

Judicial Remuneration Tribunal Bill

No.

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By Authority L. V. North, Government Printer Melbourne



LEGISLATIVE ASSEMBLY

Read 1° 10 November 1994

(Brought in by Mrs Wade and Mr Gude)

A BILL

to establish a tribunal in relation to the salary and allowances of Judges of the Supreme Court Judges of the County Court, Magistrates and the holders of certain other offices, to amend the **Constitution Act 1975**, the **Supreme Court Act 1986**, the **County Court Act 1958**, the **Magistrates' Court Act 1989** and certain other Acts and for other purposes.

Judicial Remuneration Tribunal Act 1994

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purpose*

The purpose of this Act is—

- (a) to establish a Judicial Remuneration Tribunal;
and

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

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(b) to make further provision in relation to the salary and allowances of Judges of the Supreme Court, Judges of the County Court, magistrates and certain other persons.

2. Commencement

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- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation within the period of 9 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

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3. Definitions

In this Act—

“**chairperson**” means chairperson of the Tribunal and includes a person appointed to act as chairperson;

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“**member**” means member of the Tribunal;

“**Tribunal**” means the Judicial Remuneration Tribunal established by this Act.

PART 2—JUDICIAL REMUNERATION TRIBUNAL

4. Establishment of Tribunal

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- (1) There is established a tribunal to be known as the Judicial Remuneration Tribunal.
- (2) The Tribunal consists of 3 members appointed on a part-time basis by the Governor in Council on the recommendation of the Attorney-General.

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- (3) A person is not eligible for appointment as a member of the Tribunal if the person is or has been the holder of an office the salary or allowances of which are determined by the Tribunal.

5 **5. Chairperson**

The Governor in Council must appoint one of the members to be the chairperson of the Tribunal.

6. Terms and conditions of office

- 10 (1) A member holds office for a term not exceeding 5 years specified in the instrument of appointment, but is eligible for re-appointment.
- (2) A member holds office, subject to this Act, on such terms and conditions as to payment of allowances and expenses or any other matter, as are determined by the Governor in Council.
- 15 (3) The **Public Sector Management Act 1992** (except Part 9 or in accordance with Part 8) does not apply to a member in respect of the office of member.

7. Vacancies, resignations, removal from office

- 20 (1) The office of a member becomes vacant if the member—
- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (b) is convicted of an indictable offence or an offence which, if committed in Victoria, would be an indictable offence.
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- 30 (2) A member may resign by writing delivered to the Attorney-General.

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- (3) The Governor in Council may remove a member from office for misconduct, neglect of duty or physical or mental incapacity.

8. *Acting appointments*

- (1) The Attorney-General may appoint a person to act in the place of the chairperson or another member who is absent or who, for any other reason, is unable to perform the duties of the office. 5
- (2) An acting appointment is for the term, and on the conditions, including conditions as to payment of allowances and expenses, determined by the Attorney-General. 10
- (3) A person appointed under sub-section (1) has all the powers and may perform all the duties of the member for whom he or she is acting. 15
- (4) The Attorney-General may at any time terminate an acting appointment.

9. *Meetings of the Tribunal*

- (1) The chairperson may convene meetings of the Tribunal and, at the request of the Attorney-General, must convene a meeting. 20
- (2) The chairperson shall preside at all meetings of the Tribunal.
- (3) At a meeting of the Tribunal—
- (a) the procedure shall be as determined by the Tribunal; 25
- (b) two members, one of whom is the chairperson, constitute a quorum;
- (c) all questions shall be decided by a majority of votes of the members present and voting; and 30
- (d) the member presiding has a deliberative vote and, in the event of an equality of votes, also a casting vote.

- (4) Subject to this Act, the Tribunal may regulate its own proceedings.

10. Validity of decisions

An act or decision of the Tribunal is not invalid—

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(a) by reason only—

(i) of a defect or irregularity in, or in connection with, the appointment of a member; or

(ii) of a vacancy in the office of a member; or

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(b) on the ground that the occasion for an acting member to act had not arisen or had ceased.

