

## REMUNERATION TRIBUNAL

### REPORT RELATING TO DETERMINATION NO. 8 OF 2001

#### 1. INTRODUCTION

- 1.1 In accordance with the provisions of the Remuneration Act 1990, the Remuneration Tribunal by letters dated 13 November, 2001 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 Industrial and Employee Relations 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 for Workplace Services to make submissions in the public interest.
- 1.2 On 26 November, 2001 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 **7 December, 2001** and submissions should be forwarded to:

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

**Telephone (08) 8226 4045  
Facsimile (08) 8226 4174**

No written submissions were received from the public in response to this notice.

- 1.3 The Tribunal received written submissions from 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 and the State Coroner.

- 1.4 Separate written submissions were also received from the Minister for Workplace Services on behalf of the Government of South Australia in relation to judicial salaries and the remuneration of the offices of Commissioner and lay Deputy President of the Industrial Relations Commission of South Australia.
- 1.5 Separate written submissions were received from Stipendiary Magistrates, the Lay Members of the Industrial Relations Commission and Commissioner Hodgson for and on behalf of the Commissioners of the Environment, Resources and Development Court.
- 1.6 Mr. Moss, Chief Magistrate requested that the relativity of his salary to that of the Magistrates be maintained.
- 1.7 On 12 December, 2001 the Tribunal heard oral submissions from Mr. C. McCarthy and Mr. A. Short on behalf of Stipendiary Magistrates and Mr. D. Clayton QC on behalf of the Minister.
- 1.8 The written submissions from the JRCC and the Minister were directed principally at the salary level of Puisne Judges of the Supreme Court which is consistent with previous enquiries conducted by the Tribunal in relation to judicial remuneration.
- 1.9 The written and oral submissions from the Stipendiary Magistrates related to their salary relativity within the South Australian judicial salary structure and in particular referred to the changes in their duties which they claim had increased the value of their work since the current relativities were set in 1992.

## **2. TRIBUNAL PROCEDURES**

- 2.1 The Minister's representative raised the issue of the need for the copies of submissions received by the Tribunal to be provided to the Minister to enable the Minister to make submissions which were in the public interest.
- 2.2 This matter was further raised on behalf of the Minister for Workplace Services in a letter to the President of the Remuneration Tribunal dated 13 December, 2001 requesting that "a copy of the Magistrates' submission be made available to the Minister along with a copy of the submission from the JRCC. If the Tribunal is of a mind not to release the JRCC submission in full, then I request that the part of the JRCC submission relating to the Magistrates and/or their submission be released to the Minister."
- 2.3 The Tribunal reiterates the earlier determinations on this matter in particular at paragraph 2.2 of the Report Relating to Determination No. 9 of 1999 (and repeated in Report Relating to Determination No. 2 of 2000) wherein the Tribunal stated:

"the Tribunal reaffirms its oral determination of 3 November, 1999 and in particular that it is up to each party to place its views before the Tribunal and to exchange its submissions should it wish to do so. There will be no right of response. Where the Tribunal deems it necessary it will seek information and clarification from the JRCC or the Minister's representative as appropriate. This applies to the written submissions, oral submissions and evidence."

- 2.4 As advised to the Minister's representative on 12 December, 2001, the Tribunal will continue to operate within the procedures it has previously determined. However, in view of the Magistrates' detailed written submissions, the Tribunal considers it appropriate to provide a copy of that submission to the Minister to enable the Minister to make submissions which are in the public interest. This will occur before the Tribunal gives final consideration to the claims of the Stipendiary Magistrates.

