

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

JUDICIAL AND STATUTORY OFFICERS REMUNERATION LEGISLATION

AMENDMENT BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industrial
Relations, the Hon Peter Morris)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE
HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED

**JUDICIAL AND STATUTORY OFFICERS REMUNERATION
LEGISLATION AMENDMENT BILL 1989**

OUTLINE

The Judicial and Statutory Officers Remuneration Legislation Amendment Bill 1989 implements the June 1989 recommendation by the members of the Remuneration Tribunal that the remuneration payable to federal and Australian Capital Territory Judges and some statutory office holders should be increased. The Bill also implements a decision announced by the Government on 13 July 1989 that the remuneration of judges of the Family Court of Australia should be brought into line with the remuneration payable to Judges of the Federal Court of Australia. In addition, the Bill amends the Remuneration Tribunal Act to give the Tribunal a power to determine judicial salaries subject to the usual disallowance procedure by either House of the Parliament.

FINANCIAL IMPACT STATEMENT

The proposed amendments will affect both the remuneration of serving judges and the pensions payable to retired Judges. It is estimated that this will involve additional expenditure of about \$3.7 million p.a.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1: Short title

1. This is a standard provision providing for the short title of the legislation.

Clause 2: Commencement

2. The effect of this clause will be that, with one exception, the increases in salaries and allowances which are to be effected by the Bill will be backdated to 1 March 1989. The exception relates to an expenses of office allowance of \$673 per annum recommended by the Remuneration Tribunal in 1988 for the Federal Court Judge who holds an appointment as Aboriginal Land Commissioner. That allowance is made payable from the date of the Judge's appointment as Aboriginal Land Commissioner, 25 May 1988. The amendment to the Remuneration Tribunal Act to enable the Tribunal to make determinations of judges' salaries, subject to Parliamentary disallowance, is to commence on the date the Act receives the Royal Assent. Clause 4, which relates to future Tribunal determinations, is also to commence on the date of Royal Assent.

PART 2 - AMENDMENTS OF THE JUDICIAL AND STATUTORY
OFFICERS (REMUNERATION AND ALLOWANCES) ACT 1984

Clause 3: Principal Act

3. This clause defines "Principal Act" in this Part to be the Judicial and Statutory Officers (Remuneration and Allowances) Act 1984.

Clause 4: Act subject to Remuneration Tribunal Act

4. This clause has the effect that a future determination of the Remuneration Tribunal will override the salary levels set out in the Judicial and Statutory Officers (Remuneration and Allowances) Act 1984 as amended by this Bill.

Clause 5: Salaries

5. Paragraph 5(1)(a) amends the Principal Act so as to vary the remuneration payable to Judges and to award National Wage Case increases to full time Judicial Registrars and the Master of the ACT Supreme Court. The new salaries are set out in the amended Schedule to the Principal Act. In line with a recommendation by the members of the Remuneration Tribunal, the new salaries incorporate the annual expenses of office allowance and the allowances recommended by the Tribunal in respect of those Federal Court Judges who hold another office.

6. This clause also omits sub-section (2) with the result that National Wage Case decisions will only flow through to Judges if the Remuneration Tribunal so determines. This will place Judges in the same position as holders of other public offices.

7. Paragraphs 5(1)(b)-(h) are consequential upon the decision to incorporate the expenses of office allowance into salary.

8. Paragraph 5(i)(j) amends the Principal Act to increase the expenses of office allowance payable to members of the Inter-State Commission, as recommended by the Remuneration Tribunal in Report Number 4 of 1988.

9. Subsections 5(2), (3) and (5) relate to Judges who hold Commissions on both the Family Court of Australia and the Family Court of Western Australia. Because the relevant State salary is higher than the corresponding federal salary, those Judges are currently receiving a higher salary than the other Judges on the Family Court of Australia. After the enactment of this Bill, however, the new federal salary will exceed the State salary. Subsections 5(2), (3) and (5) ensure that, in respect of the period from 1 March 1989 (the backdated commencement for the new federal salary), the Judges with dual Commissions will receive the higher federal salary but that there is no entitlement to two salaries.

