



SENTENCE ADMINISTRATION BOARD OF THE AUSTRALIAN CAPITAL TERRITORY

Sandra Lambert AM
Chair, ACT Remuneration Tribunal
remtrib@act.gov.au

24 August 2021

Dear Ms Lambert

Re: Further examination of the remuneration, allowances, and other entitlements for judicial members of the Sentence Administration Board (SAB)

Thank you for the opportunity to provide a submission. This submission is provided by the three judicial members of the SAB, being Laura Beacroft (Chair), and Philip Moss AM and Dominic Mulligan (Deputy Chairs).

We rely on prior submissions made to the Tribunal. We note the document prepared by your office titled "Key themes raised in submissions to the Remuneration Tribunal". This is helpful, however we wish to clarify some points in it as follows:

- Some of the workload of the SAB Chair, tasks such as legal research and updating SAB's web pages, can be delegated to the Secretariat as it becomes better resourced; it is expected that the Secretariat will be better resourced to do this type of work by December 2021. However, the SAB judicial members do not agree that the highest-level strategic management and accountability work that the SAB Chair, supported by the SAB Deputy Chairs, currently undertakes is the work of the Secretariat. While very small, the SAB is still subject to most of the same strategic management and accountability requirements of larger agencies such as ACAT, and these requirements result in considerable work for the Chair. Delegating SAB's highest level strategic management and accountability work to SAB's Secretariat would not be responsible or practical. The Secretariat is necessarily a team with skills relevant to day-to-day SAB operations and its skills base is not suited to undertaking the highest-level management and accountability work that the Chair does. While larger agencies, such as ACAT, can support a Registrar who might undertake that agency's highest level strategic management and accountability work, this is not cost-effective for the SAB given its size; there is no proposal that this level of resources be provided to the SAB at this time. An added problem in delegating any work to the Secretariat in the case of the SAB is that all the Secretariat staff are employees of ACT Corrective Services (ACT CS), the latter agency is the main 'prosecutor' in all cases before the SAB, and so Secretariat staff can be conflicted for certain tasks.

- A decision by the Tribunal about submissions by SAB judicial members over some years for an increase in their remuneration has been delayed, in part as we understand it to allow an MOU to be developed with the SAB. In 2020 the SAB exchanged Statements of Expectations and Intent with the ACT Attorney which are referred to in more detail in this Submission. The SAB judicial members submit that these documents give sufficient clarity for the Remuneration Tribunal to decide about the equitable remuneration of SAB's judicial members.

Summary

The essence of our submission is that the workload, value, complexity, and responsibilities of the SAB judicial members, especially the Chair, have significantly increased over the last 3 years and this has escalated since 1 January 2021 with the commencement of the ACT Victims of Crime Charter as explained later in this submission. However, the annualised remuneration of the judicial members has been static for many years, apart from any generic increases that have been granted by the Tribunal for all statutory office holders to reflect the CPI.

The remuneration for SAB judicial members is inequitable because of the amount of time that judicial members must now spend to exercise their statutory and related duties, and when one considers the value, complexity, and responsibilities that they now bear. The annualized salaries of the judicial members should be increased, using other comparable positions at the ACT Civil and Administrative Tribunal (ACAT) and the ACT Courts as the benchmarks to calculate this increase.

Note, the ordinary members of the SAB do not face the same inequity regarding the increased time they are spending on SAB sittings and other business - they are paid a daily rate when sitting or doing business of the SAB. Indeed, over time what has occurred is that the remuneration of some ordinary members has grown such that it is significantly closer to that of judicial members, which has devalued the role of judicial members and created inequities within the SAB.

Comparability of SAB judicial roles to interstate parole authority positions and other positions in the ACT justice system

When comparing the SAB judicial roles with comparable positions in other state and territory parole authorities, it should be understood that the SAB is subject to the highest requirements compared to any other parole authority in Australia. The SAB is legally required to meet human rights and natural justice requirements and it works therapeutically in line with the ACT Attorney's Statement of Expectations and recognised best practice, whereas interstate parole authorities do not. For e.g., the NSW parole authority is not subject to human rights law and does much of its work 'on the papers' without hearings, and the Victorian parole authority similarly does much of its work 'on the papers' and is exempted from natural justice and human rights law that otherwise apply in Victoria. The SAB judicial members support the onerous requirements and more effective methods of practice that the SAB is subject to in the ACT; these requirements and methods contribute to lower numbers of persons being imprisoned because of SAB decisions and increased community corrections compliance as reported in the SAB's Annual Reports. However, these require SAB judicial members to be experts and up-to-date in additional technical and practice areas, they place added responsibilities on SAB judicial members, and SAB proceedings are more complex and time-consuming, when compared to interstate parole authorities.

