) – made in compliance with the *Superannuation Guarantee (Administration) Act 1992* (C'wth) – was increased by 0.25 per cent with effect from 1 July 2013.

26. The SOOR Regulation 2013, which was first published on 21 June 2013, outlined the declared government policy on remuneration of office holders under Part 3. In accordance with Clause 6:

6 Other policies

(1) The following policies are also declared, but are subject to compliance with the declared paramount policy:

(a) an office holder may be awarded increases in remuneration that do not increase the officer-related costs for the office holder by more than 2.5% per annum,

(b) increases in remuneration that increase the officer-related costs for the office holder by more than 2.5% per annum can be awarded, but only if sufficient officer-related cost savings for the office holder have been achieved to fully offset the increase.

27. The policy, as drafted at the time, reflected the intent of the original IR Regulation 2011 which continues to apply to the SES determination, and previously applied to the Tribunal's determinations pursuant to section 6AA, with the exception of Judicial Office Holders.

28. In May 2013 the Government advised that it was its intention that the SGC increase be funded from within the existing wages cap of 2.5 per cent. The Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales, which had filed applications to vary the salaries of certain public sector awards by 2.5 per cent, opposed the SGC being funded from the existing wages cap of 2.5 per cent. This issue was referred to a Full Bench of the Industrial Relations Commission of New South Wales for determination.

29. In its decision made on 25 June 2013, the Full Bench found that the increases in remuneration or other conditions of employment, referred to in clause 6(1)(a) of the

Public Office Holders Group

IR Regulation 2011, are only those increases resulting from an award or order made or varied by the Commission either by consent or in arbitration proceedings: Re Crown Employees Wages Staff (Rates of Pay) Award 2011 & Ors [2013] NSWIRComm 53.

30. Subsequent to the decision of the Full Bench on 28 June 2013 the Government amended the IR Regulation 2011 to make clear the Government's public sector policies for the purposes of section 146 of the IR Act, and to clarify the application of those policies in relation to the impact of increases in superannuation employment benefits.

31. Clause 6 (1)(a) of the IR Regulation 2011 as amended provided;

"...Other policies

(1) *The following policies are also declared, but are subject to compliance with the declared paramount policies:*

(a) *Public sector employees may be awarded increases in remuneration or other conditions of employment, but only if employee-related costs in respect of those employees are not increased by more than 2.5% per annum as a result of the increases awarded and of any new or increased superannuation employment benefits provided (or to be provided) to the employees since their remuneration or other conditions of employment were last determined."*

32. Clause 8 of the IR Regulation 2011, as amended, provided;

".... Meaning of employee-related costs

(1) *For the purposes of this Regulation, employee-related costs are the costs to the employer of the employment of public sector employees, being 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.*

(2) *In subsection (1), superannuation benefits include any payments by the employer to a superannuation fund of an employee as a consequence of the enactment of or amendments to the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth or the State Authorities Non-contributory Superannuation Act 1987."*

Public Office Holders Group

33. The effect of the amendments to the IR Regulation 2011 was that SGC increases were to be funded from within the existing wages cap of 2.5 per cent. These arrangements applied to the Tribunal's determinations pursuant to Part 3A, the SES, and all other public sector employees and office holders subject to the IR Regulation 2011, including Members of Parliament.
34. To ensure the same conditions applied to the Tribunal's determination pursuant to Part 3 of the SOOR Act - being the Judges and Magistrates, Court and Related Offices and Public Office Holders - the Government also amended the SOOR Regulation 2013 on 9 August 2013 to re-declare the Government's policies the Tribunal is required to give effect to when determining the remuneration of office holders. The re-declaration clarified the application of those policies in relation to the impact of increases in superannuation employment benefits and followed the similar re-declaration in relation to public sector remuneration made by the IR Regulation 2011.
35. The amendments to the IR Regulation 2011, which clarified the application of the policies articulated in the IR Regulation 2011 in relation to the impact of increases in superannuation employment benefits, were disallowed by the Legislative Council on 21 August 2013. This had the effect of restoring the original *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011* immediately.
36. Similarly on 22 August 2013, the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment Regulation 2013*, which applied to those determinations of the Tribunal pursuant to Part 3A of the SOOR Act, was also disallowed by the Legislative Council. This had the effect of restoring the original *Statutory and Other Office Holders Regulation 2013* immediately.

Submissions Received

Government Submission

37. The Government submission recommends the Tribunal approve an increase of 2.25 per cent for the Public Office Holders Group. Those office holders to whom a section 11A determination applies should receive an increase of 2.5 per cent.

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38. The Government submission states:

"This recommendation is consistent with the NSW Wages Policy and reflects the NSW Governments' intent, pursuant to section 6AB of the SOOR Act and the SOOR Regulation 2013."

