

## **REMUNERATION TRIBUNAL**

### **REPORT RELATING TO DETERMINATION NO. 1 OF 2006**

#### **1. INTRODUCTION**

1.1 In accordance with the provisions of the *Remuneration Act 1990*, the Remuneration Tribunal by letters dated 5 September 2005 invited the office holders of the statutory positions of Auditor-General, Electoral Commissioner, Deputy Electoral Commissioner, Employee Ombudsman, Health and Community Services Complaints Commissioner and the Ombudsman to make submissions in relation to the remuneration of those offices. The Tribunal also invited the Minister to make submissions in the public interest.

1.2 On 14 September 2005 the following notice was published in The Advertiser newspaper:

#### **REMUNERATION TRIBUNAL REVIEW OF SALARIES FOR STATUTORY OFFICE HOLDERS**

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 the determination incorporating the salaries payable to the following statutory office holders:

- . Auditor-General;
- . Electoral Commissioner;
- . Deputy Electoral Commissioner;
- . Employee Ombudsman;
- . Ombudsman; and
- . Health and Community Services Complaints Commissioner

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 28 September 2005 and submissions should be forwarded to:

The Secretary  
Remuneration Tribunal  
GPO Box 1072  
ADELAIDE SA 5001

Or alternatively submissions can be forwarded via the Tribunal's website:  
[www.remtribunal.sa.gov.au](http://www.remtribunal.sa.gov.au).

Telephone: (08) 8226 4013

Facsimile: (08) 8226 4174

1.3 The Tribunal received oral and written submissions from the Auditor-General and oral submissions from the Ombudsman and a joint written and oral submission from the Electoral Commissioner and Deputy Electoral Commissioner. In addition, the Minister's representative made written and oral submissions in relation to all of the positions being considered. The oral submissions were made to the Tribunal on 29 November 2005 and 12 December 2005.

1.4 The Tribunal did not receive any written submissions from the Employee Ombudsman, the Health and Community Services Complaints Commissioner, or the public.

2. **AUDITOR-GENERAL**

- 2.1 The remuneration for the Office of Auditor-General was last determined in Determination No. 1 of 2004 operative from 1 July 2004. The current salary is \$225,000 per annum.
- 2.2 The Auditor-General's submission to the Tribunal requested consideration of an alleged anomaly regarding the remuneration of the Office of Auditor-General and the public sector positions of Under Treasurer and Chief Executive, Department of the Premier and Cabinet. He also requested that changes associated with the role of the Office of Auditor-General be considered on the basis of significant work value change.
- 2.3 A number of alleged increased audit risk matters were presented, including those said to be concerned with the operation of the Parliament, public sector management, government policy initiatives and changes in the political environment.
- 2.4 In particular the Auditor-General submitted that the introduction of the State Strategic Plan, the Strategic Infrastructure Plan and the State ICT Program gave rise to significant increases in the work value of his office. He also pointed to law and order audit issues associated with, inter alia, the operation of Forensic Science DNA database and the findings of the Kapunda Road Royal Commission. The Auditor-General also submitted that the Government's increased use of prerogative powers has fundamentally changed the requirements of the Office. He claimed that overall environment in which he operated has become much more difficult due to the adversarial nature of audits.
- 2.5 The Minister submitted, *"A salary increase should be granted to Statutory Office Holders (being the Auditor-General, Electoral Commissioner, Deputy Electoral Commissioner, Employee Ombudsman and Ombudsman) that is consistent with the broad background of movements in Public Sector Executive remuneration in 2005 in particular, and in the public sector generally. The Tribunal should, in determining the salary outcomes for Statutory Office Holders, have regard to the 2005 remuneration increase of 3.5% for Public Sector Executive level employees. In addition, the Tribunal should have regard to the economic indicia outlined in the Minister's submission: in particular, the CPI increase for South Australia and the 3.5% increase granted by the Full Commission of the Industrial Relations Commission of South Australia for public sector salaried employees immediately below the Executive level."*
- 2.6 In previous submissions the government has submitted, *"given the nature and status of the Statutory Offices, it is in the public interest that the salaries for these officers keep pace with, but do not significantly exceed, increases applicable to other public sector positions of similar status"*.
- 2.7 The Tribunal was advised that an increase of 3.5% on Public Sector Executive's Total Employment Cost packages was effective from 1 July 2005 and that the salaries for senior public sector employees, covered by the SA Government (Public Sector Salaried Employees) Arbitrated Enterprise Bargaining Award 2004 were increased by 3.5% from the first pay period on or after 1 October 2005.
- 2.8 At the time the Tribunal was first required to determine the remuneration for the Office of Auditor-General it had cause, amongst many other matters then raised with it, to consider the Cullen Egan and Dell Job Evaluation System used by the Commissioner for Public Employment for determining the Total Employment Cost (TEC) for public sector executives, including Chief Executives. In this respect it noted in its Determination 2 of 1997 that "there are two scales of "Levels" for Chief Executives depending on whether they are "tenured" or "non-tenured"" and that the Office of Auditor-General fell into the first of these. It also noted that "non-tenured" TEC packages are generally higher, as well as having a sixth Level "F" available for classification. The then Government's position was that TEC packages for

“tenured” offices are properly set without any “discount” or “penalty” for tenure, and the higher amounts paid to “non-tenured” officers are compensation for aspects of their contract different from “tenured” conditions. The Tribunal accepted the Government’s explanation and sees no reason to now resile from that position.

