



Our Reference:  
Your Reference:

9 October 2017

Ms Anne Cahill Lambert AM  
Chair, ACT Remuneration Tribunal

Dear Ms Lambert,

### **SUBMISSION - RENUMERATION OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

I would like to make a formal submission in my role as the Director of Corporate Service and the Director of HR at the ACT Director of Public Prosecutions.

I would like to bring to the attention of the Tribunal what appear to be some unintended anomalies to the remuneration arrangements related to the position of ACT Director of Public Prosecutions.

#### **Background**

The remuneration for the role of the ACT DPP was originally considered at the time of the appointment of the first ACT DPP Mr Ken Crispin, QC. Mr Crispin QC made a submission to the Tribunal in 2012 in relation to a review of the role by the Tribunal. In that submission he identified that the ACT government had accepted at the time of his appointment that the salary should be set at parity with that of judges in the ACT Supreme Court. He also noted that other Australian jurisdictions have generally accepted that parity with the Supreme Court judiciary is appropriate.

My understanding of the history related to the remuneration arrangements is that the position of the ACT DPP was originally considered under the review of judicial positions in the ACT. At some point in the past, the timing of which is not clear, the Remuneration Tribunal changed the structure under which it considered the position, placing it under the review of Full – Time Statutory Office Holders.

This change resulted in a slippage of the remuneration over time compared to the other judicial roles in the ACT and made the ACT DPP position the lowest paid DPP in Australia.

### **ACT DIRECTOR OF PUBLIC PROSECUTIONS**

This slippage in the remuneration of the position was acknowledged in 2013 by the Tribunal when the role of ACT DPP was given a 15% pay increase to acknowledge the disparity and identified that it would work towards creating parity with Supreme Court Judges remuneration, [Determination 13 of 2013 – Director of Public Prosecutions](#).

I will trace the recent history of determinations which show how the discrepancy in remuneration was remedied, then increased.

In 2012 the Tribunal decided to commence a significant review of the requirements of the role and responsibilities of the ACT DPP position and the following provides a time line of events from that point onwards.

## 2012

Following a review of the DPP position, [Determination 3 of 2012 – Director of Public Prosecutions](#) records the Tribunal's decision to seek further information before considering changes to the remuneration of the DPP position.

- DPP remuneration: \$354,979 (at 1 November 2012)

## 2013

In 2013 having completed a review and taking a number of submissions, the Tribunal released [Determination 13 of 2013 – Director of Public Prosecutions](#) which states in the last paragraph of the first page under the heading background:

*"The Tribunal considered information provided by Mr White and by the Justice and Community Safety Directorate, and noted that the selection criteria for the ACT DPP position was the same as the criteria for ACT judicial appointments. Following consideration, the Tribunal decided that remuneration for the position of DPP will be reviewed as part of the annual review for judicial members."*

The decision of Determination 13 of 2013 – Director of Public Prosecutions stated:

*"The Tribunal decided to continue progress in approaching parity with the salary of a Supreme Court judge and decided that the DPP would receive a 15% increase in salary, effective from 1 November 2013".*

**The decision of this Determination for the DPP to achieve parity with the remuneration of a Supreme Court Judge has not yet been fully achieved in 2017.**

- DPP remuneration: \$408,226 (at 1 November 2013)
- [Supreme Court Judge](#): \$412,550 (at 1 November 2013)

## 2014

Under [Determination 10 of 2014 – Director of Public Prosecutions](#), the Tribunal made no change to the salary at the time. However the determination stated:

*"that the previous increase provided the DPP with approximately 98% remuneration of that provided to a Supreme Court Judge".*

- DPP remuneration: \$408,226 (at 1 November 2014)

- [Supreme Court Judge](#): \$412,550 (at 1 November 2014). No change from 2013.

## 2015

In [Determination 10 of 2015 – Director of Public Prosecutions](#), the decision states:

*“The Tribunal determined to defer a determination of remuneration and allowances in relation to the DPP pending the outcome of the Australian Government Remuneration Tribunal’s review of Judicial and Related Offices”.*

- DPP remuneration: \$408,226 (at 25 September 2015). No change from 2014 or 2013.
- [Supreme Court Judge](#): \$412,550 (at 25 September 2015). No change from 2014 or 2013.