39. The Government recommends a 2.25 per cent increase, rather than a 2.5 per cent increase, to reflect the intent of the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment Regulation 2013*. That regulation, now disallowed, provided that under section 6(1)(a):

"an office holder may be awarded increases in remuneration, but only if officer-related costs for the office holder are not increased by more than 2.5% per annum as a result of the increases awarded and of any new or increased superannuation employment entitlements provided (or to be provided) to the office holder since his or her remuneration was last determined."

40. Following the disallowance of the SOOR Amendment Regulation, the Tribunal received a supplementary submission from the Secretary of The Treasury, Mr Philip Gaetjens. The Supplementary submission states that:

"Notwithstanding the disallowance, the Government intends to ensure the 2.5 per cent remuneration policy requirement is met and is currently considering options available to it."

Other Submissions

41. As is the usual practice, prior to the Tribunal making her Reports and Determinations, the Tribunal invited submissions from office holders. For the 2013 review office holders in the Public Office Holders Group were advised that if they wished to submit that an increase in excess of 2.5 per cent was warranted, it would be necessary for such office holder or group of office holders to identify and propose to the Tribunal the officer-related cost savings which it or they intend to achieve.

42. As part of the current review the Tribunal received four submissions from offices within the Public Office Holders Group. Three of those submissions sought an increase of 2.5 per cent only.

43. The WorkCover Independent Review Officer (WIRO) made a submission requesting an (unspecified) increase of more than 2.5 per cent based on the achievement of

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officer-related cost savings which related to savings resulting from changes in work practices (pursuant to Clause 7(1)(b)(i) of the SOOR Regulation 2013). The WIRO has requested that the Tribunal review the remuneration for this position having regard to changes that have occurred in the responsibilities and management of the office since it became operational on 1 October 2012. The WIRO submits that the additional responsibility for managing a new legal assistance and review service (the ILARS) has had an impact on the office and the position of WIRO. Also, that the new office (established June 2012) had no comparative office elsewhere in the NSW Government or other Australian jurisdiction. By establishing work practices such as electronic communications and a paperless office, the WIRO submits that cost savings have been achieved. The WIRO has provided the Tribunal with an estimate of cost savings achieved to 30 June 2013.

2013 Increase

44. The WIRO submits that certain decisions made by him, in establishing work practices for himself and the agency, provide sufficient officer-related cost savings to warrant an additional increase in remuneration. The savings identified in the submission relate to the period prior to 1 July 2013.
45. The Tribunal has considered the WIRO's submission carefully, but finds that the tests for officer-related cost savings, set out in clause 7 of the SOOR Regulation 2013, are not met. The requirement is that any savings result from changes in work practices. As the work practices described in the submission are initial practices – established in a new office and where none had existed previously – they cannot reasonably be characterised as changes.
46. Based on the information provided the Tribunal is unable to consider the WIRO's request for an increase of more than 2.5 per cent. Therefore the Tribunal will only consider what general increase, if any, of up to 2.5 per cent is warranted.
47. An assessment of the key economic indicators would suggest that an increase of 2.5 per cent is warranted. The Tribunal notes that the NSW Wages Price Index was 3 per cent for the March quarter 2013 and is expected to grow to 3.25 per cent in 2013-14

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and 3.5 per cent in 2014-15. The Consumer Price Index (CPI) figures for the June quarter 2013 show annual CPI growth of 2.6 per cent in Sydney, and 2.4 per cent across the average of 8 capital cities. In year average terms, the Sydney CPI rose by 2.5 percent in 2011-12. The outlook for headline inflation, according to NSW and Commonwealth Treasury forecasts, is for inflation to remain within the Reserve Bank of Australia's 2-3 per cent target band over the forecast period.

48. Having regard to the Parliament's disallowance of the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Amendment Regulation 2013*, and to the approach adopted by the Industrial Relations Commission in arbitration proceedings: *Re Crown Employees Wages Staff (Rates of Pay) Award 2011 & Ors [2013] NSWIRComm 53*, the Tribunal understands that the intent of the Parliament is clear, and does not propose to discount any remuneration increase it determines to take account of the increase in the Superannuation Guarantee Contribution.

Section 11A Office Holders

49. 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).
50. For the 2013 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.