- 2.9 Furthermore, the present Commissioner for Public Employment confirmed this to still be the case in a letter dated 8 December 2005 by stating, *“The State Government introduced a contract based remuneration structure for Executives and Chief Executives in 1995. The structure provided for appointment on either a tenured or untenured basis. Executives who were offered and accepted transition of contract without tenure at that time received an additional 15% increase in remuneration as compensation for loss of tenure.”* However, in the context of the Government’s recent decision to eventually move all public sector executives on to non-tenured contracts the letter went on to say, *“Nevertheless, in view of Government’s policy position, it is arguable that no distinction be drawn for the Auditor-General’s position. I would suggest that the Auditor-General’s salary should be looked at in terms of its work value merits as proposed by the Auditor-General”* noting that *“As to whether these changes constitute significantly increased work value, is an issue for the Tribunal to determine.”*
- 2.10 The Tribunal has had regard to all submissions made and in doing so accepted the Office of Auditor-General has been impacted by changes in the public sector. In particular the Tribunal recognised that the role of Auditor-General is dynamic and ever changing and that in this context the introduction of State Strategic Plan, inter alia, has impacted on the Office since it last reviewed the remuneration of the Office. In this context, the Tribunal also noted that the overall remuneration of the Auditor-General is generally comparable with that of the Chief Executive Officer, Treasury and Finance (Under Treasurer) and the Chief Executive Officer, Premier and Cabinet (considering the nature of their contracts). After reviewing previous Tribunal Determinations and the submissions received during this review the Tribunal has determined the salary for the Office of Auditor-General will be \$235,000 per annum. Telephone rental and calls allowance for this Office will remain unaffected by this Determination.

### 3. **ELECTORAL COMMISSIONER**

- 3.1 The remuneration of the Office of Electoral Commissioner was last determined in Determination No. 1 of 2004 operative from 1 July 2004. The current salary is \$131,000 per annum.
- 3.2 A joint submission from the Electoral Commissioner and Deputy Electoral Commissioner submitted that the Tribunal needed to take a more robust approach in determining salaries for their respective Offices. It was submitted that such an approach should take into account forces such as market rates; attraction and retention; the fact that electoral administrators suffer career limitations by vigorously maintaining their independence; the pressure of continuously running elections and the high levels of performance and competence required of such positions. Further, they submitted that the increased volumes of electoral events including ballots, elections and public education and research programs placed an increasing pressure on the Electoral Commissioner’s Office. It was noted that the Tribunal had previously made judgements on a number of work value changes and had made some changes, however it was submitted that the process had not kept pace with the market forces.
- 3.3 At the hearing, the Electoral Commissioner indicated that historically the Tribunal had not been prepared to entertain interstate comparisons. Nevertheless, the Tribunal was asked to note the interstate comparisons of similar positions. This information was provided to the Tribunal subsequent to the hearing. It was also again submitted that the Tribunal should fully consider comparisons with the South Australian public positions of Public Trustee;

Liquor Licensing and Gambling Commissioner; Commissioner for Equal Opportunity and Commissioner for Public and Consumer Affairs, given they were once all set at the same amount as the Electoral Commissioner, but now allegedly received significantly higher recognition. Total employment packages of these positions (some tenured and some untenured), which include provision of a car and superannuation for the holders, range from \$169,659 to \$188,426.

- 3.4 Notwithstanding the above, and having regard to the current remuneration and issues of tenure, the Tribunal is satisfied that its determination for the Electoral Commissioner is fair and reasonable.
- 3.5 The Electoral Commissioner also presented to the Tribunal a copy of an e-mail received from the Deputy Chief Executive of the Attorney-General's Department and Department of Justice in relation to the acceptance of her appointment which in part stated, "*The understanding on which you accept those terms is that the government will not oppose an application by you to the remuneration tribunal to increase your total package so as to allow for super contributions of \$20,000 over and above the base remuneration.*"

The Tribunal does not determine Superannuation. It has been determined by Parliament through legislation and provides the minimum levels of employer contributions for the three separate schemes currently operating under distinct legislative prescriptions.

The Tribunal determines salaries and observes, as it has done on previous occasions, that it might be inappropriate to include superannuation in remuneration packages. Whilst it is appropriate to have regard to superannuation in total employment costs the inclusion of superannuation in remuneration packages may be problematic in the context of existing legislation.

