



No. 2 of 2015

## INAUGURAL REVIEW OF REMUNERATION FOR PRESIDENTIAL MEMBERS OF THE SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

### DETERMINATION AND REPORT OF THE REMUNERATION TRIBUNAL

#### A. REPORT

##### 1. Introduction and Background

- 1.1 On 14 November 2013 the Governor proclaimed the *South Australian Civil and Administrative Tribunal (Commencement) Proclamation Act 2013*. The Act provides that, pursuant to section 10(6) and section 14(6) of the *South Australian Civil and Administrative Tribunal Act 2013* (the SACAT Act), the Remuneration Tribunal may make a determination that the President, and Deputy President(s) appointed under subsection (1)(a) of the SACAT Act, to the South Australian Civil and Administrative Tribunal, (SACAT) will have an additional component of salary or allowance, as a judge, on account of holding office under the SACAT Act.
- 1.2 The relevant statutory provisions are as follows
- 1.2.1 10(6) – *Without limiting subsection (5), the Remuneration Tribunal may determine that the President’s salary or allowance as a judge will have an additional component on account of holding office under this Act (and the jurisdiction to make such a determination is conferred on the Remuneration Tribunal by this Act);*
- 1.2.2 14(6) – *Without limiting subsection (5), in the case of an appointment under subsection (1)(a), the Remuneration Tribunal may determine that a Deputy President’s salary or allowance as a judge will have an additional component on account of holding office under this Act (and the jurisdiction to make such a determination is conferred on the Remuneration Tribunal by this Act); and*
- 1.2.3 14(10) – *Without limiting subsection (9), in the case of an appointment under subsection (1)(b), the Remuneration Tribunal will determine the salary or allowances to be paid to the person on account of holding office under this Act (and the jurisdiction to make such a determination is conferred on the Remuneration Tribunal by this Act).*
- 1.3 Section 10(1) of the SACAT Act prescribes that the President of SACAT will be a Judge of the Supreme Court appointed by the Governor, by proclamation, to be President of SACAT. A Deputy President appointed under Section 14(1)(a) of the SACAT Act will be a Judge of the District Court.
- 1.4 The SACAT Act describes the President and Deputy President functions generally as follows:
- President
- 1.4.1 *Participating as a member of the Tribunal;*
- 1.4.2 *Having primary responsibility for the administration of the Tribunal;*
- 1.4.3 *Managing the business of the Tribunal, including ensuring that the Tribunal operates efficiently and effectively and continually improves the way in which it carries out its functions;*

- 1.4.4 *Providing leadership and guidance to the Tribunal and engendering cohesiveness and collaboration amongst the members and staff of the Tribunal;*
- 1.4.5 *Giving directions about the practices and procedures to be followed by the Tribunal;*
- 1.4.6 *Developing and implementing performance standards and setting benchmarks for the Tribunal;*
- 1.4.7 *Being responsible for promoting the training, education and professional development of members of the Tribunal;*
- 1.4.8 *Overseeing the proper use of the resources of the Tribunal;*
- 1.4.9 *Providing advice about:*
  - 1.4.9.1 *The membership of the Tribunal; and*
  - 1.4.9.2 *The operations and activities of the Tribunal.*
- 1.4.10 *The President may do all things necessary or convenient to be done in the performance of the President's functions.*

Deputy President

- 1.4.11 *Participating as a member of the Tribunal;*
  - 1.4.12 *Assisting the President in the management of the business of the tribunal, including in connection with the training, education and professional development of members of the Tribunal;*
  - 1.4.13 *Other functions assigned by the President;*
  - 1.4.14 *A Deputy President may do all things necessary or convenient to be done in the performance of the Deputy President's functions;*
  - 1.4.15 *The Deputy President is subject to the direction of the President in performing the Deputy President's function, other than adjudicating in the Tribunal.*
- 1.5 On 14 November 2013 Justice Greg Parker was appointed the President of SACAT. Justice Parker holds office as President of SACAT, pursuant to Section (10)(1) of the SACAT Act, and sitting Justice of the Supreme Court.
  - 1.6 On 14 February 2014 Judge Susanne Cole was appointed Deputy President of SACAT. Judge Cole holds office as Deputy President of SACAT pursuant to Section (14)(1)(a) of the SACAT Act, Senior Judge of the Environment Resources and Development Court and Judge of the District Court.
  - 1.7 In accordance with the provisions of the *Remuneration Act 1990* ("the Act"), the Remuneration Tribunal, by letters dated 6 February 2015, invited the Attorney-General, Justice Parker, Judge Cole and the Judicial Remuneration Coordinating Committee (JRCC) to make submissions in relation to the Tribunal's inaugural review of remuneration of those office holders of SACAT. The Tribunal also invited the Premier, as Minister responsible for the Act, to make submissions in the public interest.
  - 1.8 Written submissions were required to be lodged by 28 February 2015.
  - 1.9 Oral submissions were heard on Friday 6 March 2015.

