



Ms Anne Cahill Lambert AM
Chair
ACT Remuneration Tribunal
By email: remtrib@act.gov.au

Dear Ms Cahill Lambert,

I refer to the invitation for submissions in relation to the Remuneration Tribunal's 2013 review of the remuneration of members of the ACT Civil and Administrative Tribunal (**ACAT**). I make the following submission in relation to the remuneration of the position of full time non-presidential member of the ACAT.

Background

The full time non-presidential member of the ACAT is a new statutory office which came into existence on 1 April 2012. Remuneration was set at \$121,000 per annum.

The Remuneration Tribunal sets remuneration of public offices by reference to the work value of each office. I understand that a work value assessment of the ACAT has been requested. Given that there has been no objective work value assessment conducted since the ACAT was established such information would be highly relevant for the Remuneration Tribunal. Nonetheless, as there is no guarantee that an external assessment will be conducted in time for the current review, I provide the following comments specifically in relation to the position of the full time non-presidential member.

Methodology

In previously setting remuneration for this new position at \$121,000 per annum, the Tribunal noted that it 'considered background information about the work value of the office received from the Justice and Community Services Directorate'. At that time, the exact scope and responsibilities of the role were not certain. Now that the office has been in existence for a year, it is a good time to revisit the question of what the position entails.

The work value of a position may be established by considering the following factors:

GPO Box 370
4855 CANBERRA ACT 2601
Level 4, ACT Health Building

Ph: 6207 1740 Fax: 6205
Email: tribunal@act.gov.au
www.acat.act.gov.au

1 Moore Street CANBERRA ACT 2601

- Type and nature of work
- Skills required to carry out the important aspects of the position
- Responsibility required
- Conditions under which the work is performed

What does the full time member do?

The functions of the full time non-presidential member fall into two classes: adjudicative or quasi-judicial functions, and managerial/leadership functions.

The ACT Civil and Administrative Tribunal was established under the *ACT Civil and Administrative Tribunal Act 2008* and commenced operation in February 2009. It is in the nature of a 'super-tribunal', consolidating what were previously independent jurisdictions each led by the Chief Magistrate or a Special Magistrate. It resolves applications lodged by individuals, businesses, Government and regulatory authorities in areas encompassing planning and taxation decisions, discrimination, civil disputes, mental health treatment and care, guardianship and management of property, residential tenancies disputes, licensing and professional disciplinary and regulatory proceedings.

In performance of adjudicative functions the full time non-presidential member hears and finally determines cases in the general civil, residential tenancy, and unit titles jurisdictions. In all of these matters the full time non-presidential member sits alone, as would a senior or presidential member, and provides written reasons for decision at the request of the parties or where appropriate to develop the Tribunal's jurisprudence. From 4 March 2013, the full time non-presidential member will also hear and determine applications under the *Retirement Villages Act 2012*.

While civil disputes are ordinarily subject to a jurisdictional limit of \$10,000, where the parties agree the jurisdiction is extended. In relation to residential tenancies, the upper limit is \$25,000 but again may be extended where the parties agree. There is no jurisdictional limit in unit titles or retirement villages matters.

The full time non-presidential member also conducts interlocutory and final hearings in administrative review, land and planning, heritage and occupational regulation and licensing matters. Similar to a senior or presidential member the full time non-presidential member either sits alone in these matters or as part of a multi-member Tribunal.

The full time non-presidential member undertakes judicial case management functions, post conference, for all matters in the civil and residential tenancies lists, ensuring procedural aspects are addressed by appropriate directions and assisting the General President in ensuring matters are allocated for hearing to members with the requisite competencies. Additionally, the full time non-presidential member individually case manages all unit titles and retirement villages matters from the point of filing to final hearing.

As a part of the managerial/leadership functions the full time non-presidential member provides support to the General President in the exercise of her responsibilities to ensure decisions are made according to law and the orderly and prompt discharge of tribunal business. The full time non-presidential member has responsibility for developing and implementing frameworks for decision-

making which encourage consistency and knowledge transfer among senior and presidential members in the general civil jurisdictions. The full time non-presidential member interacts with the registry to improve performance of procedural aspects of the lists; facilitating regular meetings and training of persons performing the registrar's functions, and assisting with the development and implementation of procedures and new technologies.

What skills are required to carry out the position?

This position involves a mixture of quasi-judicial, management and leadership functions, and a corresponding mix of skills is required.

The ACAT is intended to enhance access to justice within the Territory by providing an efficient, accessible forum for citizens to resolve disputes between themselves, and by ensuring that citizens have a means to seek review of government actions that affect them. For many litigants, the ACAT will be their first encounter with the legal and justice system. The primary skill that is needed by the full time non-presidential member is an ability to conduct him or herself in a manner that builds faith and confidence in the administration of justice in the Australian Capital Territory.

It goes without saying that the conducting of hearings requires legal technical skills of a high order. Although in relation to some civil disputes the amount of the claim may be considered relatively small, this is no indication of the complexity of the legal issues presented, and as I have noted above, in relation to unit titles and retirement villages there is no jurisdictional limit.

The jurisdiction of the ACAT is very broad. The full time non-presidential member is expected to have a comprehensive understanding of both statute and case law. For example, during the course of the previous year the full time non-presidential member has been required to hear and determine matters involving the national consumer law, residential tenancies, employment contracts, liquor licensing, nuisance, fencing disputes, unit titles management and general civil applications.