### 3. COMPARISON OF FEDERAL AND STATE JUDICIAL SALARIES

- 3.1 As in previous reviews the Tribunal examined the Federal and other State judicial salaries. The submissions presented to the Tribunal this year were similar to recent years however the JRCC submission strongly suggested that the Tribunal had breached a "fundamental principle" of salary fixation in that "work of equal value should attract the same remuneration". It was asserted that this breach had occurred as a result of this Tribunal consistently fixing "South Australian salaries below the norm applicable in any other jurisdiction."
- 3.2 The JRCC submitted that "the level of work value for which South Australian judges should be remunerated is at a higher level than most other States because of a lack of a separate Court of Appeal." The submission detailed the various interstate jurisdictions and cited the different remuneration arrangements which apply to judges of Courts of Appeal. Attention was also drawn to the dates of operation of determinations of those interstate jurisdictions.
- 3.3 The Minister's submission supported the Tribunal's approach of using the office of puisne judge of the Supreme Court as the basis for comparison with other jurisdictions and fixing a salary that was within the framework of the salaries being paid to puisne judges in other States and Territories however the Tribunal "should place importance on economic factors and indicators which are applicable to the State of South Australia." This submission reflected that received by the Tribunal in 2000 from the Minister.
- 3.4 The Tribunal was advised by a statement from Ms. Linda Hart, the Director, Economics in the South Australian Department of Treasury and Finance of the Consumer Price Index (CPI) increase from the September 2000 quarter to September 2001 quarter was 2.3% for Adelaide (2.5% for Australia as a whole) and generally wage and salary levels are lower for South Australia than Australia as a whole.
- 3.5 In addition to this economic advice, the Tribunal was presented by the Minister with:
- 3.5.1 a market issues survey conducted in June 2001 by William M. Mercer Cullen Egan Dell which stated that for the period 2000/2001 "senior executive" remuneration movements for Australia was 4.6% whilst for the South Australia the movement was 4.5%.
- 3.5.2 advice that public sector executive remuneration was increased by 3% from 1 July, 2001;

- 3.5.3 advice on the salary increases which ranged from 4% to 6.5% per annum, for public service employees subject to the Wages Parity Enterprise Agreement, South Australian police, nurses, medical officers and teachers together with a report detailing salary movements across the whole of the public sector. The Tribunal notes that these salary increases are paid pursuant to Enterprise Agreements.
- 3.6 The Tribunal has experienced difficulties in obtaining salary information for the legal profession. The Minister provided a table titled "Public Sector Lawyers Salaries". This table indicated that public sector salaried lawyers compared favourably with those paid in other States.
- 3.7 The Minister's submission stated "that if there is to be an increase it should be 2.3%, that is an increase which takes account of movements in the CPI in the period since the last review. Such an increase would be appropriate to maintain the real value of judicial salaries."
- 3.8 The Tribunal is advised that the present relevant judicial salaries (for the Puisne Judges in States and Territories) are as follows:

COURT/STATE	SALARY	OPERATIVE DATE
New South Wales	\$220,840	1.10.2001
Northern Territory *	\$221,500	1.10.2001
Australian Capital Territory	\$221,500	1.10.2001
Western Australia	\$217,970	1.12.2000
Tasmania	\$215,222	1.7.2001
Queensland	\$213,550	1.7.2000
Victoria	\$210,000	1.1.2001
South Australia	\$207,500	1.11.2000
Federal Court	\$221,500	1.10.2001
Family Court	\$221,500	1.10.2001

\*Note: The Northern Territory judges will receive the increase awarded to Federal Court judges but this will be released in March 2002 and be backdated from 1 October, 2001.

- 3.9 Particular mention was made that reviews were underway in Queensland and Western Australia and that Victoria would proceed as soon as new arrangements for a reconstituted Tribunal had been finalised.

### 3.10 **Attraction and Retention Factors**

- 3.10.1 The JRRC submitted that:

"so long as South Australian jurisdictions continue to be and continue to be regarded (as they are) as the "Cinderella jurisdiction" so far as salaries and conditions are concerned, there is the potential for a grave recruitment problem of deep concern to the South Australian judiciary. The realisation of the problem cannot be in the public interest."

“So long as judicial salaries and conditions remain relatively depressed, long term recruitment and short and medium term retention problems will face this State. There will not be a shortage of available appointees, but the inevitable effect will be to lower the standard of expertise of the profession from which judges in South Australia can be selected.”

3.10.2 The JRCC advised the Tribunal that of the three judges of the Federal Court resident in South Australia, two were recruited from the Supreme Court and “in recent years 2 highly competent female District Court judges have been recruited to the Family Court.” and “Within the last 12 months, a senior Queen’s Counsel in South Australia ... has been appointed to the Supreme Court of the ACT on better conditions generally than he could hope to enjoy in any jurisdiction, other than the Federal or Family Court, in South Australia.”

3.10.3 The Minister however, advised the Tribunal of recent calls for expressions of interest conducted by the Minister for Justice and the Minister for Consumer Affairs for appointment to judicial offices in particular for a:

3.10.3.1 Magistrate on 10 March, 2001 with 55 expressions of interest received from the legal profession from which one new Magistrate was appointed.

