



No. 2 of 2019

## **REPORT OF THE REMUNERATION TRIBUNAL**

### **REMUNERATION OF MEMBERS OF THE JUDICIARY, PRESIDENTIAL MEMBERS OF THE SAET, PRESIDENTIAL MEMBERS OF THE SACAT, THE STATE CORONER, AND COMMISSIONERS OF THE ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT**

#### **INTRODUCTION**

1. The Remuneration Tribunal (“the Tribunal”) has jurisdiction under section 13 of the *Remuneration Act 1990* (“the Act”), to determine the remuneration payable to Judges, Magistrates and holders of the public offices listed in that section of the Act. Section 14 of the Act provides that the Tribunal may be conferred additional jurisdiction by any other Act or by proclamation by the Governor, to determine the remuneration of other specified offices.

#### **BACKGROUND**

2. In previous reviews of judicial remuneration in South Australia, the Tribunal has had regard to the national framework of salaries paid to judicial officers throughout the Commonwealth.
3. It would be accurate to describe the concept of a national framework of judicial salaries as a guiding principle for the purpose of considering judicial remuneration in South Australia. However, whilst adopting this guiding principle, the Tribunal has ensured that discretion has been preserved for the purpose of making an independent judgement of an appropriate level of judicial remuneration from time to time.
4. The Tribunal has avoided any Determination that judicial salaries in South Australia will automatically follow any Determination or legislative regulation of judicial remuneration in another jurisdiction. Nonetheless, it is a feature of the history of the Tribunal’s determination of judicial salaries in South Australia that the level of salary of a Puisne Judge of the Supreme Court has been determined taking into consideration, among other things, the salary of a Puisne Judge of Supreme Courts throughout the States and Territories and the salaries of Federal Court Judges.

#### **PROCEDURAL HISTORY**

5. Section 10(2) of the Act provides that prior to the making of a Determination, the Tribunal must allow an affected person, or persons of an affected class, a reasonable opportunity to make submissions orally or in writing to the Tribunal. Section 10(4) provides that the Minister responsible for the Act may intervene, personally or by counsel or other representative, in proceedings before the Tribunal for the purpose of introducing evidence, or making submissions, on any question relevant to the public interest.
6. On 30 October 2018, the Tribunal wrote to the Judicial Remuneration Coordinating Committee (“JRCC”) and the Magistrates Association of South Australia (“MASA”),

notifying of the Tribunal's intention to conduct a review of the remuneration of the relevant office holders. The Tribunal also wrote to the Honourable Premier of South Australia ("the Hon. Premier"), as the Minister responsible for the Act.

7. In addition, on 30 October 2018, the Tribunal distributed a notice to judicial officers and on 7 November 2018, a notification of the review was placed on the Tribunal's public website.
8. The Tribunal convened a hearing on 31 January 2019 to hear oral submissions. The following persons attended:
  - 8.1. The Honourable Justice Tim Stanley, on behalf of the JRCC; and
  - 8.2. Ms Caitlin Hartvigsen-Power, on behalf of the Hon. Premier, as Minister responsible for the Act.

## **SUBMISSIONS**

9. Submissions were received by the JRCC and the Crown Solicitor's Office ("CSO"), on behalf of the Hon. Premier.
10. The JRCC submitted that:
  - 10.1. The Tribunal should continue to set judicial salaries in a national framework.
  - 10.2. In conformity with that policy, the salary of a Puisne Judge of the Supreme Court of South Australia should be increased to \$458,840 per annum.
  - 10.3. The increase to the judicial and other officers should be no less than the percentage increase, and from the same operative date, applicable to the salary of a Puisne Judge of the Supreme Court.
  - 10.4. The increase should operate from 1 January 2019.
11. The CSO, on behalf of the Hon. Premier, submitted that:
  - 11.1. Whilst noting that the Tribunal has previously made decisions within a "national framework", the Tribunal should not adopt the recent determination by the Commonwealth Remuneration Tribunal ("CRT"), which awarded a wage increase to the Federal Judiciary of 2.0% on grounds that:
    - 11.1.1. The economic evidence in respect of South Australia does not justify such an increase;
    - 11.1.2. Over the past nine years, the South Australian Judiciary has received substantial increases in salary having particular regard to general increases within the State Public Sector (including executives); and
    - 11.1.3. In making decisions within a "national framework" the Tribunal should, and has, guarded against automatically adopting salary outcomes determined by the CRT.
  - 11.2. The Tribunal should increase South Australian judicial remuneration by 1.0% from 1 June 2019, consistent with the economic conditions in South Australia and taking into account the historically significant increases to South Australian judicial salaries.

