

ACT Remuneration Tribunal

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Judicial members

Sentence Administration Board

24 October 2019

Dear Ms Lambert

Re: Submissions by judicial members ACT Sentence Administration Board

Thank you again for the Tribunal's time on our submissions and at the recent hearing. We write to clarify aspects of our submissions.

1 The status quo is inequitable

We note that 'community' board members currently receive a per diem payment of \$1025 (Determination No 5 of 2019), and as a matter of practice any preparation over 2 hours attracts extra remuneration. To illustrate the current inequity in the annualised remuneration of the Board's judicial members, we calculate below the annual income of judicial members for their current sitting workload if they were paid at the same rate as community members.

The judicial members would be paid for their reasonable preparation and case-management time above 2 hours, which for the Deputy Chair is the equivalent of 1 extra day/hearing day, and for the Chair it is 2 extra days/hearing day due to her responsibilities to case-manage and oversee policies and processes for all hearings as well as those that she will Chair. Each judicial member sits 36 days/year on current data (72 sitting days in 2018-2019, an increase of 26.3% from 57/year in prior years). If paid as community members, this equates to an annual income for the Deputy Chair of \$73,800 (compared to the current annualised salary of \$63,305) and for the Chair of \$110,700 (compared to the current annual salary of \$79,175).

Another way of illustrating the inequity is as follows: if the current annualised salary is divided by the current workload (36 hearing days each/year) including preparation days as set out above (ie 1 day preparation/hearing day for the Deputy and 2 days preparation and follow up/hearing days for the Chair), then the Deputy Chair is being paid \$879/day and the Chair is being paid \$733/day.

The above illustrative calculations make no allowance for the quasi-judicial skills and knowledge, and chairing role that the judicial members bring to the Board each time they sit on a hearing. It also does not account for any time that judicial members spend on essential work outside the actual sitting days of the Board. In particular, the Chair is the head of a Territory agency and has associated responsibilities to report and meet the usual accountability requirements. Also the Board has a statutory advisory role and judicial members are often called upon to advise about a range of issues and matters. The Chair occupies a statutory position on the ACT Victims Advisory Board by virtue of being Chair of the Board, is not separately remunerated because it is assumed that the Chair's annualised remuneration covers her time for this Board (it meets 4 times/year with related pre-reading and follow up on specific issues). Judicial members settle legal advices, FOI and subpoena requests, instruct in reviews of Board decision, and write responses to Ministerial, Committee and media inquiries. There were 3 days of Board training during 2018-2019 that the judicial members facilitated for all Board members, which is the norm for each year.

2 Approaches to remunerating the judicial members

It is difficult to easily name a comparable body to benchmark the remuneration of the judicial members of the Board. The Board is an administrative body and is not a court, similar in this regard to the ACAT. It is an unusual body in that it impacts on the liberty of persons, Decision-making by the Board has historically been done by courts and in many jurisdictions is still done by courts. The powers of the Board have led the ACT Supreme Court to describe it as a 'quasi-judicial' body, which refers to the court-like standards and common law about courts that are applicable to the Board's decision-making.

We have suggested that the judicial members of the Board have their remuneration benchmarked against that for Magistrates. We note that Determination No 11 of 2018 prescribes the per diem rate for a Special Magistrate as being a 230th of a Magistrates annual salary of \$362,484. This equates to \$1576 per day. The latter Determination No 11 prescribes that Special Magistrates who undertake more than 3 hours preparation are entitled to payment for a further day.

We suggest that the Board's work, exercising a quasi-judicial powers that impacts citizen's fundamental right to liberty, is just as complex as a exercising a judicial power in the Magistrate's Court. The ACT Board, unlike other parole authorities in Australia, is subject to the principles of natural justice and the human rights legislation (for example in Victoria neither of these apply to the Adult Parole Board's decisions). We note that Special Magistrates usually sit alone, have the assistance of a legally qualified prosecutor and legal aid is available for most criminal matters before them. The judicial members have the added responsibility and complexity of managing a hearing panel of three, comprised of two lay persons, to court-like standards. Also there is no legal aid for persons before the Board so the vast majority of those appearing are self-represented.

Using the Special Magistrates rate as a benchmark, for the 36 sitting days/year and 1 day/sitting preparation for Deputy Chair and 2 days/sitting day for the Chair as explained above, then this equates to annual income for the Deputy Chair of \$ 113,472 and for the Chair of \$170,208. This annual income on a per diem basis does not allow for remunerating the judicial members for any of their other essential work which is set out under 1 above.

ACAT also offers a relevant benchmark. ACT Civil and Administrative Tribunal Determination 12 of 2018, which we understand is the current determination, sets out remuneration for the President and full-time and part-time Presidential members. Presidential members are akin to the judicial members of the Board in that they must be a lawyer of 5 years or more (s94 ACAT Act). Similarly, unlike other members of that Tribunal, they can sit in jurisdictions e.g. the mental health tribunal that impact the liberty of the person and which require them therefore to be subject to court-like standards and common law.

Sessional Presidential members are paid at the rate of \$1576/day, with payment for pre and post sitting time above 'normal preparation time' also remunerated. Remuneration for sessional Presidential members is 47.6% above that for ACAT's senior members (\$1,100). Community members of the Board are paid a similar per diem to that of ACAT's senior members (\$1025), and we suggest that it is appropriate for judicial members of the Board to receive a per diem rate similarly considerably above that of community members.

If the ACAT sessional Presidential members' rate is applied to the current workload for hearings conducted by the judicial members of the Board, again the annual income for the Deputy Chair is \$113,472 and for the Chair is \$170,208. This annual income on a per diem basis does not allow for remunerating the judicial members for any of their other essential work.

3 Proposal

We recognise that both of the approaches above lead to a significant increase to the current remuneration for judicial members. This arises due to the significant inequity of the current remuneration given the increased workload and work value of the judicial members' roles, which is illustrated by the calculations set out in 1.

Even if the Tribunal takes issue with the overall ambit of what is set out above, we ask that it increase the remuneration of the judicial members in response to the significant increase in workload and the increased work value as explained and set out in written and oral submissions. As explained in those submissions, the Board's workload is not going to decrease given the new sentence options and initiatives in place and in progress that drive demand for the Board services.

It is not our preferred option to be remunerated on a 'per diem' basis. Such a system would require preparation and sign off of an enormous number of timesheets - presumably a senior executive within the Department of Justice and Community Safety would have to sign-off the time sheets and Secretariat staff would need to track payments, thus increasing already busy workloads. On the other hand, moving to per diem remuneration for the judicial members would allow remuneration to be more responsive to the increasing workloads and requirements placed on the judicial members. If the Tribunal concludes that the best manner to respond to issues raised by the judicial members is to move to a per diem approach, then the judicial members suggest this be done.

For the reasons set out above, any per diem for the judicial members should be significantly higher than that paid to community members and comparable with that for a sessional Presidential member at ACAT and a Special Magistrate. Both the latter per diem arrangements allow for additional per diem payments for preparation beyond the normal i.e. beyond 3 hours in the case of a Special Magistrate. The different roles played by the Chair

and the Deputy Chair should be reflected in the per diem rates, and the per diem arrangement should allow for payment of superannuation in the usual way.

Laura Beacroft and Don Malcolmson

Chair and Deputy Chair, Sentence Administration Board

24 October 2019