



No. 12 of 2019

REPORT OF THE REMUNERATION TRIBUNAL

REMUNERATION OF MEMBERS OF THE JUDICIARY, PRESIDENTIAL MEMBERS OF THE SAET, PRESIDENTIAL MEMBERS OF THE SACAT, THE STATE CORONER, AND COMMISSIONERS OF THE ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT

INTRODUCTION

1. Section 13 of the *Remuneration Act 1990* ("the Act") provides that the Remuneration Tribunal ("the Tribunal") has jurisdiction to determine the remuneration payable to members of the judiciary and holders of the public offices listed in that section of the Act.
2. Section 14 of the Act provides that the Tribunal has jurisdiction to determine the remuneration, or a specified part of the remuneration, payable in respect of certain offices, if such jurisdiction is conferred upon the Tribunal by any other Act or by the Governor by proclamation.
3. This Report relates to the remuneration of members of the judiciary and certain other statutory office holders.

BACKGROUND

4. 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.
5. 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.
6. The Tribunal has avoided any Determination that judicial salaries in South Australia will automatically follow any other 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 Court Judges.

PROCEDURAL HISTORY

7. 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.

8. Section 10(4) of the Act provides that the Honourable Premier of South Australia (“the Premier”), as 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.
9. On 19 August 2019, the Tribunal wrote to the Judicial Remuneration Coordinating Committee (“JRCC”) and the Magistrates Association of South Australia (“MASA”), notifying of the Tribunal’s intention to review Determination 2 of 2019.
10. The Tribunal, by letter dated 19 August 2019, wrote to the Premier, as the Minister responsible for the Act, inviting submissions in relation to this review.
11. In addition, the Tribunal distributed an email notification to the relevant office holders on 19 August 2019. A notification of the review was also placed on the Tribunal’s public website, on the same day.
12. The Tribunal convened a hearing on 2 October 2019 to hear oral submissions. The following persons attended:
 - 12.1. The Honourable Judge Wayne Chivell, on behalf of the JRCC;
 - 12.2. Magistrate Jay McGrath, on behalf of the MASA; and
 - 12.3. Mr Stephen Ranieri of the Crown Solicitor’s Office (“CSO”), on behalf of the Premier, as Minister responsible for the Act.

SUBMISSIONS

13. Submissions were received by the JRCC, MASA, the President of South Australian Civil and Administrative Tribunal (“SACAT”) and the Crown Solicitor’s Office (“CSO”), on behalf of the Premier.
14. The JRCC submitted that:
 - 14.1. The Tribunal should continue to set judicial salaries in a national framework.
 - 14.2. In conformity with that policy, the salary of a Puisne Judge of the Supreme Court of South Australia should be increased to \$468,020 per annum.
 - 14.3. The increase to the judicial and other officers should be no less than the percentage increase, and from the same operative date, applicable to the salary of a Puisne Judge of the Supreme Court.
 - 14.4. The increase should operate from 1 October 2019.
15. The MASA submitted that:
 - 15.1. The submissions made by the JRCC are supported by MASA.
16. The President of SACAT submitted that:
 - 16.1. The Tribunal determine the remuneration applicable to the office of Deputy President of the SACAT.
 - 16.2. The office of Deputy President of the SACAT is currently vacant. Since the middle part of 2017, the duties of the Deputy President of the SACAT have been carried out on an acting basis by an Executive Senior Member remunerated at a rate equivalent to that of a Magistrate.
 - 16.3. The appointment of a Deputy President of SACAT under 14(1)(b) of the *South Australian Civil and Administrative Tribunal Act 2013* (“SACAT Act”) has been foreshadowed. For that to occur, terms and conditions should be set.
 - 16.4. The salary applicable to the office of Deputy President of the SACAT appointed under 14(1)(b) of the SACAT Act ought to be set at that which is set for a Magistrate.
 - 16.5. That it would be appropriate for the Deputy President of the SACAT appointed under 14(1)(b) of the SACAT Act to be entitled to Conveyance Allowance, Communication

Allowance, Judicial Security Allowance and per diem Accommodation and Meal Allowances, at rates equivalent to those applicable to a Magistrate.

17. The CSO, on behalf of the Premier, submitted that:
 - 17.1. The Premier respectfully submits that any increase in excess of two per cent per annum is opposed.
 - 17.2. That the operative date of any increase in remuneration be 1 January 2020, being 12 months following the operative date of the previous increase in remuneration determined by this Tribunal.
 - 17.3. The Premier does not wish to make a submission regarding economic trends or data for the purposes of this Review, or produce evidence in relation thereto.
 - 17.4. The Premier further submits that, upon request of the Honourable Justice Hughes, President of the South Australian Civil and Administrative Tribunal, the Tribunal determine the salary of the (future) Deputy President, SACAT in accordance with section 14(10) of the *South Australian Civil and Administrative Tribunal Act 2013*.
 - 17.5. The Premier supports the recommendation of the President of the SACAT that the salary of the Deputy President appointed under 14(1)(b) be equivalent to that of a Magistrate.

