

REMUNERATION TRIBUNAL

REPORT RELATING TO DETERMINATION NO. 7 OF 2012

1. INTRODUCTION

- 1.1 In accordance with the provisions of the *Remuneration Act 1990*, the Remuneration Tribunal by letters dated 4 October 2012, 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 Minister to make submissions in the public interest.
- 1.2 On 6 October 2012, the Tribunal published a notice in *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 consider should be taken into account in the review. Submissions were required to be lodged by the close of business on 26 October 2012.

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 Crown Solicitor's Office, on behalf of the Premier, the Minister in the public interest.
 - The Honourable Dr Bob Such MP, Member for Fisher in the House of Assembly.
- 2.2 The Tribunal convened a hearing on 9 November 2012, to hear oral submissions. The following persons attended and made submissions:
 - The Honourable Justice John Sulan, The Honourable Justice Timothy Stanley and His Honour Judge Wayne Chivell, on behalf of the JRCC; and
 - Mr Jeremy Brown 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. It argued that because there have been increases to the salaries of Federal Court Judges, Family Court Judges and Federal Magistrates as a result of the Commonwealth Remuneration Tribunal's Determination 2012/09, and as these increases will flow on to the other federal jurisdictions and most of the other States, either automatically or as a likely outcome of Tribunal determinations, the same increases should flow on to South Australian Judges.

- 2.4 The JRCC presented argument that not only should the Tribunal set judicial salaries in a national framework, but in conformity with that policy, the salary of a Puisne Judge of the Supreme Court should be increased to \$402,880 per annum, in order to match the annual salary paid to a Judge of the Federal Court. The JRCC brought to the attention of the Tribunal that most other jurisdictions now provide salaries to Puisne Judges of the Supreme Court at the same level as the salaries paid to Judges of the Federal Court. Evidence was presented that South Australian Supreme Court Judges have the lowest remuneration of all Supreme Court Judges and that there was no justification for treating Adelaide based judges differently from judges in other states. The JRCC also presented evidence which showed that the cost of living in Adelaide is greater in all mainland cities other than Sydney, when the rent index is removed. The judges argued that it is not relevant to include the rent index when considering the cost of living facing judges as most judicial appointments are made when those appointed are aged 50 years or more, and already own their homes.
- 2.5 The JRCC also submitted evidence that the level of work of South Australian Supreme Court Judges includes sitting on the Full Court and Court of Criminal Appeal. As a consequence, South Australian Supreme Court Judges carry a greater judicial responsibility than equivalent judges of other mainland states. South Australian Judges are required to sit as the final Court of Appeal in South Australia. Most cases are finally determined by the Full Court. In all mainland states other than South Australia, there is a separate Court of Appeal, the Judges of which receive a higher remuneration than those who sit as trial judges.
- 2.6 Mr Brown, 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
 - The State Government's commitment to limiting salary increases across the public sector of no more than 2.5% per year, including for South Australian Public Sector Executives, and therefore any increase to judicial salaries should not exceed 2.5%.

3. COMMONWEALTH TRIBUNAL'S REVIEW AND DETERMINATION

- 3.1 The Tribunal noted Determination 2012/09 of the Commonwealth Remuneration Tribunal, dated 19 June 2012.
- 3.2 The Commonwealth Remuneration Tribunal's Determination 2012/09 provided for a remuneration increase of 3.0%. In its related Statement, the Tribunal reiterated its belief in a conservative approach to the determination of remuneration. The Tribunal also considered national economic developments, and attributed particular significance to public sector remuneration.

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	\$402,880	1 July 2012
Queensland – Supreme Court	\$402,880	1 July 2012
Australian Capital Territory – Supreme Court	\$402,880	1 November 2012
Victoria – Supreme Court	\$402,880	18 September 2012
Northern Territory – Supreme Court	\$402,880	1 July 2012
New South Wales – Supreme Court	\$402,810	1 October 2012
Western Australia – Supreme Court	\$411,980	1 January 2013
Tasmania – Supreme Court	\$389,527	Currently under review
South Australia – Supreme Court (before this determination)	\$389,130	1 November 2011

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 for South Australia indicated that the costs of employment in South Australia had increased by 3.4% over the 12 months to 30 June 2012, compared to 3.7% nationally.
- If the Tribunal increased salaries by 2.5%, the benchmark salary of a Puisne Judge of the South Australian Supreme Court would only be approximately 1% less than the current salary of a Judge of the Federal Court. That figure is consistent with the fact that wages in South Australia are lower than Australian wages on average, and consistent with the estimate of the average weekly ordinary time earnings for full time adult employees in the South Australian public sector being 1.2% 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 2012.

6. **PUBLIC SUBMISSIONS**

In response to the advertised invitation for public submissions, one letter was received from the Hon Dr Bob Such MP. Dr Such urged the Tribunal to provide economic leadership and to restrain any increase to 3% or less, in line with movement in the Consumer Price Index.

7. **FAIR WORK ACT 1994 (SA)**

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

8. COMMUNICATION ALLOWANCE

The Communication Allowance for members of the Judiciary, members of the Industrial Relations Commission, the State Coroner, and Commissioners of the Environment, Resources and Development Court is prescribed in Determination No. 4 of 2008 and will continue in accordance with that determination.

9. CONVEYANCE ALLOWANCE

Conveyance Allowances for Judges, Statutory Officers and Court Officers are prescribed in Determination No. 2 of 2012. Those allowances will remain unaffected by this determination.

10. TRAVELLING AND ACCOMMODATION ALLOWANCES

Travelling and Accommodation Allowances for Judges, Statutory Officers and Court Officers are prescribed in Determination No. 3 of 2012. These allowances will remain unaffected by this determination.

11. OPERATIVE DATE

11.1 The JRCC submitted that the Judge of the Supreme Court of South Australia should be increased to \$402,880 per annum, with effect from 1 July 2012.

11.2 The Minister submitted that due to the Section 8(2) of the *Remuneration Act 1990*, requirement for an annual review it is reasonable that the Tribunal should retain its current practice as to the operative date of any annual increase and that subsequently the 2012 Determination should have an operative date of no earlier than the first pay period commencing on or after 1 November 2012.

11.3 In all the circumstances the Tribunal was not persuaded to change its current practice regarding operative date.

12. CONCLUSIONS

12.1 The Tribunal has had regard to all the submissions and material before it, including economic factors, information regarding current Federal and State comparisons, attraction and retention, levels of responsibility for South Australian judges compared to their colleagues interstate, and the operative date.

12.2 The Tribunal has determined that the salary of a Puisne Judge of the Supreme Court of South Australia will be increased to \$402,880 per annum.


12.3 The Tribunal has determined that the salary of the Chief Justice of the Supreme Court will be increased to \$451,190 per annum.

12.4 The Tribunal has also determined that the salaries of District Court Judges, including those assigned to the Industrial Relations Court, will be increased by the same percentage increase as applied to a Puisne Judge of the Supreme Court (3.53%).

12.5 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 should not be interpreted as a commitment to automatically link the salary of a Puisne Judge to that of a Judge of the Federal Court. Determining salaries in a 'national framework' still requires the Tribunal to appropriately consider and have regard to the differing factors in the different jurisdictions.

12.6 The salaries of all other judicial officers and statutory office holders listed in the Determination have generally been increased by 3%.

12.7 All salary increases in this Determination are effective as from 1 November 2012.

A handwritten signature in black ink, appearing to read 'Deane R. Prior', with a large, loopy flourish at the end.

Deane R. Prior
PRESIDENT

15 December 2012