



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

7 October 2022

By email: remtrib@act.gov.au

Dear Ms Lambert,

ACT Remuneration Tribunal - Annual review into the remuneration and allowances for ACT Civil and Administrative Tribunal members

Thank you for your letter dated 12 September 2022 inviting me to make a submission in relation to your Tribunal's annual review of the remuneration and allowances to be paid, and other entitlements be granted, to members of the ACT Civil and Administrative Tribunal (ACAT).

In preparing this submission, I note that the ACAT made a detailed submission dated 26 August 2021. This submission builds on, and to some extent reiterates, aspects of that earlier submission.

Expanding jurisdiction

As noted in previous submissions to the Remuneration Tribunal, the ACAT has a broad and expanding jurisdiction. In summary, the ACAT considers and resolves applications lodged by individuals, businesses, government agencies and occupational regulatory authorities on a wide range of issues. The subject matter of applications extends from the review of multi-million-dollar planning and taxation decisions to the disconnection of essential services from residential premises. Applications can be made about:

- the review of a range of administrative decisions made by the ACT Government
- discrimination complaints
- guardianship, financial management and enduring powers of attorney
- mental health treatment and care
- residential tenancies (rental property) disputes
- energy and water hardship and complaints/investigations
- civil disputes valued at \$25,000 and under
- unit titles and retirement villages disputes
- motor accident injuries



- change of registered identity details of young people
- the discipline and regulation of people in a wide range of professions and occupations including health professionals, legal practitioners, liquor licensees, security guards, real estate agents, veterinarians, teachers, and various construction occupations.

Legislative changes implemented during 2021-22 increased and changed the ACAT's jurisdiction. New reviewable decisions were created under a range of legislation and new functions were given to ACAT under the *Births Deaths and Marriages Registration Act 1997*, which commenced in August 2021. The amended Act sets up a mechanism for children under 16 to apply to the ACAT for leave to apply to the Registrar-General for registration of a change of the person's given names, alteration of the record of the person's sex in the birth registration or a recognised details certificate without parental consent.

There were legislative amendments to some authorising laws, including to the:

- *Guardianship and Management of Property Act 1992* which gave the ACAT the power to order compensation if guardians or managers do not comply with the Act.
- *Fair Trading (Australian Consumer Law) Act 1992* which gave power to The Commissioner for Fair Trading to conciliate consumer complaints. An application may be brought to the ACAT for orders to give effect to a conciliated agreement.
- *Residential Tenancies Act 1998*, including in relation to education provider occupancy agreements.

The ACAT is aware of proposed and possible legislation which will expand the functions and powers of the tribunal by amending legislation which the ACAT currently administers, replacing current legislation with a new authorising law conferring power on the ACAT (in particular, a proposed new Planning Act) and possible new legislation conferring new powers and functions on the ACAT.

The ever-expanding range of matters conferred on the ACAT demonstrates the confidence that the ACT Legislative Assembly has in the capacity of the ACAT (through its experienced and expert members) to deal fairly, promptly, and informally with matters that are significant to the ACT community.

As noted in previous submissions to Remuneration Tribunal, a comparison between the jurisdictional scope of comparable civil and administrative tribunals throughout Australia shows that the ACAT has jurisdiction in relation to as many, and sometimes more, types of matters than other such bodies.

Membership

The ACAT currently has four full-time Presidential Members (including the President), two full-time Senior Members and 54 sessional Senior and Ordinary Members.

The ACT Attorney-General is currently engaged in a process to recruit additional sessional members with appropriate qualifications, skills, and experience to meet current and reasonably foreseeable needs of the ACAT.



President

As noted in previous submissions, the qualifications for appointment as President include that they be either a Magistrate or be eligible for appointment as a magistrate. In August 2021, the ACAT submitted that it would be appropriate to at least maintain parity between the salary of the President and that of a Magistrate. Further, it was arguable that in recognition of the additional statutory functions of the President and the President's oversight of the ACAT an additional payment should be made.

I acknowledge that such an adjustment was made in Determination 8 of 2021, and submit that a comparable provision be made in the next Determination.

In December 2021, an issue emerged about whether the President (and other full-time Presidential Members and full-time Senior Members) are entitled to a motor vehicle (in lieu of a motor vehicle allowance) consequent upon changes to the entitlements of senior officers of the ACT public service. I understand that matter was referred to the Remuneration Tribunal, because the Determination in section 12 refers to entitlements under the *Public Sector Management Standards* and the *Guidelines for the Management and Use of Executive Vehicles*. Executive vehicles are no longer provided under those documents. At present, the issue is only of practical significance to me as I am the only full-time Member who has a vehicle under the Determination. I look forward to your advice.

Presidential Members

The qualifications and many of the powers and functions of the Presidential Members are specified in the *ACT Civil and Administrative Tribunal Act 2008*.

Presidential Members preside over most internal appeals and in a range of other matters. It is necessary for a Presidential Member to preside in hearings and perform other functions under the *Mental Health Act 2015*.

Presidential Members can (and do) exercise powers delegated by the President.

