



No. 3 of 2021

REPORT OF THE REMUNERATION TRIBUNAL **ELECTORAL DISTRICTS BOUNDARIES COMMISSION**

INTRODUCTION

1. The Remuneration Tribunal (“the Tribunal”) has jurisdiction under section 14 of the *Remuneration Act 1990* (“the Act”) and section 78(7) of the *Constitution Act 1934* (“the Constitution Act”), to determine the remuneration payable to the members of the Electoral Districts Boundaries Commission (other than the chair).
2. The Constitution Act provides for the establishment of an Electoral Districts Boundaries Commission (“the Commission”) to review and carry out periodic redistribution of the boundaries of the State’s House of Assembly electoral districts. The Commission has perpetual succession and the powers and functions of a Royal Commission.

BACKGROUND

3. The Commission conducts boundary reviews on a four-yearly basis. Hence, Determinations in relation to this matter are made by the Tribunal on a four-yearly basis, following the completion of the Commission’s official Report. Those Determinations prescribe a one-off payment of remuneration for all purposes in relation to the work performed by the Commission.
4. The previous Determination made by the Tribunal under section 78(7) of the Constitution Act was in 2017¹, whereby the Tribunal determined remuneration of \$18,963 each for the Electoral Commissioner and the Surveyor-General. The operative date of that Determination was 3 October 2017.

LEGISLATIVE PROVISIONS

5. Section 78(7) of the Constitution Act, from which the Tribunal sources its jurisdiction in relation to members of the Commission, is set out as follows:

“78—The Commission

- (1) *There shall be a Commission by the name of the Electoral Districts Boundaries Commission constituted of the following members:*
 - (a) *the Chairman of the Commission who shall be a Judge of the Supreme Court appointed by the Chief Justice to be Chairman of the Commission; and*
 - (b) *the Electoral Commissioner or a person appointed pursuant to subsection (3) of this section; and*

¹ *Determination 7 of 2017 – Electoral Districts Boundaries Commission*

- (c) *the Surveyor-General or a person appointed pursuant to subsection (4) of this section.*
- (2) *The Judge appointed by the Chief Justice under subsection (1) of this section should be the most senior puisne Judge who is available to undertake the duties of Chairman of the Commission.*
- (3) *If there is no Electoral Commissioner, or the Electoral Commissioner is for any reason unable to act as a member of the Commission, then, subject to subsection (5) of this section, the Chief Justice shall appoint as a member of the Commission, for such term as the Chief Justice considers expedient, a person who, in the opinion of the Chief Justice, has wide knowledge of, and experience in, electoral matters.*
- (4) *If there is no Surveyor-General, or the Surveyor-General is for any reason unable to act as a member of the Commission, then, subject to subsection (5) of this section, the Chief Justice shall appoint as a member of the Commission, for such term as the Chief Justice considers expedient a person who, in the opinion of the Chief Justice, has wide knowledge of, and experience in, surveying.*
- (5) *Where the Chairman is for the time being acting in the office of the Chief Justice any appointment to the Commission under subsection (3) or subsection (4) of this section shall be made by the puisne judge next in order of seniority after the Chairman.*
- (6) *A member appointed under subsection (3) or subsection (4) of this section, may by instrument in writing addressed to the Governor resign the member's office.*
- (7) ***The members of the Commission (other than the Chairman) are entitled to remuneration determined by the Remuneration Tribunal.***

[emphasis added to original]

6. As presently constituted, the Commission is comprised of:

Office Held	Office Holder
Chair	The Hon. Justice Trish Kelly (Supreme Court Judge appointed by the Chief Justice)
Member	Mr Michael Sherry (Electoral Commissioner)
Member	Mr Michael Burdett (Surveyor-General)

7. The Tribunal notes that its jurisdiction under the above legislative provisions is limited and specific. It is not permissible for the Tribunal to make a Determination of remuneration for the Chair of the Commission. The statutory role assigned to the Tribunal is to determine an appropriate amount of remuneration for the two members of the Commission (other than the Chair).

PROCEDURAL HISTORY

8. 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.
9. 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.
10. The Tribunal, by letter dated 2 February 2021, invited the members of the Commission to make a submission prior to the making of any Determination by the Tribunal.
11. The Tribunal, by letter dated 2 February 2021, invited the Honourable Premier of South Australia ("the Premier"), as the Minister responsible for the Act, to make submissions in the public interest.
12. In addition, on 2 February 2021, a notification of the review was placed on the Tribunal's public website.

