



CANBERRA

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18 September 2015

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

By email: [remtrib@act.gov.au](mailto:remtrib@act.gov.au)

Dear Ms Cahill-Lambert,

Thank you for your invitation to make a submission regarding determination of Magistrates' remuneration. As in previous years, I make this submission on behalf of all ACT magistrates and special magistrates.

Having reflected on the historical figures in relation to ACT Magistrates' remuneration relative to Magistrates of other states and territories within Australia, Judges of the ACT Supreme Court and Federal Circuit Court Judges, we submit that an appropriate increase in remuneration is 6%.

In support of this submission, we have included tables:

- Outlining Australian State and Territory Courts' jurisdictional limits (Table A);
- detailing current relativities in remuneration between all Magistrates Courts and other State or Territory courts in the various jurisdictions, expressed both as raw figures and percentages (Table B);
- an historical table of ACT Magistrates remuneration and that of other ACT judicial officers, expressed in raw figures and as percentages (Table C), and
- ACT Magistrates remuneration compared to that of a Federal Circuit Judge as raw figures and a percentage (Table D).

### ***The increase in jurisdiction in the ACT***

In 2013, this Court made a submission to the Tribunal in respect to the broad increase to civil and criminal jurisdiction which had been vested in the ACT Magistrates Court in 2010. The Tribunal awarded a significant remuneration increase of 7.5%. However, a review of the historical position of the ACT Magistrates Court compared to the ACT Supreme Court demonstrates that in doing so, the ACT Magistrates Court was effectively merely put back in the position it held relative to the Supreme Court in 2008, some two years prior to the jurisdictional increase. We submit that the significant jurisdictional increase, with its associated increase in the breadth, diversity and complexity of work undertaken by this court, is not yet fully reflected in the relativities between the remuneration of ACT Magistrates and ACT Supreme Court judges.

A relativity closer to 85% would more properly do so in our submission.

### ***Breadth and complexity of jurisdiction - a sideways look***

The ACT Magistrates Court continues to have a significantly greater jurisdiction in both general civil and criminal matters than any of its State or Territory counterparts. Not evident in the Tables but also significant are two other matters.

The ACT Children's Court, which elsewhere is commonly headed by a Judge of the District Court or its equivalent, has jurisdiction, with consent, in all criminal matters with the exception of murder and commercial drug trafficking. Whilst a single person sits as the dedicated Children's Court Magistrate, no particular training is provided for that position and all Magistrates are eligible for the role. In addition, Magistrates other than the appointed Children's Court Magistrate regularly sit in this jurisdiction when there is a need either due to the absence of the appointed magistrate, a legal conflict, or a particular work demand.

Similarly, the Industrial Court, which commenced on 8 November 2013, has also introduced a level of complexity to the work of the ACT Magistrates Court not previously seen. Matters that now come before that Court are almost exclusively attended to by counsel, frequently senior Counsel, and tend to run far longer and be far more complex than general civil or criminal matters. Again, whilst there is a dedicated Industrial Court Magistrate, no particular training is provided for this role and all Magistrates are both eligible, and at times required, to perform this function.

We have included reference to the Federal Circuit Court Judges remuneration in the attached table as, we submit, an appropriate "sideways glance" and a relativity check. The Tribunal will no doubt be aware that the Federal Circuit Court commenced its life as the Federal Magistrates Court. The change in title of both the Court and the judicial officers who sit on it was introduced to recognise the fact that the Court undertakes work which overlaps with that of both the Federal and Family Courts. Nonetheless, the Federal Circuit Court remains the entry level court within the federal arena.

A review of the types of matters attended to by the Federal Circuit Court shows a significant overlap with that of the ACT Magistrates Court. It includes administrative law, industrial law, consumer law, family law, all of which this court is required to consider within its jurisdiction. I note that in respect to the *Competition and Consumer Act 2010* (C'th) (formerly of the *Trade Practices Act 1974* (C'th)), the Federal Circuit Court has jurisdiction but the Act also vests Commonwealth jurisdiction in various

State and Territory courts including the ACT Magistrates Court. The jurisdictional limit for the Federal Circuit Court is set to \$750,000 (section 86A). The ACT Magistrates court jurisdiction is limited to that jurisdiction set by local Statute, in practical terms a \$250,000 limit. However, many of the matters which arise are of similar complexity and both jurisdictional limits are well beyond that of any other entry-level court in Australia. In relation to the financial jurisdictional limit, there are areas in which the ACT Magistrates Court in fact has a higher or unlimited financial jurisdiction, for example breaches of the *Work Health Safety Act 2011* and pursuant to the *Leases (Commercial and Retail) Act 2001*. Like the Federal Circuit Court, the ACT Magistrates Court effectively carries out work consistent with that of a District or County Court in jurisdictions with a three tiered court system. Unlike the Federal Circuit Court, the ACT Magistrates Court jurisdiction is not limited to civil work but encompasses the a range of Commonwealth and Territory criminal work.

