



No. 5 of 2021

REPORT OF THE REMUNERATION TRIBUNAL
2021 INAUGURAL REVIEW OF REMUNERATION FOR OFFICIAL VISITORS OF
CORRECTIONAL INSTITUTIONS

INTRODUCTION AND BACKGROUND

1. Section 14 of the *Remuneration Act 1990* (“the Act”) provides that the Remuneration Tribunal (“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.
2. On 8 April 2021, the *Correctional Services (Accountability and Other Measures) Amendment Act 2021* (“the Amending Act”) was assented to. The Amending Act confers jurisdiction upon the Tribunal to determine remuneration to be paid to Official Visitors of correctional institutions (“Official Visitors”).
3. Prior to the Amending Act, some of the functions of Official Visitors were performed by Visiting Inspectors under the previous provisions of the *Corrections Act 1982* (“the Corrections Act”). The Tribunal is advised that Visiting Inspectors were not entitled to remuneration for the performance of their official duties and hence were appointed on a volunteer basis.

COMMENCEMENT OF THE AMENDING ACT

4. At the time of writing, the sections of the Amending Act in relation to the Tribunal’s jurisdiction for Official Visitors are yet to commence by Governor Proclamation. In the course of this Review, the Department for Correctional Services (“DCS”) requested that the Tribunal deal with this matter prior to the commencement of those sections to enable a recruitment process whereby those applying for appointment for Official Visitors would be notified of the applicable remuneration prior to their appointment.
5. DCS provided the Tribunal with Crown Solicitor’s Office advice in relation the Tribunal’s ability to rely on section 14C of the *Acts Interpretation Act 1915* (“the AIA”) for the making of a determination in relation to Official Visitor remuneration. That section is set out as follows:

“14C—Exercise of powers conferred by a provision of an Act or statutory instrument before the provision comes into operation

- (1) *Where—*
 - (a) *a provision of an Act that has passed is not yet in operation; and*
 - (b) *it is expedient that a power expressed to be conferred by the provision be exercised before it comes into operation, the power may be so exercised before the provision comes into operation.*
 - (2) *Subject to subsection (3), anything created, granted, issued, done or made under or pursuant to a provision by virtue of subsection (1) will take effect when the provision comes into operation and not before.*
 - (3) *The appointment of a person to a position pursuant to subsection (1) takes effect at the time of appointment but any power exercised by that person pursuant to subsection (1) does not take effect until the relevant provision comes into operation.”*
6. On the basis of this advice from the Crown Solicitor’s Office the Tribunal has agreed to deal with this matter under section 14C of the AIA so that a sensible and timely recruitment process for Official Visitors may be undertaken.

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 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 28 June 2021, the Tribunal wrote to Visiting Inspectors, notifying of the Tribunal’s intention to conduct a review of remuneration to be paid to Official Visitors. The Tribunal invited written submissions with a closing date of 16 July 2021.
10. On 28 June 2021, the Tribunal wrote to the Honourable Premier of South Australia (“the Premier”), as the Minister responsible for the Act, inviting submissions in the public interest, with a closing date of 16 July 2021.
11. On 28 June 2021, the Tribunal wrote to the Minister for Police, Emergency Services and Correctional Services, as the Minister responsible for the Amending Act, inviting submissions in the public interest, with a closing date of 16 July 2021.
12. In addition, on 28 June 2021, a public notification of the review was placed on the Tribunal’s website.

LEGISLATIVE PROVISIONS

13. The operation of the Amending Act provides for amendments to section 20B of the Corrections Act. That section, as amended, is set out as follows:

“20B—Remuneration

- (1) *An official visitor is entitled to remuneration, allowances and expenses determined by the Remuneration Tribunal.*
- (2) *Jurisdiction is, by force of this section, conferred on the Remuneration Tribunal to make a determination or perform any other functions required by this section.”*

14. Notably, the statutory functions and powers of Official Visitors are set out by section 20D of the Corrections Act. That section, as amended, is set out as follows:

