



Judicial Salaries and Allowances Determination 2003

Pursuant to the Remuneration Authority Act 1977 and,—

- (a) in relation to the Chief Justice, to section 9A(1)(a) and (b) of the Judicature Act 1908 and, to the extent that this determination relates to salaries and allowances payable to the Chief Justice as head of the Supreme Court, section 11 of the Interpretation Act 1999:
- (b) in relation to the Judges of the Supreme Court, to section 33 of the Supreme Court Act 2003 and section 11 of the Interpretation Act 1999:
- (c) in relation to the President of the Court of Appeal, the other Judges of the Court of Appeal, and the Judges of the High Court, to section 9A(1)(a) and (b) of the Judicature Act 1908:
- (d) in relation to the Chief High Court Judge, to section 9A(1)(a) and (b) of the Judicature Act 1908 and section 11 of the Interpretation Act 1999:
- (e) in relation to the Chief Judge of the Employment Court and the other Judges of the Employment Court, to section 206 of the Employment Relations Act 2000:
- (f) in relation to the Chief Judge of the Maori Land Court, to the Deputy Chief Judge of the Maori Land Court, and the other Judges of the Maori Land Court, to section 13(1)(a) and (b) of Te Ture Whenua Maori Act 1993:
- (g) in relation to the Chief District Court Judge, the Principal Family Court Judge, the Principal Youth Court Judge, the Principal Environment Judge, and the other District Court Judges, to section 6(1)(a) and (b) of the District Courts Act 1947:
- (h) in relation to the Masters of the High Court, to section 26F(1)(a) and (b) of the Judicature Act 1908,—

the Remuneration Authority makes the following determination (to which is appended an Explanatory memorandum).

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Determination

1 Title

This determination is the Judicial Salaries and Allowances Determination 2003.

2 Commencement

- (1) Except as provided in subclause (2), this determination is deemed to have come into force on 1 October 2003.
- (2) This determination, to the extent that it relates to the salaries and allowances payable on and after 1 January 2004 to the Chief Justice as the head of the Supreme Court, the Judges of the Supreme Court, and the Chief High Court Judge, comes into force on 1 January 2004.

3 Expiry

This determination expires on 30 September 2004.

4 Salaries of judicial officers

The salaries payable to the judicial officers specified in the Schedule must be paid at the respective rates set out in that schedule.

5 Principal allowances of judicial officers

Principal allowances for general expenses must be paid to the judicial officers specified in the Schedule at the respective rates set out in that schedule.

6 Revocation

The Judicial Salaries and Allowances Determination 2002 (SR 2002/400) is revoked.

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Schedule Salaries and principal allowances

	Yearly rate of salary payable on and after 1 October 2003	Yearly rate of salary payable on and after 1 January 2004	Yearly rate of principal allowance for general expenses pay- able on and after 1 Octo- ber 2003	Yearly rate of principal allowance for general expenses pay- able on and after 1 Janu- ary 2004
Chief Justice	326,900	335,000	7,900	
Judge of the Supreme Court		313,900		6,500
President of the Court of Appeal	312,500		6,500	
Judge of the Court of Appeal	292,000		5,600	
Chief High Court Judge		291,000		5,600
Judge of the High Court	272,000		5,600	
Chief District Court Judge	268,900		5,000	
Principal Fam- ily Court Judge	230,600		5,000	
Principal Youth Court Judge	223,400		5,000	
Principal Envi- ronment Judge	223,400		5,000	
District Court Judge	208,300		4,100	
Chief Judge of the Employ- ment Court	268,200		5,600	
Judge of the Employment Court	242,800		4,700	
Chief Judge of the Maori Land Court	236,500		5,000	
Deputy Chief Judge of the Maori Land Court	223,800		4,700	
Judge of the Maori Land Court	208,300		4,100	

	Yearly rate of salary payable on and after 1 October 2003	Yearly rate of salary payable on and after 1 January 2004	Yearly rate of principal allowance for general expenses pay- able on and after 1 Octo- ber 2003	Yearly rate of principal allowance for general expenses pay- able on and after 1 Janu- ary 2004
Master of the High Court	208,300			4,100

Dated at Wellington this 10th day of December 2003.

H. D. Peacock, Chairman.

B. A. Wakem, Member.

D. Oughton, Member.

Explanatory memorandum

This memorandum is not part of the determination, but is intended to indicate its general effect.

