

16 September 2019

Ms Sandra Lambert AM
Chair
ACT Remuneration Tribunal
PO Box 964
Civic Square ACT 2608

By email: remtrib@act.gov.au

Dear Ms Lambert,

Thank you for your invitation to comment on the review of salary and entitlements of full-time statutory office holders. We would like to submit the following regarding the determination of Legal Aid ACT's Chief Executive Officer ("CEO") and Deputy Chief Executive Officer ("DCEO") remuneration.

The Legal Aid Commission (**the Commission**) is established by the *Legal Aid Act 1977 (the Act)*. Under the Act the Commission has responsibility for the provision of legal assistance in ACT matters. Section 10 of the Act sets out the significant duties and responsibilities of the Commission. These include ensuring that legal assistance is provided in the most effective, efficient and economical manner and determining priorities in the provision of legal assistance as between different classes of people or classes of matters, as well as a range of other duties.

Under the Act the CEO and the DCEO are charged with the management of the operations and affairs of the Commission. The Commission now provides a vast array of services to the ACT community in relation to (but not always limited to) legal advice, support and assistance, and grants of legal aid, on all manner of areas of law including criminal, family and civil law. The clients we see are typically vulnerable and disadvantaged, and are not in a position to pay for private legal services.

The ACT Remuneration Tribunal's Determination 4 of 2016 indexed CEO and DCEO remuneration at Executive Level 3.7 and 2.4 respectively. Following that re-indexation, the scope of the work undertaken by both the CEO and the DCEO has continued to increase and there has been expansion in work value undertaken by both positions during the last three years. The CEO and DCEO manage a large organisation that sees a greater number of in-house grants, helpline calls, advices, advocacy, duty-lawyer services and dispute resolution services than has been previously seen in the history of the Commission. The breadth of work has also increased with the introduction of a range of new preventative services in areas including community legal education, outreach sites and the publication and provision of legal information.

We note, however, that the current remuneration of both the CEO and DCEO has fallen below their respective classifications. We therefore submit that the remuneration for both positions should be increased to reflect their current classification levels (EL 3.2 and 2.2 respectively) and in recognition of the increased work value of these positions.

In support of this submission, we have included tables detailing:

- Increases in assistance provided by Legal Aid ACT (Table 1);
- Provision of new services (Table 2);

Executive Level Index

The ACT Remuneration Tribunal's 2016 determination indexed the CEO and DCEO at EL 3.7 and 2.4 respectively. The tribunal 'noted the changes in the scope of work of Legal Aid since 2003 and the increases in work value attached to the positions of CEO and ACEO.'

In Determination 9 of 2018, a new executive pay structure was created. The CEO's new equivalent executive classification level was EL 3.2 and the DCEO's new equivalent executive classification level was EL 2.2.

We note that the remuneration of both the CEO and DCEO have not kept pace with their new respective classifications. Determination 2 of 2019 sets the remuneration for an EL 3.2 at \$293 809 and an EL 2.2 at \$227 160, however, Determination 4 of 2019 sets the remuneration for the CEO at \$279 883 and the DCEO at \$215 391. Thus, the CEO's remuneration sits between zones 2 & 3 and the DCEO's remuneration between the range of an EL 2.1 & EL 2.2.

We suggest that consideration be given to reversing this classification slippage so that the CEO's and DCEO's remuneration properly reflects their remuneration point and the employer provided benefits.

Expansion of Work Value

Growth in Service

Demand for legal services has also increased significantly and is likely to grow further. Assistance provided to the most legally vulnerable members of the ACT community has both increased and changed qualitatively. Grants of aid and duty services have continued to be brought in-house to increase cost efficiency, requiring expertise across a greater range of legal issues.

Table 1: Changes in assistance provided between 2015-16 and 2018-19

Assistance Type	2015-16	2018-19	% change
Helpline Calls	15,877	17,406	9.63%
Advice, Advocacy and Minor Assistance	6,526	7,885	20.82%
Duty Lawyer Service	3,062	6,105	99.38%
Family Dispute Resolution	241	278	15.35%
In-house Grants of Legal Assistance	1,622	1,594	-1.73%
External Grants of Legal Assistance	1,024	710	-30.66%

While the total number of grants of aid (both in-house and external) has remained relatively stable, the Commission continues to keep an increasing proportion of the work in-house: 39% of the grants of aid were external grants in 2015-16 as compared to 30% in 2018-19. Further, our other work has continued to expand, particularly in the duty lawyer services and helpline service.

