



Australian Capital Territory Remuneration Tribunal

ACT Supreme Court Judicial Positions

Determination 7 of 2019

made under the
Remuneration Tribunal Act 1995, section 10 (Inquiries about holders of certain positions)

ACCOMPANYING STATEMENT

Background

Under section 10 of the *Remuneration Tribunal Act 1995* (the Act), the Remuneration Tribunal (the Tribunal) must inquire into and determine the remuneration, allowances and other entitlements to be paid to the holders of Judicial positions mentioned in Schedule 1 of the Act, including the Chief Justice of the ACT Supreme Court, the Associate Judge and Acting Judges. For the Chief Justice, this entitlement is in addition to their entitlements as a resident judge under the *Supreme Court Act 1933*.

Considerations

The Tribunal's 2019 review of remuneration and entitlements for the ACT Supreme Court was advertised in August 2019. The Chief Justice, Associate Judge and the Chief Minister made submissions in relation to the ACT Supreme Court Judicial Positions.

The Tribunal met on 21-22 October 2019 and this determination sets out the Tribunal's decisions following the review. Treasury officials provided a comprehensive briefing to the Tribunal on the prevailing economic circumstances for 2019 and forecasts for the coming years.

In considering remuneration, allowances and entitlements for the ACT Supreme Court Judicial Positions, the Tribunal had discussions with Justice Elkaim on behalf of the Chief Justice, the Chief Minister and officials from the Justice and Community Safety Directorate.

The Tribunal had regard to the nexus between the remuneration, allowances and entitlements for the ACT Supreme Court Judges and those of Federal Court Judges, pursuant to section 37U(2) of the *Supreme Court Act 1933*. The Tribunal noted the new Commonwealth Remuneration Tribunal determination the *Remuneration Tribunal (Judicial and Related Offices—Remuneration and Allowances) Determination 2019*, which provided a 2 per cent increase (effective as of 1 July 2019), bringing the remuneration of a Federal Court Judge to \$468,020.

The Tribunal acknowledged the claims from the Chief Justice and Associate Judge that the jurisdiction of the Associate Judge had significantly expanded.

The Tribunal also considered the Chief Justice's request for the Tribunal to make a determination in relation to travel entitlements and employee superannuation contributions for Acting Judges.

Decision

The Tribunal decided to increase the allowance for the position of the Chief Justice of the ACT Supreme Court to \$46,802 to continue the existing relativity.

The Tribunal decided to increase the remuneration for the position of the Associate Judge of the ACT Supreme Court to \$430,578, an increase of approximately 4.3 per cent.

The Tribunal determined to maintain the remuneration for the position of Acting Judge of the ACT Supreme Court, at the rate of 1/230 of the annual remuneration paid to a judge of the ACT Supreme Court per day.

The Tribunal also determined that an acting judge will receive a travelling allowance and employer superannuation contributions. The travelling allowance is based on the same travelling allowance provisions as for other ACT Supreme Court Judges (being those of a Judge of the Federal Court of Australia). The provisions for employer superannuation contributions are the same provisions that apply to a magistrate or other statutory office holder.

December 2019



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1. Commencement

This instrument is taken to have commenced on 1 July 2019.

2. Remuneration

2.1 The benchmark is \$468,020 (being the remuneration payable to a Federal Court Judge and ACT Supreme Court Judge on 1 July 2019).

Chief Justice of the Supreme Court

2.2 The Chief Justice of the Supreme Court is entitled to an allowance of \$46,802 per annum in addition to the benchmark.

Associate Judge of the ACT Supreme Court

2.3 The Associate Judge of the ACT Supreme Court is entitled to remuneration of \$430,578 per annum.

Acting Judge

2.4 An Acting Judge is entitled to be paid remuneration calculated at the rate of 1/230 of the annual remuneration paid, from time to time, to a judge of the ACT Supreme Court per day.

2.5 In any 12 month period, total remuneration paid to an Acting judge must not exceed that paid to a judge of the ACT Supreme Court.

3. Salary packaging for the Associate Judge

3.1 The Associate Judge may elect to take remuneration mentioned as:

- a) salary; or
- b) a combination of salary and other benefits (a **salary package**).

