

REMUNERATION TRIBUNAL

REPORT RELATING TO DETERMINATION NO. 8 OF 2010

1. INTRODUCTION

- 1.1 In accordance with the provisions of the *Remuneration Act 1990*, the Remuneration Tribunal by letters dated 7 October 2010 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 8 October 2010 the following notice was published in *The Advertiser* newspaper.

**REMUNERATION TRIBUNAL
REVIEW OF REMUNERATION FOR MEMBERS OF THE JUDICIARY AND
OTHER STATUTORY OFFICERS**

Section 8(2) of the *Remuneration Act 1990* (SA) requires the Tribunal to sit at least once in each year to review its previous determinations. Accordingly, the Tribunal is conducting a review of the determination incorporating the salaries payable to members of the Judiciary and other Statutory Officers.

Interested persons, organisations and associations are invited to submit in writing any views they consider should be taken into account in the above review.

The closing date is **Friday 29 October 2010** and submissions should be forwarded to:

**The Secretary
Remuneration Tribunal
GPO Box 2343
ADELAIDE SA 5001**

**Telephone (08) 8226 2373
Facsimile (08) 8226 2730**

Or alternatively submissions can be forwarded via the Tribunal's website:
www.remtribunal.sa.gov.au.

2. SUBMISSIONS

- 2.1 The Tribunal received written submissions from:
- Justice Sulan, Acting Chair of the Judicial Remuneration Co-ordinating Committee (JRCC), on behalf of the Chief Justices, 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.
- 2.2 The Tribunal convened a hearing on 3 November 2010 to hear oral submissions. The following attended and made submissions as appropriate:
- Justice Sulan of the Supreme Court and Mr Mark Johns, the State Coroner, on behalf of the JRCC; and
 - Mr Ben Trainor on behalf of the Minister, in the public interest.
- 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 2010/12 signed on 23 August 2010, 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 Other reasons given for seeking the increases were:
- It is contrary to the national interest to allow a gap between the salaries of Federal and State Judges to emerge;
 - A significant reduction in the status and authority of State courts would result if parity with Federal salaries is not maintained; and
 - The economic outlook for South Australia is no worse than other States.
- 2.5 The JRCC submitted that any further adjustments in federal judicial salaries should, if they are not to be automatically passed on by the Tribunal, be the subject of further applications as and when any adjustments are made.
- 2.6 The JRCC also suggested a change from Tribunal Determination 4 of 2010 for inclusion in the pending Determination, that the following be deleted:
- "Other Judges of the Industrial Relations Court who hold joint commissions in the Australian Industrial Relations Commission and the Industrial Relations Commission of South Australia"*
- and replaced with:
- "Other Judges of the Industrial Court who are members of the principal judiciary of the Court".*
- 2.7 Mr Trainor, on behalf of the Minister 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;
 - 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 notes the recently issued Determinations 2010/12 and 2010/19 of the Commonwealth Remuneration Tribunal ('Cth Tribunal'). The Tribunal also noted the ongoing impact of the Commonwealth Tribunal's Report on the *Review of Remuneration Relativities among Australia's Federal Courts*, published in October 2009.
- 3.2 The Cth Tribunal's Determinations 2010/12 provided for a remuneration increase of 4.1%. In its related Statement, the Cth Tribunal reiterated its belief in a conservative approach to the determination of remuneration, but also highlighted the ongoing importance of attracting and retaining highly skilled and committed individuals. The Cth Tribunal considered national economic developments, but attributed particular significance to public sector remuneration.
- 3.3 The Cth Tribunal's Statement regarding Determination 2010/19 provides a further remuneration increase of 1.5%, this being as a result of conclusions reached in the *Review of Remuneration Relativities among Australia's Federal Courts*. This means that Tribunal has now provided three of the four tranches of the total remuneration increase of 6% it determined in 2009. Further it has undertaken to provide a decision on the fourth tranche by May 2011.

