



Australian Capital Territory Remuneration Tribunal

ACT Supreme Court Judicial Positions

Determination 14 of 2022

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

In October and November 2022, the Tribunal commenced its Spring Sitting to consider the remuneration, allowances and other entitlements of the following office-holders:

- ACT Magistrates Court Judicial members;
- ACT Supreme Court Judicial members;
- ACT Civil and Administrative Tribunal members;
- the ACT Integrity Commissioner (Integrity Commissioner and Chief Executive Officer);
- the Principal Registrar, Courts and Tribunal;
- the Director of Public Prosecutions;
- part-time Holders of Public Office on boards, tribunals and committees; and
- any other positions that have been referred to the Tribunal for consideration.

The Tribunal advertised its Spring Sitting on its website and in the Canberra Times on 10 September 2022. The Tribunal also wrote to the relevant office-holders requesting submissions.

At its meetings in October and November 2022, the Tribunal met with the Chief Minister, ACT Government Treasury officials and officials responsible for the Enterprise Agreement bargaining for ACT Public Sector non-executive employees. The Tribunal also met with a number of full-time public office-holders and departmental officials.

The briefings provided to the Tribunal by ACT Treasury officials outlined the resilient nature of the Territory's economy. ACT Treasury reported that the Territory had transitioned out of the potential economic crisis brought on by the COVID-19 health emergency, with the Territory now experiencing a tight labour market and wages growth. ACT Treasury also reported that the Territory's labour market is strong and tight, with jobs and wages for most industries in the ACT recovered to be above pre-lockdown levels. In its deliberations, the Tribunal continues to give considerable weight to community standards and expectations, with particular reference to the COVID-19 economic recovery, national and local inflation reporting and wage price index reporting.

The Tribunal also considered the importance of the Territory providing competitive and equitable remuneration, allowances and other entitlements so that the Territory can continue to attract and retain high calibre individuals to deliver high quality services to the ACT community. In this context, the Tribunal noted the wage policies and recent remuneration determinations by its Commonwealth and State/Territory counterparts.

Consistent with usual practice, the Tribunal considered the pay increases that were provided to the ACT Public Sector non-executive workforce during 2021 under the Enterprise Agreements. In addition, when considering pay increases for statutory office-holders, the Tribunal noted the pay increases that were provided to executives in the ACT Public Service in 2022.

In making this determination, the Tribunal has had regard to the fact that the Government is currently negotiating enterprise agreements for employees covered by such agreements. The Tribunal had regard to the 2022–23 ACT Budget, released in August 2022 by the Chief Minister, which predicted growth in 2023–24 of 3.5 per cent in WPI and 3 per cent in CPI.¹

The Tribunal considered the comments made by the Governor of the Reserve Bank of Australia on 1 November 2022, and noted his comments both in respect to household budgets being under strain from cost-of-living pressures and in relation to many firms finding it hard to find workers.² In a tight labour market, an increasing number of firms are paying higher wages to attract and retain staff, especially in an environment where the cost of living is rising.

The Tribunal received correspondence from Associate Justice McWilliam requesting that existing relativities in remuneration between the Associate Judge and Chief Justice be maintained.

The Tribunal also received correspondence from Chief Justice McCallum requesting that the existing relativity of the Chief Justice's additional allowance be maintained, and in support of the Associate Justice's correspondence.

Decision

The Tribunal determines to increase the allowance for the position of the Chief Justice of the ACT Supreme Court to \$48,090 per annum continuing the existing relativity of this allowance to salary and noting also the increases in remuneration and entitlements

¹ [ACT Budget 2022-2023 Budget Outlook, Chapter 2 Economic Outlook](#), page 17.

² <https://www.rba.gov.au/speeches/2022/sp-gov-2022-11-01.html>

provided to Federal Judicial positions in July 2022³ which determine the remuneration provided to ACT Judicial positions.

The Tribunal determines to increase the remuneration for the position of the Associate Judge of the ACT Supreme Court to \$442,428.

The Tribunal determines 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 retrospective application of this Determination to 1 July 2022 does not affect the rights of a person (other than the ACT Government) in a manner prejudicial to that person, nor does it impose any liability on such person.

