

ACT Auditor-General's Office

Performance Audit Report

Courts Administration

September 2005



AUDITOR-GENERAL

Australian Capital Territory



PA04/18

The Speaker
ACT Legislative Assembly
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Mr Speaker

I am pleased to present to you a Performance Audit Report titled '**Courts Administration**', conducted under the authority contained in the *Auditor-General Act 1996*.

I would appreciate if you could arrange for the tabling of the Report in the Legislative Assembly pursuant to section 17(4) of the *Auditor-General Act 1996*.

Yours sincerely

Tu Pham
Auditor-General
20 September 2005

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- the Chief Justice and Chief Magistrate;
- the Judges of the Supreme Court and the Magistrates;
- the Law Courts & Tribunals Unit and the Department of Justice and Community Safety;
- the Law Society of the Australian Capital Territory;
- the Australian Capital Territory Bar Association;
- the Victims of Crime Coordinator;
- the Court Assistance and Referral Service;
- ACT Policing;
- the Director of Public Prosecutions (ACT);
- the Legal Aid Commission of the Australian Capital Territory ; and
- the ACT Government Solicitor's Office.

Audit also sought expert advice during the audit and on the draft report. For their assistance in this regard, our thanks go to Mr Gary Byron and Mr Tom Sherman AO.

Mr Gary Byron is currently Deputy President, NSW Workers' Compensation Commission. He has been extensively involved at Chief Executive level in Court administration in Western Australia, NSW and South Australia. He has also written extensively on the subject of Courts administration, and was co-founder of the Australian Courts Administrators Group.

Mr Tom Sherman is currently a Visiting Fellow at the Faculty of Law, Australian National University. His former positions include Australian Government Solicitor, Chairman of the National Crime Authority and President of the ACT Legal Aid Commission. In 1998, he conducted a review of the Courts Administration Authority of South Australia.

The audit also benefited from a useful discussion with Mr Richard Foster, Chief Executive Officer of the Family Court of Australia.

1. REPORT SUMMARY AND AUDIT OPINIONS

INTRODUCTION

1.1 This report presents the results of a Performance Audit that reviews the efficiency and effectiveness of courts administration in the Australian Capital Territory (ACT).

BACKGROUND

1.2 The administration of the court system in the ACT is pivotal to achieving justice. The primary administrative functions of the ACT Courts include:

- managing the court facilities and staff, including buildings, court security and ancillary services (such as the registry, libraries and transcription services);
- providing case management services, including client information, scheduling of court appearances and case flow management; and
- enforcing court orders through the Sheriff's Office or a similar agency.

1.3 In the ACT, courts administration is provided by the Department of Justice and Community Safety (JACS), primarily through the business unit 'Law Courts and Tribunals' (the LC&T Unit). The LC&T Unit provides support to the Supreme Court (including the Court of Appeal), the Magistrates Court and most of the Tribunals.

1.4 JACS spent \$21.4 million on the Courts in 2004-05 (excluding overhead). There were 31 809 matters finalised in the Magistrates Court and Tribunals, and 2353 matters finalised in the Supreme Court (including the Court of Appeal) in 2003-04. Figures for 2004-05 were not available at time of audit due to changes in reporting.

1.5 Courts administration is a complex field involving the interplay between administrative functions and matters of judicial discretion. There are also interactions and differences between the Supreme Court and the Magistrates Court; and between criminal and civil cases.

1.6 The overall performance of the justice system is affected not only by actions of the courts but also by actions of other key participants such as litigants, prosecutors, defendants, legal representatives, police, corrective services and other agencies. Although control of the system is not fully with courts, they do have more power over the system than other participants, and it is generally accepted that it is within the courts' responsibility to set targets and achieve performance.

1.7 In full recognition of the judicial independence, this audit focuses solely on the administrative aspect of Courts. The audit considers issues ranging from overall governance, through management of the workflow, to finance and Human Resources

(HR) issues. Recognising the extent of skill and experience within the courts, at both the judicial and administrative level, the audit does not offer detailed solutions to all of the issues considered. For some issues, it only discusses the directions that might be explored. The audit also points out that there have been a number of previous reviews, many of which contain useful recommendations that have not yet been implemented.

