



No. 2 of 2018

REPORT OF THE REMUNERATION TRIBUNAL

2018 REVIEW OF REMUNERATION OF MEMBERS OF THE JUDICIARY, PRESIDENTIAL MEMBERS OF THE SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL, THE STATE CORONER, AND COMMISSIONERS OF THE ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT

INTRODUCTION

1. The Remuneration Tribunal (“the Tribunal”) has jurisdiction under section 13 of the *Remuneration Act 1990* (“the Act”) to determine the remuneration payable to judges, magistrates and holders of the public offices listed in that section of the Act. Section 14 of the Act provides that the Tribunal may be conferred additional jurisdiction by any other Act or proclamation by the Governor, to determine the remuneration of other specified offices.
2. Section 8 of the Act requires the Tribunal to sit at least once in each year for the purpose of reviewing previous determinations of remuneration, made under the Act. Judicial remuneration in South Australia was last reviewed in May 2017.
3. Section 10(2) of the Act provides that prior to the making of a Determination, the Tribunal must allow an affected person, or persons of an affected class, a reasonable opportunity to make submissions orally or in writing to the Tribunal. Section 10(4) provides that the Minister responsible for the Act may intervene, personally or by counsel or other representative, in proceedings before the Tribunal for the purpose of introducing evidence, or making submissions, on any question relevant to the public interest.
4. On 13 December 2017, the Tribunal wrote to the Judicial Remuneration Coordinating Committee (“JRCC”), Magistrates Association of South Australia (“MASA”), the Crown Solicitor’s Office (“CSO”) and the Attorney-General, notifying of the Tribunal’s intention to conduct a review of the remuneration of the relevant office holders.
5. In addition, on 13 December 2017, the Tribunal distributed a notice to judicial officers and a notification of the review was placed on the Tribunal’s public website.

BACKGROUND

6. In previous reviews of judicial remuneration in South Australia, the Tribunal has had regard to the national framework of salaries paid to judicial officers throughout the Commonwealth.
7. It would be accurate to describe the concept of a national framework of judicial salaries as a guiding principle for the purpose of considering judicial remuneration in South Australia. However, whilst adopting this guiding principle, the Tribunal has ensured that discretion has been preserved for the purpose of making an independent judgement of an appropriate level of judicial remuneration from time to time.

8. The Tribunal has avoided any Determination that judicial salaries in South Australia will automatically follow any Determination or legislative regulation of judicial remuneration in another jurisdiction. Nonetheless, it is a feature of the history of the Tribunal's determination of judicial salaries in South Australia that the level of salary of a Puisne Judge of the Supreme Court has been determined taking into consideration, among other things, the salary of a puisne judge of Supreme Courts throughout the States and Territories and the salaries of Federal judicial officers.

THE COMMONWEALTH REMUNERATION TRIBUNAL'S RECENT DETERMINATIONS.

9. The Commonwealth Remuneration Tribunal ("The Commonwealth Tribunal") determines the salaries payable to judicial officers of the Commonwealth. The Commonwealth Tribunal conducts reviews of judicial remuneration on an annual basis. In 2016, the Commonwealth Tribunal issued two statements which resulted in a Determination¹ to increase the salaries of Commonwealth judicial officers by 4.8 per cent operative from 1 January 2017.
10. In 2017, the Commonwealth Tribunal conducted its annual review of judicial and related salaries, which resulted in the making of Determination 2017/09². That Determination provided for a 2 per cent increase to the salaries of judicial offices within its jurisdiction, with operative effect on 1 July 2017.

COMPARISON OF FEDERAL, STATE AND TERRITORY JUDICIAL SALARIES

11. The Tribunal has examined Federal, State and Territory judicial salaries.
12. The relevant judicial salaries as at the time of this review are set out below.