## 2016

[Determination 5 of 2016 – ACT Supreme Court Judicial Positions](#) had an effect date of 1 January 2016. The determination indicated that the remuneration for ACT Supreme Court Judges be increased to \$420,810 from its previous amount of \$412,550, an increase of \$8,260 per annum.

Full-time Statutory Office Holders which did not include the DPP position ([Determination 4 of 2016 – Full Time Statutory Office Holders](#)) were provided a 2.5% increase per annum with effect 1 July 2016.

In mid 2016 I made inquiries of the Tribunal secretariat as the DPP position was not considered in the review of judicial positions as per the 2013 determination, nor had it been considered in the review of Full-Time Statutory Officer Holders. The Tribunal secretariat responded with the advice that it had been overlooked. [Determination 10 of 2016](#) was issued which resulted in a modest increase to the remuneration for the DPP which equates to 98% of a Supreme Court Judge.

- DPP remuneration: \$412,394 [Determination 10 of 2016](#) at 1 November 2016.  
98% of \$420,810 = \$412,394
- [Supreme Court Judge, Det 5 of 2016](#): \$420,810 (at 1 January 2016). Increased from 2015
- [Supreme Court Judge, Det 8 of 2016](#): \$420,810 (at 1 January 2016). Increased from 2015

## 2017

The ACT Supreme Court Judicial Positions received a further increase to a benchmark salary of \$441,010 [Determination 1 of 2017](#) with effect of 1 January 2017. No change was made to the DPP’s remuneration.

This now means a Supreme Court Judge salary is set at \$28,616 more than remuneration payable to the role of the ACTDPP, **so the remuneration gap is again growing.**



## The effect of the discrepancy

In considering the impact of the slippage for the DPP role, consideration should be given to a number of factors:

1. The ability of government to both retain and attract suitable applicants to a role which is of critical importance to the ACT community - noting that in his 2012 submission, Mr Ken Crispin QC identified that attorney generals in both the ACT and other Australian jurisdictions have at times found it difficult to find suitable candidates for the role. Slippage in the salary relative to a Supreme Court Judge will simply compound these challenges.
2. The issues around how the ACT values the role of the Director of Public Prosecutions in terms of the perception of senior criminal lawyers both within the ACT and other jurisdictions. If the remuneration does not keep pace, it runs the risk of reflecting poorly on the status of the role and could lead external observers to the conclusion that the ACT does not value the position as a key member of the Judicial arm of government in the same way as other states and territories do.
3. Consideration should also be given to how the current occupant of the role may have been financially disadvantaged by the slippage given the increases afforded to his judicial peers since the most recent changes in 2016 and 2017.

In determining what might be appropriate, below outlines how the Tribunal might consider ensuring this role keeps pace with other judicial members in the ACT. This can be achieved by re-affirming the previous determination decision in 2013 to review the DPP role as part of the annual review of judicial positions and to align full parity with a Supreme Court Judge. This will provide a mechanism to avoid slippage in the remuneration rates and provide the appropriate acknowledgement of this vitally important position.

In considering the appropriate remuneration package the Tribunal might consider the following:

- DPP remuneration: \$412,394 (before October 2017 Spring Review)
- After October 2017 Spring Review: 98% of \$441,010 = \$432,190 (at 1 November 2017).
- Supreme Court Judge: \$441,010 (at 1 January 2017)
- Federal Court Judge: \$494,840 (at 1 July 2017) issued by Commonwealth Remuneration Tribunal.
- If the Supreme Court Judge is increased to \$494,840, 98% of \$494,840 for DPP = \$484,943.
- Creating parity related to any allowances which are provided to Supreme Court Judges (excluding the Judges superannuation arrangements)

The Tribunal might also like to consider an appropriate amount to compensate the current occupant for what I am sure was an unintended oversight in timing across 2016 and 2017.

If any further information is needed, please let me know.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'E Flukes', with a stylized, flowing script.

Ms Emma Flukes  
Director Corporate Services