OBJECTIVES, SCOPE AND APPROACH

1.8 The objective of the audit was to provide an independent opinion to the Legislative Assembly on whether administration and governance of the ACT Court system is efficient and effective, with emphasis on case management processes.

1.9 The scope covers the operations of areas in JACS that support the Supreme Court and the Magistrates Court. The focus of the audit has been primarily on work supporting the Magistrates Court, as that is an administratively complex area, and where the greatest volume of cases is handled. The audit did not address the administration of the Tribunals.

1.10 The audit included a review of the literature on courts administration, and of reports prepared for the ACT Courts. The audit team consulted with most of the judicial officers and the senior Courts staff, selected other staff, and stakeholders involved in Court processes. The team also reviewed statistics from other Australian courts and from the ACT. They also reviewed files and other information on case processes and on administrative aspects of the Courts, and observed proceedings in Court.

1.11 The criteria for the audit are listed in Appendix 1.

AUDIT OPINIONS

1.12 The audit opinions, formed against the audit objectives, are set out below:

- Administration of the ACT Court system is adequate to ensure that the business of the courts functions smoothly. However, there are opportunities to improve efficiency in areas such as the management of caseflow, finance, human resources and registry functions.
- Governance and accountability are not clear, partly because of the division of responsibility between judicial and administrative functions. There are opportunities to clarify accountability through a review of overall governance structures, and through better budgeting and reporting.
- Significant administrative efficiency can be achieved with greater cooperation between the judiciary and the Department in court management.

KEY FINDINGS

1.13 The above opinions are supported by the following key findings.

Strategic planning and governance

1. The current governance arrangements for the ACT Courts system indicate a lack of alignment between responsibilities and accountability.
2. Clear accountability is difficult to achieve. The Courts Administrator has conflicting accountabilities to the Attorney-General, the Chief Executive of JACS, the Chief Justice, and the Chief Magistrate. Some financial accountability issues are also unclear. For example, judicial officers effectively make some expenditure decisions, but legally they are departmental decisions.
3. It appears that actions better suited to a Business Plan are contained in the Strategic Plan and vice versa. The Law Courts and Tribunals Business Plan is much more general in nature and its actions appear to be less targeted.
4. There is no overall risk management plan and no evidence that the risks identified in 2002 were monitored and addressed.

Performance measures and reporting

5. There have been many reviews of the ACT Courts, dating back to the early days of self-government. The repetition of themes within these reviews indicates that there has not been a consistent process of formally analysing recommendations and either rejecting or accepting them, nor have there been sound processes to implement agreed recommendations.
6. Based on comparative data available, and subject to its limitations, the performance of ACT Courts did not generally compare well against other jurisdictions with respect to some performance measures:
 - Statistics in the Australian Bureau of Statistics (ABS) report on the Criminal Courts for 2003-04 indicate that the ACT Magistrates Court had the highest proportion of its cases taking longer to finalise than other states and territories. On state and territory average, 44% of cases were finalised in under 6 weeks, but only 16.8% in the ACT were finalised over the same period. At the 26-week mark, 76% of cases in the ACT Magistrates Court were finalised, compared with 90% nationally.
 - For the Supreme Court, the ACT's timeliness is close to the average for other states and territories.
 - Although ACT Courts have improved their performance on costs against other states in recent years, the ACT Childrens Court remained the most expensive of all jurisdictions in recent years.

- On average, the number of attendances for criminal matters was higher than any other state or territory for the ACT Supreme Court and Magistrates Court in 2003-04. The Coroner's Court had the highest average number of attendances in 2003-04, and the Childrens Court had the second highest for the same period.
7. Notwithstanding improvements in recent years in ACT Court reporting, there is still less information available to the ACT community compared with some of their counterparts in other states. Unlike the ACT, many Federal and State Courts provide their own comprehensive annual reports.

