

Judicial Remuneration Tribunal Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 sets out the purpose of the Act.

Clause 2 sets out the time for commencement of the Act. Part 1 and section 29 come into operation on the day the Act receives Royal Assent. The remainder of the Act will automatically come into operation 9 months after Royal Assent unless it is proclaimed at an earlier date.

Clause 3 sets out definitions of terms used in the Act.

PART 2—JUDICIAL REMUNERATION TRIBUNAL

Clause 4 provides for the establishment of the Judicial Remuneration Tribunal (the Tribunal). The Tribunal consists of three part time members appointed by the Governor in Council on the recommendation of the Attorney-General. To avoid a conflict of interest sub-clause 4 (3) provides that a person who is, or has been, the holder of an office, the remuneration of which is determined by the Tribunal, is not eligible for appointment to the Tribunal.

Clause 5 provides that the Governor in Council must appoint one of the members of the Tribunal to be the chairperson.

Clause 6 provides that the term of appointment of a member can not exceed 5 years. A member is eligible for reappointment. Members hold office subject to terms and conditions determined by the Governor in Council. Clause 6 (3) provides members are not subject to the **Public Sector Management Act 1992** with the exception of Part 9 or in accordance with Part 8.

Clause 7 provides that the office of a member becomes vacant if the member becomes bankrupt or is convicted of an indictable offence. A member may resign in writing delivered to the Attorney-General. A member may be removed from office for misconduct, neglect of duty or physical or mental incapacity.

Clause 8 provides that if a member of the Tribunal is unable to perform his or her duties the Attorney-General may appoint another person to act in the place of that member during the period of inability. An acting appointment is for a term and on the conditions determined by the Attorney-General. An acting member has all the powers and may perform all the functions of the member for whom he or she is acting. The appointment of an acting member may be terminated by the Attorney-General at any time.

Clause 9 provides that meetings of the Tribunal may be convened by the Chairperson. If the Attorney-General requests that the Tribunal meet, the chairperson must convene a meeting. The chairperson must preside at all meetings of the Tribunal. A quorum of the Tribunal is two members one of whom must be the Chairperson. All questions must be decided in accordance with a majority of votes of the members of the Tribunal. The Chairperson has both a deliberative and casting vote. Except as provided in the Act, the Tribunal may regulate its own proceedings.

Clause 10 provides that an act or decision of the Tribunal is not invalid by reason only of a defect or irregularity in connection with the appointment of a member or acting member, a vacancy in the office of a member or on the ground that the occasion for an acting member to act had not arisen or had ceased.

PART 3—INQUIRIES AND REPORTS

Clause 11 provides that the functions of the Tribunal are to inquire into and report to the Attorney-General on whether any adjustments are desirable in the salary and allowances of a number of judicial officers including the judges of the Court of Appeal and the Supreme and County Courts, the magistrates of the Magistrates' Court, the masters of the Supreme and County Courts and the State and Deputy State Coroner. In addition to the jurisdiction to make recommendations on the salary and allowances of these office holders, *clause 11 (n)* provides that any other Act may confer jurisdiction on the Tribunal in respect of any other office.

Clause 12 provides that in the performance of its functions the Tribunal—

- may inform itself in such a manner as it thinks fit;
- may receive written and oral submissions;
- is not required to conduct any proceeding in a formal manner; and
- is not bound by the rules of evidence.

The Tribunal may appoint a person or persons to assist the Tribunal in an inquiry and they are entitled to such fees and allowances as determined by the Secretary to the Department of Justice.

Clause 13 provides that the Tribunal must report in writing to the Attorney-General as soon as practicable after the commencement of the Act and at subsequent intervals of not more than 2 years. If the Tribunal reports that adjustment in the salary and allowances of the holder of an office are desirable it must in its report recommend the nature and extent of the alterations that should be made

Clause 14 provides that the Attorney-General must table a copy of the report before both Houses of Parliament within 10 sitting days of receiving the report. If the Attorney-General does not accept, or wants to vary, a recommendation contained in the Tribunal's report, reasons must be tabled in both Houses of Parliament within 10 sitting days of tabling the report.

Clause 15 provides that to the extent that the Attorney-General accepts the recommendations of the Tribunal the Attorney-General must issue a certificate that the salary and allowances of the judiciary be increased accordingly. In issuing the certificate, the Attorney-General must set out the date in which the alteration is to come into effect.

PART 4—AMENDMENT OF CERTAIN ACTS

Clause 16 substitutes a new section 80A (1) (a) in the **Constitution Act 1975**. The effect of this amendment is to raise the age at which a judge of the Supreme Court may elect to be become a reserve judge from 60 years of age to 65 years. This amendment will only affect those judges appointed to the Supreme Court after the commencement of this provision. The amendment also enables judges of 20 years standing to become reserve judges.

