



9 March 2013

Ms Yu-Lan Chan  
Secretary  
ACT Remuneration Tribunal  
Level 5, Canberra Nara Centre  
GPO Box 158  
Canberra ACT 2601

Dear Ms Chan

I now lodge a preliminary submission to the Remuneration Tribunal. Please note as discussed, that any scoping report will not be available until after 9 March, but the Presidential Members of ACAT and the full time General Member would be delighted to appear before the Tribunal to give further evidence in person and answer any questions you may have.

#### 1. Dealing with the Presidential Members first

When ACAT was set up, the current Appeal President put in a submission arguing that the then 2 full time presidential members should be paid the same as the President of the ACT AAT who was also a special magistrate and who was then paid at the same rate as a magistrate. As the old AAT is now one of 16 tribunals that form ACAT, this remains an excellent base to start from.

It is our understanding that the original salary of \$238,198 pa was virtually the same as a magistrate when it was announced in around early November 2008. At that time the magistrates had before your tribunal a new submission seeking an increase and several months after the tribunal allocated the above figure to the General and Appeal Presidents of ACAT, the base salary of magistrates increased. The salary of ACAT presidents did not increase automatically as in our view it should have. In the November 2012 round of allocations the magistrates' salary increased significantly from around \$272,000 pa to over \$291,000 pa. The current salary for Presidential Members is \$264,825, some \$26,000 less than a magistrate. Whilst the magistrates now have an enlarged civil jurisdiction, ACATs jurisdiction has also significantly increased with the addition of new functions.

ACAT deals with over 6,000 hearing a year ranging from mental health Psychiatric Treatment Orders, to evictions under the Residential Tenancies Act, through to multimillion dollar planning disputes. Our jurisdiction is significantly more diverse than the Magistrates Court and we tend to sit longer hours deciding cases. Presidential members will regularly sit until after 6pm and it is common for matters to continue until 7 30pm. One matter went on until 9 20pm.



ACAT probably has the widest jurisdiction of any of the super tribunals in Australia. Some of our major areas are dealt with in other jurisdictions by independent bodies (e.g. mental health) or by courts (planning).

Many of our matters involve disputes that have a value that is well in excess of the Magistrates Court's civil jurisdiction. The value of the property involved in matters in the guardianship list would commonly exceed \$1 Million, and many of the revenue disputes in admin review involve sums that exceed \$500, 000. The value of the property forming the subject matter of these disputes commonly exceeds \$10 million and some of the planning disputes have involved properties valued in excess of \$300 million.

Some of our disputes involve issues of considerable public and media interest e.g. some of our forensic mental health matters (which involve liaising with the Magistrates and Supreme Courts) and/or considerable public debate e.g. the Fitters workshop.

We have recently taken on significant new responsibilities in relation to retirement homes.

We are increasingly playing an important role in systems of national regulation which are set up under COAG agreements e.g. the Health Practitioner Regulation National Law

Presidential members have roles that are equivalent to Managing Judges under a modern court case management system.

Presidential members have to sit on mental health matters and on appeals from the General Division (our division of first instance where all matters are first heard- just like the Magistrates Court) to our Appeal Division.

Appeals from ACAT go to the Supreme Court (in the case of planning appeals direct from the general division and likewise for mental health appeals (although in the case of mental health appeals they can go to the Appeal Division of ACAT first), and in all other cases, to the Appeal Division and then on to the Supreme Court if the issues is not resolved in our Appeal Division). In this way we are no different from the Magistrates Court in that appeals from that court also go to the Supreme Court. It is another reason for Presidential members to be paid the same as magistrates. If ACAT were a lesser jurisdiction to the Magistrates Court appeals from us would go to the Magistrates Court. They do not. When they leave ACAT, they go to the Supreme Court.

Another reason is that Presidential members , although appointed for a fixed term of no less that 7 years, can only be dismissed from office using the same procedures for dismissal of a judge or magistrate. Legally in this respect they are judicial officers in all but name.

