



11 October 2017

Ms Anne Cahill Lambert AM  
Chair  
ACT Remuneration Tribunal  
PO Box 964  
CIVIC SQUARE ACT 2608

Sent by email: [remtrib@act.gov.au](mailto:remtrib@act.gov.au)

Dear Ms Cahill Lambert

### **Annual review of ACAT Member remuneration**

Thank you for your letter inviting a submission in relation to the annual review into the remuneration and allowances to be paid, and other entitlements to be granted, to Members of the ACT Civil and Administrative Tribunal (ACAT).

Those positions comprise the President, full-time Presidential Member, part-time Presidential Member, acting Presidential Member, full-time Senior Member, Senior Member and Ordinary Member.

#### **President**

As you might recall, the *ACT Civil and Administrative Tribunal Act 2008* (the ACAT Act) was amended on 29 June 2016 to create a position of President as the head of the ACAT, combining the previous positions of General President and Appeal President. The amended ACAT Act also requires that the President be either a Magistrate or be eligible for appointment as a Magistrate.

***Expanded jurisdiction, including civil matters previously decided by Magistrates:*** On 15 December 2016, amendments to the ACAT Act commenced increasing the civil dispute jurisdiction of the ACAT from \$10,000 to \$25,000. From that date, civil dispute applications seeking payment of an amount up to and including \$25,000 or orders in relation to goods and services valued up to that amount may only be commenced in the ACAT. Matters commenced but not yet progressed to a hearing in the Magistrates Court may be transferred to the ACAT by order of the Magistrates Court.

As a result of those amendments, there has been a significant increase in the workload as well as the complexity of civil dispute matters. A comparison of statistics suggests that the matters filed with the ACAT since those amendments commenced comprise not only matters that would previously have been dealt with by the Magistrates Court but also matters which, for whatever reason (including that the ACAT is a no costs jurisdiction), have been commenced in the ACAT. In other words, the amendments appear to have generated new work for the ACAT, not merely transferred matters from the Magistrates Court.



The jurisdiction of the ACAT continues to expand with the enactment of legislation conferring new powers and functions on it, as well as amendments to existing enabling legislation (e.g. amendments to the *Residential Tenancies Act 1997* by the *Family Violence Act 2016*).

**Parity with Magistrates:** In Determination 4 of 2013, the Remuneration Tribunal decided to “remunerate Presidential Members at salary parity with magistrates from one November 2013.” That decision was confirmed and continued in the 2014 Determination. While not identified as a specific decision, in practice it was departed from the 2015 Determination at a time when the structure of the ACAT was under review.

In the 2016 submission to the Remuneration Tribunal, the previous President supported the head of the ACAT receiving remuneration at parity with Magistrates, and indicated that the Directorate and the Chief Magistrate supported such parity.

Amended Determination 11 of 2016 (the current Determination) set the salary of the President as the same amount as for a Magistrate (as set out in Determination 9 of 2016), without formally expressing that as parity.

I support parity being formally reintroduced, or at least the amount of remuneration being equivalent to that of a Magistrate.

In doing so, I observe that the amount of remuneration for the President and Members of the ACAT is substantially less than for people holding comparable positions in similar tribunals elsewhere in Australia.

### **Full-time and part-time Presidential Members**

I note that the current Determination sets rates for remuneration of full-time and part-time Presidential Members as a numerical figure, which appears to be derived as a percentage of the remuneration paid to the President. I support the continuation of the current approach, with the percentage being fixed at not less than that in the current Determination.

**Per diem rates:** I would appreciate it if the Remuneration Tribunal could clarify one aspect of payment, being the daily rate paid to an Acting Presidential Member of the ACAT. The current Determination provides that such a Member is paid “at the rate applicable to the presidential member they are acting for, paid pro rata.” I understand the formula has resulted in some uncertainty as to the rate per diem to be paid from time to time, and that some payments have been less than the Acting Presidential Member would have otherwise received as a Senior Member who is presiding (calculated as per Determination 11 of 2015 (Amended) paragraph 13). It might assist if the next Determination were to include a mathematical formula linked to the pro rata rate for the President to avoid that situation arising.

### **Full-time Senior Member**

The rate of remuneration of the relatively new position of full-time Senior Member was originally set at a rate equivalent to an executive 1.2. The remuneration specified in the current Determination is the equivalent amount to that set for executive 1.2 in Determination 3 of 2016.



Given that the full-time Senior Member has significant case management and administrative responsibilities, as well as hearing and conference responsibilities and the writing of reserved decisions, it is appropriate that the remuneration be equivalent to the remuneration of an executive 1.3.

### **Sessional Senior Members and Ordinary Members**

**Per diem rate:** The salary paid to Sessional Senior Members and Ordinary Members was not changed for some years. Following submissions made by the previous President in 2016, the per diem rates were increased from \$440 to \$480 for Ordinary Members and from \$945 to \$1040 for Senior Members.

Those rates are more in line with what is paid to members of other tribunals performing comparable work in other jurisdictions. I acknowledge that there is no ready equivalence between the work of those Members of the ACAT and members of other tribunals, given the variation and diversity of work from tribunal to tribunal.

At the very least it would be appropriate for those daily rates to be increased in line with any general percentage increase in the remuneration of full-time Members of the ACAT.

### **Allowances and entitlements**

Although this submission has focussed on remuneration, I support the continuation of the allowances and entitlements of the types set out in the current Determination and any other applicable determinations.

I would welcome an opportunity to discuss my submission with you further at a hearing.

Yours sincerely



Graeme Neate AM  
President