



No. 7 of 2022

## REPORT OF THE REMUNERATION TRIBUNAL

### 2022 Review of 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

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#### INTRODUCTION

1. The Remuneration Tribunal (**Tribunal**) has conducted a review of Determination 13 of 2021<sup>1</sup> which sets salaries payable to the members of the judiciary and office holders listed in section 13 of the *Remuneration Act 1990 (Act)*, and salaries payable to certain other office holders as conferred under section 14 of the Act. That determination also sets a communication allowance and security allowance which is payable to some of the above-mentioned office holders and judicial members.
2. As explained in this report, the Tribunal has decided to increase salaries by 2.75% and modify the application of the security allowance for part-time officers. The Tribunal has issued an accompanying determination, which applies from 1 September 2022.

#### THE REVIEW PROCESS

3. On 20 September 2022, in accordance with sections 10(2) and 10(4) of the Act, the Tribunal wrote to and invited submissions by 17 October 2022 in respect of this review from:
  - a. the Honourable Premier of South Australia – as the Minister responsible for the Act who may make submissions or introduce evidence in the public interest
  - b. the Judicial Remuneration Coordinating Committee (**JRCC**)
  - c. members of the judiciary and relevant office holders
4. The Tribunal also placed a notice on its website from 20 September 2022 calling for submissions from affected persons by 17 October 2022.
5. The JRCC provided a written submission on 17 October 2022, on behalf of:
  - a. the Chief Justice, Judges of Appeal, Judges and Masters of the Supreme Court
  - b. the Chief Judge, Judges and Masters of the District Court

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<sup>1</sup> 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.

- c. the Judges and Magistrates of the South Australian Employment Tribunal (with respect to the security and communication allowance)
  - d. the Chief Magistrate and the Magistrates of the Magistrates Court
  - e. the State Coroner and Deputy Coroner
  - f. the Commissioners of the Environment, Resources and Development Court, and
  - g. the President and Deputy Presidents of the South Australian Employment Tribunal.
6. On 31 October 2022, after an extension was granted, the Premier’s representative confirmed that the Premier did not intend to make a submission.
  7. No other submissions were received.
  8. The Tribunal convened a hearing on this and related matters on 14 November 2022. This hearing was attended by the Honourable Justice Tim Stanley as chair of the JRCC, Magistrate Jay Pandya as President of the Magistrates Association of South Australia, and Ms Carly Cooper from the Crown Solicitor’s Office as representative of the Premier.
  9. Justice Stanley and Magistrate Pandya spoke to the written submissions received from the JRCC. Ms Cooper attended and confirmed the Premier’s instructions.
  10. In summary, the JRCC submitted that:
    - a. the Tribunal should continue to set judicial salaries in accordance with the established national framework
    - b. the salary of a puisne Judge of the Supreme Court of South Australia should be increased to \$480,900 per annum – which would be a 2.75% increase on the current salary of a puisne Judge which has applied since 1 January 2020, and will match the annual salary of a Federal Court Judge
    - c. the salary of the other judicial members and other officers should be increased by no less than 2.75%
    - d. the increase should operate from 1 October 2022, in order to maintain a coherent national framework. This date would be three months behind when salary increases take effect for Federal, Queensland, and Territory Judges, and around the same time as the increase for Victorian Judges
    - e. the security allowance should be reviewed in the usual way, but part-time office holders should receive the full amount of the allowance as the costs of securing their residences is the same as for full-time office holders
    - f. the communication allowance should be increased to \$1,500 per annum, as the current rate was set in 2013 and the Tribunal should have regard to cost increases since 2013.

## CONSIDERATION AND CONCLUSION

11. The Tribunal has considered the current judicial salaries across the Commonwealth and States and Territories, as set out below.

Jurisdiction	Supreme Court Judge Salary	Operative Date
New South Wales	\$497,580	1 July 2022
Commonwealth (Federal Court Judge used)	\$480,900	1 July 2022
Northern Territory	\$480,900	1 July 2022
Australian Capital Territory ±	\$480,900	1 July 2022
Victoria ±	\$480,900	Date to be fixed
Queensland ±	\$480,900	1 July 2022
Tasmania §	\$471,485	1 July 2022

Western Australia	\$454,214	1 January 2022
SA (salary prior to this Determination)	\$468,020	1 January 2022

± These salaries are directly linked by legislation to the salary of a Federal Court Judge, under section 37U of the *Supreme Court Act 1933* (ACT), section 5 of the *Judicial Entitlements Act 2015* (Vic) and section 5 of the *Judicial Remuneration Act 2007* (Qld). The effective date of the increase for Victoria is yet to be fixed in accordance with the Victorian Act.

§ This salary is set by a statutory formula under section 7 of the *Supreme Court Act 1887* (Vic), being 90% of the average of the salaries of the Chief Justices of South Australia and Western Australia.

