



Ms Sandra Lambert AM
Chair
ACT Remuneration Tribunal
PO Box 964,
CANBERRA ACT 2608

Dear Ms Lambert

RE: Submission from the Aboriginal and Torres Strait Islander Elected Body seeking a review of remuneration

Thank you for meeting with Lisa Charles and myself regarding the ACT Aboriginal and Torres Strait Islander Elected Body (Elected Body) submission.

As discussed, I would like to provide the Remuneration Tribunal with an overview of the current arrangements that are in place to support the Elected Body participation in the COAG Closing the Gap Refresh, as the ACT representative of the National Coalition of Aboriginal and Torres Strait Islander Peak Organisations (Coalition of Peaks). I am also writing to support the Elected Body's submission to review the remuneration of the Chair, Deputy Chair and members.

In March 2019 the Council of Australian Governments (COAG) entered into a formal 10 year Partnership Agreement with the Coalition of Peaks to design, implement, monitor and evaluation of the Closing the Gap framework. A Joint Council on Closing the Gap has been established to provide oversight and accountability of this work and the Partnership Agreement Working Group was formed to undertake the refresh before moving to monitoring and evaluation phases.

As the ACT representative of the Coalition of Peaks, the Elected Body, represented by the Chair, are involved in biannual Joint Council meetings and the more frequent Partnership Working Group meetings. It is the responsibility of the Coalition of Peaks representatives to engage with Aboriginal and Torres Strait Islander community and organisations to understand what is important under the Closing the Gap Refresh to inform the Coalition of Peaks position at Joint Council and Partnership Working Group meetings.

The Joint Council is the first COAG Council to include non-government members as equal partners in decision-making and marks an historic change in the way Australian governments are working with Aboriginal and Torres Strait Islander peoples. This partnership embeds shared decision making into the Closing the Gap framework.

The Commonwealth is providing funding on a three-yearly basis to establish a dedicated policy team, secretariat function and travel costs to support the Coalition of Peaks as a group and this is based in the National Aboriginal Community Controlled Organisation (NACCHO).

The Partnership Working Group agreed that State and Territory governments would consider ways to support their Coalition of Peaks representatives, in particular in the surge period of the refresh. The Refresh period includes significant work for all partners to develop and negotiate a new National Agreement on Closing the Gap which will replace the current National Indigenous Reform Agreement.

The ACT Government is undertaking this work within existing budget allocations including the resources available to support participation of the ACT Coalition of Peaks representative in the Refresh. Ministerial agreement was sought to the allocation of resources which included contracting Ms Fanning on temporary basis, as suitably qualified to undertake the work and providing an additional policy officer position which is unlikely to be filled at this time.

I would like to confirm that the arrangement that we discussed for Ms Fanning was a casual contract as a public servant under the Public Sector Management Act 1994. This is quite separate to Ms Fanning's appointment as Chair of the Elected Body. This was to support the work of the Elected Body in preparation for its participation in the Coalition of Peaks process initially for nine months to meet COAG timeframes. This is not additional remuneration for Ms Fanning as the Chair of the Elected Body and is separate to the current submission which has been provided to the Remuneration Tribunal as a part of the 2019 Spring Review in relation to the future remuneration of the Chair, Deputy Chair and members. If this work was not done by Ms Fanning as a public servant, it would have been undertaken by another suitably qualified individual employed as a public servant.

My understanding is that the Elected Body is seeking the Remuneration Tribunal to consider increasing their current annual salary in recognition of the responsibilities of becoming the ACT representative on the Coalition of Peaks. Through their membership of the Joint Council, the Elected Body is contributing to the national leadership, coordination and cooperation on Closing the Gap and providing advice to the COAG.

The COAG Closing the Gap framework and governance structure is unique in that Coalition of Peaks representatives are decision makers alongside First Ministers from each jurisdiction and a Local Government Association representative. Accountability measures are broad for Coalition of the Peaks representatives and it is their responsibility to bring the views of their communities to the negotiating table.

Moving forward we have acknowledged that the Elected Body will continue to play an important role in Closing the Gap and we have agreed to regularise their participation on the Coalition of Peak.

Most recent work on the Closing the Gap Refresh has involved the Coalition of Peaks representatives leading a four-tiered approach to engagements, in partnership with Australian governments, with Aboriginal and Torres Strait Islander community members and

organisations on a new National Agreement on Closing the Gap. The engagements occurred during September and October 2019.

