



No. 10 of 2020

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. Section 13 of the *Remuneration Act 1990* (“the Act”) provides that the Remuneration Tribunal (“the Tribunal”) has jurisdiction to determine the remuneration payable to members of the judiciary and holders of the public offices listed in that section of the Act.
2. Section 14 of the Act provides that the Tribunal has jurisdiction to determine the remuneration, or a specified part of the remuneration, payable in respect of certain offices, if such jurisdiction is conferred upon the Tribunal by any other Act or by the Governor by proclamation.
3. This Report relates to the remuneration of members of the judiciary and certain other statutory office holders.

BACKGROUND

4. 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.
5. In the course of reviewing judicial remuneration from time to time, the Tribunal has adopted the concept of a national framework of judicial salaries as a guiding principle, while preserving the discretion to make independent assessments of judicial remuneration in South Australia.
6. The Tribunal has avoided any Determination that judicial salaries in South Australia will automatically follow any other 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

7. 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.
8. Section 10(4) of the Act provides that the Honourable Premier of South Australia (“the Premier”), as 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.
9. On 13 October 2020, 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 review its previous Determination.
10. The Tribunal, by letter dated 13 October 2020, wrote to the Premier, as the Minister responsible for the Act, inviting submissions in relation to this review.
11. In addition, the Tribunal distributed an email notification to the relevant office holders on 13 October 2020. A notification of the review was also placed on the Tribunal’s public website on the same day.

SUBMISSIONS

12. Submissions were received by the JRCC and the Crown Solicitor’s Office (“CSO”), on behalf of the Premier.
13. The JRCC submitted that:
 - 13.1. The JRCC does not seek any increase in salary pursuant to the review of Determination 12 of 2019 having regard to the current economic and financial situation as a result of the COVID-19 pandemic.
14. The CSO, on behalf of the Premier, submitted that:
 - 14.1. It is appropriate and in the public interest for the Tribunal to determine to not award an increase to the salaries of judicial and other statutory office holders covered by Determination No. 12 of 2019 having particular regard to the current economic conditions as a result of the COVID-19 pandemic;
 - 14.2. However, if the Tribunal is minded to award an increase to the relevant salaries, that the operative date of any annual salary increase be no earlier than 1 January 2021, in conformity with Determination No. 12 of 2019; and
 - 14.3. It is noted that upon commencement of the *Supreme Court (Court of Appeal) Amendment Act 2019* there will be amendments required to any new Determination to reflect the introduction of the Court of Appeal into the Supreme Court.

COMPARISON OF FEDERAL, STATE AND TERRITORY JUDICIAL SALARIES

15. The Tribunal has examined Federal, State and Territory judicial salaries.
16. The relevant judicial salaries of Supreme Court Judges and Federal Court Judges as at the time of this review are set out below.

Jurisdiction	Judge of the Supreme Court Salary	Operative Date
New South Wales	\$475,920	1 Jul 2019
Northern Territory	\$468,020	1 Jul 2019
Victoria	\$468,020	17 Sep 2019
Queensland	\$468,020	1 Jul 2019
Tasmania	\$464,729	31 May 2020

Australian Capital Territory	\$468,020	1 Jul 2020
Western Australia [†]	\$441,057	1 Jul 2016
Commonwealth (federal court judge used)	\$468,020	1 Jul 2019
Median Salary (all states and territories ex SA)	\$468,020	
Average Salary (all states and territories ex SA)	\$465,226	
SA (salary <i>prior</i> to this Determination)	\$468,020	1 Jan 2020

[†]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 increasing that salary.

FAIR WORK ACT 1994 (SA)

17. 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”). 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.

18. The Tribunal has had due regard accordingly, as required by the relevant legislative provisions.

THE ECONOMIC CONTEXT

19. The most recent monetary policy decision published by the Reserve Bank of Australia states as follows:

“In Australia, the economic recovery is under way and positive GDP growth is now expected in the September quarter, despite the restrictions in Victoria. It will, however, take some time to reach the pre-pandemic level of output. In the central scenario, GDP growth is expected to be around 6 per cent over the year to June 2021 and 4 per cent in 2022. The unemployment rate is expected to remain high, but to peak at a little below 8 per cent, rather than the 10 per cent expected previously. At the end of 2022, the unemployment rate is forecast to be around 6 per cent.”

“This extended period of high unemployment and excess capacity is expected to result in subdued increases in wages and prices over coming years. In underlying terms, inflation is forecast to be 1 per cent in 2021 and 1½ per cent in 2022. In the most recent quarter, year-ended CPI inflation was 0.7 per cent and, in underlying terms, inflation was 1¼ per cent.”

20. The Tribunal has 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 2.2%¹.
21. The Tribunal has noted that the most recent data published by the Australian Bureau of Statistics shows the Consumer Price Index for Adelaide has increased at an annualised rate of 1.0%².

CONCLUSION

22. The Tribunal is conscious of the difficult economic and social circumstances faced by the State at the time of this review. The Tribunal has taken into consideration that the JRCC and the Premier have both submitted that judicial remuneration should not be increased by the Tribunal on this occasion in light of the difficulty currently experienced by the State.
23. Having regard to the submissions before the Tribunal, the economic background, and the relevant material referred to above, the Tribunal does not consider it appropriate to increase judicial remuneration at the time of this review.
24. Accordingly, the rates of judicial remuneration applicable under Determination 12 of 2019 have not been increased on this occasion.
25. Determination 12 of 2019³ shall remain in force until further determination by the Tribunal.

COURT OF APPEAL LEGISLATION

26. The Tribunal has noted the submissions of the CSO on behalf of the Premier in relation to the *Supreme Court (Court of Appeal) Amendment Act 2019*. The Tribunal will consider its statutory obligations under that Act following its commencement, with ample opportunity for the making of submissions. The Tribunal has been advised that commencement is likely to occur in early 2021.

COMMUNICATION ALLOWANCE

27. The Tribunal has reviewed the amount of the communication allowance applicable to judicial office holders. The Tribunal has had regard to the relevant statistical measure which comprises the basis of the communication allowance applicable to judicial office holders, and has concluded that no variation will be made to the amount of the communication allowance.

JUDICIAL SECURITY ALLOWANCE

28. The Tribunal has reviewed the amount of the judicial security allowance. Having regard to the Tribunal's consideration of information within the Australian Bureau of Statistics series concerning the costs of items of a similar nature, no justification is discernible for any variation to the judicial security allowance.

COUNTRY MAGISTRATE HOUSING ALLOWANCE – MAGISTRATE CATHY DELAND

29. On 29 October 2020, the Tribunal received a submission from Magistrate Cathy Deland in relation to an application for a Determination of a Country Magistrate Housing Allowance.
30. The Tribunal will deal with the submission made by Magistrate Cathy Deland separately and will issue a separate Report in relation to that matter in due course. The Tribunal is undertaking further enquiries in order to better understand the nature and operation of any existing entitlements in relation to Magistrate Deland's application.

¹ Australian Bureau of Statistics 2020, *Wage Price Index*, Public Sector, South Australia, for the year ending June 2020.

² Australian Bureau of Statistics 2020, *Consumer Price Index*, All Groups, Adelaide, for the year ending September 2020.

³ *Remuneration Tribunal Determination 12 of 2019 – 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.*



Matthew O'Callaghan
PRESIDENT



Deborah Black
MEMBER



Peter de Cure
MEMBER

Dated this 7th day of December 2020