



NORTHERN TERRITORY OF AUSTRALIA

REMUNERATION TRIBUNAL

REPORT

AND

RECOMMENDATION No. 2 of 2002

MEMBERS OF THE LEGAL PRACTITIONERS COMPLAINTS COMMITTEE

REMUNERATION TRIBUNAL

REPORT

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COMMITTEE**

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INTRODUCTION

1. The remuneration and allowances and expenses paid to a member or class of members of the Complaints Committee constituted under Part VI of the *Legal Practitioners Act* must be determined by the Administrator under section 48F of that Act. Such Determination must not be made unless the Administrator is in receipt of a report with recommendations by the Remuneration Tribunal on the remuneration and allowances to be paid to such members.
2. The Tribunal is established by section 6(1) of the *Remuneration Tribunal Act*. Section 10(1) of that Act enables the Administrator to request the Tribunal to inquire into and report with recommendations on the remuneration and allowances to be paid to a person or class of persons, as well as other entitlements to be granted for their services. Tribunal reports are required to be tabled in the Legislative Assembly within 6 sitting days next following their receipt by the Administrator.
3. On 12 December 2001 the Administrator issued a formal Notice of Request to the Tribunal, specifying members of the Legal Practitioners Complaints Committee as a class of persons to come within these arrangements and requesting the Tribunal to undertake its duties in this regard “from time to time”.
4. It is customary under such standing authority for each inquiry and report sequence of Tribunal to be initiated by a written request by the Chief Minister of the Northern Territory.
5. The Chief Minister initiated the current inquiry and report sequence by letter to the Tribunal dated 8 January 2002.

6. The Tribunal has completed the inquiry and this report and recommendation completes the review.

CONDUCT OF THE REVIEW

7. A general call for submissions was made by advertisement in the Northern Territory News on Saturday, 26 January 2002.
8. State and Territory instrumentalities administering parallel complaints resolution mechanisms were asked for member remuneration details. These included:
 - The Legal Services Commission (reviews the decisions of the Law Society of NSW);
 - The Law Society of the ACT (reference the Professional Conduct Board);
 - The South Australian Legal Practice Board;
 - The Queensland Solicitors Complaints Tribunal;
 - The Victorian Legal Profession Tribunal;
 - The Western Australian Legal Practitioners Complaints Committee.
9. Individual invitations for submissions were also sent to the NT Law Society, the Ombudsman and other members of the NT Legal Practitioners Complaints Committee, the Department of Justice, and the Master of the Supreme Court.
10. The Tribunal met with Mr Robert Bradshaw of the Department of Justice, and spoke with Mr David De Winter, Chairman of the Complaints Committee on several occasions.

GENERAL BACKGROUND

11. Until the commencement of amendments to the *Legal Practitioners Act* on 1 February 2002, only members of the Complaints Committee who were not legal practitioners or government employees were entitled to receive remuneration covering time spent on Committee affairs.

12. The private member of the Committee received remuneration at a daily rate of \$135 and an hourly rate of \$30 under a Determination made by the Administrator on 31 August 1994 under the *Remuneration (Statutory Bodies) Act*.
13. Under that Determination, where an overnight stay on Committee business was involved, the private member and also the legal practitioner members were entitled to travelling allowance (Schedule 4) at public sector rates (or the actual cost if higher), and expenses reasonably incurred (Schedule 5) including for the cost of travel to and from meetings.
14. Public sector travel allowances are set by Determination of the Commissioner for Public Employment under the *Public Sector Employment and Management Act*. The current Determination is No. 1 of 2002, dated 12 December 2001.
15. Complaints Committee costs for member remuneration and allowances are payable out of the Fidelity Fund constituted by section 86 of the *Legal Practitioners Act*.
16. This year's legislative amendment increased the pool of membership of the Complaints Committee. The panel of members is now:
 1. the Chairperson
 2. the Ombudsman (or alternate)
 3. three lay persons (was one)
 4. five practitioners nominated by the Law Society (was three)
 5. three other practitioners (was two)

For any hearing the Committee must comprise at least one member of groups 2 or 3 and one member of group 4, with a quorum of three members. Previously, a quorum of the Committee was 4 members of a panel of 7 members.

17. The requirement that the Administrator obtain a report with recommendations from this Tribunal prior to determining member remuneration and allowances was introduced as part of these amendments. Direct determination in this way, in conjunction with effective removal of the Complaints Committee reference in the Determination under the *Remuneration (Statutory Bodies) Act*, will mean that legal practitioner members may receive remuneration for their services.

CONSIDERATIONS

(a) Legislative Intent.