PART 3—INQUIRIES AND REPORTS

11. Functions

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The functions of the Tribunal are to inquire into, and report to the Attorney-General on, the question whether any adjustments are desirable in the salary or allowances of—

(a) the Chief Justice of the Supreme Court;

(b) the President of the Court of Appeal;

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(c) the Judges of the Court of Appeal, other than the Chief Justice and the President;

(d) the Judges of the Supreme Court, other than the Judges referred to in paragraphs (a), (b) and (c);

(e) the Chief Judge of the County Court;

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(f) the Judges of the County Court, other than the Chief Judge;

(g) the Chief Magistrate;

(h) the Deputy Chief Magistrates;

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(i) the Magistrates, other than the Chief Magistrate and Deputy Chief Magistrates;

(j) the Masters of the Supreme Court;

(k) the Masters of the County Court;

- (l) the State Coroner;
- (m) the Deputy State Coroner;
- (n) if another Act provides that the salary or allowances for a particular office are to be determined by the Tribunal, the holder of that office.

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12. Method of inquiry by Tribunal

- (1) In the performance of its functions, the Tribunal—
 - (a) may inform itself in such manner as it thinks fit; and
 - (b) may receive written or oral statements; and
 - (c) is not required to conduct any proceeding in a formal manner; and
 - (d) is not bound by the rules of evidence.
- (2) The Tribunal may, if it thinks fit, appoint a person or persons to assist the Tribunal in an inquiry.
- (3) A person appointed under sub-section (2) is entitled to such fees and allowances (if any) as are determined by the Secretary to the Department of Justice.

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13. Reports

- (1) The Tribunal, as soon as practicable after the commencement of this section, and at subsequent intervals of not more than 2 years, must report in writing to the Attorney-General.
- (2) If a report recommends that adjustments are desirable in the salary or allowances of the holder of an office, the report must set out the nature and extent of the adjustment that should be made.

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14. Tabling of Report

- (1) The Attorney-General must cause a copy of each report under section 13 to be laid before each House

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of the Parliament within 10 sittings days of the House after the Attorney-General receives the report.

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- (2) If the Attorney-General does not accept, or proposes to vary, a recommendation in a report, the Attorney-General must cause a copy of the reasons for not accepting or for varying that recommendation to be laid before each House of the Parliament with the report or within 10 sittings days of the House after the report is laid before the House.

10 **15. Attorney-General's certificate**

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- (1) The Attorney-General must issue a certificate authorising the adjustment of the salary or allowances, or salary and allowances, in accordance with a report by the Tribunal, except so far as the Attorney-General does not accept, or varies, the recommendations.
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- (2) A certificate under this section must specify the date on which the adjustment of salary or allowances comes into effect, being the date of the certificate or an earlier or later date.

PART 4—AMENDMENT OF CERTAIN ACTS

16. Reserve Judges of the Supreme Court

In section 80A (1) of the **Constitution Act 1975**, for paragraph (a) substitute—

25 “(a) has attained—

(i) the age of 65 years; or

(ii) in the case of Judge appointed as a Judge of the Court before the commencement of section 16 of the **Judicial Remuneration Tribunal Act 1994**, 60 years—

30 but not the age of 70 years; and”.

17. Salaries and allowances of Supreme Court Judges

- (1) In section 82 (1) of the **Constitution Act 1975**—
- (a) for “\$101 732” substitute “\$177 696”;
- (b) for “sub-section (3) or (6)” substitute “the **Judicial Remuneration Tribunal Act 1994**”. 5
- (2) In section 82 (1A) and (1B) of the **Constitution Act 1975**, for “under sub-section (3) or (6)” substitute “the **Judicial Remuneration Tribunal Act 1994**”.
- (3) In section 82 (2) of the **Constitution Act 1975**—
- (a) for “\$90 433” substitute “\$157 213”; 10
- (b) for “sub-section (3) or (6)” substitute “the **Judicial Remuneration Tribunal Act 1994**”.
- (4) In section 82 of the **Constitution Act 1975**, for sub-section (3) substitute—
- “**(3)** Each Judge of the Court shall be paid— 15
- (a) allowances at such rate or of such amount or of such kind as those to which he or she was entitled—
- (i) immediately before the commencement of section 17 of the **Judicial Remuneration Act 1994**; or 20
- (ii) upon his or her appointment—
whichever is the later; or
- (b) allowances at such rate or amount or of such kind as are for the time being applicable pursuant to an adjustment certified by the Attorney-General under that Act.”. 25
- (5) In section 82 of the **Constitution Act 1975**—
- (a) sub-sections (4) (5) (6) and (6A) are **repealed**; 30
- (b) in sub-section (6B), after “salaries” insert “or the aggregate value of the allowances”;
- (c) in sub-section (7), after “salaries” insert “and allowances”.