Jurisdiction	Puisne Judge Salary	Operative Date
New South Wales	\$452,990	1 July 2017
Northern Territory	\$449,840	1 July 2017
Queensland	\$449,840	1 July 2017
Victoria	\$449,840	17 October 2017
Australian Capital Territory	\$449,840	1 July 2017
Tasmania	\$446,031	31 May 2017
Western Australia	\$441,057	1 July 2016
Commonwealth (federal court judge used)	\$449,840	1 July 2017
Median Salary (all states and territories ex SA)	\$449,840	
Average Salary (all states and territories ex SA)	\$448,660	
SA (salary prior to this Determination)	\$441,010	1 January 2018

¹ Commonwealth Remuneration Tribunal Determination 2016/17: Judicial and Related Offices – Remuneration and Allowances

² Commonwealth Remuneration Tribunal Determination 2017/09: Judicial and Related Offices – Remuneration and Allowances

FAIR WORK ACT 1994 (SA)

13. The Tribunal is required by Section 101(1) of the *Fair Work Act 1994* (SA) to have due regard to, and may apply, principles, guidelines, conditions practices or procedures adopted by the South Australian Employment Tribunal. That section is set out as follows:

101—State industrial authorities to apply principles

(1) *In arriving at a determination affecting remuneration or working conditions, a State industrial authority must have due regard to and may apply and give effect to principles, guidelines, conditions, practices or procedures adopted by SAET under this Part.*

(2) *However, principles adopted under this Part are not applicable to enterprise agreements.*

(3) *In this section—*

State industrial authority means—

(a) SAET; or

(b) the Remuneration Tribunal; or

(c) the Commissioner for Public Sector Employment; or

(d) another person or body declared by regulation to be a State industrial authority.

14. The Tribunal has had due regard accordingly, as required by the relevant legislative provisions.

SUBMISSIONS

15. The JRCC made submissions on 30 January 2018, 2 February 2018 and 7 March 2018, which were supported by the MASA. The CSO made submissions on behalf of the Hon. Premier Jay Weatherill on 30 January 2018, 2 February 2018 and 21 February 2018.

16. The Tribunal convened a hearing on 2 February 2018 to hear oral submissions. The following persons attended:

- The Honourable Justice Tim Stanley, on behalf of the JRCC;
- Magistrate David McLeod, on behalf of the MASA;
- Magistrate Jayanthi McGrath, on behalf of the MASA;
- Mr Elbert Brooks, on behalf of the MASA;
- Mr Joseph Wearing, on behalf of the MASA; and
- Ms Lucy Hodge, on behalf of the Honourable Premier of South Australia, as Minister responsible for the Act.

17. The JRCC submitted that:

- The Tribunal should continue to set judicial salaries in a national framework.
- In conformity with that policy, the Tribunal should determine that the salary of a puisne Judge of the Supreme Court of South Australia be \$449,840 per annum.
- The Tribunal should determine an increase to the salaries of judicial and other officers represented by the JRCC of an amount no less than the percentage increase applicable to the salary of a puisne Judge of the Supreme Court.
- The increase should be backdated to operate from 1 January 2018.
- In conformity with the Tribunal's Determination 2 of 2015³, in relation to the President of the South Australian Civil and Administrative Tribunal ("SACAT"), the President of the South Australian Employment Tribunal ("SAET") be awarded an additional component of 10 per cent of a District Court Judge's salary in recognition of the additional administrative work attached to that position.

³ *Remuneration Tribunal Determination and Report 2 of 2015 – Inaugural Review of Remuneration for Presidential Members of the South Australian Civil and Administrative Tribunal.*

- That the JRCC agrees with the Premier’s submission in relation to granting an additional component of salary to Deputy President Hannon, who continues to perform the duties of the President of the Industrial Relations Commission of South Australia, within the newly established SAET.
18. The MASA submitted that:
- The Tribunal grant to members of the judiciary appointed under the *Magistrates Act 1983* not less than the general increase in remuneration applicable to other members of the judiciary.
19. The CSO, on behalf of the Hon. Premier Jay Weatherill, submitted that:
- The existing salaries as determined by Determination 4 of 2017 remain appropriate, and no further increase in salaries are appropriate.
 - If the Tribunal is minded to determine an increase in those salaries, that the Tribunal not exceed 1.5% to be consistent with current State Government wages policy.
 - An appropriate additional component of remuneration be awarded to the President of the SAET is in the hands of the Tribunal.
 - An additional component of remuneration be awarded to Deputy President Hannon, who continues to perform the duties of the President of the Industrial Relations Commission within the recently established South Australian Employment Tribunal, is in the hands of the Tribunal.
 - An economic statement was provided which was drafted by Mr Benjamin Wilson who holds the position of Director, Economic Strategy at the Department of Treasury and Finance.
 - The Premier submits that the increase in salaries sought by the JRCC should only be granted if there is economic evidence to support such an increase or evidence supporting such an increase to the work value to each judicial position.
 - Following the 2018 election of members of the Parliament and changes to the Executive, the Honourable Premier Stephen Marshall advised the Tribunal that he did not wish to make any additional submissions to the Tribunal.