18. The Minister for Justice, in his second reading speech to the amendments, pointed out that most members of the Committee are volunteers with relatively limited time outside of their requirement to earn an income. The introduction of appropriate pay would mean that members will not suffer severe financial penalty when a hearing lasts more than two or three days, thus making it “more practical for those sole practitioners, or legal practitioners from small firms, to accept membership of the Committee”.
19. The Minister emphasised that the amendments were of an interim nature. He pointed out that he understood that the Law Society and authorities in other parts of Australia were putting together reform proposals, and that the discipline issue is to be considered by the Standing Committee of Attorneys-General.

(b) Comparison with other jurisdictions.

20. Rates of remuneration payable to members of similar bodies elsewhere are:

| | |
|-------------------|---|
| NSW | \$500 per day or 1/7 of that rate per hour. |
| ACT | \$450 per day (> 3 hours) or \$500 if Chairman, 3/5 of rate for 2 to 3 hours, 2/5 for <2 hours. |
| South Australia | \$9,020 pa, or \$12,070 if Chairman. |
| Queensland | Legal practitioners NIL, lay members Public Sector standard rates. |
| Victoria | \$210 per ½ day, or \$228 per ½ day if Deputy Chairman. |
| Western Australia | Legal practitioners NIL, lay members \$115 per ½ day or less. |

21. The Tribunal found no instance where the rate of remuneration where paid is different depending upon whether the member is or is not a legal practitioner.

(c) Evidence received from NT sources.

22. The Northern Territory Law Society submitted that member remuneration should be linked to the rates of Senior Junior Counsel, thus removing the need for ongoing review. The current rate for such Counsel is \$1,980 per day.
23. The Chief Executive Officer of the Northern Territory Department of Justice submitted that as Complaints Committee exercises responsibility akin to that of the Local Court a suitable rate of remuneration for the Chairman (who carries overall responsibility) might be a daily and hourly rate similar to that paid to a Magistrate, with discount for other members. In saying this the Chief Executive Officer made it clear that the Department itself has no view other than that of its Minister on this issue and that this view was expressed by the Minister and Attorney General in the House during his Second reading Speech. The current remuneration for a Magistrate is of the order of \$85 per hour.
24. The previous rate of remuneration payable to lay members of the Committee was set under the Determination referred to in para. 12 above. The \$135 daily rate was payable where the duration, including travel time, exceeds 4 hours on a day. The \$30 hourly rate was payable where the duration, including travel time, was up to 4 hours on a day.

(c) Payment implications.

25. The Tribunal presumes that members of the Committee are appointed in their personal capacity, and not as a partner in, or an employee of, or sole proprietor of, the corporate entity with which they are engaged from time to time.
26. Should this be so, then the associated corporate entity will suffer the total cost of the loss of services of the member for the time spent on Committee affairs. Depending on all the circumstances, it may consider reducing the member's entitlement flow during absences. The increase in the size of the panel from which members are drawn to constitute a Committee for each appeal or inquiry should help keep corporate disruption to a minimum.
27. Any remuneration is subject to income tax in the hands of the payee.
28. Payment of member remuneration by the Committee as a charge against the Fidelity Fund may have GST implications for the Fund unless the recipient is registered with an ABN number and can supply a tax invoice for services.

REVIEW - REMUNERATION

29. There is some consistency between the rates of remuneration paid to members of equivalent bodies in other jurisdictions where a daily rate system is used, although there is, reportedly, some dissatisfaction among members in Victoria where it is nearly ten years since rates were adjusted and demands on members are quite high.
30. In recommending rates of remuneration the Tribunal takes careful account of jurisdictional relativities. This is necessary to minimise precedent setting that can cause leapfrogging in the overall remuneration setting environment.
31. Those rates are far below Counsel's fees payable in the Northern Territory (and elsewhere) as they are meant to contribute only to loss during the time the member is necessarily absent from business. The Minister stated that the intention of providing remuneration was to ensure that "severe" financial penalty is not carried by members. The Administrator, in making the determination following receipt of this recommendation of the Tribunal must take into account the fees or other remuneration that the member or members are usually paid in carrying out his, her or their professional activities. In the Tribunal's view that account should be of the remuneration element relating to the basic cost (as distinct from the opportunity value) of that professional activity.
32. The Tribunal is aware that there are legal practitioners who hold the view that services to the committee should be provided by them voluntarily, as a means of supporting their profession.
33. The Tribunal is also conscious that this review is part of the initial step to paid service to the profession on the part of the legal representative members, and that some uniform Australia-wide complaints resolution system may be agreed upon fairly soon.
34. The Administrator is able to determine different rates of remuneration for a member or class of members.
35. Public sector employees such as the Ombudsman serve as Committee members while on duty for which they are already paid. Such appointees represent a class for which there should be no remuneration entitlement. The Chairperson of the Committee has an extra administrative load as well as direct responsibility for ensuring the due constitution of each Complaints Committee. Where the Chairperson is not a member of a Complaints Committee the presiding member appointed by the Chairperson has certain extra responsibility for the conduct and reporting of that Committee. The Tribunal received no argument that lay members of the Committee should receive remuneration that is different from that payable to members

appointed as legally qualified representatives, and finds no precedent for such variation.

