



No. 13 of 2021

## **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. The Tribunal has been conferred the necessary jurisdiction to determine the remuneration for the judicial and other office holders to whom this report applies through various Acts of Parliament.

#### **BACKGROUND**

4. In the course of reviewing judicial remuneration from time to time, the Tribunal has adopted the long standing principle of fixing levels of judicial remuneration within a national framework, while preserving the discretion to adopt an independent position.
5. 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 in other States and Territories and the salaries of Federal Court Judges.

#### **PROCEDURAL HISTORY**

6. 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.
7. 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.

8. On 19 October 2021, 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.
9. The Tribunal, by letter dated 19 October 2021, wrote to the Premier, as the Minister responsible for the Act, inviting submissions relevant to the public interest.
10. In addition, the Tribunal distributed an email notification to the relevant office holders on 19 October 2021. A notification of the review was also placed on the Tribunal’s public website on the same day.

## **SUBMISSIONS**

11. Submissions were received by the JRCC and the Crown Solicitor’s Office (“CSO”), on behalf of the Premier.
12. The JRCC submitted:
  - 12.1. 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.
13. The Crown Solicitor’s Office (“CSO”), on behalf of the Premier, submitted:
  - 13.1. That the Tribunal’s past approach of determining salaries within a national framework continues to be appropriate and in the public interest.
  - 13.2. That the Tribunal should consider:
    - that the JRCC has not sought an increase in salary;
    - that there have been wage freezes undertaken in other cohorts of senior public office holders in South Australia;
    - that no increase was awarded by the Commonwealth Remuneration Tribunal in 2021 due to the pandemic.
  - 13.3. That it is appropriate and in the public interest for the Tribunal not to increase the salaries of judicial and other statutory office holders covered by Determination 12 of 2019 and reviewed in Report 10 of 2020, having particular regard to the subsisting economic conditions as a result of the COVID-19 pandemic.
  - 13.4. Following the commencement of the Amending Act, on 1 January 2021, the Tribunal is vested with jurisdiction to fix the salaries of the President and Judges of the Court of Appeal. It follows that the Tribunal may determine the salaries of the President and the Judges of the Court of Appeal in the amounts fixed by the Governor pursuant to the transitional provisions of the Amending Act.

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

14. The Tribunal has examined Federal, State and Territory judicial salaries.
15. 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	\$487,820	1 Jul 2021
Northern Territory	\$468,020	1 Jul 2019
Victoria	\$468,020	17 Sep 2019
Queensland	\$468,020	1 Jul 2019
Tasmania	\$465,179	1 Jul 2021
Australian Capital Territory	\$468,020	1 Jul 2020
Western Australia	\$442,057	1 Jul 2021

Commonwealth (federal court judge used)	\$468,020	1 Jul 2019
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Median Salary (all states and territories ex SA)	\$468,020
Average Salary (all states and territories ex SA)	\$466,895

SA (salary <i>prior</i> to this Determination)	\$468,020	1 Jan 2020
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## FAIR WORK ACT 1994 (SA)

16. 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.

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

## THE ECONOMIC CONTEXT

18. The monetary policy decision published by the Reserve Bank of Australia on 2 November 2021 states as follows:

*“Inflation has picked up, but in underlying terms is still low, at 2.1 per cent. The headline CPI inflation rate is 3 per cent and is being affected by higher petrol prices, higher prices for newly constructed homes and the disruptions in global supply chains. A further, but only gradual, pick-up in underlying inflation is expected. The central forecast is for underlying inflation of around 2¼ per cent over 2021 and 2022 and 2½ per cent over 2023. Wages growth is expected to pick up gradually as the labour market tightens, with the Wage Price Index forecast to increase by 2½ per cent over 2022 and 3 per cent over 2023. The main uncertainties relate to the persistence of the current disruptions to global supply chains and the behaviour of wages at the lowest unemployment rate in decades.”*

19. 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 1.2%<sup>1</sup>.
20. 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 2.5%<sup>2</sup>.

