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Ms Sandra Lambert AM
Chair
ACT Remuneration Tribunal
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Dear Ms Lambert

Thank you for the opportunity to provide submissions to the ACT Remuneration Tribunal's 2024 review into the remuneration and allowances to be paid, and other entitlements for the ACT Magistrates Court judiciary.

We invite you to consider a number of factors in determining the appropriate level of remuneration for the 2024/2025 year.

Consumer Price Index

Last year, we submitted that an increase consistent with Consumer Price Index (CPI) would be appropriate.

We draw the following to your attention:

- in your 2021/22 determination, the increase given was 2%, whereas the CPI increase over the previous year was 4.8%;
- in your 2022/23 determination, the increase given was 3%, whereas the CPI increase over the previous year was 6.3%;
- in your 2023/24 determination, the increase given was 3.5%, whereas the CPI increase over the previous year was 5.7%.

It is apparent that magistrates' remuneration has gone backwards in real terms in recent years.

Government forecasts

The determinations appear to be directed to the ACT government’s forecasts for CPI and WPI, however those forecasts have proved to be well under the increases which in fact resulted for 2021/2022 and 2022/2023. The forecast figures included in the below table are taken from the Determinations referred to:

| Determination | Increase given | CPI forecast v CPI actual | WPI forecast v actual |
|---------------|----------------|------------------------------|------------------------------|
| 2021/2022 | 2% | 1.75% forecast v 6.3% actual | 1.75% forecast v 2.5% actual |
| 2022/2023 | 3% | 3% forecast v 5.7% actual | 3.5% forecast v 4% actual |
| 2023/2024 | 3.5% | 3.25% forecast | 3.75% forecast |

Work Value

We submit that a proper assessment of an ACT Magistrates’ work value is reflected at 85% of that of an ACT Supreme Court judge. In support of this are a few basic considerations:

We remain a two tier system in which the ACT Magistracy carries the highest criminal and civil jurisdiction of any lower court in the country.

There is a significant overlap in the work done in the two courts as the following figures disclose:

In the 2022/2023 year, 406 summary/indictable charges were committed to Supreme Court.

To afford greater granularity, these figures can be broken down by Court:

- in the Childrens Court, of 1175 charges, 21 were committed to the Supreme Court;
- in the Magistrates Court, of 9304 charges 385 were committed to the Supreme Court.

Our jurisdiction continues to increase. Section 375AA of the *Crimes Act 1900* (ACT) was inserted by the *Crimes Legislation Amendment Act 2023* in September 2023. The stated intention from the explanatory statement was to “provide that the Childrens Court can dispose of charges of sections 310 or 312 of the *Criminal Code 2002* (Aggravated robbery or Aggravated burglary) summarily, without the consent of the prosecution”.

Section 375AA in form, however, confers jurisdiction to the ACT Childrens Court for any charge that does not carry a maximum penalty of life imprisonment. There are only a handful of criminal offences in the ACT that carry a maximum penalty of life imprisonment (notably murder, manslaughter and significant commercial drug trafficking). As long as the Court is able to pass sentence within its jurisdictional limit of two years imprisonment per charge, commonly the case in respect to children and young people, there is no bar to final

determination of every criminal charge other than those with maximum penalties of life imprisonment in the Childrens Court.

This new and significant criminal jurisdiction is unmatched by any other children's court in Australia with children's serious indictable offences almost always being dealt with outside of the ACT by County and District Courts (and Supreme Courts in the two other jurisdictions where there is no intermediate court).

Since the introduction of s 375AA aggravated burglaries and aggravated robberies are now regularly dealt with by the ACT Childrens Court. However other matters that have also been heard by the Court since the introduction of s 375AA including serious sexual assault and physical assault allegations that would previously have been committed to the ACT Supreme Court for determination. This workload will only increase as charges relating to children's criminal conduct post September 2023 continue to be laid.

This has caused a significant increase in the complexity of matters determined to finality by the Childrens Court with an accompanying requirement to provide far more detailed decisions that match the complexity of the subject matter.

It should be noted that the present tranche of legislation relating to raising the age of criminal responsibility has had little effect on the workload of the Court as few children aged between the ages of 10 and 12 were ever the subject criminal charges.

We note that all magistrates also sit as Childrens Court magistrates on an ad hoc basis, or on specific appointment, and are required to have the capacity to deal with each and every matter which arises in that jurisdiction.

Unrecompensed out of hours duty work

As we wrote in our submission to you on 20 August 2021:

We further note that ACT Magistrates continue to meet significant and increasing duty obligations with no formal recompense for this...It is appropriate to formally reflect this duty obligation either by additional remuneration or additional leave...

Our request for additional leave was not met by the Attorney-General. Whilst I am able to provide some relief via time in lieu, that does not rise to the level of proper recompense for the 24/7 availability during duty periods which average six weeks per annum per magistrate. I note that the magistracy supports both the Supreme Court and Sentence Administration Board in dealing with executed warrants issued by those bodies and for which they provide no duty arrangement.

Supreme Court relativity

The proposed 85% relativity between an ACT Magistrate and a Supreme Court Judge reflects the very significant overlap in the type of work undertaken by both courts.

The Commonwealth Remuneration Tribunal afforded increases in remuneration to Federal Court judges (to whom the remuneration of ACT Supreme Court judges is legislatively tied) of 4% in July 2023. The current level of remuneration for an ACT judge is therefore \$500,140.

A five percent increase on magistrates' current remuneration of \$404,008 would result in a figure of \$424,208, slightly shy of 85% of an ACT Judge's remuneration which would be \$425,119.

Chief Magistrate and Special Magistrates

We submit that it is appropriate to retain the existing relativities with magistrates' remuneration that apply to the Chief Magistrate and to special magistrates.

Yours sincerely

Lorraine Walker
Chief Magistrate

14 June 2024