



CANBERRA

Magistrates Chambers  
Law Courts of the Australian  
Capital Territory  
Canberra City, A.C.T. 2601  
G.P.O Box 370

Ms Anne Cahill Lambert AM  
Chair  
ACT Remuneration Tribunal  
PO Box 964  
CIVIC SQUARE ACT 2608

Dear Ms Cahill Lambert,

I refer to the letter dated 8 September 2011 sent to you by Ms Alison Playford on behalf of the Justice and Community Safety Directorate ("JACS") titled "Judicial Remuneration". The letter only came to the attention of the Magistrates last Friday as a result of a fortuitous inspection of the Tribunal's web page.

May I first point out that the submission sent to you under cover of my letter dated 29 August 2011 was not my submission alone. It was a submission prepared by all the Magistrates. I forwarded it to the Tribunal on behalf of all the Magistrates. It is incorrect to refer to it as my submission.

This further submission is again made by all the Magistrates but forwarded by me on behalf of all the Magistrates.

The JACS submissions reveal a misunderstanding of the nature of the judicial work undertaken by the Magistrates and the level of responsibility they bear. In addition, it misrepresents the position in respect of both the criminal and civil jurisdictions of the Magistrates Court.

It is correct that the Magistrates Court's criminal jurisdiction "has included for some time the possibility of the Court hearing matters in the 2-5 year criminal (sic) range (and a range of matters attracting higher penalties)". In fact, for over 26 years the Court has had jurisdiction, with the defendant's consent, to hear and determine a large range of criminal charges punishable by up to 10 years imprisonment, and in charges relating to property by up to 14 years imprisonment. However, until May 2009 the Court could not impose a sentence of imprisonment exceeding 2 years in respect of any one of those charges. Since May 2009, the Court has been empowered to impose a sentence of up to 5 years imprisonment in all matters where the maximum penalty fixed by statute is 5 years or more. Where the maximum penalty fixed by statute is

less than 5 years imprisonment, the Court is limited to that maximum statutory penalty. This is a significant increase in the sentencing responsibility of Magistrates.

The consideration and imposition of a sentence of imprisonment on a person is a heavy burden and becomes heavier as the length of a sentence increases. It is this increase in sentencing responsibility that the Magistrates rely upon to demonstrate increased work value, not any change in the seriousness of charges that can be heard and determined by the Court.

As a result of changes made to the *Crimes Act 1900*, which commenced on 25 July 2011, the Director of Public Prosecutions ("the DPP") is permitted to elect to have offences punishable by imprisonment for longer than 2 years but not longer than 5 years imprisonment heard as summary charges. Where such an election is made, the maximum penalty that may be imposed is 2 years imprisonment.

Logic suggests that the DPP will not elect to have a matter dealt with as a summary matter in a case where he is not satisfied that a maximum of 2 years imprisonment is sufficient punishment for the particular offence, having regard to all the surrounding circumstances. It follows that in none of these matters would it have been likely that the Court would have otherwise imposed a sentence exceeding 2 years imprisonment.

Therefore to suggest that there has been a "formal reduction of the sentencing powers of the Magistrates Court to 2 years (from 5 years) in relation to this bracket of cases" is simply wrong. There remains in "this bracket of cases" many matters which the DPP will not elect to have heard and determined as summary matters but which the defendants themselves will elect to have determined by the Magistrates Court instead of the Supreme Court. The maximum penalty for such matters is 5 years imprisonment.

The effect of the power given to the DPP to elect to have matters heard as summary charges is to change the nature of the offences from indictable to purely summary offences. The maximum penalty for purely summary matters was increased from 1 year to 2 years imprisonment on 30 May 2009 (before that date it was 12 months imprisonment). It follows that there has been no "formal reduction of the sentencing powers of the Magistrates Court". Rather, the DPP has been given the option to convert indictable matters into purely summary matters, and, since 30 May 2011, the Magistrates Court has exercised an increased sentencing power in respect of summary offences.

It is significant to note that this change was introduced for the purpose of reducing the number of cases in which defendants elect to have their charges committed to the Supreme Court for trial or sentence. It was intended thereby to reduce the workload of the Supreme Court by transferring work that had been undertaken by it to the Magistrates Court.

