

Ms Sandra Lambert AM
Chair
Australian Capital Territory Remuneration Tribunal
PO Box 964
CIVIC SQUARE ACT 2608

Dear Ms Lambert

ACT Remuneration Tribunal 2019 Spring Review – ACT Electoral Commissioner

Thank you for your letter of 30 October 2019 in which you requested additional information to support your consideration of my submission of 18 September to the Remuneration Tribunal 2019 Spring Review. You asked that I specify what changes have occurred over the last 12 months and how the work value has changed to warrant a change in remuneration. In doing so I have also acted on your recommendation to consider previous submissions to the Tribunal especially that provided by the Clerk of the Legislative Assembly in January 2019.

In summary I submit that the role and work value of the ACT Electoral Commissioner has expanded due to the significantly increased cyber and physical security risks impacting on the electoral environment, and recent legislative changes pending approval by the ACT Legislative Assembly. Additionally, the remuneration of the ACT Electoral Commissioner is considerably less than that of Electoral Commissioners of other jurisdictions with like roles and responsibilities (South Australia, Northern Territory and Western Australia).

Work of the Role and its Impact on the ACT Community

The ACT Electoral Commissioner is the only full-time member of the ACT Electoral Commission, an independent statutory authority established under the *Electoral Act 1992*, also comprising a Chairperson (part-time) and a Member (part-time). The Commission members are also independent Officers of the Legislative Assembly thus reinforcing their statutory independence from the Executive.

The Electoral Commissioner serves in a dual capacity as both a member of the Commission and as a statutory office holder with independent powers and functions. The Commissioner is also the CEO of the Commission and manages its operations under the guidance of the full Commission and as the Commission's delegate. The Electoral Commissioner and staff operate under the title of Elections ACT.

The most important function of the Commission and Elections ACT is the conduct of elections for the ACT Legislative Assembly. Additional key functions include:

- Provision of information and advice to the Assembly, the Speaker, the Minister responsible for electoral matters, the Executive, agencies, political parties, MLAs and candidates;
- Redistribution of electoral boundaries to ensure equality of elector representation in the Assembly;

- Conducting electoral education and information programs for schools and community groups;
- Conducting research and publication of electoral material;
- Providing fee for service electoral services and goods;
- Conducting ballots for prescribed organisations such as the ACT Aboriginal and Torres Strait Island Elected Body; and
- Reviewing of appeals against decisions made by the Commissioner or delegate.

Importantly the Electoral Commissioner also has specific sole functions and responsibilities including most of the procedures related to the conduct of the elections; the maintenance of the ACT electoral roll (in conjunction with the AEC); registration of political parties; and administration of the election funding, expenditure and financial disclosure scheme.

The Electoral Commissioner is a member of the Electoral Council of Australia and New Zealand, a peak consultative council of electoral commissioners established to promote best practice electoral administration and to improve services for all eligible electors. The Commissioner is also a member of the Inter-jurisdictional Working Group on Electoral Integrity and Security, a senior level cross agency group tasked to strengthen Australia's electoral systems, data and processes, reporting to COAG.

The impact of work of the ACT Electoral Commissioner on the ACT community is of the greatest significance. The outcomes for which the Commissioner is responsible underpin the integrity and viability of government. Any perception of inappropriate or biased conduct by the Electoral Commissioner, inaccurate roll data or questionable counting of votes, a breach in the secrecy of individuals' votes, or a lack of security of the electoral processes and ICT systems, would be highly detrimental to the reputation of the ACT government and the community's trust in elected members. Additionally, the wider Australian community's trust and perception of integrity of governments and democracy in general would be significantly diminished.

The importance and impact of the work of the Electoral Commissioner has been highlighted through recent unprecedented challenges to governments and communities around the world in protecting and securing their political institutions, democratic processes and electoral systems. Although a relatively small jurisdiction, the ACT is not immune to these challenges; indeed, smaller jurisdictions may well present an easier target for those actors wishing to disrupt and undermine democracies. The impact of a successful cyber and/or physical attack upon the ACT electoral processes and systems would be catastrophic: reputationally, economically and in human terms. The growing and evolving threat of foreign interference or malicious misinformation campaigns against the ACT electoral processes and systems must be addressed through prudent risk-based assessments and proactive planning and cooperation with central and security agencies.

Coordination and delivery of effective responses to these challenges in preserving the integrity of democracy in the ACT is the responsibility of the Electoral Commissioner. This new and challenged electoral environment has greatly added to the work value of the role and its impact upon the ACT and wider community.

Span of Control and Degree of Autonomy

As outlined above and in the *Electoral ACT 1992*, the ACT Electoral Commissioner is an independent statutory authority with responsibilities as a member of the Electoral Commission, as Commissioner, and as CEO of the Commission. There are no implied powers of the Legislative Assembly arising from the Commissioner being an independent

officer of the Legislative Assembly, assuring the independence and full autonomy of the position.

