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Dear Mr Adrian

ACT Remuneration Tribunal 2018 Spring Review

Thank you for your letter inviting the Magistrates of the Australian Capital Territory to make a submission in relation to the Remuneration Tribunal Spring review.

This year, the Magistrates have determined to rely upon submissions put before the Tribunal, supplemented by a brief Addendum addressing two further issues relevant to work value: increased jurisdiction and work value having regard to inherent stresses of the role. We maintain that remuneration at the rate of 85% of a Supreme Court judge, currently \$458,840, is appropriate.

One other issue is raised by this submission. That is the basis upon which special magistrates are remunerated. This is also addressed in the Addendum.

The attached submission is on behalf of all ACT Magistrates and Special Magistrates.

I again welcome the opportunity to speak to the submission and respond to any questions it raises for the Tribunal.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L Walker'.

Lorraine Walker
Chief Magistrate
7 September 2018

Submission to the Act Remuneration Tribunal 2017 Spring Review ACT Magistrates

Our submission is that it is appropriate to adjust ACT Magistrates' remuneration to \$382,364, which is 85% of that of the ACT's Supreme Court judges. Our submission relies upon the following considerations:

1. An objective assessment of the value of work undertaken by ACT magistrates;
2. Comparative work value between the Supreme Court and the Magistrates Court in this Territory;
3. Comparative work value between the ACT Magistrates Court and other first tier courts in Australia; and
4. The devolution of work from the Supreme Court to the Magistrates Court and a quantification of the salaries of ACT magistrates relative to ACT judges from 2008 to the present.

1. An objective assessment of the value of work undertaken by ACT magistrates

ACT magistrates are required to make decisions across a broad range of legal jurisdictions including:

- Criminal, with child, adult, family violence, industrial and indigenous specialisations;
- Civil matters including uncircumscribed tortious and contractual disputes with damages up to \$250,000, *Domestic Relationships Act* applications up to \$250,000, commercial lease disputes with unlimited damages, and industrial matters including workers compensation claims; and
- Coronial inquests and inquiries.

Nature of work

Within these jurisdictions, but particularly the criminal jurisdiction, magistrates are required to make decisions on a daily basis across a broad range of seriousness, from the most minor traffic and public nuisance type matters, through to serious violence such as aggravated robbery, drug trafficking, death by work place conduct or culpable driving and fraud. Being a high volume court, magistrates may be confronted with this range of matters within a single court session, often without warning as to what will arise. Many of our decisions are required to be made immediately during bail, hearing or sentencing proceedings notwithstanding they may effect a person's finances, their family or living arrangements or their liberty. Further, these decisions are made in the context of:

- The proceedings being very public – with large numbers of persons within the courtroom, including media representatives;
- The constant pressure of the need to ensure that all matters are dealt with fairly but also promptly; and
- What are sometimes heightened emotions on the part of defendants, victims and/or their supporters or other litigants.

In order to make these important decisions, magistrates must consider, absorb and analyse often voluminous and complex material across a range of disciplines other than the strictly legal, frequently including medical, psychiatric and commercial material.

Accountability

The magistrates' decision-making capabilities and capacities must be, in our submission, of the highest order. They are required to display sound judgment of people and circumstances, and their judgment must be sufficiently robust to withstand public and appellate scrutiny. Consistent with such requirements, magistrates are required to provide cogent reasons for their decisions, which often involve precise analysis of the evidence, before findings of fact are made and relevant legal principles are applied.

When hearing appeals from the ACT Magistrates Court, the ACT Supreme Court places much emphasis on the reasons given by a magistrate. In other first tier courts, appeals to an intermediate court often involve a re-hearing of the matter where the judge looks at the evidence afresh without needing to consider the reasoning of the magistrate.

The ACT Magistrates Court does not conduct trials by jury. Most criminal trials in the Supreme Court are jury trials. Our Supreme Court colleagues have the benefit of the jury deciding matters of fact while the judge determines only matters of law. It follows that no reasons are given when matters of fact are decided in that way. In the Magistrates Court however the magistrate determines both matters of fact and law, and is expected to give detailed reasons for findings of fact.

Impact

The impact of magistrates' decisions is not only significant in terms of their consequences but also in terms of their reach. By far the greatest contact between the judicial arm of government and the community comes through the magistracy. In the ACT around 90% of all criminal matters are finalised in the Magistrates Court.

Specialist Courts

The Territory government has established a range of "specialist" courts in addition to the Magistrates Court – in particular the:

- Childrens Court;
- Industrial Court;
- Family Violence Court;
- Galambany Court; and
- Coroner's Court.

The number of Territory magistrates (7) is such that, of necessity, magistrates are required to sit in more than one of these courts, and often several of them on the same day. As a result ACT magistrates must be able to meet the different demands of each of the different courts as well as of the ordinary Magistrates Court. Whilst it is not unusual for Magistrates Courts in other jurisdictions to also have other "specialist" courts, the larger number of magistrates in those other jurisdictions allows for work allocation which results in fewer cross-court demands being placed upon individual magistrates. The additional skills brought to bear by ACT magistrates in this area make their work more valuable.

2. Comparative work value between Supreme and Magistrates Courts in this Territory

In previous submissions, we have highlighted the increased jurisdiction devolved to magistrates in the ACT in the early years of this decade. We reiterate that in the ACT magistrates are empowered to deal with all except a few of the most serious offences in the criminal calendar, such as murder,

manslaughter and the most serious sexual offences. Magistrates deal with offences such as aggravated burglary, aggravated robbery, drug trafficking and fraud. A magistrate's sentencing power is capped at five years imprisonment for each offence. Often multiple offences committed by the same defendant are dealt with. Thus in real terms ACT magistrates have the power to sentence for far beyond five years. Unlike some jurisdictions ACT magistrates also determine a defendant's fitness to plead where it arises.

It is not unusual for hearings in the Magistrates Court to extend well beyond a day, and on occasions hearings (criminal, civil and coronial) may extend to a number of weeks. Lengthy hearings require magistrates to bring to bear a range of case management skills.

ACT magistrates enjoy significantly fewer entitlements than ACT judges, in particular in relation to leave, sabbatical arrangements, compulsory retirement ages and non-contributory pensions.

In the absence of an intermediate Court in the ACT, and having regard to the level of decision-making required, we submit that an 85% relativity between the salary of ACT magistrates and ACT judges properly reflects the comparative work values between the two courts (such as is enjoyed by Queensland magistrates).

3. Comparative work value between the ACT Magistrates Court and other Australian first tier courts.

In the seven years since the ACT Magistrates Court general civil jurisdictional cap was set at \$250,000, there has been some increase in the jurisdiction in other first tier courts. However, with the recent exception of the Northern Territory where magistrates have been retitled "judge", the next highest level of civil jurisdiction is \$150,000 in Queensland.

