



No. 11 of 2021

REPORT OF THE REMUNERATION TRIBUNAL
2021 INAUGURAL REVIEW OF ALLOWANCES AND EXPENSES FOR MEMBERS OF
THE PAROLE BOARD OF SOUTH AUSTRALIA

INTRODUCTION AND BACKGROUND

1. Section 14 of the *Remuneration Act 1990* (“the Act”) provides that the Remuneration Tribunal (“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.
2. On 8 April 2021, the *Correctional Services (Accountability and Other Measures) Amendment Act 2021* (“the Amending Act”) was assented to. The Amending Act confers jurisdiction upon the Tribunal to determine allowances and expenses to be paid to members of the Parole Board of South Australia (“Parole Board”). On 3 June 2021, the section of the Amending Act in relation to Parole Board remuneration was brought into operation by Governor Proclamation.
3. Section 3 of the Act defines allowances and expenses as remuneration. The Tribunal notes it has no jurisdiction in relation to salary or other pecuniary benefits in relation to Members of the Parole Board and that its jurisdiction is confined to allowances and expenses only for the relevant office holders.
4. Prior to the commencement of the Amending Act, the Legislation provided that the allowances and expenses to be paid to members of the Parole Board were determined by the Governor of South Australia.

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.
6. Section 10(4) of the Act 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.

7. On 28 June 2021, the Tribunal wrote to the members of the Parole Board, notifying of the Tribunal's intention to conduct a review of allowances and expenses to be paid to members of the Parole Board. The Tribunal invited written submissions with a closing date of 16 July 2021.
8. On 28 June 2021, the Tribunal wrote to the Honourable Premier of South Australia ("the Premier"), as the Minister responsible for the Act, inviting submissions in the public interest, with a closing date of 16 July 2021.
9. On 28 June 2021, the Tribunal wrote to the Minister for Police, Emergency Services and Correctional Services, as the Minister responsible for the Amending Act, inviting submissions in the public interest, with a closing date of 16 July 2021.
10. In addition, on 28 June 2021, a public notification of the review was published on the Tribunal's website.

LEGISLATIVE PROVISIONS

11. The operation of the Amending Act provides for amendments to section 57 of the *Correctional Services Act 1982* ("Correctional Services Act"). That section, as amended, is set out as follows:

"57—Allowances and expenses

- (1) *A member of the Board will be paid the allowances and expenses determined by the Remuneration Tribunal.*
- (2) *Jurisdiction is, by force of this section, conferred on the Remuneration Tribunal to make a determination or perform any other functions required by this section.*
- (3) *The Remuneration Tribunal may make different provision according to the member of the Board or the circumstances to which the determination is to apply and may vary an amount payable according to any other factor that the Remuneration Tribunal considers relevant.*
- (4) *The Remuneration Tribunal must, at least once in each prescribed period, review the allowances and expenses referred to in subsection (1) and may, if it considers it appropriate to do so, determine to increase any such amount payable by a specified amount.*
- (5) *The regulations may make further provision in relation to a determination of the Remuneration Tribunal for the purposes of this Act."*

12. Relevantly, the definition of *prescribed period* for the purposes of the above section 57(4) is dealt with by the *Correctional Services Regulations 2016*, as follows:

"39A—Prescribed period (section 57(4))

For the purposes of section 57(4) of the Act, the prescribed period is 2 years"

SUBMISSIONS

13. Submissions were made by Presiding Members and by the other Members of the Parole Board. The Presiding Members appeared before the Tribunal on 30 July 2021 and made short oral submissions to the Tribunal in support of their written submission. Those submissions are summarised in short form below.

