

Premier,

**REPORT ON THE REMUNERATION OF  
JUDGES  
DISTRICT COURT JUDGES,  
MASTERS OF THE SUPREME COURT,  
MAGISTRATES and  
MEMBERS OF THE ANTI-CORRUPTION COMMISSION**

The *Salaries and Allowances Act 1975* (the Act) requires the Tribunal, at intervals of not more than twelve months, to inquire into and report to the Minister on the question of whether any alterations are desirable in the remuneration to be paid or provided to Judges, District Court Judges, Masters of the Supreme Court and magistrates, and members of the Anti-Corruption Commission. The Act provides further that if the Tribunal reports that alterations are desirable it shall recommend the nature and extent of the alterations that should be made.

A copy of the report must be laid before each House of Parliament within five sitting days of that House after the report has been received by the Minister.

## JUDICIAL REMUNERATION

### Background

It is the Tribunal's current practice to conduct its annual inquiries into judicial remuneration during November of each year, with any recommendations for change being operative prospectively from 1 January of the following year.

In the past twelve months the Tribunal has had cause however, to make two reports – initially on 15 November 2002 and then again on 26 March 2003. This two-stage approach arose through the need to consider the outcome of a major examination into judicial remuneration completed by the Commonwealth Remuneration Tribunal in late 2002. The conclusion of this study was that increases should flow to Federal judicial office-holders on the following basis:

“...The first increase arising from the Review will be 7% for judicial office holders and is to take effect from 1 July 2002. The second and third increases for judicial office holders arising from the Review are to be implemented in two instalments of 5% from July 2003 and 5% from July 2004...”.

The Commonwealth Remuneration Tribunal made it clear that the latter two instalments were to proceed independently of and additionally to any other annual increases it might make to reflect changed economic circumstances in 2003 and 2004.

Taking the above into account, this Tribunal's two-stage approach resulted in a 7 per cent increase for Judges, Judges of the District Court, Masters of the Supreme Court and magistrates effective from 1 January 2003. As the Tribunal explained in its 26 March 2003 report, adoption of a full flow-on of the federal increase was considered essential, to maintain the current well-established relativities between the jurisdictions. This was seen to be particularly important from the perspective of addressing ever-present issues of recruitment and retention of judicial officeholders in Western Australia.

It may be helpful at this point briefly to relate how the current nexus between the Commonwealth and State jurisdictions has evolved. Essentially, the relativities had their genesis in a meeting of Commonwealth, State and Territory tribunals in August 1990, which resolved that the salary of a Supreme Court Judge should not exceed 85 per cent of a High Court Judge (provided that the latter's salary was maintained at an acceptable level). In this regard, it is worth noting that in 1976 the Commonwealth Remuneration Tribunal had indicated, in explaining the rate of remuneration it had determined for Judges of the High Court, that:

"...this Court is the pre eminent Court in Australia, and the only Court set up by the Constitution. It decides questions as to the relative constitutional powers of the Commonwealth and of the States as between themselves. The High Court is empowered, by the Constitution, to hear appeals from the Courts of the States, and such appeals, now final in all matters, range over the whole spectrum of the law, civil and criminal. Decisions made by the Court in the exercise of its jurisdiction bind all state Courts, so that the High Court performs the function of bringing uniformity to the common law throughout Australia and uniformity in statutory construction.

We are of the opinion that the salaries and allowances of members of the High Court should have a reasonable margin above those paid to Federal and State puisne judges."

The approach developed by the tribunals was effectively endorsed at a Special Heads of Government meeting held in October 1990 in Brisbane, from which the following statement was made:

"The Heads of Government also agreed to pursue arrangements for the co-ordination of future increases in judicial remuneration. They emphasised that these arrangements would be aimed at setting maximum remuneration, with the clear understanding that remuneration levels within these maxima could vary significantly between States."