In Queensland, the maximum imprisonment term available to magistrates is three years. Queensland magistrates are not generally required to concurrently perform the role of coroner.

There is also an intermediate court in Queensland in the form of the District Court. Yet Queensland magistrates are the highest paid in the country, receiving an amount equal to 85% of the salary of a QLD Supreme Court judge.

While the Northern Territory has significantly increased the jurisdiction of its magistrates in the last year or so to equate to that of ACT magistrates, magistrates in that territory are not required to concurrently perform the role of coroner.

ACT magistrates have the greatest jurisdiction of first tier state and territory courts nationally and this should be reflected in their remuneration.

4. The devolution of work from the ACT Supreme Court to the Magistrates Court and a quantification of the salaries of ACT magistrates relative to ACT judges from 2008 to present.

As described above, and since 2008, there has been a systematic devolution of work from the ACT Supreme Court to the ACT Magistrates Court. This was for the purpose of reducing the delays within the Supreme Court. It took the form of changes to Magistrates Court jurisdictional limitations and the imposition of additional procedural requirements before parties could make certain applications in the Supreme Court. The key changes included:

- Increasing the Magistrates Court civil jurisdiction from \$50,000 to \$250,000;

- Increasing the maximum period of imprisonment a magistrate may impose for any single offence from two to five years;
- Allowing additional serious offences to be finalised by the Magistrates Court, for example aggravated robbery and aggravated burglary;
- Allowing the prosecution to unilaterally elect that certain indictable offences be finalised before the Magistrates Court;
- Providing the Magistrates Court with a formal power to review earlier bail decisions, and prohibiting the Supreme Court from reviewing Magistrates Court bail decisions until the Magistrates Court has conducted a review of those decisions; and
- Establishing the Industrial Court as part of the Magistrates Court with extensive jurisdiction, including finalising any industrial or work safety indictable offences.

These changes were made in circumstances where, due to the absence of an intermediate court, the ACT Magistrates Court already exercised exceptional jurisdiction for a first tier court. For example, it already exercised the unlimited jurisdiction under the *Leases (Commercial and Retail) Act 2001* and the power to finalise a range of serious indictable offences.

During that same period, the relative salary of ACT magistrates to ACT judges increased from 75.1% to only 78.0%. The latter comparison rate is even lower now as a result of the Commonwealth Remuneration Tribunal's recent determination 2017/09 of 28 June 2017. We submit that the current work value provided by ACT magistrates is not adequately compensated having regard to the current remuneration of ACT Supreme Court judges. A better reflection of that work value is an amount calculated at 85% of the salary of an ACT Supreme Court judge.

Budget considerations

By way of additional submission we note that in 2014, 2015 and 2016 the Tribunal, within its determinations, expressly recorded that it had been "mindful of the economic and financial considerations facing the ACT". We acknowledge the necessary pragmatism of that approach. However, to the extent that it may have resulted in determinations not fully reflective of the magistrates' work value, we invite a reconsideration of that work value and to that end rely upon the contents of those earlier submissions.

As in previous years, we invite the Tribunal to retain the existing relativity between magistrates, special magistrates and the Chief Magistrate.

Lorraine Walker
Chief Magistrate

19 October 2017

**ADDENDUM TO SUBMISSION TO THE ACT REMUNERATION TRIBUNAL
SPRING REVIEW 2018 – ACT MAGISTRATES**

Increased jurisdiction – Family Law - *Family Law Amendment (Family Violence and Other Measures) Bill 2018*

The above legislation passed both Commonwealth Houses on 22 August 2018. It will soon become law. The Minister's Second Reading speech is annexed at "A" for the Tribunal's consideration.

The practical effect of this legislation in the Territory is that all Magistrates will now be required to develop expertise in family law and exercise jurisdiction in a way which has never formed part of the usual practice of this Court. In particular, it is anticipated that the applicable limit for property matters will be \$250,000, consistent with the Court's general civil jurisdiction. The Court will also be empowered and required to make parenting orders.

As the Minister noted in the Second Reading speech, the Commonwealth has funded the National Judicial College of Australia to deliver training to territory judicial officers. The ACT was the first jurisdiction to access that training. Whilst it provided a basic introduction to the area, it must be recognized that family law is a specialist area requiring detailed understanding of the extensive Family Law Act. We note that Federal Circuit Court Judges, many of whom exercise solely family law jurisdiction, are remunerated at \$387,230.

This area of new and increased jurisdiction will significantly increase the work value of Territory Magistrates.

Inherent psychological demand

The Tribunal may well be aware of the groundswell of recognition of the toll which judicial work has upon Magistrates. Annexed at 'B' are copies of articles from "The Age" and "The Canberra Times" newspapers highlighting this concern and its possible effect on individuals.

In this respect, we note that the addition of family law jurisdiction will increase to the already stressful work of the Magistrates in the criminal, coronial and protection order jurisdictions. Unlike the Federal Circuit and Family Courts which have no criminal jurisdiction to speak of, the Magistrates will now be expected to attend to what are widely recognized as the most stressful areas of judicial work, namely family and criminal law and coronial matters. We will not only have to deal with these within a single court but due to small numbers on our bench, concurrently.

Special Magistrates

Paragraph 2.3 of Determination 17 of 2107 states that special magistrates are to be remunerated based on the time they "sit" or "travel". Arguably, this does not make provision for preparation, decision-writing nor necessary judicial education. That is patently unfair. We ask that the condition be amended to include payment at the same rate for time allocated to "judicial duties, including sitting time, preparation, decision-writing and judicial education, at the direction of the Chief Magistrate".

Annexure

A

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|--------------------|--|
| Title | BILLS Family Law Amendment (Family Violence and Other Measures) Bill 2018 Second Reading |
| Database | House Hansard |
| Date | 21-08-2018 |
| Source | House of Reps |
| Parl No. | 45 |
| Electorate | Durack |
| Interjector | Hogan, Kevin (The DEPUTY SPEAKER) |
| Page | 12 |
| Party | LP |
| Status | Proof |
| Speaker | Price, Melissa, MP |
| Stage | Family Law Amendment (Family Violence and Other Measures) Bill 2018 |
| Context | BILLS |
| System Id | chamber/hansardr/e58f72a8-6e2f-4fb3-838f-055a62f31c2c/0020 |

BILLS - Family Law Amendment (Family Violence and Other Measures) Bill 2018 - Second Reading

Ms PRICE (Durack—Assistant Minister for the Environment) (13:22): I present the explanatory memorandum to this bill, and I move:

That this bill be now read a second time.

Family violence and child abuse are unacceptable and require a strong legislative response. The Family Law Amendment (Family Violence and Other Measures) Bill 2018 will enhance the capacity of the justice system to provide effective outcomes for vulnerable Australians who are experiencing family violence. In particular, the bill will strengthen the powers of courts to protect victims of family violence, and facilitate the resolution of family law matters by state and territory courts in appropriate cases.

