

# Statutory and Other Offices Remuneration Act 1975 No 4 of 1976

[1976-4]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**

[Constitution Amendment \(Governor's Salary\) Act 2003 No 66](#) (amended by [Statute Law \(Miscellaneous Provisions\) Act 2009 No 56](#)) (not commenced — to commence on the day on which the first person to be appointed to the office of Governor after the date of assent to that Act is so appointed)

[Industrial Relations Amendment \(Jurisdiction of Industrial Relations Commission\) Act 2009 No 32](#) (not commenced)

[Small Business Commissioner Act 2013 No 22](#) (not commenced)

[Government Sector Employment Act 2013 No 40](#) (not commenced)

### Authorisation

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# Statutory and Other Offices Remuneration Act 1975 No 4 of 1976



New South Wales

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# Statutory and Other Offices Remuneration Act 1975 No 4 of 1976



New South Wales

An Act relating to the remuneration and allowances payable to the holders of certain offices; to make provision for the establishment of a Statutory and Other Offices Remuneration Tribunal; and for these and other purposes to repeal the *Statutory Salaries Adjustment Act 1975* and to amend the *Supreme Court Act 1970*, the *District Court Act 1973* and certain other Acts.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Statutory and Other Offices Remuneration Act 1975*.

### 2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsections (1), (3) and (4), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.
- (3) Section 29 (1), (2) and (3) shall commence on the day on which the *Higher Education Act 1969* is repealed or the date of assent to this Act, whichever is the later.
- (4) Section 29 (4) shall commence on the day on which the *Securities Industry Act 1970* is repealed or the date of assent to this Act, whichever is the later.

### 3 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**office** includes position.

**regulation** means regulation under this Act.

**Tribunal** means the Statutory and Other Offices Remuneration Tribunal established under this Act.

**wages decision** means a decision made by the Industrial Relations Commission under Part 3 of Chapter 2 of the *Industrial Relations Act 1996* of:

(a) the amount, or

(b) the method by which an amount may be determined,

by which the rates of wages in awards under that Act will be varied following a National decision or State decision under that Part.

(2) A reference (however expressed) in this Act to the holding, or the holder, of an office includes a reference to the holding, or the holder, of an appointment to that office.

## 5 Amendment of Schedules 2 and 3

(1) In this section, **public office** means an office, whether or not established by an Act, to which a person may be appointed by the Governor, and includes an office under an uncommenced enactment, but does not include an office specified in Schedule 1 or 4.

(2) The Governor may, from time to time, by regulation, amend Part 1 of Schedule 2 by omitting therefrom words describing any former public office.

(3) The Governor may, from time to time, by regulation, amend Part 2 of Schedule 2 or 3:

(a) by inserting therein words describing any public office, or

(b) by omitting therefrom words describing any public office or former public office.

(4) The Governor may, from time to time, by regulation, amend Schedule 2 or 3 by omitting Part 2 and by inserting instead a Part containing words describing public offices.

(5) The Governor may, from time to time, by regulation, amend Part 1 of Schedule 3 by omitting from Column 1 words describing any public office or former public office, together with any words in Column 2 appearing opposite that description.

## Part 2 Administration

### 6 Statutory and Other Offices Remuneration Tribunal

(1) There shall be a Tribunal to be known as the Statutory and Other Offices Remuneration Tribunal.

(1A) The Tribunal shall have and may exercise and perform the powers, authorities, duties and functions conferred or imposed on the Tribunal by or under this or any other Act.

- (2) The Governor may appoint a person to hold office as the Tribunal.
- (3) The one person may be appointed as, and hold office as, the Tribunal, the Parliamentary Remuneration Tribunal and the Local Government Remuneration Tribunal.
- (4) Notwithstanding anything in this section, a person shall not be appointed as the Tribunal, or as the deputy of the person appointed as the Tribunal, if he or she is:
  - (a) an office holder (within the meaning of Part 3) or an executive office holder (within the meaning of Part 3A),
  - (b) a retired Judge of a court of New South Wales, or
  - (c) a person who has retired from an office in which he or she served in New South Wales with the same status as a Judge of a court of New South Wales.
- (5) Subject to this Act, the Tribunal shall hold office for such period, not exceeding 3 years, as is specified in the instrument of appointment of the Tribunal and shall be eligible for re-appointment.

**6AA Tribunal to give effect to declared government policy on remuneration of chief executive and senior executive office holders**

- (1) This section applies to the determination under Part 3A (Remuneration packages for chief executive and senior executive office holders) of any alteration in the remuneration packages for executive office holders within the meaning of that Part.
- (2) In making a determination to which this section applies, the Tribunal is to give effect to the same policies on increases in remuneration as those that the Industrial Relations Commission is required to give effect to under section 146C of the *Industrial Relations Act 1996* when making or varying awards or orders relating to the conditions of employment of public sector employees.

**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 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 provision of this Act (other than sections 16 (6) and 21) or any other Act.

**Note—**

Section 16 (6) provides that a determination under Part 3 may be made so as to apply differently as between two or more persons holding the same office, being an office specified in Schedule 2 or 3 but not Schedule 1.

Section 21 prevents a determination under Part 3 from operating to reduce the rate at which remuneration is paid to the holder of an office specified in Schedule 1.