While this Tribunal as an independent body is not bound by the understanding or agreement, it has long accepted the wisdom of generally following a policy, which ensures there is some consistency and uniformity of approach and a minimal leap-frogging or escalation of applicable rates across the different jurisdictions. The one area where maintenance of the ratio was seen to be inequitable to Judges in Western Australia, given it has no separately dedicated Court of Appeal, was the inadequate recognition given to their increasing appellate work. The Tribunal addressed this in 1997, when it recommended that the salary relativity of a Supreme Court Judge to a Judge of the High Court be increased by 2 per cent. The State relativity in Western Australia between a Supreme Court and a High Court Judge at times now slightly exceeds the 85 per cent benchmark.

The following chart reflects the comparative arrangements, which the Tribunal understands to be in place in each jurisdiction as at November 2003. The disparity in rates needs to be viewed in the context of the differing stages of remuneration review in each jurisdiction:

## Commonwealth v State Relativities (as at November 2003)

|   | High Court | Federal Court | Family Court | Federal Magistrates Service | NSW                     | VIC       | Q'LAND                  | SA        | WA        | TAS       | ACT <sup>1a</sup>         | NT <sup>1a</sup>        |
|---|------------|---------------|--------------|-----------------------------|-------------------------|-----------|-------------------------|-----------|-----------|-----------|---------------------------|-------------------------|
| <b>Effective date of last adjustment:</b> | 01-Jul-03  | 01-Jul-03     | 01-Jul-03    | 01-Jul-03                   | 01-Oct-03               | 29-Oct-02 | 01-Jul-02               | 01-Nov-02 | 01-Jan-03 | 01-Jul-03 | 01-Jul-03                 | 01-Jul-03               |
| <b>Chief Justice</b>                      | \$336,450  | \$284,910     | \$284,910    | \$216,330                   | \$289,775 <sup>1d</sup> | \$256,300 | \$243,500 <sup>1b</sup> | \$264,750 | \$273,604 | \$265,322 | \$282,620 <sup>1c</sup> □ | \$284,910               |
| <b>Judge</b>                              | \$305,330  | \$258,920     | \$258,920    | n/a                         | \$258,960 <sup>1d</sup> | \$227,100 | \$215,775 <sup>1c</sup> | \$236,390 | \$242,557 | \$238,790 | \$258,920                 | \$258,920               |
| <b>District/County Court Judge</b>        | n/a        | n/a           | n/a          | n/a                         | \$233,065 <sup>1d</sup> | \$196,800 | \$192,885 <sup>1c</sup> | \$208,760 | \$218,300 | n/a       | n/a                       | n/a                     |
| <b>Magistrate</b>                         | n/a        | n/a           | n/a          | \$186,960                   | \$186,450 <sup>1d</sup> | \$157,500 | \$173,610 <sup>1f</sup> | \$165,520 | \$174,641 | \$161,183 | \$173,340 <sup>1g</sup>   | \$176,635 <sup>1h</sup> |
| <b>Judge as a % of High Court Judge</b>   | 100.0%     | 84.8%         | 84.8%        | n/a                         | 84.8%                   | 74.4%     | 70.7%                   | 77.4%     | 79.4%     | 78.2%     | 84.8%                     | 84.8%                   |

<sup>1a</sup> Rates for Judges are based on those specified for a Judge of the Federal Court of Australia.

<sup>1b</sup> Does not include jurisprudential allowance of \$20,475 a year, expense of office of \$7,565 or Long Leave Allowance of \$6,965.

<sup>1c</sup> A Judge of the Federal Court of Australia occupies the position of Chief Justice. From 1.11.02 an allowance of \$23,710 above the quoted Judge's salary is provided in recognition of this role.

<sup>1d</sup> Plus a conveyance allowance (\$18,000 Puisne Judge, \$15,000 District Court Judge, \$13,000 Magistrates), which not being part of salary does not count for pension or superannuation purposes.

<sup>1e</sup> Does not include: in case of Puisne Judge jurisprudential allowance of \$17,430 a year, expense of office allowance of \$7,565 and Long Leave Allowance of \$6,170 in case of District Court Judge jurisprudential allowance of \$16,750 a year and expense of office allowance of \$7,565.

<sup>1f</sup> Comprises 80% of salary and jurisprudence allowance of District Court Judge, plus \$5,900 compensation for motor vehicle.

<sup>1g</sup> Effective from 1.11.2002

<sup>1h</sup> Base salary quoted – add \$3,500 in lieu of airfares – effective from 1.12.2002.