Scheduling and management of cases

8. There was significant under-use of court time and facilities in both the Supreme Court and the Magistrates Court. In particular:
- Of the 74 criminal trials listed for hearing in the Supreme Court in 2004, only 33 trials occurred. Of the others, 21 defendants changed their plea to guilty, 9 trial dates were vacated, the prosecution abandoned 10 cases, and one accused absconded.
 - This resulted in there being only 101 days of criminal trials in the Supreme Court in 2004, compared with 297 planned days.
 - In the Magistrates Court, there was a high level of unexpected adjournments, leading to court resources being under-utilised. Only about 50% of cases proceeded when scheduled.
9. There have been occasions, both in the Supreme Court and the Magistrates Court, in which there have been concerted efforts to address particularly long-wait cases. These actions are useful, but may be more productive if adopted on a continuous basis.
10. There are a large number of lists¹ in the Magistrates Court, which could be streamlined for improved efficiency.
11. Little use is made of demand management measures to encourage parties to resolve civil disputes outside the court system.

Services to court users

12. The court user satisfaction survey would be more useful if it included a more diverse sample of court users and if the courts published the results.
13. There was little evidence in the Magistrates Court that systemic action on substantive complaints is occurring, nor is it clear that complainants are informed of progress.

¹ These are lists of different types of court proceedings, that are grouped together and carried out in the same session

14. Communication and liaison with stakeholders has been reasonable, but could be improved further.

Budget and expenditure management

15. There has been a continuing pattern in recent years of planned deficits, and actual deficits exceeding those planned. There appears to be a lack of effective action to resolve these deficits.
16. The ACT judiciary currently plays a limited role in generating budget proposals or approving expenditure – these activities are left primarily to the LC&T Unit and JACS.
17. There appears to be a lack of ownership and clarity of accountability for the Budget outcomes, including insufficient control over special project expenditure.
18. There has not been a fundamental review of the cost basis for Court services to support a decision for appropriate base funding. This has led to on-going concerns by the judiciary about the appropriateness of the Budget allocations.

Administrative procedures

19. There has been a lack of integration between administrative areas of Courts. In particular, there was little mutual support between different sections of the Magistrates Court Registry. There was also limited interaction between the Registry, conferencing cell and the Magistrates.
20. The current review of Magistrates Court registry functions has the scope to integrate sections within courts administration and improve efficiencies.
21. Current Information and Communication Technology (ICT) equipment appears inadequate to meet the needs of the courts.
22. Progress to replace the caseload management system has been slow and limited by funds.
23. The Courts have not yet taken full advantage of ICT to improve administrative processes.

Human resources management

24. The current staff structure, in particular the lack of senior officers in the Magistrates Court registry, gives rise to a risk of lack of direction to staff and insufficient consideration of process improvement.
25. Human resources management practices are poor, as shown by:
 - the high level of temporary positions;
 - the high level of acting positions;

- some duty statements not aligning with actual duties; and
 - lack of forward planning.
26. Staff satisfaction surveys indicate that courts administration performance was perceived as deteriorating in some areas.
27. There was a lack of prompt action to address issues raised by staff surveys.

1.14 During the audit, the Magistrates Court commenced a review of case management. The results of this review were not available to Audit at the time of drafting. However, the Chief Magistrate advised Audit that a new model of judicial court governance was under active consideration for introduction in the second half of 2005. Recommendations from this review are likely to address a number of concerns raised by the audit.

RECOMMENDATIONS AND RESPONSES TO THE REPORT

1.15 The Audit made 24 recommendations to address the audit findings detailed in this report.

1.16 Audit addresses each of the recommendations to JACS or LC&T. Given the interdependence between administrative and judicial functions, the implementation of many recommendations would also require assistance and support from the judiciary.

1.17 In accordance with section 18 of the *Auditor-General Act 1996*, a final draft of this report was provided to the Chief Executive of the Department of Justice and Community Safety (JACS) for formal response. In addition, the final draft was also provided to the Chief Justice and the Chief Magistrate for comment.

1.18 The Chief Executive of JACS provided the overall response below:

It is reassuring to note that the Audit Opinions will confirm that the current administration of the ACT court system is adequate to ensure the continued smooth running of the courts' functions.

