



REMUNERATION TRIBUNAL

REPORT RELATING TO DETERMINATION NO. 5 OF 2016

ANNUAL REVIEW OF REMUNERATION FOR MEMBERS OF THE JUDICIARY, MEMBERS OF THE INDUSTRIAL RELATIONS COURT AND COMMISSION, THE STATE CORONER, AND COMMISSIONERS OF THE ENVIRONMENT, RESOURCES & DEVELOPMENT COURT

1. INTRODUCTION

- 1.1. In accordance with the provisions of the *Remuneration Act 1990* (SA) (“the Act”), the Remuneration Tribunal by letters dated 22 December 2015, invited those members of the judiciary and statutory office holders whose offices are listed under Section 13 of the Act, as well as those covered by relevant sections of the *Fair Work Act 1994* (SA), to make submissions in relation to the remuneration of members of the judiciary and other office holders. The Tribunal also invited the Premier, as Minister responsible for the Act, to make submissions in the public interest.

2. SUBMISSIONS

- 2.1. The Tribunal received written submissions from:
- The Judicial Remuneration Co-ordinating Committee (“JRCC”) on behalf of the Chief Justice, Judges and Masters of the Supreme Court; the Chief Judge, Judges and Masters of the District Court; the Senior Judge, Judges and Magistrates of the Industrial Relations Court; the Chief Magistrate and the Magistrates of the Magistrates Court; the State Coroner and the Deputy State Coroners; the Commissioners of the Environment Resources and Development Court; and the President, Deputy Presidents and Commissioners of the Industrial Relations Commission;
 - The Magistrates Association of South Australia (“MASA”);
 - The State Coroner;
 - The Chief Magistrate;
 - The Deputy Premier; and
 - The Crown Solicitor’s Office, on behalf of the Premier, in the public interest.
- 2.2. The Tribunal convened a hearing on 17 February 2016 to hear oral submissions. The following persons attended and made submissions:
- The Honourable Justice Tim Stanley, on behalf of the JRCC; and
 - Ms Carly Cooper and Mr Ross Callow, on behalf of the Premier.

- 2.3. The JRCC submitted that the Tribunal should continue to set judicial salaries in a national framework, and in the national interest.
- 2.4. The JRCC presented their argument that, in conformity with that approach, the salary of a puisne judge of the Supreme Court of South Australia should be increased by 2% to \$420,810, to maintain parity with the annual salary paid to a judge of the Federal Court. The JRCC also submitted that the salaries of other judicial officers including judges of the District Court, Magistrates, the State Coroner and other statutory office holders as listed in Section 13 of Act, be increased by 2% to preserve the relativity that exists.
- 2.5. The JRCC made the submission that, in order to maintain South Australian judicial salaries at the same level as those of a Federal Court judge and within a national framework, the Tribunal should determine that the commencement date should be as of 1 January 2016.
- 2.6. The Magistrates Association of South Australia (“MASA”) supported the submissions made by the JRCC. However, the letter also asked that the long standing relativity between members of the South Australian judiciary, which was not followed when the Tribunal handed down its determination in 2012, be restored. Subsequently, the JRCC also made an additional submission supporting MASA’s relativity claim.
- 2.7. The State Coroner brought to the attention of the Tribunal that for a number of years preceding Determination 7 of 2012, the salary of the Coroner was at a constant level relative to that of a puisne judge of the Supreme Court, but as a consequence of Determination 7 of 2012, that former relativity was not maintained. Moreover, the State Coroner expressed his support for MASA’s relativity claim.
- 2.8. The Chief Magistrate submitted that she is in support of MASA’s claim and that restoration of the relativity that existed prior to 2012 would be appropriate and reasonable.
- 2.9. The Deputy Premier made a submission in order to raise an issue associated with the remuneration of His Honour Judge Jennings and His Honour Judge Hannon as provided in the Tribunal’s Determination 5 of 2013. The Deputy Premier submitted that the remuneration of the offices occupied by those judicial officers should be associated with the position or public office and not the person. The JRCC responded accordingly and submitted that these determinations should not continue to provide for remuneration *in personam*, and that the remuneration should be fixed for the performance of the relevant judicial functions. It was submitted that this issue should be resolved immediately, having regard to the recent retirement of His Honour Judge Jennings. Furthermore, the JRCC submitted that His Honour Judge McCusker has not received the appropriate remuneration whilst performing the same functions as the Honourable Judge Jennings since 14 December 2015.
- 2.10. Ms Cooper, on behalf of the Premier, submitted that the Tribunal should consider and have regard to the following in its review of judicial remuneration:
 - Where appropriate in determining remuneration under the *Remuneration Act 1990* (SA), the constitutional principle of judicial independence;
 - Principles, guidelines, conditions, practices or procedures adopted by the Full Industrial Relations Commission of South Australia, including the State Wage Fixing Principles;
 - Interstate and Federal salary levels, however it should place a greater emphasis on economic indicators applicable to South Australia, in particular, that judicial salaries have increased more quickly than the average South Australian workforce wage, and have increased more than twice the inflation rate; and

- As a matter of principle, setting salaries in a national framework does not require uniformity or conformity.