The JACS submission seems to suggest to the Tribunal that the Court's criminal workload consists primarily of assault matters. This is far from the case. There is a very large number of offences punishable by more than 5 years imprisonment within the Court's jurisdiction. The following is a representative, but less than exhaustive,

list of the types of such criminal offences which come, or potentially can come, before the Magistrates Court for determination:

- Wounding a person
- Reckless infliction of grievous bodily harm
- An act endangering life
- Culpable driving causing death
- Threat to kill
- Demand accompanied by a threat
- Forcible confinement
- Affray
- Torture
- Unlawfully taking a child
- Intentional or reckless infliction of grievous bodily harm on an unborn child during childbirth
- An act of indecency in the 3<sup>rd</sup> degree
- An act of indecency without consent
- Incest with a person 16 years or older
- Abduction
- Bestiality
- Possession of child pornography
- Using the internet to deprave a young person
- Removal of a child from the ACT for female genital mutilation
- Deceptive recruiting for sexual services
- Money laundering
- Contaminating, or threatening to contaminate, goods with intent to cause public alarm or economic loss
- Making a false statement about the contamination of goods with intent to cause public alarm
- Acting, or threatening to act, with intent to cause public alarm
- Incitement
- Conspiracy
- Robbery
- Burglary
- Theft
- Receiving
- Obtaining property by deception
- Obtaining a financial advantage by deception
- Conspiracy to defraud
- Forgery
- Using a forged document
- Possessing a forged document
- Making, or possessing, a device for making a false document
- False accounting
- False statement or account by an officer of a body
- Bribery
- Intentional or reckless damage to property valued over \$1,000

- Threat to a person to cause property damage
- Unauthorised modification of computer data to cause impairment of the data
- Unauthorised impairment of electronic communication
- Trafficking in a trafficable quantity of cannabis
- Trafficking in a controlled substance (e.g. heroin, methamphetamine, cocaine, MDMA)
- Manufacturing a controlled drug
- Supplying substance, equipment or instructions for manufacturing controlled drug
- Cultivating a controlled plant other than a large commercial or commercial quantity, with intention to sell
- Cultivating a trafficable quantity of cannabis for sale
- Cultivating a controlled plant, other cannabis, for sale
- Selling a trafficable quantity of cannabis
- Selling a controlled plant other than cannabis
- Supplying plant material, equipment or instructions for cultivating a controlled plant
- Supplying a trafficable quantity of cannabis to a child
- Receiving property directly derived from a drug offence
- Participating in a criminal group causing, or threatening to cause, harm, to a person
- Participating in a criminal group causing, or threatening to cause, damage to property belonging to someone else
- Recruiting people to engage in criminal activity
- Perjury
- Making or using false evidence for a legal proceeding
- Destroying or concealing evidence for a legal proceeding
- Corruption in relation to legal proceedings
- Perverting the course of justice
- Publishing something that could cause a miscarriage of justice
- Compounding an offence
- Accessory after the fact in relation to any offence punishable by 15 years imprisonment or less

This list has been included in order to emphasise for the Tribunal, and others, that the Magistrates deal with a very broad range of serious criminal matters other than assaults occasioning actual bodily harm. Indeed, based on statistics in the DPP's report for 2009-10, the Magistrates Court deals to finality with 90% of all criminal charges brought in the ACT. This is a very different picture to that painted by the somewhat dismissive submission made by JACS.

As to the JACS submission in relation to the increase of the Court's civil jurisdiction from \$50,000 to \$250,000, we can only say that we find it bemusing. Of course many civil matters commenced in the Magistrates Court and the Supreme Court are settled before hearing. That has been so since the inception of both Courts and is a pattern reflected in all Australian jurisdictions.

It is difficult to understand how it is of any relevance to the complexity and importance of the matters which the Magistrates will be required to hear and determine to say that “proportionally few civil matters come before a judicial officer for consideration”. Proportionally fewer cases come before the Supreme Court than the Magistrates Court – does that make the work value of the Judges and Master of the Supreme Court less than that of the Magistrates?