We would suggest you also look at what Presidential members or their equivalents, are paid in VCAT, QCAT and the WA State Administrative Tribunal. In the case of these tribunals, the head of jurisdiction and their deputies, all full time members , are judges of the State Supreme Court or at the very least, the state District or County



Court. They are higher than magistrates in the judicial pecking order and there is actually a strong case (as they do identical work to our Presidential members) for the ACAT presidents to be paid similarly to judges, or in the ACAT's case, at least the same as the Master of the Supreme Court. Indeed a number of local practitioners have indicated that our work load and responsibilities are more akin to the Master of the Supreme Court than to a magistrate.

ACAT, to keep costs down, has decreased the use of part time members and utilised its full time members to as great an extent as possible. The General President, as well as undertaking her significant administrative duties, sits on the guardianship tribunal every week and also on the mental health tribunal every week. She also does hearings in a wide range of Administrative review (Admin review) and professional discipline matters as well as some civil and residential tenancy matters. She also does appeals when they cannot be done by other presidential members.

The Appeal President, apart from doing the majority of appeals, sits each Monday and Tuesday in the civil and residential tenancy hearing list and does conferences each Wednesday unless he has to do Appeals. He also regularly sits in the mental health list. He also does most of the liquor licensing and a range of other Admin review matters. He is also responsible for the allocation of appeals to other members.

Professor Spender, one of our 2 part time presidents, does nearly all the Planning cases and many e other Admin review matters. She also does a number of appeals each year in a wide variety of areas and also sits as the presiding member in mental health matters, as does our most recent part time president Liz Symons who also does a number of appeals, some residential tenancy and civil matters and some Admin review and other matters as allocated to her the General President.

Our full time member allocates the civil and residential tenancy lists, does hearings in those areas herself several days a week, conducts mention lists, does conferences several days a week, as well as other matters allocated to her by the General President and administrative duties such as updating forms used by litigants and chairing internal working committees of staff.

ACAT, unlike the Magistrates Court also lends itself to the need for Presidential members and the General Member to write written judgements. Our Act specifically states that we have to provide written reasons for decision if asked. This places a much more time consuming and onerous burden on members of ACAT than the Magistrates Court where reasons only have to be given orally. A look at the Supreme Court library weekly reports will illustrate this fact.

The points above us believe shows that the presidential members of ACAT should be at the very least paid the same as magistrates just as the President of the old ACT AAT was. We do the same work he did- plus some. The Magistrates, prior to ACAT were all Deputy Presidents of various tribunals and the Chief Magistrate was the president of those various other tribunals except the AAT. They did the same work we all do now in such areas as discrimination, residential tenancies, small claims etc.



In our view, presidential members should be pegged at the same rate magistrates are, at the very least. When one looks at what we do and more importantly have to do with our vast and varied jurisdiction, and what our colleagues (judges all) interstate receive, something akin to the Master of the Supreme Court would seem appropriate.

## 2. The General Member.

We have already indicated in brief what the full time member does. A look at what full time members are paid interstate for doing similar tasks (as at 2009- see COAT results of 2009 Remuneration Survey) indicate that in 2009 a full time member of the Consumer, Trader and Tenancy Tribunal in NSW received \$162,720 pa, a member of the State Administrative Tribunal in WA received \$190,065 pa and the full time member of the National Native Title Tribunal received \$180,400 pa. These figures are more realistic than what our full time general member receives now.

3. There is also a need, now that ACAT is over 4 years old to look at whether there should be an additional loading for the General President and the Appeal President. There are ample precedents interstate now with VCAT, SAT (WA) QCAT and now NCAT together with the additional loading the Chief Magistrate, the Chief Justice and the President of the ACT Court of Appeal receive by way of loading. The General President is head of jurisdiction and has a significant administrative role as touched on above. She also stands in as Appeal President when the Appeal President is away as does the Appeal President for her when she is away. The loadings for Chief Justice and President of the ACT Court of Appeal come to mind here as possible comparisons. (Indeed the volume of appeals to the ACT Court of Appeal is not that dissimilar to the number of appeals from our general division to our appeal division).

The above is submitted for your consideration. Due to the short time frame (we were only notified on 1 March of the need to put in a submission by 9 March) my colleagues and I have not been able to make as full a submission as we would have liked, but the above sets out some basic considerations and we look forward to appearing in person and providing orally any further information you need. My colleagues may also put in some addition material for your consideration and assistance.

Yours sincerely



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