



Simon Corbell MLA

ATTORNEY GENERAL

MINISTER FOR THE ENVIRONMENT, CLIMATE CHANGE AND WATER

MINISTER FOR ENERGY

MINISTER FOR POLICE AND EMERGENCY SERVICES

MEMBER FOR MOLONGLO

Mr Bill Rowlings
CEO
Civil Liberties Australia Inc
Box 7438
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Dear Mr Rowlings

I am writing to you regarding the 2010 Access to Justice Initiative which was aimed at addressing concern about the backlog of cases in the Supreme Court, which is being compounded by the number of outstanding reserved judgments.

In that initiative I proposed structural reform to the court system. A large percentage of matters currently dealt with in the ACT Supreme Court are heard by the District Court in other jurisdictions. If the ACT established a District Court, the streamlined procedures of the court would have been better suited to many of the less serious criminal and civil matters currently heard in the ACT Supreme Court.

Unfortunately, the non-Government members of the ACT Legislative Assembly do not support structural reform at this stage. Action is nevertheless required.

The Government is therefore moving to implement alternative measures. In particular, the Government has appointed three highly experienced retired judges as acting judges for a cumulative period of 9 months to assist with the backlog in the short-term. The Government has also converted under-utilised hearing rooms in the Magistrates Court building into a jury court room and jury retirement room to enable more jury trials to proceed.

The Government is also taking measures which will reduce the number of matters coming before the Supreme Court. First, the Government is introducing reforms to the *Bail Act 1992*. In recent years there has been a significant increase in the number of bail applications being heard in the Supreme Court as opposed to the Magistrates Court. The reforms to the *Bail Act 1992* will ensure that the issue of bail is explored fully in the Magistrates Court while still ensuring that appropriate access to the Supreme Court is retained. This should reduce the number of bail hearings in the Supreme Court.

Secondly, as I foreshadowed publicly in September, the Government proposes to increase the criminal and civil jurisdictions of the Magistrates Court.

ACT LEGISLATIVE ASSEMBLY

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Government proposes that all criminal matters with a maximum penalty of five years or less should be dealt with by the Magistrates Court. To that end, the definition of ACT indictable offences will be amended to apply only to those offences with a maximum penalty greater than 5 years. The Magistrates Court already has jurisdiction to deal summarily with all indictable offences with a maximum penalty of 10 years and some with much higher maximum penalties. If the Assembly agrees, in relation to charges with an offence greater than two years but less than the revised definition of an indictable offence, a defendant will no longer have an election to have the matter proceed to the Supreme Court for hearing. Instead, as is the case now where a defendant elects to have these matters proceed summarily in the Magistrates Court, all these matters will be dealt with summarily in the Magistrates Court. As with other summary matters, an appeal will lie to the Supreme Court.

While this proposal was put forward by the Law Society and Bar Association and others, the Law Society and Bar Association linked this proposal with a requirement for an additional significant change. It was proposed that all summary matters should have a de novo appeal to the Supreme Court. The Government does not support the introduction of a de novo review of all criminal matters coming before the Magistrates Court as this may significantly undermine the Government's attempt to reduce the pressure on the Supreme Court. While de novo appeals appear to be working quickly and efficiently within the NSW District Court, there can be no guarantee that this experience would be replicated in a superior court of record such as the ACT Supreme Court.

Following suggestions from a number of stakeholders, the Government proposes to increase the civil jurisdiction of the Magistrates Court to a \$250,000 threshold from the current threshold of only \$50,000. The increase in the civil threshold appears to enjoy general support.

Active case management is the norm in all modern courts. While case management falls within the responsibility of the judiciary, I am keen to do as much as possible to facilitate greater efficiency in our Supreme Court. To this end I have, jointly with the Chief Justice, requested a review of case management in the ACT Supreme Court. The review will examine listing practices, and consider practices adopted in other jurisdictions, including docket and reserve trial practices. This review will be undertaken by Justice Hilary Penfold and the Chief Executive of my Department, Ms Kathy Leigh. It will be assisted by a reference group consisting of senior members of the ACT Bar Association, the ACT Law Society, the ACT Legal Aid Commission and the office of the Director of Public Prosecutions. I am particularly grateful that His Honour Bernard Teague AO will assist the review while he is acting judge of the ACT Supreme Court.

The Government is bringing forward a strong package of measures to address the pressure on our Supreme Court. These will go some way in reducing the backlog of cases and number of outstanding reserved judgments in the Supreme Court. The Government continues to have concerns that, absent structural reform, these measures alone will not achieve the solution needed in the long-term. Should these measures prove insufficient, the Government will again raise the proposal for structural reform in the form of a new intermediate jurisdiction for the ACT.

The Government is committed to continuous improvement of the justice system in the ACT, and will continue to deliver reforms to achieve this goal.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Corbell', written over a horizontal line.

Simon Corbell MLA
Attorney General

19.11.10