



23 August 2011

Mr Greg Haustead
Secretary
ACT Remuneration Tribunal
PO Box 964
CIVIC SQUARE ACT 2608

Dear Mr Haustead

**REMUNERATION OF DIRECTOR OF PUBLIC PROSECUTIONS
REMUNERATION TRIBUNAL ACT 1995**

I refer to your letter of 3 August 2011 inviting submissions for your comprehensive review of remuneration for all public offices. I wish to make a submission to the tribunal concerning the remuneration paid to the Director of Public Prosecutions (DPP).

There is an anomaly in that the ACT DPP alone amongst Australian DPP's is not remunerated at the same rate as a Supreme Court judge. It is not just a question of quantum – it is invidious that the ACT DPP must apply for increases in remuneration, rather than - as in other States and Territories - having any increases which flow to judges also flow through to the DPP. This has the potential to compromise the independence of the office of DPP.

Overview - Position of the Director of Public Prosecutions

The independence of the DPP is a cornerstone of our system of government. In his recent review of the ACT Public Service, Dr Hawke noted that the DPP was an office whose role at arm's length from the government was "part of the foundation of the ACT's system of government and accountability frameworks". [Hawke report p. 103].

In every other Australian jurisdiction - including those smaller jurisdiction with which the ACT can most usefully be compared - the independence of the DPP is marked by ensuring that the DPP has parity with the terms and conditions of a judge of the Supreme Court.

ACT DIRECTOR OF PUBLIC PROSECUTIONS

The ACT DPP has the same functional responsibilities as other DPP's, the only difference being that the ACT DPP has in addition, responsibility for conducting prosecutions in the Magistrates Court. No other DPP has that responsibility.

To have the ACT DPP remunerated at a different rate to all other DPP's in Australia is an anomaly that should be corrected.

The important responsibilities of the DPP

The Director of Public Prosecutions has the following important functions:-

- Act independently of government;
- Exercise important statutory functions in the public interest;
- Take responsibility for the fearless and independent prosecution of difficult, controversial and high profile matters. Those matters could involve persons in high office;
- Appear personally to prosecute complex matters, and conduct appeals, against counsel of the highest calibre. These are generally matters where leadership is required to be demonstrated for example murder trials;
- Take responsibility for the management of the indictable and summary prosecution of matters in the Territory;
- In relation to staff of the Office, exercise the powers of the head of service relating to the appointment, engagement and employment of people; and the powers of a director-general;
- Manage the Office of the DPP.

Comparison with other DPPs

Directors of Public Prosecutions in other Australian jurisdictions are paid at the rate of Supreme Court Judges in those jurisdictions - or higher - and otherwise have the status of Supreme Court Judges.

A particular point of comparison would be with comparable smaller jurisdictions.

The remuneration of the Tasmanian DPP is linked statutorily to the base salary of the Chief Justice of Tasmania. It should be noted that the Tasmanian DPP is responsible for 38 staff (from last available annual report) as against 66 for the ACT DPP. Functionally the offices are equal except Tasmania lacks responsibility for the summary prosecutions in the jurisdiction.

In Northern Territory, the independence of the Office of the DPP is marked by appointing the DPP upon the terms and conditions accorded to a Supreme Court judge. The staff numbers of ACT and NT DPP offices are similar.

As stated, other DPP's are accorded the status and remuneration of Supreme Court judges in their respective jurisdictions.

It is notable that judges and magistrates in the ACT are paid at rates similar to their interstate colleagues. In those circumstances it is anomalous for the DPP to be paid at a markedly lesser rate. Any arguments about the attractiveness of the position to interstate applicants which apply to judges and magistrates apply with equal force to the DPP's position.

Issues of Relativity

A work value review for prosecutors employed by the Office of DPP is currently under way. It appears destined to lead to significant wage increases for non-SES prosecutors in the Office. As part of that review, a Work Value Assessment and Classification Advice has been obtained from Mercer, an independent human resource consultancy, for the Assistant Director positions in the Office. Mercer has assessed that the role be classified at an SES 2.4, up from its present classification of 1.2. This in turn suggests an elevation of the remuneration of the DPP's position.

Recommendation

It is my recommendation that the remuneration of the DPP be the same as, and tied to, the remuneration of a Supreme Court judge in the Territory.

This will both set the level of remuneration at an appropriate level, and avoid the necessity of the DPP applying year by year for increases.

On both counts the independence of the position will be thereby enhanced.

Please contact me should any further information be required.

Yours faithfully,



Jon White

Director of Public Prosecutions