

REMUNERATION TRIBUNAL

REPORT RELATING TO DETERMINATION NO. 1 OF 2009

1. INTRODUCTION

- 1.1 In accordance with the provisions of the *Remuneration Act 1990*, the Remuneration Tribunal by letters dated 3 October 2008 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* 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 10 October 2008 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* requires the Tribunal to sit at least once a year to review its previous determinations. Accordingly, the Tribunal is conducting a review of 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 31 October 2008** and submissions should be forwarded to:

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

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

**Telephone (08) 8226 4007
Facsimile (08) 8226 2730**

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 all the Justices and Masters of the Supreme Court, the Judges and Masters of the District Court, the Judges of the Industrial Relations Court, Stipendiary and Industrial Magistrates, the lay Deputy Presidents and Commissioners of the Industrial Relations Commission, the Commissioners of the Environment Resources and Development Court; the State Coroner, and the Deputy State Coroner.
 - Senior Judge, Youth Court, Stephen McEwen and Senior Judge, Environment Resources and Development Court, Christine Trenorden.
 - Hon Dr Bob Such MP.
 - The Crown Solicitors Office on behalf of the Minister in the public interest; and
 - A member of the public.

- 2.2 The Tribunal convened a hearing on the 2 December 2008 to hear oral submissions. The following attended and made submissions as appropriate:
- Justice Bleby, Judge Rice and Mr Mark Johns on behalf of the JRCC; and
 - Mr Michael Wait on behalf of the Minister, in the public interest.
- 2.3 In summary, the JRCC submission detailed the background relating to increases being applied to Judicial Officers in other States. As a result the JRCC believed the Tribunal should set rates of pay in South Australia that were level with or exceeded that determined in the Commonwealth jurisdiction. Other reasons for seeking this were:
- There was an emerging system of national professional regulations that had been passed in all states except SA.
 - Judicial exchanges being encouraged interstate.
 - Cross vesting jurisdictional ability conferred on each State through legislation.
 - SA had an operative date in November as opposed to July for most other states.
 - WA seemingly justified a 2% margin to take account of the 'timing' of their increase.
 - The need for attraction and retention of suitably qualified persons.
 - The SA Puisne Judge had a greater range of duties than their counterparts in other States due to their appellate role.
 - Total remuneration in SA was deficient to other States taking into account non-salary elements.
- 2.4 The JRCC also submitted that further consideration must be given to the judicial officers within the District Court, as the JRCC did not accept the current relativities of approximately 88.2% as appropriate. The JRCC stated that the District Court Judges in South Australia had the widest jurisdiction of any intermediate trial court in Australia while the relativities for their counterparts in New South Wales, Western Australia and Queensland was 90%.
- 2.5 Mr Wait presented submissions on behalf of the Minister. He discussed relevant factors that the Tribunal has previously considered when making judicial determinations, including comparison of State, Territory and Federal judicial salaries; South Australia's economic circumstances and particular note of the extent to which judicial salaries have moved significantly ahead of the average weekly earning in South Australia. He submitted that, *"having regard to the economic factors, and the fact that the salary increase for South Australian Public Sector Executives will not exceed 3.5%, that any increases to judicial salaries should not exceed 3.5% "*.
- 2.6 In considering the written submission from the Senior Judges of the Youth Court and Environment Resources and Development Court, the Tribunal noted that the two positions titled as 'Senior' undertook additional administrative and managerial duties in their respective Courts. Views of the Minister were sought and received informing the Tribunal of the additional responsibilities and duties and submitting that a loading for additional administrative duties would be appropriate. The Tribunal determined that a loading was appropriate on the same basis as that received by Magistrates undertaking additional administrative duties.
3. **COMPARISON OF FEDERAL, STATE AND TERRITORY JUDICIAL SALARIES**
- 3.1 As in previous reviews the Tribunal examined the Federal and other State and Territory judicial salaries relevant to the office of Puisne Judge.
- 3.2 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
Queensland	\$333,660	1.7.2008
Commonwealth - Federal & Family Court	\$333,660	1.7.2008
Australian Capital Territory	\$333,660	1.7.2008
Victoria – Supreme Court	\$333,660	1.7.2008
New South Wales	\$333,630	1.10.2008
Northern Territory	\$333,660	1.7.2008
Western Australia	\$351,717	1.1.2009
Tasmania	\$326,871	1.7.2008
South Australia	\$319,000	1.11.2007