The offices specified by Schedule 1 include certain judicial offices.

**6A Deputy of the person holding office as Tribunal**

- (1) The Governor may, subject to section 6 (4), appoint a person to be the deputy of the person holding office as the Tribunal.
- (2) During any illness or absence of the person holding office as the Tribunal, the deputy has, and may exercise and perform, all of the powers, authorities, duties and functions of the Tribunal.
- (3) The Governor may, at any time, revoke the appointment of the deputy.
- (4) The deputy is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the deputy.

**7 Assessors**

- (1) For the purposes of this Act, there are to be the following 2 assessors:
  - (a) the Director-General of the Department of Premier and Cabinet,
  - (b) an individual appointed by the Governor on the nomination of the Minister, being:
    - (i) an individual who has, in the opinion of the Minister, special knowledge relating to salaries payable to persons engaged in commercial, banking, insurance, industrial or other activities at executive or management level, and
    - (ii) is not, except as provided by subsection (1A), in the service of the State.
- (1A) An individual in the service of the State may be appointed as an assessor under



subsection (1) (b) (ii) if the individual is in the service of the State only:

(a) under this Act, or

(b) as a member of a board, tribunal, council, committee, authority or similar body.

(2) In exercising or performing the Tribunal's powers, authorities, duties and functions under this or any other Act, the Tribunal shall:

(a) be assisted by the assessors, and

(b) take into consideration the views and recommendations tendered to the Tribunal by the assessors.

(2A) Despite any other provision of this Act, the assessor appointed under subsection (1) (b), must not assist, or make a recommendation to, the Tribunal with respect to the exercise or performance of the Tribunal's powers, authorities, duties or functions in relation to any office held by that assessor.

(3) Subject to this Act, the assessor appointed under subsection (1) (b) shall hold office for such period, not exceeding 3 years, as is specified in the instrument of his or her appointment and shall be eligible for re-appointment.

(4) The assessor referred to in subsection (1) (a) may appoint a deputy and, in the absence of the assessor, the deputy may act as an assessor.

## **8 Vacation of office**

(1) The person holding office as the Tribunal or assessor appointed under section 7 (1) (b) shall be deemed to have vacated his or her office:

(a) if he or she dies,

(b) if he or she becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her fees or allowances as the Tribunal or assessor or of his or her estate for their benefit,

(c) if he or she becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the [Mental Health Act 1958](#) or a person under detention under Part 7 of that Act,

(d) if he or she is convicted in New South Wales of an indictable offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable,

(e) if he or she resigns his or her office by writing under his or her hand addressed to the Governor, or

(f) if he or she is removed from office by the Governor.

(2) The Governor may remove the person holding office as the Tribunal or assessor referred to in subsection (1) from office for any cause which seems to the Governor sufficient.

### **9 Fees and allowances payable to Tribunal and assessor**

(1) The Tribunal and any assessor appointed under section 7 (1) (b) are entitled to be paid such fees and allowances as the Minister may fix in respect of each of them.

(2) The fees and allowances payable to:

(a) the Tribunal shall be fixed before the appointment of the Tribunal, or

(b) the assessor referred to in subsection (1) shall be fixed before his or her appointment,

and may be varied in respect of any year commencing on 1 April before that day.

### **10 Assistance for the Tribunal**

The Minister shall make available to the Tribunal such officers and employees of the Public Service as may be necessary to assist the Tribunal in the exercise or performance of the powers, authorities, duties and functions of the Tribunal.

#### **10AA Tribunal assistance to other entities**

(1) The Tribunal may enter into arrangements with any Minister or government agency or other body or person in the public sector for the provision of assistance by the Tribunal to the Minister, agency or other body or person by means of the provision of services that are within the Tribunal's field of expertise and relevant to its functions.

(2) However, the Tribunal is not to enter into an arrangement under this section:

(a) for the provision of services relating to the remuneration or allowances payable to the holder of an office specified in Schedule 1, 2, 3 or 4, or

(b) unless the Minister has approved of the arrangement (either generally or in a particular case).

(3) In entering into an arrangement under this section, the Tribunal has a duty to ensure that giving effect to the arrangement will not interfere with the ability of the Tribunal to exercise its functions.

## **Part 3 Remuneration of office holders (other than chief executive or senior executive office holders)**

## 10A Definitions

In this Part:

**allowance** does not include a travelling or subsistence allowance, but includes a travelling or subsistence allowance for travel within Australia by the holder of an office specified in Schedule 1 who is:

- (a) a Judge or Acting Judge of a court, or
- (b) any other judicial officer (within the meaning of the *Judicial Officers Act 1986*) nominated by the Minister by notice in writing to the Tribunal for the purposes of this definition.