Extent of Decision-Making Powers

The ACT Electoral Commissioner has Head of Service and Director General powers under the *Public Service Management Act 1994* (PSMA) in relation to engaging, appointing and employing staff employed to assist the Commissioner. The Commissioner may also employ temporary staff and engage consultants under the *Electoral Act 1992*, on terms and conditions determined by the Commission.

The Commissioner was assisted in 2018/2019 by ten permanent officers under the PSMA, as well as number of other staff under both the PSMA and the Electoral Act. The small permanent workforce is boosted by approximately 870 temporary staff and contractors during the electoral period, employed under both the PSMA and the Electoral Act. This number is expected to grow to approximately 1000 in 2020 due to increased ACT community demand for pre-polling and electronic voting.

The Electoral Commissioner as the Chair of the ACT Redistribution Committee, and as a member of the Augmented Commission, has specified powers and responsibilities under the Electoral Act with respect to proposed and final redistributions of electoral boundaries.

Professional and other Qualifications, Degree of Knowledge and Skills Required

The Electoral Act 1992 requires that the Speaker must not appoint a person as the Electoral Commissioner unless that person has extensive knowledge of and experience in electoral systems or management, or public administration.¹

Additionally, and owing to the increasing complex electoral environment, my effectiveness and work value as ACT Electoral Commissioner has been greatly enhanced through advanced knowledge, skills and experience in:

- cyber and physical threat awareness, resilience and preventative measures, response options, and coordination with government security and cyber agencies;
- risk assessment framework, risk registers and crisis response planning;
- corporate and election specific ACT ICT systems;
- financial management, audit regulations and procurement provisions;
- reform and change management practices and policies;
- media engagement and community education and outreach programs, especially for CALD, Disability Advisory Committee, and LGBTIQ representatives;
- government structures, committee and hearing processes; and
- workplace reform processes and best practices in leadership and management.

Potential Risks and Economic/Non-economic Impacts of the Role

The potential risks associated with the role of ACT Electoral Commissioner are outlined above under impact on the community. The reliable and secure conduct of full and fair elections has always been critical to the integrity and public trust in elected governments. Most significantly, new and additional risks of disruption or degradation of our democratic processes and electoral systems through cyber and physical threats have arisen in the last

¹ Electoral Act 1992 section 12 (3) (a)

12 months. Regardless of this changed and dynamic environment, the responsibility for the conduct of elections remains with the Electoral Commissioner. This has required a proactive and collaborative engagement with federal central and security agencies to coordinate relevant support and advice, in addition to normal extensive preparations for ACT Legislative Assembly elections.

The economic risks of a failed or flawed election, whether through mismanagement or malicious cyber or physical attack, include the need to re-run the election with associated major costs. There would be significant impact on the government's budget through extended caretaker periods and budget re-provisioning and uncertainty. The enormous non-economic costs of lack of faith in electoral processes and governments would be widespread and enduring.

What is the Statutory Holder Responsible for and what work do they do? (including budget and resources)

The responsibilities of the ACT Electoral Commissioner as defined in the Electoral ACT 1992 are outlined above. The significant change over the last 12 months in the cyber and physical aspects of the electoral environment have required additional skills and knowledge of the Commissioner, and demanded collaborative proactive planning with ACT and federal government agencies to develop effective responses to these threats and challenges.

The ACT Budget Paper for 2018-19 outlines the total revenue for the ACT Electoral Commissioner as \$3.699 M for 2019-20 and \$8.776 M for 2020-21, in line with the four-year electoral cycle. Additional budget submissions have been made for improvements to the electoral management system including overseas voting, and a permanent office solution for Elections ACT.

The ACT Electoral Commission has also contributed to several proposed legislative changes for consideration by the Legislative Assembly ahead of the 2020 elections. This has added to the workload of the Commission due to not having any legal staff internal to the Commission, necessitating referral to the ACT Government Solicitor's office and frequent extended engagements with JACS legal advisors.

One such proposed change in legislation relating to a ban on political donations by property developers will, if approved by government, require four additional FTE to the permanent staffing in Elections ACT, to conduct the necessary detailed financial auditing of any such donations and donors. The need to effectively administer this complex task with attendant risks of diminished trust in the Commission if unsuccessful presents as a significant expansion of the funding and disclosure responsibilities and work value of the Commissioner. Further legislative changes to enable an interim electronic voting option for overseas electors, and the need to address deficiencies in funding and disclosure provisions as a result of Commonwealth reforms to federal disclosure provisions, have all added greatly to the workload and work value of the Commissioner over the last 12 months.

Remuneration Comparative Data

I offer that a benchmark for remuneration for the ACT Electoral Commissioner might be the middle salary point of the comparable electoral Commissioners as noted below.

ACT	SA	WA	NT
\$215 391	\$235 013	\$252 020	\$259 018 to \$284 592

Thank you for the opportunity to provide this additional information. I am very happy to elaborate on this matter directly with the Tribunal on 21st November as currently scheduled.

Yours sincerely



Damian Cantwell AM
Electoral Commissioner

19 November 2019