

SENTENCE ADMINISTRATION BOARD OF THE AUSTRALIAN CAPITAL TERRITORY

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8 September 2016

The Chair
ACT Remuneration Tribunal
PO Box 964
Civic Square ACT 2608

Dear Chair

This submission is made on behalf of the non-judicial members of the Sentence Administration Board (the board) in relation to the Remuneration Tribunal's (the tribunal) annual review of remuneration and allowances for part-time holders of statutory offices. This submission requests a review of the remuneration paid to the board's non-judicial members.

With the enactment of the *Crimes (Sentence Administration) Act 2005* (the CSA), the tribunal determined a *per diem* rate as the basis of remunerating the non-judicial members. The board (as presently constituted) is not aware of the information that informed any aspect of the tribunal's decision.

The board submits that circumstances exist that require an increase in the *per diem* payment at a rate that is higher than the normal general increase. These circumstances are:

- An increase in preparation time;
- A change in legislation which will require members to be more available than they have been before; and
- A general increase in the length of hearings.

The board notes and accepts that remuneration for its members "is not intended to replace other employment or salary for office holders."¹ However, this does not mean that this principle requires the tribunal to ignore the statutory responsibilities of members and the time that is required for them to properly undertake them to ensure that they are properly remunerated for their time.

Role of the non-judicial members

The board considers as much information as is possible that is relevant to the function it performs. The material includes reports from ACT Corrective Services (ACTCS) which includes information on the degree to which a parole applicant has addressed factors that contribute to offending behaviour through participation in rehabilitative programs, and the degree to which risk has been mitigated, or otherwise, a

¹ Determination 12 of 2015 of the Remuneration Tribunal (ACT), page 1.

consideration of offenders' criminal histories and responses to community based orders, the comments made by the judge or magistrate when sentencing offenders, victims' submissions, medical reports and submissions made by or on behalf of the offenders.

Members consider the issues presented by each case and questions they will ask offenders during a hearing.

Most of this material is provided to the board on the Friday before meetings, which are normally held on Tuesdays, however, it is not uncommon for more material to be provided the day before the hearing. This means that preparation cannot necessarily be undertaken in one session.

When making a decision to release an offender on parole, the board considers the risk that offenders might commit further offences if they are released into the community. Parole operates to reduce the risk that offenders will reoffend by providing a supervised transition into the community and by ensuring that offenders continue to address the factors that may lead to reoffending behaviour.

The non-judicial members bring a focus on and a better sense of community expectations to this part of the criminal justice system in the board's weighing of the factors to ensure the protection of the community and the rehabilitation of offenders.

A non-judicial member's 'vote' or voice at a meeting is equal to that of a judicial member.

The board convenes to meet as follows:

- Every Tuesday, a *divisional meeting* is held. A quorum for these meetings is 3, consisting of the presiding judicial member and 2 non-judicial members
- *Ad hoc extra divisional meetings*, determined by workload
- *Extraordinary meetings* are occasionally convened by telephone or email
- At least 3 *full board meetings* each year, which brings together every member of the board to address issues and education

Availability of non-judicial members

In February 2016, intensive correction orders (ICOs) were introduced as a new sentencing option by the *Crimes (Sentencing and Restorative Justice) Amendment Act 2016*.

This Act amended the CSA giving the board responsibility to determine whether an offender breached the conditions of an ICO and to take action as allowed by the legislation, which it determines in the

circumstances is appropriate. This may involve a suspension or cancellation of an offender's ICO which activates a period of full-time imprisonment.

The explanatory statement supporting ICOs states that the board "is provided with a power to act quickly and innovatively ..."²

In discussions between the board's then judicial officers, officers of ACTCS and officers of the Justice and Community Safety Directorate (JACSD) suggested that the expectation that the board will act "quickly" may require the board to meet more frequently.

Currently, the board meets once a week. The number of alleged ICO breaches that have been referred to the board have increased steadily since June 2016 but the referrals are yet to reach a level that requires an increase in the frequency of its meetings. It is envisaged that if numbers do reach that level the board will meet twice a week.

The board asks that the tribunal acknowledge that an increase in meetings has an impact on the board's members as it requires them to be available to meet quickly as required. In other words, members will be asked to be on standby in case their services are required or to be more available than is currently required. This has a disruptive effect on their normal daily activities.

The board submits that this expectation can be met within the hourly rate or by the payment of a retainer.

The board acknowledges that their actual attendance at a meeting is acknowledged and remunerated by the *per diem* payment.