3.2 Salary packaging must be consistent with:

- a) taxation laws and guidelines issued by the Australian Taxation Office; and

- b) any salary packaging policy and/or procedures issued for the ACT Public Service, with up to 100% of the remuneration able to be taken as benefits and related costs such as fringe benefits tax.

3.3 Salary packaging must be administered without additional cost to the employer and any fringe benefits tax associated with the provision of a benefit must be included in the salary package.

3.4 Salary for superannuation purposes is not affected by salary packaging.

4. Travelling Allowance for the Associate Judge — within and outside Australia

4.1 The Associate Judge of the Supreme Court is entitled to the same travelling allowance provisions as for other ACT Supreme Court Judges (being those of a Judge of the Federal Court of Australia), which are outlined in Commonwealth Remuneration Tribunal Determinations for Judicial and Related Offices, issued from time to time.

5. Other entitlements for the Associate Judge

5.1 Other entitlements for the Associate Judge such as vehicle, parking, relocation, superannuation and leave arrangements are outlined in the *Supreme Court (Master) Conditions of Appointment 2017 (No.1)*, NI2017-242.

6. Travelling Allowance for an Acting Judge — within and outside Australia

6.1 An Acting Judge of the Supreme Court is entitled to the same travelling allowance provisions as for other ACT Supreme Court Judges (being those of a Judge of the Federal Court of Australia), which are outlined in Commonwealth Remuneration Tribunal Determinations for Judicial and Related Offices, issued from time to time.

7. Employer superannuation contribution – Acting Judge

7.1 An Acting Judge of the Supreme Court is only eligible for the employer's superannuation contribution in this determination if their superannuation entitlements are not provided for elsewhere.

7.2 For an Acting Judge, who is a member of the Commonwealth Superannuation Scheme (CSS) or Public Sector Superannuation (PSS) Scheme:

- (a) the person's annual rate of remuneration for the purposes of the scheme is the base remuneration as provided in clause 2 of this Determination;
- (b) the value attributed to the employer's superannuation contribution is taken to be a notional 16% of the person's base remuneration.

7.3 For an Acting Judge who is not currently a member of the CSS or PSS but was a member of the PSS Accumulation Plan (PSSap) until it closed to the Territory on 30 June 2006, and has maintained continuous employment with the Territory:

- (a) the value of the employer's superannuation contribution is a notional 16% of the base remuneration as provided in clause 2 of this Determination; and
- (b) the employer will contribute that amount to an agreed superannuation fund nominated by the person appointed to an office in clause 2 of this Determination.

7.4 For an Acting Judge who is a member of any other superannuation fund, the employer's superannuation contribution is to be made at a rate no less than the Employer

Superannuation Guarantee Charge Percentage as provided by the *Superannuation Guarantee (Administration) Act 1992* (which at the commencement of this Determination is 9.5%).

7.5 The employer provides an additional employer superannuation contribution. The additional employer superannuation contribution is the same rate provided under clause D7 of the ACT Public Sector Administrative and Related Classifications Enterprise Agreement 2018-2021, as follows:

(a) From 1 July 2019: 1.50%.

(b) From 1 July 2020: 2%.

7.6 In respect of an Acting Judge, who is not a CSS or PSS member or appointed to or engaged by the Territory before 30 June 2006 and has maintained continuous employment with the Territory:

- if the person contributes 3% or more of their base remuneration component to an agreed superannuation fund in the form of employee contributions, the Territory will contribute an additional 1% employer superannuation contribution above the amount indicated in clause 6.5.

7.7 The value of the employer's superannuation contribution must not be paid in cash to the person appointed to an office in clause 2 of this Determination.

8. Definitions

8.1 In this Determination:

employer means the Australian Capital Territory and includes any person authorised to act on behalf of the Australian Capital Territory.

fringe benefits tax means the tax assessed under the *Fringe Benefits Tax Assessment Act 1986*.

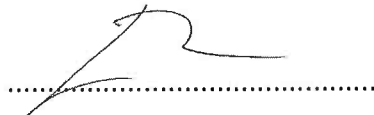
9. Revocation of previous determination

Determination 10 of 2018 is revoked.


Ms Sandra Lambert AM
Chair



Dr James Popple
Member



Mr Dale Boucher PSM
Member



December 2019