The Joint Council is seeking COAG to endorse the draft National Agreement on Closing the Gap. The National Agreement will take into account the outcomes of the engagement process, and including targets and indicators; reform priorities; accountability, monitoring and reporting arrangements; and implementation arrangements and timeframes. This important work is anticipated to be finalised for the proposed February 2020 COAG meeting.

Further work is anticipated following COAG endorsement to finalise the targets and the National Partnership by April 2020. This will lead to finalising the ACT Aboriginal and Torres Strait Islander Agreement 2029-2028 Outcomes Framework with the COAG targets as headline indicators.

As part of this request, I would also like the Remuneration Tribunal to consider the Elected Body's increased responsibility and accountability to both government and community as a direct result of the *Aboriginal and Torres Strait Islander Elected Body Amendment Bill 2017 (the Amendment Bill 2017)* and the *Aboriginal and Torres Strait Islander Elected Body Regulation 2017*.

Under section 21(2) of the *Aboriginal and Torres Strait Islander Elected Body Act 2008*, the Elected Body must meet at least 6 times in a financial year. According to Determination 5 of 2019, the remuneration that the Elected Body receives for these 6 meetings are:

- Chair: \$25,185 per annum;
- Deputy Chair: \$20,155 per annum;
- Member: \$15,115 per annum.

Going back to 2009, at a meeting between the Chief Minister and the Chair and Deputy Chair of the Elected Body it was agreed that an estimates style process would assist the Elected Body to carry out its functions under the *Aboriginal and Torres Strait Islander Elected Body Act 2008 (the Act)*. The hearings were carried out initially under section 26 of the Act with the first being held on 19 August 2009 until the changes under the *Amendment Bill 2017*.

Following the 2015 review of *the Act* (tabled in the Legislative Assembly on 2 August 2016) several amendments were instigated through the *Aboriginal and Torres Strait Islander Elected Body Amendment Bill 2017* and the *Aboriginal and Torres Strait Islander Elected Body Regulation 2017*. The review found that the Elected Body performs a valuable role, and that the functions of the Elected Body under the Act should be clarified to allow for more comprehensive community and stakeholder consultation and to formally establish the elected body hearing process within the legislation.

Section 10A of the *Aboriginal and Torres Strait Islander Elected Body Act 2008* now provides for the Elected Body to hold public hearings about government service provision. The time commitment and complexity of the work of the Elected Body has increased due to the annual public hearings. Since establishment, ATSIEB have held nine hearings and produced nine reports. The reports and Government responses are tabled in the Legislative Assembly.

ATSIEB members have allocated portfolios and meet with Directors General monthly. This practice was adopted in 2011 when the ACT Government restructured to form new Directorates. The 2015 review found that the portfolio system operated effectively in that it provides engagement between Directorates and ATSIEB, allowing ATSIEB to have influence over Government policy and services.

Since the 2017 amendments, ATSIEB is required to develop a plan for how it will consult Aboriginal and Torres Strait Islander people living in the ACT (section 12), consultations must be held under a guiding set of principles (section 13) and ATSIEB must prepare a written report about its community consultation activities with the Minister providing a timely response (section 13A).

Earlier this year, the Chair of the Elected Body, the ACT Head of Service and the Minister for Aboriginal and Torres Strait Islander Affairs, signed the ACT Aboriginal and Torres Strait Islander Agreement 2019-2028. The ACT Office for Aboriginal and Torres Strait Islander Affairs and the Elected Body worked together on the development of the Agreement. The Elected Body are a member of the Inter-Directorate Committee on Aboriginal and Torres Strait Islander Affairs and the ACT Strategic Board Subcommittee on Aboriginal and Torres Strait Islander Affairs. These committees meet at least four times a year respectively. The Elected Body also have a role in working with the ACT Government in setting priorities and developing action plans for the four phases over the life of the Agreement.

Further detail on the work value criteria to demonstrate how this has changed in line with legislation amendments and ACT Government commitments are in [Attachment A](#).

As demonstrated, these recent developments have resulted in an increased workload and work value of the Elected Body. As a result, I am respectfully seeking the Remuneration Tribunal to consider an increase in remuneration on the per annum amount to at least 30 per cent for the Chair and Deputy Chair and a 15 per cent increase for members. While it is difficult to find a direct comparator within ACT given the uniqueness of the Elected Body, the proposed increase and functions is somewhat comparable to the Defence Industry Advisory Board.

I understand that the Elected Body was initially seeking a 'per diem' rate in addition to the 'per annum' that they currently receive. It is understood that there are no other boards or committees which receive a 'per diem' and a 'per annum' rate. After further consideration, it has been decided to request to the Remuneration Tribunal to increase the 'per annum' amount that the Elected Body receives.

