



CANBERRA

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

Mr Greg Haustead
Secretary
ACT Remuneration Tribunal
PO Box 964
Civic Square ACT 2601

Dear Mr Haustead,

I refer to your letter of 3 August 2011 in which the Remuneration Tribunal invited submissions in relation to its 2011 review of remuneration for all public offices.

The attached submission is made on behalf of myself, as Acting Chief Magistrate, and all other ACT Magistrates, including the Special Magistrates.

I request that I and one other Magistrate be given the opportunity, at a convenient time, to appear before the Tribunal to make oral submissions and to respond to any questions the Tribunal might wish to pose.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P.G. Dingwall'.

P.G. Dingwall
Acting Chief Magistrate
29 August 2011

Submission of ACT Magistrates to the Remuneration Tribunal

August 2011

Summary

Since the Tribunal's last determination (Statement 10 of 2010) there has been an extraordinary increase in the ACT Magistrates Court's jurisdiction in both the civil and criminal areas of its practice.

In light of this, the Magistrates submit that their remuneration should now be set at a level more closely aligned to that of the judges of the District Courts of New South Wales, Queensland, South Australia, Western Australia and the County Court of Victoria ("intermediate courts"), and certainly more than that of the Master of the ACT Supreme Court.

The Magistrates do not ask for any of the other remuneration entitlements that the judges of intermediate courts receive, although we note that District and County Court judges' pensions form a significant part of their remuneration, over and above their base salaries. ACT Magistrates, while doing comparable work, only have access to the lesser superannuation schemes that are available to public servants (despite the fact that – as part of the Judicial arm of government – Magistrates are not public servants nor part of the Executive arm of government).

Historical background

In its 1989-90 report the Tribunal examined the position of Magistrates in the Australian Capital Territory. It stated:

"77. Submissions have been made that their functions are analogous to those of District Court and County Court judges in other jurisdictions rather than to Magistrates. The Tribunal has been informed that in practice the Magistrates perform functions beyond those which ordinarily would be performed in other jurisdictions.

“78. The Tribunal is not satisfied that the Magistrates should presently be equated to District or County Court judges.

“79. In 1989 the then Federal Attorney General, Mr Lionel Bowen, submitted that their remuneration should be substantially above the existing magistrate level. The Tribunal has invited submissions from the present Federal Attorney-General, Mr Duffy, and from Mr Collaery, the Deputy Chief Minister and Attorney-General in the Australian Capital Territory. Mr Collaery has submitted that the remuneration of Australian Capital Territory Magistrates should be as follows:

Chief Magistrate: 80% of Chief Justice of the ACT

Magistrate: 75% of a Judge of the ACT

“80. This level of remuneration is above that presently provided for, e.g., New South Wales and Victorian Magistrates. The Tribunal is conscious that it has been suggested that there may be a reorganisation of the system of courts of the judicial responsibilities within the Australian Capital Territory. Weight is properly to be given to the views of Mr Collaery as to the level of remuneration which the Government of the Territory sees as appropriate for its Magistrates at this stage. In the circumstances, the Tribunal concludes that it should accede to determine the level of magistrate’s remuneration accordingly.¹ In doing this, it makes no formal judgement as to the relativity which such Magistrates have in relation to the Magistrates on other jurisdictions.”

Thus, the Tribunal will see that as long ago as 1989 it was acknowledged that the jurisdiction of ACT Magistrates exceeded that of interstate judicial officers in similarly named courts.

Recent changes in government policy

Members of the Tribunal will be well aware of public statements (some of which are reproduced in this submission) by the government and the profession as to continuing inefficiencies and delays in the ACT Supreme Court. The Tribunal will also be aware that the ACT Government has, in the past 12 months, introduced a number of measures to fuel

¹ For no readily apparent sound reason, this linking to ACT Supreme Court judicial salaries was abandoned by the Tribunal in the early 2000s.

efficiencies in the Supreme Court rather than appoint an additional judge to that Court with all the attendant considerable costs and resource implications.

The primary means the Government has used to give effect to its policy has been the devolution of jurisdiction from the Supreme Court to the ACT Magistrates Court. The changes are an attempt to ensure that not only will the Supreme Court consider only the most serious cases, but conversely, that the type of cases in both civil and criminal jurisdictions being considered by Magistrates (in the absence of an intermediate court) will be more complex and involved than has previously been the case.