This determination, which is deemed to have come into force on 1 October 2003, establishes salaries and allowances for the newly created roles of Supreme Court Judge, Chief High Court Judge, and the enhanced role of the Chief Justice as head of the Supreme Court and leader of the New Zealand judiciary.

The determination also allows for a 3% increase in salary levels for all benches. A separate determination adjusts the superannuation subsidy level for Judges covered by the post-1992 superannuation scheme, as from 1 January 2004.

A comparison of remuneration values shows that there has been a disparity between Judges in the pre-1992 and post-1992 superannuation schemes. The Government Actuary has calculated the inherent

value of the subsidy in the pre-1992 scheme during the 16 years that count for benefits to be well in excess of 30%.

The differences are shown below in respect of the District Court and the High Court to illustrate the point.

	Before 1 October 2003				From 1 January 2004			
	District Court		High Court		District Court		High Court	
	GSF \$000	Not GSF \$000	GSF \$000	Not GSF \$000	GSF \$000	Not GSF \$000	GSF \$000	Not GSF \$000
Salary	202.2	202.2	264.1	264.1	208.3	208.3	272.0	272.0
Superannuation subsidy*	70.8	40.4	92.4	52.8	72.9	52.1	95.2	68.0
Value of Sabbatical	13.6	12.1	35.7	31.7	14.1	13.0	36.7	34.0
Value of package	286.6	254.7	392.2	348.6	295.3	273.4	403.9	374.0

*Assumes a subsidy rate of 35% gross for the GSF.

The Remuneration Authority has previously commented on the barrier to recruitment of high quality candidates for the judiciary (notably in the High Court) to which the lack of certainty of retirement benefits has contributed.

That issue remains and is now acute.

It is worth stating again why it is important to provide the judiciary with security in retirement.

A number of provisions in various Acts reflect the importance of the principle of judicial independence in the New Zealand constitutional framework.

There are 3 essential elements to judicial independence—

- security of tenure; and
- financial security; and
- institutional independence.

With respect to financial security, Judges are in a different position to the rest of the society. As the Solicitor-General stated in 2003:

“Judicial independence requires that judges as a group have a greater degree of protection from financial concerns than other groups within society. They must be free to administer justice through the courts impartially, which means that they must be comparatively free of financial pressures both while on the Bench and

after retirement. As a matter of principle it is undesirable that judges become personally involved in significant investment activity while on the Bench.

Unlike other groups, judges are subject to a mandatory retirement age (an exception to anti-discrimination provisions which is justified by reference to judicial independence requirements) and to conventions that are, in effect, permanent restraint of trade clauses, which prevent them from undertaking the form of income earning work after retirement that they are best suited for, namely legal practice (some forms of work after retirement from judicial office are acceptable, ie, arbitration work). Judges must accept the mandatory retirement age and the restriction on their income earning capacity after retirement in order to preserve the integrity of the justice system.

Further, as a practical matter, given that for many judges accepting judicial office involves a significant reduction in income, uncertainty as to their position on retirement, coupled with the factors just mentioned, is likely to create a disincentive for potential appointees to go to the Bench.

I doubt that a defined contribution scheme meets the elements of judicial independence as generally accepted, at least if it does not have some form of defined benefit floor. In the absence of such a floor, judges have no certainty as to their financial position on retirement, which will be determined by market conditions prevailing at the time. As they are responsible for the investment of the funds contributed in their names, they must take some active interest in investment markets and fund performance.”

The Solicitor-General summarised his overall conclusion as follows:

“The defined contribution scheme creates undesirable incentives and ... exposes judges to financial pressure both before and after retirement in a way that is inconsistent with the requirements of judicial independence.”

The Remuneration Authority supports this assessment.

As there is no prospect of a defined benefit scheme being re-established for this group of Judges, the Authority believes it must restore a greater degree of parity with pre-1992 Judges in terms of the value of the remuneration package and allow for greater certainty of retirement income potential.

Accordingly, the superannuation determination raises the superannuation subsidy rate for post-1992 Judges by 5% to 25% and signals that the Authority will further close the gap in its next determination.

Issued under the authority of the Acts and Regulations Publication Act 1989 and section 12B(9) of the Remuneration Authority Act 1977.

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