

Ms Sandra Lambert AM
Chair
Australian Capital Territory Remuneration Tribunal PO
Box 964
CIVIC SQUARE ACT 2608

Dear Ms Lambert

ACT Remuneration Tribunal 2024 Autumn Review - ACT Electoral Commissioner

Thank you for your letter of 15 December 2023 in which you invited me to provide a submission to the Remuneration Tribunal 2024 Autumn Review. This submission addresses the points outlined in your letter and builds upon my previous submission of 19 November 2019, highlighting the changes in the electoral environment since then and the resultant increased work value of the role of the ACT Electoral Commissioner (the Commissioner).

Work of the role and its impact on the ACT community

The Commissioner is the only full-time member of the ACT Electoral Commission (the Commission), an independent statutory authority established under the *Electoral Act 1992*, also comprising a Chairperson (part-time) and a Member (part-time). The Commission members are also independent Officers of the Legislative Assembly thus reinforcing their statutory independence from the Executive.

The Commissioner serves in a dual capacity as both a member of the Commission and as a statutory office holder with independent powers and functions. The Commissioner is also the CEO of the Commission and manages its operations under the guidance of the full Commission and as the Commission's delegate. The Commissioner and staff operate under the title of Elections ACT.

The most important function of the Commission and Elections ACT is the conduct of elections for the ACT Legislative Assembly. The Commission is also responsible for:

- setting the strategic direction and risk management framework for the Commission and Elections ACT;
- provision of information and advice to the Assembly, the Speaker, the Minister responsible for electoral matters, the Executive, agencies, political parties, MLAs and candidates;
- establishment of the Augmented Electoral Commission under the Chairperson for the final redistribution of electoral boundaries to ensure equality of elector representation in the Assembly;
- reviewing appeals against decisions made by the Commissioner or delegate; and
- provision of an annual report to the Speaker for presentation to the Assembly.

The Commissioner also has specific sole functions and responsibilities including:

- Agency Head of Elections ACT with responsibilities under the *Financial Management Act 1996* and the *Public Sector Management Act 1994 (PSMA)*;
- conducting ballots for the Assembly and other prescribed entities such as Aboriginal and Torres Strait Islander Elected Body;
- registration of political parties;
- administration of the election funding, expenditure and financial disclosure scheme;
- maintenance of the ACT electoral roll in conjunction with the AEC;
- Chair of the Redistribution Committee; and
- delivering community electoral information and education services.

The Commissioner is a member of the Electoral Council of Australia and New Zealand, a peak consultative council of electoral commissioners established to promote best practice electoral administration and to improve services for all eligible electors. The Commissioner is also a member of a senior level cross agency group tasked to strengthen Australia's electoral systems, data and processes.

The impact of work of the Commissioner on the ACT community is of the greatest significance. The outcomes for which the Commissioner is responsible underpin the integrity and viability of government. Any perception of inappropriate or biased conduct by the Commissioner, inaccurate roll data or questionable counting of votes, a breach in the secrecy of individuals' votes, or a lack of security of the electoral processes and ICT systems, would be highly detrimental to the reputation of the ACT government and the community's trust in elected members. Additionally, the wider Australian community's trust and perception of integrity of governments and democracy in general would be significantly diminished.

The importance and impact of the work of the Commissioner has been highlighted through ongoing challenges to governments and communities around the world in protecting and securing their political institutions, democratic processes and electoral systems. Although a relatively small jurisdiction, the ACT is not immune to these challenges; indeed, smaller jurisdictions may well present an easier target for those actors wishing to disrupt and undermine democracies. The impact of a successful cyber and/or physical attack upon the ACT electoral processes and systems would be catastrophic: reputationally, economically and in human terms. The growing and evolving threat of foreign interference or malicious misinformation campaigns against the ACT electoral processes and systems must be addressed through prudent risk-based assessments and proactive planning and cooperation with central and federal security agencies.

Coordination and delivery of effective responses to these challenges in preserving the electoral integrity and highest possible standard of electoral services in the ACT is the responsibility of the Commissioner. Ensuring a high level of functionality, security, integrity and reliability of the Commissioner's electoral ICT systems and processes will be critical in continued public confidence and trust in election outcomes. This new and challenged electoral environment has greatly added to the work value of the role and its impact upon the ACT and wider community.