The Commonwealth, states and territories have made shared commitments under the National Plan to Reduce Violence against Women and their Children 2010-2022, which sets an ambitious agenda for addressing the scourge of family violence affecting many Australians. Under action 5.1 of the Third Action Plan of the national plan, governments have agreed to implement supported recommendations of the Family Law Council's 2015 and 2016 reports on families with complex needs and the intersection of the family law and child protection systems. The bill implements four of those recommendations.

The bill also responds directly to calls for reform from Victoria's 2016 Royal Commission into Family Violence, the Australian and New South Wales Law Reform Commissions' 2010 report, *Family violence—a national legal response*, and the Victorian state coroner's 2015 findings of the inquest into the death of Luke Geoffrey Batty. This bill demonstrates the seriousness with which the government has taken the findings of these inquiries, and its commitment to improving how the federal, state and territory justice systems help vulnerable families.

The bill will reduce the need for families to interact with multiple courts across these systems to address their legal needs.

Currently, families are often required to navigate state or territory magistrates' courts and children's courts, and the federal family law courts. Understandably, this can cause confusion, delay and prolonged exposure to risks of violence, particularly for families with complex needs such as family violence, mental health and substance abuse issues.

State and territory magistrates' courts already have a range of powers to make, vary and suspend family law orders under the Family Law Act. However, they don't always do this and, when they do, it can result in inconsistent state and federal orders. This can create uncertainty and also increase risk for families.

The bill will also provide for an increased total property value, under which state magistrates' courts can hear contested family law property matters without both parties' consent. The current property value of \$20,000 has not been updated since 1988. The bill will allow a higher value to be prescribed in regulations, with the flexibility of prescribing different values for different states and territories.

Increasing this value will reduce the cost, pressure and risk for vulnerable families who are dealing with legal matters across multiple courts. State and territory magistrates' courts exercising limited property and parenting jurisdiction will enable vulnerable victims of family violence to achieve some measure of economic independence without having to initiate separate proceedings in a family law court. This can accelerate their recovery process by facilitating earlier financial stability.

The bill will allow relevant state and territory courts, such as children's courts, to be prescribed so that they can exercise family law parenting jurisdiction. This will provide children's court judicial officers with additional tools to make orders that support the best interests of children.

Family law orders will be a useful tool for the children's court, where they can provide greater certainty to children and their carers. For example, where a matter is already before the children's court a family law parenting order may give a protective carer, such as a grandparent, greater certainty about ongoing care arrangements for a child. It will also negate the need to institute future proceedings in a family law court.

The government does not intend that state and territory courts become the primary fora for resolving family law disputes. The amendments in this bill are designed to give state and territory courts greater flexibility to hear family law matters where parties are already appearing for a related state or territory proceeding. State and territory courts will retain their existing powers to transfer proceedings to the federal family law courts in the circumstances provided for in the act.

To support this bill, the Australian government has funded the National Judicial College of Australia to deliver training to state and territory judicial officers about family law parenting and property matters.

The government has delayed introducing criminal offences for breaches of family law injunctions made for personal protection.

This government takes the safety of family violence victims seriously, and remains committed to the policy intention of the proposed offences.

However, in order to progress passage of the remaining measures in the bill to deliver effective outcomes for Australian families experiencing family violence, the government has removed this measure.

The bill will further improve the efficacy and protective function of the Family Law Act by ensuring that judges exercising family law jurisdiction do so expeditiously, and that the information children receive from a court is appropriate and would not expose them to further details of family violence. The bill includes measures to avoid inconsistencies between family violence orders and family law orders, which can lead to confusion and increased risk for victims. It will also strengthen and codify the power of the family law courts to dismiss unmeritorious cases and proceedings that are frivolous, vexatious or an abuse of process.

The bill will improve the justice system's capacity to produce timely and effective resolutions to matters involving family violence. It will respond directly to expert recommendations to address the needs of vulnerable families and support more effective interaction between family law and the state and territory family violence and child protection systems. The measures in this bill exemplify the government's commitment to ensuring that the family law system will protect victims of family violence and hold perpetrators accountable.

The DEPUTY SPEAKER (Mr Hogan): The debate is interrupted in accordance with standing order 43. The debate may be resumed at a later hour.



JUDGE DREAD

Two unexpected deaths in Victoria highlight the stresses faced by overworked judges and magistrates – many of whom sift through horrendous evidence day in, day out.

STORY BY *Peter Wilmoth* PHOTOGRAPHY BY *Kristoffer Paulsen*

ON THE afternoon of Tuesday March 14, former Victorian politician Joanne Duncan walked into a furniture shop in Geelong, an hour from Melbourne, and noticed some dining chairs which would be perfect for the beach house at nearby Ocean Grove that she and her magistrate husband Stephen Myall had just finished building. It had been a four-year project and Duncan was looking forward to Myall taking some of his accrued leave for a much-needed break there together. She reached for her phone to call him, then remembered that he would be at Sunshine Magistrates' Court in Melbourne's west, where he was presiding that day. She could tell him later.

At 8.30pm their 21-year-old son, Steve, called from the family property at Gisborne in the Macedon Ranges to say that his dad wasn't home yet. "That's okay," Duncan told him, "he's gone swimming, the pool shuts at 8.30. If he's gone to the supermarket he'll be home at 10 to nine." At 10.30pm she rang Myall's phone. There was no answer, so she left a message. As the night went on she tried a few more times, increasingly worried. By now it was too late to call his mother to see if, by chance, he'd stopped in there.

The next day Steve remembered that his dad had installed a Find My Phone app. They activated it and the phone started beeping. It – and presumably he – was two kilometres from home. "I found him! I found him!" said Steve.

Duncan could see on the map that the phone was located at a disused tip. "Right," she said, "we're going." Duncan, her sister and Steve headed to the tip. On the way she called triple zero. She also texted her friend, Victorian Police Minister Lisa Neville, who she knew from her time as the Labor state member for Macedon. (Duncan retired from politics in 2014.) "I didn't want us to get there first and find whatever we may have found," she says.

They found Myall's body near his car, in which there was a short note. "He just told me he loved me," Duncan says. He was 59 years old.

STEPHEN MYALL'S death followed that last October of Jacinta Dwyer, who, after a career specialising in family violence matters, had been appointed to the Victorian Magistrates' Court in March that year. She was no longer a sitting magistrate when she died. Their deaths deeply shocked Victoria's legal community, those on the judicial bench in particular, prompting the fast-tracking of both an Australia-first study into the wellbeing of judicial officers, and changes in key elements of their working day.