SUBMISSIONS

13. A summary of the submissions received in relation to this matter are included below:

The Chair of the Commission, the Hon. Justice Kelly submitted that:

- Having regard to the statutory provisions, I ask that the Tribunal determine the remuneration for the Electoral Commissioner and the Surveyor-General being the other members of the Commission.
- The nature of the Commission's work including the number of hearings and meetings at which the members participated is detailed in its report, including the timing of those events.
- The Electoral Commissioner and the Surveyor-General discharged their statutory duties under the Constitution Act in addition to both their respective offices. Their contributions have spanned an extended period across the past 16 months since July 2019.
- It is my view that the Tribunal should take into consideration the significant contributions of the relevant roles having regard to the nature of the Commission's work in developing the electoral geography as the foundation of a representative democracy that the accepted as fair by the people of South Australia.
- That the Tribunal should be guided by the highest order of the work of the relevant roles, which is consistent with its previous Determination 8 of 2017².

The Electoral Commissioner (Mr Michael Sherry) and the Surveyor-General (Mr Michael Burdett) jointly submitted that:

- The work of the previous commission was substantial with very significant alterations made the electoral boundaries of the State.
- At that time, it was envisaged that this work would place the electorates in a position that would allow a modest redrafting by the 2020 Commission.
- However, in 2017, the Parliament made amendments to the Constitution Act that changed the criteria for a redistribution. This change led to the 2020 redistribution again being a substantial piece of the work for the Commission.
- The Commission held five public hearings, received over 60 written submissions from nine parties through the public hearing.
- The work of the Commission generated media interest in Adelaide and in the regions.
- In assessing the work value and commensurate level of remuneration, we respectfully submit the following:
- The statutory obligation placed upon each member requires them to operate at a very senior level and possibly significantly higher than their substantive level.
- The "public position" under which the Commission is viewed, scrutinized and judged needs to be given full consideration.
- The three member Commission is headed by the Chairman, with the other two Commissioners carrying an equal responsibility and workload whilst bringing their own expertise to the Commission's work.
- That any assessment acknowledges that each member was required to maintain their base workload in addition to their obligations as members of the Commission.
- That each member expended many hours outside normal working hours.
- That the length of service with respect to the work of the Commission will endure for a period of at least 12 months.
- The Constitution Act clearly establishes that the members of the Commission (other than the Chairman) are entitled to remuneration regardless of the fact that they are already in receipt of salaries as part of their substantive roles.

² Determination 8 of 2017 – Electoral Districts Boundaries Commission

- That the Tribunal consider the key conclusions from its previous Report, that the level of remuneration be determined having regard to the highest order of the work of the members of the Commission.

14. No other submissions were received by the Tribunal in relation to this matter.

CONSIDERATIONS

15. The Tribunal has noted the submissions made by the Chair of the Commission and its two members. The Tribunal has also examined the material provided, including the final report of the Commission which outlines its role and functions, as well as a summary of the Commission's work. Upon examining that material, the Tribunal considers that the nature, scope and complexity of the work, and the level of responsibility exercised by the Commission's members is similar to the work performed by the previous Commission in 2016.
16. The Tribunal accepts the submission made by the Hon. Justice Kelly that the statutory powers and responsibilities exercised by the Commission's members are foundational to the State's democracy. The Tribunal considers that the full and proper performance of the statutory duties assigned to the members of the Commission by the Constitution Act is critically important to maintaining public confidence in our State's independent institutions such as the Commission.
17. Moreover, it is clear upon reading the Commission's Report that the members of the Commission draw upon significant levels of individual skill and expertise in order to properly execute the statutory duties assigned by the Constitution Act. The Tribunal considers that the application of that skill and expertise to the Commission's work should attract a fair and reasonable rate of remuneration.

CONCLUSION

18. In determining an appropriate amount of remuneration for the 2020 Commission, the Tribunal has decided to apply an increase to the amount of remuneration previously payable to the 2016 Commission, having regard to any salary increases provided to the Statutory Office Holders within its jurisdiction. However, the Tribunal has not included the 2020 increase in its methodology due to the adverse effects of the COVID-19 pandemic.
19. Accordingly, the Tribunal will issue the accompanying Determination which provides for remuneration to be payable to each of the members of the Commission (other than the Chair) at the rate of \$20,103.
20. The Tribunal considers that the amount of remuneration determined under the accompanying Determination is a one off lump sum payment for all purposes in relation to the work performed by the 2020 Commission.

OPERATIVE DATE

21. The operative date of the accompanying Determination shall be 11 March 2021.



Matthew O'Callaghan
PRESIDENT



Deborah Black
MEMBER



Peter de Cure
MEMBER

Dated this 11th day of March 2021