Nevertheless, if the Government wishes to honour the agreement as outlined in the e-mail correspondence, as it was interpreted by the Tribunal, it may elect to do so by increasing the amount it contributes to the scheme in respect of the Electoral Commissioner.

- 3.6 The Minister's submissions for the remuneration for the position of Electoral Commissioner mirrored those made in respect of the Auditor-General. While invited to do so, the Minister made no submission in respect of superannuation or the e-mail correspondence.
- 3.7 The Tribunal has had regard to the submissions made and recognises the changes made to this Office, however the Tribunal did not consider these to be significant enough to warrant an increase beyond that generally proposed by the Minister. In all the circumstances the Tribunal has determined the salary for the Office of Electoral Commissioner will be \$136,000 per annum. Telephone rental and calls allowance for this Office will remain unaffected by this Determination.

#### 4. **DEPUTY ELECTORAL COMMISSIONER**

- 4.1 The remuneration for the Office of Deputy Electoral Commissioner was last determined in Determination No. 1 of 2004 operative from 1 July 2004. The current salary is \$95,700 per annum.
- 4.2 As previously stated, the submissions presented for the Electoral Commissioner and the Deputy Electoral Commissioner were as a joint submission and therefore their submissions, as detailed at clauses 3.2 to 3.3 are reiterated.
- 4.3 The Government submissions for the remuneration for the Office of Deputy Electoral Commissioner mirrored those made in respect to the Auditor-General.

- 4.4 The Tribunal has had regard to the submissions made and recognises the changes made to this Office, however the Tribunal did not consider these to be significant enough to warrant an increase beyond that generally proposed by the Minister. In the circumstances the Tribunal has determined the salary for the Office of Deputy Electoral Commissioner will be \$99,500 per annum. Telephone rental and calls allowance for this Office will remain unaffected by this Determination.

5. **EMPLOYEE OMBUDSMAN**

- 5.1 The remuneration for the Office of Employee Ombudsman was last determined in Determination No. 1 of 2004 operative from 1 July 2004. The salary is currently \$98,000 per annum.
- 5.2 No submissions were received from the Employee Ombudsman.
- 5.3 The Minister's submission in relation to the position of Employee Ombudsman mirrored that made in respect to the Auditor-General.
- 5.4 The Tribunal has considered the submission made and has determined that the salary for this Office will be \$101,800 per annum. Telephone rental and calls allowance for this Office will remain unaffected by this Determination.

6. **OMBUDSMAN**

- 6.1 The remuneration of the Office of Ombudsman was last determined in Determination No. 1 of 2004 operative from 1 July 2004. The current salary is \$167,500 per annum.
- 6.2 The Ombudsman's oral submission to the Tribunal requested that consideration be given to his salary on the basis of work value change. The Ombudsman tabled a number of documents including the 04/05 Annual Report, the Freedom of Information Act 2004 and the District Court decision DPC vs. Redford [2005] SADC 58 (1 June 2005).
- 6.3 Whilst the Ombudsman believed the work value had changed significantly in his position he did not have any objection to the increase outlined in the Government's submission.
- 6.4 The Minister's submission in relation to the position of Ombudsman mirrored that made in respect to the Auditor-General.
- 6.5 The Tribunal has had regard to the submission made and recognises the changed responsibilities applicable to this Office. However the Tribunal did not consider these changes were of such magnitude as to warrant an increase beyond that generally proposed by the Minister. The Tribunal has therefore determined the salary for the Office of Ombudsman will be \$174,000 per annum. Telephone rental and calls allowance for this Office will remain unaffected by this Determination.

7. **HEALTH AND COMMUNITY SERVICES COMPLAINTS COMMISSIONER**

- 7.1 The remuneration of the Health and Community Services Complaints Commissioner was first determined in Determination No. 1 of 2004 operative from 1 July 2004. The current salary is \$151,000 per annum.
- 7.2 No submissions were received from the Health and Community Complaints Commissioner.

- 7.3 The Minister's submission in relation to the position of Health and Community Services Complaints Commissioner mirrored that made in respect of the Auditor-General.
- 7.4 The Tribunal has considered the submissions made and has determined that the salary for this Office will be \$157,000 per annum. Telephone rental and calls allowance for this Office will remain unaffected by this Determination.

**8. CONCLUSION**

- 8.1 The Tribunal thinks it timely to again restate the requirements of the state wage case principles as they relate to changes in work value. The relevant principle states that *"Changes in work value may arise from changes in the nature of work, skill and responsibility required or the conditions under which work is performed. Changes in work by themselves may not lead to a change in wage rates. The strict test for an alteration in wage rates is that the change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification"*.
- 8.2 Salaries determined herein will operate from 1 July 2005.

Hedley R Bachmann  
**PRESIDENT**

January 2006