14. Submission made by the Presiding Member and the Deputy Presiding Member of the Parole Board:
 - 14.1. The Parole Board Members should be appropriately remunerated given the significance and complexity of their function. Current remuneration levels do not reflect appropriate remuneration.
 - 14.2. This is reflected in difficulties in attracting and retaining Parole Board members.
 - 14.3. The members of the Parole Board are currently remunerated as follows:
 - 14.3.1. Presiding Member \$80,000 per annum
 - 14.3.2. Deputy Presiding Member \$50,657 per annum
 - 14.3.3. Board Member \$37,665 per annum
 - 14.3.4. Deputy Board Members \$952 per session
 - 14.4. Remuneration should reflect the quasi-judicial role of the Parole Board Members and the hours of work involved.
 - 14.5. The Victorian Parole Board Presiding Member and Deputy Presiding Member would be a reasonable comparison point. The remuneration should be 40% of what is currently provided to the Victorian Parole Board, to be:
 - 14.5.1. Presiding Member \$162,000 per annum
 - 14.5.2. Deputy Presiding Member \$96,000 per annum
 - 14.6. Ordinary Board Members should be paid \$50,000. The remuneration provided to Deputy Board Members (sessional rate) is sufficient at the present time.
 - 14.7. The Parole Board Members recognise that there is a substantial element of community service associated with this function.
 - 14.8. A Member of the Parole Board who is also employed in the Public Sector should be remunerated for reading time. Those members are currently not remunerated for their time. Our submission is that a public sector employee should receive 50% of the sessional payment currently allocated to Deputy Board Members as remuneration for reading time only (i.e. \$476 per session).
 - 14.9. That the Tribunal should review Parole Board remuneration every two years.
 - 14.10. That, in determining remuneration, the Tribunal should recognise that Parole Board Members sacrifice a significant portion of their professional time to service on the Parole Board, which often has an opportunity cost due to foregone earnings elsewhere, such as private legal practice work.
 - 14.11. That because there is no support is provided to the Parole Board in terms of Media Advisors those duties are undertaken by the Presiding Member and are time consuming and demanding.
 - 14.12. Decisions of the Parole Board are subject to review. In the last 12 months there have been two Coronial Inquests and 7 Judicial Reviews. These involve substantial time commitments.
 - 14.13. The Presiding Member and Deputy Presiding Member are required to conduct annual visits to correctional institutions and conduct external meetings with different agencies and specialists.

15. Submission made by other Parole Board Members:
 - 15.1. All Parole Board Members indicated that the time commitment involved in Parole Board work was not commensurate with the level of remuneration currently provided. The Parole Board Members supported the Presiding Members' submission.
 - 15.2. Parole Board Members are highly skilled and experts relating to the legislative criteria for appointment.
 - 15.3. Support is provided to Parole Board Members by the Parole Board Secretariat. That support includes preparation of meeting minutes, advices to prisoners, and correspondence with prisoners and their legal representatives. Drafting of decisions, reasons for refusal and court reports are completed by the Board, most commonly by the Chair of the meeting, or the Presiding Member of the Board.
 - 15.4. Two current Members of the Board are Public Sector employees. Work done in their own time should be recognised, and, in the case of medical officers, forgone private practice income should be recognised.
 - 15.5. A schedule of typical Parole Board activity was also provided.
16. Members of the Tribunal were also provided with examples of the Reports prepared by the Parole Board and observed the conduct of Parole Board hearings.
17. No other submissions were received by the Tribunal in respect of the review to which this Report relates.

SECTION 101 OF FAIR WORK ACT 1994

18. In considering this matter, the Tribunal is aware of its obligations under section 101 of the *Fair Work Act 1994* ("the Fair Work Act"), 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."*

19. The Tribunal has had due regard to section 101 of the Fair Work Act accordingly and has noted the approaches to work value assessment adopted by the South Australian Employment Tribunal.

PAROLE BOARD SCHEMES OPERATING IN OTHER JURISDICTIONS

20. The Tribunal has examined schemes operating in other jurisdictions throughout the States and Territories, using the information available, and has made the following observations.

Jurisdiction	Chairperson	Deputy Chair	Members	Relevant Authority	Notes
NSW	<p>Sessional rate is \$1,850 (per day)</p> <p>Is the daily equivalent to NSW Supreme Court Judge (\$487,020 p.a.)</p>	n/a	\$761 (sessional rate)	Minister Responsible for the Act	Chairperson is a "judicial member" who is a Judge. NSW hold 4 private meetings and 4 public review hearings each week. Are paid 2 days pay for each division attended to account for pre-reading material.
VIC	<p>Full-time Members paid equivalent to a Supreme Court Judge (\$468,020 p.a.)</p> <p>\$658 (per day for sessional)</p>	Full-time Members paid as a Supreme Court Judge (\$468,020)	<p>Full-time members remuneration set individually and not published.</p> <p>\$569 (per day for sessional)</p>	Governor in Executive Council	Full-time Chair and Deputies have individual salaries set by negotiation. Others are paid per session (per day or half day).
TAS	\$40,136 p.a.	\$20,067 p.a.	\$23,528 p.a.	Governor in Executive Council	Deputy sits 1/3 meetings. Chair sits 2/3 meetings. Tasmanian rates currently under review. Approx 24 Meetings per year.
WA	\$233,411 p.a.	\$116,714 p.a.	<p>Various (per day)</p> <p>\$4,672 - \$38,997 per annum</p>	Governor in Executive Council	Sessional (per day) rates for members.
NT	Chief Justice of Supreme Court sits as chair	n/a	\$540 (per day)	Administrator (Governor equivalent) in Executive Council	Sessional rates for members. Chairperson is the Chief Justice of the Supreme Court. Chief Justice not paid an additional sum.