I also acknowledge that there are real opportunities to improve efficiency and clarify governance in the operation of the Territory's courts. I am pleased to provide the department's formal responses ... and indicate that all the recommendations are generally agreed.

1.19 The Chief Justice provided the following response:

... the members of the Supreme Court fully support the recommendations relating to greater administrative independence for the Judiciary in the Australian Capital Territory.

While proposals to enhance the exchange of views and ideas with the Executive Government are welcome, experience suggests a structural

solution is the most effective way of ensuring that opportunities for confusion to arise in this area are avoided. That solution also affords a genuine opportunity to review the basis on which the operations of the Territory's courts are funded and administered in order to achieve greater transparency and effectiveness in this area.

Otherwise, the Court looks forward to participating wherever possible in the implementation of the recommendations made in the report.

1.20 The Chief Magistrate provided the following response:

I ... strongly support Recommendation 1 relating to strengthening the relationship between the judicial and executive arms of government and the need for a more collaborative relationship with the Attorney General and his department. This will provide the opportunity to develop a structure that delivers a clearer recognition of the judiciary as a truly independent arm of government in accordance with the doctrine of the separation of powers.

I also firmly support Recommendation 17 concerning the need for a proper examination of the costs of court services to support a more viable financial model into the future. I believe that the Government must take up this sensible recommendation at the earliest possible opportunity, as much time and effort is currently being diverted from improving court services in what seems to be an interminable debate around resources. Indeed, without that baseline it may be that the successful implementation of the report's recommendations would be in some jeopardy.

My colleagues and I look forward to working with the Government in improving the services provided to the Magistrates Court for the benefit of the community as a whole.

1.21 In addition, the Chief Executive of JACS provided responses for each recommendation, as shown below.

Recommendation 1 (page 26)

- JACS should work with the judiciary with a view to:
- a) establishing a more collaborative relationship between the judiciary and the Department;
 - b) putting in place regular forums for communication between the judiciary, the Department and the executive arm of the Government; and
 - c) establishing a governance model for the courts that provides greater administrative independence and hence better alignment of courts' responsibility with public accountability.

JACS' Response:

Agreed.

- a) *More regular meetings between the Attorney General and the Heads of Jurisdiction, in addition to the separate meetings with the Chief Justice and Chief Magistrate have been agreed-in-principle.*
- b) *The “Courts Governance Committee”, comprising the Attorney General, the Chief Justice, the Chief Magistrate, the Chief Executive of Justice & Community Safety and the Courts Administrator will meet every 6 months to monitor progress in the courts and facilitate joint action in areas of concern.*
- c) *The proposed “Courts Governance Committee” will consider any future model of court governance.*

Chief Magistrate's Comment:

Strongly supported (see paragraph 1.20 above).

Recommendation 2 (page 26)

JACS should invite the heads of jurisdictions to contribute comprehensive annual reports for incorporation in the overall JACS Annual Report. Alternatively, heads of jurisdictions should provide their annual report directly to the Attorney-General or the ACT Legislative Assembly.

JACS' Response:

Agreed. The Department will assist both Heads of Jurisdiction to publish a comprehensive annual review to be provided directly to the Attorney-General and reproduced as a separate part of the JACS Annual Report.

Recommendation 3 (page 28)

The LC&T Unit should develop a risk management plan to assist in identification and amelioration of significant risks.

JACS' Response:

Agreed.

Recommendation 4 (page 30)

The LC&T Unit should, for recent and future audit and evaluation reports, establish implementation plans that address each agreed recommendation, and monitor and report on the progress against these plans.

JACS' Response:

Agreed. In addition, all prior reports and reviews into the ACT courts will be re-examined by the Courts Governance Committee to determine whether any recommendations should now be implemented.

Recommendation 5 (page 42)

The LC&T Unit should analyse better practices from other jurisdictions, and consult with relevant government departments with a view to advising government and the judiciary on ways to reduce costs, with particular attention to the Childrens Court.