**determination** means a determination made by the Tribunal under section 13, 14, 15 or 15A.

**office holder** means the holder of an office specified in Schedule 1, 2 or 3.

**remuneration** means remuneration by way of salary or allowances payable in money to an office holder.

## 11 Payment of remuneration to office holders

- (1) Each office holder is entitled to be paid:
  - (a) a salary that is calculated in such a manner as is specified, and
  - (b) allowances (if any) that are:
    - (i) of such classes or kinds as are specified, and
    - (ii) calculated in such a manner as is specified,in respect of the office holder in a determination that is in force.
- (2) The holder of an office specified in:
  - (a) Column 1 of Part 1 of Schedule 3—is not entitled to be paid remuneration by virtue of this section unless the office holder is the person described in column 2 of that part opposite the office so specified, or
  - (b) Part 2 of Schedule 3—is not entitled to be paid remuneration by virtue of this section unless the office holder is required by the Governor (by the terms of his or her appointment or otherwise) to devote the whole of his or her time to the duties of his or her office.
- (3) All remuneration payable to the holder of an office specified in Schedule 1 by virtue of a determination that is in force is payable out of the Consolidated Fund which, to the necessary extent, is appropriated accordingly.

### **11A Employment benefits for non-judicial office holders**

- (1) This section applies to office holders (other than office holders who are judicial officers within the meaning of the *Judicial Officers Act 1986*) who are nominated by the Minister by notice in writing to the Tribunal for the purposes of this section.
- (2) A determination of the remuneration to be paid to office holders to whom this section applies must fix the remuneration as a single amount without reference to salary or allowances.
- (3) An office holder to whom this section applies is entitled to be provided with employment benefits (within the meaning of Division 4 of Part 3.1 of the *Public Sector Employment and Management Act 2002*) if:
  - (a) the office holder elects by notice in writing to the Minister to be provided with those employment benefits, and
  - (b) the Minister approves of that election, and
  - (c) the remuneration otherwise payable to the office holder under section 11 is reduced by the cost of those employment benefits (being the cost determined under that Division of similar employment benefits provided to an executive officer under that Division).
- (3A) Contributions to a superannuation scheme by an employer (for superannuation purposes) in respect of an office holder who has made an election under subsection (3) that are required to be made by the employer under a law of the State relating to superannuation are, until provided for by an election under that subsection, taken to be an employment benefit for which there is an election in force under that subsection.
- (4) A nomination referred to in subsection (1) may be revoked at any time, but the revocation does not apply to the determination in force at the time of the revocation.
- (5) An election referred to in subsection (3) (a) may, with the approval of the Minister, be revoked at any time.
- (6) In the case of the holder of an office specified in Schedule 1:
  - (a) a nomination referred to in subsection (1) may not be made or revoked without the approval of that office holder, and
  - (b) an election referred to in subsection (3) (a) may be made or revoked without the Minister's approval.
- (7) This section has effect despite anything to the contrary in this Part.

### **11B Salary sacrifice for motor vehicles and superannuation for office holders not subject**

**to section 11A**

- (1) This section applies to office holders other than office holders to whom section 11A applies.
- (2) The employment benefits that an office holder may be provided with under this section are either or both of the following:
  - (a) the provision of a motor vehicle for private use by the office holder,
  - (b) the payment, on behalf of the office holder, of employee contributions to a superannuation scheme (except in the case of an office holder to whom the *Judges' Pensions Act 1953* applies).
- (3) An office holder to whom this section applies is entitled to be provided with any such employment benefit if:
  - (a) the office holder elects by notice in writing to the Minister to be provided with that employment benefit, and
  - (b) the Minister approves of the provision of that employment benefit, and
  - (c) the salary otherwise payable to the office holder under section 11 is reduced by the cost of that employment benefit (being the cost determined under Division 4 of Part 3.1 of the *Public Sector Employment and Management Act 2002* of a similar employment benefit under that Division).
- (4) An election referred to in subsection (3) (a) may, with the approval of the Minister, be revoked at any time.
- (5) This section has effect despite anything to the contrary in this Part.

**12 (Repealed)**

**13 Annual determinations**

The Tribunal shall, in each year, make a determination of the remuneration to be paid to office holders as on and from 1 October in that year.

**14 Special determinations: by direction**

- (1) Where the Minister so directs, the Tribunal, not later than the day specified in the direction as the day on or before which the determination is to be made, shall, after taking into consideration such matters as are specified in the direction and such other matters as the Tribunal thinks fit, make a determination as to whether, and (if so) how, any determination already made should be altered in relation to such office holders as are referred to in the direction.
- (2) A reference in subsection (1) to an office holder includes a reference to an office

holder whose remuneration is not fixed by the determination to which the determination made under this section relates.

## **15 Special determinations: wages decisions**

The Tribunal may, for the purpose of applying, in such manner as the Tribunal thinks appropriate, a wages decision to the remuneration of office holders or any of them or any class of them, make a determination as to whether, and (if so) how, any determination already made should be altered.

### **15A Special determinations: wages decisions (on or after 4 April 1984)**

- (1) While this section has effect, sections 13, 15, 16 (2), 18 (2) and 20 (2) do not have effect.
- (2) The Tribunal shall, as soon as practicable after the making of a wages decision, make a determination of the remuneration to be paid to office holders as on and from the day to be specified in the determination.
- (3) The reference in this section to a wages decision is a reference to a wages decision made on or after 4 April 1984 but does not include a reference to a decision prescribed by the regulations as a decision to which this section does not apply.