THE ECONOMY OF SOUTH AUSTRALIA

20. The determination of judicial salaries should have appropriate regard to the economic context in which such determinations are made and the relevant economic circumstances experienced by the community which the judiciary serves.
21. The evidence before the Tribunal and its observations indicate slowly improving economic circumstances in South Australia. In particular, while unemployment remains a concern, it would seem that the State has not suffered the drastic increases in unemployment widely anticipated to follow the closure of the vehicle production industry.
22. The Tribunal will take these matters into account when balancing the relevant considerations for the purposes of our discretionary judgement of the appropriate level of judicial salaries.

CONSIDERATION

23. In the 2016-17 State Budget, the following was stated “the Government has revised its wages policy to limit wage growth to a maximum of 1.5% per annum over the next three years of each enterprise agreement.”
24. The Tribunal has observed that recent enterprise bargaining outcomes throughout the South Australian public sector have regularly exceeded salary increases of 1.5% per annum. Relevantly, the *South Australian Modern Public Sector Enterprise Agreement 2017* was approved by the South Australian Employment Tribunal on 31 January 2018. That agreement provided for increases of:

- \$1500 per annum for salaries less than \$75,000;
 - \$1800 per annum for salaries greater than \$75,000; and
 - A minimum of 1.5% per cent salary increase per annum.
25. The Tribunal has observed that for employees within the administrative services stream of the above agreement, the weighted average of the applicable salary increases is 2.3% per annum, ranging from 3.5 per cent at the ASO1 level to 1.5 per cent at the MAS3 level. In this particular respect the Tribunal observes that there is often a divergence between espoused wages policies and the outcome of enterprise bargaining negotiations affecting public sector employees in various jurisdictions. Accordingly, expressions of wages policy and actual outcomes in the relevant fields should both be taken into account when considering the weight to be afforded to expressions of Government wages policy. When doing so, in the Tribunal's view, the actual, as opposed to the espoused, outcomes of the policy should be accorded greater weight.
26. The determination of judicial remuneration within a national framework requires the Tribunal to have regard to the level of salaries determined in other jurisdictions, which create the levels of remuneration applicable to judicial officers throughout the Commonwealth. The salaries shown at paragraph 12 are determined by remuneration Tribunals or by legislative provisions. In several of the latter cases those provisions are linked to Determinations made by State or Commonwealth Tribunals applicable to the remuneration of judicial officers.
27. While the history of the determination of judicial salaries throughout Australia has, on occasion, reflected changes in the value of the work of identifiable judicial functions, from time to time, increases in the level of judicial remuneration are not exclusively or systematically determined on a work value basis. Rather, in all cases, the history of the determination of judicial salaries reveals continuing close alignment between the various jurisdictions as the dominant experience. Departures from this pattern are unusual and in very distinct circumstances affecting individual jurisdictions.
28. Accordingly, it is pertinent to note that the recent situation in Western Australia is highly distinct. The Western Australia Salaries and Allowances Tribunal has, since May 2017, applied a freeze to the adjustment of judicial salaries following the application by the Government of the State of such a freeze on remuneration across the public sector generally. The grounds upon which the State Government did so reflect a view that the State faces a fiscal emergency. Moreover, since the decision of the Tribunal mentioned above the Parliament of Western Australia has by legislative enactment⁴ prohibited any increase in judicial remuneration before 1 July 2021. The circumstances before us are not analogous.
29. To adopt a principle that judicial remuneration in South Australia would be exclusively reviewed on the basis of the economic circumstances in the State, or, alternatively, specific work value considerations discretely applicable to an individual judicial office or identified judicial officers, would disconnect the determination of judicial remuneration from the principle of setting judicial remuneration within a national framework. In the Tribunal's view, the determination of judicial salaries within a national framework will necessarily encompass comparative economic adjustments as a relevant consideration.