### ***General considerations***

We note that the setting of judicial salaries is not to be considered in isolation of community expectations, national economic indicators, or the ACT's economic position. These are all appropriate considerations in the broader milieu of the Tribunal's function. The judiciary ought not be allowed to lag behind general increases in the community. Similarly, however, where a particular case can be put outside of the standard expectation of an increase in accordance with consumer price index, for example, that case should be recognised. We submit that that case is the as yet uncompensated jurisdictional increase vested in the ACT Magistrates Court.

We also note that the Tribunal has previously indicated that a mere pegging of Magistrates' remuneration to that of the ACT Supreme Court Judges fails to reflect a proper exercise of the Tribunal's discretion. Clearly, where different considerations apply in respect to different sectors of the judiciary, that must be correct. To this end, the Tribunal will note that there has been a devolution of responsibility from the Supreme Court to the ACT Magistrates Court without any increase to the responsibilities of the higher court.

Our submission in relation to the position of Chief Magistrate and Special Magistrate is, again, that the existing relativity with other Magistrates be maintained.

I look forward to the opportunity of meeting with the Tribunal to speak to this submission on 25 September 2015.

Yours sincerely,



Lorraine Walker  
Chief Magistrate



Table A

## Outline of State and Territory Courts basic jurisdictional limits

Jurisdiction	Supreme Court		District/County Court		Magistrates/Local Court	
	CIVIL	CRIMINAL	CIVIL	CRIMINAL	CIVIL	CRIMINAL
ACT	Unlimited	Unlimited	-	-	\$250,000; Unlimited in commercial lease disputes	5yrs imprisonment per offence unlimited accumulation
NSW	Unlimited	Unlimited	Up \$750,000; unlimited regarding motor vehicle accident cases	Limited by offence type	\$100,000	2 years per offence to maximum 5 years
NT	Unlimited	Unlimited	-	-	\$100,000	Up to 5 years imprisonment
QLD	Unlimited	Unlimited	\$750,000	Limited by offence type	\$150,000	Up to 3 years imprisonment
SA	Unlimited	Unlimited	Over \$100,000 for non-personal injury matters and \$100,000 personal injury claims	Limited by offence type	\$100,000	Up to 5 years imprisonment per offence to maximum of 10 years
TAS	Unlimited	Unlimited	-	-	\$50,000	Up to 5 years
VIC	Unlimited	Unlimited	Unlimited for common law damages and commercial matters	Limited by offence type	\$100,000	2 years per offence to maximum 5 years
WA	Unlimited	Unlimited	\$750,000 Unlimited in personal injury matters	Limited by offence type	\$75,000	Statutory penalty

Table B

Magistrates' remuneration as a percentage of that of District or County Court and Supreme Court judges throughout Australia – current (rounded to the nearest percentage point)

	Magistrates/Local Court	District/County Court		Supreme Court	
	\$	\$	%	\$	%
ACT	325,915	-	-	412,550	79%
NSW	307,690	386,160	80%	431,160	71%
NT	318,695	-	-	412,550	77%
QLD	324,677	371,295	87%	412,550	79%
SA	287,340	364,320	74%	412,550	70%
TAS	288,390	-	-	432,728	67%
VIC	285,875	357,429	80%	412,550	69%
WA	321,694	389,932	82%	433,258	74%

Table C

Relative remuneration of ACT Magistrates, Supreme Court Judges and the Master

Year	Magistrate	Supreme Court judge	Supreme Court master	Magistrate as % of judge	Magistrate as % of master
2008	\$250,698	\$319,990	\$269,565	78%	93%
2009	\$254,458	\$333,660	\$288,820	76%	88%
2010	\$262,728	\$374,120	\$298,239	70.0%	88%
2011	\$271,923	\$391,140	\$309,712	69%	88%
2012	\$290,958	\$402,880	\$331,392	72%	88%
2013	\$325,915	\$412,550	\$350,668	79%	93%
2014	\$325,915	\$412,550	\$356,856	79%	91%

Table D

Magistrates' remuneration as a percentage of that of Federal Circuit Court judges

ACT Magistrate	Federal Circuit Court Judge	%
325,915	348,160	94%