## **16 General provisions as to determinations**

- (1) In making a determination, the Tribunal may determine:
  - (a) that any class or kind of remuneration shall be at rates the same as or higher or lower than those at which it was payable immediately before the determination comes into force,
  - (b) that any class or kind of allowance payable immediately before the determination came into force shall:
    - (i) be payable to office holders or any of them or any class of them who or which are or is not in receipt of an allowance of that class or kind immediately before the determination comes into force,
    - (ii) be not payable to office holders or any of them or any class of them who or which are or is in receipt of an allowance of that class or kind immediately before the determination comes into force,
    - (iii) cease to be payable, or
    - (iv) be replaced by an allowance of some other class or kind, or
  - (c) that, in addition to any class or kind of remuneration payable at the time the determination is made, an allowance of some additional class or kind shall be payable to office holders or any of them or any class of them.

- (1A) A determination by the Tribunal of the remuneration to be paid to an office holder who is an officer in the Public Service may not be less than the maximum salary, at the time of the determination, for a clerk (grade 12) in the Public Service.
- (2) The Tribunal may, in a determination, make provision for the application, in such manner as the Tribunal thinks fit, of any wages decision that may be made after the date of the determination, but before the end of the period in which the determination has effect, to the remuneration to be paid to office holders or any of them or any class of them.
- (3) The Tribunal may make a determination that applies in relation to an office specified in Schedule 1, 2 or 3 notwithstanding that:
  - (a) no person holds the office for the time being, or
  - (b) the person who holds the office for the time being is not entitled to be paid remuneration under this Act.
- (4) The Tribunal may make a determination that does not apply in relation to an office specified in Schedule 1, 2 or 3 if:
  - (a) no person holds the office for the time being, or
  - (b) the person who holds the office for the time being is not entitled to be paid remuneration under this Act.
- (5) The Tribunal may, in a determination that applies in relation to an office specified in Schedule 2 or 3, provide that a special allowance (whether or not in addition to any other allowance) is payable only to the holder of the office who is named in the determination.
- (6) A determination may be made so as to apply differently as between two or more persons holding the same office, being an office specified in Schedule 2 or 3 but not Schedule 1.
- (7) A reference in this section to an office specified in Schedule 2 includes a reference to an office specified in Schedule 1 to the [Public Service Act 1979](#).

## **17 Inquiries**

- (1) Before making a determination, the Tribunal may make such inquiry as the Tribunal thinks necessary.
- (2) An inquiry held for the purpose of a determination to be made under section 13 may not be commenced before 1 April in the year in which the determination is to be made.
- (3) In the exercise or performance of the Tribunal's powers, authorities, duties and

functions under this Part:

- (a) the Tribunal may inform himself or herself in such manner as the Tribunal thinks fit,
  - (b) the Tribunal may receive written or oral submissions,
  - (c) the Tribunal shall take into consideration submissions received by the Tribunal relating to the remuneration of office holders, whether or not those submissions were received in response to an invitation under subsection (4),
  - (d) the Tribunal is not required to conduct any proceedings in a formal manner, and
  - (e) the Tribunal is not bound by the rules of evidence.
- (4) Without affecting the generality of subsection (3), the Tribunal may invite submissions from office holders, Ministers of the Crown, members and officers of statutory bodies and Departments of the Government and any other persons.

#### **18 Tribunal's reports**

- (1) (Repealed)
- (2) The Tribunal shall, in each year, make a report to the Minister of the Tribunal's determination made in that year under section 13.
- (3) The Tribunal shall, not later than the day specified in a direction referred to in section 14, as the day on or before which the determination is to be made, make a report to the Minister of the Tribunal's determination made in consequence of that direction.
- (4) The Tribunal shall, as soon as practicable after making a determination under section 15 or 15A, make a report to the Minister of the Tribunal's determination.

#### **19 Report to be tabled**

- (1) The report of a determination shall:
  - (a) be published in the Gazette as soon as practicable after the report is received by the Minister, and
  - (b) be laid before each House of Parliament within 14 sitting days of that House after the day on which it is so published.
- (2) Failure to lay a report before each House of Parliament in accordance with this section does not affect the validity of a determination, but the report must nevertheless be laid before each House.

#### **19A Disallowance of determinations**

- (1) Either House of Parliament may pass a resolution disallowing a determination:



- (a) at any time before the relevant report is laid before the House, or
  - (b) at any time after the relevant report is laid before the House, but only if notice of the resolution was given within 15 sitting days of the House after the relevant report was so laid.
- (2) On the passing of a resolution disallowing a determination:
- (a) in the case of a determination under section 13 or 15A—the determination shall have effect as if it were a determination that remuneration payable to office holders shall be of the same classes or kinds, and at the same rates, as those payable immediately before the determination came or comes into force, as the case requires, or
  - (b) in the case of a determination under section 14 or 15—the determination shall thereupon cease to have effect.
- (3) Nothing in subsection (2) affects any remuneration paid or payable in respect of any period before the date of the resolution referred to in that subsection.

