

REMUNERATION TRIBUNAL

REPORT RELATING TO DETERMINATION NO. 6 OF 2011

1. INTRODUCTION

- 1.1 In accordance with the provisions of the *Remuneration Act 1990* (SA) ('the Act') the Remuneration Tribunal by letters dated 19 October 2011 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 to make a submission in the public interest.
- 1.2 The Tribunal sought written submissions from "interested persons, organisations and associations" by an advertisement placed in *The Advertiser* on Wednesday, 19 October 2011.

2. SUBMISSIONS

- 2.1 The Tribunal received written submissions from:
- Justice Sulan, Chair of 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 responsible for the *Remuneration Act 1990*) in the public interest.
- 2.2 No written submissions were received from members of the public.
- 2.3 The Tribunal convened a hearing on 1 December 2011 to hear oral submissions, attended by the following:
- Justice Sulan of the Supreme Court, Justice Stanley of the Supreme Court, and Justice Chivell of the District Court, on behalf of the JRCC; and
 - Mr Ben Trainor of the Crown Solicitor's Office, on behalf of the Premier, in the public interest.

Judicial Remuneration Co-ordinating Committee

- 2.4 The JRCC provided information about the remuneration of judicial officers in other Australian jurisdictions, and the impact of the determinations of the Commonwealth Remuneration Tribunal ('Cth Tribunal').

- 2.5 The JRCC submitted that the Tribunal should continue to set judicial salaries in a national framework, as it *'continues to be appropriate and in the national interest'*. It noted that the Tribunal has not historically set judicial salaries in direct parity with other jurisdictions, and submitted that it was in the public interest and in the *'pursuit of the principle of setting salaries in the national framework, that there should be no differential between South Australian salaries and those of Federal Court Judges and Judges interstate'*.
- 2.6 Other reasons given for seeking increases were:
- A significant reduction in the status and authority of State courts would result if general parity with Federal salaries is not maintained and no such disparity is justifiable on a work value basis; and
 - Legislative changes in South Australia have increased and broadened the jurisdictions of the various courts.
- 2.7 The JRCC submitted that consideration of the general wage increases awarded to South Australian public servants was not relevant as the judiciary are not public servants. Regard should instead be had to the wage increases of judicial officers interstate and at a Federal level.
- 2.8 The JRCC submitted that the following increases awarded by the Cth Tribunal should be flowed on to South Australian judges:
- the final 1.5% tranche of the 6% increase awarded in the Cth Tribunal Determination 2011/05, to be effective from 1 May 2011; and
 - a 3% increase awarded by the Cth Tribunal in its Determination 2011/10, to be effective from 1 July 2011.
- 2.9 The JRCC noted that the operative date of any increase was particularly relevant to two previous members of the bench. Both individuals retired in 2011 as they reached the compulsory age of 70 and their pensions will be determined on their remuneration as at the time of their retirement. It was submitted that should the operative date of any increase differ from the dates of Federal increases, it would create an inequity in respect of each of them as they were serving Judges at the time of the Federal decisions.
- 2.10 The JRCC also noted that while it did not seek to have the matter considered in these proceedings, it would be making an application to the Tribunal in 2012 regarding the relativities that establish the remuneration of a District Court judge.

The Premier, in the public interest

- 2.11 The Premier, in the public interest, 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, in particular State Wage Principle 8 with regards to the Tribunal's consideration of the final 1.5% tranche of the Cth Tribunal's 6% work value increase;
 - The prevailing economic conditions in South Australia (including labour price movements);

- Local movements in remuneration, and in particular those within the South Australian Executive Service and the South Australian Public Service;
 - Statements of the State Government in the 2009/10, 2010/11 and 2011/12 State Budgets regarding wage outcomes and the sustainability of the State's finances;
 - Interstate and Federal salary levels, however the Tribunal should place a greater emphasis on economic indicators applicable to South Australia, in particular, the fact that judicial salaries have increased more quickly than the average South Australian workforce wage; 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%.
- 2.12 A Statement from Mr Stuart Hocking, Director Economics, Department of Treasury and Finance, provided information regarding economic conditions and indicators relevant to South Australia and Australia.
- 2.13 The Premier noted that there has historically been a difference in the operative dates of remuneration adjustments for the judiciary in the various jurisdictions, and that the operative date of judicial remuneration adjustments in South Australia has been 1 November. The Premier submitted that the Tribunal should retain its past practice as to the operative date of any adjustments in remuneration, and as such any increase should be operative from not earlier than the first full pay period on or after 1 November 2011.
- 2.14 The Premier supported a salary increase that had regard to economic and local circumstances that also ascribed weight to the 2.5% per annum salary increase received by the South Australian Executive Service and the South Australian Public Service.