COMPARISON OF FEDERAL, STATE AND TERRITORY JUDICIAL SALARIES

18. The Tribunal has examined Federal, State and Territory judicial salaries.
19. The relevant judicial salaries of Supreme Court Judges and Federal Court Judges as at the time of this review are set out below. At the time of writing, the salary of a Supreme Court Judge in South Australia is equal to the lowest in Australia with the exception of Western Australia and lower than both the respective median and average salaries.
20. The situation in Western Australia is made problematic by a legislative freeze on the jurisdiction and powers of the Independent Salaries and Allowances Tribunal in that State due to a fiscal emergency affecting the State's finances. That situation has occurred since 28 February 2018 and will continue at least until July 2021. The Tribunal considers that the current judicial salaries in Western Australia must be regarded accordingly. It is not possible to know what the level of judicial salaries in that State would be if they were and had been determined in the manner provided for by the statute applicable to such determination if not for the temporary salary freeze.

Jurisdiction	Judge of the Supreme Court Salary	Operative Date
New South Wales	\$475,920	1 Jul 2019
Northern Territory	\$468,020	1 Jul 2019
Victoria	\$468,020	17 Sep 2019
Queensland	\$468,020	1 Jul 2019
Tasmania	\$460,103	31 May 2019
Australian Capital Territory	\$458,840	1 Jul 2018
Western Australia [†]	\$441,057	1 Jul 2016
Commonwealth (federal court judge used)	\$468,020	1 Jul 2019
Median Salary (all states and territories ex SA)	\$468,020	
Average Salary (all states and territories ex SA)	\$463,500	
SA (salary prior to this Determination)	\$458,840	1 Jan 2019

[†]The salary of judges of the Supreme Court in Western Australia is subject to the restrictive provisions of the *Salaries and Allowances (Debt and Deficit Remediation) Act 2018 (WA)*, which prevents the WA Tribunal, until July 2021, from increasing that salary.

FAIR WORK ACT 1994 (SA)

21. The Tribunal is required by section 101 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 (“SAET”). Section 101 of that Act 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.

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

THE ECONOMIC CONTEXT

23. The most recent monetary policy decision published by the Reserve Bank of Australia states as follows:

“The recent inflation data were broadly as expected, with headline inflation at 1.7 per cent over the year to the September quarter. The central scenario remains for inflation to pick up, but to do so only gradually. In both headline and underlying terms, inflation is expected to be close to 2 per cent in 2020 and 2021.”

24. The 2019-20 State Budget Statement contains an economic performance and outlook statement for the South Australian economy. Extracts from that statement read as follows:

“South Australia’s GSP is forecast to grow 2½ per cent in 2019-20 then resume trend growth of 2¼ per cent per annum from 2020-21 through to 2022-23. Supporting the outlook for 2019-20 is an anticipated bounce back in South Australia’s winter crop production assuming a return to more favourable seasonal weather conditions. The competitiveness of the Australian dollar is also expected to continue to support South Australia’s goods and services exports, particularly international tourism, education and premium food and wine exports.”

“Wages in South Australia have continued to grow at subdued rates by historical standards, as is the case nationally. Although still modest, wages grew by 2.1 per cent in the year to the March quarter 2019. Nationally, wages rose by 2.3 per cent in the year to the March quarter 2019. This is potentially an early indication of the gradual pickup in wages anticipated by the Reserve Bank of Australia.”

25. The Tribunal has noted that the most recent data published by the Australian Bureau of Statistics shows the Wage Price Index for Public Sector in South Australia has increased at an annualised rate of 2.1%¹.
26. The Tribunal has noted that the most recent data published by the Australian Bureau of Statistics shows the Consumer Price Index for Adelaide has increased at an annualised rate of 1.9%².
27. 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.

¹ Australian Bureau of Statistics 2019, *Wage Price Index*, series 6345.0, Public Sector, South Australia, for the year ending June 2019.

² Australian Bureau of Statistics 2019, *Consumer Price Index*, series 6413.0, All Groups, Adelaide, for the year ending September 2019.

28. The Tribunal has taken these matters into account when balancing the relevant considerations for the purposes of our discretionary judgement of the appropriate level of judicial salaries.