The stresses for those on the bench are myriad, ranging from massive – and growing – caseloads to disturbing subject matter in the lower courts, often involving children. As if that wasn't enough, there are regular and very public challenges from parts of the media aware that their "soft on crime" attacks are good clickbait. Appeals courts, meanwhile, can

use some pretty tough language about judicial colleagues who've made errors.

In 1995 Michael Kirby, the then president of the NSW Court of Appeal, delivered a paper noting that stress among judicial officers was regarded as an "unmentionable" topic. The mindset back then was that the judiciary was a privileged group who shouldn't complain; their task was an intellectual exercise with no place for feelings. Nearly two decades later, the former High Court judge addressed the subject again: "They are supposed to be paragons of virtue, industry, judgment, courtesy and efficiency," Kirby wrote in 2014. "So can we put judicial officers on such a high pedestal as to be completely out of account in a discussion about wellness?"

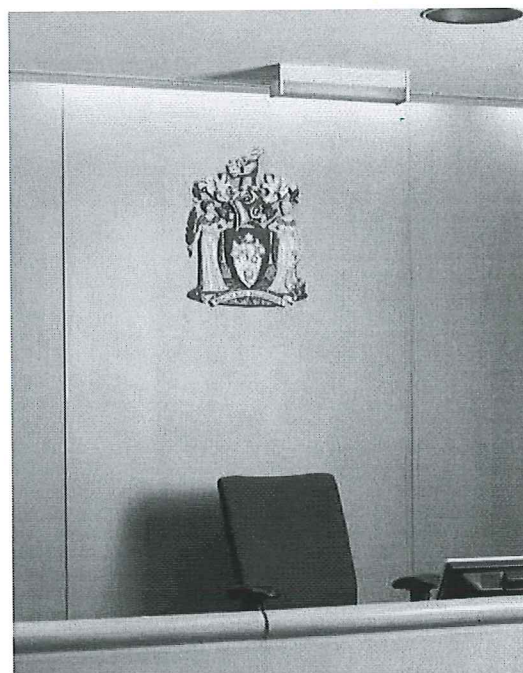
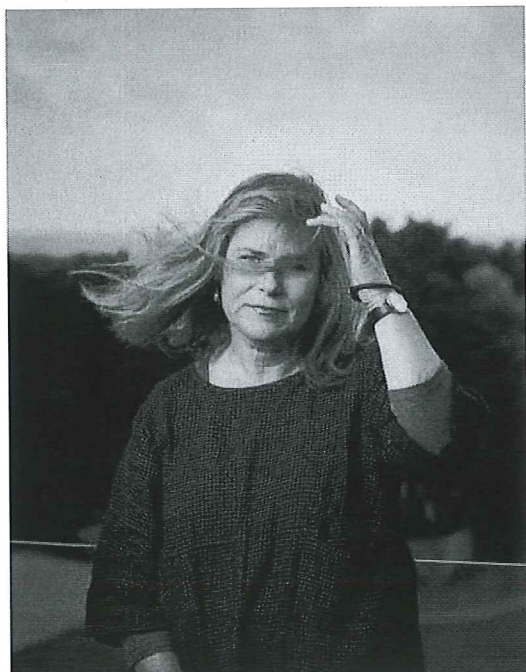
Not any more. The days of judges and magistrates being regarded as immune to normal human emotions, somehow existing on a higher plane, unaffected by day after day of adjudicating on conflict and trauma, being exposed to verbal and photographic evidence of the most vile crimes imaginable, are ending. Judicial wellness programs have been introduced in recent years and, following the deaths of Dwyer and Myall, there's a growing sense of urgency about the need to ensure judges and magistrates, like the rest of us, have safe workplaces.

CONSIDER THE caseload. According to the most recent figures, Victoria's 120 magistrates and registrars sat through more than



*Victorian magistrate
Pauline Spencer:
limited Legal Aid
services place extra
pressure on judicial
officers to protect
defendants' rights and
not "wreck" their life.
"That makes me feel
very worried when
I'm doing my job."*





680,000 criminal hearings in the 2015-16 financial year. They can face a daily load of 50 cases, far exceeded in some courts, ranging from family violence and assault to driving offences.

Rob Hulls, Victoria's attorney-general for 12 years and now director of the Centre for Innovative Justice at RMIT University, says already clogged courts have been further burdened by cases he believes should not be before them. He mentions, in particular, toll-road operators who send unpaid tolls to the justice department, many of which wind up in the Magistrates Court. "In what other jurisdiction do we have a private toll-road operator using our police force and publicly funded court system as a debt collection agency?" he asks.

Hulls knows what he's talking about; his wife, Carolyn Burnside, is a magistrate. He appointed Myall to the Magistrates Court bench in 2005, and, on the Friday of the week of Myall's death, the two couples were to have dinner together.

He derides the notion that judicial officers live in an "ivory tower". "Judicial officers - in particular magistrates - are more in touch with what's happening in the real world than most of us," he says. "They see the family violence, the drug addiction, the mental health issues, the homelessness, the long-term unemployment, the sexual assault. They see that on a daily basis. That is the real world out there and most of us are sheltered from it. They take home with them the burdens of their daily work-life. They take home the anguish of the decisions they have to make... They take home the anguish of whether or not the decision they made in a case is going to make a positive difference to the life of that person and the community more generally."

Now, finally, the judiciary is acknowledging this toll and speaking out. Last October, NSW local court magistrate David Heilpern gave a

powerful address at the Federal Court in Sydney about life on the bench. Heilpern was delivering the Tristan Jepson Memorial Lecture, an annual address aimed at raising the profile of mental health issues in the legal profession. He spoke of waking in the night drenched in sweat, "screaming and panicking". It was 2005 and he'd been dealing with a string of horrific child pornography cases. "I started dreaming of these children and the torment perpetrated on them... I thought it would pass but it did not." He added: "I am convinced that it is time to lift the veil for the benefit of the judiciary, but also for the system of justice itself. We ought to stop talking of judicial stress, and start calling it for what it is - anxiety, panic attack, insomnia, traumatic response, depression, PTSD, substance-use disorder and the like."

Carly Schrever is judicial wellbeing project adviser to the Judicial College of Victoria, which provides education programs for judges and magistrates. Her days are spent speaking with court leaders about matters affecting health within the courts. She is also increasingly called on to deliver wellbeing training to jurisdictions outside of Victoria. A lawyer and provisional clinical psychologist, Schrever is working on a research project involving a survey of 152 judicial officers from five jurisdictions and in-depth interviews with 60 of them, to try to understand the nature, prevalence and severity of work-related stress in the judiciary.

The project stemmed from her research on a combined master's of psychology and PhD at Melbourne University, after the then Chief Judge of the County Court, Michael Rozenes, expressed concern at the lack of empirical research on judicial stress in Australia, and encouraged her to look into it. She will publish her report later this year.

