

**THE JUDICIAL SALARIES AND ALLOWANCES  
DETERMINATION 1985**

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PURSUANT,—

- (a) In relation to the Chief Justice, the President of the Court of Appeal, the Judges of the Court of Appeal, and the other Judges of the High Court, to both section 9A (1) (a) and (b) of the Judicature Act 1908 (as inserted by section 2 of the Judicature Amendment Act (No. 3) 1985) and the Higher Salaries Commission Act 1977:
- (b) In relation to the Chief Judge of the Arbitration Court and the other Judges of the Arbitration Court, to both section 39 (1) (a) and (b) and (2) of the Industrial Relations Act 1973 (as substituted by section 2 of the Industrial Relations Amendment Act (No. 2) 1985) and the Higher Salaries Commission Act 1977:
- (c) In relation to the Chief Judge of the Maori Land Court and the other Judges of the Maori Land Court, to both section 21 (1) (a) and (b) of the Maori Affairs Act 1953 (as substituted by section 2 of the Maori Affairs Amendment Act (No. 2) 1985) and the Higher Salaries Commission Act 1977:
- (d) In relation to the Chief District Court Judge, the Principal Family Court Judge, the Principal Planning Judge, and the other District Court Judges, to both section 6 (1) (a) and (b) of the District Courts Act 1947 (as substituted by section 2 of the District Courts Amendment Act (No. 3) 1985) and the Higher Salaries Commission Act 1977,—

the Higher Salaries Commission hereby makes the following determination (to which is appended an Explanatory Memorandum).

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DETERMINATION

**1. Title and commencement**—(1) This determination may be cited as the Judicial Salaries and Allowances Determination 1985.

(2) This determination shall be deemed to have come into force on the 1st day of April 1985.

**2. Salaries of Judges**—The salaries payable to the Judges specified in the Schedule to this determination shall be paid at the respective rates set out in that Schedule.

**3. Allowances of Judges**—Allowances for general expenses shall be paid to the Judges specified in the Schedule to this determination at the respective rates set out in that Schedule.

**4. Judicial Salaries and Allowances Order 1985 affected**—The rates of salaries and the rates of allowances prescribed by the Judicial Salaries and Allowances Order 1985\* (other than the rate of salary and the rate of allowance prescribed by that order in relation to the Judge of the Compensation Court) are superseded by this determination.

Cls. 2, 3

SCHEDULE

SALARIES AND ALLOWANCES

Office	Yearly Rate of Salary Payable on and After 1 April 1985	Yearly Rate of Allowance for General Expenses Payable on and After 1 April 1985
	<b>\$</b>	<b>\$</b>
Chief Justice .. .. .	120,000	5,000
President of the Court of Appeal .. .. .	116,000	4,000
Judge of the Court of Appeal .. .. .	112,000	3,500
Judge of the High Court .. .. .	108,000	3,500
Chief District Court Judge .. .. .	93,000	3,000
Principal Family Court Judge .. .. .	89,000	3,000
Principal Planning Judge .. .. .	85,000	3,000
District Court Judge .. .. .	83,000	2,500
Chief Judge of the Arbitration Court .. .. .	108,000	3,500
Judge of the Arbitration Court .. .. .	97,000	3,000
Chief Judge of the Maori Land Court .. .. .	89,000	3,000
Judge of the Maori Land Court .. .. .	83,000	2,500

Dated at Wellington this 5th day of November 1985.

R. S. V. Simpson, Chairman.

W. L. Birnie, Member.

J. T. F. Francis, Member.

EXPLANATORY MEMORANDUM

This Judicial Salaries and Allowances Determination is part of the General Review of all the positions within the jurisdiction of the Higher Salaries Commission, as at 1 April 1985.

*Jurisdiction*

1. In Chapter 12 of the Higher Salaries Commission's Report on the General Review as at 1 April 1985, it was stated that the Commission had decided to await the outcome of the Higher Salaries and Allowances Bill before making its decisions in respect of the Judiciary. This Bill was subsequently divided into five Bills, which were separately enacted.

2. The five Acts are as follows:

- (i) The Higher Salaries Commission Amendment Act (No. 2) 1985 (1985 No. 135):
- (ii) The Judicature Amendment Act (No. 3) 1985 (1985 No. 136):
- (iii) The Industrial Relations Amendment Act (No. 2) 1985 (1985 No. 138):
- (iv) The District Courts Amendment Act (No. 3) 1985 (1985 No. 137):
- (v) The Maori Affairs Amendment Act (No. 2) 1985 (1985 No. 139).