Increase in hearing times

There is a demonstrable change in the temporal demands of the role of a non-judicial member. When the current Chair joined the board in 2010, a divisional meeting usually commenced at 1 pm and concluded between 4 30 pm and 5 pm. Indeed, it was possible on the day of a meeting to undertake the necessary preparatory reading and attend the meeting. The board submits that that is no longer possible.

In his submissions to the tribunal dated 12 August 2012, the former Chair of the board, Mr Delaney, alluded to the board's increased workloads that have required a change to the board's sitting pattern. Meetings now commence at 9 30 am, if not earlier, and generally conclude around 3 30 pm. The board has a 30 minute break for lunch although this is not always possible. Neither is it possible to guarantee a mid-morning break. This is in contrast to the sitting patterns of the ACT's courts.

Occasionally, extra meetings are scheduled to manage the workload. In 2015 -2016, the board convened at least 4 extra meetings. The non-judicial members are, of course, remunerated for these extra meetings by a *per diem* payment.

² *Crimes (Sentencing and Restorative Justice) Amendment Act 2016*, Explanatory Statement, page 2

However, the increase in meeting times is shown by taking a sample from 1 February 2016 to 30 June 2016 and contrasting it with the same period in 2006 and 2009. This is shown in the following table:

Year	Total meetings ³	Extra meetings	Total meeting hours	Average meeting hours	Median meeting hours	<i>Per diem</i> rate	Simple Hourly rate	Actual hourly rate
2006	13	NK	41.8	3.2	3.5	\$550	\$91	\$106
2009	20	NK	60.4	3.0	2.9	\$610	\$102	\$122
2016	25	4	148.6	5.9	6.5	\$720	\$120	\$91

Notes:

The *simple hourly rate* is calculated by dividing the *per diem* rate by 6 hours, which was the time spent at a notional hearing of the board, including 4 hours meeting time and 2 hours preparation time.

The *actual hourly rate* is calculated by dividing the *per diem* rate by the time spent at meetings (average meeting hours) and 2 hours preparation time.

These calculations do not take into account the realistic or actual times spent preparing for the meetings.

The board submits that the evidence indicates a real and significant diminution of the underlying value of the work of the non-judicial members.

Increase in preparation time and travel time

The non-judicial members have reported for a number of years that they regularly spend more than 2 hours preparing for divisional meetings.

The current determination provides:

(c) the daily fee for a formal meeting includes a component to cover normal preparation time, but where the chairperson of the authority considers it appropriate that a period of preparation time beyond this warrants recognition, then the chairperson may determine that payment in accordance with the scheduled fee shall be payable for such periods as “business of the authority”.

For some time, a reasonable time for preparation (or “normal preparation time” is regarded as 2 hours. It is not known by whom, when or how this was determined.

³ This includes weekly divisional meetings, ad hoc full board meetings and extra meetings.

The practical effect of this is that non-judicial members are entitled to payments in accordance with clause 3.

The following points, in the board's submission, favours making specific allowance for preparation:

- It is preferable from a budgetary perspective that regular and recurring preparatory work is recognised in the determination;
- The current arrangement creates an uncertain budgetary position;
- The claims for extra payment for preparatory work create extra processing work in ACTCS and Shared Services and increase the possibility for errors.⁴

The reality is that the amount of time spent on preparation varies from individual to individual. The board will be able to provide data that demonstrates the time members expend preparing for time. Preparation time is important to the role the non-judicial members play, each having an equal vote on decisions that involve the liberty of offenders, including their re-incarceration. These are decisions are not made lightly.

The board suggests that the tribunal determine a standard period 4 hours of preparatory time for a divisional meeting is an appropriate and reasonable time for preparation and that extra claims will no longer be possible.

Conclusion

The board submits that a member can expect an average divisional meeting to involve -

Hearing time	6.5 hours
Preparation time	4.0 hours
Travelling time	1.0 hour
Total	11.5 hours

The board submits that the current *per diem* payment does not adequately reflect the actual time spent by the non-judicial members in performing their roles.

The board also submits that the current arrangements do not reflect other matters including:

- Increased parking costs
- Standby time

As chair of the board, I would be pleased to meet with the tribunal to expand on these submissions and discuss the information provided here or any other information the tribunal might require in considering this submission.

⁴ Processing errors and delay take time to correct. They happen.

Although some of the matters raised in this submission apply to the judicial members, I do not propose to make any submissions about the impact on the payments currently made to them at this time.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Chilcott', with a horizontal line underneath the name.

Michael Chilcott
Chair
Sentence Administration Board