JACS' Response:

Agreed. The issue of establishing systems for identifying national better practice in case management that lead to greater efficiency, has been placed on the agenda for the September 2005 meetings of the Australian Court Administrators' Group and the Productivity Commission's Court Administration Working Group.

Recommendation 6 (page 50)

The LC&T Unit should review the effectiveness of compliance and other mechanisms to encourage efficiency in caseload management, and advise the government and the judiciary on options.

JACS' Response:

Agreed. The issue of costs, fees and other sanctions will be examined and advice provided to Government and the Judiciary.

Recommendation 7 (page 51)

The LC&T Unit should ensure that there are procedures in both Courts for:

- a) collecting relevant statistics on long-wait cases; and
- b) analysing the information and informing the judiciary.

JACS' Response:

Agreed. The current practice of providing monthly Backlog Indicator reports to the Judiciary will be expanded to include all adjudicative and dispute resolution activities of the courts.

Recommendation 8 (page 54)

The LC&T Unit should:

- a) record and analyse the cause and extent of all short-notice adjournments or cancellations² to hearings;
- b) report this analysis and assist in developing strategies to improve utilisation of the Courts' resources; and
- c) consider, in particular, greater overlisting to compensate for the current pattern of case cancellations.

JACS' Response:

Agreed. The current practice of providing monthly Backlog Indicator reports to the Judiciary will be expanded to include all adjudicative and dispute resolution activities of the courts. While the listing strategy is a matter for the respective Heads of Jurisdiction, the Department will work with the courts to improve case management decision-support systems. It is noted that the department has supported the Chief Magistrate's Listing Review by funding an expert consultancy to work with the Court.

Recommendation 9 (page 55)

The LC&T Unit should support the judiciary by facilitating the formal evaluation of the effectiveness of significant initiatives such as the Case Management Hearing in the Magistrates Court and the Pre-Arraignment Conference in the Supreme Court.

JACS' Response:

Agreed. Subject to resources, the Department will consult with the Judiciary on conducting formal evaluations of Alternate Dispute Resolution and case management initiatives.

Recommendation 10 (page 56)

Given the effectiveness of conferencing, the LC&T unit should:

- a) monitor conferencing processes and outcomes in order to further enhance efficiency and court user satisfaction; and
- b) consider implementing measures such as improved guidance material and identification of training needs for conferencing staff.

JACS' Response:

Agreed. Subject to resources, the Department will consult with the Judiciary on conducting formal evaluations of Alternate Dispute Resolution and case management initiatives.

² References to cancellations mean cases that do not proceed because the accused enters a plea of guilty or the prosecution declines to proceed.

Recommendation 11 (page 59)

The LC&T Unit should work with the Magistrates to formally analyse and advise on approaches to improving caseflow management. These approaches might include, but not be limited to:

- a) modified running lists;
- b) managing timeliness of cases by exception; and
- c) use of more efficient procedures for routine court appearances.

JACS' Response:

Agreed. Subject to resources, the Department will consult with the Judiciary on conducting formal evaluations of case management initiatives.

Recommendation 12 (page 62)

The LC&T Unit should consider measures to improve services to court users, such as:

- a) identifying needs of different court user groups (including users such as unrepresented litigants);
- b) publishing combined court user service standards for all court services; and
- c) ensuring that court user service standards are met.

JACS' Response:

Agreed.

- a) *The 2005-06 Customer Satisfaction Survey will be provided to a broader range of court users and a Litigants-in-Person Plan will be developed;*
- b) *A combined Service Charter for both courts will be developed and published;*
- c) *Standards will be monitored via both the annual Survey and rolling customer feedback mechanisms, such as the feedback brochures currently in use in the Supreme Court.*

Recommendation 13 (page 63)

The LC&T Unit should improve the usefulness of court user satisfaction surveys by:

- a) addressing the surveys to a more diverse sample of court users;
- b) publishing the results in the Annual Report and on their web site; and
- c) implementing appropriate action to address issues identified in the survey.

JACS' Response:

Agreed.