Above, left: Joanne Duncan, widow of the late magistrate Stephen Myall. "Over the last year, he'd get home and say, 'I got smashed today,'" she recalls.

"A lot of research on lawyer stress both in Australia and America had revealed this consistent finding of alarmingly high rates of depression and mental illness within the legal profession," she says. "The logical question was, 'Well, no one's looked at the judiciary, to what extent might that extend to them?' With Jacinta Dwyer's death in October last year, I would say the issue was really catapulted to top priority within the Magistrates Court. This idea of judicial wellbeing is an idea whose time had come."

The week after Dwyer died, Victoria's chief magistrate Peter Lauritsen convened a committee to advise him on judicial wellbeing, and asked the Judicial College to organise a day-long program on it. Held in March, *Magistrates' Wellbeing: A Conversation about Change* was designed to enable all 120 Victorian magistrates to engage in a facilitated conversation about the issues affecting their health. "There was a very strong level of engagement with the topic," says Schrever.

IT'S a Friday morning in July in the County Court of Victoria, and in her chambers Judge Susan Pullen is preparing to hear a sexual assault plea. This is nothing new - half the matters in the County Court are sex offences, and half of those involve child complainants. As sex offences are required to be dealt with quickly, they take priority. Pullen expects more of these cases following the Royal Commission into Institutional Responses to Child Sexual Abuse, which handed down its final report last December.

"Sex-offence matters are really stressful not only for the complainants but for the judges who hear them," Pullen says. "The complainants are naturally very distressed, children are very distressed. It's an extremely delicate



environment. It's very easy to take this stuff home, very difficult to just tune off at the end of the day."

A sense of isolation contributes to the stress. "Who do you discuss it with?" she says. "It's very hard to go home and talk to my partner about these matters, and I question whether it's appropriate to, anyway. So I mainly rely upon a couple of judges here who I'll go and have a chat to if necessary... But I tend not to. It can be extremely lonely."

Pullen is one of six judges and magistrates who agreed to talk to *Good Weekend* in the hope that the issue of judicial health becomes better understood. Fellow County Court Judge Felicity Hampel is another. After a career as a prominent barrister, president of Liberty Victoria and a commissioner of the Victorian Law Reform Commission, Hampel was appointed to the County Court bench in 2005.

"It's been hidden, unspoken, unacknowledged and surrounded by taboo and shame for a long time," she says. "There's this sort of almost irreconcilable conflict between being an impartial decision-maker and being a human being who responds in a human way to what we're doing."

"Because we've got to be tough [and] impartial, there's been a concern about 'Are you not intellectually rational enough to do the job, or are you too weak as a person if you're responding on a personal level to other people's trauma?' So [there's] the shame of saying, 'I'm struggling, I'm finding this hard... I'm finding it hard to reconcile the human part of me with my impassive, impartial demeanour.'"

As with police, journalists and emergency service workers, a grim humour can be an effective coping mechanism. Hampel talks of "the black humour of judges saying, 'It's so nice to be doing a good old-fashioned armed robbery'."

"Which doesn't mean we're being insensitive to the plight of the people who were held up. It's because you're not dealing with having to listen to yet another child talk about sexual abuse that they suffered at the hands of an adult known to them," she says. "One judge said to me one day that it really saddened him that every time he saw an elderly man with a child, instead of thinking 'loving grandfather', he thought 'paedophile'. Judges will say things like that in asides over coffee, but we wouldn't say, 'Let's have a therapy session, how does it affect you?' It's often as an aside, rather than saying, 'I'm struggling, I want to come and talk to you about it.'"

Hampel says most judges she knows who hear crime can't watch violent movies. "Violence as entertainment is just something that jars so much and physically reawakens the senses of what we're dealing with in a court context."

Different judges deal with the pressure in different ways: a drink after work, going to the gym, that important transition between work and home. "I heard one magistrate talk about sitting in the car about to drive into his driveway and taking a few deep breaths before he got out, so that he went home having almost physically 'parked' the pressure."

Most of the judicial officers I speak to mention the isolation of the job. Peter Kidd was 49 in 2015, when he was appointed Chief Judge of Victoria's County Court, the youngest appointee to that role. In his career as a barrister, he'd prosecuted international war crimes in Sarajevo and appeared in high-profile trials such as those involving the murder in 1997 of Bega schoolgirls Lauren Barry and Nichole Collins; and the prosecution of the murderers of police officers Gary Silk and Rodney Miller in 2002. Speaking over

"One judge said to me one day that it really saddened him that every time he saw an elderly man with a child, instead of thinking 'loving grandfather', he thought 'paedophile'."

coffee in his Melbourne chambers, he says that as collegiate as judges and magistrates try to be, the job is a solitary one.

"They come out onto that bench every day, alone. They are making the decision alone... It's their name which is going to be printed in the paper and appear on the judgment. It can be a very lonely profession... this can lead to isolation and we need to break that down."

Kidd also mentions the toll that media coverage can take, while emphasising that he understands reporting is always limited by space and that the judiciary is open to criticism. In May, media reports took aim at County Court judge Barbara Cotterell after two women who bashed a paramedic had their jail sentences overturned, with Judge Cotterell saying it "would achieve little" by sending the two women to jail. "One cartoon suggested that Her Honour was responsible for the physical injury," Kidd told ABC Radio's Jon Faine. "Criticise the outcome, but some of the denigrating press is really unfortunate." Under pressure after this decision, the Victorian government announced it would introduce tough new laws upgrading the classification of any attack on emergency workers to the same level as murder or rape.

Kidd points out that mitigating circumstances such as mental illness are often omitted in the reporting of sentences: "You see sometimes calls in the [letters] pages for the judge to be sacked. Now that judge has done nothing less and nothing more than apply the law diligently and conscientiously. Yet this article is portraying the judge as out of control, off on a frolic, and that's incredibly stressful."

You can hear the anger and frustration in the voices of a lot of those talking about the issue. Fiona Patten is leader of Victoria's Reason Party, formerly the Australian Sex Party. Elected to Victoria's upper house in 2014, Patten is one of the crossbenchers who hold the balance of power. Well known for her socially progressive policies, her successes include the introduction of laws ensuring exclusion zones around abortion clinics and a trial for Victoria's first medically supervised injection centre.

Of the political response that evolves from media commentary on "soft sentencing", she says, "I call a lot of these laws 'Herald Sun laws' because the *Herald Sun* says... Judges are letting these people out! Then we in this parliament are faced with making laws to say, 'Okay, judges can't let these people out.' We don't know the circumstances. When there's an outcry in the newspapers about a particular case we then have a blanket response: 'Okay, judges can't make that decision anymore.' We in parliament say, 'We don't care about the facts. We are just going to make this rule for all because of the pressure from the media.' I'm quite often appalled because I think the judiciary does an incredible job, and we are sending more and more people to them with more and more laws."

