



No. 16 of 2016

**REPORT OF THE REMUNERATION TRIBUNAL**  
**2016 REVIEW OF THE COMMON ALLOWANCE FOR MEMBERS OF THE PARLIAMENT OF**  
**SOUTH AUSTRALIA**

**1. PREAMBLE**

The *Remuneration Act 1990* (“the Act”) was introduced to establish an independent tribunal to determine the remuneration payable to members of the judiciary, and the remuneration or part of the remuneration payable in respect of certain other offices. Section 14 of the Act provides that additional jurisdiction may be conferred on the Tribunal by any other Act, or by proclamation of the Governor. Section 3A of the *Parliamentary Remuneration Act 1990* (“the PR Act”) confers jurisdiction on the Remuneration Tribunal to make a determination or perform any other function required by the PR Act.

In 2015, the PR Act was amended by the *Parliamentary Remuneration (Determination of Remuneration) Amendment Act 2015* (“the Amending Act”) and a number of allowances for Members of the Parliament and Ministers of the Crown were abolished. To compensate for the abolition of the allowances, a Common Allowance was established by the Amending Act, and the Remuneration Tribunal was given a statutory direction by the Amending Act to determine the amount of the Common Allowance. Accordingly, the Tribunal issued Report and Determination 7 of 2015, which determined the amount of the Common Allowance for Members of the Parliament.

Section 4AA(3) of the PR Act, as amended, provides that the Tribunal must review the Common Allowance once per year, and if the Tribunal considers it appropriate to do so, the Tribunal may determine an increase to the level of the Common Allowance.

**2. PROCEDURAL HISTORY**

Section 10(2) of the Act, requires that before the making of a Determination affecting the remuneration of a particular person, or persons of a particular class, the Tribunal must allow that person, or persons of that class, a reasonable opportunity to make submissions.

The Tribunal wrote to the Premier, as the Minister responsible for the Act, and the Members of the Parliament on 18 October 2016, notifying the parties of the Tribunal’s intention to review the Common Allowance, and inviting submissions with a closing date of 18 November 2016. No submissions were received by the Tribunal.

A formal sitting of the Tribunal was convened in relation to this matter on 5 December 2016.

**3. REPORT**

The Tribunal has conducted its annual review of the Common Allowance for the Members of the Parliament. On the material before the Tribunal, we discern no basis on which it would be appropriate in the circumstances to vary the Common Allowance.

There are no submissions from any member of Parliament for whom the Common Allowance forms a component of remuneration, submitting that it is appropriate to vary the Common Allowance. The Common Allowance was determined by the Tribunal, as referred to in section 4AA of the PR Act.

The Tribunal considers it appropriate to note some of the comments made in the Tribunal's 2015 report accompanying the Determination that established the Common Allowance, which summarised the functions it was required to perform, as follows:

*“5.11.1. Ascertain the full value of specified travel entitlements.*

*5.11.2. Make a determination that reasonably compensates members of parliament for the loss of those entitlements.*

*5.11.3. Determine the amount of payment currently made for service as ordinary members of committees as a quotient.*

*5.11.4. If the amount of the quotient is considered inadequate remuneration to replace existing payments for committee service make a further determination of an additional amount.”*

The effect of the Amending Act included the abolition of existing prescribed payments for members of Parliament who were ordinary members of parliamentary committees. The Tribunal's 2015 report also summarised the following in relation to functions the Tribunal was required to perform:

*“5.3 Before proceeding to address each of the two areas of consideration it is necessary to provide some explanation of the approach that the Tribunal must take to the functions that comprise the statutory duties it is directed to perform.*

*5.4. Where a Tribunal is assigned a task or function by legislation it must do so in accordance with and within the boundaries of the relevant statutory provisions and in a manner that conforms to any direction expressed by the terms of the statute.*

*5.5. In this case it is to be noted that there are several mandatory tasks that are to be performed by the Tribunal. Mandatory direction to the Tribunal is effected by the inclusion of the word “must” in the commencing words of subsections (1) and (2) of section 4AA. However, it is also to be noted that the relevant statutory provisions confer some discretion upon the Tribunal in relation to certain aspects of the matters to be dealt with under section 4AA.*

*5.6. Thus, under subsection (1) of section 4AA the Tribunal “must” “ascertain the full value” of the named travel entitlements and “must” then determine an amount which “reasonably compensates” a member of Parliament for the abolition of the named entitlements.*

*5.7. Some pertinent considerations flow from these aspects of the statutory language. Most importantly, the Tribunal must make a Determination of an amount of compensation. The amount so determined must be reasonable and the amount of compensation must be arrived at by reference to the loss of the full value of travel entitlements and not other extraneous considerations. The statute directs that the Determination of the relevant amount by the Tribunal must be the source of the reasonable compensation for the lost entitlements. The existence of other entitlements or remuneration is not therefore a relevant consideration. The Determination must arise from a clear nexus between the full value of the named entitlements abolished and the amount of reasonable compensation judged by the Tribunal, although the two need not be identical.”*

The Tribunal's Determination 7 of 2015 determined appropriate amounts as directed by the legislation, totalling \$30,294, which is the level of the Common Allowance. It will be observed that this amount is comprised of components subject to diverse considerations. In these circumstances, particularly in the absence of any submissions, the Tribunal cannot be satisfied that a uniform variation is warranted. Rather, in our view, appropriate consideration of each of the components, and any relevant change in circumstances, would be indicated as a basis for a review. In this respect, the Tribunal would have regard to submissions made by persons to whom the Determination applies in accordance with the legislation. Nothing has been put to the Tribunal, in relation to the level of the various components of the Common Allowance, accordingly.

Moreover, the Tribunal is not independently aware of any relevant changes in circumstances which would, in our view, warrant a variation to the Common Allowance at this time.

Accordingly, the Tribunal will make no variation to Determination 7 of 2015, which will continue to apply.



John Lewin  
**PRESIDENT**



Peter Alexander  
**MEMBER**



Pamela Martin  
**MEMBER**

Dated this 19<sup>th</sup> day of December 2016.