2.11. Ms Cooper, on behalf of the Premier submitted that it was appropriate and in the public interest for the Tribunal to determine an increase in salaries for members of the judiciary and other statutory office holders of up to 2% with an operative date of no earlier than 1 January 2016.

2.12. Ms Cooper, on behalf of the Premier submitted that the existing relativities in remuneration between the courts as altered in 2012 are appropriate and should not be disturbed. Any increase in remuneration over and above a general salary increase can only be justified if there is, in relation to a particular court, an identifiable significant net addition to the work value of that court. There is currently no evidence before the Tribunal to establish a claim in these terms. Ms Cooper therefore submitted that a separate and additional increase on grounds of historical changes in salary relativity should not be awarded by the Tribunal.

3. COMMONWEALTH REMUNERATION TRIBUNAL'S REVIEW AND DETERMINATION

3.1. The Commonwealth Remuneration Tribunal's *Determination 2015/18: Judicial and Related Offices, Remuneration and Allowances* provides for a remuneration increase of 2%.

4. COMPARISON OF FEDERAL, STATE AND TERRITORY JUDICIAL SALARIES

4.1. As conducted in previous reviews, the Tribunal examined the Federal and other State and Territory judicial salaries relevant to the office of puisne judge.

4.2. The Tribunal is advised that the relevant judicial salaries as at the time of writing (for the puisne judges in States and Territories) are as follows:

JURISDICTION / COURT	SALARY
South Australia – Supreme Court (before this determination)	\$412,550
Commonwealth - Federal & Family Court	\$420,810
Queensland – Supreme Court	\$420,810*
Australian Capital Territory – Supreme Court	\$420,810*
Victoria – Supreme Court	\$420,810*
Northern Territory – Supreme Court	\$420,810*
New South Wales – Supreme Court	\$431,160
Western Australia – Supreme Court	\$433,258
Tasmania – Supreme Court	\$432,728

*Salaries have regard to the salary of a Federal Court Judge.

5. SOUTH AUSTRALIAN ECONOMIC CIRCUMSTANCES

5.1. The submission on behalf of the Premier suggested that the Tribunal should place greater emphasis upon economic indicators applicable to South Australia, and provided a statement by the Director, Economics, of the Department of Treasury and Finance. The submission provided statistical data, including:

- The Wage Price Index (WPI) for South Australia indicated that the costs of employment in South Australia had increased by 2.5% over the 12 months to 30 June

2015, compared to 2.3% nationally. South Australian WPI growth softened to 2.3% in the year to the September quarter 2015, to be the same as growth nationally.

- Wages in South Australia are marginally lower than Australian wages on average, with estimated average ordinary time weekly earnings for full time adult employees in the South Australian public sector being 0.3% less than those across the Australian wide public sector.
- The Consumer Price Index for Adelaide (All Groups) increased by only 1.2% over the 12 months to 30 June 2015.

6. FAIR WORK ACT 1994 (SA)

- 6.1. In relation to comments made by the JRCC and by the Crown Solicitor's Office on behalf of the Premier, the Tribunal will continue to have due regard to State Wage Fixing Principles as required by Section 101(1) of the *Fair Work Act 1994*, and will apply and give effect to such principles as it deems appropriate.

7. COMMUNICATION ALLOWANCE

- 7.1. Communication Allowance for Judges, Statutory Officers and Court Officers are prescribed in Determination No. 6 of 2013. This allowance will remain unaffected by this Determination.

8. CONVEYANCE ALLOWANCE

- 8.1. Conveyance Allowance for Judges, Statutory Officers and Court Officers are prescribed in Determination No. 3 of 2015. These allowances will remain unaffected by this Determination.

9. TRAVELLING AND ACCOMMODATION ALLOWANCES

- 9.1. Travelling and Accommodation Allowances for Judges, Statutory Officers and Court Officers are prescribed in Determination No. 6 of 2015. These allowances will remain unaffected by this determination.