When comparing the SAB judicial positions with comparable judicial or quasi-judicial roles in the ACT justice system, the following points can be made – the points are in part based on the judicial

members' own experience given they have been or are currently appointed to positions in the ACT Courts and ACAT.

Like other persons of authority in the ACT justice system, SAB judicial members must increasingly act to effectively protect their privacy and safety. They are required to meet the highest duties regarding managing conflict of interest and personal integrity.

SAB judicial members adjudicate complex cases in a high-volume context in a similar manner to Presidential members of the ACAT and Magistrates. In particular, SAB judicial members case-manage matters prior to any hearings; ensure that the relevant laws, rules of evidence and principles of natural justice are met; manage proceedings including hearings; make defensible decisions in accordance with law and the facts before them; bring high-level legal knowledge and expertise to their adjudication; write reasons for decisions; and their decisions are subject to review by the ACT Supreme Court.

Added challenges for SAB judicial members when adjudicating as compared to Magistrates and ACAT Presidential members are as follows:

- they always chair a three-member Board when sitting which includes two other members, usually non-lawyers, and this requires SAB judicial members to have extra skills compared to sitting alone, and
- the SAB must make all its decisions orally at the final hearing and cannot reserve a decision, which requires careful and time-consuming preparation and adjudication by SAB judicial members.

The SAB Chair, in addition to her adjudication responsibilities, also performs the following roles:

- actively manages and develops the strategic, operational, and case-management frameworks of the SAB which the SAB judicial members, supported by the Secretariat, then implement,
- develops and oversees relationships and protocols with key stakeholders and service providers to ensure compliance with statutory requirements, improved efficiencies and to resolve disputes, such as operational areas of ACT Corrective Services, the Director of Public Prosecutions (DPP), the ACT Solicitor-General, and the Victims of Crime Commissioner,
- actively monitors and responds to SAB's co-operation and compliance with government initiatives and law reforms,
- undertakes SAB's high-level reporting including to the Legislative Assembly and related Committees when required, to Ministers and the Attorney, and writes its Annual Report,
- manages the Secretariat, note since 2020 the Secretariat reports to her on substantive matters,
- oversees and responds as necessary to the performance of Board members, and any complaints about them or the SAB.

The current daily payment for ordinary members of SAB (\$1,055) is comparable to that of a senior member of ACAT (\$1,130). SAB judicial members should be paid at a higher daily rate than SAB ordinary members given their higher-level skills and additional responsibilities. The most appropriate

benchmark for calculating the annualised salaries of SAB judicial members is that of a Magistrate/President of ACAT in the case of the SAB Chair, and a Presidential member of ACAT in the case of SAB Deputy Chairs (see Determinations 8 and 9 of 2020). If these benchmarks are applied, it shows that the current annualised remuneration of the SAB judicial members translates to the following numbers of remunerated days for the SAB judicial members:

- SAB Chair annualised salary (\$81,155) compared to that of a Magistrate/President of ACAT (\$371,546): 50 remunerated days (i.e., \$1,615/day)
- SAB Deputy Chairs annualised salaries (\$64,890) compared to that of a Presential Member of ACAT (\$278,660): 53 remunerated days (i.e., \$1,211/day).

On these calculations, the number of days the SAB judicial members are currently remunerated for does not cover the bare minimum number of days (i.e. 56 days) required for them to undertake their current sitting day duties. Also, it provides no remuneration for other work they do, and which is not able nor appropriate to be delegated to the Secretariat, as explained later below.

Note, a Magistrate's and Presential member's remuneration includes four weeks leave, but the above calculations appear to assume that the SAB judicial members have no leave entitlements which is not equitable.