18. *Pensions of Judges of the Supreme Court*

(1) In section 83 (1) of the **Constitution Act 1975**, for paragraph (a) substitute—

“(a) has attained—

(i) the age of 65 years; or

(ii) in the case of a Judge appointed as a Judge of the Court before the commencement of section 18 of the **Judicial Remuneration Tribunal Act 1994**, the age of 60 years—

and has served for not less than 10 years in the office of Judge of the Court; or

(aa) has served for not less than 20 years in the office of Judge of the Court; or”.

(2) After section 83 (1) of the **Constitution Act 1975** insert—

“(1A) A Judge of the Court who—

(a) had attained the age of 60 years when appointed as a Judge of the Court; and

(b) has attained the age of 70 years—

is entitled upon resignation or retirement from office to a pension payable fortnightly at the proportion of the rate of the pension that would have been payable if he or she had served 10 years that is equal to the proportion of 10 years served as a Judge.

(1B) A Judge of the Court who—

(a) had attained the age of 60 years when appointed as a Judge of the Court; and

(b) has become afflicted with some permanent incapacity disabling him or her from the due execution of his or her office—

is entitled, upon resignation or retirement from office, to a pension payable fortnightly at the rate of the pension that would have been payable under sub-section (1A) if he or she had served until attaining the age of 70 years.”.

19. Salaries and allowances of Masters of Supreme Court

After section 83 of the **Constitution Act 1975**
insert—

‘83A. Salaries of masters

- (1) Each master shall be paid a salary at the rate per annum of— 5
- (a) in the case of the Registrar of the Court of Appeal, \$130 372;
 - (b) in the case of the Senior Master, \$130 372; 10
 - (c) in the case of a General Master, \$115 035;
 - (d) in the case of a Specialist Master, \$109 283—
- or such higher rate as is for the time being applicable pursuant to an adjustment certified by the Attorney-General under the **Judicial Remuneration Tribunal Act 1994**. 15
- (2) Each master shall be paid— 20
- (a) allowances at such rate or of such amount or of such kind as those to which he or she was entitled—
 - (i) immediately before the commencement of section 19 of the **Judicial Remuneration Act 1994**; or 25
 - (ii) upon his or her appointment— whichever is the later; or
 - (b) allowances at such rate or amount or of such kind as are for the time being applicable pursuant to an adjustment certified by the Attorney-General under that Act. 30

(3) Nothing in this section authorises the salaries or the aggregate value of the allowances payable to the masters to be reduced.

5 (4) The salaries and allowances payable under this section shall be paid out of the Consolidated Fund which is hereby to the necessary extent appropriated accordingly.

10 (5) In this section—

“General Master” means a Master other than the Senior Master or a Specialist Master;

15 “Specialist Master” means the Listing Master, the Registrar of Criminal Appeals and the Taxing Master of the Court.’

20. Masters of Supreme Court

20 (1) In section 104 (4) (a) of the **Supreme Court Act 1986**, for “remuneration as is from time to time fixed by Order of the Governor in Council” substitute “salary and allowances as are payable under section 83A of the **Constitution Act 1975**”.

25 (2) In section 104A (1) of the **Supreme Court Act 1986**, for paragraph (a) substitute—

“(a) has attained—

(i) the age of 65 years; or

(ii) in the case of a Master appointed before the commencement of section 20 of the **Judicial Remuneration Tribunal Act 1994**, the age of 60 years—

and has held office for at least 10 years; or

(aa) has held office for at least 20 years; or”.

