

DETERMINATION AND REPORT OF THE REMUNERATION TRIBUNAL

MEMBERS OF THE JUDICIARY

REQUEST FOR INTERIM REVIEW OF SALARIES

1. On 4 June 2001, the Judicial Remuneration Co-ordinating Committee (JRCC) wrote to the President of the Remuneration Tribunal requesting that a sitting of the Tribunal be convened for the purpose of making an interim determination of increased judicial salaries and enclosed written submissions in support of the request. The JRCC advised that:

“Because of the exceptional nature of this request we are, on this occasion, providing a copy of the submission to the Crown Solicitor on behalf of the Minister, although we consider that there is no obligation to do so.”

Following a further submission and discussions with Tribunal Members, the President convened a formal sitting which was arranged for 27 July 2001 to allow the parties to make oral submissions in relation to an interim review of judicial salaries.

2. The essential thrust of the JRCC’s submission was that since the December 2000 review, there have been significant movements in judges’ salaries in many of the other States/Territories. The JRCC went on to submit that the consequence of this is that South Australian salaries are now at the lowest level in the national framework of salaries and that this is unjust. The JRCC also submitted that there is no reason why the South Australian salary at the key level of Puisne Judge should be less than that of the federal “standard”.
3. The Minister for Workplace Relations, on behalf of the Government of South Australia, made two submissions in the public interest in relation to the application for an interim review of judicial salaries. The first of these, presented and dated 26 July 2001, concluded that:

“The Government submits that it supports the Tribunal practice to engage in one annual review with respect to judicial remuneration. The Government, therefore, opposes an interim review as there are no significant issues that need to be addressed with respect to judicial remuneration.”

The second submission presented, also dated 26 July 2001, responded to the JRCC submission and amongst other things, stated:

“The Government submits that if the Tribunal adopted the JRCC approach and simply followed the salary of the Determination of the Commonwealth Tribunal that would result in the Tribunal ceasing to be the independent statutory body which Parliament had intended to establish in order to determine the salary of

judicial officers. The Tribunal would become a ‘rubber stamp’ to endorse the Commonwealth Tribunal Determination, without due and proper consideration of all the relevant factors, such as economic indicators, that are applicable to this State.”

Economic information was again included. The Government submitted the Tribunal should have regard to the economic factors which are peculiar to this State. The Government concluded that it strongly opposed an increase at this time.

4. Salaries of the judiciary were last reviewed during the latter part of last year, with the increases granted in a Determination (No. 2 of 2000) dated 19 December 2000, operative from 1 November 2000. At the time, the JRCC sought an interim increase only, on the basis that the salaries used for comparison purposes in the other jurisdictions were under actual or potential review. The Tribunal declined to determine an interim increase. Instead, it determined new salaries which took into account the actual salaries applying in the other jurisdictions at the time of making the determination.
5. The Tribunal has made it clear on a number of occasions in the past that when examining Federal and State judicial salaries as part of a review into the salaries of the judiciary in this State, it will not speculate on any likely outcomes from impending reviews. The Tribunal has gone on to emphasise that at the time it makes its Determination, it will only have regard to actual existing salary levels in the other jurisdictions. The Tribunal points out that in this regard it is not unique and other competent Tribunals adopt the same approach.
6. Obviously, this approach will mean that the relative position of South Australian salaries against the relevant salaries in the other States/Territories at any point in time will vary as and when the salaries in one or more of the other States/Territories are varied. There is nothing unusual about this and is a natural consequence of taking an approach to salary determination which includes reference to salaries provided elsewhere.
7. In addition, the Tribunal again points out that it does not simply look at the salary levels applicable elsewhere. It is required by the Remuneration Act to have regard to the principle of judicial independence but it also has regard to recruitment and retention factors, general productivity improvements as well as submissions made in the public interest. These latter submissions draw attention to special economic factors existing in this State, including the fact that salaries and wages in both the private and public sector are generally lower in this State than in other States.
8. In coming to its conclusions in 2000, the Tribunal stated:

“Having regard to the submissions made to the Tribunal and Section 15 of the Remuneration Act which requires the Tribunal when determining remuneration under this Act to have regard to the constitutional principle of judicial independence, salary levels in other jurisdictions and submissions made in the public interest, the Tribunal has determined...etc...”

We make it quite clear that we do have regard to the fact that salaries in this State are generally lower.

9. For a number of years this Tribunal has followed a policy of conducting annual remuneration reviews of all of the Groups that come within its jurisdiction. It has deviated from this practice from time to time where, in the Tribunal's view, special circumstances warranted a departure from the usual practice.
10. The system of annual reviews has meant that the salary levels for all of the positions that come under the Tribunal's jurisdiction have generally been increased once per year. This is certainly true of judicial salaries. This frequency of reviewing judicial salaries is consistent with the frequency of wage/salary reviews currently applying in the wider community.
11. In accordance with the established pattern, the next review of the remuneration for judges, statutory officers and court officers is due to be commenced later this year. As part of that review, all parties will be invited to present detailed written and oral submissions to the Tribunal.
12. Having regard to the factors taken into account in reviewing judicial salaries and in view of the fact that the Tribunal supports an annual review, the Tribunal is not persuaded that it should grant interim salary increases at this point in time and determines accordingly.

H.R. Bachmann
PRESIDENT

D. Flux
MEMBER

J.A. Meeking
MEMBER

Dated August 2001