An irresistible corollary of reduced workloads in the Supreme Court is that the work of the Magistrates Court must increase in both volume and complexity. In this latter regard, whilst it may be obvious, it needs to be stated that cases which have been devolved from the Supreme Court to the Magistrates Court retain the same level of complexity as they had when in the Supreme Court – the factual and legal issues remain the same. The government has made it clear that the initiatives it has introduced are an acknowledgement of the proven capacity of the ACT Magistrates to manage increased and more complex workloads efficiently and in a timely manner.

The Courts Legislation Amendment Act 2010

The primary policy of the government is contained in the *Courts Legislation Amendment Act 2010*. The Act came into effect on 25 July 2011. In the supplementary explanatory statement to the *Courts Legislation Amendment Bill*, the Attorney-General stated in relation to criminal matters:

*“As part of the 2010 access to justice initiative, the government is introducing a range of legislative reforms with respect to the jurisdiction of the Magistrates Court. The Bill has the effect of increasing the threshold for matters that must be dealt with summarily in the Magistrates Court, to include offences with a maximum penalty of five years or less imprisonment”.*²

² The government proposal in relation to the re-definition of ‘indictable offence’ was subsequently amended as a result of a proposal by Vicky Dunne MLA. The amendment places in the hands of the prosecution the decision as to whether an indictable offence carrying a penalty of longer than two years but not longer than five years imprisonment is to be dealt with summarily in the Magistrates Court. The aim of the amendment, however, was stated to address the same problem, namely ‘a backlog of cases in the ACT Supreme Court.’ ‘This has been a persistent problem for a number of years, and is confirmed by data from the Productivity Commission’s *Review*

It was only a few years ago that this threshold was set at offences punishable by a term of imprisonment not exceeding 12 months.

This follows upon changes made in May 2009 to the Magistrates Court's criminal jurisdiction in respect of indictable matters dealt with summarily which increased the maximum penalty that the Court can impose for such offences, subject to the maximum otherwise provided for, to a fine of \$15,000 or 5 years imprisonment or both. Previously, the maximum penalty was a fine of \$5,000 or 2 years imprisonment or both. To date, this increase in sentencing power has not been recognised in any remuneration determination. Lest the Tribunal think this is merely changing numbers, this could not be further from the truth. Greater sentencing powers bring with them greater complexity, greater degrees of criminality and more serious issues to be tried and decided.

In relation to the increased jurisdiction of Magistrates in criminal hearings, the Attorney-General stated:

These changes are intended to reduced the Supreme Court's trial backlog, and enable the Supreme Court to deal with more complex and serious cases... A key element of the right to fair trial is the right to a trial within a reasonable period or without undue delay... the Bill supports the right to fair trial by reducing undue delays in bringing matters to trial. The increased summary jurisdiction promotes greater accessibility to court proceedings and timely hearings.

Procedural guarantees associated with the right to fair trial such as the opportunity for defendants to present their case are bolstered by ensuring defendants are brought before the court more promptly, and are not left with the uncertainty of a lengthy remand period. The proposed reforms fortify the right to a fair trial by extending the jurisdictional competency of Magistrates to deal with a greater range of offences, thereby reducing backlog and minimising procedural delays.

ACT Magistrates meet the fair trial requirements (as propounded in the international convention and as formulated under the Human Rights Act 2004) of competent, independent and impartial adjudication. Through their demonstrated ability to deal summarily with

a broad range of offences by consent (including indictable offences with greater penalties than those affected by the proposed increase to exclusive jurisdiction), experience in sentencing defendants in these matters and knowledge of the law, Magistrates possess the skills and experience to competently hear cases which would fall within their sole jurisdiction as a result of the proposed reform.

The *Courts Legislation Amendment Act* also increased the jurisdiction of the Magistrates Court in civil claims matters from \$50,000 to \$250,000 – a 500% increase with a corresponding increase in complexity and importance of the issues to be resolved.

According to information recently provided to us by the Registrar of the ACT Magistrates Court:

“The increase in the court’s jurisdiction to \$250,000 essentially means that we are taking over about 95 per cent of the current Master’s jurisdiction in the Supreme Court. The remaining 5% being matters involving amounts in excess of \$250,00.