**2. Submissions**

- 2.1 The Tribunal received written submissions from:
  - The Judicial Remuneration Coordinating Committee (JRCC); and
  - The Crown Solicitor's Office, on behalf of the Premier, in the public interest.

### Written Submission – Judicial Remuneration Coordinating Committee (JRCC)

- 2.2 The JRCC submitted to the Tribunal that any additional component of remuneration would reflect the additional work performed by the judges in their capacities as President and Deputy President of SACAT over and above work which could be considered or characterised as judicial work.
- 2.3 The JRCC submitted that the Tribunal should determine that Justice Parker be entitled to an additional amount of remuneration (*see determination 5 of 2013*), on account of holding the office of President of SACAT. This additional amount of remuneration is equal to 10% of the salary of a Puisne Judge of the Supreme Court.
- 2.4 Further, the JRCC submitted that the Tribunal should determine that Judge Cole be entitled to an additional amount of remuneration (*see determination 5 of 2013*) on account of holding the office of Deputy President of SACAT. This additional amount of remuneration is equal to 7.5% of the salary of a District Court Judge.
- 2.5 The JRCC submit that in addition to hearing the most complex and significant matters in SACAT and making the decisions required under the SACAT Act about various administrative matters to do with the lodgement and listing of proceedings, the President and Deputy President of SACAT will undertake and/or support the undertaking of significant managerial and administrative duties including:
- The management of approximately 50 members of SACAT, which is likely to increase over the first two years of operation;
  - Participation in the recruitment and performance review of members and staff on an ongoing basis.
  - Involvement in overseeing the leasing, fit out and maintenance of two premises, together with the involvement in decisions relating to the leasing and fit out of further premises as SACAT grows;
  - The devising and implementation of procedures for a large, varied and expanding jurisdiction, both original and review, including the making of Rules and Practice Directions on an ongoing basis;
  - Overseeing the disposition of a high volume of matters consistent with the objectives of the SACAT Act; and
  - Participation in regular consultation with Ministers of the Crown, private and Government organisations and individuals whose work relates to areas of SACAT's jurisdiction, including landlords and tenants groups, the Public Advocate, the Public Trustee and Chief Psychiatrist among many others.

### Written Submission - Crown Solicitor's Office on behalf of the Premier

- 2.6 In its submission, the Crown advocated that it is appropriate and in the public interest to support the submission of the JRCC that an appropriate additional component of salary is 10% (of a Puisne Judge of the Supreme Court salary) for the President and 7.5% (of a District Court Judge) for the Deputy President based on the significant additional responsibilities that are required of the judges.

### **Oral Submissions**

- 2.7 The Tribunal convened a hearing on Friday 6 March 2015 to hear oral submissions. The following persons attended:
- The Honourable Justice Tim Stanley and the Honourable Justice Greg Parker on behalf of the JRCC; and
  - Ms Carly Cooper, Crown Solicitors Office on behalf of the Premier.

#### Oral Submission – JRCC

- 2.8 The JRCC asked that the Tribunal note that Justice Parker and Judge Cole have been working on the establishment of SACAT for a number of months.
- 2.9 Further, the JRCC advised that the Tribunal should be mindful of the considerable amount of knowledge and experience Judge Cole has brought to SACAT. Particularly with regards to early administrative problem solving and the continued formulation and refinement of Rules and Practice Directions.
- 2.10 During the Friday 6 March 2015 hearing the Tribunal raised with the Crown's representative and the JRCC the basis upon which the component of Judge Cole's salary, on account of holding the office of Deputy President of SACAT, was to be arrived at. The Tribunal referred to section 14(6) of the SACAT Act which contemplated the possibility of a plurality of Deputy Presidents of SACAT. The Tribunal raised the possibility that the responsibilities for which the additional remuneration was submitted may be diffused among such a potential plurality.
- 2.11 The Tribunal also noted that the commencement date of the additional salary component was not addressed within the written submission.
- 2.12 The JRCC submitted that the effective date align with the commencement of SACAT on 30 March 2015. The Crown did not oppose the submission of the JRCC.