15 December 2022

³ [Remuneration Tribunal \(Judicial and Related Offices-Remuneration and Allowances\) Determination 2022](#)



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1. Commencement

This instrument is taken to have commenced on 1 July 2022.

2. Remuneration

- 2.1 The benchmark is \$480,900 (being the remuneration payable to a Federal Court Judge and ACT Supreme Court Judge on 1 July 2022).

Chief Justice of the Supreme Court

- 2.2 The Chief Justice of the Supreme Court is entitled to an allowance of \$48,090 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 \$442,428 per annum.

Acting Judge

- 2.4 Subsections 2.5 to 2.11 do not apply to an Associate Judge who acts as a Judge.
- 2.5 If an Acting Judge 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 undertakes judicial duties for fewer than 3 hours on any given day, they are entitled to half of the daily remuneration rate.
- 2.7 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.
- 2.8 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.

2.9 **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.

2.10 An Acting Judge is entitled to an allowance in lieu of a vehicle equal to the amount of reimbursement for private vehicle running costs that applies to Federal Court Judges, as determined by the Commonwealth Remuneration Tribunal, from time to time. This allowance is paid pro-rata for the period of the appointment and is not superable.

Associate Judge performing duties of an Acting Judge

2.11 If the Associate Judge is also appointed as an Acting Judge and is performing the duties of an Acting Judge on any given day, in addition to the salary payable as the Associate Judge under clause 2.3, the Associate Judge is also entitled to an additional daily salary payment equal to the difference between:

- a) the daily amount of salary payable (exclusive of superannuation) to an Acting Judge of the ACT Supreme Court on that day; and
- b) the daily amount of salary payable (exclusive of superannuation) to an Associate Judge of the ACT Supreme Court.

2.12 When the Associate Judge is performing the duties of an Acting Judge, their superannuation entitlements will be calculated in accordance with clause 7, except where the Associate Judge is a member of Commonwealth Superannuation Scheme (CSS) or Public Sector Superannuation (PSS) Scheme in which case it will be determined by the rules of the relevant fund.

Note: Superannuation arrangements for the Associate Judge is determined under the Supreme Court (Master) Conditions of Appointment 2017 (No 1), NI2017-242.

2.13 In any 12 month period, base remuneration paid to the Associate judge must not exceed that paid to a judge of the ACT Supreme Court.

Note: The Associate Judge will continue to accrue leave as outlined in the Supreme Court (Master) Conditions of Appointment 2017 (No 1), NI2017-242 when performing the duties of an Acting Judge.

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.
- 3.5 The Associate Judge's entitlement to salary package is not affected by an appointment from time to time as an Acting Judge.

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*.

Note: at the commencement of this Determination, the Employer Superannuation Guarantee Charge Percentage is 10.5% and increases to 11% on 1 July 2023.

- 7.5 The employer provides an additional employer superannuation contribution. The additional employer superannuation contribution is the same rate provided under clause D7 in the *ACT Public Sector Administrative and Related Classifications Enterprise Agreement 2021-2022* or its replacement.
- 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:
- for each pay period in which the person contributes 3% or more of their base remuneration to their nominated superannuation fund in the form of employee contributions (either in pre or post tax dollars), the Territory will contribute an additional 1% employer superannuation contribution pro-rata per pay above the entitlement in clause 7.5, based on the person's gross fortnightly OTE (or other methods where prescribed by the nominated superannuation fund rules).
- 7.7 If the legislated minimum Superannuation Guarantee rate mentioned in clause 7.4 of this Determination is increased, it will be absorbed by the additional employer contribution provided in clause 7.5, but will not affect the entitlement in clause 7.6.
- 7.8 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 6 of 2021 is revoked.

Ms Sandra Lambert AM
Chair

A handwritten signature in black ink, appearing to read "Sandra Lambert", with a long horizontal flourish extending to the right.

Mr Dale Boucher PSM
Member

A handwritten signature in black ink, appearing to read "Dale Boucher", with a long horizontal flourish extending to the right.

15 December 2022