Clauses 6 and 7: Allowances

10. These clauses increase certain allowances payable to the Justices of the High Court. Clause 6 deals with overnight travelling allowances. Clause 7 deals with the allowances payable to a High Court Justice who resides in a location other than Canberra.

Clause 8: Travelling allowances payable to holders of certain offices

11. This clause amends the travelling allowances payable to Judges and Presidential members of the Australian Industrial Relations Commission.

Clause 8A: Travelling allowances payable to members of the Inter-State Commission

12. This clause increases the travelling allowances payable to the President and Members of the Inter-State Commission, as recommended by the Remuneration Tribunal in Report Number 4 of 1988.

Clause 9: Schedule

13. This clause replaces the Schedule to the Principal Act with one which sets out the new rates of salary for Judges.

PART 3 - AMENDMENTS OF THE REMUNERATION TRIBUNAL ACT 1973

Clause 10: Principal Act

14. This clause defines "Principal Act" in this Part to be the Remuneration Tribunal Act 1973.

Clause 11: Interpretation

15. This clause removes the offices of Judge and offices of persons who, by virtue of an Act, have the same status as a Judge from the list of offices that are outside the definition of a 'public office'. The effect is that such offices are brought within paragraph 4(a) of the Remuneration Tribunal Act as offices in respect of which the Tribunal may make a determination. As is the case with other offices, the Tribunal's power to make determinations is subject to disallowance by either House of the Parliament.

Clause 12: Inquiries and Reports by Tribunal

16. This clause removes the offices of Judge and offices of persons with the same status as a Judge from the Tribunal's reporting power. With the inclusion of these offices in the Tribunal's power to make determinations, it is necessary to remove them from the offices covered by s.6.

Clause 12A: Inquiries and determinations by Tribunal

17. Clause 11 of the Bill has the effect of empowering the Remuneration Tribunal to make determinations in relation to remuneration of judges and members of the Inter-State Commission (currently the Tribunal is only able to make recommendations in respect of such remuneration). Under subsection 7(5) of the Remuneration Tribunal Act 1973, determinations by the Tribunal take effect on such date as the Tribunal specifies in the determination. Subsection 7(8) of that Act provides that Parliament may disallow a determination. A disallowance may take effect either before or after the determination has come into operation.

18. Subsections 72(iii) and 103(iii) of the Constitution provide, among other things, that the remuneration payable to Justices of the High Court and of the other Courts created by the Parliament and members of the Inter-State Commission shall not be diminished during their continuance in office. Where such remuneration is increased by a Remuneration Tribunal determination which is then subject to the possibility of subsequent disallowance, such a disallowance would have the effect of diminishing that remuneration during continuance in office.

19. This amendment is intended to ensure that a determination by the Remuneration Tribunal will not, so far as it relates to federal or Territory Judges or persons having the status of such a judge, come into operation until after the expiration of the period allowed by section 7 of the Remuneration Tribunal Act for the possible disallowance of that determination by the Parliament (proposed new subsection (5C)).

20. After the expiration of the disallowance period and if the determination is not disallowed the determination takes effect and the judges and persons having the status of judges covered by it will be entitled to receive the remuneration they would have received had the operation of the determination not been deferred and it had come into operation on the date set in the determination (proposed new subsection (5E)).

21. By virtue of the operation of subsection 19(3) of the Inter-State Commission Act 1974, the changes made to the Remuneration Tribunal Act by clause 11 of the Bill will also apply to the remuneration of the members of the Inter-State Commission.

Clause 13: Determination of certain salaries not affected by amendments

22. This clause ensures that the salaries applicable to the offices of Master of the Supreme Court of the Australian Capital Territory and Judicial Registrar of the Family Court of Australia

will not be altered when judicial remuneration is increased upon the enactment of the Bill. It is intended that the salaries of those offices should be the subject of further consideration by the Remuneration Tribunal in the light of the increases in judicial remuneration.

