



Sentence Administration Board of the
Australian Capital Territory

Ms Sandra Lambert
Chair,
ACT Remuneration Tribunal
PO Box 964
Civic Square
ACT 2608
Email:remtrib@act.gov.au

16 September 2019

Dear Ms Lambert

Re: Submission by judicial members of the ACT Sentence Administration Board

We write on behalf of the judicial members of the ACT Sentence Administration Board (the Board), being the Chair (Laura Beacroft) and the Deputy Chair (Don Malcolmson), in response to your call for submissions to the Tribunal's Spring Review.

We made a submission in the 2017 spring hearings of the Tribunal on remuneration for part-time holders of statutory offices. The then Chair replied that we needed to provide a copy of a Memorandum of Understanding (MOU) that has been in the process of being negotiated with ACT Corrective Services, to provide further support for our submission. On 14th August 2018, we advised the then Chair that the negotiations about a MOU were continuing, that we were not in a position to make any submission in the then upcoming hearings, and that we expected to be able to do so in the following sittings.

Unfortunately, due to the significantly increased workload as discussed below of both the Board's judicial members, and also the pressing commitments of ACT Corrective Services (ACT CS), it has not been possible to progress the MOU. Nonetheless, the judicial members submit that this should not prevent consideration of our remuneration claim summarised below.

In summary, there is a well-evidenced case for a remuneration increase for the Chair and Deputy Chair of the Board on both workload and work value grounds, and also for the annualised remuneration of the Board's judicial members to be benchmarked against that for an ACT Magistrate. Note, the increased workload of the Board does not undermine the fair remuneration of community (non-judicial) members because they are paid on a sessional basis for their time; whereas judicial members are paid an annualised sum and this annualised sum is not keeping pace with the significant increase in the workload and actual responsibilities of the Chair and also the Deputy Chair.

As canvassed in our 2017 and 2018 submissions, the number of persons in custody and subject to community corrections, being the population that drives the Board's workload, has significantly increased in the ACT over the last 3 years similar to national trends: in the ACT at 30 June 2019 there were 211 offenders subject to parole, an Intensive Corrections Order (ICO) or periodic detention, and therefore subject to the Board's supervisory functions, compared to 175 in 2017-2018 being a 20.6% increase, and 152 in 2016-2017 being a 38.8% increase. This significant upward trend in the ACT is consistent with that reported by the Productivity Commission¹. The increasing numbers of

¹ Productivity Commission (2019), "Report on Government services 2019", Australian Government

persons in custody/community corrections has a direct flow-on to the numbers of persons coming before the Board and therefore the Board's workload in performing its supervisory functions: the Board sat on 72 days (sitting days) to exercise its supervisory functions in 2018-2019, being an increase from each of the prior years of 26.3% (the Board sat 57 days in 2017-2018 and 2016-2017). This increased workload in sitting days is also driven by more intensive parole supervision and new community corrections sentencing options, with a 13.5% increase in hearings for breach of parole and a 33.1% increase in hearings for the relatively new ICO matters (mostly ICO breach matters) since 2017-2018².

The judicial members of the Board perform a special role, a judicial role, on the Board, that involves leading and guiding it in all aspects of its supervisory functions to ensure that decisions are lawful and just. This judicial work is becoming more complex, due to the complexity of laws that underpin the Board's work coupled with increasing case-law and community expectations about how the Board exercises its powers. The Board's environment is increasingly litigious, with many more reviews underway in the Supreme Court, more FOI applications, and more subpoenas of Board material, than ever before. There is also a greater focus on the Board by bodies that scrutinise its operations, for e.g. there is an investigation currently underway by the ACT Ombudsman's Office on parole processes.

Another driver of this increased workload and complexity is that the disability of persons before the board is becoming more understood and acute, with some hearings in 2018-2019 being conducted at the Canberra Hospital. Also, victims are becoming increasingly involved with Board proceedings, which is predicted to rapidly increase further as a Victims Charter is implemented in 2019-2020: victims can input into Board decisions now, and there has been a 29.2% increase in new registrations by victims and a 20% increase in the number of registered victims that the Board engages with. Finally, a further driver of this increased workload and complexity is that the Board is using its powers to publish decisions where appropriate, powers which have not been previously used, to better respond to community expectations and to improve transparency. In 2018-2019 one decision outcome was made public, and more will be made public in 2019-2020, which is consistent with a national trend to have more transparency around Board decision-making. Judicial members jointly compose the public summary of the outcome, and jointly write and manage follow-up communications for e.g. with the media.