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2014 Review

51. The *Government Sector Employment Act 2013* (the GSE Act) was assented to on 25 June 2013 and reflects and builds on the Government's reform program for the public sector. The GSE Act provides a new and simpler statutory framework devoted solely to NSW Government sector employment and workforce management.
52. All determinations of the Tribunal will apply from 1 July each year once the GSE Act commences. The SOOR Act will be amended upon proclamation of the GSE Act. Clause 7 of Schedule 6 of the GSE Act will amend section 13 of the SOOR Act to change the commencement date of the Tribunal's annual determinations from 1 October to 1 July. Section 17 of the SOOR Act will also be amended to allow the Tribunal to commence its inquiries on 1 January instead of 1 April.
53. On that basis the Tribunal will commence the 2014 annual review earlier than usual (but not before 1 January 2014) to ensure sufficient time is available to complete the determinations before or as close to 1 July as possible.

Section 4

Conclusion

54. The amendments to the SOOR Act (Section 6AB) and the introduction of the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013* have had a further impact on the way this Tribunal makes its determinations. It is the obligation of the Tribunal to undertake its duties consistent with the legislation. On that basis the Tribunal, after considering the views of the Assessors, considers that an increase of 2.5 per cent is appropriate and so determines.
55. 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 2013 shall be as specified in Determination 1 in respect of the Public Office Holders and Determination 2 in respect of Section 11A Office Holders.

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The Statutory and Other Offices

Remuneration Tribunal

Helen Wright

Dated: 27 September 2013

Public Office Holders Group

Determination No 1

Determination of the remuneration the Public Office Holders Group Effective on and from 1 October 2013

Salary	\$ per annum
Public Service Commissioner	\$471,545
Commissioner Police Integrity Commission	\$449,695
Auditor General	\$438,655
Ombudsman	\$437,525
Commissioner, NSW Crime Commission (Note 1)	\$434,130
Assistant Commissioner, NSW Crime Commission	\$411,285
Full time Member and CEO, Independent Pricing and Regulatory Tribunal	\$391,000
President, Mental Health Review Tribunal	\$355,015
Electoral Commissioner (Note 1)	\$341,445
Valuer General (Note 1)	\$315,885
Workcover Independent Review Officer	\$315,190
Deputy President Mental Health Review Tribunal	\$310,600
Information Commissioner	\$307,990
Privacy Commissioner	\$297,225
Chairperson, Consumer Trader and Tenancy Tribunal	\$288,540
Mental Health Commissioner	\$285,770
President, Guardianship Tribunal	\$282,515
Parliamentary Budget Officer	\$281,660
Principal Claims Assessor (Motor Accidents Compensation Act)	\$280,570
Inspector of Custodial Services	\$271,625
Small Business Commissioner	\$267,000
Deputy Chairperson Consumer Trader and Tenancy Tribunal	\$266,860
Deputy Chairperson, Law Reform Commission	\$264,935
Commissioner, Law Reform Commission	\$254,085
Deputy President Administrative Decisions Tribunal	\$254,085
Clerk of the Legislative Assembly	\$247,365
Clerk of the Parliaments	\$247,365

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Salary	\$ per annum
Executive Manager, Parliamentary Services	\$247,365
Registrar Workers Compensation Commission	\$247,365
Senior Arbitrator, Workers Compensation Commission (legally qualified)	\$229,595
Deputy President, Guardianship Tribunal	\$221,030
Senior Member, Consumer Trader and Tenancy Tribunal	\$217,800
Deputy Clerk, Legislative Assembly	\$212,350
Deputy Clerk, Legislative Council	\$212,350
Senior Arbitrator, Workers Compensation Commission (not legally qualified)	\$211,450
Arbitrator, Workers Compensation Commission (legally qualified)	\$202,715
Chairperson, Local Land Boards	\$202,675
Registrar, Aboriginal Land Rights Act 1983	\$196,175
Assessor (Civil Claims)	\$187,705
Member, Consumer Trader and Tenancy Tribunal	\$187,705
Arbitrator, Workers Compensation Commission (not legally qualified)	\$182,240
Chairperson, Board of the Aboriginal Housing Office	\$146,465
Member of the New South Wales Aboriginal Land Council (Note 2)	\$130,670
Chairperson, Infrastructure NSW	\$75,385
President Mental Health Review Tribunal (part time daily rate)	\$1,475
Deputy President Mental Health Review Tribunal (part time daily rate)	\$1,290
Senior Member, Consumer Trader and Tenancy Tribunal (part time daily rate)	\$905
Assessor Civil Claims (daily rate)	\$780
Member, Consumer Trader and Tenancy Tribunal (part time daily rate)	\$780

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 \$143,737 per annum) and the Deputy Chairperson shall receive an allowance of 5% (i.e. a total of \$137,204 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-

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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.

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 2013

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:

Public Office Holder	Remuneration
Commissioner, NSW Crime Commission	\$452,730
Electoral Commissioner	\$359,295
Valuer General	\$333,705

The Statutory and Other Offices

Remuneration Tribunal

Helen Wright

Dated: 27 September 2013

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