Reasons for raising the annualised remuneration of SAB judicial members

The data that the SAB has provided to the Tribunal and that SAB has published in its Annual Report for many years shows that the number of remunerated days as calculated above is grossly out of step with the actual days that SAB judicial members are required to work. There are extra resources being provided to the Secretariat and an additional SAB judicial member was appointed to the SAB in 2020, for which the SAB judicial members are grateful. However, the situation remains inequitable for the reasons set out below.

By way of background, a decade ago the judicial members sat once per fortnight except in weeks where there was a public holiday i.e., usually no more than 20 sitting days per year each. A sitting day was from 10AM to 4PM usually, the nature of cases and the wider context was such that preparation took no more than one day with minimal follow-up, and there was little to no other work to be done by the SAB judicial members. That situation has changed. As mentioned earlier, while an extra SAB judicial member was appointed in 2020 and extra resources are being provided to the Secretariat, nonetheless the workload of each SAB judicial member today is substantially greater than earlier as set out below:

1. The three SAB judicial members each sat 28 days in 2020-2021, which is a result of the increasing number of persons incarcerated or subject to community corrections and therefore within the SAB's jurisdiction. It is also a result of the increasing number of hearings with victims following the commencement of the ACT Victims Charter on 1 January 2021 that gives victims a statutory right to an oral hearing (see the *Victims of Crime Act* 1994 which brought in the ACT Charter of Victims' Rights on 1 January 2021; for information see <https://hrc.act.gov.au/complaints/services-for-victims-of-crime-complaints/#:~:text=There%20are%20five%20categories%20of%20rights%20in%20the,investigations%20C%20proceedings%20and%20decisions%205%20Participation%20in%20proceedings>). The increase in numbers of hearings with victims is expected to continue, given this is a new right that is only beginning to be known and exercised.
2. A sitting day is now usually from 9AM to 5PM or indeed later.

3. The preparation time and time required to undertake follow-up work is much greater now due to the following: increased legal complexity in cases; increase in volume of submissions and evidence for hearings; new laws that apply such as the 'ACT Charter of Victims' Rights' as mentioned above; more legal representation at hearings; new demands for more detailed reasons for decisions and consideration of whether to publish a decision; and increasing litigation and complaints and inquiries about SAB's decisions.
4. Judicial members, especially the Chair, undertake a significant amount of high-level strategic management and accountability work including the following:
 - regularly reporting and providing briefs to the Attorney and the Minister,
 - reporting to the Legislative Assembly and making Submissions to Committees when required,
 - regularly reporting and meeting with JACS and ACT Corrective Services (ACT CS) senior leadership,
 - developing and monitoring the SAB strategic plan,
 - liaising and developing protocols, resolving disputes, with key stakeholders and service providers including the DPP, the ACT Solicitor-General, operational areas of ACT CS and the Victims of Crime Commissioner,
 - participating in the ACT Victims Advisory Board, note that the SAB Chair is a statutory appointment to the Board by virtue of her Chairing the SAB,
 - writing the SAB's Annual Report.

The SAB judicial members also undertake complex technical tasks such as reviewing templates for legal compliance and drafting legally complex, sensitive policies and practice notes.

The current Strategic Plan for the SAB was developed by the Chair. It has been submitted to the Attorney and meets a key requirement in the Attorney's Statement of Expectations (see Plan attached). Its implementation will be overseen by the judicial members, especially the Chair, and many of the projects in the Plan will be largely actioned by a judicial member.

In addition, there is increasing interest, requests for submissions and information, and scrutiny about the SAB's work and outcomes. The SAB plays a key role in the ACT government's justice goals, including improving community safety especially for family violence victims, reducing recidivism and enhancing the voice of victims. Judicial members, particularly the Chair, are continually reviewing SAB operations to improve its outcomes in this regard to the extent that the law allows.

Complaints bodies are more actively engaged with the SAB, either by way of reviews or referring complaints to the SAB for input which judicial members, largely the Chair, must respond to, e.g., see the ACT Ombudsman's Office recent review of the parole process that required SAB to input and also follow-up on recommendations (see <https://www.ombudsman.act.gov.au/publications/media/2020/act-ombudsman-releases-report-on-parole-processes-at-the-alexander-maconochie-centre>)

In a larger entity, a Registrar-type position would be available to do much of the management and accountability work and highly technical tasks outlined above. But this is not the case at the SAB due to its small size.