Actions initiated by me for Commission endorsement to address these challenges include:

- development of a Terms of Reference for the Commission to clarify roles and responsibilities;
- defining our key strategic risks to electoral integrity and quality of electoral services;
- development of a new Corporate Plan 2023-2027 to set new strategic priorities and mitigate the strategic risks;
- establishing a new format and content for the Commission's Annual Report to outline and report against the strategic priorities; and
- development of budget business cases to enhance the operational capability of Elections ACT and electoral integrity of ACT elections.

Actions undertaken by me for action by Elections ACT include:

- establishment of an Electoral Integrity Advisory Panel to enhance the electoral integrity of the ICT enabled electoral systems used by Elections ACT, as a key measure in maintaining public confidence and trust in election outcomes in the ACT;
- conduct and implementation of an organisational review to ensure Elections ACT retains the necessary additional FTE and capabilities to deliver trusted electoral outcomes;
- design input to and occupation of a purpose-built permanent office space for Elections ACT;
- conduct of cyber maturity reviews and modernisation of ICT electoral systems and process in consultation with ACT and federal government security agencies;
- provision of advice to the Assembly in consideration of electoral legislation amendments and matters of electoral integrity, through attendance at inquiries and hearings and related submissions and reports;
- implementation of operational procedures arising from new legislation related to misleading electoral advertising, prohibited donors, early and overseas voting, disclosure of gifts, expenditure and funding, telephone and mobile polling and numerous other changes; and
- development of a comprehensive Service Delivery Plan to ensure delivery of trusted, transparent, secure and accessible electoral services for the 2024 Assembly election.

Span of Control and Degree of Autonomy

As outlined above and in the *Electoral ACT 1992*, the ACT Electoral Commissioner is an independent statutory authority with responsibilities as a member of the Electoral Commission, as Commissioner, and as CEO of the Commission. There are no implied powers of the Legislative Assembly arising from the Commissioner being an independent officer of the Legislative Assembly, assuring the independence and full autonomy of the position.

Extent of Decision-Making Powers

The Commissioner has Head of Service and Director General powers under the PSMA in relation to engaging, appointing and employing staff employed to assist the Commissioner. The Commissioner may also employ temporary staff and engage consultants under the *Electoral Act 1992*, on terms and conditions determined by the Commission.

The staffing of Elections ACT in 2023/2024 is 17 permanent officers under the PSMA, as

well as number of other staff under both the PSMA and the Electoral Act. The workforce is expected to grow by approximately 900 temporary and casual staff and contractors during the election period, employed under both the PSMA and the Electoral Act.

As the Chair of the Redistribution Committee, and as a member of the Augmented Commission, the Commissioner has specified powers and responsibilities under the Electoral Act with respect to proposed and final redistributions of electoral boundaries.

Professional and other Qualifications, Degree of Knowledge and Skills Required

The Electoral Act 1992 requires that the Speaker must not appoint a person as the Commissioner unless that person has extensive knowledge of and experience in electoral systems or management, or public administration.

Additionally, and owing to the increasing complex electoral environment, my effectiveness and work value as Commissioner has been greatly enhanced through advanced knowledge, skills and experience in:

- cyber and physical threat awareness, resilience and preventative measures, response options, and coordination with government security and cyber agencies;
- risk assessment framework, risk registers and crisis response planning;
- corporate and election specific ACT ICT systems;
- financial management, audit regulations and procurement provisions;
- reform and change management practices and policies;
- media engagement and community education and outreach programs,
- government structures, committee and hearing processes; and
- workplace reform processes and best practices in leadership and management.

Potential Risks and Economic/Non-economic Impacts of the Role

The potential risk associated with the role of Commissioner are outlined above under impact on the community. The conduct of trusted, transparent, secure and accessible elections has always been critical to the integrity and public trust in elected governments. Risks to electoral integrity and delivery of high quality electoral services through disruption or degradation of our democratic processes and ICT enabled electoral systems have dramatically increased. Regardless of this changed and dynamic environment, the responsibility for the conduct of elections remains with the Electoral Commissioner. This has required a proactive and collaborative engagement with federal and local security agencies to coordinate relevant support and advice, in addition to normal extensive preparations for Assembly elections.