A result of all of the above is that judicial members now commonly do considerable legal research or seek legal advices on commonly arising issues, and then digest and respond to the research or advice, and train members as required about the latter. Judicial members now must do extended legal research and more preparation on each case in the list prior to a sitting day, plus there are many more sitting days. They also must manage more complex hearings during the sitting in regard to the evidence provided, and the scope and detail of deliberation by the Board. Usually judicial members spend five hours doing such research/preparation prior to a sitting day, and then a sitting day is usually seven hours sometimes longer in duration.

Judicial members meet with key stakeholders to ensure effective Board operations, including various elements within ACT CS, ACT Government Solicitors, the ACT Ombudsman Office, Inspector of Corrective Services, the Minister's and the Attorney's Offices. They attend the Legislative Assembly Committees Hearings each year. These meetings and attendances are not optional, but necessary to support the accountability, and the legal and other support for the Board.

The Chair and Deputy Chair confer about issues and individual cases in the interest of consistency. Also they jointly input into matters under review or investigation, personally writing required responses and instructions. The Deputy Chair assists the Chair in both the legal research and the management of the Board's activities, for example, he drafted a submission on accommodation for

² Data is from the Board's forthcoming Annual Report 2018-2019

detainees on release from prison. He also provides assistance to the Chair in the management of staff and resourcing matters, and represents the Chair as required when she is unavailable.

The Board is subject to the full range of statutory reporting and accountability requirements, for example, under the *Annual Reports (Government Agencies) Act 2004*, similar to the courts, and ACT CS. However, the Board has no staff to specifically support this activity. The Chair personally undertakes this essential and increasing accountability work. The Board's Secretariat, made up of excellent ACT CS staff, is fully committed to supporting the Board's supervisory functions, and the skills of the Secretariat staff are linked to such work. If there were other staff available to support the Chair (which there is not), they would be ACT CS staff and not report to the Chair, and their involvement in such work would undermine the independence of the Board.

Since she was appointed, the Chair has personally researched and written the Annual Reports including undertaken the data analysis, annually reviewed and written the Board's webtext, researched and written the specifications for the Board's data and reporting system, written regular briefs to the Minister and the Attorney, regularly provided information, inductions and training to Board members about requirements they need to be aware of, and personally written answers to questions from Committees and from the media. She has personally researched and settled a new condition re passports, an information note for persons appearing before the Board about McKenzie Friend status, and personally researched and wrote the Board's Conflict of Interest/Bias Policy. She is currently drafting a practice note on therapeutic jurisprudence, and the training materials for training for lawyers and other professionals in parole proceedings. The Chair occupies a newly created statutory position on the Victims Advisory Board, and she participated actively in key law reform projects of the government including about reducing recidivism and justice-reinvestment to ensure the Board's view was heard and law reforms were sound in practice. Given the complexity and workload of the Board the Chair now meets fortnightly with the Board's Secretariat staff to case-manage issues and specific cases, and to support efficiency in operations.

In the light of the above, the judicial members are of the view that a significant increase in the remuneration is warranted for both the Chair, and the Deputy Chair. In regards to comparable remuneration benchmarks, the *Crimes (Sentence Administration) Act 2005* and case law confirm that the functions performed by the judicial members are providing judicial leadership and guidance to a quasi-judicial/administrative tribunal. The two jurisdictions that the ACT is most comparable to in the nature of its work and statutory requirements are Victoria and NSW, and in both these jurisdictions the judicial members are remunerated as Magistrates or Judges. On this basis, we submit that the remuneration of the Board's judicial members should be benchmarked against that of an ACT Magistrate.

Both Mr Malcolmson and I would be only too pleased to appear before you and provide any further information you may require.

We look forward to hearing from you.

Yours sincerely



Laura Beacroft
Chair
Sentence Administration Board



Donald Malcolmson
Deputy Chair
Sentence Administration Board