



## Remuneration Tribunal

### 2016 Review of Remuneration for Judicial and Related Offices

#### Statement

The Tribunal announced on 21 September 2015 that it was commencing a review of offices covered by the *Judicial and Related Offices Remuneration and Allowances Determination*. This Statement provides an update on the review and sets out the Tribunal's preliminary conclusions.

The Tribunal expects to finalise the review by the end of 2016.

#### Preliminary conclusions

The Tribunal has not settled final decisions on key matters considered in the review but its preliminary conclusions are that:

- there is a strong case for a remuneration increase for judicial offices given increased complexity in the work, remuneration movements in other public offices, efficiency gains and relativities with the State jurisdictions;
- some 'related offices' have not been reviewed for significant periods and updated information is required to consider remuneration arrangements for these on a case by case basis; and
- there is a need to streamline, consolidate and simplify the provisions of the current determination.

These conclusions are discussed in more detail later in this statement.

#### Background

The Tribunal last undertook a comprehensive review of judicial and related offices during 2001-2002. It reviewed the relativities between the federal courts (in 2009), and between the federal tribunals, but has not undertaken a comprehensive review of the entire jurisdiction for some 15 years.

Offices in the jurisdiction include Judges and office holders in the High Court, the Federal Court, the Family Court and the Federal Circuit Court. It also includes offices in the Military Justice System and a range of tribunals and commissions (the related offices).

Judicial offices are of fundamental importance to the Australian community. Their independence is critical to their impartiality and the acceptance of their judgements by all parties. *Australia's Constitution* provides for their appointment, terms and remuneration.

The related offices are a diverse group, both in the nature of roles and in the way they function. Some are full-time, some are part-time, while others have multiple office holders with a mix of both full-time and part-time appointees.

The diversity of roles and working arrangements has given rise to differing and sometimes complex remuneration arrangements.

### **Conduct of the Review**

At the commencement of the review, the Tribunal both sought, and invited, submissions from key stakeholders and interested parties. In response, to date, the Tribunal has considered 16 formal submissions, comprising over 650 pages of material. A list of submissions is at **Attachment A**.

The Tribunal has also met with the Attorney-General, the heads of each Court, and with a number of other office holders. Further consultation has occurred on a range of issues arising from individual submissions and the application of the Tribunal's determination. A list of formal stakeholder meetings undertaken during the review is included at **Attachment B**.

### **Conclusions to date**

#### *Judicial offices*

Since the Tribunal's review of relativities between the courts in 2009, it is clear that the efficiencies initiated at that time have continued. Through both operational improvements, including greater use of technology, and legislative change, the capacity of the courts to meet ever-increasing demands has continued to improve.

The complexity of cases has continued to increase, and the work of judges has intensified, with new legislation and the global environment expanding the range of matters under scrutiny, including the diversity of matters dealt with by individual judges. The factors leading to this include:

- greater regulatory impact in, for example, consumer protection, communications and the finance industry, and associated enforcement actions;
- emerging areas of law such as biosecurity, online safety for children, and new aspects of intellectual property;
- increasing complexity, public exposure and commentary on societal issues such as mental health and drug use, and a renewed Government focus on sexual abuse and family violence;
- an increasing caseload with international implications in many aspects of federal law including in family law; and
- an increase in appellate and class action matters.

In its 2009 review the Tribunal expressed some reservations about progress with the intended redistribution of family law work between the Family Court of Australia and the Federal Magistrates Court (which has since become the Federal Circuit Court). The allocation of work between these courts has now stabilised, closer to the arrangements recommended in the Semple Report.

In relation to the Federal Circuit Court, the significant changes arising from the *Federal Circuit Court of Australia Legislation Amendment Act 2012* were recognised by the Tribunal in determining work value remuneration increases for these judicial offices (only) effective from 1 May 2013.

The Tribunal's view is that the existing relativities between the judges of the various federal courts, including the High Court of Australia, set some time ago, and adjusted by changes to the Federal Circuit Court in 2013, remain appropriate.

More generally however, remuneration for judges has not kept pace with economic indicators and remuneration/wage movements in the private and public sectors. Long established relativities with State and Territory judicial remuneration have also been broken, particularly in New South Wales and Western Australia, as remuneration policies for the general public sector in those jurisdictions have also applied to judicial offices and have been less restrained than the conservative stance maintained by the Tribunal in the federal sphere.

The Tribunal, in considering the amount of any increase also, necessarily, considers the impact of conditions that are provided outside its determinative jurisdiction on the attractiveness of an office. In the case of the judiciary, office holders generally have access to pension and leave arrangements that recognise the nature of the judicial role, especially its intensity and restrictions, and are more generous than those available to other office holders. The Tribunal notes these same arrangements are not available to Judges of the Federal Circuit Court.