3. In respect of judicial salaries and judicial allowances, under the Higher Salaries Commission Act, as enacted in 1977, the Higher Salaries Commission had power only to make recommendations to the appropriate Ministers. The actual salaries were prescribed by the Governor-General by Order in Council.

4. The Higher Salaries Commission Amendment Act (No. 2) 1985 (referred to in paragraph 2 above) now provides (inter alia) that the Commission shall have the function of considering and determining the salaries and principal allowances of the Judiciary.

5. The relevant statutory provision reads as follows:

**“4. Functions of Commission in relation to judicial salaries and superannuation**—The principal Act is hereby amended by inserting, after section 12A (as inserted by section 3 of the Higher Salaries Commission Amendment Act 1982), the following section:

“12B. (1) The Commission shall have the function of considering and determining the salaries and principal allowances of—

- “(a) The Chief Justice, the President of the Court of Appeal, the Judges of the Court of Appeal, and the Judges of the High Court; and
- “(b) The Chief District Court Judge, the Principal Family Court Judge, the Principal Planning Judge, and the other District Court Judges; and
- “(c) The Chief Judge of the Arbitration Court and the other Judges of the Arbitration Court; and
- “(d) The Chief Judge of the Maori Land Court and the other Judges of the Maori Land Court.

“(2) The Commission shall have the function of making recommendations to the Minister of Justice, the Minister of Labour, the

EXPLANATORY MEMORANDUM—*continued*

Minister of Maori Affairs, and the Minister of Finance with respect to matters to which Part IV or Part V of the Government Superannuation Fund Act 1956 applies.

“(3) Every determination to which subsection (1) of this section applies shall be deemed to be a regulation for the purposes of the Regulations Act 1936.”

6. The other 4 Acts (ii) to (v) referred to in paragraph 2 above, are amendments to other relevant statutes, consequential upon the insertion of section 12B into the Higher Salaries Commission Act 1977 by section 4 of the Higher Salaries Commission Amendment Act (No. 2) 1985.

7. Section 2 of the principal Act (the interpretation section) is amended by the insertion, after the definition of the term “Minister”, of the following definition:

“‘Principal allowances’ means allowances (not being travelling allowances or other incidental or minor allowances)”.

8. It should be noted that the Commission in future will not have power to make determinations or recommendations in respect of the salary and allowances of the Judge of the Compensation Court. There has been no permanent Judge of the Compensation Court for some time. It is intended that the salary of that Judge can be fixed, if necessary, by the Governor-General by Order in Council.

9. Under the Higher Salaries Commission Act 1977, there was no specific provision for the date by which recommendations in respect of judicial salaries were to be made. The Commission adopted the practice of making recommendations to the appropriate Ministers at the same time as it made the determinations for a General Review. Section 19 (1) of the principal Act, however, has now been amended to provide that judicial salaries and allowances shall be determined as at the same date as the other salaries and allowances are determined by the Commission for the other positions within its jurisdiction.

*Criteria*

10. In the making of its recommendations on judicial salaries and allowances prior to the enactment of the Higher Salaries Commission Amendment Act (No. 2) 1985, the Commission was not required to have regard to the criteria prescribed by section 18 of its Act (see Chapter 4, paragraph 13, of the 1985 General Review Report). Section 18 of the principal Act has been amended by the above Act to provide that the Commission, in determining judicial salaries, shall now have regard to the provisions of that section.

*Principles*

11. At this point it is opportune to set out the principles followed by the Commission in fixing the salaries appropriate to the judicial structure in New Zealand. In the Commission's 1978 and 1981 Reports, the principles applied then in the framing of the Commission's recommendations were enunciated and it is considered that these principles are still valid.

12. To give a proper understanding of these principles, the Commission considered it desirable to repeat some of the statements from its earlier reports, as follows:

EXPLANATORY MEMORANDUM—*continued*

“There is a broadly held view in New Zealand that judicial officers are servants of the State. This is not the case, and it is of considerable importance that this misconception, no doubt reinforced by the (former) linking of the salaries of the Judiciary with those of senior civil servants, should be corrected.

“It should be pointed out that judicial officers are servants of the Crown and not of the State. The importance of the constitutional independence of the Judiciary cannot be over-emphasised and we see it as essential to the maintenance of our judicial system that barristers appointed to the Bench are men (or women) of the widest experience and of recognised ability.

“In considering the salaries appropriate to the Judiciary, we gave careful consideration and weight not only to our statutory criteria but also to the following additional factors:

“(a) Members of the Judiciary desirably should be free from financial worry. The burden of their office is very heavy and they should be placed in a position where their income should be sufficient to meet their financial commitments and allow them to live in reasonably comfortable circumstances.