## Current Inquiry

For the purposes of conducting its current annual November inquiry, on 24 September 2003 the Tribunal placed an advertisement in "The West Australian", calling for submissions from interested persons and organisations. It also wrote to all relevant, directly affected parties. Submissions were received from the Supreme Court, the District Court and the Stipendiary Magistrates' Society of Western Australia. No submissions were received from the general public.

Each of the submissions was premised on, or took the opportunity to emphasise, the need for the established relativities to be maintained. Indeed, they all went so far as to suggest that the operative date of an increase should align with the Federal jurisdiction, where the most recent changes have come into effect on 1 July 2002 and 1 July 2003 respectively. The District Court in particular expressed reservations about what it perceived to be the Tribunal's delays in passing on recommended increases. It argued that –

"...there is a very strong concern among the judges of the District Court of Western Australia that, if the trend to delay the flow-on effect of the Federal Tribunal's determinations to Western Australian judges continues, then Western Australian judges will be seriously disadvantaged in comparison to their federal counterparts and the principle of relativity will have been seriously compromised. All the increases identified above [in the submission] should be retrospectively amended to take effect from the dates they were granted to our federal colleagues, and all future increases should take effect from the same date as they are conferred upon our federal colleagues."

The submissions also drew attention to the issues, amongst others, of the complexity of the work undertaken and the ever-increasing workloads.

In giving consideration to the matter, the Tribunal has in line with its usual practice had regard to a range of economic and other indices. These include the latest relevant data issued by the Australian Bureau of Statistics, such as the 2003 September Quarter Wage Cost and Consumer Price (CPI) Indices and the August Average Weekly Earnings index, and a number of Government and private sector forecasted movements in CPI and wages. The Tribunal has also been mindful of increases it has provided to other officeholders under its jurisdiction over the past twelve months and to the Government's Wages Policy for the current financial year.

On 17 June 2003 the Commonwealth Remuneration Tribunal released its determination for the 2003 annual review of judicial and related offices' remuneration. This provided for a 4 per cent increase with effect on and from 1 July 2003. Furthermore, the determination incorporated the outcome of the 2002 major review – that is, the first of the two foreshadowed 5 per cent increases. The increase in salaries from 1 July 2003 therefore with the compounding effect totalled slightly in excess of 9 per cent. The period for disallowance by the Federal Parliament having expired, the rates as set out in the foregoing chart are now operative in the federal sphere.

In its last report made on 26 March 2003 the position of this Tribunal on the need for continuation of the relativity was affirmed in the following terms:

"In the Tribunal's considered opinion, particularly having regard to issues of recruitment and retention, there is no practical alternative but to maintain the longstanding relativities that have existed nationally in the area of judicial remuneration. Indeed a meeting of State Judicial Remuneration Tribunals held in Melbourne in mid-February 2003, confirmed as essential the continuance of these relativities."

The Tribunal does not depart from this viewpoint and accordingly supports the full flow-on of the latest changes implemented at the federal level. It does not however, see any compelling basis for backdating of the increases to coincide with the operational date in the federal jurisdiction. In the Tribunal's opinion, persistence in its current practice of prospective increases – in this case the next increase to be effective from 1 January 2004 – would have minimal adverse impact on any aspect of the terms and conditions applying to the judiciary in this State.

The Tribunal therefore recommends alterations to the remuneration paid or provided to Judges, District Court Judges, Masters of the Supreme Court and magistrates be in line with those set out in the attached Schedule. For ease of reference, the Schedule consists of a consolidated listing of all the entitlements and benefits provided by way of past and current recommendations of the Tribunal. The changes recommended by this report are highlighted *in italics*. Specifically, these encompass:

- a 9.2 per cent increase in salaries, translating into the rates specified for the office-holders listed, to be effective from 1 January 2004
- an updating of some travel allowance rates to be effective from 1 January 2004 - these are reflective of the adjustments made by the Tribunal in its August 2003 determination relating to travel by Ministers and members of Parliament, as well as relevant rates applicable within the Federal jurisdiction
- minor additional wording to clarify operational aspects of the travel allowance system

## ANTI-CORRUPTION COMMISSION

The Chairman and members of the Anti-Corruption Commission occupy part-time positions. They are the only part-time positions within the jurisdiction of the Tribunal. Issues of their remuneration have therefore traditionally been dealt with on a separate basis.