The economic risks of a failed or flawed election, whether through mismanagement or malicious cyber or physical attack, include the potential to re-run the election with associated major costs. There would be significant impact on the government's budget through extended caretaker periods and budget re-provisioning and uncertainty. The enormous non-economic costs of lack of faith in electoral processes and governments would be widespread and enduring.

What is the Statutory Holder Responsible for and what work do they do? (including budget and resources)

The responsibilities of the Commissioner as defined in the *Electoral ACT 1992* are

outlined above. The significant changes over the last five years in the threats to electoral integrity and quality of electoral services, including through cyber security risks, misinformation and disinformation, more complex funding and disclosure provisions, more complex and robust ICT electoral systems, and risks to physical security of staff and stakeholders, have all demanded additional skills, knowledge and planning of the Commissioner. This has required collaborative proactive engagement with other jurisdictions, ACT and federal government security and other agencies, vendors and independent advisors to develop effective responses to these threats and challenges.

In addition to the work of the role as detailed above, the Commissioner is also responsible for implementation of numerous recent legislative changes ahead of the 2024 elections. The most impactful in terms of workload for the Commissioner include misleading political advertising, expansion of the scope of prohibited donors, variations to the funding and disclosure scheme provisions, and voting periods and arrangements. This has added to the workload of the Commissioner through the need for additional staffing resources and increased engagements with the ACT Government Solicitor's office and JACS legal advisors.

The Commissioner as CEO is responsible for financial operations and the management of the Commissions budget. The Commission's Budget Statement 2023-24 is outlined below, with budget papers available at [Budget-Statements-A.pdf \(act.gov.au\)](https://www.act.gov.au/budget-statements-a).

Financial Statements – Controlled (GGS)

Table 4: ACT Electoral Commission: Operating Statement (\$'000)

	2022-23 Budget	2022-23 Estimated Outcome	2023-24 Budget	Var %	2024-25 Estimate	2025-26 Estimate	2026-27 Estimate
Income							
Controlled Recurrent Payments	4,282	3,470	6,431	85	11,657	4,461	4,597
Sale of Goods and Services from Contracts with Customers	26	6	27	350	27	28	29
Grants and Contributions Revenue	131	128	199	55	205	210	217
Interest Revenue	16	16	16	-	16	16	16
Other Income	0	40	0	-100	0	0	0
Total Income	4,455	3,660	6,673	82	11,905	4,715	4,859
Expenses							
Employee Expenses	2,403	1,897	3,366	77	4,500	2,576	2,607
Supplies and Services	2,052	1,804	3,317	84	7,414	2,140	2,253
Depreciation and Amortisation	364	164	707	331	486	391	391
Total Expenses	4,819	3,865	7,390	91	12,400	5,107	5,251
Operating Result	-364	-205	-717	-250	-495	-392	-392
Total Comprehensive Result	-364	-205	-717	-250	-495	-392	-392

Remuneration Comparative Data

I offer the following comparative data of current remuneration of electoral commissioners of other like jurisdictions, highlighting that the remuneration for the ACT Electoral Commissioner is significantly less than other like jurisdictions.

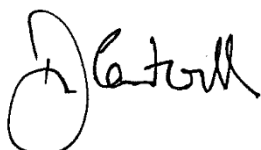
ACT	SA	WA	NT
\$ 248,492	\$ 264,737	\$ 268,490	\$ 264,198 – \$ 290,284

Conclusion

In summary I submit that the role and work value of the Commissioner has expanded due to the significantly increased risk to electoral integrity and quality of electoral services through changes in the electoral environment, and recent legislative changes made by the ACT Legislative Assembly. Additionally, the remuneration of the Commissioner is considerably less than that of Electoral Commissioners of other like jurisdictions (South Australia, Northern Territory and Western Australia).

Thank you for the opportunity to make this submission. I would be very happy to meet with the Tribunal in person if this would assist your deliberations.

Yours sincerely



Damian Cantwell AM CSC

ACT Electoral Commissioner

23 January 2024