Clause 17 amends section 82 of the **Constitution Act 1975**. Sub-clause (1) (a) sets out the salary of the Chief Justice of the Supreme Court current to the time this Part commences. Sub-clause (1) (b) replaces a reference to the procedure by which the salary of the Chief Justice is currently increased with a reference to the procedure contained in the **Judicial Remuneration Tribunal Act 1994** (the new Act). Sub-clause (2) amends sections 82 (1A) and (1B), which have been inserted by the **Constitution (Court of Appeal) Act 1994**, to replace a reference to the procedure by which the judges of the Court of Appeal receive salary adjustments with a reference to the procedure set out in the new Act. Sub-clause (3) (a) sets out the salary of the puisne judges of the Supreme Court current to the time this Part commences. Sub-clause (3) (b) replaces a reference to the procedure by which the puisne judges currently receive salary increases with a reference to the procedure set out in the new Act. Sub-clause (4) substitutes a new sub-section 82 (3) to provide that judges of the Supreme Court must be paid allowances to which they are entitled and that the Attorney-General may certify adjustments to these allowances in accordance with the new Act. By replacing sub-section (3) the new Act breaks the salary nexus between federal court judges and Victorian Supreme Court judges. Sub-clause (5) (a) repeals sub-sections 82 (4), (5), (6) and (6A) of the **Constitution Act 1975** to remove references to the procedure by which the salaries of Supreme Court judges are currently increased. Sub-clause 5 (b) amends sub-section 82 (6B) to provide that, like salaries, the aggregate value of allowances may not be reduced. Sub-clause (5) (c) amends sub-section 82 (7) to ensure that judicial allowances are paid out of the Consolidated Fund through special appropriations.

Clause 18 amends section 83 of the **Constitution Act 1975**. Sub-clause 18 (1) deals with the pension eligibility of Supreme Court judges. Judges appointed to the Supreme Court before this section commences will continue to be required to attain the age of 60 years and serve ten years in office before they are eligible for a pension. Judges appointed to the Supreme Court after this section commences will be required to attain the age of 65 years and serve ten years in office before they are eligible for a pension. Alternatively, a judge who serves in office for 20 years will be entitled to a full pension regardless of the age at which they retire. Sub-clause 18 (2) makes provision for pension entitlements for those judges appointed over the age of 60 years. A judge appointed over the age of 60 years will be entitled to a pro rata pension provided he or she remains in office until the age of 70 years. A judge appointed over the age of 60 years who becomes afflicted with some permanent incapacity before reaching the age of 70 years will receive a pension entitlement equivalent to what they would have received had they remained in office until the age of 70 years.

Clause 19 inserts a new section 83A in the **Constitution Act 1975**. This section sets out the current salaries of the masters of the Supreme Court and provides that the salaries may be raised in accordance with the procedures set out in the new Act. It also provides that masters of the Supreme Court must be paid allowances to which they are entitled and that the Attorney-General may certify adjustments to these allowances in accordance with the new Act. Sub-section 83A (3) provides that both salaries and the aggregate value of the allowances can not be reduced. Sub-section 83A (4) provides that salaries and allowances payable to masters are paid out of the Consolidated Fund through special appropriation. Sub-section 83A (5) defines the terms “General Master” and “Specialist Master”.

Clause 20 deals with the salary and allowances of masters of the Supreme Court as well as their pension entitlement. Sub-clause 20 (1) amends section 104 (4) (a) of the **Supreme Court Act 1986** to provide that masters’ salaries and allowances are payable in

accordance with section 83A of the **Constitution Act 1975**. Previously the remuneration of masters was fixed by the Governor in Council. Sub-clause 20 (2) deals with pension eligibility of masters. Masters appointed to the Supreme Court before this section commences will continue to be required to attain the age of 60 years and serve ten years in office before they are eligible for a pension. Masters appointed after this section commences will be required to attain the age of 65 years and serve ten years in office before they are eligible for a pension. Alternatively, a master who serves in office for 20 years will be entitled to a full pension regardless of the age at which he or she retires. Clause 20 (3) makes provision for pension entitlements for masters appointed over the age of 60 years. A master appointed over the age of 60 years is entitled to a pro rata pension provided he or she remains in office until the age of 70 years. A master appointed over the age of 60 years who becomes afflicted with some permanent incapacity before reaching the age of 70 years will receive a pension entitlement equivalent to what they would have received had they remained in office until the age of 70 years.

Clause 21 amends section 10 of the **County Court Act 1958**. Sub-clause 21 (1) (a) sets out the current salary of the Chief Judge of the County Court current to the day this Part commences. Sub-clause (1) (b) replaces a reference to the procedure by which the salary of the Chief Judge is currently increased with a reference to the procedure contained in the new Act. Sub-clause (2) (a) sets out the salary of the judges of the County Court current to the day this Part commences. Sub-clause (2) (b) replaces a reference to the procedure by which the County Court judges currently receive salary increases with a reference to the procedure set out in the new Act. Sub-clause (3) substitutes a new sub-section 10 (3) to provide that judges of the County Court must be paid allowances to which they are entitled and that the Attorney-General may certify adjustments to these allowances in accordance with the new Act. Sub-clause (4) (a) repeals sub-sections 10 (4), (5), (6) and (6A) which set out the procedure by which the salaries of County Court judges are currently increased. Sub-clause 4 (b) amends sub-section 10 (6B) to provide that like salaries, the aggregate value of allowances can not be reduced. Sub-clause (5) (c) amends sub-section 10 (7) to ensure that allowances payable to County Court judges are paid out of the Consolidated Fund through special appropriations.

