



No. 8 of 2017

REPORT OF THE REMUNERATION TRIBUNAL
ELECTORAL DISTRICTS BOUNDARIES COMMISSION

INTRODUCTION

1. The Remuneration Tribunal (“the Tribunal”) has jurisdiction under section 14 of the *Remuneration Act 1990* (“the Act”) and section 78(7) of the *Constitution Act 1934* (“the Constitution Act”), to determine the remuneration payable to the members of the Electoral Districts Boundaries Commission (other than the chairman).

BACKGROUND

2. The Constitution Act provides for the establishment of an Electoral Districts Boundaries Commission (“the Commission”) to review and carry out periodic redistribution of the boundaries of the State’s House of Assembly electoral districts. The Commission has perpetual succession and the functions of a Royal Commission.
3. The members of the Commission are:
 - the most senior Supreme Court puisne judge available, appointed by the Chief Justice, to be the Chairman;
 - the Electoral Commissioner; and
 - the Surveyor-General.
4. Section 78(7) of the Constitution Act states, “*The members of the Commission (other than the Chairman) are entitled to remuneration determined by the Remuneration Tribunal.*”
5. The last Determination made by the Tribunal under section 78(7) of the Constitution Act was in 2012, whereby the Tribunal determined an allowance \$16,550 for the Electoral Commissioner and \$11,585 for the Surveyor-General.
6. The Tribunal notes that historically, Determinations of remuneration made under section 78(7) of the Constitution Act have been made on a four yearly basis, and have prescribed a one off payment as compensation for the work performed by the relevant members of the Commission.
7. The Tribunal notes that at the time of the Commission in 2016, the Deputy Electoral Commissioner was acting as Electoral Commissioner, due to the vacancy of that office.

SUBMISSIONS

8. In accordance with section 10(2) of the Act¹ the Tribunal invited submissions from the affected parties to be taken into consideration as part of the review. A time was also made available for the making of oral submissions on 22 August 2017. Submissions were received from the Chair of the Commission, the Electoral Commissioner, the Deputy Electoral Commissioner, the Surveyor-General and the Crown Solicitor's Office on behalf of the Honourable Premier.

9. A summary of the submissions received is as follows:

The Chair of the Commission (Her Honour Justice Vanstone) submitted that:

- The Commission undertook a significantly greater workload than previous Commissions, due to undertaking a greater number of public consultations and having the Commission's order unsuccessfully challenged before the Full Court of the Supreme Court of South Australia.
- A schedule of hours was provided for the Acting Electoral Commissioner and the Surveyor-General for the performance of their respective duties as part of the Commission.

The Electoral Commissioner (Mr Michael Sherry) submitted that:

- The *Constitution Act 1934* binds the Electoral Commissioner to participate as a member of the Commission.
- The remuneration of the Commission should be at least consistent with that of the Electoral Commissioner.
- The duration and complexity of each Commission can differ significantly.

The Deputy Electoral Commissioner (Mr David Gully) and the Surveyor General (Mr Michael Burdett) submitted that:

- Any assessment acknowledges that each member was required to maintain their base workload in addition to their obligations as members of the Commission.
- That each member expended many hours outside normal work hours.
- The length of service with respect to the work of the Commissioner will ensure for a period of at least 12 months.
- The statutory obligation placed upon each member requires them to operate at a very senior level and possibly significantly higher than their substantive level.
- The "public position" under which the Commission is viewed, scrutinised and judged needs to be given full consideration.
- The remuneration of the two members of the Commission should be equal.

The Crown Solicitor's Office, on behalf of the Honourable Premier submitted that:

- The period for which the additional duties were performed is significant (12 months).
- General industrial/wage fixation principles should be taken into account by the Tribunal, including relevant benchmarks in the public employment setting.
- The methodology and the amounts of the respective allowance are matters for the Tribunal in the exercise of its discretion.

¹ Before the Tribunal makes a determination affecting the remuneration of a particular person, or persons of a particular class, the Tribunal must allow that person, or the persons of that class, a reasonable opportunity to make submissions orally or in writing to the Tribunal.

CONCLUSION

10. The Tribunal is required by Section 101(1) of the *Fair Work Act 1994* (SA) to have due regard to principles, guidelines, conditions practices or procedures adopted by the South Australian Employment Tribunal ("SAET"). That section is set out as follows:

101—State industrial authorities to apply principles

(1) *In arriving at a determination affecting remuneration or working conditions, a State industrial authority must have due regard to and may apply and give effect to principles, guidelines, conditions, practices or procedures adopted by SAET under this Part.*

(2) *However, principles adopted under this Part are not applicable to enterprise agreements.*

(3) *In this section—*

State industrial authority means—

(a) SAET; or

(b) the Remuneration Tribunal; or

(c) the Commissioner for Public Sector Employment; or

(d) another person or body declared by regulation to be a State industrial authority.

11. The Tribunal has had due regard accordingly as required by the relevant legislative provisions, and has taken into consideration movements in minimum remuneration determined by SAET since Determination 5 of 2012².
12. The Tribunal notes that the Deputy Electoral Commissioner and the Surveyor-General have submitted that the remuneration of the two offices that are subject to the Tribunal's Determination should be equal. The Tribunal accepts that submission, and is of the view that the value of the work should be properly apprehended as equivalent.
13. The Tribunal also considers that the highest order of the work performed by the relevant members of the Commission is the most appropriate consideration in determining a monetary amount of remuneration for the relevant office holders performing the work of the Commission.
14. Having regard to the nature and extent of the additional work undertaken by the members of the Commission (other than the Chairman) in producing the 2016 Report of the Electoral Districts Boundaries Commission, the Tribunal is of the view that:
- The Acting Electoral Commissioner should be entitled to be paid an allowance of \$18,963; and
 - The Surveyor-General should be entitled to be paid an allowance of \$18,963.
15. A Determination will issue accordingly.



John Lewin
PRESIDENT



Peter Alexander
MEMBER



Pamela Martin
MEMBER

Dated this 3rd day of October 2017

² Determination 5 of 2012 – Electoral Districts Boundaries Commission