Breadth of Service

In tandem with undertaking more grants of legal aid work in-house, we have increasingly had to expand our focus in the areas of early identification and resolution of legal issues, rather than simply trying to address problems after they have been further compounded by a lack of legal guidance or support. To advance this objective, we have introduced a number of early intervention services that will offset the later costs (in time, court resources and financial expenditure) that necessarily arise in litigation or advocacy. This approach is driven by both changes in government policy and by the need to find innovative and less expensive strategies for providing legal assistance. These programs are particularly structured to mitigate legal issues experienced by vulnerable members of the ACT community, including victims of domestic violence, Aboriginal and Torres Strait Islander peoples and members of culturally and linguistically diverse communities.

Table 2: Provision of services

Service	Number (2014-15)	Number (2018-19)
Information Services*	77,229	108,101
Community Legal Education (CLE) Sessions	320	405

*Includes website visits

Our outreach work and work in the community more broadly is now extensive and the oversight responsibilities of our executive team have proportionately increased as a result. These services include both temporary and regular clinics where clients from vulnerable community groups may seek advice, referrals or advocacy. The aim is to encourage people to seek early assistance for legal issues before they become complex or resource-intensive to resolve. Outreach locations include:

- The Canberra Hospital;
- ACT Libraries;
- Migrant and Refugee Resource Settlement Service;
- Tuggeranong Community Centre;
- SouthPoint Shopping Centre in Tuggeranong;
- Salvation Army Mission Days;
- Various mosques in Canberra;
- The Alexander Maconochie Centre;
- Canberra College Cares;
- The University of Canberra; and
- Winnunga Aboriginal Health Service.

In addition to our work at outreach locations, we also hold an increased number of regular and well-attended information sessions:

- In the 2018-19 financial year we held 65 free information sessions for members of the public on topics in family law (divorce, property and children) and criminal law (drink driving and other traffic matters).

- A new series of sessions called *Building Bridges*; these aim to improve cross-cultural awareness and communication among lawyers and community workers. Topics have included working with clients from refugee and asylum seeker backgrounds, working effectively with interpreters, the concept of jihad in Islam and African communities in the ACT.
- Our 'law for non-lawyers' CLE series, continue to be popular. 469 frontline service and community workers attended these sessions in the 2018-19 financial year.
- We also continue to deliver workshops to social workers at Calvary and Canberra Hospital, through which we aim to improve the legal awareness of social workers and their ability to make appropriate referrals. Topics have ranged from elder abuse and guardianship to Centrelink.

The Commission also delivered workshops to 19 high schools and colleges in Canberra in the last financial year, reaching 2038 students. Topics covered included criminal law and police powers, cyber-safety and sexting, sex and consent, young people and the law, legal career pathways and access to justice. Further, in response to a high number of calls to our helpline from international students experiencing tenancy issues, we partnered with the Tenants' Union ACT to present two workshops on tenancy for international students at the ANU. The workshops were delivered in English and Mandarin to approximately 70 students. We also delivered a presentation on employment law to over 400 new University of Canberra international students.

In addition, the Commission continues to expand its range of legal service delivery initiatives so that our services reach as far as possible. Some examples of continuing initiatives in recent years include:

- The establishment of the Family Violence Advocacy Support Service (FASS) in 2017, which assists families dealing with family violence in the Federal Circuit Court and Family Court. The relationship between FASS and our Domestic Violence Unit at the Magistrates Court is a particular driver of increased service provision in this area;
- The establishment of a Legal Aid service for students, staff and members of the community at the University of Canberra in 2018, operating two days per week;
- The establishment of the Older Persons Legal Service in 2018, which provides legal advice on issues affecting older people, including elder abuse; and
- The engagement of a migration agent in 2019 to assist migrants and refugees. In the first four months over 100 duty appointments were undertaken and we anticipate this service becoming an integral part of Legal Aid.