The Tribunal is aware that major legislative changes are underway affecting the future of the agency, although at the time of this report some uncertainty exists as to the precise timetable for implementation. However, to the extent that members of the Commission may be in office after 31 December 2003, it is considered only equitable and appropriate that their remuneration should be adjusted in accordance with the normal annual review process.

Taking into account therefore the economic and other factors previously referred to in this report, the Tribunal recommends that their current rates of remuneration be increased by 3.1 per cent with effect from 1 January 2004. This will provide remuneration of \$161,160 per annum to the Chairman and \$91,933 per annum to the members.

#### TABLING OF REPORT

Under the provisions of the *Salaries and Allowances Act 1975* this report is required to be laid before each House of Parliament within five sitting days of the House after its receipt by the Minister. Either House of Parliament, within 15 sitting days of that House after a copy of the report has been laid before it, may pass a resolution disapproving a recommendation made by the Tribunal.

Dated at Perth this 4<sup>th</sup> day of December 2003.

Professor M C Wood  
CHAIRMAN

J A S Mews  
MEMBER

M L Nadebaum  
MEMBER

SALARIES AND ALLOWANCES TRIBUNAL

# SCHEDULE

## REPORT ON THE REMUNERATION OF JUDGES, DISTRICT COURT JUDGES MASTERS OF THE SUPREME COURT, and MAGISTRATES

### Remuneration arrangements, incorporating recommended alterations:

#### 1. Salaries

*Effective from 1 January 2004, the salary of a Puisne Judge of the Supreme Court shall be increased to \$264,872 per annum.*

*Salaries shall consequently be payable at the following rates to Judges, Masters and magistrates –*

| Position  | \$ per annum |
|---|--------------|
| Chief Justice   | 298,776      |
| Senior Puisne Judge                                     | 272,951      |
| Puisne Judge  | 264,872      |
| Senior Master of the Supreme Court                      | 245,456      |
| Master of the Supreme Court                             | 238,384      |
| Chief Judge District Court                              | 264,872      |
| Senior Judge District Court                             | 245,456      |
| Judge District Court                                    | 238,384      |
|   |              |
| Chief Stipendiary Magistrate                            | 214,545      |
| Deputy Chief Stipendiary Magistrate                     | 202,626      |
| Principal Registrar/Stipendiary Magistrate Family Court | 202,626      |
| Stipendiary Magistrates                                 | 190,708      |
| Registrars/Stipendiary Magistrates Family Court         | 190,708      |

#### 2. Travelling and Accommodation Allowance

*Effective from 1 January 2004, where an overnight stay away from home is involved, a travelling and accommodation allowance (inclusive of accommodation, meals and incidentals) shall be payable in accordance with the following rates –*

| Location                                    | Judges and Masters | Magistrates   |
|---|--------------------|---|
| Western Australia North of the 26° Latitude | \$340              | As per the Public Service Award 1992 – Schedule I plus 5% |
| Sydney                                      | \$350              | \$285   |
| Melbourne, Brisbane                         | \$340              | \$255   |
| Perth, Adelaide, Canberra, Darwin & Hobart  | \$290              | \$215   |
| Other than a Capital City                   | \$220              | \$180   |

If the reasonably and properly incurred travelling and accommodation expenses exceed the abovementioned specified rates, the actual costs should be reimbursed. Receipts or vouchers must be provided in support of any claim for reimbursement in excess of the specified rate.

Claims for overnight stays in the Perth metropolitan area should be subject in each case to the approval of the relevant Chief Judicial Officer.