12. The Tribunal has had regard to the principles, guidelines, conditions, practices and procedures adopted by the South Australian Employment Tribunal under Part 4 of the *Fair Work Act 2009*, as required by section 101 of that Act.
13. The Tribunal has taken the following economic data into account:
- a. The Consumer Price Index (All groups Adelaide) shows the following percentage changes from the corresponding quarters of previous years:
    - i. 3.3% for December 2021
    - ii. 4.7% for March 2022
    - iii. 6.4% for June 2022
    - iv. 8.4% for September 2022.
  - b. The Australian Bureau of Statistics Wage Price Index (Public Sector in South Australia) shows the following percentage changes from the corresponding quarters of previous years:
    - i. 1.2% for September 2021
    - ii. 1.4% for December 2021
    - iii. 2.0% for March 2022
    - iv. 1.7% for June 2022
    - v. 2.7% for September 2022.
  - c. As at November 2022 the Reserve Bank of Australia forecast of the Consumer Price Index is:
    - i. 8% for December 2022 quarter
    - ii. 6.3% for June 2023
    - iii. 4.7% for December 2023
    - iv. 4.2% for June 2024
    - v. 3.2% for December 2024.
14. The Tribunal has noted the steps being taken to reduce the current inflationary trend and has adopted a cautionary approach to recognition of inflationary movements.
15. 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 the discretion to adopt an independent position. This means that while the Tribunal has, since 2012, determined increases with the effect of aligning the salary of a puisne Judge of the Supreme Court to that of a Judge of the Federal Court, this should not be interpreted as a commitment to automatically link the salaries of these positions in the future.
16. As the Tribunal has explained on previous occasions, determining salaries in a 'national framework' still requires the Tribunal to appropriately consider and have regard to all the differing factors in the different jurisdictions and, where appropriate, the value of the work

of a particular judicial office. While setting remuneration in the national framework does not inherently require a strict nexus to be maintained between particular judicial offices, the Tribunal recognises the substantial benefits of maintaining a consistent national approach to judicial remuneration.

17. Accordingly, the Tribunal has decided that it is appropriate to increase the salary of a puisne Judge of the Supreme Court to \$480,900, which reflects the salary of a Judge of the Federal Court and also the median salary of Supreme Court Judges in all states and territories other than South Australia. This is a 2.75% increase, rounded up to the nearest \$10. The Tribunal has decided to increase the other salaries within the scope of this review by the same rate.

*Operative date*

18. As illustrated below, in recent years the effective date of increases has moved around for a variety of reasons, which include the submissions received. At times, the effective date has been the same as that set for Federal Court Judges (1 January 2016, and 1 January 2017 being examples), but more commonly the Tribunal has set an effective date which is several months later.

<b>Determination / Report No</b>	<b>Effective Date of Increase</b>	<b>Determination / Report Issued</b>
7 of 2012	1 November 2012	15 December 2012
5 of 2013	1 November 2012	25 November 2013
9 of 2014	No increase	12 December 2014
2015	No increase	3 December 2015
5 of 2016	1 January 2016	23 March 2016
4 of 2017	1 January 2017 & 1 January 2018	25 May 2017
2 of 2018	1 June 2018	3 May 2018
2 of 2019	1 January 2019	14 March 2019
12 of 2019	1 January 2020	21 November 2019
10 of 2020	No increase	7 December 2020
13 of 2021	No increase	14 December 2021

19. The Tribunal is minded to establish a more consistent effective date having regard to the effective dates of salary increase for Commonwealth, State and Territory Judges. The Tribunal is nevertheless mindful that some of the above-mentioned changeability reflected changes in the effective date of salary increases for Commonwealth Judges, and the timings of the Tribunal's own reviews. The Tribunal also does not purport to bind itself for future reviews. The Tribunal has also noted the potential for proposed increases in remuneration for Federal Court Judges to be disallowed by the Australian Parliament.
20. While the JRCC has this year sought an effective date of 1 October 2022, the underlying submission is that there should not be a substantial (or perhaps any) difference in the effective date between the increase for Commonwealth Judges (and jurisdictions which adopt those increases). In some previous years, the JRCC has submitted that the increase should be backdated to occur on the same date as Commonwealth Judges.
21. The Tribunal is traditionally cautious about making determinations with significant retrospective effect, but is also of the view that if a reasonable effective date is set this year, then the Tribunal can work towards conducting next year's review with sufficient time to avoid or minimise retrospectivity should the same effective date be determined for that review.
22. For this year's review, the Tribunal is of the view that 1 September 2022 strikes the right balance. Further, the Tribunal is strongly inclined to the view that if future remuneration increases maintain the national framework approach and the timing of the review for the

Commonwealth Judges remains the same, 1 September represents an appropriate date for the application of that approach in South Australia.

### **Communication Allowance**

23. A communication allowance of \$1,254 per annum is paid to eligible office holders in respect of their expenditure on mobile and landline telephones, and internet usage, connected with their duties. While this rate was originally set in 2013, the Tribunal has generally reviewed the rate of the allowance each year. This year, based on the information currently before it the Tribunal is not persuaded that an increase is warranted. The information generally available to the Tribunal, does not demonstrate significant increases in communication costs.
24. The Tribunal would be aided, for next year's review, by information on cost increases over recent years and information about the typical annual costs incurred by office holders on telephones and internet usage.

### **Security Allowance**

25. Based on the information available, the Tribunal is not prepared to increase the rate of this allowance. As with the Communication Allowance, the Tribunal would be aided if it had information on what the allowance is currently being spent on and whether the rate of the allowance is sufficient for its designated purpose – noting that it was never the intention for this allowance to cover all possible costs of this nature.
26. In recognition of the importance of this allowance, the Tribunal would be willing to review this allowance in the first half of next year if application/s were received with the above-mentioned information. Otherwise, the allowance will be reviewed at the usual time. The Tribunal is attracted to the proposition that payment of this allowance in the future should be contingent on demonstrated actual expenditure on security arrangements.
27. The Tribunal has considered the submission by the JRCC that part-time office holders should receive the full amount of the allowance as the costs of securing their residences is the same as for full-time office holders. The Tribunal agrees with this submission from the JRCC, and has accordingly determined that part-time office holders will receive the full amount of the security allowance with effect from 1 September 2022.



Matthew O'Callaghan  
**PRESIDENT**



Deborah Black  
**MEMBER**



Peter de Cure AM  
**MEMBER**

Dated: 14 December 2022