“20D—Functions of official visitors

- (1) *The functions of an official visitor in relation to the correctional institution in respect of which the visitor is appointed include the following:*
- (a) *to receive any complaint of a prisoner in the correctional institution;*
 - (b) *to act as an advocate for prisoners in the correctional institution to promote the proper resolution of issues relating to the care, treatment or control of the prisoners;*
 - (c) *to conduct visits to the correctional institution as required or authorised under this Division;*
 - (d) *to conduct inspections of the correctional institution as required or authorised under this Division;*
 - (e) *to promote the best interests of prisoners in the correctional institution;*
 - (f) *to inquire into, investigate and provide advice to the Minister or the CE on any matter relating to the management of the correctional institution, or the care, treatment or control of the prisoners, either on the official visitor's own initiative or on referral by the Minister or the CE;*
 - (g) *to make recommendations to the Minister or the CE on any matter for the purposes of improving the quality of care, treatment or control of prisoners in the correctional institution;*
 - (h) *any other functions assigned to the official visitor under this or any other Act.*
- (2) *An official visitor has power to do all things necessary or convenient to be done for or in connection with the performance of the official visitor's functions and may have free and unfettered access to a correctional institution in respect of which the visitor is appointed.*
- (3) *In exercising functions under this Division, an official visitor—*
- (a) *must encourage prisoners in the correctional institution to express their own views and give proper weight to those views; and*
 - (b) *must have regard to relevant legislation and other material, including international conventions and treaties, with a view to promoting the high quality care, treatment and control of prisoners in the correctional institution; and*
 - (c) *must pay particular attention to the needs and circumstances of prisoners in the correctional institution who—*
 - (i) *are Aboriginal or Torres Strait Islander persons; or*
 - (ii) *have a physical, psychological or intellectual disability; and*
 - (d) *may receive and consider information, reports and materials relevant to exercising the official visitor's statutory functions.*
- (4) *Despite any other provision of this Division, an official visitor may conduct a visit to or inspection of any correctional institution (whether or not the official visitor is appointed in respect of the institution) if the official visitor considers it necessary to do so to investigate systemic issues relating to prisoners or the provision of correctional services.*

- (5) *An official visitor may receive and consider information, reports and materials, and interview a prisoner or other person, including in accordance with a requirement under section 20E(2), in private.*
- (6) *In exercising functions and powers under this Division, an official visitor must, so far as is reasonably practicable, ensure that those functions and powers are exercised in a manner that is not likely to—*
 - (a) *adversely affect the good order and security of a correctional institution or the safety of any person at, or whose work is connected with, a correctional institution; or*
 - (b) *adversely affect the protection from disclosure of criminal intelligence or the protection of the health, safety and welfare of a victim of an offence committed by a prisoner.”*

SUBMISSIONS

15. The Tribunal received the following submissions.

Department for Correctional Services

- 15.1. The Department for Correctional Services (“DCS”) lodged a comprehensive submission which was accompanied by a role description and a proposed schedule of activity for official visitors. A summary of official visitor remuneration in other jurisdictions was also provided although direct comparisons are not possible.
 - 15.2. On 30 July 2021, DCS made oral submissions to the Tribunal in support of their written submission.
 - 15.3. DCS chose not to form a view as to the level of the remuneration sought for official visitors and was content to leave the matter for the Tribunal to exercise its independent judgement.
16. No other submissions were received by the Tribunal in respect of the review to which this Report relates.

SECTION 101 OF FAIR WORK ACT 1994

17. In considering this matter, the Tribunal is aware of its obligations under section 101 of the *Fair Work Act 1994* (“the Fair Work Act”), 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.”*

18. The Tribunal has noted the longstanding approach to the assessment of work value applied by both the South Australian Employment Tribunal and the Australian Fair Work Commission and has applied this approach such that it has sought to identify the requisite skills and skill requirements and then considered those skills and requirements against other roles and functions of comparable work value.

SCHEMES OPERATING IN OTHER JURISDICTIONS

19. The Tribunal has examined schemes operating in other jurisdictions using the information available and has made the following observations.
20. The nature, scope and complexity of the work of Official Visitors in other jurisdictions is comparable to those in South Australia in the sense that most other jurisdictions must perform independent inspections of prison facilities, hear complaints, and produce written reports including recommendations to either a Minister or a senior public office holder. However, there are material differences in the powers and functions of Official Visitors throughout the States and Territories which no doubt reflects the varying levels of remuneration.
21. The Tribunal noted that a direct point to point comparison of Official Visitor duties on an interjurisdictional basis was not possible to the varying nature of the legislative role and functions of Official Visitors throughout the States and Territories.
22. In terms of remuneration paid to Official Visitors in other jurisdictions for the performance of their official duties, a broad range of remuneration was observed between \$200 and \$540 per day, excluding expenses.
23. As the nearest jurisdiction to the South Australian approach operates in the ACT, the Tribunal sought specific information from the ACT Remuneration Tribunal in relation to how remuneration for Official Visitors within that jurisdiction are determined. The ACT Tribunal advised that remuneration is set on the basis of work value considerations, such as the level of responsibility, the type of work that is performed, and the overall impact on the community.
24. For the most part, schemes operating in other jurisdictions provide for a per day rate of remuneration, with some jurisdictions also providing a half day rate.