Part payment of travelling and accommodation allowance shall apply in the following circumstances, when an entity other than the Judge, Master or magistrate meets the cost of accommodation and / or meals -

- Where the Judge, Master or magistrate is accommodated in private non-commercial accommodation, such as the home of a family member or friend, a rate of one third of the specified rate shall be payable.
- Where the cost of *commercial* accommodation is met by an entity other than the Judge, Master or magistrate, an allowance only of \$95 per overnight stay shall be payable (comprised of: Dinner \$35, Lunch \$25, Breakfast \$16, Incidentals \$19).
- Where in the case of *commercial* accommodation the cost of a meal or meals is met by an entity other than the Judge, Master or magistrate, the amount of travelling allowance shall be reduced by the relevant amount(s) referred to in the preceding paragraph.

### **3. Motor Vehicles**

The following arrangements apply, or continue to apply as the case may be, to the entitlement of each Judge, Master and fulltime magistrate to the provision of a fully maintained motor vehicle for business and private use:

- Judges, Masters and the Chief Stipendiary Magistrate are entitled to provision of a "Prestige" vehicle, selected from the Government's Common Use Contract no. 012A1994, Items 1008 (Prestige Class) and 1009 (Restricted Prestige Class), as amended from time to time.

Vehicles with supercharged or V8 engines are not included.

Availability of Ford LTD or GMH Caprice is restricted to the Chief Justice.

- Magistrates are entitled to provision of a "Prestige" vehicle, selected from Item 1008 (Prestige Class), as amended from time to time.
- All vehicles (being part of the Government-owned State Fleet) should be managed in accordance with the policies and conditions established and amended from time to time by the Department of the Treasury and Finance (the effective owner of the State Fleet).

Applicable terms and conditions are currently set out in the document "State Fleet - Agency General Agreement".

- Selection of appropriate vehicles should be subject to consultation between the Department of Justice (as the department administratively supporting the Courts and therefore the “Agency” responsible for managing the leasing arrangements for vehicles provided to Judges, Masters and magistrates) and the relevant Court.

Although the cost of the vehicles is centrally funded as a consequence of it being an emolument recommended under the *Salaries and Allowances Act 1975*, the area nevertheless remains an administrative responsibility of the Department to manage.

Based on individual usage patterns, each lease should be tailored to achieve the most cost-effective arrangement, but with the maximum lease term being two years.

- The relevant Chief Judicial Officer should approve each selection, provided that
  - selection of any vehicle from a lesser category (ie other than the “Prestige” range) in the Common Use Contract does not exceed the cost of accessing a vehicle to which an entitlement exists in the “Prestige” range
  - provision of 4 wheel drive vehicles is substantiated by operational need
- Accessories should be limited to whatever is the standard (not the optional) equipment that comes with the vehicle selected. However, to the extent that such equipment does not include them, the following items may be added:
  - Air-conditioning
  - Airbags
  - ABS braking
  - Automatic / power steering
  - Cruise control
  - Mudflaps
  - Sunroof (only for those entitled to a “Prestige” vehicle selected from Item 1009)
  - Tow bar (or other accessory – eg child restraints – to the value, including installation, of a tow bar for the specific make and model of the vehicle)

and where operational need arises

- Roo bar
- Long range fuel tank
- Extra spare tyre
- Winch
- Window tinting

The cost of any other extra equipment should be met by the individual – ie. purchase of item, installation and removal if required before disposal of the vehicle.

Where a magistrate is employed on a part time basis, a pro rata amount should be added to the salary in lieu of a motor vehicle. For that purpose, the full value of the vehicle is assessed at \$17,000 per annum.

Dated at Perth this 4<sup>th</sup> day of December 2003.

Professor M C Wood  
CHAIRMAN

J A S Mews  
MEMBER

M L Nadebaum  
MEMBER

SALARIES AND ALLOWANCES TRIBUNAL

**SALARIES AND ALLOWANCES TRIBUNAL  
DETERMINATION VARIATION  
SALARIES AND ALLOWANCES ACT 1975**

**Preamble**

The Tribunal has today issued a report under section 7 of the *Salaries and Allowances Act 1975* to the Minister recommending an adjustment effective from 1 January 2004 in the remuneration to be paid to Judges of the Supreme and District Courts, Masters of the Supreme Court and magistrates. The adjustment provides for an increase in salary of 9.2%.

The report is required to be laid before each House of Parliament within five sitting days of the House after its receipt by the Minister. Either House of Parliament, within 15 sitting days of that House after a copy of the report has been laid before it, may pass a resolution disapproving a recommendation made by the Tribunal.

