



18 April 2006

Mr Jonathan Curtis
Committee Secretary
Senate Legal & Constitutional Committee
Parliament House
CANBERRA ACT 2600

Transmission by email to: legcon.sen@aph.gov.au

Dear Mr Curtis

Inquiry into the provisions of the *Federal Magistrates Amendment (Disability and Death Benefits) Bill 2006: Submission of the Victorian Bar*

Thank you for the invitation to make a submission to the above inquiry in your 3 April 2006 email to my predecessor as Chairman of the Victorian Bar, Ross Ray QC. In accordance with the expressed preference that submissions be submitted electronically, this letter, which constitutes the submission of the Victorian Bar, will be transmitted to the Committee by email. For convenience of reference, the paragraphs of this submission are numbered.

- (1) The Victorian Bar ("the Bar") strongly supports the purpose of the Bill expressed in the explanatory memorandum, namely "to provide statutory disability cover and death benefits for Federal Magistrates".
- (2) The Bar would go further and recommend that Federal Magistrates, as Chapter III Justices of a federal court¹, ought to be on the same footing as the judges of every other federal court, and ought to be covered by the *Judges' Pensions Act 1968*.²

¹ Federal Magistrates Act 1999 s. 3(1) ("The main object of this Act is to create the Federal Magistrates Court under Chapter III of the Constitution"); s. 4 ("The Federal Magistrates Court is created as a federal court under Chapter III of the Constitution"); s. 8(4) (referring to Federal Magistrates as "justices"); s. 9 and Schedule 1 clause 5(3) ("a Federal Magistrate is the holder of an office of Justice of a federal court").

² As the *Judges' Pensions Act 1968* stands "Judge" is defined in s. 4 of that Act as, amongst other things, "a Justice or Judge of a federal court (other than the Federal Magistrates Court)".

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- (3) The discrimination in singling out Federal Magistrates to be the only Chapter III judges not covered by the *Judges' Pensions Act* was, we believe, misconceived from the outset. It was, and is, fundamentally wrong in principle.
- (4) It is one thing, as stated in the Explanatory Memorandum to the Federal Magistrates Bill 1999, to create a court that will "provide a quicker, cheaper option for litigants" and "develop procedures that are as simple and efficient as possible aimed at reducing delay and costs to litigants", and in which "the use of conciliation, counselling and mediation will be strongly encouraged in appropriate cases". It is entirely another for the Chapter III judges of this court, which has substantial partial concurrent jurisdiction with the Federal Court and the Family Court, to be denied the standing, security and benefits that every other Chapter III judge enjoys under the *Judges' Pensions Act*.
- (5) Further, in all matters arising out of the *Bankruptcy Act* 1966, the *Human Rights and Equal Opportunity Act* 1986, and the *Administrative Decisions (Judicial Review) Act* 1977, the Federal Magistrates Court jurisdiction is wholly concurrent and identical to that of the Federal Court.
- (6) Whatever justification there may have been when the creation of a Federal Magistrates Court was first under consideration has surely been superseded by the character of the Court that was actually created, the quality of people appointed to the Court, and the work and volume of work undertaken by the Court.
- (7) Quoting the description on the Court's website: "The jurisdiction of the Federal Magistrates Court includes family law and child support, administrative law, bankruptcy, consumer protection and trade practices, human rights, migration, privacy law, copyright and workplace relations."
- (8) Looking just at the Federal Magistrates in Melbourne, the elevation of Chief Federal Magistrate Bryant to be Chief Justice of the Family Court, and the elevation of Federal Magistrate Bennett to be a Judge of the Family Court little more than 18 months after her appointment to the Federal Magistrates Court, recognise the quality of their work as Federal Magistrates.
- (9) This Court may have been conceived as a "service" – "The Federal Magistrates Court may also be known as: (a) the Federal Magistrates Service" ³ There cannot be any doubt that the Court that was, in the end, created – and the Court that has developed and evolved, and is continuing to develop and evolve – is well and truly a "court".
- (10) Insofar as there may be justification for lesser benefits for Federal Magistrates than for other Chapter III judges, that can be, and is, appropriately dealt with by differences in salary which, of course, flow on into the level of other benefits. It is wholly inappropriate to deny death benefits and pension rights.
- (11) As to the benefits proposed in the *Federal Magistrates Amendment (Disability and Death Benefits) Bill* 2006, neither the Explanatory Memorandum nor the second reading speech offer any explanation for the age of 65 being the key under these provisions, when Federal Magistrates are appointed to the age of 70. ⁴

³ Federal Magistrates Act 1999 s. 8(2)(a).

⁴ Federal Magistrates Act 1999 s. 9 and Schedule 1 clause 1(4).

- (12) The proposed disability benefit of 60% of salary⁵ equates with the pension payable to a retired judge under the *Judges' Pensions Act*.⁶ However, it extends only until the retired disabled Federal Magistrate attains the age of 65 or dies (whichever is the earlier),⁷ whereas appointments are to age 70.
- (13) The proposed death benefit, on the other hand, is only the amount of superannuation contributions (13.1% of salary) from the date of death to the day on which the Federal Magistrate would have turned 65.
- (14) The Bar urges close scrutiny of this Bill and careful consideration of the matter of fundamental principle, namely that it is wrong for Federal Magistrates to be denied the standing, security and benefits that every other Chapter III judge enjoys under the *Judges' Pensions Act*.

Yours faithfully



KATE McMILLAN S.C.

Chairman

⁵ Proposed clause 9B(2).

⁶ Judges' Pensions Act 1968 s. 6A(2).

⁷ Proposed clause 9B(1).