AUSTRALIAN CAPITAL TERRITORY

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9 August 2012

Ms A Cahill-Lambert
Chair
ACT Remuneration Tribunal
PO Box 964
Civic Square ACT 2608

Dear Ms Cahill Lambert,

I refer to the invitation for submissions in relation to the Tribunal's 2012 review of the remuneration of the Chief Magistrate, Magistrates and Special Magistrates ("the magistrates"). This submission is made for, and with the approval of, the magistrates.

Whilst the Tribunal has not in the past formally adopted a strict nexus between the remuneration of magistrates and that of other ACT judicial officers, the Tribunal has recognised that the level of remuneration of those officers is a matter which is "significant and useful" in determining movements in remuneration for magistrates in the ACT.[1] Indeed, the Tribunal has in the past made adjustments to ensure that ACT judicial officers do not "fall behind other members of the judiciary in the ACT and elsewhere"[2]. Consistent with this approach, the setting of the remuneration of magistrates at 75% of that of the remuneration of a Supreme Court judge was an approach endorsed by the Commonwealth Tribunal historically.[3]

[1] Remuneration Tribunal (ACT), Statement No 140.
[2] Remuneration Tribunal (ACT), Statement 11 of 2009.
[3] See Remuneration Tribunal Annual Report 1989-1990 at 37[80].

Having regard to the small and integrated nature of the ACT judicial system, the relativities between judicial officers within this system are properly a very important consideration for the Tribunal.

Relative to the judges and the Master of the Supreme Court, the remuneration paid to magistrates has declined significantly since 2008. At the same time the jurisdiction and responsibilities of magistrates have been significantly increased, thus aggravating the increasing disparity.

Relative decline in remuneration

The relative remuneration of ACT judicial officers is set out in Table 1. That table sets out the comparative remuneration in raw terms as well as the percentage relationship between the remuneration of magistrates and both the judges and the Master. The table does not take into account the significant difference in the retirement benefits available to magistrates and judges, which is an entirely separate issue.

Between 2008 and 2011 the remuneration payable to magistrates declined from 75% to 69% of a Supreme Court judge's remuneration. Based on the increased remuneration for Supreme Court judges effective 1 July 2012, the percentage is further reduced to 67.5%.

Similarly, between 2008 and 2011 the salary payable to magistrates declined from 93% to 87.8% of the Master's salary.

Increase in jurisdiction

During the same period, in order to reduce delays in the Supreme Court, the jurisdiction of the Magistrates Court was increased. The legislature's clearly stated intention in so doing was to reduce the workload of the Supreme Court and increase the workload of the Magistrates Court in order to achieve more timely disposition of cases. The end result is both anomalous and ironic. The remuneration of those taking the increased workload has reduced relative to that of those from whom that workload is taken.

The principal effects of these changes are as follows.

Criminal jurisdiction. The seriousness of the criminal charges that can be dealt with by the Magistrates Court other than by consent of the parties has been increased. In May 2009 the sentencing powers of the Court were increased where there is consent to dealing with

indictable matters summarily so as to increase the period of imprisonment that may be imposed from two years to five years on each offence.[4] Further, changes made in May 2011 mean that, for certain classes of offences, the prosecution may elect to have them dealt with in the Magistrates Court notwithstanding that the maximum penalty exceeds two years imprisonment.[5]

Bail. The role of the Court in relation to bail applications has also been increased. The effect of the amendments to the *Bail Act* 1992 commencing in May 2011[6] is to require further bail applications to be made in the Magistrates Court before an application is made to the Supreme Court. The resultant effect is reduction of the workload of the Supreme Court in relation to bail applications and a corresponding increase in the Magistrates Court.

Civil jurisdiction. The changes made in July 2011[7] substantially increased the monetary limit in the general civil jurisdiction of the Court from $50,000 to $250,000. The general civil jurisdiction of the Magistrates Court is now the highest of any first tier court in Australia (see Table 2).

Further, the jurisdiction of magistrates has increased relative to that exercised by the Master. Whilst it is clear that in 2006, when the *Court Procedures Rules* 2006 were made, the jurisdiction of the Master was substantially expanded[8], in the period 2008 to 2011, there has been no significant expansion of the jurisdiction of the Master. One of the principle consequences of the increase in the civil jurisdiction of the Magistrates Court from $50,000 to $250,000 is that a substantial number of cases that would have been heard and determined by the Master are now within the jurisdiction of the the Magistrates Court where they will be heard and determined by magistrates.

Conclusion

As between magistrates and judicial officers of the Supreme Court, relativity between magistrates and the Chief Magistrate should also be maintained, as should that between magistrates and special magistrates.

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[4] *Crimes Legislation Amendment Act* 2008.
[5] *Crimes Legislation Amendment Act 2011.*
[6] *Bail Amendment Act* 2011.
[7] *Courts Legislation Amendment Act* 2011.
[8] Compare *Supreme Court Rules* 1937 O61A (at 30 June 2006) with *Court Procedures Rules* 2006 r 6200 (at 1 July 2006).

The magistrates look to the Tribunal in setting a fair and appropriate remuneration to redress the anomalous situation detailed above.

Yours sincerely,

Lorraine Walker

Lorraine Walker
Chief Magistrate

Table 1 – Relative remuneration of magistrates, Supreme Court judge and Supreme Court Master.

Year	Magistrate[9]	Supreme Court judge[10]	Supreme Court master[11]	Magistrate as % of judge	Magistrate as % of master
2008	$250698	$333660	$269565	75.1	93
2009	$254458	$333660	$288820	76.2	88.1
2010	$262728	$374120	$298239	70.2	88.1
2011	$271923	$391140	$309712	69.5	87.8
2012	-	$402880	-	67.5	-

Table 2 – Monetary limits on civil jurisdiction of Magistrates Court equivalents

State	Limit
Australian Capital Territory[12]	$250,000
Queensland[13]	$150,000
Northern Territory[14]	$100,000
New South Wales[15]	$100,000
Victoria[16]	$100,000
South Australia[17]	$80,000[18] or $40,000[19]
Western Australia[20]	$75,000
Tasmania[21]	$50,000

[9] Remuneration Tribunal (ACT), Determinations 11 of 2008, 10 of 2009, 10 of 2010, 12 of 2011.
[10] *Supreme Court Act* 1933, s 37U(2); Remuneration Tribunal (Cth) Determinations 2008/09, 2009/07, 2010/19, 2011/10, 2012/09.
[11] Remuneration Tribunal (ACT) Determinations 12 of 2008, 11 of 2009, 11 of 2010, 13 of 2011.
[12] *Magistrates Court Act* 1930 (ACT) s 257.
[13] *Magistrates Court Act* 1921 (Qld) s 4 (s 2 def. of prescribed limit).
[14] *Local Court Act* (NT) s 14 (s 3 for def. of jurisdiction limit).
[15] *Local Court Act* 2007 (NSW) s 29.
[16] *Magistrates Court Act* 1989 (Vic) s 100 (s 3(1) def. of jurisdictional limit).
[17] *Magistrates Court Act* 1991 (SA) s 8.
[18] Damages as a result of motor vehicle accidents, interpleader actions or actions for recovery of property.
[19] Other claims.
[20] *Magistrates Court (Civil Proceedings) Act* 2004 (WA) s 4, 6.
[21] *Magistrates Court (Civil Division) Act* 1992 (Tas) s 7 (see s 3 def. of prescribed amount).