## **20 Operation of determinations**

- (1) Subject to this Act, a determination, the report of which is published in the Gazette under section 19 (1) and which was made under:
- (a) (Repealed)
  - (b) section 13—shall come into force, or be deemed to have come into force, on 1 October in the year in which it is made, and
  - (c) section 14, 15 or 15A—shall come into force, or be deemed to have come into force, on the day specified in the determination as the day on which the determination is, or is to be deemed, to come into force.
- (2) Subject to this Act, a determination shall continue in force until and including 30 September next following the day on which it comes into force.
- (2A) Subject to this Act, a determination made under section 15A shall continue in force until another determination made under section 13 or 15A comes into force.
- (2B) A determination made under section 13 or 15A has effect subject to any subsequent alteration that was made under section 14 or 15 and that is in force.
- (2C) A determination made under section 13 shall not come into force if, after it was made and before it would, but for this subsection, have come into force, a determination made under section 15A comes into force.
- (3) A determination has effect subject to any alteration made to it by a determination that was made under section 14 or 15 and that is in force.

(4) Where:

(a) a determination is made under section 15 for the purpose of applying a wages decision,

(a1) a determination is made under section 15A in consequence of the making of a wages decision, or

(b) a wages decision is to be applied in accordance with a provision of the kind referred to in section 16 (2),

no alteration of remuneration shall be effected thereby before:

(c) the day as on and from which rates of wages in awards made under the *Industrial Relations Act 1996* are varied in consequence of the wages decision, or

(d) where any of those rates are so varied as on and from different days—the earlier or earliest of those days.

(5) A determination shall not be challenged, reviewed, quashed or called into question before any court or in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition, mandamus, certiorari or otherwise.

## **21 Restrictions on reduction of remuneration of certain office holders**

(1) Notwithstanding any other section of this Act, a determination does not operate so as to reduce the rate at which remuneration is payable to the holder of an office specified in Schedule 1.

(2) Where an Act contains a provision to the effect that subsection (1) does not apply to a determination made before the date of assent to that Act, then, subject to that Act, the reduction effected by virtue of that Act does not, in relation to any period before that date, apply to a person who is not an office holder at that date.

(3) A determination does not operate so as to reduce, contrary to a written contract or agreement entered into by a person and by or on behalf of the State or the Government of the State, the rate at which remuneration is payable to the person as an office holder, unless the person agrees in writing.

## **22 Remuneration payable during period before publication of report**

(1) If the report of a determination made under section 13 is published in the Gazette after 1 October in the year in which it is made, each office holder is, for the period commencing on and including that day and ending on and including the day preceding the date of publication, entitled to be paid the remuneration that the office holder would have been entitled to be paid had the determination in force on the preceding 30 September continued in force, subject to any adjustment necessary by reason of

the making and publication of the report.

- (2) Notwithstanding anything in this Act, where a determination takes effect on a date (referred to in this subsection as **the effective date**) that is earlier than the date of publication in the Gazette of the report of the determination, a person who:
- (a) was an office holder at or at any time after the effective date, and
  - (b) was not an office holder at the date of publication,
- is not, in relation to any period before the date of publication, affected by the determination, unless:
- (c) the determination would, if he or she had continued in office, operate to increase the remuneration payable to him or her in relation to that period, and
  - (d) he or she ceased to hold office otherwise than by reason of resigning office (except by way of retirement) or by reason of removal from office by the Governor or by resolution of either or both of the Houses of Parliament.

### **23 Remuneration of office holders not dealt with**

- (1) Where, but for this subsection, no remuneration would be payable to an office holder in respect of any period during which he or she is an office holder, the Minister may, from time to time, fix the remuneration payable to the office holder in respect of that period.
- (2) The remuneration payable to an office holder under subsection (1) is payable until a determination applicable to the office holder comes into force.
- (3) The holder of an office specified in:
- (a) Column 1 of Part 1 of Schedule 3—is not entitled to be paid remuneration by virtue of this section unless the office holder is the person described in Column 2 of that Part opposite the office so specified, or
  - (b) Part 2 of Schedule 3—is not entitled to be paid remuneration by virtue of this section unless the office holder is required by the Governor (by the terms of the office holder's appointment or otherwise) to devote the whole of the office holder's time to the duties of the office holder's office.

### **23A Application of quantum and principles determined in State Wage Cases**

The Tribunal in making a determination under section 14 or 15A, and the Minister in fixing remuneration under section 23, shall:

- (a) have regard to the most recent determination of the Industrial Commission of New South Wales under section 57 of the *Industrial Arbitration Act 1940* of:

- (i) the amount, or
  - (ii) the method by which an amount may be determined,
- by which rates of wages in awards made under that Act shall be varied, and
- (b) adopt, as far as practicable, the principles of wage fixation for the time being adopted as a general ruling or declaration of principle, by that Commission, in connection with awards made under that Act.

### **23B Suspension of sections 15A and 23A**

- (1) The Governor may, by order published in the Gazette, declare that sections 15A and 23A are suspended either until a specified date or until further notice is given by order published in the Gazette.
- (2) While a declaration under this section is in force, sections 15A and 23A do not have effect.

#### **Editorial note—**

Declaration suspending operation of secs 15A and 23A until further notice published in Gazette No 5 of 20.1.1989, p 322.

### **24 This Act to prevail**

An office holder is entitled to the remuneration provided for by this Act in respect of the office holder, instead of that payable to the office holder by or under any other Act.

## **Part 3A Remuneration packages for chief executive and senior executive office holders**

### **24A Definitions**

In this Part:

**chief executive office holder** means the holder of a position referred to in Parts 1 and 2 of Schedule 2 to the *Public Sector Employment and Management Act 2002* or the Commissioner of Police.