4. SOUTH AUSTRALIAN ECONOMIC CIRCUMSTANCES

4.1 The submission on behalf of the Minister provided the following statistical data:

- The IMF World Economic Outlook projected substantial slowing in economic growth into 2009. This slow growth would impact Australia with growth forecasts down to 2% and predicted unemployment to rise.
- Through the year to the September quarter 2008, wages growth as measured by the Labour Price Index in South Australia was 3.9%;
- Since 1998 judicial salaries have risen by 69% as compared with 37% growth in South Australian hourly rates of pay and 31% growth in the Adelaide CPI;
- The Australian Bureau of Statistics Survey of Average Weekly Earnings shows that on average for the year August 2008 to average weekly ordinary time earnings for full time adult employees were 6.7% lower in South Australia compared nationally.

4.2 Justice Bleby submitted a number of statistical documents from the Australian Bureau of Statistics to highlight that many of the statistics used in the submission on behalf of the Minister were inappropriate and not relevant to the position of Judicial Officers. Particular reference was also made to average public sector weekly earnings having increased over the last 12 months in South Australia by 5.7%. In addition reference was made to Government economic indicators offering projections and predictions, many of which still predicted growth but at a reduced rate.

4.3 At the conclusion of the hearing further information was requested and supplied by both the JRCC and Crown Solicitors Office on behalf of the Minister, the comments contained within were noted by the Tribunal as providing assistance in their deliberations.

5. PUBLIC SUBMISSIONS

5.1 One public submission was received, along with a submission from a State MP, but these provided little assistance to the Tribunal in determining appropriate remuneration for the judiciary.

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. These allowances will remain unaffected by this Determination.

8. CONVEYANCE ALLOWANCE

8.1 Conveyance Allowances for Judges, Statutory Officers and Court Officers are currently prescribed in Determination No. 5 of 2008. These allowances were last adjusted in April 2008 and 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 currently prescribed in Determination No. 2 of 2008. These allowances were adjusted in May 2008 and will remain unaffected by this Determination.

10. OPERATIVE DATE

- 10.1 The JRCC submitted that the date of operation for the determination should be 1 July 2008, whilst the Minister submitted that against the background of the requirement for an annual review as set out in Section 8(2) of the *Remuneration Act 1990* it is reasonable that the 2008 Determination have an operative date of no earlier than the first pay period commencing on or after 1 November 2008.
- 10.2 In all the circumstances the Tribunal was not persuaded to change its current practice regarding operative date.

11. DETERMINATION

- 11.1 Having regard to all the submissions and material put to the Tribunal, including those concerning State and Federal comparisons, attraction and retention, economic factors and operative date, the Tribunal has determined that the salary of the Puisne Judge of the Supreme Court will be \$332,800 per annum operative from 1 November 2008. In this regard the Tribunal reiterates that its past approach of setting salaries in a "national framework" continues to be appropriate and in the public interest.
- 11.2 In relation to the submissions from Senior Judge, Youth Court, and Senior Judge, Environment Resources and Development Court, the Tribunal determined that a Judge who is appointed as 'Senior' within the respective Court and who undertakes additional administrative duties in that capacity is to be paid an allowance at the rate of \$8270 per annum for as long as the additional duties are performed.
- 11.3 In relation to comments made by the JRCC and Crown Solicitors Office on behalf of the Minister, the Tribunal will, as required by s.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 in future determinations.
- 11.4 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.



Hedley R. Bachmann
PRESIDENT

9th January 2009