

REMUNERATION TRIBUNAL

REPORT RELATING TO DETERMINATION NO. 5 OF 2009

1. INTRODUCTION

- 1.1 In accordance with the provisions of the *Remuneration Act 1990*, the Remuneration Tribunal by letters dated 7 October 2009 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 9 October 2009 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 in each year to review its previous determinations. Accordingly, the Tribunal is conducting a review of 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 30 October 2009** 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) 8207 2277
Facsimile (08) 8226 2730**

2. SUBMISSIONS

- 2.1 The Tribunal received written submissions from:
- Justice Bleby, 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 President, Deputy Presidents and Commissioners of the Industrial Relations Commission; the Chief Magistrate and the Magistrates of the Magistrates Court; the State Coroner and the Deputy State Coroners; and the Commissioners of the Environment Resources and Development Court;

- 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 9 November 2009 to hear oral submissions. The following attended and made submissions as appropriate:

- Justice Bleby and Mr Mark Johns (the State Coroner) on behalf of the JRCC; and
- Mr Stephen McDonald on behalf of the Minister, in the public interest.

2.3 In summary, the JRCC submission provided that the Tribunal should continue to set judicial salaries in a national framework, and in the national interest. It was submitted that because the further increases to the salaries of Federal Court Judges, Family Court Judges and Federal Magistrates (resulting from the decision of the Commonwealth Tribunal on 13 October 2009) 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. Other reasons for seeking this increase were:

- The economic outlook for South Australia is above the Australian average;
- The need for attraction and retention of judges to South Australian courts;
- Cases of complexity in the High Court have inevitably already been heard by a State Supreme Court or the Federal or Family Courts, therefore a substantial salary disparity is not justifiable on a work value basis;
- There have been extensive changes to the criminal law which have added greatly to the complexity of criminal trials and appeals; and
- Most of the jurisdictions of State Supreme and Federal Courts is cross-vested by legislation, allowing a greater number of Federal jurisdiction cases to be heard by State Supreme Court Judges.

2.4 The JRCC also 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.

2.5 The JRCC reserved its right to make a further application in due course seeking a comprehensive examination of work value issues throughout all levels of the South Australian Judiciary.

2.6 Mr McDonald presented submissions on behalf of the Minister. He discussed relevant factors that the Tribunal has previously considered when making judicial determinations, including South Australian economic circumstances, a comparison of State, Territory and Federal judicial salaries and the fact that the Tribunal must have due regard to the State Wage Fixing Principles. He submitted that the Tribunal should place a greater emphasis on economic indicators applicable to South Australia and also noted that since 1998, growth in judicial wages has surpassed growth in both the Adelaide Consumer Price Index ("CPI") and South Australian hourly rates of pay.

2.7 Mr McDonald also submitted that due to the State Government's commitment to pursuing salary increases across the public sector of no more than 2.5% per year,

including for South Australian Public Sector Executives, any increase to judicial salaries should not exceed 2.5%. He submitted that there is no evidence on which the Tribunal may be satisfied that the level of remuneration of judicial officers is currently a substantial factor in the attraction and retention of such officers.

- 2.8 Additional information was provided by Mr McDonald at the request of the Tribunal in relation to Public Sector Executive Salaries and the Government policy in relation to holders of provisional licenses and learner's permits.

3. COMMONWEALTH TRIBUNAL'S REVIEW AND DETERMINATION

- 3.1 The Tribunal notes the recently issued Determination 2009/17 and the accompanying statement of the Commonwealth Tribunal. The Tribunal also notes the Commonwealth Tribunal's Report on the *Review of Remuneration Relativities among Australia's Federal Courts*, published in October 2009.

Commonwealth Tribunal's Review of Remuneration Relativities among Australia's Federal Courts

- 3.2 According to the Commonwealth Tribunal's report, the Review of Remuneration Relativities among Australia's Federal Courts was initiated by the Federal Magistrates Court submission for an increase in pay for the Federal Magistrates based on a claim of increased work value. After initial consideration of that submission, the Commonwealth Tribunal decided that it would be appropriate to defer consideration of the matter until it had commenced its review of the Federal and Family Courts. The Tribunal commenced its review in May 2007. Submissions were received during the course of that year and the Tribunal gave consideration to each of the submissions over the period between late 2007 and early 2008. Further submissions were made in 2008 and by November 2008 the Tribunal had come to an indicative decision.
- 3.3 In its indicative decision the Commonwealth Tribunal "concluded that there was a work value case to increase the remuneration of the Judges of the Federal Court by 6%. At the same time, the Tribunal noted the Attorney-General's views about the difficult economic circumstances in which Australia, and indeed the world, found itself and decided at the time not to put the increase into effect until at least 1 July 2009. The Tribunal did not nominate this date as the date on which an increase would occur – but rather the time when the Tribunal would revisit the circumstances to decide if the increase should then be determined". Both the Family Court and the Federal Magistrates Court subsequently provided further information and in October 2009 the Tribunal published its final report.
- 3.4 In its decision (as outlined within the report), Commonwealth Tribunal remained "of the view that economic circumstances preclude the granting of the full increase of 6%" and instead the "decided on adjustments of 1.5% for judicial offices in the High Court, Federal Court, Family Court and Federal Magistrates Courts from 1 November 2009".
- 3.5 The Report noted the Tribunal's present intention "to determine three further 1.5% adjustments for each of the judicial offices concerned" subject to some further consideration "and while the actual decisions on timing are for the future... the total increase would have occurred by 1 May 2011".