CONSIDERATION AND CONCLUSION

25. This review marks the first occasion the Remuneration Tribunal has made a Determination of remuneration for Official Visitors.
26. The Tribunal has assessed the Official Visitor functions as distinctly different to the voluntary functions previously undertaken by Visiting Inspectors. It may be the case that a person who has been a Visiting Inspector is successful in being appointed as an Official Visitor, however the functions and responsibilities have been revised and the Tribunal considers the new legislative requirements fundamentally distinguish this function from the previous roles.
27. The Tribunal has considered the functions to be undertaken by Official Visitors in the context of four key requirements. Firstly, the position presumes knowledge and understanding of correctional institutions in the context of South Australia's commitments to international conventions regarding the treatment of prisoners and the operation of prisons. This requirement indicates that a capacity to understand the legal and social framework underpinning our prison system is an important element of this function. The function presumes these analytical skills can be applied in an impartial and responsible manner.


28. Secondly, the Tribunal considers that the Official Visitor function requires a substantive understanding of the legal system and principles of Law. The Tribunal considers that, while not essential, it is likely that substantial experience of legal practice is a likely requirement for the Official Visitor function. At minimum will be knowledge of how the law operates and the capacity to evaluate complaints and issues in the context of prison behaviour.
29. The Tribunal considers that the Official Visitors will need a comprehensive appreciation of social issues generally, with particular application to prisons. This knowledge may be derived from involvement with one or more special interest groups, or it may be derived from broader involvement with special interest groups generally. The Tribunal considers this requirement extends to a capacity to communicate with and understand the needs of Aboriginal and Torres Strait Islander people and people with psychological or physical disabilities.
30. Finally, the Tribunal anticipates that the Official Visitor function requires high level political astuteness and acumen. The Official Visitor is required to provide written recommendations to the responsible Minister and the Chief Executive Officer of the DCS. Inappropriately founded reports will have the potential to discredit not merely the Official Visitor, and the prisoners affected, but the Department and the Government.
31. Having considered these likely skill requirements, the Tribunal has noted the significance of the Official Visitor function. The Tribunal considers that that Parliament intended this function to be regarded as significant or it would not have delegated the remuneration fixing function to the Tribunal.
32. The Tribunal has assessed the Official Visitor positions using the public sector work level standards as a comparison point. More specifically, the Tribunal has taken the view that the skill requirements that have been identified most closely equate to a legal officer employed by a public sector agency. That function, referenced as LEC4 requires a legal practice qualification with the ability to work independently using substantial practical experience. That skill level envisages that the officer may have developed specialist knowledge of a given function and would have the ability to develop reports containing contentious issues using a high degree of tact and diplomacy.
33. In reaching this conclusion, the Tribunal stops short of establishing an ongoing nexus between the Official Visitor function and the LEC4 function in the South Australian Public Sector because it remains to be seen just what skill levels exist amongst the persons appointed and exactly how the Official Visitor function is undertaken.
34. In fixing this rate the Tribunal has noted remuneration levels applicable to DCS staff engaged in prisons but has concluded that the Official Visitor function is fundamentally different to those roles.
35. The Tribunal has also considered that the work of Official Visitors will include not only the visit to the correctional institution but also the necessary report writing process following the visit.
36. Taking all of the above factors into account Tribunal considers that a full-day rate of \$483 and a half-day rate of \$258 are appropriate.
37. The Tribunal anticipates that Official Visitors will provide detailed time records to the DCS to confirm their activities prior to any payment of remuneration being made.
38. The Tribunal will issue the accompanying Determination, which sets out the remuneration to be paid to Official Visitors of correctional institutions.

OPERATIVE DATE

39. The accompanying Determination shall come into operation on and from the commencement date of section 9 of the Amending Act.¹



Matthew O'Callaghan
PRESIDENT



Deborah Black
MEMBER



Peter de Cure
MEMBER

Dated this 26th day of August 2021

¹ Noting that section 14C of the Act Interpretation Act 1915 provides that "...anything created, granted, issued, done or made under or pursuant to a provision by virtue of subsection (1) will take effect when the provision comes into operation and not before."