There is also an emphasis on timeliness of decision making. Decisions are made under a considerable degree of pressure, and litigants may require the provision of written reasons. It is also relevant to note that the majority of litigants are self-represented. These litigants are usually not legally trained, and many have social or other disadvantages which limit their ability to present their case effectively. It is essential that a member presiding over hearings have high level communication skills such as the ability to actively listen and reframe, identify the relevant legal issues and extract the relevant evidence. This role must be undertaken pro-actively and with no appearance of bias or favour. It calls for competencies which may not be considered integral in jurisdictions in which parties are routinely legally represented. These skills should be recognised.

The management and leadership aspects of the office require skills in relation to planning and managing change, encouraging and facilitating teamwork, listening and communicating with influence, maintaining relationships, innovating and delivering on projects and managing knowledge transfer, are equivalent to those required in the ACT Government Executive at level 2.4 (ie Executive Director) and higher.

By way of example, the full time non-presidential member is proactive in setting standards by the development of template orders and decisions checklists, and convening regular members meetings

to discuss legal issues and developments. The full time non-presidential member takes responsibility for delivering outcomes on time and in a resource effective manner in relation to new areas of jurisdiction given to the ACAT, such as the *Unit Titles (Management) Act 2011* and *Retirement Villages Act 2012*.

The full time non-presidential member contributes actively to the strategic vision of the ACAT, attending and contributing to meetings of presidential members and engaging with stakeholders, as appropriate, about broader issues affecting the ACAT and the community.

Responsibility required and conditions under which the work is performed

The full time non-presidential member has a significant public and independent role. It must be performed in a way that maintains the independence, authority and reputation of the ACAT. In relation to decision-making there is an obligation to maintain quality of decisions that may be subject to review on appeal. In managerial and leadership aspects the full time non-presidential member must exemplify the qualities of independence, a commitment to public service and integrity in decision-making, must build capability within the organisation and cultivate productive relationships.

Key features of the role include:

- Accountability – the full time non-presidential member is accountable to the Territory and the public. Judgments may be controversial and may attract a high degree of publicity, whether in the local media or more broadly. The reputation of the ACAT and the broader justice system depends on the quality decision-making of the full time non-presidential member.
- Expectations – the expectations of the public are ever increasing. The Australian Capital Territory prides itself on being a jurisdiction that protects human rights, and crucial amongst them is the right to a fair trial. A high standard has been set and the office of the full time non-presidential member is a key part of maintaining that standard.
- Case management – There is an increased focus on the management of cases in the Territory's courts. This has seen the creation of a complex set of procedural rules within the Courts and an emphasis on judicial case management from an early stage. The ACAT has a legislative imperative to resolve matters as efficiently and effectively as the requirements of natural justice allow. The full time non-presidential member must ensure the provision of efficient and quick justice, in an environment where litigants, and consequently the Tribunal, rarely have the benefit of legal representation.

In summary, the functions undertaken by the full time non-presidential member are varied, and the environment in which the role is performed is complex, demanding and time-pressured.

Remuneration of comparative positions

Unfortunately, there are few positions within the Territory which are directly comparable to the full time non-presidential member. Table 1 sets out the remuneration of positions of reference within the ACT and other jurisdictions.

Table 1 Remuneration of positions undertaking comparative roles¹

Deputy President VCAT (non-judicial)	Over \$300,000 per annum
Deputy Chairperson CTTT	Over \$230,000 per annum
Presidential Member of the ACAT	\$264,825
Senior Member of the ACAT	Per diem equivalent to \$227,000 inclusive of entitlements
ACT Government Executive Level 2.4	\$231,000 inclusive of entitlements

Given that the functions undertaken by the full time non-presidential member are a mix of those otherwise performed by presidential and senior members of the ACAT, the Remuneration Tribunal might consider it appropriate to establish a nexus for remuneration of the full time non-presidential member at around 65% of the remuneration determined for a full time presidential member.

Conclusion

The position of full-time non-presidential member should be remunerated by reference to the work value of the office.

I understand that at the time of creation of the position an attempt at parity with the remuneration of sessional or part-time ordinary members, together with a recognition of the legal skills required, was undertaken. In fact, the scope, functions and responsibilities of the position of full time non-presidential member that I have outlined above are far removed from this initial conceptualisation of the role. A reassessment of remuneration with reference to the actual work value of the office will be welcomed.

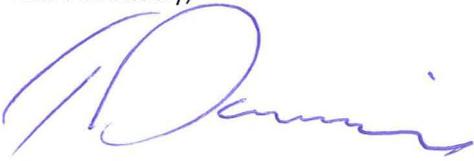
The current determination is based on a significant underestimation of the work value of the position. I request that the Remuneration Tribunal take into account the true work value of the position and determine appropriate remuneration by reference to similar statutory offices in the

¹ In the Tribunals of other Australian Jurisdictions, the functions performed by the full time member are undertaken by Deputy Presidents (Victorian Civil and Administrative Tribunal and Queensland Civil and Administrative Tribunal) or Deputy Chairpersons (NSW Consumer, Trader & Tenancy Tribunal).

Territory, either by establishing a nexus at around 65% of the rate of remuneration of a full time presidential member or a point of equivalence at around ACT Government Executive level 2.4.

I would appreciate the opportunity to appear before the Remuneration Tribunal to answer any questions the Tribunal may have about the scope and functions of the office of the full time non-presidential member.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. Daniel', with a large, stylized initial 'M'.

Mary-Therese Daniel

Non-Presidential Member