QLD	Paid as a QLD Supreme Court Judge (\$468,020)	Paid as a QLD District Court Judge (\$421,218)	<ul style="list-style-type: none"> • Professional Board Members remunerated at SO.3 (\$141,773 p.a.) and • Public Service Representative remunerated at AO8 (\$128,254 p.a.) • Queensland Police Representatives remunerated at Inspector Level (\$163,546 p.a.) • Community Board Members Adjudication & Determination level 3 - \$250 up to and including 4 hours. These members are paid for pre-meeting preparation (reading) and meeting time. 	Governor in Executive Council	Approximate 500 meetings per year.
ACT	\$81,155 p.a.	\$64,890 p.a.	<p style="text-align: center;">\$422 (2 hours) \$633 (up to 3 hours) \$1,055 (full diem, 3+ hours)</p>	ACT Remuneration Tribunal	ACT Policing Member is not paid as it is part of their duties.

21. The above information in relation to interstate remuneration has been used as a guide only and is based on general information provided by staff of other jurisdictions. The Tribunal acknowledges that there may be errors or omissions in the information and has not reached its conclusions on the basis of this information.
22. However, the Tribunal has noted that in some jurisdictions such as NSW, NT, QLD and VIC, the Parole Board Presiding Officer is paid the equivalent of a Supreme Court Judge. There are no other recurring themes in the other jurisdictions in terms of an appropriate level of remuneration, with considerable variations between jurisdictions.

CONSIDERATION AND CONCLUSION

23. This review marks the first occasion the Remuneration Tribunal has made a Determination of remuneration for members of the Parole Board.
24. This review reflects the requirements of the Amending Act. In the Tribunal's view, the Amending Act confirms the significance of the Parole Board functions as a critical component of the overall approach to imprisonment.
25. Further, the Tribunal recognises that the role of Parole Board members reflects the requirements of the Correctional Services Act for assessment of the risks in determining whether to grant, deny, breach or cancel parole, and to set appropriate conditions for parole release. The Parole Board reviews the progress and performance of parolees.
26. The Tribunal acknowledges that Parole Board members must possess the necessary skill and expertise to be able to exercise those powers effectively and fairly.
27. The Tribunal recognises that Parole Board Members are required by the Correctional Services Act to possess specific skills and attributes and that, accordingly these Members must have current skills. This means that Parole Board Members generally need to forego other income opportunities in order to undertake Parole Board work.
28. The Tribunal has noted that the Parole Board work involves a substantial amount of reading, research and preparation. It requires that Members have the ability to clearly articulate

appropriate questions for persons seeking parole and the capacity to assess complex and often contradictory information. That skill needs to extend to the capacity to address sensitive issues on occasion. Parole Board Members must be able to direct the person seeking parole to address core and difficult personal issues in situations where there is contradictory and sometimes disturbing information.

29. The Presiding Member is required to demonstrate the capacity to combine the Board Members' views. The Presiding Member is also required to combine a substantial knowledge of the criminal legal system with knowledge of the correctional services system and political astuteness. These skills need to be applied in general Parole Board decision making functions as well as in dealings with the media to ensure fairness to the community and the offender.
30. The Tribunal appreciates that the Parole Board Members have recognised that there is an element of community service commitment associated with this function. However, the Tribunal is cognisant that, if there is too heavy a reliance on this community service commitment as a substitute for a reasonable level of remuneration, this must eventually impact on the continuity of appointments and the capacity to attract persons with appropriate skills.
31. The Tribunal notes that there is a travel element associated with the Parole Board functions and has taken this into account in its deliberations.
32. The Tribunal has considered the diverse remuneration levels that apply in the other States. The tribunal has particularly noted the recognition, in other States, of the quasi-judicial function of Parole Boards.
33. The Tribunal considers that the full and proper performance of the Parole Board duties should attract a reasonable amount of remuneration. While the Tribunal has considered the submissions of the Parole Board it is not constrained by those submissions and has concluded that the Presiding Members particularly, have undervalued the extent of community service commitment associated with these roles.
34. The Tribunal is not satisfied that there should be any direct link between the allowance payable to the Presiding Member of the Parole Board and the Victorian counterpart. Such an approach would require a full assessment of the counterpart Victorian officer's duties and involve more substantive consideration of the remuneration setting process.
35. The Tribunal has determined that the Presiding Member should receive an annual allowance based on the remuneration payable to a Puisne Judge of the Supreme Court in South Australia. The Presiding Member's functions and responsibilities most closely align with the role of that Judge. The Tribunal has noted that while there are obvious differences in the roles, the Presiding member is required to undertake a range of functions, including, but not limited to media interaction, that the Puisne Judge is not required to undertake on such a frequent basis. In the Tribunal's view, these differences only marginally detract from the links between the roles.
36. The Tribunal considers that an annual allowance represents the most appropriate form of remuneration arrangement. While the Tribunal believes the time associated with the performance of those duties exceeds a normal half time commitment, it has recognised the community service component of the position and has decided to base this annual allowance on 45% of the Judge's rate of salary.