3.10.3.2 Full time Commissioner in the Environment, Resources and Development Court on 12 May, 2001 with 10 expressions of interest received with one appointment being made.

3.10.4 On the basis of the above and the appointment of Mr. Anthony Besanko QC as a Justice of the Supreme Court on 18 October, 2001, the Minister submitted that there were no “exceptional issues arising in respect of the recruitment or retention of judges in South Australia which need to be taken into account by the Tribunal.”

3.10.5 The Tribunal concludes that the approach of setting salaries in a “national framework” continues to be appropriate and in the public interest to ensure that the JRCC’s assertions do not materialise and that the Minister can continue to submit that there are no difficulties in the recruitment or retention of judges in South Australia.

#### 4 **SOUTH AUSTRALIAN ECONOMIC CIRCUMSTANCES**

4.1 Consistent with the Minister’s submission on the quantum of salary increases applicable, the Tribunal was presented with economic data on the Consumer Price Index (CPI), the South Australian Average Weekly Ordinary Time Earnings of Full Time Adults and a signed statement from Ms Linda Hart, Director, Economics in the South Australian Department of Treasury and Finance regarding the South Australian economy.

4.2 As discussed earlier in this Report, the Tribunal was advised that the increase in the CPI between the September quarter 2000 and the September quarter 2001 was 2.5% nationally and 2.3% for Adelaide.

- 4.3 In respect to wage movements the Tribunal was informed that the Wage Cost Index shows annual wages growth in South Australia was 3.2% from the September quarter 2000 to the September quarter 2001 whilst the annual wages growth nationally was 3.6%.
- 4.4 Ms Hart's statement also advised the Tribunal that:
- “Recent estimates of the level of earnings are available in the ABS Survey of Average Weekly Earnings. The survey shows that for the August 2001 quarter average weekly ordinary time earnings for full-time adults were:
- in the private sector \$753.50 in South Australia and \$818.30 for Australia – South Australian wages are lower by 7.1%;
  - in the public sector \$909.90 in South Australia and \$929.00 for Australia – South Australian wages are lower by 2.1%;
  - average of both sectors \$791.70 in South Australia, compared with \$838.50 nationally – South Australian wages are lower by 5.6%.”
- 4.5 The Tribunal concludes based on a comparison of the data provided in 2000 (9.3% for the difference in private sector; 2.3% for public sector difference and 7.1 for the difference in the average of both sectors) that there is a narrowing of the gap in the average weekly ordinary time earnings between South Australia and Australia as a whole.

## 5 **OTHER ISSUES BEFORE THE TRIBUNAL**

### 5.1 **Lay Members of the Industrial Relations Commission**

5.1.1 The Lay Members, whilst not advocating a particular claim, identified the following factors for consideration of the Tribunal.

5.1.1.1 Federal and State appointments and salary relativity in which it was submitted that “all Lay Members of the IRCSA are now not only dual appointees but are appointed to the Panel system operating within the AIRC. This means that the Lay Members of the IRCSA are now fully responsible for the full range of AIRC matters that are assigned to them by the relevant Panel Head or the President of the Commission.”

5.1.1.2 The submission also identified that the relativity between the salaries is as follows:

	AIRC *	IRCSA
Deputy Presidents	\$210,345	\$160,160
Commissioners	\$147,242	\$139,270

“\* Note: These new salaries are the result of increases granted by the Federal Remuneration Tribunal earlier this year, to operate as of 1 October, 2001. They will apply from that date unless disallowed by Federal Parliament.”