## **COMPARISON OF FEDERAL, STATE AND TERRITORY JUDICIAL SALARIES**

12. The Tribunal has examined Federal, State and Territory judicial salaries.
13. The relevant judicial salaries of Supreme Court Judges and Federal Court Judges as at the time of this review are set out below. It will be noted that at the present time the salary of a Supreme Court Judge in South Australia is the lowest in Australia with the exception of Western Australia and lower than both the respective median and average salary. Moreover, this has been the case for most of 2018.
14. The situation in Western Australia is made problematic by a legislative freeze on the jurisdiction and powers of the Independent Salaries and Allowances Tribunal in that State

due to a fiscal emergency affecting the State's finances. The situation in South Australia is not analogous.

Jurisdiction	Judge of the Supreme Court Salary	Operative Date
New South Wales	\$464,310	1-Jul-18
Northern Territory	\$458,840	1-Jan-18
Victoria	\$458,840	17-Oct-18
Australian Capital Territory	\$458,840	1-Jul-18
Tasmania	\$455,570	31-May-18
Queensland <sup>†</sup>	\$449,840	1-Jul-17
Western Australia <sup>Ω</sup>	\$441,057	1-Jul-16
Commonwealth (federal court judge used)	\$458,840	1-Jul-18
Median Salary (all states and territories ex SA)	\$458,840	
Average Salary (all states and territories ex SA)	\$455,767	
SA (salary <i>prior</i> to this Determination)	\$449,840	1-Jun-18

<sup>†</sup>The salary of judges of the Supreme Court in Queensland is linked to the salary of a Federal Court Judge by the *Judicial Remuneration Act 2007* (QLD) and is set to increase to \$458,840 in early 2019.

<sup>Ω</sup>The salary of judges of the Supreme Court in Western Australia is subject to the restrictive provisions of the *Salaries and Allowances (Debt and Deficit Remediation) Act 2018* (WA), which prevents the WA Tribunal, until July 2021, from causing an increase in that salary.

## FAIR WORK ACT 1994 (SA)

15. The Tribunal is required by Section 101 of the *Fair Work Act 1994* (SA) to have due regard to, and may apply, principles, guidelines, conditions practices or procedures adopted by the South Australian Employment Tribunal ("SAET"), the successor to the Industrial Relations Commission of South Australia ("IRCSA"). Section 101 of that Act 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.

16. The Tribunal has had due regard accordingly, as required by the relevant legislative provisions. On the last occasion SAET adjusted wages and salaries generally within the scope of its jurisdiction, an increase of 3.5% was determined as appropriate. This determination was broadly consistent with that of the Fair Work Commission ("FWC"), which applied a 3.5% increase to wages and salaries prescribed by Federal Awards operative from 1 July 2018. The practice of SAET and IRCSA before it usually reflected similar quantitative outcomes to those determined by the Fair Work Commission for the purposes of annual adjustments to wages and salaries prescribed by Federal Awards.

## THE ECONOMIC CONTEXT

17. The National Economy is expected to continue to grow. The Commonwealth Government's Mid-Year Economic and Fiscal Outlook 2018-19 includes the following:

*"Australia's economy continues to perform well. Real GDP is expected to grow by 2¼ per cent in 2018-19, in line with the economy's estimated potential growth rate. Growth is expected to strengthen to 3 per cent in 2019-20. This growth outlook is forecast to support continuing employment growth, helping to keep the unemployment rate around recent lows."*

18. While revising previous forecasts downwards, the most recent economic outlook from the Reserve Bank of Australia states as follows:

*"Year-ended growth is expected to be around 3 per cent over 2019 and 2¼ per cent over 2020 (Graph 5.1). Accommodative monetary policy and tighter labour market conditions are expected to provide ongoing support to growth in household income and consumption."*

19. The 2018-19 State Budget Statement contains an economic outlook statement for the South Australian economy. That statement is set out below:

### **"Economic outlook**

*The economic challenges arising from the cessation of car manufacturing in South Australia have been relatively well accommodated, with continuing overall employment growth and a fall in the unemployment rate. The declines in production and employment in the manufacturing industry have been offset by growth in service based industries, led by health care and social assistance.*

*Employment in South Australia is likely to continue to be supported by public sector investment in transport projects, by private sector investment (including OZ Minerals' Carrapateena project and Servion's Ceres wind farm project). In the medium term, naval shipbuilding projects (future frigates and submarines) offer the potential for significant job opportunities, including in supply chain firms.*

*Although retail spending growth has seen gradual declines from its recent peak in late 2014, it is likely that recent strong employment growth, continued sources of inexpensive consumer credit and growing tourist numbers will be supportive of household spending going forward. A number of surveys have confirmed strong business confidence in South Australia in recent months. This bodes well for growth in the state.*

*Forecasts and projections for South Australia from 2018–19 onwards take into consideration the expected performance of the international, national and state economies over the medium term. Forecasts and projections also depend on key assumptions around population growth rates and the relative performance of the state's economic sectors. Taking into consideration the relevant information on the past trends of the South Australia economy and having allowed for sensitivities in key assumptions, South Australia's GSP is forecast to increase by 2¼ per cent in real terms in 2018–19, following similar growth in 2017–18. South Australian employment is forecast to grow by 1½ per cent in 2018–19, revised up from 1 per cent in the mid-year budget review. South Australia's SFD is forecast to grow by 2½ per cent in 2018–19, revised up from 2¼ per cent since the mid-year budget review as a result of stronger than expected economic conditions."*