30 (3) After section 104A (1) of the **Supreme Court Act 1986** insert—

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“(1A) A Master who—

(a) had attained the age of 60 years when appointed as a Master; and

(b) has attained the age of 70 years—

is, on resignation or retirement, entitled to a pension payable fortnightly at the proportion of the rate of the pension that would have been payable if he or she had held office for 10 years that is equal to the proportion of 10 years during which he or she held office as a Master.

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(1B) A Master who—

(a) had attained the age of 60 years when appointed as a Master; and

(b) has become afflicted with a permanent incapacity that disables him or her from the due execution of the office—

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is, on resignation or retirement, entitled to a pension payable fortnightly at the rate of the pension that would have been payable under sub-section (1A) if he or she had held office until attaining the age of 70 years.”.

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21. *Salaries and allowances of County Court Judges*

(1) In section 10 (1) of the **County Court Act 1958**—

(a) for “\$89 725” substitute “\$157 373”;

(b) for “sub-section (3) or (6)” substitute “the **Judicial Remuneration Tribunal Act 1994**”.

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(2) In section 10 (2) of the **County Court Act 1958**—

(a) for “\$76 298” substitute “\$133 574”;

(b) for “sub-section (3) or (6)” substitute “the **Judicial Remuneration Tribunal Act 1994**”.

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(3) In section 10 of the **County Court Act 1958**, for sub-section (3) substitute—

“(3) Each judge shall be paid—

(a) allowances at such rate or of such amount or of such kind as those to which he or she was entitled—

(i) immediately before the commencement of section 21 of the **Judicial Remuneration Act 1994**; or

(ii) upon his or her appointment—
whichever is the later; or

(b) allowances at such rate or amount or of such kind as are for the time being applicable pursuant to an adjustment certified by the Attorney-General under that Act.”

(4) In section 10 of the **County Court Act 1958**—

(a) sub-sections (4) (5) (6) and (6A) are **repealed**;

(b) in sub-section (6B), after “salaries” insert “or the aggregate value of the allowances”;

(c) in sub-section (7) after “salaries” insert “and allowances”.

22. *County Court reserve judges*

In section 13A (1) of the **County Court Act 1958**, for paragraph (a) substitute—

“(a) has attained—

(i) the age of 65 years; or

(ii) in the case of a judge appointed before the commencement of section 22 of the **Judicial Remuneration Tribunal Act 1994**, 60 years; and”.

23. *Pensions of County Court judges*

(1) In section 14 (2) of the **County Court Act 1958**, for paragraphs (a) and (b) substitute—

“(a) has attained—

(i) the age of 65 years; or

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- (ii) in the case of a judge appointed before the commencement of section 23 of the **Judicial Remuneration Tribunal Act 1994**, the age of 60 years—
- and has served for not less than 10 years in the office of judge; or 5
- (b) has served for not less than 20 years in the office of judge; or
- (c) having been appointed before attaining the age of 60 years, has become afflicted with some permanent incapacity disabling him or her from the due execution of the office; or 10
- (d) in the case of a judge appointed after attaining the age of 60 years but before the commencement of section 23 of the **Judicial Remuneration Tribunal Act 1994**, has become afflicted with some permanent incapacity disabling him or her from the due execution of the office—”. 15
- (2) After section 14 (2) of the **County Court Act 1958** insert— 20
- “(2A) A judge who—
- (a) had attained the age of 60 years when appointed as a judge; and
- (b) has attained the age of 70 years— 25
- is entitled, upon resignation or retirement from office to a pension payable fortnightly at the proportion of the rate of the pension that would have been payable if he or she had served 10 years that is equal to the proportion of 10 years served as a judge. 30
- (2B) A judge who—
- (a) had attained the age of 60 years when appointed as a judge; and
- (b) has become afflicted with some permanent incapacity disabling him or her from the due execution of his or her office— 35

is entitled, upon resignation or retirement from office, to a pension payable fortnightly at the rate of the pension that would have been payable under sub-section (2A) if he or she had served until attaining the age of 70 years.”.

24. *Masters of County Court*

In section 17A (4) (a) of the **County Court Act 1958**, for “remuneration as is from time to time fixed by Order of the Governor in Council” substitute “salaries and allowances as are from time to time payable under section 17AA.”.