- 3.6 The Commonwealth Tribunal also noted that it "is aware that the remuneration of judicial officers in the states and territories is based on remuneration in the federal court system. In making its decision, the Tribunal has taken into consideration factors pertaining specifically to judicial offices in the federal sphere" and noted that it was "of the view that any adjustment to the remuneration of judicial officers in the states and territories would need to be based on specific issues particular to each jurisdiction".

Commonwealth Tribunal Determination and Statement

- 3.7 As outlined in its accompanying statement, in making its determination 2009/17, the Commonwealth Tribunal considered the economic situation with particular focus on the present conditions as outlined in the Minutes of the Monetary Policy Meetings of the Reserve Bank on 4 August 2009 and 1 September 2009 and a speech made by the federal Treasurer, the Hon Wayne Swan MP, at Chatham House on 4 September 2009. In noting that 'caution continues to be appropriate' the Tribunal determined "effective 1 October 2009, an increase of 3%".
- 3.8 The statement indicated that the Commonwealth Tribunal's annual adjustments take account of the evolution that occurs over time in the responsibilities of public offices. The Commonwealth Tribunal then noted that the legislation programs of governments, including the assiduous making of legislative instruments is one source of such change. The Commonwealth Tribunal noted that it has been undertaking a review (i.e. the review outlined above) which demonstrated:
- Sustained incremental expansion in the responsibilities of Judges of the Federal Court of Australia, together with increases in the breadth of law, and number of legal and factual issues both across caseload and within individual cases, which a Federal Court Judge must now consider to fulfil his or her day to day duties; and
 - Significant change, still underway, in the structure of the family law system involving the Family court of Australia and the Federal Magistrates Court, so as to increase the average complexity of matters dealt with by Judges of each court. This has occurred principally as a consequence of the continuing refinement of the allocation of the work between the courts.

The Commonwealth Tribunal considered "that changes in these courts, and the evolution of the law, more generally, in federal and state jurisdictions, have demonstrable and significant effects on the work of Judges of the High Court of Australia, sufficient to warrant an adjustment in the remuneration of these judicial officers".

- 3.9 This Tribunal has noted the comments in respect to the jurisdiction specific basis of the Commonwealth Tribunal's deliberations in each of its report and statement and further notes that the Determination will have to be tabled in the Federal Parliament and then either House may disallow the Determination within 15 sitting days of tabling.
- 3.10 In light of the above and having had regard to the submissions received on behalf of the JRCC, the Tribunal proposes to conduct a further review in the new year and hear further submissions specifically in relation to work value changes. The

Tribunal will call for submissions as per the usual process at a date to be determined.

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
Queensland	\$343,670	1.10.2009
Commonwealth - Federal & Family Court	\$343,670	1.10.2009
Australian Capital Territory	\$343,670	1.10.2009
Victoria – Supreme Court	\$343,670	1.10.2009
New South Wales	\$343,640	1.10.2009
Northern Territory	\$343,670	1.10.2009
Western Australia	\$351,545	1.12.2009
Tasmania	\$340,972	1.7.2009
South Australia	\$332,800	1.11.2008

5. SOUTH AUSTRALIAN ECONOMIC CIRCUMSTANCES

- 5.1 Justice Bleby submitted a number of statistical documents published by the South Australian Government, which indicated, amongst other things, that South Australia's economy will continue growing faster than the national average.
- 5.2 The submission on behalf of the Minister provided statistical data, including:
- The International Monetary Fund World Economic Outlook projected world economic growth to be negative in 2009 (-1.1%) and positive, but below trend, in 2010 (3.1%);
 - In South Australia, the available partial indicators of economic activity in 2009-10 show that economic conditions have not deteriorated as much as may have been feared earlier this year. Nonetheless, labour market outcomes have softened.;
 - Between the September quarter 2008 and the September quarter 2009, the Adelaide CPI increased by 1.4%, similar to the national increase of 1.3%; and
 - Through the year to the June quarter 2009, the Labour Price Index has risen by 3.7% in South Australia in line with national growth of 3.7%. Annual growth in hourly rates of pay in South Australia has been falling since its most recent peak of 4.1% recorded in the year to the December quarter 2008.

6. PUBLIC SUBMISSIONS

- 6.1 One public submission was received to which the Tribunal had due regard in determining appropriate remuneration for the judiciary.

7. FAIR WORK ACT 1994

- 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. Whilst a small increase was requested by the JRCC, the Tribunal has decided that this allowance will not be increased at this time.

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. 4 of 2009. These allowances were adjusted in May 2009 and will remain unaffected by this Determination.

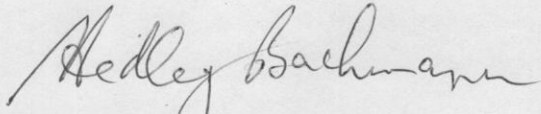
11. OPERATIVE DATE

- 11.1 The JRCC submitted that the date of operation for the determination should be 1 July 2009 with a further increase operative from 1 November 2009, 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 2009 Determination have an operative date of no earlier than the first pay period commencing on or after 1 November 2009.
- 11.2 In all the circumstances the Tribunal was not persuaded to change its current practice regarding operative date.

12. DETERMINATION

- 12.1 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 \$342,800 per annum operative from 1 November 2009. 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.

- 12.2 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.

A handwritten signature in cursive script, reading "Hedley R. Bachmann".

Hedley R. Bachmann AM
PRESIDENT

December 2009