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Dear Ms Cahill Lambert

ACT Remuneration Tribunal 2017 Spring Review

Thank you for your letter inviting the ACT Magistrates to make a submission in relation to the Remuneration Tribunal Spring review. Your original letter was sent on 28 September 2017 and invited submissions prior to 11 October 2017 at midday. You may be aware that due to administrative oversight your letter did not come to my attention until after the closing date for submissions. Following communication with the Tribunal Secretariat, you kindly agreed to allow us until today to file a submission.

I apologise for any inconvenience that the delay in providing this submission creates for the Tribunal.

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

I 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 that reads "L Walker".

Lorraine Walker
Chief Magistrate

19 October 2017

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