36. The Tribunal sees merit in linking the rates of remuneration to a benchmark such as the daily rate of Counsel fees set under the Taxation of Costs rules of the Northern Territory Supreme Court. As to the opening quantum of remuneration for the establishment of such linkage, a 8 hour charging day at rates applicable to Northern Territory Magistrates results in a daily rate very close to 1/3 of the daily tax rate for Court preparation and conferences by Senior Junior Counsel, i.e. \$660. This is slightly high relative to the States and the ACT, as a result of the Magistrate reference recognising the special economic circumstances of the Northern Territory. That rate should apply to the Chairperson of the Committee and any separate presiding member. A suitable discounted rate for other members is one that would preserve the sort of discounts prevailing in the States and the ACT. The Tribunal recommends that the rate for other members (not full-time public sector employees) should reasonably and conveniently be 1/4 of the daily tax rate for Court preparation and conferences by Senior Junior Counsel, ie. \$495. Hourly rates should be set at 1/5 of the daily rate, to accord with the general relativity between hourly and daily rates set under the Determination of 31 August 1994 made pursuant to the *Remuneration (Statutory Bodies) Act*.
37. As to the definition of service entitling a member to the hourly or the daily rate, the Tribunal finds no reason to depart from the conditions set out in Part B of Schedule 1 of the Determination of 31 August 1994 made pursuant to the *Remuneration (Statutory Bodies) Act*.

REVIEW - ALLOWANCES AND EXPENSES ENTITLEMENT

38. No submissions were received in respect of allowances and expenses payable to members of the Committee. The Tribunal recommends that the current entitlement be incorporated into the new determination, with some variation as the current travelling allowance entitlement contains an outdated nexus..

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MEMBERS OF THE LEGAL PRACTITIONERS COMPLAINTS COMMITTEE

In accordance with a request from the Administrator that the Tribunal from time to time inquire into and report with recommendations on the remuneration and allowances to be paid and other entitlements to be granted to members of the Legal Practitioners Complaints Committee in respect of their services to the Committee, the Tribunal recommends that the following remuneration, allowances and expenses be granted, effective from 1 February 2002.

Remuneration

(a) Subject to the conditions in (c) below, the rate of remuneration to be paid should be:

| | Daily rate | Hourly rate |
|--------------------------------------|------------|-------------|
| Chairman of the Committee | \$660 | \$132 |
| Presiding member if not Chairperson | \$660 | \$132 |
| Annual Salaried Public Sector member | NIL | NIL |
| Other Members of the Committee | \$495 | \$99 |

(b) The rate in (a) should vary automatically with, and in the same proportion as, the daily tax rate for Court preparation and conferences by Senior Junior Counsel set under the Taxation of Costs rules of the Northern Territory Supreme Court.

(c) The conditions attaching to the payment of daily and hourly rates contained in Part B of Schedule 1 to the determination of remuneration, allowances and expenses payable to members of statutory bodies made under section 4 of the *Remuneration (Statutory Bodies) Act* on 31 August 1994 as amended and in force at this time ("the Determination") should be repeated as conditions attaching to the payment of the rates of remuneration in (a) above.

Travelling Allowances

Unless costs of accommodation and meals are met directly by the Committee, travelling allowance should be paid to members at the rates provided in the Determination of the Commissioner for Public Employment made under section 14 of

the *Public Sector Employment and Management Act* from time to time (currently No. 1 of 2002, dated 12 December 2001), where the travel involves an overnight stay at a place other than the member's place of living by reason of:

- (a) the member's attendance at a meeting of the Committee;
- (b) the member's engagement, with the prior approval of the Committee, on the business of the Committee; or
- (c) travelling to or from the member's place of living after or before such meeting or in connection with such business

Expenses

Expenses should be payable to members in accordance with Schedule 5 of the Determination, unless already met from some other entitlement, and the words of that Schedule should be repeated in the determination to be made under section 48F of the *Legal Practitioners Act*.

Dated this twenty third day of April Two thousand and two.



O. Alder
Member of the
Northern Territory Remuneration Tribunal