Clause 22 substitutes a new section 13A (1) (a) in the **County Court Act 1975**. The effect of this amendment is to raise the age at which a judge of the County Court may elect to become a reserve judge from 60 years to 65 years. This amendment will only affect those judges appointed to the County Court after the commencement of this provision. The amendment also allows judges of 20 years standing to become reserve judges.

Clause 23 substitutes new sections 14 (2) (a)–(d) in the **County Court Act 1958** deals with the pension eligibility of County Court judges. Judges appointed to the County Court before this section commences will continue to be required to attain the age of 60 years and serve ten years in office before they are eligible for a pension. Judges appointed after the commencement of this section will be required to attain the age of 65 years and serve ten years in office before they are eligible for a pension. Alternatively, a judge who serves in office for 20 years will be entitled to a full pension regardless of the age at which they retire. Sub-section 14 (2) (d) is a saving provision. This is necessary because under section 14 of the **County Court Act 1958** a pension entitlement following retirement on incapacity is not subject to the condition of appointment before the age of 60 years. This can be contrasted to section 83 (1) (b) of the **Constitution Act 1975**. It is necessary to alter this arrangement to make the change for pro rata pensions for judges who are appointed at age 60 years or later.

In making this change it is necessary to preserve the rights of serving judges appointed over the age of 60 years. Sub-clause 23 (2) makes provision for pension entitlements for those judges appointed over the age of 60 years. A judge appointed over the age of 60 years is entitled to a pro rata pension provided he or she remains in office until the age of 70 years. A judge appointed over the age of 60 years who becomes afflicted with some permanent incapacity before reaching the age of 70 years will receive a pension entitlement equivalent to what they would have received had they remained in office until the age of 70 years.

Clause 24 amends section 17A (4) (a) of the **County Court Act 1958** to provide that Masters' salaries and allowances are payable in accordance with section 17AA of the **County Court Act 1958**. Previously the remuneration of masters was fixed by the Governor in Council.

Clause 25 inserts a new section 17AA in the **County Court Act 1958**. Sub-section (1) sets out the current salary of the masters of the County Court and provides that the salary may be raised in accordance with the procedure set out in the new Act. Sub-section (2) provides that masters of the County Court must be paid allowances to which they are entitled and that the Attorney-General may certify adjustments to these allowances in accordance with the new Act. Sub-section (3) provides that both salaries and the aggregate value of the allowances can not be reduced. Sub-section (4) provides that salaries and allowances payable to masters are paid out of the Consolidated Fund through special appropriation.

Clause 26 amends section 17B of the **County Court Act 1958** and deals with the pension eligibility of masters. A master appointed to the County Court before this section commences will continue to be required to attain the age of 60 years and serve ten years in office before he or she is eligible for a pension. A master appointed after the commencement of this section will be required to attain the age of 65 years and serve ten years in office before he or she is eligible for a pension. Alternatively, a master who serves in office for 20 years will be entitled to a full pension regardless of the age at which they retire. *Clause 26 (2)* makes provision for pension entitlements for masters appointed over the age of 60 years. A master appointed over the age of 60 years is entitled to a pro rata pension provided he or she remains in office until the age of 70 years. A master appointed over the age of 60 years who becomes afflicted with some permanent incapacity before reaching the age of 70 years will receive a pension entitlement equivalent to what they would have received had they remained in office until the age of 70 years.

Clause 27 amends Schedule 1 of the **Magistrates' Court Act 1989** to set out the current salaries of the Chief Magistrate, Deputy Chief Magistrates and magistrates. This clause also provides salaries are to be adjusted in accordance with the new Act. *Clause 27 (d)* substitutes a new clause 4 to provide that magistrates must be paid allowances to which they are entitled and that the Attorney-General may certify adjustments to these allowances in accordance with the new Act. *Sub-clause 27 (e)* repeals clauses 5, 6, 7 and 8 which set out the current procedure for adjusting the salary of magistrates. *Sub-clause 27 (f)* amends clause 9 of the Schedule to provide that like salaries, the aggregate value of allowances can not be reduced. *Clause 27 (g)* provides that allowances payable to magistrates are paid out of the Consolidated Fund through special appropriation.

Clause 28 amends section 9 of the **Coroners Act 1985** to provide that a coroner is entitled to be paid the salary as set out in the instrument of appointment or at such higher rate as is certified by the Attorney-General in accordance with the procedure set out in the new Act together with allowances as specified.

Clause 29 amends the **Constitution (Court of Appeal) Act 1994** and adjusts the salary of the President and Judges of Appeal.