While the SAB is hosted for certain administrative purposes by ACT CS for cost efficiency reasons, the SAB is an independent entity (see the *Crimes Sentence Administration Act 2005* <https://www.legislation.act.gov.au/a/2005-59/>). Its independence has become better recognised with the exchange in 2020 of Statements of Expectations and Intent between the Attorney-General and the SAB (see <https://justice.act.gov.au/safer-communities/sentence-administration-board/statement-expectations-and-intent>). The staff of the Secretariat now report on substantive matters to the SAB Chair. New laws also reflect SAB's independence, for e.g., the *Victims of Crime Act 1994* as amended on 1 January 2021 designates the SAB as a justice agency with numerous new statutory responsibilities like those for large agencies including ACT Police and the DPP.

While very small, the SAB is still subject to most of the same strategic management and accountability requirements of larger agencies such as ACAT, and these require the Chair to undertake related work. Delegating SAB's highest level strategic management and accountability work to SAB's Secretariat would not be responsible or practical. The Secretariat is necessarily a team with skills relevant to its focus on day-to-day SAB operations and is not well suited to such work. As mentioned above, while larger agencies such as ACAT can support a Registrar who might undertake that agency's highest level strategic management and accountability work, this is not cost-effective for the SAB given its size and there is no proposal that this level of resources be provided to the SAB at this time. An added problem in delegating any work to the Secretariat in the case of the SAB is that all the Secretariat staff are employees of ACT Corrective Services, the latter agency is the main prosecutor in all cases before the SAB, and so Secretariat staff can be conflicted for certain tasks.

The consequence of all the matters raised above is that SAB judicial members, particularly the Chair, perform significant high level strategic management and accountability work and undertake complex sensitive technical work which is not able to be nor appropriate to be delegated.

Conclusions

The judicial members propose that their annualised remuneration be calculated using as the benchmark the daily rate of remuneration for the ACAT President/Magistrate in the case of the Chair, and using as the benchmark that for ACAT Presential Members in the case of SAB Deputy Chairs.

Considering the number of days that judicial members should be remunerated for, the SAB judicial members submit that their current annualised remuneration is inequitable when one considers that each judicial member is sitting 28 days and is also doing many days preparation and follow-up for each sitting day. The SAB judicial members acknowledge that a daily rate usually includes some time for preparation for a sitting day (note, for SAB ordinary members the preparation time which is usually regarded to be 'in-built' into the daily remuneration for a sitting day is 3-5 hours). However, the preparation and follow-up for each SAB sitting day for SAB judicial members is now well in excess of this, sometimes it is many days, for the reasons set out above. The SAB judicial members therefore submit that for each sitting day they should be remunerated for an additional day to cover the current significant preparation and follow up time required of them i.e. 56 days for each judicial member to cover sitting day duties. This is remunerating them for the bare minimum of time that they are in fact allocating for each sitting day.

The SAB judicial members are not being remunerated at all for other work that is now required of them, as set out above. The Chair carries the bulk of the load regarding this other work, as set out above.

Regarding the SAB Chair's remuneration, in the interest of equity it is proposed that the remuneration be increased to allow for an additional 10 days to cover the SAB Chair's non-delegable high-level strategic management and accountability work. Like the other SAB judicial members, the Chair is also adjudicating and doing significant preparation and follow up for sitting days - 56 days should be allowed for her sitting day work. Applying the daily rate for the ACAT President/Magistrate, then the annualised remuneration for the SAB Chair should be: \$106,590.

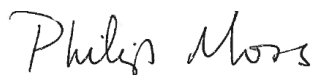
Regarding the Deputy Chairs' remuneration, in the interests of equity it is proposed that the remuneration be increased to allow for an additional 5 days to cover each of the SAB Deputy Chairs' contribution to the Chair's management and accountability work and doing complex technical tasks, and the 56 days be allowed for their sitting day work. Applying the daily rate for an ACAT Presidential Member, then the annualised remuneration for each of the SAB Deputy Chairs should be: \$73,871.

Please let us know if we can provide any further information.