“Information suggests that 90 per cent of the Master’s workload involves personal injury cases with the balance comprising medical negligence, defamation, commercial disputes and other isolated matters like estate disputes.”

Indeed, anecdotal evidence from the ACT Bar is that even matters that have been commenced in the Supreme Court and are now ready for hearing may be transferred to the Magistrates Court. This is because hearing dates in the Supreme Court are more than 18 months away and the profession has indicated it is willing to advise clients to transfer their claims to the Magistrates Court to get a much earlier hearing date.

A table summarising the increases in the Magistrates Court’s jurisdiction is attached.

Views of the government

The increased jurisdiction of the ACT Magistrate’s Court was summarised in an article in the *Canberra Times*, headed ‘**ACT Bill to boost role of Magistrates,**’ with the sub-heading ‘**Government plans to reduce ACT judges’ workload.**’³ The article stated:

³ Kretowicz, Ewa, *Canberra Times*, 10 December 2010.

“Thousands of cases will be heard in the ACT Magistrates Court rather than the Supreme Court if new laws extending the jurisdiction of the Magistrates Court are passed”.

The article then discussed changes to both the criminal and civil jurisdictions of the court and quoted recent comments by the Attorney-General:

“The changes were proposed in a bid to reduce caseloads for the territory’s top judges. Under the proposed changes in the past three years, approximately 40 per cent of the criminal cases heard in the Supreme Court would have been able to be heard in the Magistrates Court. In civil matters, 87 per cent of matters in the past three years were for less than \$250,000. The new laws would give greater powers to Magistrates in the ACT than other jurisdiction.

“But Attorney-General Simon Corbell said it was the only option available to the ACT Government after plans for a virtual District Court were voted down by the Liberals and the Greens. ‘Our Magistrate’s Court will deal with a larger range of matters than most other equivalent courts around the country, but of course the issue we have here in the ACT that these types of matters are usually dealt with by a District Court in other jurisdictions, a District or a County Court,’ he said. ‘That hasn’t been supported by the parties in the Assembly, so the lesser option is now to increase the jurisdiction of the Magistrates Court, and that’s the only option left to reduce workflow in the Supreme Court.’”

Mr Corbell was quoted as saying that the changes would significantly reduce the workload of Supreme Court judges. “The aim is to see more matters dealt with in the Magistrates Court, and take pressure off the Supreme Court,” he said. “It’s a very significant number of cases, certainly in the thousands, of matters that won’t have to go to the Supreme Court, and that is designed to reduce pressure on the Supreme Court.”

The only inference to be drawn from this statement is that the government acknowledges the ability of the Magistrates in the Territory to (and indeed that they will) perform the role of judicial officers of an intermediate court by dealing with the work that would otherwise be dealt with in a superior court.

We note that the changes discussed above represent a change in the policy initially proposed by the Government in the *2010 Access to Justice Initiative* paper. That policy proposed the creation of a “virtual District Court” which would be given jurisdiction in respect of matters which were then in the Supreme Court’s civil and criminal jurisdictions. The jurisdiction of the “virtual District Court” was to have been exercised by two of the existing Magistrates who were to have been given commissions as judges of that court, whilst also retaining their appointments as Magistrates. It was envisaged that each would devote half of their time to each court. Ultimately, for political reasons, the Government was unable to implement that policy and, instead, decided to achieve the efficiencies and reduction of backlogs in the Supreme Court by implementing the changes to the Magistrates Court’s jurisdiction described above. The practical outcome has been that – instead of two Magistrates being “virtual District Court judges” – a greater workload will continue to be transferred from the Supreme Court and all Magistrates will, in reality, perform the functions originally proposed for the “virtual District Court”

In the *2010 Access to Justice Initiative* paper it was announced that provision had been made in the 2010-2011 budget of a sum of \$71,000 per annum which was described as being “the uplift of 2 magistrates half-time to the level of District Court judges”. Thus, the Government was of the view that an appropriate allowance to make for the additional responsibility to be taken on by the two part-time judges was \$31,000 per annum. This, of course, was just an estimate for budgeting purposes and was arrived at without reference to the Remuneration Tribunal or the views of the Magistrates. Nevertheless, we submit that it should be the starting point (but not the conclusion) in considering the appropriate level of remuneration of the Magistrates.