The term of the current Elected Body expires in 2020 and a new election process will be undertaken in 2020. It is anticipated that the increased remuneration payable to the Elected Body would be in place for the new members to be elected, and would provide a sufficient incentive for the Aboriginal and Torres Strait Islander community to consider running for a member of the Elected Body. The current per annum amount is not sufficient enough to encourage participation from the community particularly given the significant national work on Aboriginal and Torres Strait Islander affairs.

I trust that the information provided has clarified the current arrangements that are in place to support the Elected Body participation in the COAG Closing the Gap Refresh and supports the Elected Body submission.

Yours Sincerely

A handwritten signature in black ink, appearing to read "Anne-Maree Sabellico". The signature is written in a cursive, flowing style.

Anne-Maree Sabellico
Deputy Director General
Community Services Directorate
20 November 2019

Attachment A- Work Value Criteria

The following information is provided against the work value criteria to demonstrate how the work value of the Elected Body has changed:

Work value criteria	Commentary
The work of the role and its impact on the ACT community	The Aboriginal and Torres Strait Islander Elected Body is an important model for Aboriginal and Torres Strait Islander empowerment and participation in government. The Elected Body legislation is a nation-leading framework for a representative voice. The Elected Body has lead changes in the way Government approaches services for and by Aboriginal and Torres Strait Islander Canberrans. The <i>Aboriginal and Torres Strait Islander Agreement 2019-2028</i> is an example of the work of the Elected Body in driving government reform.
The span of control, including relative autonomy	The Elected Body pass on the views of Aboriginal and Torres Strait Islander people living in the ACT on issues of concern to them. Key to this is the ability to represent Aboriginal and Torres Strait Islander people living in the ACT and to act as an advocate on systemic or whole-of-government issues. The Elected Body conduct regular consultation with Aboriginal and Torres Strait Islander people living in the ACT and report the outcomes of that consultation to the Minister and any other Minister responsible.
The extent of the statutory office holder's decision-making powers	The Elected Body monitor and report on the effectiveness and accessibility of programs and services conducted by government agencies for Aboriginal and Torres Strait Islander people. They also monitor and report on the accessibility by Aboriginal and Torres Strait Islander people living in the ACT to programs and services conducted by government agencies. (see sections 10A and 10B)
Professional and other qualifications required of the statutory office holder	ATSIEB members are elected by Aboriginal and Torres Strait Islander people living in the ACT. A person is eligible to be an ATSIEB member if the person— (a) is— (i) an Aboriginal or Torres Strait Islander person; and (ii) at least 18 years old; and

	<p>(iii) enrolled, or entitled to be enrolled, for an electorate in the ACT; and (b) is not under a sentence of imprisonment for 1 year or longer for a conviction for an indictable offence.</p>
<p>The degree of knowledge and skill needed to perform the role</p>	<p>There are no specific education requirements to become a member of the Elected Body. Elected Body members are elected by Aboriginal and Torres Strait Islander Canberrans (their constituents), however recent developments would require members to have the skills, capabilities and experience to actively participate in the national work as an equal partner.</p>
<p>The potential risks and the economic or non-economic impacts of the role</p>	<p>The ATSIEB model is the best example in Australia of a Government and a representative Aboriginal Body relating to each other in a way that is in accordance with the main principles of the UN Declaration on the Rights of Indigenous peoples. ATSIEB is to ensure maximum participation by Aboriginal and Torres Strait Islander People in the ACT in the formulation, co-ordination and implementation of government policies that affect them.</p>
<p>What the statutory office holder is responsible for (e.g. financial and other resource responsibilities) and what work they do</p>	<p>ATSIEB provides a broad representative voice across the ACT for Aboriginal and Torres Strait Islander communities in the ACT and provides an opportunity for the community to have a say as to what their needs are and whether services are adequate and whether current programs are meeting community needs.</p> <p>ATSIEB:</p> <ul style="list-style-type: none"> • Meets monthly with ACT Government Directorates; • Monitors and reports on Government service delivery through the Hearings process, reporting these to the Legislative Assembly through the Minister for Aboriginal and Torres Strait Islander Affairs; • Holds regular consultation with the ACT Aboriginal and Torres Strait Islander community and reports these to the Minister and Minister responsible for the subject of the consultation; • Represents the ACT Aboriginal and Torres Strait Islander community locally and nationally; and • further the economic, social and cultural development of Aboriginal and Torres Strait Islander people living in the ACT.