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:

COURT/STATE/TERRITORY	SALARY	OPERATIVE DATE
Commonwealth - Federal & Family Court	\$374,120*	1.11.2010
Queensland	\$374,120*	1.11.2010
Australian Capital Territory	\$374,120*	1.11.2010
Victoria – Supreme Court	\$374,120*	1.11.2010
Northern Territory	\$374,120*	1.11.2010
New South Wales	\$368,550	1.10.2010
Western Australia	\$362,092	1.7.2010
Tasmania	\$361,746	1.7.2010
South Australia	\$353,090	1.5.2010

* The salaries of \$374,120 include the 4.1% and 1.5% increase granted in the Cth Tribunal's determinations 2010/12 and 2010/19. These have not yet passed the required 15 parliamentary sitting days disallowance period.

- 4.3 At the time of publication, the Western Australian Salaries and Allowances Tribunal were undertaking an Enquiry into Judicial and Court Registrars' Salaries,

5. SOUTH AUSTRALIAN ECONOMIC CIRCUMSTANCES

- 5.1 Justice Sulan submitted during a the hearing that the South Australian economic situation is no worse than that of other Australian states, and noted that the submission on behalf of the Minister regarding the South Australian Economic Conditions included comparisons that analysed non-comparable figures.
- 5.2 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 current Director, Economics, of the Department of Treasury and Finance. The submission provided statistical data, including:
- the International Monetary Fund World Economic Outlook projected world economic growth in real terms of 4.8% in 2010 and 4.2% in 2011, while growth in advanced economies is projected at only 2.7% in 2010 and 2.2% in 2011;
 - in South Australia, the latest available partial indicators of economic activity in 2010 show some positive trends with some signs of caution;
 - between the September quarter 2009 and the September quarter 2010, the Adelaide CPI increased by 2.6%, below the national inflation rate of 2.8%; and
 - through the year to the June quarter 2010, the Labour Price Index has risen by 2.9% in South Australia, lower than national growth of 3.1%. South Australian wages are lower than Australian wages on average.

6. PUBLIC SUBMISSIONS

- 6.1 No public submissions were received.

7. FAIR WORK ACT 1994 (SA)

- 7.1 In relation to comments made by the JRCC and Crown Solicitors Office on behalf of the Minister, the Tribunal will, as required by s101(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

- 8.1 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 will continue in line with this determination.

9. CONVEYANCE ALLOWANCE

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

10. TRAVELLING AND ACCOMMODATION ALLOWANCES

- 10.1 Travelling and Accommodation Allowances for Judges, Statutory Officers and Court Officers are currently prescribed in Determination No. 3 of 2010. These

allowances were adjusted in May 2010 and 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 \$368,590 per annum, with no operative date specified, and that two additional increases of 1.5% should be made effective 1 November 2010 and 1 May 2011.
- 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 2010 Determination should have an operative date of no earlier than the first pay period commencing on or after 1 November 2009.
- 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, and the operative date.
- 12.2 The Tribunal considers that the economic data provided to the Tribunal does not warrant any greater emphasis to be placed on economic factors, as it indicates that the South Australian economy is doing as well as other Australian states.
- 12.3 The Tribunal has determined that the salary of the Puisne Judge of the Supreme Court will be \$367,570 per annum operative from 1 November 2010. The Tribunal reiterates that its past approach of setting salaries in a "national framework" continues to be appropriate and in the public interest.
- 12.4 The Tribunal will consider the Cth Tribunal's 1.5% increase, operative from 1 November 2010, and any additional increases provided by the Cth Tribunal, in relation to its *Review of Remuneration Relativities among Australia's Federal Courts*, at a later date, and determine their applicability to the South Australian Judiciary at the appropriate time.
- 12.5 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 the Mr H Bachmann 30 November 2010

Hedley R. Bachmann AM
PRESIDENT

30 November 2010