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An Act to amend the Remuneration Tribunal Act 2005 to provide for the determination of judges' remuneration and expenses.

The Parliament of the Cook Islands enacts as follows—

(29 June 2021)

- Title**
This Act is the Remuneration Tribunal Amendment Act 2021.
- Commencement**
This Act comes into force on the day after the date that it is assented to by the Queen's Representative.

3 Principal Act

This Act amends the Remuneration Tribunal Act 2005.

4 Long Title replaced

Replace the Long Title with:

“An Act to provide for the establishment and operation of a Remuneration Tribunal and the Tribunal’s role in—

“(a) making recommendations on the remuneration of holders of certain public offices; and

“(b) making determinations on remuneration of the Chief Justice and other judges of the High Court, and judges of the Court of Appeal”.

5 Section 2 amended (Interpretation)

(1) In section 2, insert in their appropriate alphabetical order:

““Judge” means the Chief Justice and other judges of the High Court, and judges of the Court of Appeal;”

““Public Service” means the Public Service as defined by section 23 of the Public Service Act 2009;”

(2) In section 2, replace the definition of “State Service” with:

“State Service” means a State Service as defined by section 50 of the Public Service Act 2009.”

6 Section 5 amended (Membership of Tribunal)

Replace section 5(5) with:

“(5) A person must not be appointed as a member of the Tribunal if that person is—

“(a) the holder of a public office; or

“(b) employed in the Public Service; or

“(c) employed by a Crown agency or State Service.”

7 Section 13 amended (Functions of Tribunal)

(1) After section 13(1)(a), insert:

“(aa) consider and determine the remuneration and types of expenses payable to judges; and”.

(2) After section 13(2), insert:

“(3) In carrying out its functions under subsection (1)(aa), the Tribunal may make determinations on remuneration (including daily rates, hourly rates, and allowances) and types of expenses payable to judges.

“(4) A determination may specify different amounts of remuneration and types of expenses for the Chief Justice, High Court judges and Court of Appeal judges.”

8 Section 15 amended (Recommendations of the Tribunal)

In section 15(1), after “recommendation”, insert “of the Tribunal under section 13(1)(a).”.

9 New section 15A inserted (Implementation of Tribunal determinations on judges’ remuneration and expenses)

After section 15 insert:

“15A Implementation of Tribunal determinations on judges’ remuneration and expenses

- “(1) The Tribunal must, promptly after making a determination on judges’ remuneration or expenses, advise the Minister of the determination.
- “(2) The Minister must then, promptly after the date on which the Minister receives the determination, present it to the Queen’s Representative so that it can be implemented by the making of an Order in Executive Council.
- “(3) A determination on judges’ remuneration or expenses takes effect on—
- “(a) the date specified in the Order in Executive Council (which may be a date before the Order in Executive Council is made); or
- “(b) the date the Order in Executive Council is made, if no date is specified in the Order.”

10 Section 16 replaced (Release of determinations to Government Statisticians)

Replace section 16 with:

“16 Release of information to Government Statistician

The Tribunal must release to the Government Statistician information that the Government Statistician requires for statistical purposes under the Statistics Act 2015-16.”

11 Section 17 amended (Obligation of Tribunal to consult)

- (1) Number the existing content of section 17 as subsection (1).
- (2) Insert as section 17(2):
- “(2) Before making any determination under section 13(1)(aa), the Tribunal must consult with the Collector of Inland Revenue about the taxation consequences of the proposed determination.”

12 Section 18 amended (Criteria for Tribunal)

- (1) Number the existing content of section 18 as subsection (1).
- (2) Insert as section 18(2):
- “(2) In making a determination under section 13(1)(aa), the Tribunal must have regard in particular to—
- “(a) the need to achieve and maintain fair relativity with the levels of remuneration received elsewhere; and
- “(b) the need to be fair both—
- “(i) to the judge or type of judge whose remuneration is being determined; and
- “(ii) to the taxpayer; and
- “(c) the state of—
- “(i) the Cook Islands economy; and
- “(ii) Government finances; and
- “(d) the need to recruit and retain competent persons; and
- “(e) the requirements of the judicial position concerned; and
- “(f) the conditions enjoyed by the judge or judges whose remuneration is being determined and those conditions enjoyed by the persons or members of the group of persons whose remuneration and conditions are, in the opinion of the Tribunal,

comparable with the judge or judges whose remuneration is being determined.”

13 Section 19 amended (Frequency of adjustments)

After section 19(1), insert:

“(2) The Tribunal must meet to consider and make determinations on judges’ remuneration and expenses at intervals of not more than 3 years.”

14 Section 20 amended (Submissions to Tribunal)

(1) In section 20(2), after “recommendation”, insert “under section 13(1)(a)”.

(2) After section 20(2), insert:

“(3) Where the Tribunal is considering whether to make a determination under section 13(1)(aa) in relation to the remuneration of any judge or type of judge, the following persons and organisations are entitled to present submissions to the Tribunal, at a time and in a manner to be determined by the Tribunal:

“(a) the Ministry of Justice:

“(b) the Ministry of Finance and Economic Management:

“(c) any judge or judges, or their representative.”

15 Section 21 replaced (Remuneration of existing holder not to be reduced)

Replace section 21 with:

“21 Remuneration of existing holder not to be reduced

“(1) Subsection (2) applies where a position is subject to a recommendation of the Tribunal under section 13(1)(a).

“(2) The Tribunal must not recommend a salary or allowance for the position at a rate that is lower than that which is being lawfully received by the holder of that position.

“(3) Subsection (4) applies where the Tribunal is determining the remuneration and type of expenses payable to a type of judge under section 13(1)(aa).

“(4) The Tribunal must not determine remuneration that is lower than that which is being lawfully received by that type of judge.

“(5) Subsection (4) is subject to Article 55(2) of the Constitution.”

16 Schedule 1 amended

In Schedule 1 repeal the heading and substitute:

“Salaries and allowances to which section 13(1)(a) applies”.

17 Repeals

The following Acts are repealed:

(a) Salaries of Judges Act 1969:

(b) Salaries of Judges Amendment Act 1971-72:

(c) Salaries of Judges Amendment Act 1973:

(d) Salaries of Judges Amendment Act 1975.

18 Revocation

The Judicial Salaries Order 1982 is revoked.

19 Transitional provision

The rates of remuneration that judges receive for their services and the types of expenses paid to them immediately before this Act commences continue to apply until an Order in Executive Council under section 15A(3) takes effect.

20 Savings provision

Nothing in this Act applies to a determination or recommendation made by the Remuneration Tribunal before the commencement of this Act.

This Act is administered by the Ministry of Finance and Economic Management.

Printed under the authority of the Cook Islands Parliament—2021.