The Work Value Argument

The expansion of services has imposed a greater workload on the Commission. Conducting a high volume in-house legal practice requires more direct supervision of duty and case work; in particular, more higher court matters are undertaken by staff rather than briefed or referred out to private lawyers or counsel.

The CEO and DCEO have ever-increasing responsibility to oversee tasks including:

- The efficient operation of outreach sites, clinics and educational programs;
- The monitoring and direction of publications produced by the Legal Aid ACT office;

- A more substantial website and data storage system, which is currently in the process of being significantly upgraded;
- Resource allocation to improve access to legal assistance;
- Management of a substantially increased number of relationships with private, public and community sectors.
- Management of more complex litigation, and in the case of the DCEO, appearance work on behalf of clients.

The movement of the Commission towards meeting legal demand is a dynamic task. The executive management team must engage with emerging research and practice across the legal services industry to ensure the best access to assistance. Resourcing by government is limited, and so improving access to justice requires an ever more innovative approach to future planning that must now take into account government priorities.

In recent years the Commission is increasingly seen as an integral part of government's law and justice policy at both a Commonwealth and Territory level, and in a role not previously undertaken the CEO is expected to be much more involved and responsive to these demands. Government accountability and reporting obligations through the new National Partnership Agreement are significant, and the demand for new data to establish the evidence-base for policy changes more prevalent (for example in relation to domestic and family violence). There is an increasing expectation by all governments that the Commission will have the capacity and be able to expeditiously provide this information.

The administration of the programs run by the Commission and the evolution of the executive roles to meet emerging demands of both government and community require higher level planning and delegation such that the relative work value of the CEO and the DCEO has increased, warranting reconsideration of their remuneration.

Other Considerations

We note that remuneration determinations are made in light of, among other considerations, the ACT's economic position, public expectations, and remuneration paid to similar public officials. The increased work values of the CEO and DCEO were recognised by the Tribunal in 2016, yet the remuneration of these positions remains inconsistent with other full-time statutory heads, ACTPS executive roles and members of the ACT judiciary. Many of these people the CEO and DCEO engage with as part of core Commission business across a range of areas impacting the remit of the Commission.

This inconsistency is particularly clear when viewed against one of our more commonly engaged counterparts, the ACT Office of the Director of Public Prosecutions (ACT DPP) and their two most senior positions (the Director and Deputy Director). Our agencies share an important role in the administration of justice both at the coalface of the criminal justice system and in the areas of policy and law reform. Our agencies are routinely leaders in innovation and identification of issues in the criminal justice system directly impacting the lives of Canberrans. The ACT DPP reported an FTE of 84.5 in its most recently available annual report (2017/18) with some 5000 matters dealt with by their staff in the reporting period. Whilst a direct comparison in the roles reveals they have some different demands there are nonetheless many similarities in the nature of the work conducted by both roles and agencies on behalf of and for, the ACT community. That said, we would argue that the breadth of

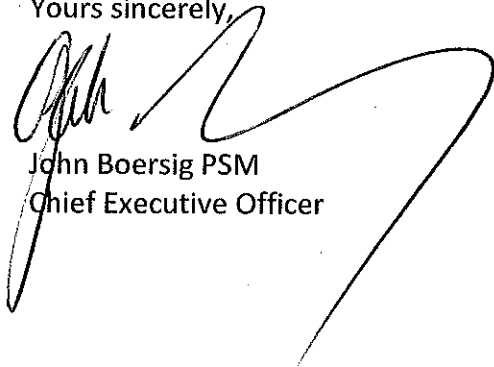
the Commission's remit and responsibilities that are overseen by the CEO and DCEO is much broader than the ACT DPP given the range of services and supports delivered to the ACT community; as a legal practice the Commission is also larger.

While we acknowledge the standard expectation of an increase is in accordance with the consumer price index, the Remuneration Tribunal has not been asked to consider the work value of our executive positions since 2016. We respectfully submit, based on the arguments advanced in this submission, that a greater increase is warranted to salary and entitlements.

I look forward to meeting with the Tribunal to discuss this submission.

We respectfully ask for these content of this submission to be kept confidential. Some of the information contained in it is not publically available and was kindly provided to us on the basis that we seek confidential classification.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Boersig', is written over the typed name and title.

John Boersig PSM
Chief Executive Officer