⁴ *Salaries and Allowances Amendment (Debt and Deficit Remediation) Act 2018 (WA)*

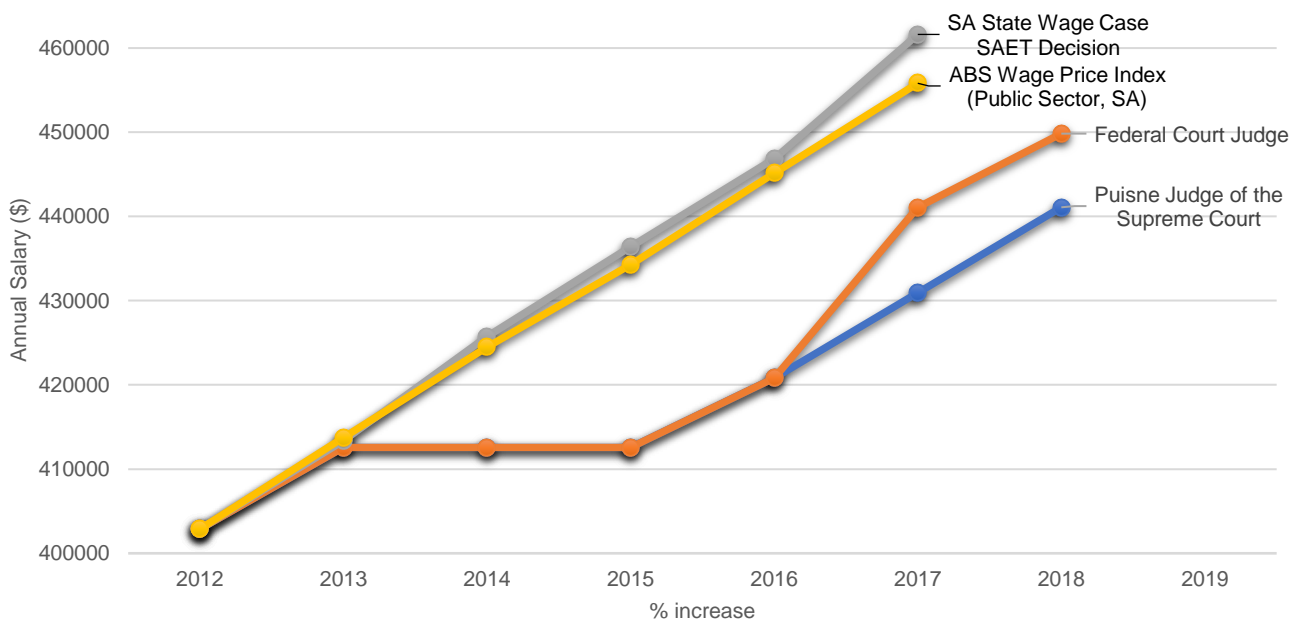
30. The Tribunal has given consideration to data reflecting actual changes in wages and salaries since the 2012 Determination of judicial salaries at which time the salary of a Puisne Judge of the Supreme Court was aligned with that of a Federal Court. We set out the relevant data below.

SA Puisne Judge Salary (actual)			SA Puisne Judge (if increased by SA State Wage Case SAET decision in corresponding year since 2012)		
2012	\$402,880		2012	\$402,880	
2013	\$412,550	2.4%	2013	\$413,355	2.6%
2014	\$412,550	0.0%	2014	\$425,756	3.0%
2015	\$412,550	0.0%	2015	\$436,399	2.5%
2016	\$420,810	2.0%	2016	\$446,873	2.4%
2017	\$430,910	2.4%	2017	\$461,620	3.3%
2018	\$441,010	2.3%	2018	Data yet to be issued	N/A
TOTAL		9.1%	TOTAL		13.8%

31. We also observe that had the salary of a Puisne Judge of the Supreme Court increased consistently with the relevant Wage Price Index series of the Australian Bureau of Statistics the result would be a salary somewhat higher than is current. The table below sets out that difference.