An article in the *Herald Sun* in the days after Stephen Myall's death provided valuable context, however, and referenced a potential source of stress. "Just over two weeks ago, a magistrate postponed court hearings for the teenager who, controversially, had earlier kicked a policeman in the head," it said. "His reason was to let the student complete his secondary school exams before facing court on

fresh charges. He also refused to release the details of the new charges after media outlets applied for the charge sheet. His decision might have been fair but it was highly unpopular in some quarters. Next day the magistrate was criticised by the police union, politicians and others. That magistrate was Stephen Myall. Exactly a week later he ended his life."

THE ASSESSMENT and Referral Court is a specialist program for accused people who have mental illness, cognitive impairment or both. Established in 2010, it sits for eight days each month, referring participants to appropriate health, welfare and disability services. This July morning it's at Moorabbin Justice Centre in Melbourne's south-east. Under magistrate Anne Goldsbrough, it is friendly and welcoming. The family of those charged are free to join them at their table. Rather than elevated on the bench, the magistrate sits at the same table as those charged. It's a remarkably supportive environment and today I get the feeling those appearing are extremely grateful for it.

"You are doing wonderfully well," magistrate Goldsbrough tells the man opposite. "Now you are in a place where you are safe and well and taking your medication. You look the best I've ever seen you." She asks a woman whether a certain date suits for her next appearance. "That's your birthday? Do you want to make it a different day? Either that or we'll have to have a cake." Everyone laughs. The woman thanks her. The magistrate smiles. "Take care of yourself."

But who's taking care of Her Honour and her colleagues?

The deaths of Dwyer and Myall have brought about change. In June, the Victorian Magistrates' Court instigated confidential debriefing sessions for magistrates, to be held with a senior psychologist four times a year, following which there is no requirement to sit in court that day. There are also more structured court sitting times: Chief Magistrate Peter Lauritsen directed that from June 4,

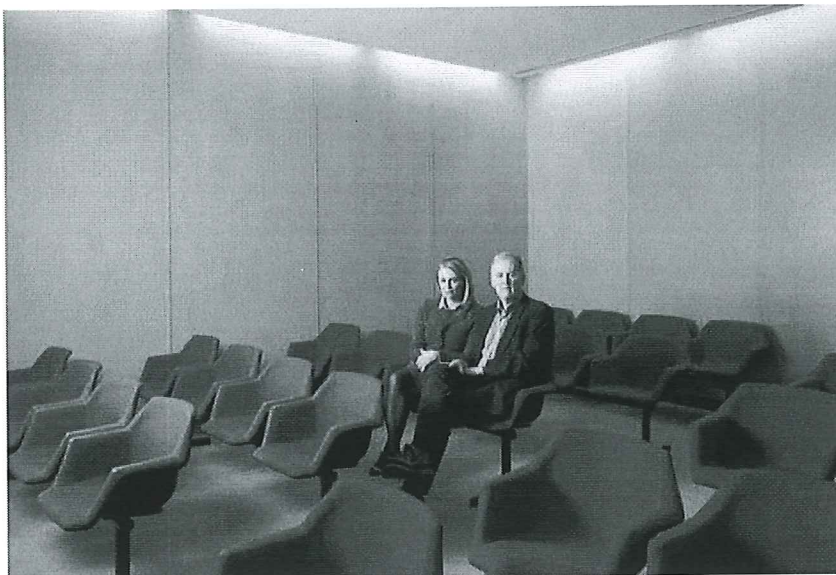
with some exceptions, courts were to sit between 10am and 4pm. Previously, sittings could drag on until 6pm. There are also now "chambers days" during which magistrates can write their decisions, rather than writing them at home in the evenings. The number of matters they're presented with is being closely monitored by regional coordinating magistrates.

The changes have helped, Goldsbrough says. They'll need to, because hearing what she and her colleagues have to absorb can be shocking. "In the everyday mention list you might suddenly have significant matters of extreme family violence, street violence, sex offences or possession of child pornography," she says. "It is classified... how many are penetrative, how many videos were there, how many were bestiality. This is in the Magistrates' Court - all matters start in our court, so we see it all. Some quite similar work to that floods the County Court. They've got an unrelenting diet of much of that."

JOANNE DUNCAN is visiting old friends at Parliament House, including Victorian Premier Daniel Andrews. We meet afterwards at The European, a famous haunt for Melbourne's political and business crowd, literally at the top end of town. It's a flurry of lanyards, laptops and

Joanne Duncan
and Stephen Myall
in earlier years.





agendas, so we decide to move to a quieter, more private cafe down the road.

Sitting down to talk, Duncan at times presents as the confident politician she once was. But as she speaks about Stephen Myall and the sense of loss and confusion she's felt since his death in March, the sadness spills into tears. She carries on, though, because while it's too late for her husband, she wants to ensure it's not too late for others.

Duncan remembers how Jacinta Dwyer's death last October affected her husband. "He was shocked and saddened," she says. "I look back and think, 'Was I listening with half an ear?' As I said at Steve's service, Steve banged on about a lot, he was passionate about a lot. Maybe as you do in a long-term relationship... you sort of half-listen, maybe. And that's part of my guilt, I felt I was half-listening."

"I remember him [talking] about Jacinta and the ripple effect it had and how many people are affected when someone kills themselves. When someone says something like that to you, you kind of imagine that they're suicide-proof."

Stephen Myall was known as one of the good guys. After many years as a criminal defence lawyer, in 2005 he was made a magistrate, the same year he and Duncan married. He had a strong sense of social justice, and agonised when he had to send people to jail.

Sometimes, he found the job devastating. On April 16, 2014, 33-year-old Fiona Warzywoda went to Sunshine Magistrates' Court, where Myall finalised an intervention order banning Craig McDermott, the father of their four children, from approaching her. Just hours later, McDermott stabbed Warzywoda to death. He was found guilty of murder and is serving a 25-year jail term.

Myall was shattered by the killing. "Steve said she had every single protection the court had offered her," Duncan recalls. "The only time she was vulnerable was when she rocked up to court." Together with the registrars involved, Myall was offered counselling. Duncan doesn't know whether he accepted it. She believes judicial officers need to be prodded into taking

counselling and their full annual leave – her husband had 140 days owing – each year. "It's bad people-management not to... [But] I can't be too angry with the system, because if his own wife can't encourage him to take leave, how can I expect his employer to?"

Duncan knew the job was wearing her husband down. "Over the last year he'd get home and say, 'I got smashed today.' It wasn't a phrase I'd heard him use previously." He'd tell her of working through 90 listings on a given day, or sitting until 5.45pm, when often it was too late for those appearing before him to access services. "On the last day I saw him, on the Monday of the long weekend, I said, 'You seem a bit flat,' and he said, 'I think I'm coming down with the flu.'" She didn't believe him, but neither did she ask him what was going on. "The guilt and the regret of a suicide is the worst part. Not seeing enough, not listening enough. I thought he was tired and needed a bigger break."