- 5.1.1.3 The “fixed term appointment” factor in that Section 35 of the Industrial and Employee Relations Act 1994 prescribes that an appointment as a Commissioner will be for a term of 6 years which may be renewed for one further term of 6 years.
- 5.1.1.4 The dual nature of their primary State appointments where the Tribunal was advised that “all five South Australian Lay Members are now appointed as both Industrial Relations Commissioners and Enterprise Agreement Commissioners pursuant to S34(3) of the Industrial and Employee Relations Act 1994. Prior to August 2000 only the (then) two Lay Deputy Presidents were appointed in both capacities. The remaining 3 Lay Members at that time were only appointed as Industrial Relations Commissioners.
- 5.1.2 The Minister’s submission reviewed the Tribunal’s previous Reports and Determinations on this matter in respect to the above matters and supported “a flow-on of any general increase determined by the Tribunal for the judiciary to the (lay) Deputy Presidents and to the Commissioners of the Industrial Relations Commission of SA. Any such increase to apply from the same date as is determined for the judiciary.”
- 5.1.3 The Tribunal examined the work value of the lay members of the IRCSA in February 1999 (refer to Determination and Report No. 1 of 1999). In determining the salary it took into account the submissions made in relation to the lay members holding “dual appointments” and that “the lay Commissioners and Deputy Presidents now, on a day to day basis, operate within the two jurisdictions. Their federal work involves unfair dismissal conferences, preliminary points of jurisdiction, arbitrations and membership of appeal benches. They also deal with disputes, award variations and like matters. Unlike the State jurisdiction, the Commissioners are regularly involved in the approval process of certified agreements and disputes relating to the negotiation and renewal of certified agreements. In the State jurisdiction that type of work is confined to Senior Judge Jennings, Deputy President Stevens and Deputy President Hampton.”
- 5.1.4 In view of the work value analysis undertaken in 1999 and that the “fixed term appointment factor” has existed since the Industrial and Employee Relations Act, 1994 was assented to in 1994, the Tribunal has determined to flow-on the general increase determined by the Tribunal for the judiciary.

## 5.2 **Comparative Conditions Allowance**

- 5.2.1 The JRCC submitted that “Proper application of the work value principle requires that there be a comparison not only of the nature of the work performed (in this case, essentially the level of jurisdiction being exercised) but of the whole range of conditions under which the work is performed. The Tribunal must take as its starting point the fact that certain South Australian conditions are inferior. It should properly make allowance for those conditions in determining the salary. Obviously, if by some other means, the conditions are changed, that will require an adjustment in the salary for that reason. However, failure to take those conditions differentials into account amounts to an abdication of the proper function of the Tribunal.” “The Tribunal has a responsibility and an obligation to ensure an adequate level of total

remuneration for judges. If it is not prepared to discharge that responsibility (which it has power to do), it has a responsibility at least to warn the Executive Government and/or Parliament that if obvious deficiencies are not remedied, the Tribunal will fix an appropriate allowance for so long as the deficiencies remain.”

- 5.2.2 The Tribunal has considered similar submissions from the JRCC in 1997, 1998, 1999 and 2000 and repeats that it is not prepared to set an allowance or provide for any other remuneration for such differences in entitlements over which it has no control. If South Australia is so out of line with other jurisdictions it seems more appropriate for these issues to be considered by the Parliament or other determining authorities as appropriate. The Tribunal is concerned that this issue is continuously raised in lieu of it being addressed by Parliament or other appropriate authority.

### 5.3 **Productivity**

- 5.3.1 Consistent with the previously stated view that the Tribunal considers it important to be informed of efficiencies and productivity improvements, the Minister advised that “the Government is not aware of any new considerations arising in the period under review, with respect to productivity issues..”
- 5.3.2 The Tribunal’s Report Relating to Determination No. 2 of 2000 reported an extensive list of efficiencies and productivity improvements provided by the JRCC. The JRCC submission received this year stated “Judicial officers participate in a variety of practices and innovations to which reference has been made in past submissions which, to a greater or lesser degree, assist in improving their output. However, in almost all cases that is dependent upon provision of resources by other arms of government to the Courts Administration Authority. It cannot be a reason for granting or withholding salary increases.”
- 5.3.3 The Tribunal has concluded that it is in the public interest to be informed of efficiencies and productivity improvements and intends to continue this practice.

### 5.4 **Salary Packaging**

- 5.5.1 Paragraph 5.5 of the Tribunal’s Report Relating to Determination No. 2 of 2000 stated that “the Tribunal considers it appropriate that salary packaging should be made available to members of the judiciary and statutory office holders covered by this Determination on the same basis available to other public office holders. The Tribunal does not consider it appropriate to include a salary packaging clause in its Determination.”
- 5.5.2 The Tribunal was advised on 6 July, 2001 that there was agreement between the Minister and the JRCC on the proposed Salary Sacrifice Arrangement documentation with further advice provided on 10 August, 2001 that an Application for Private Ruling from the Australian Taxation Office (ATO) had been sought. The Tribunal was advised on 12 December, 2001 that the ATO had not issued a Private Ruling.

5.5.3 Both the JRCC and the Lay Members of the Industrial Relations Commission made submissions in respect to the delays being experienced and the inability to salary package at the present time. The JRCC submitted that the Tribunal should include in its determination a proposed clause so as these arrangements could be implemented as soon as practicable and without any further delay. The proposed clause was not in accord with that as previously agreed between the JRCC and the Government as advised to the Tribunal.