25. *New section 17A inserted in County Court Act 1958*

After section 17A of the **County Court Act 1958** insert—

“17AA. *Salaries and allowances of masters*

(1) Each master of the court shall be paid a salary at the rate of \$115 035 per annum or such higher rate as is for the time being applicable pursuant to an adjustment certified by the Attorney-General under the **Judicial Remuneration Tribunal Act 1994**.

(2) Each master of the court shall be paid—

(a) allowances at such rate or of such amount or of such kind as those to which he or she was entitled—

(i) immediately before the commencement of section 25 of the **Judicial Remuneration Act 1994**; or

(ii) upon his or her appointment—
whichever is the later; or

(b) allowances at such rate or amount or of such kind as are for the time

being applicable pursuant to an adjustment certified by the Attorney-General under that Act.

(3) Nothing in this section authorises the salaries or the aggregate value of the allowances payable to the masters of the court to be reduced. 5

(4) The salaries and allowances payable under this section shall be paid out of the Consolidated Fund which is hereby to the necessary extent appropriated accordingly.”. 10

26. *Pensions of masters of County Court*

(1) In section 17B (1) of the **County Court Act 1958**, for paragraph (a) substitute— 15

“(a) has attained—

(i) the age of 65 years; or

(ii) in the case of a master appointed before the commencement of section 26 of the **Judicial Remuneration Tribunal Act 1994**, the age of 60 years— 20

and has held office for at least 10 years; or

(aa) has held office for at least 20 years; or”.

(2) After section 17B (1) of the **County Court Act 1958** insert— 25

“(1A) A master who—

(a) had attained the age of 60 years when appointed as a master; and

(b) has attained the age of 70 years—

is, on resignation or retirement, entitled to a pension payable fortnightly at the proportion of the rate of the pension that would have been payable if he or she had held office for 10 years that is equal to the proportion of 10 years during which he or she held office as a master. 30
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(1B) A master who—

(a) had attained the age of 60 years when appointed as a master; and

(b) has become afflicted with a permanent incapacity that disables him or her from the due execution of the office—

is, on resignation or retirement, entitled to a pension payable fortnightly at the rate of the pension that would have been payable under sub-section (1A) if he or she had held office until attaining the age of 70 years.”.

27. Salaries and allowances of magistrates

In Schedule 1 to the Magistrates' Court Act 1989—

(a) in clause 1—

(i) for "\$81 399" substitute "\$116 498";

(ii) for "clause 4 or 7" substitute "the **Judicial Remuneration Tribunal Act 1994**";

(b) in clause 2—

(i) for "\$75 277" substitute "\$107 634";

(ii) for "clause 4 or 7" substitute "the **Judicial Remuneration Tribunal Act 1994**";

(c) in clause 3—

(i) for "\$70 903" substitute "\$101 303";

(ii) for "clause 4 or 7" substitute "the **Judicial Remuneration Tribunal Act 1994**";

(d) for clause 4 substitute—

"4. The Chief Magistrate, each Deputy Chief Magistrate and each other magistrate shall be paid—

(a) allowances at such rate or of such amount or of such kind as those to which he or she was entitled—

(i) immediately before the commencement of section 27 of the **Judicial Remuneration Act 1994**; or

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- (ii) upon his or her appointment—
whichever is the later; or
- (b) allowances at such rate or amount or of such kind as are for the time being applicable pursuant to an adjustment certified by the Attorney-General under that Act.”; 5
- (e) clauses 5, 6, 7 and 8 are **repealed**;
- (f) in clause 9, after “salaries” **insert** “or the aggregate value of the allowances”; 10
- (g) in clause 10, after “salaries” **insert** “and allowances”.

28. Coroners Act 1985

In section 9 (1) of the **Coroners Act 1985** after “appointment” **insert** “and is entitled to be paid the salary at the rate specified in the instrument or at such higher rate as is for the time being applicable under an adjustment certified by the Attorney-General under the **Judicial Remuneration Tribunal Act 1994**, together with allowances so specified, as adjusted from time to time under that Act”. 15 20

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