Myall was previously a partner in the firm of Melbourne criminal defence lawyer Rob Stary, who has represented, among others, gangland killer Carl Williams and terror suspects. Stary sees the pressure on the bench daily.

He knew his friend was burdened by the need to incarcerate young people on occasions when all other options had been exhausted. "I know that Stephen thought, tragically, that in ways he'd failed," Stary says. "He was troubled about the constant pressure to incarcerate particularly young offenders... It remains with you for life and your prospects of employability, of reintegration into the community to live a useful productive life are completely scuttled once you've been imprisoned."

Growing demand for already stretched Legal Aid services means more people are fronting up to court unrepresented, which adds to the pressure on those charged with deciding their fate, he says. "The judicial officer has a duty to advocate on behalf of the unrepresented person. So they've got a dual role – they've got to adjudicate, but they've also got to assist the unrepresented."

That pressure can be seen at the Dandenong Magistrates' Court in Melbourne's south-east,

Magistrate Carolyn Burnside and her husband, Rob Hulls of RMIT's Centre for Innovative Justice. "Judicial officers take home the anguish of their decisions," Hulls says.

"We ought to stop talking of judicial stress and start calling it for what it is – anxiety, panic attack, insomnia, traumatic response, depression, PTSD, substance-use disorder and the like."

where justice is served swiftly. I'm here on a "mention list" day, during which magistrate Pauline Spencer will hear, adjourn or stand down 122 matters. It is a cavalcade of offences of varying degrees of seriousness – drink-driving, shoplifting, assault, family violence – and also different levels of dignified behaviour. A disruptive man is asked to leave the court. "E... off," he says as he walks out, a curse certainly audible to me but luckily not to the bench. It sounds so jarring after the effort the magistrate has been making to accommodate everyone.

This morning, magistrate Spencer will hear matters involving accused people in jail via video-link and young kids on charges of selling drugs, sitting here with their worried-looking families. She has dispensed jail terms, community orders and, in the case of one teary drink-driver, encouragement. "You'll get through this," she says. Some matters last 60 seconds, others five minutes. The skill displayed in instantly changing gears is extraordinary. The role seems to be part-adjudicator, part-administrator and part-traffic-cop to drug, alcohol and mental health programs.

Today, one case exemplifies the pressure the reduction of Legal Aid services can put on the judiciary. An unrepresented woman here on a drink-driving charge is facing a conviction, before she mentions that she's a registered nurse and that it will damage her job prospects.

"That poor woman," Spencer tells me later. "If she had a lawyer [they] would have come in with the express purpose of no conviction being recorded. I'm lucky that she raised that, because I could have wrecked her life and I wouldn't even have known about it. That makes me feel very worried when I'm doing my job. You need to make sure their rights are being protected. You worry about things you don't know."

AT STEPHEN Myall's funeral, his wife spoke of a deeply modest man with a love of dogs, spaghetti westerns, motor sport and football (he often wrote in to the ABC's AFL radio show, *Coodabeen Champions*). "He wore shirts that were so old," she told the gathering. "He bought his suits at op shops, he wore a coat I think he bought from an op shop when he was 20 and only stopped wearing it about 15 years ago."

"We would go to the supermarket, Steve wearing tracksuit pants, or old work pants, that were either too long, or too short, a torn and moth-eaten beanie, which he had had for years... All of a sudden, Steve would walk head down and say, 'Shit, that guy appeared before me last week.' I'd look at Steve – *Seriously*, do you really think anyone would recognise you looking like that? I loved that about him, he really did not care how he looked. He was completely without pretence. He never really tried to impress. That was what I found so attractive about Steve."

Duncan says it hurts her that Steve thought that she was a strong woman and would get over it. "Even now people say, 'You're a strong woman,' but what the f... does a strong woman look like? Does this look strong to you? And when I think about the pain he was in, I'm thinking, is it worse than the pain I feel now, is it worse than the loss that I feel?"

At Steve's eulogy, she summarised the swirling emotions with a final line. "We will never understand Steve's pain or why he died what he did. All I know is that I loved him and he was loved by many. I just hope he knew that, and is resting in peace." ■

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Inside the people's court

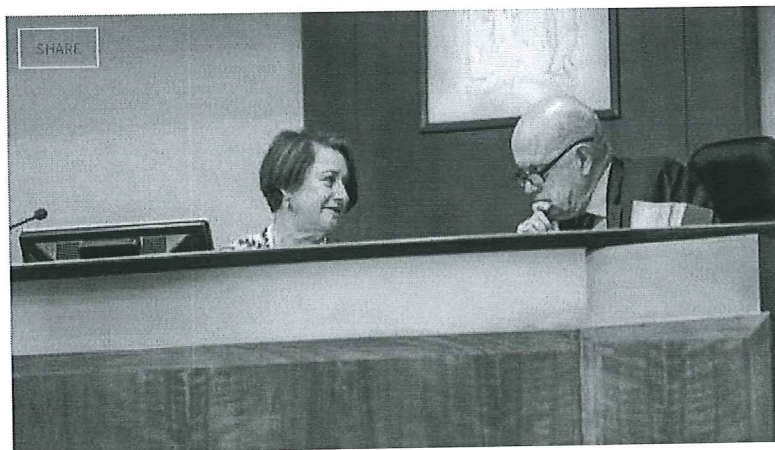


John Silvester

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It is midweek in Melbourne Magistrates Court One, as one of Australia's most experienced judicial officers begins to dish out justice on the run.

There is nothing of the organised structure and strict rules of high-profile Supreme or County Court trials held across the road. This is the legal version of a casualty ward, where treatment must be immediate and the magistrate acts as a triage doctor – trying to wade through the mundane, the tragic, the dangerous and the bewildered.



Deputy Chief Magistrate Jelena Popovic with journalist John Silvester on the bench. Photo: Chris Hopkins

These are the cases that are rarely reported – they are not newsworthy to the wider world – but to the victims, witnesses and those charged, they can be life-altering.

Deputy Chief Magistrate Jelena Popovic is on the bench and *The Age* has been invited to sit with her to observe the duty court, where more than 50 cases can be dealt with in one day.



HUFFPOST AUSTRALIA

Famed DJ Avicii Dies At 28



Musicians, Fans Mourn Swedish DJ Avicii ...

