

REMUNERATION TRIBUNAL

REPORT RELATING TO DETERMINATION NO. 5 OF 2013

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* ("the Act"), the Remuneration Tribunal by letters dated 4 October 2013, 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 those office holders. The Tribunal also invited the Premier, as Minister responsible for the Act, to make submissions in the public interest.
- 1.2 The Tribunal published a notice in the 5 October 2013 edition of *The Advertiser* newspaper, advising that the Tribunal was to conduct a review of the determination incorporating the salaries payable to Members of the Judiciary and other Judicial Statutory Officers. The notice invited interested persons, organisations and associations to submit in writing any views they considered should be taken into account in the review. Public submissions were required to be lodged by the close of business on 25 October 2013.

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;
 - The State Coroner; and
 - The Crown Solicitor's Office, on behalf of the Minister, in the public interest.
- 2.2 The Tribunal convened a hearing on 14 November 2013, to hear oral submissions. The following persons attended and made submissions:
 - The Honourable Justice John Sulan and His Honour Judge Wayne Chivell, on behalf of the JRCC; and
 - Ms Carly Cooper and Mr Craig Stevens, on behalf of the Minister.
- 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 argument that, in conformity with that approach, the salary of a puisne judge of the Supreme Court of South Australia should be increased by 2.4% to \$412,550 per annum 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 2.4% to preserve the relativity that exists.

- 2.5 The JRCC made no submissions on the date of effect other than to note that an operative date of 1 July was preferred.
- 2.6 The JRCC noted that there had been no adjustment to the Communication Allowance since *Determination 4 of 2008*, and requested that the allowance be increased from its current value of \$1200 to \$1450 per annum.
- 2.7 The JRCC also advised that as a consequence of recent legislative changes, the jurisdiction of Magistrates has increased and that the Magistrates intend to make a separate work value submission in the future when the effect of the changes on their work has been determined.
- 2.8 In a letter to the Tribunal dated 15 October 2013, the Magistrates Association of South Australia supported the submissions to be 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.
- 2.9 The Magistrates Association gave the Tribunal notice of its intention to file an application in 2014 seeking a review of the nexus between the salary of a District Court Judge and that of the Magistrates.
- 2.10 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.
- 2.11 Ms Cooper, on behalf of the Minister, 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.
- 2.12 The Government 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 2.5% with an operative date of 1 November 2013.
- 2.13 On the matter of an adjustment to the Communications Allowance, the Government proposed that the Tribunal have regard to the Australian Bureau of Statistics (ABS) Communications Index, which between the 2008 September quarter and the 2013 September quarter showed a relative price increase of 4.5%.

3. COMMONWEALTH REMUNERATION TRIBUNAL'S REVIEW AND DETERMINATION

- 3.1 The Commonwealth Remuneration Tribunal's *Determination 2013/10: Remuneration and Allowances for Holders of Full-Time Public Office* provides for a remuneration increase of 2.4%. In its related Statement dated 13 June 2013, the Commonwealth Tribunal made the following comments; "While trend information on wages growth during the past twelve months would support an increase above 3 per cent, the most recent information suggests a slowing in wages movements in the community as well as uncertainty regarding economic growth. Consequently, the Tribunal has decided to take a conservative and incremental approach to the annual remuneration increase at this time. The Tribunal will monitor remuneration outcomes in the coming months and will make a further assessment of the situation in December 2013 ... If the Tribunal decides that a further general increase is required before 1 July 2014, it will make an appropriate determination."
- 3.2 The South Australian Tribunal particularly noted the Commonwealth Remuneration Tribunal's *Determination 2013/12: Judicial and Related Offices – Remuneration and Allowances*. This determination granted a salary increase of 2.4% to judges of the federal courts.

4. COMPARISON OF FEDERAL, STATE AND TERRITORY JUDICIAL SALARIES

- 4.1 As 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 present relevant judicial salaries (for the puisne judges in States and Territories) are as follows:

| JURISDICTION / COURT | SALARY | OPERATIVE DATE |
|--|-----------|------------------|
| Commonwealth - Federal & Family Court | \$412,550 | 1 July 2013 |
| Queensland – Supreme Court | \$412,550 | 1 July 2013 |
| Australian Capital Territory – Supreme Court | \$412,550 | 1 July 2013 |
| Victoria – Supreme Court | \$412,550 | To be determined |
| Northern Territory – Supreme Court | \$412,500 | 1 July 2013 |
| New South Wales – Supreme Court | \$402,810 | 1 October 2012 # |
| Western Australia – Supreme Court | \$422,691 | 1 July 2013 |
| Tasmania – Supreme Court | \$416,813 | 1 July 2013 |
| South Australia – Supreme Court (before this determination) | \$402,880 | 1 November 2012 |

The proposed increase as determined by the NSW Statutory and Other Offices Remuneration Tribunal to apply from 1 October 2013 was disallowed by resolution of the Legislative Council of the NSW Parliament on 12 November 2013.

5. SOUTH AUSTRALIAN ECONOMIC CIRCUMSTANCES

- 5.1 The submission on behalf of the Minister 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 3.3% over the 12 months to 30

June 2013, compared to 2.9% nationally. Although the SA WPI is higher than the national wage index for the same quarter, SA still trails Australia in terms of total growth in wages since the base year.

- Wages in South Australia are 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 2.0% less than those across the Australian wide public sector.
- The Consumer Price Index for Adelaide (All Groups) increased by only 2.1% over the 12 months to 30 June 2013.

6. FAIR WORK ACT 1994 (SA)

In relation to comments made by the JRCC and by the Crown Solicitor's Office on behalf of the Minister, 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

The Tribunal has determined to increase the value of the Communications Allowance by 4.5% to \$1254 per annum, operative from 1 January 2014. This matter is dealt with in Determination No. 6 of 2013.

8. CONVEYANCE ALLOWANCE

Conveyance Allowances for Judges, Statutory Officers and Court Officers are prescribed in Determination No. 4 of 2013. These allowances will remain unaffected by this determination.

9. TRAVELLING AND ACCOMMODATION ALLOWANCES

Travelling and Accommodation Allowances for Judges, Statutory Officers and Court Officers are prescribed in Determination No. 2 of 2013. These allowances will remain unaffected by this determination.

10. OPERATIVE DATE

10.1 The JRCC maintained its position that annual increases in salaries and allowances should be effective from 1 July 2013, being the date from which the Commonwealth Remuneration Tribunal increased salaries for federal judicial officers.

10.2 The Minister submitted that due to the requirement for an annual review in Section 8(2) of the *Remuneration Act 1990*, it is reasonable that the Tribunal should retain its current practice of having any salary increase operative from 1 November 2013.

10.3 The Tribunal was not persuaded to change its current practice regarding operative date.

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 differing factors in the different jurisdictions.

- 11.3 The Tribunal has determined that the salary of the Chief Justice of the Supreme Court will be increased by 2.4% to \$462,020 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 2.4% to \$412,550 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 2.4%.
- 11.6 All salary increases in this Determination are operative from 1 November 2013.



Deane R. Prior
PRESIDENT

25 November 2013