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**ACT Office of the Director of Public Prosecutions**

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Our Reference: 200929083  
Your Reference:

27 August 2019

Ms Sandra Lambert AM  
Chair, ACT Remuneration Tribunal  
PO Box 964  
Civic Square  
ACT 2608

Via email: [remtrib@act.gov.au](mailto:remtrib@act.gov.au)

Dear Ms Lambert,

**ACT REMUNERATION TRIBUNAL 2019 SPRING REVIEW**

I refer to your letter of 23 August 2019, in which you sought submissions on the remuneration of the Director's position. As outlined in the invitation, this submission contains the personal financial pension and superannuation conditions of previous Directors, so I would prefer they not be published.

The Tribunal has previously acknowledged that the position of Director of Public Prosecutions should be remunerated in a way which recognises the parity with the salary of a Supreme Court judge.<sup>1</sup>

There is however a systemic disparity between the remuneration package of a Supreme Court judge and the remuneration of the Director of Public Prosecutions in the ACT.

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<sup>1</sup> See Determination 10 of 2014.

Pursuant to section 6.2 of Director of Public Prosecutions Determination 14 of 2018, the employer superannuation contribution is 16% of the base remuneration, which is of course added to by the occupant's own contribution of up to 10% of the base salary.

Pursuant to section 37U *Supreme Court Act 1933*, the *Judges' Pensions Act 1968* applies to resident judges of the ACT, providing for a judicial pension on retirement rather than a superannuation scheme-based retirement fund.

This is an anomaly that is not present in a number of other jurisdictions such as New South Wales<sup>2</sup>, Victoria<sup>3</sup>, South Australia<sup>4</sup> and the Northern Territory<sup>5</sup>, that afford the position of Director of Public Prosecutions the entitlement of that particular jurisdictions judicial pension scheme.

For this reason, potential future candidates for the position of Director of Public Prosecutions in the ACT, may see the position as little more than a stepping stone to judicial appointment, rather than a career destination in itself as such an important role within the criminal justice system deserves. Further, there is a risk of public perception that the independence of role may be infected by the incumbent's aspirations for a judicial appointment, eroding public confidence in the office. This is seen by the fact that three out of my four predecessors were either directly appointed to a judicial position from the Director position, or they used their time in the role as a vehicle for judicial appointment.

It should be noted that South Australia most recently recognised this issue and introduced the Judicial Pension scheme for the role of Director of Public Prosecution, in order to reverse the perception of a Directors "elevation" to the bench, recruiting a sitting Supreme Court Judge, Justice Martin Hinton to the position of Director of Public Prosecution.<sup>6</sup>

To give the position of Director of Public Prosecution the status and independence that such an important role within the Criminal Justice system requires, the role should be remunerated so as to draw candidates who see the appointment as an alternative to a judicial appointment rather than just a stepping stone towards judicial appointment, further giving breath to the parity statement in Determination 10 of 2014.

I respectfully submit that consideration be given to bringing the position of ACT Director of Public Prosecutions in line with NSW, Victoria, South Australian and the Northern Territory,

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<sup>2</sup> See Sch 1, section 10, Director of Public Prosecutions Act 1986 (NSW).

<sup>3</sup> See section 87AF, Constitution Act 1975 (Vic).

<sup>4</sup> See section 4A, Director of Public Prosecutions Act 1991 (SA).

<sup>5</sup> See section 4(6), Director of Public Prosecutions Act 1990 (NT).

<sup>6</sup> See Media Release Hon Vickie Chapman MP, Attorney General South Australia 26 July 2019.

[https://d3n8a8pro7vhlmx.cloudfront.net/liberalpartyofaustralia/mailings/2669/attachments/original/New\\_Director\\_of\\_Public\\_Prosecutions\\_to\\_be\\_appointed\\_FINAL.pdf?1564027210](https://d3n8a8pro7vhlmx.cloudfront.net/liberalpartyofaustralia/mailings/2669/attachments/original/New_Director_of_Public_Prosecutions_to_be_appointed_FINAL.pdf?1564027210)

following a path similar to that of South Australia, and replace the current 16% employer contribution superannuation scheme with the application of the Judges' Pensions Act 1968.

Cost implications

I should address the cost implications and point out that if the position of Director of Public Prosecutions been afforded an entitlement of Judicial Pension from establishment of the office, with a sensible restriction such as the benefits only being accrued once, the total cost of operation of the office to date would certainly have been less.

For example after 10 years in the role, the 3<sup>rd</sup> Director of Public Prosecutions Richard Refshauge SC was appointed to the Supreme Court Bench, where he served another 10 years.

[REDACTED]

This is balanced with the 2<sup>nd</sup> Director of Public Prosecutions Terry Buddin SC who served less than 2 years as Director of Public Prosecutions, [REDACTED], and the 4<sup>th</sup> Director of Public Prosecutions Jon White SC, who retired after 10 years as Director [REDACTED]

[REDACTED]

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Shane Drumgold', written in a cursive style.

Shane Drumgold  
**Director - ACT Director of Public Prosecutions**