20. According to the 2018-19 Mid-Year Budget Review<sup>1</sup>, the Government's 2018-19 State Budget is on track to deliver a return to surplus and maintain projected surpluses across each year of the forward estimates.
21. The determination of judicial salaries should have appropriate regard to the economic context in which such determinations are made and the relevant economic circumstances experienced by the community which the judiciary serves.
22. The Tribunal has taken these matters into account when balancing the relevant considerations for the purposes of our discretionary judgement of the appropriate level of judicial salaries.

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<sup>1</sup> 2018-19 Mid-Year Budget Review, Department of Treasury and Finance, published on 13 December 2018.

23. The Tribunal also noted that the most recent data published by the Australian Bureau of Statistics shows the Wage Price Index for Public Sector in South Australia has increased at an annualised rate of 2.5%<sup>2</sup> for the year ending December 2018.

## **PUBLIC SECTOR REMUNERATION**

24. The Premier's submission focuses on various aspects of changes in the level of remuneration applicable to public sector employees. The *South Australian Modern Public Sector Enterprise Agreement: Salaried 2017*, which covers approximately 37,000 public employees, provides for a weighted average salary increase of 2.3% in 2019. Other significant employment areas in the public sector are subject to enterprise bargaining and 2019 adjustments to wages and salaries are not known for those employment areas at the time of this review.
25. The Premier submits that when reviewing judicial remuneration, the Tribunal should have particular regard to changes in the level of remuneration of the South Australian Executive Service ("SAES").
26. The Tribunal considers that, while general consideration of changes in employee remuneration in the public sector forms a background to the review of judicial remuneration, there are limits to the utility of such consideration.
27. On the material before the Tribunal, isolating a particular class of public servant as the basis for the adjustment of judicial salaries is not compatible with the determination of judicial salaries within a national framework of such salaries. While there may be a small number of senior officials performing important legal functions, the Tribunal considers that there is insufficient similarity or comparability of the responsibilities, role, functions, qualifications and competencies across the SAES, generally, with those of judicial officers.
28. Moreover, the remuneration of the members of the SAES is determined by the Executive. Having regard to the provisions of section 15 of the Act, which are set out below, the Tribunal considers an approach which subjects the determination of the remuneration of the judiciary to decisions of the Executive is contrary to the intention of the Act:

***"15—Tribunal to have regard to principle of judicial independence***

*The Tribunal must, where appropriate in determining remuneration under this Act, have regard to the constitutional principle of judicial independence."*

## **CONCLUSION**

29. The table of judicial salaries above and the relevant observations thereto indicate a compelling case to adjust the salaries of judicial officers to reflect the median salary in that table, having regard to the Tribunal's policy of determining judicial salaries within a national framework. The Tribunal considered that, on the material before it, that policy remains appropriate. The Tribunal did not consider it appropriate to depart from that policy based upon the outcomes and effects of previous reviews of judicial remuneration. Accordingly, the Tribunal determined that the salary of a Puisne Judge of the Supreme Court should be adjusted to reflect the median salary level in the national framework of judicial salaries shown in the table above. The Tribunal considered that other judicial salaries should move in harmony. The Tribunal considered that the effect of the adjustment will not have a material effect on the South Australian economy or the fiscal position of the Government.

## **OPERATIVE DATE**

30. The Tribunal has decided that the accompanying Determination 2 of 2019 will come into operation on and from 1 January 2019.

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<sup>2</sup> Australian Bureau of Statistics, Wage Price Index, Public Sector, South Australia, for the year ending December 2018, series 6345.0.

## COMMUNICATION ALLOWANCE

31. The Tribunal has had regard to the relevant statistical measure which comprises the basis of the Communications Allowance applicable to judicial office holders, and has concluded that the amount of the Communications Allowance will remain as provided for in Determination 6 of 2013.

## CONSOLIDATION OF DETERMINATIONS

32. The following Determinations have been consolidated into the accompanying Determination (Determination 2 of 2019):
- 32.1. Determination 6 of 2013 – Communications Allowance for Judges and Related Office Holders
  - 32.2. Determination 15 of 2017 – Judicial Security Allowance
  - 32.3. Determination 1 of 2018 – Supervising Regional Manager Allowance (Magistrates)
  - 32.4. Determination 8 of 2018 – Manager Family Violence List Allowance (Magistrates)
  - 32.5. Determination 9 of 2018 – Additional Salary for Presidential Members of the South Australian Civil and Administrative Tribunal.



John Lewin  
**PRESIDENT**



Peter Alexander  
**MEMBER**



Pamela Martin  
**MEMBER**

Dated this 14<sup>th</sup> day of March 2019