“(b) As we have stated, it is important to attract to the Bench outstanding barristers of the day. Although we do not consider that the salaries of the Judiciary should necessarily match the earnings of the leaders of the Bar, nevertheless, the salaries offered should be such as to ensure that suitable appointments can be made. It is well known that from time to time some leading barristers have refused judicial appointment because the salary offered was not sufficient to maintain them in a standard of living reasonably comparable to that to which they are accustomed. We are also aware that in most cases the incomes of Judges and Magistrates (now District Court Judges) have been reduced on accepting appointment to the Bench—in some cases significantly so.”

*Procedures adopted*

13. In respect of this general review, written submissions were made by the Judges of all jurisdictions in respect of their salaries and allowances and these submissions were the subject of full discussion between the Commission and their representatives. The Commission also sought advice and opinions from many sources, including the New Zealand Law Society, some independent practitioners whose opinions in the view of the Commission would be of value, and other persons and organisations. Comments were also sought from relevant Government Departments in regard to particular jurisdictions. The Commission also had the benefit of access to some of the findings of the confidential New Zealand Law Society Practice Survey report 1984. This survey was of particular value to the Commission because it gave a comparison of earnings at the Bar with judicial remuneration. The Commission also obtained information from other sources on the earnings of Barristers. This information was of importance to the Commission because there was evidence that some Barristers eminently qualified to be Judges of the High Court in particular, had not accepted appointment as they were not prepared to suffer a

EXPLANATORY MEMORANDUM—*continued*

considerable drop in income. It has always been recognised that many a Barrister, on accepting an appointment to the Judiciary, is reconciled to some drop in income when that does occur, but it is acknowledged that important compensating factors are the status of the office and the fact that acceptance of judicial appointment leads to a measure of security in office and a reasonably attractive superannuation scheme. However, there is invariably a limit to the amount that individual Barristers are prepared to forego in income. Evidence shows that the difference in earnings between the Judiciary and the Barrister suitable for appointment has widened over the last year or so.

14. In view of the changes in the duties and increased responsibilities of the District Court Judges, the Commission gave special consideration to the relativity of their salaries to those of High Court Judges. After much research, the Commission found that the work and responsibilities of all the Judiciary had become more onerous, and therefore decided that the relative difference in salaries between District Court Judges and High Court Judges should remain about the same.

15. In reaching its conclusions on judicial salaries the Commission has had regard to all the principles and other factors that it has mentioned above. The Commission has also given careful consideration to the submissions, both written and oral, and the other evidence that has been placed before it by various parties. The Commission believes that its determinations for judicial salaries are consistent with the determinations it has made in other areas of its jurisdiction.

*Salary of Court of Appeal Judges*

16. It has been represented to the Commission that the permanent Judges of the Court of Appeal should receive a margin over the salary received by the High Court Judges. Before the establishment of a permanent Court of Appeal in 1957 that Court was made up of Judges of the then Supreme Court (now the High Court), all of whom received the salary of a Supreme Court Judge. The practice of paying the permanent Judges of the Court of Appeal the same salary as that of a High Court Judge remained the same.

17. The Commission received submissions from the representatives both of the Judges of the High Court and of the Court of Appeal, and had discussions with them on the issues involved. The Commission also obtained the views of the Department of Justice and studied in depth the work of the two Courts.

18. In the Commission's view, the superior status of the Court of Appeal is probably sufficient justification on its own for the establishing of a margin, but, in addition, there is the scope and nature and level of difficulty of much of the appellate work—factors which have been magnified in the many developing areas of the law which have put much greater pressure on the Judges of the Court of Appeal. At the same time, the Commission would wish to acknowledge that the work of the High Court Judges has also become more onerous.

EXPLANATORY MEMORANDUM—*continued*

19. After careful consideration of all the issues, the Commission has decided that there should be a margin between the salaries of the Court of Appeal Judges and the High Court Judges and this is reflected in the determinations.

*Allowances*

20. No adjustments had been made to Judicial allowances since they were last determined in 1981. The Commission gave careful and detailed consideration to the submissions received on this subject, and the new allowances determined are considered by the Commission to be fair and appropriate.

*Superannuation*

21. The Commission received submissions from the Judiciary on judicial superannuation. The Commission has not yet completed its deliberations on this matter and will make separate recommendations at a later date to the appropriate Ministers.

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Issued under the authority of the Regulations Act 1936 and section 12B (3) of the Higher Salaries Commission Act 1977.  
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