#### Oral Submission – Crown Solicitors Office on behalf of the Premier

- 2.13 The Crown's representative reiterated its written submission supporting the JRCC's submission for the additional component amount of 7.5% of the salary of a District Court Judge as additional remuneration for the Deputy President of SACAT and an additional component amount of 10% of a Puisne Judge of the Supreme Court as additional remuneration for the President of SACAT.

#### Oral Response - JRCC

- 2.14 Justice Stanley and Justice Parker respectively suggested that the Tribunal confine any determination of additional remuneration equal to 7.5% of a District Court Judge's salary to Judge Cole on account of holding the office of Deputy President of SACAT, and/or making a condition that any determination providing additional remuneration of 7.5% of a District Court Judge salary on account of holding the office of a Deputy President of SACAT, be applicable only so long as there was one Deputy President.

#### Oral Response – Crown Solicitors Office on behalf of the Premier

- 2.15 The Crown's representative responded that the Crown's submission for the amount of 7.5% of the salary of a District Court Judge as additional remuneration for the Deputy President was made on the basis of there being only one Deputy President of SACAT.

#### **Written Response – Crown Solicitors Office and the JRCC**

- 2.16 A further written submission was received by the Tribunal on 25 March 2015 from the Crown providing clarity on the position of the Premier and JRCC, confirming their agreement:

*"That any Determination by the Tribunal for an additional component of salary for the current Deputy President positions applies specifically to Deputy President Judge Cole";  
and*

*"Any additional appointments of Deputy President made to the SACAT will need to be the subject of a separate review and Determination by the Tribunal as to what, if any, additional component of salary is applicable to the position".*

### 3. Summary and Conclusions

- 3.1 The South Australian Remuneration Tribunal has completed a review of additional remuneration for the Presidential Members of SACAT in accordance with the provisions of the SACAT Act set out above.
- 3.2 The Tribunal considers that the additional responsibilities and work to the judicial work performed by the President of SACAT, justifies an additional component of remuneration equivalent to 10% of the salary of a Puisne Judge of the Supreme Court.
- 3.3 The Tribunal considers that the additional responsibilities and work to the judicial work performed by Judge Cole as Deputy President of SACAT, justifies an additional component of remuneration equivalent to 7.5% of the salary of a District Court Judge.
- 3.4 The Tribunal has determined that in order to give effect to the intention that Judge Cole should be paid an additional component equivalent to 7.5% of the salary of a District Court Judge, it is appropriate to specify that this decision is based on there being one Deputy President of SACAT.
- 3.5 On what is before it, the Tribunal would not determine that an appropriate additional allowance or component of salary of 7.5% of a District Court Judge's salary would be appropriate for all Deputy Presidents of SACAT if there were to be a plurality of Deputy Presidents of SACAT.
- 3.6 The Tribunal accepts that any additional appointments of a Deputy President would require a review separate to that of this determination.
- 3.7 On the question of an operative date for any additional component of salary or allowance, it was supported by all parties that 30 March 2015 be adopted by the Tribunal so as to coincide with the commencement of the SACAT. The Tribunal considers this an appropriate date to give effect to its decisions and determination.

### B. DETERMINATION

1. The Remuneration Tribunal determines that a Puisne Judge of the Supreme Court appointed as President of the South Australian Civil and Administrative Tribunal is entitled to an additional component of remuneration equivalent to 10% of the salary of a Puisne Judge of Supreme Court of South Australia, on account of holding the office of President of South Australian Civil and Administrative Tribunal.
2. The Remuneration Tribunal determines that Judge Susanne Cole is entitled to an additional component of remuneration equivalent to 7.5% of the salary of a District Court Judge of South Australia on account of holding the office of Deputy President of the South Australian Civil and Administrative Tribunal, so long as there is one Deputy President of that Tribunal.
3. This determination takes effect on and from 30 March 2015.

Dated this 15<sup>th</sup> day of May 2015



John Lewin  
**PRESIDENT**



Nicola Vincent  
**MEMBER**



Peter Alexander  
**MEMBER**