Comments of Chief Justice Higgins

In a recent Bar Association Bulletin (May 2011) the Chief Justice discussed the heavy workload and backlog of cases in his court. He said the problem could only be fixed “by an increase in court resources or a significant reduction in the business coming to the Court.” The government has chosen the latter approach.

The profession acknowledges the significance of the changes

The President of the ACT Law Society, Mr Athol Opas, in the June 2011 edition of the Law Society journal *Ethos*, referred to the *Courts Legislation Amendment Act 2010* and acknowledged that ‘this Act substantially reforms ACT civil and criminal court jurisdiction.’

Additional changes in jurisdiction/responsibilities in 2011

In addition to the changes in jurisdiction discussed above, there have been other significant changes made to the Magistrates Court’s jurisdiction and structure in the past 12 months which we submit have resulted in an increase in work value.

Bail

The *Bail Amendment Act* was introduced in 2011 by the government as part of its express policy to reduce the workload of the Supreme Court. Its provisions came into effect in May 2011. The Act introduced new procedures in relation to the review of bail decisions, and modified the limitations on the powers of the Magistrates Court to grant bail. Importantly, defendants are now precluded from applying for bail in the Supreme Court without first having the question of bail reviewed in the Magistrates Court, i.e., in practical effect an appeal process has been introduced into the Magistrates Court.

Family Violence Court and Galambany Court

The *Courts Legislation Amendment Act* also formally enshrines in legislation the Family Violence Court and Galambany Court, both of which are constituted by Magistrates.

The Family Violence Court has been formally established to deal with all criminal offences involving family violence. These matters tend to be particularly difficult to deal with due to the heightened emotions that are usually involved and the close relationships between victims and perpetrators. Much of the work is akin to that performed by judges of the Family Court and Federal Magistrates.

The Galambany Court is the court established to conduct circle sentencing for indigenous offenders found suitable for referral to it. It requires the application by the + of quite different skills to those applied in usual sentencing proceedings.

Youth Drug and Alcohol Court

The ACT Childrens Court is trialling a new Drug and Alcohol Court that will put young offenders through intensive rehabilitation programs to help them stay out of jail.

Magistrates will become more closely involved in the rehabilitation process, meeting the young people every week or fortnight until they complete their program.

The new Youth Drug and Alcohol Court is the first of its kind in the Territory. A two-year trial begins in September. This initiative of the court has received wide support from both the Government and the profession, with an acknowledgement of the ability of the ACT's Magistrates to take on this work. We note that Drug Courts in other jurisdictions are operated by judicial officers at the District Court level.

Comparative salaries

We have not carried out an extensive review of salaries in the States and the Northern Territory however the following are, in our submission, relevant in determining the appropriate remuneration for ACT Magistrates:

Judge of the District Court (NSW)	\$331,690 (from 1/10/10)
Judge of the District Court (Qld)	\$336,708 (from 1/11/10)
Judge of the District Court (WA)	\$349,497 (from 1/5/11)
Judge of the District Court (SA)	\$329,470 (from 1/2/11)
Master Supreme Court of the ACT	\$298,239 (from 1/11/10)
Federal Magistrate	\$296,180 (from 1/5/11)
Magistrate Qld	\$294,432.44 (from 1/11/10)
Magistrate WA	\$288,335 (from 1/5/11)
Magistrate NT	\$276,443 (from 1/8/10)
Magistrate NSW	\$265,350 (from 1/10/10)
Magistrate SA	\$261,210 (from 1/2/11)

Economic considerations

Last year we provided a detailed outline which demonstrated that by comparison the workforce at large and on the basis of relativities and economic factors, our remuneration in real terms had been on a constant decline for many years. Those arguments remain true today and need to be addressed by the Tribunal.

Conclusion

If the Tribunal has been in any doubt in previous years that the ACT Magistrates Court undertakes much of the work of a middle-tier court in other jurisdictions, the Tribunal must now regard this doubt as having been removed.

The ACT Magistrates Court now has more extensive jurisdiction than any other court at a similar judicial level in Australia and the work value entailed in the work of an ACT Magistrate, following the increases in jurisdiction and powers we have highlighted, significantly exceeds that of magistrates sitting in any other equivalent court in Australia.

