



Australian Capital Territory Remuneration Tribunal

ACT Supreme Court Judicial Positions

Determination 16 of 2020

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

Chief Justice Helen Murrell wrote to the Tribunal to request an out-of-session consideration on a number of matters in relation to the current ACT Supreme Court Judicial Positions Determination 7 of 2020.

An acting judge is currently entitled to be paid remuneration calculated at the rate of 1/230 of the annual remuneration paid to a judge of the ACT Supreme Court per day.

The Chief Justice has advised that acting judges often sit for significantly fewer hours than half a day but are entitled to a daily rate.

The Tribunal met on 16 December 2020 and considered the Chief Justice's submission. The Tribunal sought advice from the Justice and Community Safety Directorate and also discussed the matters raised by the Chief Justice with an official from the Justice and Community Safety Directorate.

Decision

The Tribunal has decided that if an acting judge who is appointed after 1 January 2021 works fewer than 3 hours in a day they are entitled to half the daily remuneration rate. Acting judges who are appointed after 1 January 2021 and work for 3 hours or more will be entitled to the full daily remuneration rate. This is to be consistent with the similar provisions for Special Magistrates who undertake judicial duties for 3 hours or more per day. Acting judges appointed before 1 January 2021 will continue to be paid in accordance with Determination 7 of 2020 for the remainder of their terms.

The Tribunal also decided to provide an additional payment for the Associate Judge when acting as a judge. Previous determinations have not covered this circumstance. The Associate Judge's total remuneration must not exceed that paid to a judge of the ACT Supreme Court.

December 2020



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1. Commencement

This instrument commences on the date of signature.

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 Subsections 2.5 to 2.8 do not apply to an Associate Judge who acts as a Judge.
- 2.5 If an Acting Judge, who is appointed after 1 January 2021, undertakes judicial duties for 3 hours or more on any given day, they are entitled to the daily 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.
- 2.6 If an Acting Judge, who is appointed after 1 January 2021, undertakes judicial duties for fewer than 3 hours on any given day, they are entitled to half of the daily remuneration rate.
- 2.7 The Chief Justice may include reasonable travelling time other than for travel between the person's home and principal place of work in the number of hours in a given day in which the Chief Justice determines that the Acting Judge has undertaken judicial duties.

2.8 **Judicial duties** includes the following:

- court sitting time, as listed by the Chief Justice;
- preparation, decision writing and judicial education approved by the Chief Justice; and
- reasonable travelling time other than for travel between the person's home and principal place of work.

2.9 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.

Associate Judge acts as a Judge

2.10 If the Associate Judge acts as a Judge on any given day, in addition to their salary payable as the Associate Judge, they are entitled to a payment equal to the difference between:

- a) the amount of salary payable (inclusive of superannuation) to a Judge of the ACT Supreme Court on that day; and
- b) the amount of salary payable (inclusive of superannuation) to an Associate Judge of the ACT Supreme Court not acting as a Judge on that day.

2.11 In any 12 month period, total remuneration paid to the Associate 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:

- c) salary; or
- d) 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 equivalent to 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:

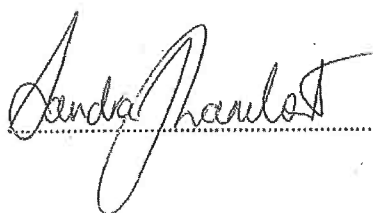
employer means the Australian Capital Territory and includes any person authorised to act on behalf of the Australian Capital Territory.

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

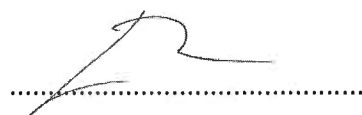
9. Revocation of previous determination

9.1 Determination 7 of 2020 other than in respect of the daily remuneration of an Acting Judge appointed before 1 January 2021 is revoked.

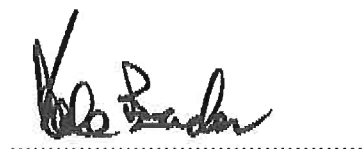
Ms Sandra Lambert AM
Chair



Dr James Popple
Member



Mr Dale Boucher PSM
Member



24 December 2020