This determination provides for the increase to flow through to the linked “judicial” positions of Registrar in both the Supreme and District Courts, and senior legal officer positions in the Offices of the Director of Public Prosecutions, the Crown Solicitor and the Parliamentary Counsel. Should either House of the Parliament disallow the salary adjustment recommended in the report, this determination insofar as it deals with these positions shall cease to have effect from the date that House passes such a resolution.

The determination also bears upon the salaries payable to the Commissioners of the Western Australian Industrial Relations Commission. In its 11 April 2003 determination the Tribunal set the rates of remuneration for the first time under the new arrangements established by the *Labour Relations Reform Act 2002*. At the time, the Tribunal effectively maintained the *status quo* by continuing to recognise a direct nexus with judicial rates. It was however pointed out that the linkage would remain under active examination.

In the opinion of the Tribunal it would not be appropriate in the circumstances of the review automatically to pass on the current recommended judicial increase in salary. Rather, it is the intention of the Tribunal to seek to address the long-term remuneration arrangements as a whole appropriate to Commissioners as part of its general determination dealing with “prescribed” offices due in April 2004. Accordingly, this determination has the effect of fixing the salary rates applicable to Commissioners at their current levels.

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**Determination**

The determination of the Salaries and Allowances Tribunal made on 11 April 2003 under sections 6(1)(c), (d) and (e) of the *Salaries and Allowances Act 1975* (as varied from time to time) is hereby varied by a further determination, to make the amendments set out below –

1. Insert and replace, as the case requires, in Part 1 of the First Schedule the following:

| AGENCY   | OFFICE                                  | CLASSIFICATION |
|--|---|----------------|
| Office of the Director of Public Prosecutions<br>Note: Effective from 1 January 2004 | Director Legal Services                 | \$214,545      |
|  | Assistant Principal Crown Prosecutor    | \$179,194      |
| Department of Justice<br>Note: Effective from 1 January 2004                         | Crown Solicitor                         | \$238,384      |
|  | Parliamentary Counsel                   | \$238,384      |
|  | Queen's / Senior Counsel                | \$226,464      |
|  | Crown Counsel                           | \$214,545      |
|  | Deputy Crown Solicitor                  | \$202,626      |
|  | Deputy Parliamentary Counsel            | \$202,626      |
|  | Senior Adviser Crown Solicitor's Office | \$190,708      |

2. Insert and replace, as the case requires, in the Second Schedule the following:

Pursuant to section 6(1)(d) of the *Salaries and Allowances Act 1975* the Salaries and Allowances Tribunal determines the following levels of remuneration with effect from 1 January 2004:

|                |                     |           |
|----------------|---------------------|-----------|
| Supreme Court  | Principal Registrar | \$204,772 |
|                | Registrar           | \$181,339 |
| District Court | Principal Registrar | \$190,708 |
|                | Registrar           | \$179,194 |
|                | Deputy Registrar    | \$161,125 |

3. Insert and replace, as the case requires, in the Third Schedule the following:

Pursuant to Section 6(1)(e) of the *Salaries and Allowances Act 1975* the Salaries and Allowances Tribunal determines the Commissioners of the Western Australian Industrial Relations Commission are entitled to remuneration on the following basis:

- The holder of the office of Chief Commissioner is entitled to the allowances payable from time to time to a Judge of the District Court of Western Australia and to the salary payable to a Judge of the District Court of Western Australia as at 1 January 2003.
- The holder of the office of Senior Commissioner is entitled to the allowances payable from time to time to a Judge of the District Court of Western Australia and to 95 per cent of the salary payable to a Judge of the District Court as at 1 January 2003.
- The holders of the office of Commissioner are entitled to the allowances payable from time to time to a Judge of the District Court of Western Australia and to 90 per cent of the salary payable to a Judge of the District Court as at 1 January 2003.

Dated at Perth this 4th day of December 2003.

Professor M C Wood  
CHAIRMAN

J A S Mews  
MEMBER

M L Nadebaum  
MEMBER

SALARIES AND ALLOWANCES TRIBUNAL