3. COMMONWEALTH TRIBUNAL'S REVIEW AND DETERMINATION

- 3.1 The Tribunal notes the recently issued Determination 2011/10 of the Cth Tribunal. The Tribunal also notes the ongoing impact of the Cth Tribunal's Report on the *Review of Remuneration Relativities among Australia's Federal Courts*, published in October 2009.
- 3.2 The Cth Tribunal's Statement regarding Determination 2011/05 provides a further and final remuneration increase of 1.5% effective from 1 May 2011. This increase is the result of conclusions reached in the *Review of Remuneration Relativities among Australia's Federal Courts*. The Cth Tribunal has now provided all of the four tranches of the total remuneration increase of 6% it determined in 2009.
- 3.3 The Cth Tribunal's Determination 2011/10 provided for a remuneration increase of 3% effective from 1 July 2011. This remuneration increase was provided to all public offices in its jurisdiction. In its related Statement, the Cth Tribunal noted that it had, in determining this increase, "*taken account of economic conditions in Australia, movements in remuneration generally, including in the Australian Public Service, as well as its current program of reviews*".

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 relevant judicial salaries (for the Puisne Judges in States and Territories) are as follows:

| COURT/STATE/TERRITORY | SALARY | OPERATIVE DATE |
|---------------------------------------|------------------------|-----------------------|
| Commonwealth - Federal & Family Court | \$391,140 | 1.7.2011 |
| Queensland | \$391,140 | 1.7.2011 |
| Australian Capital Territory | \$391,140 | 1.7.2011 |
| Northern Territory | \$391,140 | 1.7.2011 |
| Victoria – Supreme Court | \$391,140 | 20.9.2011 |
| New South Wales | \$391,080 | 1.10.2011 |
| Western Australia | \$399,981 | 1.1.2012 |
| Tasmania | \$395,572 ¹ | 1.7.2012 |
| South Australia | \$373,085 ² | 1.11.2010 |

¹This is a prospective rate derived as 90% of the average of the remuneration of the Chief Justice of the Western Australian Supreme Court and the Chief Justice of the South Australian Supreme Court. This figure incorporates the recent Western Australian determination (25 November 2011) and the existing South Australian Determination.

²This is the existing rate for South Australia.

5. OPERATIVE DATE

- 5.1 Submissions made regarding the operative date of any increase are discussed in part 2 – Submissions.
- 5.2 The Tribunal has considered the submissions made, including the information provided regarding the impact of the operative date upon two now retired members of the bench. However, the Tribunal is not at this time minded to change its current practice regarding the operative date of judicial remuneration increases.

6. FAIR WORK ACT 1994 (SA)

- 6.1 The Tribunal, as required by s101(1) of the *Fair Work Act 1994* (SA) continues to have due regard to State Wage Fixing Principles, and as it deems appropriate apply and give effect to such principles.

7. COMMUNICATION ALLOWANCE

- 7.1 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 are currently prescribed in Determination No. 4 of 2008 and are unaffected by this Determination.

8. CONVEYANCE ALLOWANCE

- 8.1 Conveyance Allowances for Judges, Statutory Officers and Court Officers shall be continued in line with previous determinations of the Tribunal.

9. TRAVELLING AND ACCOMMODATION ALLOWANCES

- 9.1 Travelling and Accommodation Allowances for Judges, Statutory Officers and Court Officers are currently prescribed in Determination No. 2 of 2011. These allowances were adjusted in April 2011 and are unaffected by this Determination.

10. CONCLUSIONS

- 10.1 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, and the operative date.
- 10.2 The Tribunal considers that the economic data provided to the Tribunal does not warrant any greater emphasis to be placed on economic factors than has been placed upon it in previous reviews. The data provided indicates that the South Australian economy is doing as well as other Australian states.
- 10.3 The Tribunal notes the submissions sought parity with the Federal and interstate judiciary. However, it also notes that the cost of living in South Australia is less than that in other jurisdictions, in particular those on the eastern seaboard.
- 10.4 The Tribunal has determined that the salary of the Puisne Judge of the Supreme Court is to be \$389,130 per annum, operative from 1 November 2011. The Tribunal reiterates that its past approach of setting salaries in a "national framework" continues to be appropriate and in the public interest.
- 10.5 The salaries of all other judicial officers and statutory office holders listed in the Determination have also been increased from the same date and to the annual amounts shown in the Determination.

Original signed by D Prior on 20 December 2011

Deane R Prior
PRESIDENT

20 December 2011