

SUPREME COURT

OF THE AUSTRALIAN CAPITAL TERRITORY

Ms Sandra Lambert AM
Chair
ACT Remuneration Tribunal
PO Box 964
Civic Square ACT 2608

9 September 2019

Dear Ms Lambert

Thank you for your invitation of 23 August 2019 to make submissions concerning the remuneration payable to judicial officers and others.

Chief Justice and Judges of the Supreme Court

Under s 37U (2) of the *Supreme Court Act 1933* (ACT), resident judges of the Supreme Court are entitled to the same remuneration, allowances and entitlements as are paid to judges of the Federal Court. The Remuneration Tribunal (Judicial and Related Officers – Remuneration and Allowances) Determination 2019 (commencing 1 July 2019) and the Remuneration Tribunal (Official Travel) Determination 2019 are the most recent substantial determinations affecting Federal Court judges, including the Chief Justice of the Federal Court. It will affect the remuneration of all resident judges, including myself as Chief Justice.

As the 2019 Commonwealth Determination specifically fixes the remuneration for the Chief Justice of the Federal Court, it seems that the Determination governs the remuneration payable to the Chief Justice of the ACT Supreme Court. Alternatively, I submit that the Tribunal should determine an allowance that accords with the established practice in other Australian jurisdictions (both large and small) of paying the Chief Justice an additional allowance of 10% of the remuneration payable to other judges of the relevant court. There is almost no difference between the two figures; on my calculation, the specific figure fixed by the 2019 Determination exceeds a 10% allowance by a trivial sum.

I submit that my allowance is (or should be set at) one of the two figures.

Associate Judge of the Supreme Court

In the past, the Tribunal has accepted that the Associate Judge should receive 90% of the remuneration that is payable to a resident judge. In relation to civil matters, the role and jurisdiction of the Associate Judge are similar to the role and jurisdiction of an Associate Judge of the NSW Supreme Court, who is remunerated at the same rate as a judge of the District Court of NSW, i.e. at a rate that is approximately 90% of the remuneration payable to a judge of the Supreme Court of NSW (in addition to which, in NSW, the Associate Judge and District Court judges receive the benefit of a judicial pension). In addition, since 2018, the ACT Associate Judge has exercised significant criminal jurisdiction, including hearing appeals from the Magistrates Court in criminal matters, conducting bail hearings and taking evidence at pre-trial hearings.

I submit that the Associate Judge should be remunerated at a rate that is somewhat higher than 90% of that applicable to a resident judge.

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Principal Registrar

Previously, I have drawn to the Tribunal's attention to the fact that the Principal Registrar has a complex, multifaceted task that requires him to manage different and often conflicting priorities within the Supreme Court, Magistrates Court and ACT Administrative Tribunal.

I submit that the current remuneration of the Principal Registrar does not reflect the demands of his role, especially when compared to the remuneration allowed to persons in similar positions (the chief executive officers of the Administrative Appeals Tribunal, Federal Circuit Court, Federal Court and High Court) under the 2019 Determination.

Travel and Employer Superannuation Allowances payable to Acting Judges

Earlier this year, the Court obtained advice about the terms and conditions relating to Acting Judges. The advice was to the following effect:

- a) The remuneration payable to an Acting Judge is determined by the ACT Remuneration Tribunal pursuant to s 10 and Schedule 1, Part 1.1 of the *Remuneration Tribunal Act 1995* (ACT).
- b) An Acting Judge is entitled to the same entitlements, other than in relation to leave or pension, as a judge: s 37V *Supreme Court Act*. An "entitlements" is a benefits other than remuneration or an allowance.
- c) Whether a benefit is an entitlement or an allowance depends on the nature of the benefit and the context in which it arises.
- d) An Acting Judge is entitled to the provision of a privately plated motor vehicle for the days on which they are working as an Acting Judge.
- e) The employer superannuation contribution rate for an Acting Judge is the default minimum rate of 9.5% under the *Superannuation Guarantee (Administration) Act 1992* (Cth) as there is no ACT law or determination specifying a higher rate.
- f) However, the minimum contribution rate for the Associate Judge and a Magistrates (including a Special Magistrate, whose role is similar to that of an Acting Judge) is 11% under the relevant ACT determinations.

I have asked the ACT Government to consider amending the *Supreme Court Act* to replace s 37V with a provision stating that, where the Supreme Court Act or another Territory law does not otherwise provide, an Acting Judge holds office on the conditions that are agreed between the Executive and the Chief Justice. Such an amendment would enable the Executive and the Chief Justice to agree on entitlements and allowances, including any vehicle allowance, that were not otherwise dealt with by legislation or a determination of the Remuneration Tribunal.

I would be pleased if the Tribunal would make a determination in relation to:

- a) The travel allowance payable to an Acting Judge. Section 4.1 of the *ACT Supreme Court Judicial Positions Determination 10 of 2018* specifies that the Associate Judge has the same travel entitlements as are Supreme Court judge. I submit that it would be appropriate to fix the travel allowance payable to an Acting Judge in the same way.
- b) The employer superannuation contribution payable to an Acting Judge. I submit that s 6 of the *ACT Magistrates Judicial Positions Determination 11 of 2018* provides a useful precedent.

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Oral Submissions

If the Tribunal believes that it may benefit from hearing oral submissions, I would be happy to attend for that purpose. If I am absent from the jurisdiction at the time of any hearing, Justice John Burns could attend in my place. In the event that you would like Justice Burns or me to attend, please advise Philippa Swayn on philippa.swayn@courts.act.gov.au or 6207 1568.

Yours sincerely



Helen Murrell
Chief Justice

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