10. OPERATIVE DATE

- 10.1. The JRCC put forward its position that the operative date for the Tribunal's Determination should be effective from 1 January 2016, to maintain parity with the Commonwealth Remuneration Tribunal's operative date for increased salaries of federal judicial officers.
- 10.2. Ms Cooper, on behalf of the Premier, submitted that the operative date for this Determination should be no earlier than 1 January 2016, in accordance with the decision of the Commonwealth Remuneration Tribunal.
- 10.3. In relation to the submission regarding the operative date for a person who is, or performs the duties of, a Senior Judge of the Industrial Relations Court whom also holds the appointment, or performs the duties of, the President of the Workers Compensation Tribunal or the South Australian Employment Tribunal, the JRCC submitted that the operative date ought to be 14 December 2015, which is the date that His Honour Judge McCusker commenced the performance of the duties, pending the retirement of His Honour Judge Jennings. The Crown Solicitor's Office, on behalf of the Premier, submitted that the operative date should be 5 March 2016, as this was the date that His Honour Judge McCusker was appointed, by the Governor, as President of the South Australian Employment Tribunal.

11. CONCLUSIONS

- 11.1. The Tribunal has had regard to all the submissions and material before it, including economic factors, information regarding Federal and State comparisons, existing relativities between South Australian judicial offices, and the operative date.
- 11.2. The Tribunal confirms that the approach of setting salaries in a 'national framework' continues to be appropriate and in the public interest. However, the Tribunal's determination to equate the salary of a puisne judge of the Supreme Court to that of a judge of the Federal Court, should not be interpreted as a commitment to automatically link the salaries of these positions. Determining salaries in a 'national framework' still requires the Tribunal to appropriately consider and have regard to the all the differing factors in the different jurisdictions and, where appropriate, the value of the work of a particular judicial office.
- 11.3. The Tribunal has determined that the salary of the Chief Justice of the Supreme Court will be increased by 2% to \$471,270 per annum.
- 11.4. The Tribunal has determined that the salary of a puisne judge of the Supreme Court of South Australia will be increased by 2% to \$420,810 per annum.
- 11.5. The salaries of all other judicial officers and statutory office holders listed in Section 13 of the *Remuneration Act 1990*, have also been increased by 2% as per the schedule in the accompanying Determination 5 of 2016.
- 11.6. In relation to foreshadowed work value and relativity claims from the Magistrates and the State Coroner, the Tribunal will consider any such work value and relativity claims cognately, at a later date.
- 11.7. In relation to the Deputy Premier's submission regarding the *in personum* Determinations for the Honourable Judge Jennings and the Honourable Judge Hannon, the Tribunal considers that it is appropriate to remove the *in personam* provisions of Determination 5 of 2013. However, the Tribunal considers that, contrary to the Premier's submission, the operative date of the effect of such removal should be the date that other judicial officers commenced to perform the duties of the offices to which the Determination applied *in personam*.
- 11.8. In the view of the Tribunal, if the appropriate provision of the Determination should be remuneration for the performance of the duties of the offices, rather than designated personal entitlement to remuneration, as submitted by the Premier, the performance of those duties should form the basis of the entitlement to the remuneration so prescribed. The relevant fact, in this case, is that another judicial officer has performed the duties to which the *in personam* remuneration of Senior Judge Jennings has thereto applied, since 14 December 2015, due to the retirement of Judge Jennings as Senior Judge of the Industrial Court. Accordingly, that date is an appropriate date from which the variation of the Determination to remove the *in personam* nature of the prescribed remuneration and provide that the remuneration so prescribed is applicable to the judicial officer performing the duties of the relevant office should operate. To determine otherwise, as suggested, would create a contradictory lacuna, whereby the duties of the office of Senior Judge of the Industrial Court were performed by another judicial officer without the remuneration of that judicial officer being at the level previously prescribed for the performance such duties, *in personam*, by Judge Jennings, for a period of several months, without good reason.
- 11.9. The operative date of the Determination to remove the *in personam* basis of the remuneration prescribed for a judicial officer who is, or performs the duties of, a Senior

Judge of the Industrial Relations Court, whom also holds the appointment, or performs the duties of the President of the Workers' Compensation Tribunal or the South Australian Employment Tribunal will be 14 December 2015, and will be the amount of \$388,200. This salary will increase to \$395,970 on and from 1 January 2016 to allow for the 2% general increase applicable to judicial and other offices within the accompanying Determination 5 of 2016.

11.10. All salaries and allowances prescribed in paragraph 1 of the accompanying Determination are operative on and from 1 January 2016, with the exception of paragraph 11.9 of this report.



John Lewin
PRESIDENT



Nicola Vincent
MEMBER



Peter Alexander
MEMBER

23 March 2016