



Ms Anne Cahill Lambert AM

The Chair

ACT Remuneration Tribunal

PO Box 964

Civic Square ACT 2608

Via email remtrib@act.gov.au

Dear Ms Cahill Lambert

Re: Annual Review of Remuneration and Allowances

Thank you for the opportunity to make a submission to the ACT Remuneration Tribunal's annual review of remuneration and allowances. I am making this submission as a full-time Holder of Public Office under Section 10(1) of the *Remuneration Tribunal Act 1995*. This is the first occasion that I have made a submission to the Tribunal but it is a matter of record that the work value of my role was the subject of advice provided to the Tribunal by Mercer Consulting (Australia) Pty Ltd (Mercer) when the position was last reviewed in 2009.

As a result of that review, the Tribunal determined (Determination 16 of 2008) that the position of Public Advocate be accorded a salary at Level 2.4 of the ACT Executive structure so as to place the Public Advocate position above that accorded the three Commissioners in the Human Rights Commission, continuing the historically established precedent in recognition of the higher work value of the Public Advocate.

In its recent Determination 14 of 2012 the Tribunal increased the salaries of the Human Rights and Discrimination Commissioner, the Health Services Commissioner and the Children and Young People Commissioner to Level 2.4 of the ACT Executive structure. In its Accompanying Statement the Tribunal noted that it had had regard "...to a formal work value assessment..." of the three roles. It also noted that "...all the Commissioners have a publicly identifiable and independent role" and that "...there has been a degree of growth in the complexity of the roles since they were established". The Tribunal went on to provide a number of examples of functions that had been identified "...by the Commissioners as increasing the breadth and complexity of the work." And noted "...that these and other responsibilities have added significantly to the work value of the offices of each of the Commissioners...".



ACT
Government

Public Advocate of the ACT

I have drawn attention to these remarks, not because I wish to dispute the rationale adopted by the Tribunal (although I do note in passing that a number of the examples provided would appear to be within the Commissioners' respective jurisdictions and may well go more to issues of workload rather than work value), but because I find myself in the position of being able to provide the Tribunal with a number of examples of increases of at least a comparable nature and weight to the above in the breadth and complexity of my functions which I now request the Tribunal to take into account in this review.

The role and organizational structure of the ACT Public Advocate

As ACT Public Advocate, my responsibilities are exercised through the two functionally separate units of Advocacy and Guardianship.

The exercise of the **Advocacy function** requires the monitoring of government programs and services delivered to people who are suffering a condition that renders them vulnerable to abuse, exploitation or neglect, and intervening on their behalf. Potential clients are those:

- suffering a mental illness or dysfunction (both short and long term and forensic)
- subject to complex disabilities and
- children and young people in the Care of the Territory.

With regard to people in the above client groups, the Public Advocate is also responsible for dealing with entities and agencies to:

- foster the provision of services and facilities
- support the establishment of organisations that provide support
- encourage the development of programs
- promote the protection of and
- monitor the provision of services and further
- investigating, reporting and making recommendations to the Minister on any matter relating to the Act referred by the Minister.

The Guardianship function involves:

- representing people with a disability at inquiries before the ACT Civil and Administrative Tribunal (ACAT) in relation to Guardianship Hearings
- representing forensic patients before the ACAT or a court and
- acting as a guardian of last resort and/or manager when appointed by the ACAT.

Both functional units, together with the Public Advocate, also carry a responsibility for community engagement with individuals and agencies and key stakeholders including other government agencies and NGOs, interest groups and the broader community.



Submission

The increased level of awareness since 2009 of the role of the Public Advocate across the general community has resulted in a significant increase in the number and complexity of cases handled by the agency, particularly in the number that are the subject of legal matters. This heightened level of awareness is also evident with increased referrals from institutions such as legal firms, medical practitioners in public and private practice, the police service, the courts and a broad range of community organisations.

In relation to the Advocacy function, the following trends between 2009/10 and 2012/13 are noted as evidence of this increased level of awareness and associated complexity -

- a 324% increase with regard to the number of people with mental health issues who were provided with advocacy by the Public Advocate
- a 125% increase in the number of children and young people with mental health issues who were brought to the attention of the Public Advocate
- 65% increase in the occasions of advocacy provided to forensic mental health clients
- an increase in the number of prisoners with psychiatric problems referred
- increasing numbers of people presenting with multiple disabilities, including substance abuse
- an increase in demand for services that are in short supply or don't exist in the ACT, such as a forensic facility, supported accommodation to allow people to be discharged from acute mental health facilities, services to assist people with dual diagnosis, early intervention and respite or rehabilitation mental health services.

In relation to the Guardian function, there have been similar increases since 2009:

- an increase of 35% in total number of Guardian of Last Resort and Emergency Guardian cases handled, (from 178 to 281);
- an increase from 29% to 35% of all Guardianship Orders that appoint the Public Advocate as guardian
- an increase of 86% in the number of people choosing to appoint the Public Advocate as their attorney under Enduring Powers of Attorney (EPAs)
- a noticeable increase in the complexity of guardianship cases
- 33% increase in cases which require legal guardianship such as several people convicted of extremely serious assault crimes, increased numbers of cases where I have had to instruct solicitors, including Senior Council, on behalf of clients in civil cases, (in one case that took 7 years and where the damages awarded were \$13.5m, and in others where I had responsibility for several clients in a class action), liaison with the Supreme Court, Federal Family Court, Children's and Magistrates court.



- An increase in the number of persons who survive traffic accidents, strokes and similar suffering severe brain injuries also contributes to the complexity of guardianship cases
- An increase in the number of people suffering dementia because of the ageing ACT population, increases the demand for guardianship and arguably to an increase in notifications of incidents of elder abuse

I believe that in addition to the actual numbers of work load increases, the heightened level of awareness of the Public Advocate role, coupled with significant changes in community attitudes and expectations including a more litigious mind-set, has materially added to the complexity and social consequences of cases referred to the Public Advocate. Also cases dealt with by the Public Advocate are never quick responses to one-off complaints, and often involve years of intensive involvement, increasing the work value of the role.

Finally, I point to the following examples of new and additional demands placed on my role and some achievements:

- conducting, at the request of the Minister, the *Review of the Emergency Response Strategy for Children in Crisis in the ACT*. This review was conducted under Terms of Reference which focused on the circumstances surrounding certain matters pertaining to Out of Home Care Placements following emergency responses taken on behalf of children and other people for whom the Territory has responsibility
- providing significant input to the *Review of the Mental Health Act* which will result in ground breaking changes particularly with regard to assessment of capacity and
- the provision of significant policy input into the development of the new *Official Visitor* legislation.
- the consolidation of our advocacy functions at the Alexander Maconochie Centre
- improving collaborative working arrangements with Legal Aid for the representation of clients in mental health hearings before ACAT
- prioritizing attendance at Children's Court hearings and conferences for care and protection matters involving children under two years, particularly infants
- continuing the focus on the provision of advocacy for young people in Bimberi.

It is my submission that the increase in work value described in this submission warrants the continuation of the remuneration differential between my role and that of the HRC Commissioners that was established in Determination 16 of 2008.

Yours sincerely

A handwritten signature in black ink, appearing to read "Anita Phillips".

Anita Phillips

ACT Public Advocate

5 March 2013