**determination** means a determination made by the Tribunal under section 24B, 24C or 24D.

**executive office holder** means a chief executive office holder or a senior executive office holder.

**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.

**senior executive office holder** means the holder of a senior executive position within the meaning of the *Public Sector Employment and Management Act 2002* or the holder of a position determined as an executive position under Division 2 of Part 5 of the *Police Act 1990*.

#### **24B Initial determinations**

- (1) The Tribunal is required to make, as soon as practicable after the commencement of this Part, a determination of the remuneration packages for executive office holders.
- (2) The Tribunal is required to make, as occasion requires, a determination of the remuneration package for an executive office holder not included in any previous determination.
- (3) The Tribunal may make a determination under this section in respect of a prospective executive office holder notified to the Tribunal by the Minister.

#### **24C Annual determinations**

The Tribunal is required to make, in each year, a determination of the remuneration packages for executive office holders as on and from 1 October in that year.

#### **24D Special determinations**

- (1) If the Minister so directs, the Tribunal is required to make (not later than the day specified in the direction as the day on or before which the determination is to be made) a determination as to whether, and (if so) how, any determination already made should be altered in relation to such executive office holders as are referred to in the direction.
- (2) A reference in subsection (1) to an executive office holder includes a reference to an executive office holder whose remuneration package is not fixed by the determination to which the determination made under this section relates.

#### **24E Directions by Minister**

- (1) The Minister may give the Tribunal directions as to matters which the Tribunal should take into consideration when making determinations of the remuneration packages for executive office holders or for any of them or for any class of them.
- (2) In making a determination, the Tribunal must take into consideration any such matters and such other matters as the Tribunal thinks fit.

#### **24F General provisions relating to determinations**

- (1) In making a determination, the Tribunal may:

- (a) fix, as a remuneration package, a specified amount or any amount that is within a specified range of amounts, or
  - (b) provide that a different remuneration package applies in the case of an executive office holder who is named in the determination, or
  - (c) increase, reduce or not change any remuneration package, or
  - (d) fix remuneration packages for particular executive office holders or for classes of executive office holders.
- (2) A remuneration package determined by the Tribunal for an executive office holder may not be less than the remuneration package which the Tribunal considers appropriate for a clerk (grade 12) in the Public Service with general administrative duties.
- (3) The Tribunal may make a determination that applies in relation to an executive office holder even though no person holds the office for the time being.

#### **24G Inquiries**

- (1) Before making a determination, the Tribunal may make such inquiry as the Tribunal thinks necessary.
- (2) An inquiry for the purpose of a determination to be made under section 24C (Annual determinations) may not be commenced before 1 April in the year in which the determination is to be made.
- (3) In the exercise or performance of the Tribunal's powers, authorities, duties and functions under this Part:
- (a) the Tribunal may inform himself or herself in such manner as he or she thinks fit,
  - (b) the Tribunal may receive written or oral submissions,
  - (c) the Tribunal must take into consideration submissions received by him or her relating to the remuneration packages for executive office holders, whether or not those submissions were received in response to an invitation under subsection (4),
  - (d) the Tribunal is not required to conduct any proceedings in a formal manner, and
  - (e) the Tribunal is not bound by the rules of evidence.
- (4) Without affecting the generality of subsection (3), the Tribunal may invite submissions from executive office holders, Ministers of the Crown, members and officers of statutory bodies and Departments of the Government and any other persons.

#### **24H Tribunal's reports**

- (1) The Tribunal must, as soon as practicable after making a determination under section 24B (Initial determinations), make a report to the Minister of the Tribunal's determination.
- (2) The Tribunal must, in each year, make a report to the Minister of the Tribunal's determination under section 24C (Annual determinations).
- (3) The Tribunal must, not later than the day specified in a direction referred to in section 24D (Special determinations) as the day on or before which the determination is to be made, make a report to the Minister of the Tribunal's determination made in consequence of that direction.

#### **24I Publication of determinations**

The report of a determination may be published by the Minister in the Gazette and in such other manner as the Minister thinks fit.

#### **24J Operation of determinations**

- (1) Subject to this Part, a determination which was made under:
  - (a) section 24B (Initial determinations)—is to be taken to have come into force on the date that the first appointment is made to the office concerned, and
  - (b) section 24C (Annual determinations)—comes into force, or is to be taken to have come into force, on 1 October in the year in which it is made, and
  - (c) section 24D (Special determinations)—comes into force, or is to be taken to have come into force, on the day specified in the determination as the day on which the determination is, or is to be taken, to come into force.
- (2) Subject to this Part, a determination continues in force until and including 30 September next following the day on which it comes into force.
- (3) Subject to this Part, a determination has effect subject to any determination that was made under section 24D (Special determinations) and that is in force.
- (4) A determination may not be challenged, reviewed, quashed or called into question before any court in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition, mandamus, certiorari or otherwise.

#### **24K Remuneration package during period before making of report**

- (1) If the report of a determination under section 24C (Annual determinations) is made to the Minister after 1 October in any year, the remuneration package for each executive office holder is (for the period commencing on and including that day and ending on

and including the day preceding the date the report is made) the remuneration package that would have been applicable had the determination in force on the preceding 30 September continued in force (subject to any adjustment necessary because of the making of the report).

