

STATUTORY AND OTHER OFFICES REMUNERATION ACT 1975

REPORT AND DETERMINATION PURSUANT TO SECTION 14 OF THE ACT

REPORT:

1. On 3 June 2009, the Minister for Public Sector Reform, the Hon John Robertson MLC, directed the Statutory and Other Offices Remuneration Tribunal (the Tribunal), pursuant to section 14(1) of the *Statutory and Other Offices Remuneration Act 1975* (SOOR Act), to make a determination concerning the remuneration to be paid to the positions of the President and Deputy President of the Mental Health Review Tribunal (MHRT). The President and Deputy Presidents are referred to in this determination as Presidential members.
2. For remuneration purposes the offices of the President and Deputy President of the MHRT are listed in Schedule 2 of the SOOR Act. The President currently receives remuneration of \$250,125 per annum and the Deputy President \$220,260 per annum. While the Tribunal currently determines the full time remuneration levels for these positions, Schedule 2 provides for the Tribunal to also determine remuneration for both the President and Deputy President should the roles be undertaken on a part time basis. Given the changes in the role and structure of the MHRT the Tribunal will determine both full and part time rates.
3. The MHRT is constituted under the *Mental Health Act 2007*. Its functions traditionally have included the review of the care, treatment and detention of persons subject to the *Mental Health Act 2007* and the *Mental Health (Criminal Procedure) Act 1990*.
4. The Tribunal previously considered a request to review the remuneration payable to the President and the Deputy Presidents of the MHRT during its 2007 annual review. In the 2007 annual Report and Determination for the Public Office Holders Group the Tribunal indicated that it was prepared to undertake a special determination to review the remuneration that was paid to the President and Deputy President of the MHRT “...*arising from the new Mental Health Act 2007 [not yet proclaimed] which will place additional*

administrative workload on the President and full time Deputy Presidents. In addition there is currently a review of the forensic provisions of the Mental Health Act and the Mental Health [Criminal procedure] Act 1990 which may impose significant additional responsibilities on the president and full time Deputy Presidents” The *Mental Health Act 2007* commenced on 16 November 2007. The outcome of the review of forensic provisions referred to above resulted in further legislative change.

5. On 1 March 2009, the *Mental Health Legislation Amendment (Forensic Provisions) Act 2008* commenced. This Act renames the *Mental Health (Criminal Procedure) Act* as the *Mental Health (Forensic Provisions) Act 1990* and made a number of significant changes to that Act and the *Mental Health Act 2007*. The Minister for Health advised that these amendments will increase the functions and responsibilities of the President and Deputy President of the MHRT.
6. These amendments have given the MHRT a new and wide range of responsibilities for making decisions about the care, treatment, detention and release of forensic patients. The MHRT must also exercise , in the sensitive area of the detention, care and treatment of persons mentally ill or unfit charged with a serious crime, the functions formerly the responsibility of the Minister and the Governor acting on the advice of the Executive Council, in respect of those matters dealing with the release of forensics patients. The new legislation places these and other responsibilities within the scope of the MHRT's Forensics Panel.
7. In respect of release of patients the *Mental Health (Forensic Provisions) Act 1990* now requires that when dealing with matters of patient release the Forensic Panel must be constituted with at least one member, being either the President or a Deputy President, who is the holder or former holder of judicial office. To reflect this new requirement the *Mental Health Act 2007* was amended to expand the qualifications for the President and Deputy President to include a person who holds or has held the office of Supreme, District or Federal Court Judge.

8. A President or Deputy President who is not a holder or former holder of judicial office may also preside over the Forensic Panel except when the Panel considers matters dealing with patient release. In practice Presidential Members, regardless of judicial experience, preside over a range of cases in both the Forensic and Civil Divisions of the Mental Health Review Tribunal.
9. The Tribunal has had regard to the additional qualification requirements associated with Presidential Members hearing forensic release matters. The Tribunal has also had regard to the level of judgement and responsibility exercised by the President and all Deputy Presidents in dealing with cases of both a forensic and civil nature. The Tribunal considers that all Presidential members would be expected to exercise the same level of legal knowledge and judgement as well as the significant issues relating to the public interest when considering all matters on which they sit. Particularly when dealing with Forensic matters. On that basis, and having regard to the additional responsibilities resulting from abovementioned legislative changes, the Tribunal finds that an increase in remuneration is warranted for all Presidential Members.
10. As these roles may also be undertaken on a part time basis, the Tribunal has determined daily rates applicable to these positions. The daily rate is based on the respective annual equivalent of the full time office holders.
11. Material presented to the Tribunal from the President of the MHRT asked the Tribunal to give consideration to other conditions of employment such as leave, car allowance etc. Conditions of employment, other than salary, are the responsibility of the Minister. As such, the Tribunal does not have jurisdiction to intervene in that process.
12. As the amendments to the *Mental Health Act 2007* commenced on 1 March 2009 the Tribunal determines that the new fee structure will come into effect from that date.

DETERMINATION:

Pursuant to section 14 of the *Statutory and Other Offices Remuneration Act 1975* the Tribunal determines that the following rates of remuneration are payable to the President and Deputy Presidents of the Mental Health Review Tribunal with effect from 1 March 2009

- Full Time President \$307,750 per annum.
- Full Time Deputy President \$269,250 per annum

- Part Time President \$1,278 per day.
- Part Time Deputy President \$1,118 per day

**Statutory and Other Offices
Remuneration Tribunal**

Chris Raper

14 August 2009