37. Having reached this conclusion, the Tribunal has considered the functions of the Deputy Presiding Member. While clearly not as onerous as those of the Presiding member, these functions still involve oversight of hearings and consideration of the same types of complex issues. The Tribunal has noted that the Deputy Presiding Member and the Presiding Member arrange to share the case workload associated with hearings. The Tribunal has determined that the Deputy Presiding member should also receive an annual allowance and has set this at 60% of the Presiding Member's rate.
38. The Tribunal has noted that Parole Board Members share the workload associated with Parole Board hearings on a generally equitable basis. Accordingly, the Tribunal has determined that an annual allowance is also appropriate for Parole Board Members, to the extent that work allocation protocols are adopted such that the work is distributed fairly and equitably. The Tribunal has noted the substantial workload associated with the Parole Board Member function and the extent to which it, like the Presiding Officer and Deputy, impact on the earning capacity of persons who would otherwise be able to charge for their services. The Tribunal has assessed the Parole Board Member's annual Allowance at 30% of the Presiding Member's rate.
39. The Parole Board considers that a sessional payment system is appropriate for Deputy Board members who undertake hearing duties as requested. The Tribunal has assessed this rate to be \$1,500 per hearing. In this context, a hearing would represent a session. This rate takes into account the time associated with preparing for the hearing. The Tribunal has noted that, prior to this review, a maximum amount payable for Deputy Board Members was applicable and the Tribunal has acknowledged this concept should be maintained. The Tribunal has determined the maximum annual amount payable to a Deputy Member through sessional payments will be \$45,000 in any financial year.
40. The Tribunal has recognised that persons who are also public sector employees may be appointed as Members of the Parole Board and has considered two different circumstances. Firstly, where such a person works in the public sector on a part time basis and undertakes all of the Parole Board work in their own time, the Tribunal considers that the normal Board member allowance should apply. The Tribunal notes that any normal public sector authorisation requirements apply.
41. A second situation may apply where the Board Member undertakes their Parole Board hearing duties in public sector time but undertakes the substantial hearing preparation work in their own time. In this instance, the Tribunal considers a sessional payment to be appropriate and has assessed that rate on the basis of the hearing preparation time as \$500 per hearing.
42. The Tribunal has also considered the arrangements that should apply in the event that a public sector medical officer with private practice rights is appointed as a Member of the Parole Board. In this instance, the Tribunal expects that the Parole Board work will be either undertaken as part of the medical officer's public duties, or that it would be undertaken in the medical officer's own time and hence it would reduce the maximum private practice earning capacity for that Medical Officer. If the Parole Board duties are undertaken as part of the Member's public duties there will be no additional payment apart from hearing preparation time which may apply consistent with the decision to recognise hearing preparation work done in the Member's own time. If the Parole Board work is undertaken outside of public sector duties the Tribunal has concluded that a Board Member in this situation should be paid on a sessional basis at the rate of \$1500 per session up to a maximum which would equate with the annual allowance payable to a Parole Board member. The sessional basis payment

would also apply in the event that a Member did not have private practice rights and undertook parole board duties in their own time.

43. In the event that a public sector medical officer with private practice rights is appointed as a Deputy Member of the Parole Board and undertakes Parole Board work in their own time, the Tribunal has determined that the sessional payment should recognise the loss of income associated with private practice work that could otherwise have been undertaken and has accordingly set a rate of \$1,500 per session. The same limit on the maximum amount payable through sessional payments per financial year will apply in this instance.
44. The Tribunal will issue the accompanying Determination, which sets out the allowances to be paid to members of the Parole Board.

FREQUENCY OF FUTURE REVIEWS

45. The Tribunal intends to conduct a post implementation review of the above entitlements in 2022. Thereafter, the Tribunal intends to adopt an approach of reviewing the Parole Board entitlements once every two years¹.

OPERATIVE DATE

46. The accompanying Determination shall have operative effect on and from 21 October 2021.



Matthew O'Callaghan
PRESIDENT



Deborah Black
MEMBER



Peter de Cure
MEMBER

Dated this 21st day of October 2021

¹ Noting section 57(4) of the Correctional Services Act 1982, as amended, and regulation 39A of the Correctional Services Regulations 2016.