

## Remuneration for the Director of Public Prosecutions

Dear Ms Unger,

I have noted with some concern that the salary payable to the ACT Director of Public Prosecutions (DPP) has progressively declined relative to those holding similar positions in other Australian jurisdictions and, whilst obviously not personally affected by this decline, I would like to make a submission to the Remuneration Tribunal concerning the next relevant determination.

I must apologize for resorting to email but I am currently in Europe and understand that the deadline for submissions is due to expire in a few days.

As members of the tribunal may know, I was the inaugural ACT Director of Public Prosecutions. At the time of my appointment it was accepted by the ACT government that the salary should be set at parity with that of the judges of the ACT Supreme Court, though as I recall the initial the determination rounded off to the figure to the nearest \$1,000 which was actually a few hundred dollars below that level. Since then the other Australian jurisdictions have generally accepted that parity with the Supreme Court judiciary is appropriate. As someone who has held both positions I think I am reasonably well placed to confirm that there are sound reasons for that approach. The DPP's role is of crucial importance to any community and it requires a person with special experience, ability and judgment. In fact, attorneys-general, both in the ACT and in other Australian jurisdictions have sometimes found that it is more difficult to find a suitable candidate for appointment as a DPP than as a judge.

The director needs to be a highly competent criminal lawyer and an outstanding legal advocate who is able to present the most abstruse scientific or commercial evidence to juries in a comprehensible manner and to address the most complex legal issues on appeal. He (the male pronoun is used only to accord with the gender of the current director) must also be able to command the respect of other prosecutors and be seen by them as a mentor rather than merely a superior officer. Those qualities alone are generally found only amongst the most eminent members of the criminal bar. But the DPP also exercises important statutory powers. He has an overarching duty to ensure that any prosecution is in the public interest and that requires an approach far different from that of a committing magistrate. In committing an accused person for trial a magistrate need only determine that there is prima facie evidence of the offences charged, but the DPP will not only review that finding but go on to determine whether the evidence is sufficiently persuasive to offer substantial prospects of conviction.

If cases proceed to trial when the evidence is tenuous then victims may be needlessly distressed, innocent people unjustifiably vilified, witnesses inconvenienced, public funds wasted and respect for the criminal justice system diminished. On the other hand, if cases are dropped too readily, then guilty people may be freed to offend again. The responsibility to consider the public interest may also require the director to ask, in effect, 'what is the right thing to do in these circumstances?' That question can be profoundly difficult to answer.

To take but one example, whilst many people might assume that any allegation of sexual assault must inevitably result in prosecution, the DPP may have to balance the wider interests of justice against the needs of an emotionally fragile victim reluctant to give evidence, a dilemma poignantly underlined during my term as DPP when a victim committed suicide prior to trial. In other cases a DPP may have to decide whether to effectively excuse offenders from prosecution or reduce the charges for other reasons, such as age, ill health, apparent absence of mala fides or, occasionally, as a quid pro quo for evidence against others who may have committed even more serious offences.

And subsequent events may require reappraisal. Unlike a judge who will generally be required to let the most hopeless case run its course, the director may terminate a prosecution at any time, even during the course of a trial, if he believes there are sufficient grounds to warrant such a course. It should also be noted that the DPP does not merely prosecute people. He also has a significant responsibility for pursuing funds or other property that might reasonably be regarded as proceeds of crime. In addition, he has statutory powers that extend to other agencies. Most notably, he is empowered to give binding directions to the police and anyone else involved in criminal investigations.

The role of the director can be a lonely one. He has statutory independence and, whilst any decision to prosecute will obviously culminate in a trial, many of his other decisions are not amenable to appeal. Some may be bitterly resented. Indeed, any director who discharges his or her functions with integrity is bound to offend people, including perhaps members of parliament and journalists. Furthermore, he may sometimes be unable to respond to criticism because an adequate explanation might expose others to danger or compromise an ongoing investigation.

It has sometimes been suggested that a lesser salary may be justified on the basis that the ACT is a relatively small jurisdiction but this is unfounded. The responsibilities are no less important. In fact, the ACT is the only jurisdiction in which the DPP is responsible for all summary prosecution and, as the seat of government, it sometimes throws up cases of particular sensitivity, such as the trial some years ago for the murder of a Saudi Arabian diplomat, Abdullah Al-Ghamdi. More importantly, the ACT community is entitled to expect that the person who bears the ultimate responsibility for prosecuting offenders for crimes such as murder, rape or child abuse will bring as much experience and expertise to the task as any of his interstate counterparts. It may also be noted that even in the Northern Territory and Tasmania, where the work load and staffing levels are comparable to those in the ACT, parity with the Supreme Court salaries has been maintained.

The ACT director's current salary is now almost \$100,000 less than the judicial salary recently determined by the Commonwealth Remuneration Tribunal for federal judges and applicable to ACT judges by virtue of section 37U of the Supreme Court Act 1933. His superannuation and leave arrangements are also substantially less favourable. In fact, he receives considerably less than either of the NSW director's deputies. This is clearly unwarranted.

It is also likely to make it extremely difficult to find a suitable person to replace the current director, Mr White, when he eventually relinquishes the position. The problem is not merely one of money, but also of perception; senior criminal lawyers from other jurisdictions would almost inevitably see the current salary level as reflecting a reduced status and wonder what problems might emerge in a jurisdiction that seems to seriously undervalue the DPP's role.

For these reasons, I would urge the Tribunal to revert to an approach that would ensure the ACT director receives a salary comparable to those of his interstate counterparts.

Sincerely,

(The Hon Dr) Ken Crispin QC