SA Puisne Judge (actual)			SA Puisne Judge (if increased by ABS Wage Price Index at 1 July in corresponding year since 2012)		
2012	\$402,880		2012	\$402,880	
2013	\$412,550	2.4%	2013	\$413,758	2.7%
2014	\$412,550	0.0%	2014	\$424,515	2.6%
2015	\$412,550	0.0%	2015	\$434,279	2.3%
2016	\$420,810	2.0%	2016	\$445,136	2.5%
2017	\$430,910	2.4%	2017	\$455,820	2.4%
2018	\$441,010	2.3%	2018	Data yet to be issued	N/A
TOTAL		9.1%	TOTAL		12.5%

32. A graphical representation of the above figures is illustrated below:



33. This graphical representation demonstrates a lag in the rate of growth of the salary of a puisne judge of the Supreme Court of South Australia, and relatively, other judicial salaries in South Australia, over the relevant period when compared with the statistical series referred to in the tables above.

CONCLUSION

34. Whilst changes in levels of remuneration within the broader community of South Australia form a relevant background for consideration, the Tribunal is not persuaded that espoused Government wages policy should displace the Tribunal's long standing approach to determine relevant salaries within a national framework of remuneration for judicial officers. The Tribunal notes that the actual outcome of wages and salaries negotiations across the public sector relevantly exceed the amount of 1.5% in various circumstances.
35. In this respect, the Tribunal refers to the reasoning generally in our previous Determination⁵ in relation to judicial remuneration. The Tribunal also notes that to simply adopt Government wages policy as the determinant of judicial salaries is not necessarily coherent with the statutory scheme under which the Tribunal's jurisdiction is established. In particular, to adopt government wages policy determined by the Executive as the basis of determining salaries of the Judiciary does not cohere happily, if at all, with the provisions of section 15 of the Act, which is as follows:

“15—Tribunal to have regard to principle of judicial independence

The Tribunal must, where appropriate in determining remuneration under this Act, have regard to the constitutional principle of judicial independence.”

36. Having regard to the national framework of judicial salaries, as set out at paragraph 12 above, the Tribunal has decided to align the salary of a puisne judge of the Supreme Court with the median salary of such an office in all states and territories other than South Australia, as detailed at paragraph 12 of this report, and to increase the salaries of judicial and other offices within the scope of application of the accompanying Determination by the same proportion. Those salaries are set out in the determination which accompanies this Report.
37. The Tribunal therefore makes the accompanying Determination. The Determination reflects discrete consideration of the level of remuneration of certain specified judicial offices, and particular circumstances relevant thereto, which are dealt with immediately below.

PRESIDENT OF SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL

38. The SAET is established by section 5 of the *South Australian Employment Tribunal Act 2014* (“the SAET Act”). The *Statutes Amendment (South Australian Employment Tribunal) Act 2016* (“the Amending Act”) abolishes the Industrial Relations Commission of South Australia and provides for the expansion of the South Australian Employment Tribunal.
39. The SAET Act establishes the office of President of the Tribunal. By section 10 of the SAET Act, the Tribunal has jurisdiction to determine an additional component of salary for a Judge of the District Court who holds the office of President of the SAET.
40. Submissions have been received in relation to the determination of such an additional amount from Premier and JRCC.
- Submission by the JRCC.
An amount of 10 per cent of a District Court Judge is appropriately payable to the President of the South Australian Employment Tribunal.
 - Submissions by CSO, on behalf of the Premier.
The amount should be determined at the Tribunal's discretion.
41. The Tribunal, in similar circumstances, was required to consider the determination of additional salary in relation to the office of President of the South Australian Civil and

⁵ *Remuneration Tribunal Determination 4 of 2017 – Remuneration of Members of the Judiciary, Members of the Industrial Relations Court and Commission, the State Coroner and Commissioners of the Environment, Resources and Development Court.*

Administrative Tribunal (“SACAT”), pursuant to the relevant provisions of the *South Australian Civil and Administrative Tribunal Act 2013* (“the SACAT Act”). The Tribunal issued a Report and Determination⁶ which prescribed an additional component of salary at the rate of 10 per cent of the salary of a puisne judge of the Supreme Court.

