

29 September 2023

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

Dear Ms Lambert,

### Remuneration Tribunal Spring 2023 Sitting

Thank you for the opportunity to provide a submission to the Remuneration Tribunal's Spring Sitting. On 14 March 2023 I was appointed as the Inspector of Correctional Services, taking over the role from the inaugural inspector Mr. Neil McAllister, who had completed his five-year statutory appointment.

#### Background

The Inspector of Correctional Services is a statutory position established under the *Inspector of Correctional Services Act 2017* to provide independent oversight of ACT correctional and youth justice facilities, focusing on continual improvement and prevention of ill-treatment. The role of the Inspector is to:

- examine and review the AMC, Bimberi and Court Transport Unit (CTU) every 3 years. The intention of this 'examination and review' is a resource-intensive comprehensive review. These are known respectively as 'Healthy Prison' and 'Healthy Centre' reviews;
- from time to time, as determined by the Inspector, review certain specific 'critical incidents' as defined in the Act; and
- undertake the review of a particular issue in the youth or adult corrections environment (a 'thematic review').

In February 2022 the ACT Inspector of Correctional Services' role was expanded when the office was appointed to be part of the ACT National Preventive Mechanism under the Optional Protocol to the Convention Against Torture (OPCAT), along with the ACT Human Rights Commission and ACT Ombudsman. These three entities are jointly responsible for monitoring places of deprivation of liberty in the ACT to fulfil ACT's obligations under this international human rights treaty.

The Inspector's conditions of appointment are the conditions agreed between the Executive and the inspector that are stated in the instrument of appointment, subject to any determination under the *Remuneration Tribunal Act 1995*.<sup>1</sup>

### Remuneration Tribunal Determination 13 of 2022

I note that the inspector's remuneration was revised as a result of the Remuneration Tribunal's Spring sitting in 2022. As a result, [Determination 13 of 2022 \(Part-time Public Office Holders\)](#) provides that the remuneration of the Inspector of Correctional Services cannot exceed \$238,765 per annum with a 'Base remuneration per diem' of \$1,038.

That determination noted that:

[t]he Tribunal received a submission from the Inspector noting the increase in workload since the establishment of the role and submitting that the Office of the Inspector has been underfunded. The submission further raised issues with the establishment of the position and funding, and submitted that the Inspector has worked extra hours unpaid due to the salary cap. In considering the remuneration of the Inspector, the Tribunal had regard to the remuneration paid to equivalent positions in other jurisdictions. The Tribunal also noted that the Inspector's jurisdiction has increased to include Bimberi Youth Justice Centre. The Tribunal met with officials from the Justice and Community Safety Directorate. Consequently, the Tribunal determines that the remuneration of the Inspector of Correctional Services be increased to \$1,038 per diem but is not to exceed \$238,765 per annum.

### Nature of ACT Inspector's work not akin to a board or committee member

This submission relates to the basis of engagement of the Inspector and argues that the role is fundamentally unsuited to engagement as a part time office holder on the same footing as members of boards and committees. In my view, the workload and nature of work for the role of the Inspector is such that it is equivalent to full time executive-level statutory office holder with the usual entitlements including leave. I note that other ACT NPM entities (ACT Human Rights Commissioners, ACT Ombudsman) are under different arrangements to the inspector.

The current employment arrangements for the inspector may be considered akin to casual employment, notwithstanding that it is a statutory appointment for 5 years. The [Instrument of Appointment](#) does not set out terms and conditions of employment. There is no contract of employment or other engagement documentation aside from the terms and conditions set out in the Remuneration Tribunal determinations. Each time the Inspector works, they complete a time sheet for that period of work completed. There are no arrangements for any type of leave including personal leave such as for illness or caring purposes.

These arrangements may have been suitable if the nature and volume of the Inspector's work was such that it was an ad hoc advisory role, or the workload was intermittent. It appears from the

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<sup>1</sup> Inspector of Correctional Services Act 2017 s 9(5).

Explanatory Statement to the Inspector of Correctional Services Bill 2017 that this may have been the intention:

Clause 11 requires the Inspector not have paid employment or engage in unpaid activity that is inconsistent with their functions. The inclusion of this clause acknowledges the role of the Inspector **may be exercised in a part-time or per diem capacity depending on the workload requirements to ensure the efficient and effective function of the Act**. It allows the person appointed as the Inspector to engage in employment or unpaid work, as long as there is no inconsistency with their functions as the Inspector. (emphasis added)

Both the inaugural inspector Mr. Neil McAllister, and I as current inspector do not consider it appropriate to regard the role as part-time either when it commenced in 2018 or at any time after. The current obligations of the role make it improbable that any person in the position would seek to engage in any substantial additional employment or unpaid work. The drafters of the Bill may have envisaged that the workload of a 'one-jail' jurisdiction would not be onerous but, if there was such a perception, it did not take into account the:

- intense workload of whole of prison Healthy Prison Reviews, particularly for an office of 2.8 full-time equivalent staff;
- addition of oversight of Bimberi in 2019, and the requirement to undertake a Healthy Centre Review of the facility every 3 years;
- unanticipated number of Critical Incident Reviews conducted between 2018 and 2023; and
- the inspector's additional OPCAT responsibilities which commenced in 2022.

By way of illustration, since the inaugural Inspector was appointed, the Office of the Inspector of Correctional Services has completed two Healthy Prison Reviews of the Alexander Maconochie Centre and one Healthy Centre Review of Bimberi Youth Justice Centre. These are comprehensive reviews of all aspects of treatment and care of detained people and involve significant work. Further, OICS has completed 14 critical incident reviews, many of them complex and lengthy.<sup>2</sup>

In my view, the workload of the office means the Inspector would not be able to appropriately satisfy statutory functions working on an ad hoc or advisory basis. Current staffing of OICS is the Inspector and 2 staff members, and in addition to examinations and reviews of correctional centres and services, functions of the office include administrative management such as payment of invoices, website administration, and human resources. I am unaware of any comparable Inspector roles in other jurisdictions (with commensurate nature and volume of work) that are appointed in the same way a board or committee member would be.

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<sup>2</sup> This equates to approximately 3 per year. The Inspector understands at the time of establishment, it was anticipated the Inspector would do 1 critical incident per year. All of these reviews have concerned critical incidents at the AMC (not Bimberi) and have included significant events requiring review including riots, fires and deaths in custody.

I have raised this matter recently as part of the mandated 5-year review of the Inspector of Correctional Services Act. In this [submission](#), I made the following recommendation:

**Recommendation:** The Inspector's conditions of appointment should be aligned with other similar statutory office holders on a full-time basis.

I **attach** a copy of this submission for the Tribunal's perusal.

Thank you for consideration of these matters. I would be pleased to discuss them further with the Tribunal, should they wish to do so.

Yours sincerely,



Rebecca Minty  
ACT Inspector of Correctional Services