



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

OFFICE OF THE LEGISLATIVE ASSEMBLY

Dr Colin Adrian
Chair
Australian Capital Territory Remuneration Tribunal
PO Box 964
CIVIC SQUARE ACT 2608

Dear Dr Adrian

I am writing in response to your letter concerning the Tribunal's annual review into the remuneration and allowances to be paid, and other entitlements to be granted, to Full Time Statutory Office Holders, of which the position I hold (Clerk of the Legislative Assembly) is one. Detailed below is some information that may assist the Tribunal in making its determination.

In summary it notes that the role of the Clerk of the Legislative Assembly is expanding by virtue of decisions taken by the Assembly in recent years, and that the ACT Clerk is still paid significantly less compared to Clerks of other small parliaments (ie, Tasmania, South Australia and Northern Territory) despite the roles and responsibilities being comparable.

ACTUAL WORK OF THE ROLE OR ENTITY AND ITS IMPACT ON THE ACT COMMUNITY

The Office of the Legislative Assembly's Strategic Plan 2018-2021 affirms that the Office is responsible for advising and supporting the Assembly as a democratic institution and advising and supporting the MLAs who constitute its membership at any given time. The plan also outlines the Office's function, where it states:

Headed by the Clerk of the Legislative Assembly, the Office supports the Assembly as the democratic body responsible for considering and passing laws, holding the Executive to account, and representing the people of the ACT.

The Office is established as an independent statutory agency under the *Legislative Assembly (Office of the Legislative Assembly) Act 2012* (the OLA Act). Under section 6 of the Act, the Office's function is to provide impartial advice and support to the Legislative Assembly, its committees and Members of the Assembly, including by:

- providing advice on parliamentary practice and procedure and the functions of the Assembly and committees;

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- reporting proceedings of the Assembly and meetings of committees;
- maintaining an official record of proceedings of the Assembly;
- providing library and information facilities and services for Members;
- providing staff to enable the Assembly and committees to operate efficiently;
- providing business support functions, including administering the entitlements of Members who are not part of the Executive;
- maintaining the Assembly precincts (including, through the Precincts Act, providing security services); and
- providing public education about the function of the Assembly and its committees.

One of the Office's main objectives is to support the Assembly as a democratic institution, and the Office aims to work to facilitate and strengthen the Assembly and its committees legislative, accountability and representative functions, including enhancing understanding and awareness of the work of the Assembly and promoting opportunities to become involved. At a time when fewer than 41 percent of Australian citizens are satisfied with the way that democracy works in Australia (down from 86 percent in 2007)¹ it is vital that the Office continues its important work and that the ACT community can have faith and confidence in the democratic institution it has that serves the Territory.

THE ROLE OR ENTITY'S SCOPE OF WORK, THE EXTENT OF ITS ADVISORY OR DECISION-MAKING POWERS AND, WHERE KNOWN, ITS BUDGET

In addition to the roles outlined above, the Clerk of the Assembly has had some additional tasks added to its remit in the last year.

In the *Legislative Assembly Legislation Act 2017* amendments were made to the *Auditor-General Act 1996*, the *Electoral Act 1992* and the *Ombudsman Act 1989* to include the following provision:

In exercising a power under this Act the Speaker may seek administrative support or advice from –

- (a) the Office of the Legislative Assembly.

As set out in the explanatory statement for the Bill, the inclusion of those provisions were to:

...enable the Speaker to seek administrative support and advice in exercising the Speaker's statutory powers and functions that arise under the Auditor-General Act. It provides a specific statutory basis for the Office of the Legislative Assembly to support and advise the Speaker in this regard.

Similar reasons were set out in relation to the Electoral Act.

With the consideration of the Integrity Commission Bill 2018 in November 2018, the Select Committee on an Independent Integrity Commission 2018 made the following comment together with two recommendations:

¹ The Conversation, *Australians' trust in politicians and democracy hits an all-time low: new research*, Mark Evans, Gerry Stoker and Max Halupka, 5 December 2018.

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The Committee notes the increased workload on the Speaker caused by the creation of Officers of the Assembly and believes that further thinking on ensuring the Speaker has adequate support is required.

The Committee's recommendations were as follows:

Recommendation 1

The Committee recommends that the legislation authorise the Speaker to seek administrative support and advice in discharging the Speaker's statutory role under the legislation, in a similar way as s37B of the *Auditor-General's Act 1996* and s37A of the *Ombudsman Act 1989*.

Recommendation 2

The Committee recommends that the Standing Committee on Administration and Procedure examine the level and manner of support to the Speaker in performing her statutory roles under Officer of the Assembly legislation.

Consequently the *Integrity Commission Act 2018* also provides for the Office to provide administrative support to the Speaker. The Assembly also, in the *Appropriation (Office of the Legislative Assembly) Act 2018-2019*, included an amount of \$1.048m in the Office's budget for the purposes of recruiting an Integrity Commissioner. The Office is currently undertaking that very important task.