## **CONCLUSION**

21. The Tribunal has continued to apply the long-standing principle that judicial remuneration should be set within a national framework in the public interest, whilst preserving its discretion in this respect.
22. The Tribunal has noted the submissions of the JRCC and acknowledge that the judiciary is not seeking an increase in salary on this occasion, having regard to the continuing economic impact of the COVID pandemic.
23. The Tribunal further noted that the Premier submitted a similar view and that the parties are in accord as to judicial salaries not being increased.
24. The Tribunal has considered the submissions, the economic information, and the levels of judicial remuneration in other jurisdictions, and has concluded that it is not appropriate to increase judicial remuneration at the time of this review.
25. Having regard to the Tribunal’s remarks in Report 3 of 2020, the Tribunal has consolidated its Determination 3 of 2020<sup>3</sup> into the accompanying Determination, which prescribes an amount of \$35,000 in additional salary payable to a Magistrate appointed as a Deputy President of the South Australian Employment Tribunal (“SAET”) under section 13(1)(b) of the *South Australian Employment Tribunal Act 2014*.
26. The Tribunal has removed its transitional provision for Judge Hannon of the SAET, as SAET have confirmed that Judge Hannon is no longer serving as a member of the SAET.

## **COMMUNICATION ALLOWANCE**

27. The Tribunal has reviewed the amount of the communication allowance. The Tribunal has had regard to the relevant statistical measure which comprises the basis of the communication allowance applicable to the relevant office holders and has concluded that no increase will be applied 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 goods and services of a relevant nature, the Tribunal has decided to increase the amount of the judicial security allowance by 2.5%.

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<sup>1</sup> Australian Bureau of Statistics 2021, *Wage Price Index, Public Sector, South Australia, for the year ending September 2021*.

<sup>2</sup> Australian Bureau of Statistics 2021, *Consumer Price Index, All Groups, Adelaide, for the year ending September 2021*.

<sup>3</sup> *Remuneration Tribunal Determination 3 of 2020 – Application for Additional Salary for Deputy President Magistrate Cole of the South Australian Employment Tribunal*.

## COURT OF APPEAL AMENDING LEGISLATION

29. 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 Amending Act”). That legislation was assented to on 19 December 2019 and came into operation on 1 January 2021.
30. The Amending Act, in essence, creates an appellate division of the Supreme Court of South Australia, known as the Court of Appeal. The other part of the Court is the General Division. The Court of Appeal has sole jurisdiction to hear and determine all appeals, questions of law and causes and matters which are required by relevant rules or legislation to be determined by that division of the Supreme Court.
31. The Court of Appeal consists of the Chief Justice, President, puisne judges of the Supreme Court that are appointed to the Court of Appeal, masters and judicial registrars<sup>4</sup>.
32. Relevantly, the transitional provisions of the Amending Act provide that the remuneration applicable to the newly established judicial offices of the President and the Judges of the Court of Appeal is fixed by the Governor on appointment, and the Tribunal has a general jurisdiction to set that remuneration thereafter. That provision is set out as follows:

### **“90—Initial remuneration**

*Despite section 13 of the Remuneration Act 1990, the Governor may determine the initial remuneration payable to—*

- (a) *the person appointed as President of the Court of Appeal on the commencement of Part 2 of this Act; and*
- (b) *the puisne judges who are, on the commencement of Part 2 of this Act, appointed to the Court of Appeal,*

*(but nothing prevents the Remuneration Tribunal making subsequent determinations in relation to the remuneration of such persons).”*

33. The CSO on behalf of the Premier has advised that the rates of remuneration fixed by the Governor on appointment for the President and the Judges of the Court of Appeal are \$490,595 and \$482,061 respectively.
34. The Tribunal has examined the levels of remuneration set by the Governor for the abovementioned judicial offices in the context of relativities within the broader judicial remuneration structure, and has also compared the levels of remuneration on a national basis with judicial offices of a comparable nature in other jurisdictions.
35. Upon review, the Tribunal does not consider it appropriate to alter the levels of remuneration set by the Governor on appointment for the offices of President and Judges of the Court of Appeal. Accordingly, those judicial offices will be added to the accompanying Determination with no change to the current rates of remuneration.

## OPERATIVE DATE

36. The operative date of the accompanying Determination shall be 1 January 2022.



Matthew O'Callaghan  
**PRESIDENT**



Deborah Black  
**MEMBER**



Peter de Cure  
**MEMBER**

Dated this 14<sup>th</sup> day of December 2021

<sup>4</sup> *Supreme Court Act 1935* (SA) s 7(1a).