- (2) Despite anything in this Part, if a determination takes effect on a date (the **effective date**) that is earlier than the date that the report of the determination is made to the Minister, a person who:
- (a) was an executive office holder at or at any time before the effective date, and
  - (b) was not an executive office holder at the date that the report is made,
- is not, in relation to any period before the date the report is made, affected by the determination, unless:
- (c) the determination would, if the person had continued in office, operate to increase the remuneration package for the person in relation to that period, and
  - (d) the person ceased to hold office otherwise than because of the resignation of his or her office (except by way of retirement) or because of his or her removal from office.

#### **24L Remuneration packages for executive office holders not dealt with**

- (1) If, but for this section, no remuneration package would be applicable to an executive office holder in respect of any period during which he or she is an executive office holder, the Minister may, from time to time, fix the remuneration package for the executive office holder in respect of that period.
- (2) The remuneration package for an executive office holder under this section applies until a determination applicable to the person comes into force.

### **Part 4 Miscellaneous**

#### **25 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

#### **26 Determination of emoluments**

- (1) In this section, **emoluments** includes salary, allowances, fees and expenses, but does not include remuneration within the meaning of this Act.
- (2) A reference (however expressed), in an enactment, or part of an enactment, for the time being prescribed for the purposes of this section, to:



(a) the determination or fixing of emoluments by the Governor or by regulation, or

(b) emoluments determined or fixed by the Governor or by regulation,

is a reference to:

(c) the determination or fixing of emoluments by the Minister administering the enactment or part, or

(d) emoluments determined or fixed by that Minister,

as the case may require.

(3) A reference in subsection (2) (a) or (b) to a regulation does not include a reference to a regulation under this Act.

## **27 Repeal of Act No 10, 1975**

The *Statutory Salaries Adjustment Act 1975* is repealed.

## **28, 29 (Repealed)**

## **30 Transitional provisions**

Schedule 6 has effect.

## **Schedule 1 Public offices**

(Sections 4, 5, 11, 21)

Chief Justice of the Supreme Court

President of the Court of Appeal

Judge of the Supreme Court, other than the Chief Justice and President of the Court of Appeal

President of the Industrial Relations Commission of New South Wales

Vice-President of the Industrial Relations Commission of New South Wales

Judge of the District Court, other than the Chief Judge

President of the Children's Court

Associate Judge or acting associate Judge (under the *Supreme Court Act 1970*)

Chief Magistrate (under the *Local Court Act 2007*)

Deputy Chief Magistrate (under the *Local Court Act 2007*)

Magistrate (under the *Local Court Act 2007*), other than the Chief Magistrate, a Deputy Chief

Magistrate, a Children's Magistrate, the State Coroner or the Deputy State Coroner

Chief Industrial Magistrate

Children's Magistrate

State Coroner

Deputy State Coroner

Auditor-General

Electoral Commissioner for New South Wales

Ombudsman

Commissioner of the New South Wales Crime Commission

Full-time Assistant Commissioner of the New South Wales Crime Commission

Director of Public Prosecutions  
Acting Judge of the Supreme Court or of the District Court  
President of the Administrative Decisions Tribunal  
Privacy Commissioner  
Commissioner for the Police Integrity Commission  
Information Commissioner  
Public Service Commissioner  
WorkCover Independent Review Officer

## **Schedule 2 Public offices**

(Sections 4, 5, 11)

### **Part 1**

Valuer-general  
Senior Public Defender  
Deputy Senior Public Defender  
Public Defender  
Solicitor General  
Senior referee of consumer claims tribunals  
Referee of consumer claims tribunals, other than the senior referee  
Commissioner of Corrective Services  
Deputy Commissioner of Corrective Services  
Crown Advocate  
Senior Commissioner (under the [Land and Environment Court Act 1979](#))  
Full-time Commissioner (under the [Land and Environment Court Act 1979](#))  
Full-time President of the Anti-Discrimination Board  
President of the Workers Compensation Commission  
Deputy President of the Workers Compensation Commission  
Acting Deputy President of the Workers Compensation Commission  
Registrar of the Workers Compensation Commission  
Senior Arbitrator or other full-time Arbitrator of the Workers Compensation Commission  
Deputy Director of Public Prosecutions  
Solicitor for Public Prosecutions  
Senior Crown Prosecutor  
Deputy Senior Crown Prosecutor  
Crown Prosecutor  
Member of the New South Wales Aboriginal Land Council  
Full-time Assessor (under Part 3 of the [Local Court Act 2007](#))  
Part-time Assessor (under Part 3 of the [Local Court Act 2007](#))  
Deputy President of the Industrial Relations Commission (not being a judicial member)  
Commissioner (being a member of the Industrial Relations Commission)  
Chairperson of the Independent Pricing and Regulatory Tribunal (being a full-time member)  
Full-time permanent member of the Independent Pricing and Regulatory Tribunal who is not the Chairperson  
Full-time conciliator (under the [Health Care Complaints Act 1993](#))  
Full-time or part-time President of the Mental Health Review Tribunal  
Full-time Deputy President of the Mental Health Review Tribunal