Yours sincerely



Laura Beacroft (Chair)



Philip Moss AM (Deputy Chair)



Dominic Mulligan (Deputy Chair)



ACT SENTENCE ADMINISTRATION BOARD (SAB) – STRATEGIC PRIORITIES AND ACTION PLAN 2021-2023

2021-2022

- 1.1 Make defensible decisions on time and within resources and continuously work to improve in this regard e.g., seek legal advice as required, respond to adverse findings about SAB decisions or processes, improve SAB processes consistent with the law, undertake effective service of SAB documents on detainees and those in the community, support relevant training of SAB members and Secretariat staff, and support bids for extra resources to better meet demands
- 1.2 Maintain SAB webpages so they are up-to-date and informative
- 1.3 Continue to work to have access to a reliable and safe venue that is consistent with SAB's therapeutic approach for SAB sittings, and end cancellation of community-based orders by phone
- 1.4 Continue to work to have timely hearing of all matters, prioritizing the goal of hearing any breach matters within three weeks of being raised, and for riskier breaches within seven days of being raised or a warrant is issued
- 1.5 Develop a monthly report on the Board's workload, timeliness, and key issues, for e.g., time to execute warrants when an order is cancelled by phone and notification of new charges
- 1.6 Develop a MOU with JACS, a Protocol with ACT Corrective Services Community Corrections, and work co-operatively with other ACTCS sections, to assist streamline and improve SAB's operations and decision-making
- 1.7 Develop a Protocol with the Victims of Crime Commissioner, and implement changes in Board processes and information resources, to support victims' rights under the *Victims of Crime Act 1994* and other laws

- 1.8 Finalize and/or follow-up arrangements with the DPP, ACT Government Solicitor, ACT Legal Aid, the ACT Ombudsman's Office, the Inspector-General of Correctional Services, the Restorative Justice Unit JACSD, and implement these arrangements
- 1.9 Meet with the Attorney-General and the Minister every six months and more frequently if necessary, using the ACT Government's Statement of Expectations and the SAB's Statement of Intentions as a basis for such meetings
- 1.10 Hold regular meetings with the judicial members to discuss and resolve issues especially legal issues, to support consistency in legal and other approaches, and to input into any proposed or requested legal reforms
- 1.11 Hold regular meetings with the Secretariat to assist manage workload and complex cases.
- 1.12 Hold meetings with all SAB members every six months, or more frequently if necessary, for discussion of issues, updates about operations, meeting stakeholders, and training
- 1.13 Develop and publish a policy/practice note on complaints, publishing outcomes, and working in a therapeutic and problem-solving manner
- 1.14 Write the Annual Report for 2020-21 and report on workload and issues/challenges, use relevant ROGS indicators and outcomes for high-level performance reporting, and respond effectively to any questions from the Legislative Assembly or its committees.
- 1.15 Seek a special audit of the SAB IT and information system to identify its nature, scope, controls, security, strengths, and weakness for supporting SAB's independence and operations, and to identify issues for improving it and supporting its portability should SAB be hosted by another agency
- 1.16 If a legal assistant can be provided, develop a system for storing and accessing legal advices and significant information relevant to SAB that can then be maintained by the Secretariat
- 1.17 If a legal assistant can be provided, develop a 'pull-down menu' of lawful additional conditions that the Board may impose

2022-2023

- 2.1 Continue to make defensible decisions on time and within resources and to work to improve in this regard
- 2.2 Finalize and/or follow-up arrangements with JACS, ACTCS Community Corrections, the Victims of Crime Commissioner, DPP, ACT Government Solicitor, ACT Legal Aid, the ACT Ombudsman's Office, the Inspector-General of Correctional Services, the Restorative Justice Unit, JACSD, and implement and improve these arrangements
- 2.3 Continue to meet with the Attorney-General, the Minister, and with judicial members, the Secretariat, and with the full SAB membership, and follow-up as necessary and as resources allow

- 2.4 Monitor implementation of policy/practice note on complaints, publishing outcomes, working in a therapeutic and problem-solving manner, and Conflict of Interest
- 2.5 Write SAB's Annual Report for 2021-2022 and respond effectively to any questions from the Legislative Assembly or its Committees
- 2.6 Continue to maintain SAB webpages so they are up-to-date and informative
- 2.7 Develop and implement an anonymous feedback survey about judicial members, the full SAB, and the Secretariat, for the information of the SAB and Secretariat to assist improve operations and decision-making
- 2.8 Develop and implement a new Parole Application Form
- 2.9 Continue to implement SAB's strategic priorities and follow-up actions until the terms of all SAB members end in May 2023