Two examples of this are:

- a magistrate in Queensland exercises civil jurisdiction only in matters where the claim does not exceed \$150,000 and, in criminal matters, is limited to imposing 3 years imprisonment in respect of indictable matters dealt with summarily, and in some exceptional matters 4 years imprisonment; and
- a Magistrate in New South Wales exercises civil jurisdiction only in matters where the claim does not exceed \$100,000, and in criminal matters is limited to imposing sentences that do not exceed 2 years imprisonment.

We submit that the work value entailed in our work demonstrably exceeds that of the Master of the ACT Supreme Court. We have almost as broad a jurisdiction in civil matters as the Master, and certainly a much more complex criminal jurisdiction than the Master. In addition, Ms undertake a number of additional roles in the Coroners Court, the Family Violence Court, the Galambany Court and the Youth Drug and Alcohol Court.

The expertise and qualities of an ACT Magistrate have always been greater than in State jurisdictions because of the combined Magistrates Court/District Court responsibilities. This is even more demonstrably the case now because of all the recent reforms introduced by the

government in its drive to make the ACT judicial system more efficient and effective. As the Attorney General said in correspondence to the Magistrates when forwarding a copy of the *Access to Justice Initiative Report*, the ACT is a “unique jurisdiction”. We ask the Tribunal to acknowledge this in its Determination.

In our submission, the appropriate level of remuneration for ACT Magistrates should be fixed closer to the median of that of the judges of the District and County Courts of the States. We are in fact, if not in name, the same as judges of those courts.

Finally, we note that detailed submissions made to the Tribunal in recent years appear to have been ignored – with no reasons for this being provided by the Tribunal – and remuneration increases appear to have simply been based on the level of increases paid to public servants. As we noted earlier, we are not public servants nor part of the Executive arm of government and taking such a course is inappropriate. We are part of the separate Judicial arm of government and should be recognised and treated as such by the Tribunal.

Chief Magistrate

In our submission, the current relativity between the salary of the Chief Magistrate and a Magistrate should be maintained.

Special Magistrates

In our submission the per diem salary payable to Special Magistrates should remain linked to the salary paid to a Magistrate and calculated using the formula applied in the Tribunal’s last determination.

29 August 2011

**Comparative Table of Criminal and Civil Jurisdictions of the ACT Magistrates Court
Pre May 2009 and Post May 2009**

Pre May 2009	Post May 2009
Criminal Jurisdiction	Criminal Jurisdiction
<ul style="list-style-type: none"> • Purely summary matters = punishable by less than 12 months imprisonment • Indictable matters that may be dealt with summarily with defendant's consent, and in a few offences also with the DPP's consent, = offences punishable by up to 10 years imprisonment or, in respect of property offences where the value of the property does not exceed \$20,000, 14 years imprisonment and offences of aggravated robbery (maximum sentence 25 years imprisonment) and aggravated burglary (maximum penalty of 20 years imprisonment) • The maximum penalty that can be imposed in respect of any indictable offences dealt with summarily = \$5,000 fine or 2 years imprisonment or both. • Bail applications in respect of any criminal charge before the Court with immediate right of review by the Supreme Court. 	<ul style="list-style-type: none"> • Purely summary matters = punishable by 12 months imprisonment + punishable by more than 2 years but not more than 5 years if the prosecution elects summary jurisdiction (the DPP has advised that he intends to elect for summary jurisdiction in most matters). • Indictable matters that may be dealt with summarily with defendant's consent, and in a few offences also with the DPP's consent, = offences punishable by up to 10 years imprisonment or, in respect of property offences where the value of the property does not exceed \$30,000, 14 years imprisonment and offences of aggravated robbery (maximum sentence 25 years imprisonment) and aggravated burglary (maximum penalty of 20 years imprisonment) • The maximum penalty that can be imposed in respect of any indictable offences dealt with summarily = \$15,000 fine or 5 years imprisonment or both. • Bail applications in respect of any criminal charge before the Court but the defendant must make 2 applications and then an application for review before being permitted to apply for review by the Supreme Court.
Civil Jurisdiction	Civil Jurisdiction
<ul style="list-style-type: none"> • Any personal action at law if the amount claimed is not more than \$50,00 	<ul style="list-style-type: none"> • Any personal action at law if the amount claimed is not more than \$250,000