In this regard, we note that a very large proportion of civil cases which have in the past been commenced in the Supreme Court have settled without a hearing yet JACS has never submitted that the Master should receive less remuneration in recognition of that fact. But, according to the JACS submission in this instance, upon the transfer of the same work to the Magistrates Court its work value diminishes because of the number of matters which can be expected to settle, notwithstanding that those matters which do proceed to a hearing would have been previously determined by the Master.

The statement in the JACS’s submission that “(T)he number of additional filings and appearances before a judicial officer will be monitored but at this stage cannot be modelled with confidence due to the number of variables involved”, is puzzling. In the *2010 Access to Justice Initiative* paper issued by JACS the following was said concerning an increase in the civil jurisdiction of the Magistrates Court:

“An analysis of Supreme Court judgment sums for the last three years suggests that approximately a quarter of the cases finalised in the Supreme Court in the last three years could have been dealt within the Magistrates Court under current jurisdictional limits. The figures also suggest that approximately 60% could be dealt with in the Magistrates Court if its jurisdictional limit were increased to \$100,000, and a cumulative proportion of between three fifths (range 57-62%) and three quarters (range 72-76%) of all Supreme Court judgments could be finalised within the lower court’s civil jurisdictional limit if that limit were set at \$150,000.”

In fact, the Magistrates Court’s jurisdiction has been increased to \$250,000 and it is now expected that 90% of matters previously dealt with by the Supreme Court will now be dealt with by the Magistrates Court. It is to be noted that this change was effected in order to relieve workload pressures on the Judges and Master of the Supreme Court, not workload pressure on its Registry or even its Registrars. Those “workload pressures” have now been transferred to the Magistrates.

As to the reference to matters arising under the *Leases (Commercial and Retail) Act 2001*, it is true that the Court has had this jurisdiction since 1 July 2002 and that applicants can potentially seek “substantial civil relief”. This does not in anyway detract from our submission. The fact is that the Tribunal has never increased our remuneration to recognise the addition of this jurisdiction. We have not taken issue with this failure in the past because of the relatively small number of cases each year. However, when the general civil jurisdiction of \$250,000 is added to the commercial and retail lease jurisdiction, we submit that our argument that there has been a significant increase in work value becomes unassailable.

We agree that that judges of the District and County Courts conduct jury trials and that their jurisdiction and sentencing powers are broader than those of the Magistrates

Court. However, it is also true that a very large number of matters dealt with by the ACT Magistrates Court are dealt with in the states by the District and County Courts and not by their magistrates courts. It is also true that the sentencing power of the Magistrates Court exceeds that of any court in the states bearing the same or a similar name.

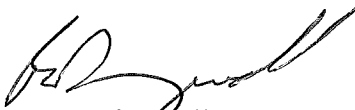
We also note that the view is held, and has been publicly stated, by at least one Supreme Court Judge in this territory, that hearing and determining a criminal case without a jury is a more difficult task for the presiding judicial officer because of the need to give reasons for the verdict. We agree that this is an onerous task and note that in every case heard by a Magistrate comprehensive reasons must be given; otherwise there will be an appealable error of law.

A further matter to be noted is that District and County Court judges do not exercise any coronial jurisdiction, it being exercised separately by State Coroners (who in Victoria is a County Court judges) and Deputy State Coroners. In the ACT the Magistrates exercise the coronial jurisdiction as an additional duty. Also, unlike the ACT Magistrates, District and County Court judges do not exercise any jurisdiction in relation to workers compensation matters. Instead, such matters are heard and determined by a stand alone Commission, the President of which in NSW is remunerated at the level of a Supreme Court judge

We also remind the Tribunal that the pension entitlements of District and County Court judges are significantly greater than those available to ACT Magistrates.

If Ms Playford's offer to the Tribunal to appear before it "to elaborate on the jurisdictional changes" has been or will be accepted, we would appreciate being advised of this, and of the details of the additional information relayed to the Tribunal.

Yours sincerely,



Peter Dingwall  
Acting Chief Magistrate  
20 September 2011