In addition to those statutory requirements and organisational arrangements, Presidential Members exercise leadership and management roles within the ACAT. Unlike some larger tribunals, the ACAT does not have formal divisions, however, under Guidelines revised in 2020, each Presidential Member has case management roles involving work within and external to the ACAT.

Within the ACAT, a case managing member will:

- ensure that each case (or cluster or category of cases with common features) is assessed for such things as the directions which should be made in relation to it (or them)
- ensure that appropriate directions are given (without necessarily having to conduct all directions hearings)
- allocate or provide recommendations to the President about the allocation of individual matters (or cluster or category of cases with common features) to a specific ACAT member or members



- ensure that ACAT members and staff working in a particular area of its jurisdiction are kept up to date with current decisions of the ACAT relevant to their work, relevant practices of the Tribunal, and relevant decisions and practices of other courts and tribunals, as a means of ensuring that members and staff have the requisite knowledge and skills to perform their work
- participate in discussions about proposed new or amending legislation which might affect the ACAT (e.g., conferring additional jurisdiction on the ACAT) and the Integrated Courts Management System, and identify practice update, training, workload, and resources issues to which the proposed legislation might give rise
- suggest changes to ACAT practices or authorising laws to enhance the operation of the ACAT or facilitate the better implementation of current law.

External to the ACAT, a case managing member will:

- engage with the relevant stakeholder bodies to gauge their responses to, and any concerns about, ACAT practices and ways to improve them; and
- arrange opportunities for stakeholder forums and other similar means of explaining ACAT practices and legislative requirements to stakeholders and seeking their feedback about ways in which the ACAT might improve its operations or activities.

On that basis, the Remuneration Tribunal should consider increasing the relativity between the remuneration of the President and the full-time Presidential Members to reflect the levels of responsibility that they exercise.

Senior Members

Full-time Senior Members exercise a range of leadership and administrative responsibilities in addition to hearing and deciding a range of complex cases. Their level of remuneration relative to the Presidential Member should reflect that degree of responsibility.

Each full-time Senior Member is allocated aspects of the Tribunal's case management work in order to work with a case managing member or members to ensure that:

- there is continuity of work practice; and
- if a case managing member is absent or on leave, another member can confidently and competently step in to undertake or continue the work of the case managing member.

The nature and extent of the work allocated to the Senior Member is a matter for discussion between that Senior Member and the case managing member and the project team leader or leaders in relation to the subject matter of the discussion.

For that reason, the Remuneration Tribunal should also consider aligning the relativity between the remuneration of full-time Presidential Members and full-time Senior Members.



As well as determining the amount of remuneration paid to full-time Senior Members relative to the amount paid to full-time Presidential Members and the President, it is appropriate that the level of remuneration for full-time Senior Members does not fall below that payable to other public sector positions for which the occupant has certain qualifications and a range of responsibilities which might be broadly comparable to the roles performed by Senior Members, in particular the ACAT Registrar (Executive 1.4) and ACT Government lawyers appearing before the ACAT (e.g., Government Solicitor Level 4).

Overall relativities

As previously submitted, there might be benefit in determining the remuneration of full-time Presidential Members and full-time Senior Members as a percentage of the President's remuneration. If that approach is taken, it would only be necessary each year to review the President's remuneration. The remuneration of other positions would be adjusted automatically, and the internal relativity of remuneration would be preserved.

As a minimum, I recommend there be an increase to all remuneration in line with the Consumer Price Index or such other increase as the Remuneration Tribunal determines for other public office holders.

Daily fees for sessional members

Determination 8 of 2021 dealt with a range of issues raised in the ACAT submission in August 2021 and I thank the Remuneration Tribunal for its assistance in clarifying the conditions related to sessional members.

I note that, in addition to the increasingly complex work undertaken by sessional Senior and Ordinary Members, those members have an added administrative workload when conducting hearings at ACAT premises. Unlike judicial officers, members of the ACAT do not have associates but work with small teams of administrative officers who have substantial workloads. A sessional member is expected to conduct a hearing, including using sophisticated audio-visual equipment at the ACAT's new premises at 15 Constitution Avenue, to link parties participating remotely in a hearing and to display documents on such equipment (including documents provided in hard copy in a hearing or transmitted electronically), without staff in the hearing room. They are expected to ensure that bench sheets and other paperwork are in order, and to prepare the reasons for decision and deliver them with a minimum of administrative assistance.

It is important that sessional members be remunerated appropriately not only for the range of substantive work assigned to them but also the associated administrative work which they are required to do, and the complex and demanding environment in which they perform their statutory functions.

Accordingly, the only submission on this occasion is that there be an appropriate increase in the daily rate payable to sessional Senior Members and sessional Ordinary Members. At the very least, such an increase should be in line with the Consumer Price Index or such other increase as the Remuneration Tribunal determines for other public office holders.



Conclusion

The ACAT would welcome the opportunity to discuss the matters raised in this submission and provide any additional information that the Remuneration Tribunal might require. Please direct any enquiries in the first instance to Brenton Hutchison at brenton.hutchison@act.gov.au or 02 6207 1438.

Yours sincerely



Graeme Neate AM

President