42. On the Tribunal’s consideration of the legislation establishing the SAET, and having regard to the extent of that Tribunal’s jurisdiction and the responsibilities of the President for providing the necessary leadership of the organisation and its administrative efficiency, the Tribunal is satisfied that an amount of 10 per cent of the salary of a District Court Judge is appropriately payable in respect of the office of President of the SAET.

DEPUTY PRESIDENTS OF THE SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL

43. Section 13 of the SAET Act provides for appointment of Deputy Presidents of the South Australian Employment Tribunal.
44. Throughout this review, there was some initial confusion within the submissions of the CSO on behalf of the Premier in relation to the Remuneration Tribunal’s jurisdiction to determine additional amounts of salary for the Deputy Presidents appointed to SAET, pursuant to the relevant provisions of the SAET Act.
45. The Tribunal is satisfied that the determination of additional amounts of salary is within jurisdiction and power in respect of the office of Deputy President of SAET, and in particular in respect of the current occupants of those offices. The Tribunal has reached this conclusion based on the SAET Act and transitional provisions enacted by the *Statutes Amendment (South Australian Employment Tribunal) Act 2016*.
46. For the purposes of the Tribunal’s current consideration of the remuneration of Deputy Presidents of SAET, it is necessary to make a distinction of Deputy Presidents who hold office as Judge of the District Court and Deputy Presidents who hold office as a Magistrate. This distinction is reflected in the legislation, which relevantly, confers jurisdiction and power upon the Tribunal to determine additional amounts of salary in respect of both categories.
47. The Tribunal received submissions from the JRCC in relation to Judges of the District Court who are appointed as Deputy Presidents of the SAET, submitting that the salary of a district court judge is appropriate, with the exception of Deputy President Hannon.
48. No submissions were received in relation to Magistrates who were previously appointed as Deputy Presidents of the Industrial Relations Commission of South Australia.

DEPUTY PRESIDENT HANNON

49. The Tribunal has heard through the submissions of the CSO, on behalf of the Premier, and the JRCC, that duties previously assigned to the now defunct role of President of the Industrial Relations Commission of South Australia have been delegated to Deputy President Hannon of the South Australian Employment Tribunal.
50. The CSO and JRCC submitted that the level of salary previously payable to Deputy President Hannon remains appropriate. The determination supported by the CSO and JRCC is an additional component of salary equivalent to the previous salary payable to the President of the Industrial Relations Commission, less the salary of a District Court Judge. Furthermore, the parties submitted that any increases granted to judicial officers generally ought to be taken into consideration in determining an appropriate amount of additional salary for Deputy President Hannon.
51. The Tribunal considers that it is appropriate in the circumstances to award an additional component of salary to a Deputy President of the South Australian Employment Tribunal who is delegated the previous duties of the now defunct role of the President of the Industrial Relations Commission. The Tribunal is satisfied that the amount of additional salary, in respect of Judge Hannon, as submitted by the parties, is appropriate.

⁶ *Remuneration Tribunal Report and Determination 2 of 2015 – Inaugural Review of Remuneration for Presidential Members of the South Australia Civil and Administrative Tribunal*

OPERATIVE DATE

52. The Tribunal has decided that the accompanying Determination will come into operation on and from 1 June 2018, with the exception of the additional salary for the President of the South Australian Employment Tribunal, which will come into operation on 7 November 2017.

COMMUNICATION ALLOWANCE

53. The Tribunal has had regard to the relevant statistical measure which comprises the basis of the Communications Allowance applicable to judicial office holders, and has concluded that the Communications Allowance will remain as provided for in Determination 6 of 2013.



John Lewin
PRESIDENT



Peter Alexander
MEMBER



Pamela Martin
MEMBER

Dated this 3rd day of May 2018