



Written Submission of the District Court of Western Australia

As Chief Judge of the District Court of Western Australia, I present on behalf of the judges of the District Court submissions concerning the *Criminal Procedure Amendment (Trial by Judge Alone) Bill 2017*.

1. I am normally reluctant to make submissions on proposed legislation given the role of the courts and the need to maintain the position of independence. However, in this matter I believe it is important that submissions are presented given the second reading speech which suggested that the Bill had strong support from the judges and because of the significant consequences that the proposed amendments to the *Criminal Procedure Act 2004* will have on the operations of the District Court.
2. The District Court is the major jury trial court in Western Australia. Over the past 5 years the District Court has conducted approximately 2,200 jury trials. I submit that given this experience with jury trials, considerable weight should attach to these submissions.
3. I have canvassed the views of all judges of the court and it is clear that the District Court judges are opposed to the proposed Bill. The views of former Judge Valerie French do not reflect the views of the current judges of the District Court.
4. A major problem with introducing a right for all accused persons to have a judge alone trial is that written reasons for verdicts must be given by the trial judge and the task of preparing these written reasons are likely to cause delays. Section 120(2) of the *Criminal Procedure Act 2004* (WA) provides that the judgment of a judge in a trial by judge alone must state 'the principles of law that he or she has applied and the findings of fact upon which he or she has relied'. However, the High Court¹ has ruled that a bare statement of the principles of law applied and the findings of fact is not sufficient. Rather, there must be exposed the reasoning process linking the law and the facts and the verdict reached. The complexity of preparing such reasons means that it is not correct to state that judge alone trials will be shorter. When the time that is required to prepare written reasons is taken into account, judge alone trials are likely to be longer and there is an increased risk that there will be unacceptable delays in preparing the written reasons for a verdict due to the workload of judges.

In the District Court of Western Australia there have been only eight judge alone trials in the last 5 years. The average time to handing down a decision is approximately 14 days (the shortest period was two days and the longest 43 days).

¹ *Fleming v the Queen* (1998) 197 CLR 250, 262 – 263 (Gleeson CJ, McHugh, Gummow, Kirby and Callinan JJ); *AK v Western Australia* (2008) 232 CLR 438.



In 1998 the Australian Capital Territory (ACT) introduced legislation for judge alone trials to be at the election of the accused. The legislation proved a disaster for the administration of the Supreme Court in the ACT. The election rate for judge alone trials grew to 56% and substantial backlogs occurred due to delays in judges delivering written reasons for their verdicts.² In the Director of Public Prosecutions (ACT) Annual Report of 2011-12, the Director reported that there was one outstanding judgment dating back to July 2010, five from 2011 and two matters from early 2012³. As a result of the substantial backlog in cases which developed in the ACT, the Government introduced legislation in 2011 removing the right for judge alone trials for most serious offences, such as murder and nearly all sexual offences.

The only other State in Australia that has judge alone trials as of right is South Australia. There, the number of judge alone trials consists of approximately 15% of trials and is viewed as one of the contributing factors to substantial delays in the South Australian District Court.⁴

1. Contrary to the suggestion in the second reading speech that the number of appeals are likely to be reduced, the judges of the District Court are of the opinion that there are likely to be more appeals if there are more judge alone trials. Appeals against the verdicts of a jury can only be made on the grounds that the verdict is "unsafe or unsatisfactory"⁵. However, appeals against judge alone trials will include challenges to the reasoning behind the judge's verdict. An example of this is the *Rayney* trial where the State appealed even in the circumstances of an acquittal.
2. The introduction of more judge alone trials is likely to have a significant impact on the capacity of the District Court to manage its workload, would require significant changes to the Court's listing practices and substantial additional judges. Currently, the District Court is in a workload crisis as demonstrated by the increase in workload over the past six years:

	<u>2012-13</u>	<u>2018-19</u>	<u>Increase</u>
<u>Crime</u>			
Increase in criminal lodgments over 6 years	1991	2826	41.9%
Criminal finalisations over 6 years	2010	2592	28.9%
Pending (cases on hand) over 6 years	917	1760	91.9%

² Australian Capital Territory, *Parliamentary Debates*, N 11, P256 (Hon Simon Corbell, Attorney General).

³ *Director of Public Prosecutions Annual Report* (ACT) 2011 – 12, 2.

⁴ The *Advertiser* 27th of March 2015 based upon information provided by the Courts Administration Authority.

⁵ *M v The Queen* (1994) 181 CLR 487 at 492-3.



Civil

Increase in civil lodgments over 6 years	4588	5432	18.3%
Civil finalisations over 6 years	4969	5182	4.2%
Pending (cases on hand) over 6 years	3817	4404	15.3%

The position has been exacerbated by recent increases in the District Court's jurisdiction with the passing of the *Court Jurisdiction Legislation Amendment Act 2018* (WA), effectively transferring all offences except homicide related matters from the Supreme Court to the District Court, and the amendments to the *Limitation Act 2005* (WA), removing time limitations in relation to child sexual abuse claims within the Court's civil jurisdiction.

One of the ways in which the District Court attempts to cope with its significant workload is by over listing in crime. In the Perth metropolitan area the Court over lists by 40%. This means that if a criminal trial does not proceed due to a late plea, a late discontinuance by the DPP or an adjournment, then there are reserve trials available to assign to a judge whose trial does not proceed. The over listing is even more severe on circuits. The District Court judges conduct annually in aggregate approximately 140 weeks of trials in circuit locations. To get through the number of matters listed in circuit locations, on each circuit approximately four trials of 2 to 3 days are listed per week before a single judge. The net effect of these listing practices is that judges are doing back-to-back trials continually to maximise judicial resources. In addition, on circuit, in order to get through the number of trials listed, a judge will on occasions commence a new trial while a jury is deliberating on an earlier trial. If the court was burdened with more judge alone trials then these listing practices could not be maintained because judges would need to be given sufficient time out-of-court to prepare written reasons for the verdict. The court could not function efficiently under such a scheme and would require a very significant increase in the number of judges on the court to avoid significant delays.

Kevīn Sleight
Chief Judge

29/11/2019