Part-time Deputy President of the Mental Health Review Tribunal  
Chairperson of the Board of the Aboriginal Housing Office (being a full-time member)  
Full-time member of the Administrative Decisions Tribunal (other than the President of the Tribunal)  
Full-time assessor of the Administrative Decisions Tribunal  
Inspector of Custodial Services  
Chairperson of the Consumer, Trader and Tenancy Tribunal appointed on a full-time basis and working on a full-time basis  
Full-time member of the Consumer, Trader and Tenancy Tribunal (other than the Deputy Chairperson (Registry and Administration))  
Part-time member of the Consumer, Trader and Tenancy Tribunal (other than the Deputy Chairperson (Registry and Administration))  
Registrar under the [Aboriginal Land Rights Act 1983](#)  
Commissioner for the Natural Resources Commission (being a full-time office holder)  
Assistant Commissioner for the Natural Resources Commission (being a full-time office holder)  
Principal Claims Assessor under the [Motor Accidents Compensation Act 1999](#)  
Chairperson of the Board of Infrastructure NSW  
Full-time member of the Planning Assessment Commission  
Mental Health Commissioner  
Full-time Deputy Mental Health Commissioner

## Part 2

Clerk of the Legislative Assembly  
Clerk of the Parliaments  
Director of the State Secretariat to the Constitution Convention Delegation  
Chairperson, Local Land Boards  
Deputy Clerk of the Legislative Assembly  
Deputy Clerk of the Legislative Council  
Executive Manager, Parliamentary Services  
Parliamentary Budget Officer (under the [Parliamentary Budget Officer Act 2010](#))

## Schedule 3 Public offices

(Sections 4, 5, 11)

### Part 1

#### Column 1

##### Public office

Chairperson of the Law Reform Commission

#### Column 2

##### Office holder to whom remuneration is payable

The holder of the office if he or she is not the holder of a judicial office and if he or she is required by the Governor (by the terms of his or her appointment or reappointment) to devote the whole of his or her time to the duties of his or her office

Deputy Chairperson of the Law Reform Commission

The holder of the office if he or she is not the holder of a judicial office and if he or she is required by the Governor (by the terms of his or her appointment or reappointment) to devote the whole of his or her time to the duties of his or her office

Commissioner of the Law Reform Commission, other than the Chairperson and Deputy Chairperson

The holder of the office if he or she is not the holder of a judicial office and if he or she is required by the Governor (by the terms of his or her appointment or reappointment) to devote the whole of his or her time to the duties of his or her office

## Part 2

President of the Guardianship Tribunal  
Deputy President of the Guardianship Tribunal  
Full-time appointed member of the Independent Liquor and Gaming Authority

## Schedule 4 Excluded offices

(Section 5)

Statutory and Other Offices Remuneration Tribunal  
Parliamentary Remuneration Tribunal  
Minister of the Crown  
Member of the Executive Council  
An office for the time being specified in Schedule 1 to the [Parliamentary Remuneration Tribunal Act 1975](#)  
Deputy President of the Industrial Relations Commission, being a judicial member  
Chief Judge of the District Court  
Commissioner or Assistant Commissioner of the Independent Commission Against Corruption

## Schedule 5 (Repealed)

## Schedule 6 Savings, transitional and other provisions

(Section 30)

## Part 1 Preliminary

### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

[Statutory and Other Offices Remuneration Amendment Act 2001](#)

any other Act that amends this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provision consequent on enactment of [Statutory and Other Offices Remuneration Amendment Act 2001](#)**

### **2 Travelling allowances for judicial officers before publication of first report**

- (1) In this clause:

**the 2001 amendment** means the amendment made by the [Statutory and Other Offices Remuneration Amendment Act 2001](#) to the definition of **allowance** in section 10A.

- (2) An office holder is, for the period:

- (a) commencing on and including the date of commencement of the 2001 amendment, and
- (b) ending on and including the day preceding the date of operation of the first determination made under this Act of the travelling or subsistence allowance payable to the office holder for travel within Australia,

entitled to be paid the travelling or subsistence allowance for travel within Australia that the office holder would have been entitled to be paid if the 2001 amendment had not been made, subject to any adjustment necessary because of the making of the determination.

## **Part 4 Provision consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2008](#)**

### **4 Appointment of assessors**

- (1) An assessor whose appointment under section 7 (1) (b) is in force immediately before the substitution of section 7 (1) by the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2008 \(the amending Act\)](#), is taken to have been appointed under that subsection as so substituted for the remainder of the term specified in the assessor's instrument of appointment.
- (2) Any such assessor, if eligible for re-appointment, may be reappointed.

- (3) Section 7 (2A), as inserted by the amending Act, extends to an assessor whose appointment under section 7 (1) (b) is in force immediately before the insertion of that subsection.

## **Part 5 Provision consequent on enactment of [Statutory and Other Offices Remuneration Amendment \(Judicial and Other Office Holders\) Act 2013](#)**

### **5 Making of first principal regulation after amendments**

Section 5 of the [Subordinate Legislation Act 1989](#) is taken not to apply to the first regulation made under this Act after the commencement of the [Statutory and Other Offices Remuneration Amendment \(Judicial and Other Office Holders\) Act 2013](#).