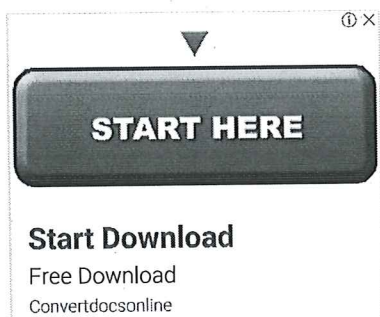




Deputy Chief Magistrate Jelena Popovic looks at the accused's file while journalist John Silvester looks like a hanging judge. Photo: Chris Hopkins

The days of the more gentle pace – when a “Magistrate’s Lunch” was code for three pots and a packet of chips – are long gone, with all Victoria’s 120 magistrates facing unprecedented workloads.

We have more police than ever before and they are arresting people at record rates. We have tightened bail, restricted parole and toughened some sentences, which means we have an unprecedented number of prisoners – a figure that will continue to rise over the next few years.



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Effectively we have built a superhighway between crime and punishment and in the middle is the bottleneck that is the Magistrates Court. It is supposed to be a roundabout, dispensing participants in several directions – including the front door to freedom or the side one to a prison van – but too often the basic components required for reasoned decisions just fail to arrive.

Consider these facts: magistrates hear more than 120,000 intervention orders a year (10 years ago the figure was about 25,000) finalise around 200,000 crime cases and issue more than 60,000 arrest warrants. Magistrates hear around 250,000 civil and criminal actions a year, which is about 90 per cent of all cases, and so if you are unlucky enough to go to court as a witness, victim or suspect, it is likely to be here.

In the so-called superior courts the accused is legally represented, the brief of evidence long completed and counsel usually well prepared. If the Supreme Court sometimes has the etiquette of the Melbourne Club, then the Magistrates is the legal version of a moshpit.

There is another growing pressure on magistrates. A section of the public believe they are “soft”, don’t reflect community standards and are out of touch with reality. In the past six months, two magistrates have taken their own lives.



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FOLLOW CANBERRA TI...



Such is the stress that Chief Magistrate Peter Lauritsen has ordered all his colleagues to take four counselling days a year to try and manage stress loads. He also wants the government to appoint more magistrates.

Ms Popovic, who has been a magistrate for nearly 30 years, tells us she has 27 matters listed before her but the number will grow and change as the day begins. "You jump on the bench and are thrown the files. You have to make quick decisions knowing they have a real impact on people's lives."

The frustration for magistrates, she says, is the endless delays and the inability of many to prepare for their day in court. "It is difficult to get parties here for the final decision. I want people who attend to understand that it is less stressful to have their matter dealt with than to keep delaying."

We enter her court at 9.38 am to sit at the bench. The handful of people – a police prosecutor in uniform, four members of the public and a few interested parties – all rise. In the next few hours the audience below changes moment by moment – at one point there are 31 people – all wanting their matters heard.

The accused appear via video link from prison, brought up from holding cells to sit in the dock, in the body of the court if on bail, or simply don't bother to turn up at all. The first matter listed is immediately set aside as the defence lawyer is missing in action. It becomes a common thread – frantic activity followed by inaction.

As cases are delayed, Ms Popovic's clerk produces more paperwork relating to fresh matters added to today's list. It looks like back orders in an overworked restaurant kitchen.

At one point Ms Popovic sees six police in court waiting to give evidence. She wants overnight remand hearings dealt with quickly so police who worked night shifts can be released.

Her frustration is evident when some cases can't be heard because the prison vans haven't turned up. This means Legal Aid lawyers will have to talk to their clients and then make immediate submissions. Equally the prosecutors have little preparation time. "They are under enormous pressure," she says.

There are video links from prisons to save time. One involves a young female inmate, well groomed and not someone who appears beaten down by life. She is clear-eyed, polite, refers to the magistrate as "Your Honour" and says please and thank you with a schoolgirl's sing-song voice.

"It is a growing problem, middle-class young women who see some glamour in ice and end up trophy girlfriends for gangsters," Ms Popovic says. Hearing she was to be jailed, one such woman protested: "But I'm from Elwood."

There is the homeless shoplifter caught with razor blades, perfume, yoghurt, prawns and fish. His lawyer says his client has a promise of steady accommodation that will take him off the street but it will lapse if he is not there to take the offer in two days. Ms Popovic sentences him to two days' prison, as much to keep him off the streets in the meantime.

One accused fails to appear despite a reminder from his Legal Aid lawyer and Ms Popovic cancels his bail and issues an arrest warrant. This means police

Stephen Myall, magistrate, died on March 14, 2018. Photo: Supplied



About to hold court: magistrate Jelena Popovic. Photo: Chris Hopkins

have to find him to serve the order. If the average time to complete the action is four hours, then police use up 30,000 operational shifts a year finding people they have already arrested.

A young African man is brought in. He turned 18 a few days earlier and looks downcast and over-awed, having spent the previous night in adult prison charged with possessing a small quantity of cannabis found when he was searched at Southern Cross Station.

As Ms Popovic reads the file she becomes visibly annoyed. She apologises to the man and releases him immediately. She has since launched an inquiry into why he was imprisoned on what was a non custodial offence not brought before a court earlier. Later she says: "Did you see him? He was shattered."

She says no one is jailed these days for a tiny amount of cannabis and wants to know why he was treated differently.

Next up is a 21-year-old who is no stranger to courts, although clearly none the wiser. Out of prison for just a few weeks he steals a van and is found passed-out on ice, with the motor running, his foot on the brake and the gear still engaged in drive. On his lap is a giant machete.

It takes Ms Popovic less than three minutes to sentence him to a further two months, telling him he had to decide "what do you love more, your daughter or ice?"

He mumbles the right words, then says "thank you Miss" before being sent back to jail. His chances of rehabilitation (at least this time around) are slim. You suspect that on the outside if he sees the light it will be a flashing blue one.

A man accused of arson is fast-tracked because he is creating a disturbance in the cells. He tells Ms Popovic he has stomach cancer, was recently in a coma, was to be charged with something he didn't do and that he helped the fire brigade extinguish the blaze.

He is in tears as his lawyer approaches, and is taken to be assessed by a mental health expert stationed at the court. Sometimes it is more than just a matter of crime and punishment.

Next is a bail application for a slick-looking young man charged with a six-figure fraud, whose level of self-assurance contrasts with the previous occupants of the dock.

His father gives him a wink just before a policeman gives evidence detailing the allegations. Next the accused's girlfriend heads to the witness box to testify on how stable he is but remains surprisingly vague about his internet-driven business that involves "direct sales", although no one seems to know what he sells.

From our vantage point we can see Ms Popovic typing on the court's antiquated computer system – granting bail but inserting strict conditions, including daily reporting to the police. But she decides to let this slickster swing in the breeze a little – to let him know bail was no certainty.

She tells him he has delusions of grandeur and had concealed details of where he lived. She then makes him stand and explain the nature and obligations of bail, warning him his father will lose his \$40,000 surety if he fails.

"That's not going to happen ma'am," he says suddenly, looking suitably chastened.

There is a break for lunch. And then it all begins again. Day after day, week after week and year after year.