5.5.4 The Tribunal accepts that it is not in a position to influence the ATO, but has written to the Minister for Workplace Services requesting that this matter be followed up directly with the ATO. When the ATO has responded the Tribunal will give further consideration to an appropriate clause.

## 5.6 **Telephone Rental and Calls Allowance**

5.6.1 The JRCC has again requested variation to provide that all fixed line telephone charges other than ISD calls should be reimbursed and that ISD calls should be reimbursed on the basis of actual call costs incurred on official business.

5.6.2 Determination No. 2 of 2000 contains the current provisions as follows: "When a person to whom this Determination applies is required to have a telephone at home for official purposes, that person shall be paid the whole of the telephone rental for a single point connection without extra services and one third of the cost of metered local calls. Reimbursement should be made for international and STD official calls on the basis of actual costs incurred."

5.6.3 When the current arrangement was reviewed in December, 2000 the Tribunal stated in the Report Relating to Determination No. 2 of 2000 "No information was provided to the Tribunal on how many official calls are made from home or on the mobile telephone. One third of the cost of metered local calls is currently paid and if these calls are now made on a mobile telephone they are then not made from the home telephone. In addition, the Tribunal is aware that many officers in Government who are required to be available are supplied with mobile telephones at public cost for rental and official calls."

5.6.4 The Tribunal concluded then, as it does now, that in the absence of more detailed information and statistics of calls made etc the Tribunal is not prepared to vary the current provisions.

## 5.7 **Magistrates Court Relativity**

5.7.1 As indicated earlier in this Report, the Tribunal received written and oral submissions from the Magistrates in respect to their relativity in the South Australian judicial salary structure having regard to work value considerations.

5.7.2 The Tribunal will be providing a copy of the written submission to the Minister to enable the Minister to make submissions which are in the public interest.

5.7.3 Accordingly, the Tribunal confirms that it intends to hear further evidence from the parties before it makes a determination on the matter. In addition the Commissioners of the Environment, Resources and Development Court will be invited to make further submissions if the relativity of Magistrates is to be altered. In the meantime the current relativity will be continued in this Determination.

## 5.8 **Conveyance Allowance**

5.8.1 Conveyance Allowances for Judges, Statutory Officers and Court Offices are currently prescribed in Determination No. 5 of 2001. These allowances were adjusted in August 2001 and these allowances will remain unaffected by this Determination.

## 5.9 **Travelling and Accommodation Allowances**

5.9.1 Travelling and Accommodation Allowances for Judges, Statutory Officers and Court Offices are currently prescribed in Determination No. 2 of 2001. These allowances were adjusted in February 2001.

5.9.2 The Tribunal has recorded in this Report the CPI increases and accordingly will review these allowances in 2002.

## 6. **DETERMINATION AND OPERATIVE DATE**

6.1 The JRCC submitted the following in relation to the date of operation:  
“IN the light of the submission made to the Tribunal in support of an interim review, there is every justification for the Tribunal backdating at least part of this determination to 1 January 2001. The Tribunal has power to do so: s 17 *Remuneration Act* 1990. It is commonly done in other jurisdictions, and in Queensland, retrospectivity of that order is a regular occurrence.

The balance of the determination, and if retrospectivity of the order suggested is considered inappropriate, the whole of the determination should at least take effect from 1 November, 2001, that being the anniversary of the date of operation of the last determination.”

6.2 The Minister submitted that “it is reasonable that the 2001 Determination have an operative date of at least twelve months. It is submitted that there is no basis for any substantive period of retrospectivity. The Government submits that an operative date of the first pay period commencing on or after 1 November 2001 would be appropriate.”

6.3 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 that the salary of the Puisne Judge of the Supreme Court will be \$218,500 per annum from 1 November, 2001.

- 6.4 The salaries for all other judicial officers listed in the Determination have been increased from the same date to the annual amounts shown in the Determination being pro-rata increases.
- 6.5 The salaries of Mr. W. Chivell, State Coroner (for as long as he continues to perform this function with his current conditions of employment), lay Deputy Presidents and Commissioners of the Industrial Relations Commission and Commissioners of the Environment, Resources and Development Court will be increased from the same respective date to the annual amounts shown in the Determination being pro-rata increases.

Hedley R. Bachmann  
**PRESIDENT**

December, 2001