In addition to these extra responsibilities, it is expected that the Clerk's role in administering the ACT's Lobbyist Register are set to expand significantly. The Clerk is currently the Registrar of Lobbyists for the Territory and the ACT is the only jurisdiction which has a Clerk of a parliament administering its Lobbyist Register. The Standing Committee on Administration and Procedure is currently inquiring into the proposed expansion of the Lobbyist Register to include industry associations, in house government relations staff and project management liaison officers. If this change is made to the register it will significantly increase the workload on the Registrar (ie, the Clerk). This is recognised in the Government's submission which indicates the level of extra work and an expanded role and additional resourcing. The submission states:

Administration of the Lobbyist Register

The Register is currently administered by the Clerk of the Legislative Assembly. The Clerk has responsibility for registration decisions, maintaining the accuracy of the register, and the handling of complaints relating to lobbying activities. The ACT Government acknowledges the inclusion of in-house lobbyists in the scheme will likely involve increases in the resourcing required to administer the Register. At the federal level, of the estimated 5000 [1] lobbyists working across the country, only 580 are on the federal register. This disparity is because in-house lobbyists or those working for industry bodies are not required to be registered. It is likely, given the similarities between the Commonwealth and ACT schemes, the number of registered lobbyists in the ACT as a proportion of the total would be similar. As at 27 November 2018, there are a total of 41 registered lobbyists on the ACT Register, extrapolating the percentage from the Commonwealth, this would equate to an additional registration of approximately 312 entities. In order to secure compliance and ensure the integrity of the Register, the administrator should have adequate institutional arrangements and the requisite operational competence. It is the view of the ACT Government that the Clerk of the Assembly possesses the expertise to continue to administer an expanded Register in-line with the proposed definitional changes. The Clerk is responsible for a range of governance and procedural matters,

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parliamentary education and public affairs. The Government recommends the administrator focus on preventative and educative role in fostering ethical practices. The extent to which the role for the administrator extends to these functions will be a future resourcing consideration for the Government and subject to review in the future.

ADDITIONAL ASSEMBLY COMMITTEES

Whilst it was anticipated that there would be additional workloads associated with the increase in the number of MLAs from 17 to 25, it was not anticipated that the structure of committees would significantly change.

At the cessation of the 8th Assembly there had been six standing committees and seven select committees. Half way through the 9th Assembly there are currently nine standing committees and thus far seven select committees.

As the principal procedural adviser for the Assembly the Clerk's advice is often sought by committee chairs, members of committees and by committee secretaries. As the number of committees have increased, so too have the number of advices requested on the operation of those committees.

WHAT MEMBERS ARE RESPONSIBLE FOR AND WHAT WORK THEY DO

The role of the Clerk and the additional workloads since the Tribunal last made a determination is outlined above. As can be seen, the role has additional remit in terms of Assembly committees, assisting the Speaker in her role of administering officers of the Assembly, a proposed change to the Lobbyist Register, and in terms of an expansion in the number of committees.

A RECOMMENDED REMUNERATION FOR THE ROLE AND ANY COMPARATIVE DATA OR EXAMPLES THAT SUPPORT THE RECOMMENDATION.

Currently, the Clerk of the ACT Legislative Assembly receives \$225,000 as salary.

Whilst the ACT Clerk's salary is always going to be less than those of the larger parliaments, there are significant differences between the salaries of the ACT Clerk and the Clerks of Parliaments of comparable jurisdictions (i.e. Tasmania with 25 MPs and 15 MLCs, Northern Territory with 25 MLAs and South Australia with 47 MLAs and 22 MLCs). The ACT Clerk's salary is \$125 000, \$50 000 and \$14 000 less than those Clerks in those similar sized legislatures. I would be happy to provide further details if I appear before the Tribunal.

I am aware that the Remuneration Tribunal has given significant weight in its determinations to making the remuneration of ACT MLAs comparable to similar office holders in other jurisdictions. The Tribunal has commented in the past that:

The Tribunal was mindful of its work over the past few years to ensure that the level of remuneration for Members of the Legislative Assembly sufficiently reflects the function and importance of the office, and to ensure appropriate relativity with the remuneration paid to parliamentarians in other jurisdictions. (*Statement No 171, dated April 2005*)

...[T]he Tribunal has consistently stated its long term objective of bringing the level of remuneration to ACT parliamentarians to one which is comparable with similar office holders in other jurisdictions. (*Statement No 62, dated July 2000*)

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This places ACT Members of the Legislative Assembly at a comparable level to Members of the Tasmanian Parliament, but still behind all other State and Territory colleagues. (*Statement No 30, dated June 1998*)

It is my contention that the remuneration of the Clerk of the Legislative Assembly must similarly be considered in light of other jurisdictions and remains comparable with those positions. In so many respects, the work requirements for Clerks is similar irrespective of the size of the Parliament, and there is a requirement to respond to similar demands of the House and its Members in regard to procedural, advisory and administrative matters.

Tribunals in other jurisdictions have taken a similar approach in relation to the remuneration of Clerks. The Tribunal might be aware that in previous determinations in relation to Clerks of the Western Australian Parliament, the Salaries and Allowances Tribunal in its determination on 4 April 2007 stated, when increasing the salaries of the Clerks that:

For this determination, the remuneration for the Clerks and Deputy Clerks has been considered almost exclusively by reference to parity with identical positions in the other Parliaments in Australia.

Whilst it is recognised that it is important to set remuneration for statutory office holders in the Territory commensurate with similar offices and Chief Executives, the Clerk of the Legislative Assembly is a specialist position requiring significant parliamentary experience. In most cases, that parliamentary experience is obtained either in the Territory legislature or in other parliaments around Australia. You may be aware that in the relevant Act (*Legislative Assembly (Office of the Legislative Assembly) Act 2012*) it is stated that:

- (3) The Speaker must not appoint a person as clerk unless—
 - (a) the Speaker is satisfied that the person has extensive knowledge of, and experience in, relevant parliamentary law, practice and procedure;

...

Your letter suggests that submissions address a recommended appropriation for the role. The Tribunal may wish to use as a benchmark the lowest or middle salary point of the three comparable parliaments (ie, Tasmania, Northern Territory and South Australia).

I hope that the above information assists the Tribunal in its deliberations.

Yours sincerely

Tom Duncan
Clerk of the Legislative Assembly
8 January 2019

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