CONCLUSION

29. Having regard to the submissions before the Tribunal, the economic background, and the relevant material referred to above, the Tribunal considers that it is appropriate that the level of remuneration applicable to the judicial and statutory officers subject to the accompanying Determination should be increased by 2 per cent.

DEPUTY PRESIDENT OF THE SACAT

30. The *South Australian Civil and Administrative Tribunal Act 2013* (“the SACAT Act”) provides that the Remuneration Tribunal has jurisdiction to determine certain specified parts of the remuneration applicable to the office of Deputy President of the South Australian Civil and Administrative Tribunal (“the SACAT”).

31. Section 14(1) of the SACAT Act provides that a Deputy President will be:

“(a) a judge of the District Court appointed by the Governor, by proclamation, to be a Deputy President of the Tribunal; or

(b) a person who is eligible for appointment as a judge of the District Court appointed by the Governor to be a Deputy President of the Tribunal.”

32. In the case of a Deputy President of the SACAT appointed under section 14(1)(a) of the SACAT Act, section 14(6) applies:

*“(6) Without limiting subsection (5), in the case of an appointment under subsection (1)(a), the Remuneration Tribunal may determine that a Deputy President’s **salary or allowance as a judge will have an additional component** on account of holding office under this Act (and the jurisdiction to make such a determination is conferred on the Remuneration Tribunal by this Act).”*

[Emphasis added]

33. In the case of a Deputy President of the SACAT appointed under section 14(1)(b) of the SACAT Act, sections 14(9) and 14(10) apply, as follows:

“(9) An appointment under subsection (1)(b) may be subject to conditions determined by the Governor.”

*“(10) Without limiting subsection (9), in the case of an appointment under subsection (1)(b), the Remuneration Tribunal **will determine the salary or allowances** to be paid to the person on account of holding office under this Act (and the jurisdiction to make such a determination is conferred on the Remuneration Tribunal by this Act).”*

[Emphasis added]

34. The Tribunal has considered the submissions in relation to the salary and allowances applicable to the office of Deputy President of the SACAT appointed under section 14(1)(b) of the SACAT Act.

35. The Tribunal has determined to fix the salary of a Deputy President of the SACAT appointed under 14(1)(b) of the SACAT Act at \$329,170 per annum, with operative effect on 21 November 2019. That salary will increase to \$335,760 per annum on and from 1 January 2020. Should such an appointment be made on a part-time basis, the salary will be payable on a pro-rata basis.

36. The Tribunal has determined that a Deputy President of the SACAT appointed under 14(1)(b) of the SACAT Act will be entitled to be paid the following allowances:

36.1. Conveyance allowance at the rate of \$15,298 per annum and in accordance with the terms of Determination 15 of 2018, as amended from time to time by the Tribunal;

36.2. Communication Allowance at the rate of \$1,254 per annum and in accordance with the terms of clauses 5, 6, and 7 of the accompanying Determination;

- 36.3. Judicial Security Allowance at the rate of \$1,000 per annum and in accordance with the terms at clause 8, 9 and 10 of the accompanying Determination; and
- 36.4. Per diem Accommodation and Meal Allowances in accordance with Determination 9 of 2019, as amended from time to time by the Tribunal.
- 36.5. The operative date for the above allowances at paragraph 36.1, 36.2, 36.3, 36.4 will be 21 November 2019.
37. Should a Deputy President of the SACAT be appointed under 14(1)(b) of the SACAT Act on a part-time basis, the allowances specified in paragraph 36.1, 36.2, 36.3 will be payable on a pro-rata basis.
38. The above determination of salary and allowances for the Deputy President of the SACAT will be consolidated into each of the corresponding Determinations.

COMMUNICATION ALLOWANCE

39. The Tribunal has reviewed the amount of the communication allowance applicable to judicial office holders. The Tribunal has had regard to the relevant statistical measure which comprises the basis of the communication allowance applicable to judicial office holders, and has concluded that no variation will be made to the amount of the communication allowance.

JUDICIAL SECURITY ALLOWANCE

40. The Tribunal has reviewed the amount of the judicial security allowance. Having regard to the Tribunal's consideration of information within the Australian Bureau of Statistics series concerning the costs of items of a similar nature, no justification is discernible for any variation to the judicial security allowance.

OPERATIVE DATE

41. The accompanying Determination 12 of 2019 will have operative effect on and from 1 January 2020, except where otherwise stated within that Determination in relation to the salary and allowances of a Deputy President of SACAT appointed under section 14(1)(b) of the SACAT Act.



John Lewin
PRESIDENT



Peter Alexander
MEMBER



Pamela Martin
MEMBER

Dated this 21st day of November 2019