#### *Related Offices*

Given the diversity of these offices, the Tribunal has been examining the appropriateness of the existing remuneration on a case-by-case basis. A number of these offices have changed in both the complexity of their roles and responsibilities and the volume of matters under consideration since last comprehensively reviewed.

#### *Determination*

As the review has progressed, a range of inefficiencies and outdated arrangements for administration of entitlements have been identified in the determination.

The Tribunal recognises the need for a new determination that streamlines, consolidates and simplifies the current arrangements. A detailed examination of the specific provisions of the current determination is underway.

The revised determination will also take account of conclusions reached by the Tribunal in its reviews of the full-time and part-time jurisdictions in 2012 and 2013.

The Tribunal will consult with relevant employing bodies on proposed changes that directly affect their specific office holders, and subject to those consultations, the Tribunal proposes to issue a determination to take effect early in 2017.

### **General remuneration context**

Since 2010 the Tribunal has conducted jurisdictional work value reviews into the remuneration of members of parliament, the office of secretary, Specified Statutory Offices, full-time offices and part-time offices. These reviews have provided opportunities to realign remuneration based on comprehensive and detailed studies and consultation on work value changes.

More generally the Tribunal takes a conservative approach to annual adjustments to remuneration and in recent years has been conscious of the concerns for budget restraint. The Tribunal has determined only one increase, of 2% from 1 January 2016, since July 2013.

During this period the Wage Price Index has increased over 7%, public sector wages have increased over 8% and wage increases for public sector bodies covered by federal agreements have averaged increases of more than 10%. Remuneration trends in the legal profession generally have also increased at a rate well above inflation.

The Tribunal continues to monitor economic conditions, wages movements and trends in public and private sector remuneration in Australia. The Tribunal draws upon authoritative external sources such as the published material available from the Government, the Reserve Bank of Australia and the Australian Bureau of Statistics.

The Tribunal's obligation under the *Remuneration Tribunal Act 1973*, is to make determinations in respect of remuneration for various offices within its jurisdiction at periods of not more than one year.

In December 2016, the Tribunal intends to issue new determinations which make no general adjustment to remuneration. The Tribunal does not expect to determine any general increases to remuneration until well into 2017.

### **Remuneration Tribunal**

4 October 2016

**Review of Judicial and Related Offices 2016**

**Submissions**

- The Hon J L B Allsop AO – Chief Justice of the Federal Court of Australia
  - Mr W Soden OAM – Chief Executive and Principal Registrar, Federal Court of Australia
  - The Hon D Bryant AO – Chief Justice of the Family Court of Australia
  - Chief Judge J H Pascoe AC CVO – Chief Judge of the Federal Circuit Court of Australia
  - Mr R Foster PSM – Chief Executive of the Family Court and Federal Circuit Court of Australia
  - The Hon Justice M J Slattery – Judge Advocate General, Australian Defence Force
  - Ms R Webb QC – President, National Native Title Tribunal
  - Professor Rosalind Croucher AM – President, Australian Law Reform Commission
  - The Hon Justice D Kerr – President, Administrative Appeals Tribunal
  - Ms J Toohey – Administrative Appeals Tribunal, Remuneration Committee
  - Mr J F Walsh – Division Head, Social Services and Child Support, Administrative Appeals Tribunal
  - The Hon Justice R R S Tracey – President, Defence Force Discipline Appeal Tribunal
  - Mr T Sandeford – Legal Officer, on behalf of the Attorney-General's Department
  - Mr R Grellman AM – Statutory and Other Offices Remuneration Tribunal of NSW
  - Mr J Flynn AM – Member, NT Remuneration Tribunal
  - Mr P Anastassiou QC – President, Victorian Bar
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**Review of Judicial and Related Offices 2016**

**Meetings**

- The Hon Senator George Brandis QC – Attorney-General
  - Mr C Moraitis PSM – Secretary, Attorney-General's Department
  - The Hon R French AC – Chief Justice of the High Court of Australia
  - The Hon J L B Allsop AO – Chief Justice of the Federal Court of Australia
  - The Hon Justice L G Foster – Federal Court of Australia
  - Mr W Soden OAM – Chief Executive Officer and Principal Registrar, Federal Court of Australia
  - The Hon D Bryant AO – Chief Justice of the Family Court of Australia
  - The Hon Justice M Aldridge – Appeal Division, Family Court of Australia
  - Chief Judge J H Pascoe AC CVO – Chief Judge of the Federal Circuit Court of Australia
  - Judge N Hartnett – Federal Circuit Court of Australia
  - Judge R Cameron – Federal Circuit Court of Australia
  - The Hon Justice M J Slattery – Judge Advocate General, Australian Defence Force
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