- a) *a customer segmentation analysis will be conducted prior to the 2005-06 Customer Satisfaction Survey to ensure that the Survey is provided to a broader range of court users;*
- b) *the results of the Surveys will be published in the Annual Report and on the courts' website; and*
- c) *actions to addresses any issues identified in the surveys will be documented and similarly reported upon.*

Recommendation 14 (page 63)

The LC&T Unit should formalise processes for dealing with administrative complaints so that they are actioned, and feedback is given to complainants. This process could also include the identification of frivolous complaints, and where no further action is to be taken, this should be recorded.

JACS' Response:

Agreed. A consolidated complaint-handling policy and system, modelled on the Ombudsman's Good Practice Guide to Complaints Handling, will be introduced. All action on complaints will be fully documented, including those where a decision is made to take no further action. Quarterly reports on complaints will be provided to the Heads of Jurisdiction for their information.

Recommendation 15 (page 64)

The LC&T Unit should work to improve communication and liaison with stakeholders, including regularly running meetings and forums where these have been identified as desirable.

JACS' Response:

Agreed. Registry User Forums will be implemented in all jurisdictions. It is also noted that consultative fora have now been re-established by the Supreme Court and that a comprehensive approach to stakeholder involvement in the governance of the Magistrates Court is now under consideration by the Chief Magistrate arising from his 2005 Listing Review.

Recommendation 16 (page 71)

JACS should establish the LC&T Unit as a separate Output Class to provide more visibility of its budget and performance against it.

JACS' Response:

Agreed. Subject to approval by the Treasurer under the Financial Management Act, a separate Output Class will be established for the 2006-07 Financial Year.

Recommendation 17 (page 71)

For the 2006-07 Budget cycle, JACS, in conjunction with the Courts, should conduct a fundamental review of the cost basis for Court services to support a decision for appropriate base funding.

JACS' Response:

Agreed in part. The department has commenced a process to review and reengineer the work practices of the courts' registries to achieve greater efficiency and economies of scale. In these circumstances, a baseline funding review for the 2006-07 Budget cycle would be premature. However, such a review would be appropriate once that exercise has been completed. The efficiency of the courts' operations will also be addressed in the proposed inquiry into JACS by the Expenditure Review Committee.

Chief Magistrate's Comment:

Supported (see paragraph 1.20).

Recommendation 18 (page 71)

The LC&T Unit should continue to seek efficiencies, either through suggestions in this report or elsewhere, in order to achieve budget targets.

JACS' Response:

Agreed. The department has established a Steering Committee for the Courts' Budget Strategy 2005-06, chaired by the Corporate Finance Manager with members drawn from the Corporate Executive and Courts Administration. An efficiency review of the courts administration Business Services Unit by the department's internal auditor has already commenced and expert assistance is to be provided to courts administration to implement a program to re-engineer registry processes. These processes may identify efficiencies and the Department will continue to seek efficiencies as opportunities become available.

Recommendation 19 (page 73)

The LC&T Unit should put in place sound project management practices to deliver the case management system redevelopment with minimum risk.

JACS' Response:

Agreed. A revised Risk Management Plan for the Case Management System redevelopment project will be developed for all future stages of the project.

Recommendation 20 (page 75)

The LC&T Unit should establish an Information and Communication Technology (ICT) advisory group comprising administrative and judicial officers to propose and sponsor projects for the better use of ICT in the Courts.

JACS' Response:

Agreed. The Heads of Jurisdiction will be asked to nominate judicial members to the new ICT Advisory Group (ITCAG). The ITCAG will be encouraged to develop a new ICT Strategic Plan for Courts Administration to update the last assessment conducted in December 2000.

Recommendation 21 (page 77)

The LC&T Unit should:

- a) consult the judiciary and then advise Government on ways to simplify forms and reduce their number;
- b) establish consistent procedures for use by staff in the Magistrates Court registry; and
- c) prepare improved manuals and procedures to assist Magistrates.

JACS' Response:

Agreed.

- a) *as part of the Joint Courts Harmonised Rules project, a small internal working group has been formed to provide advice on simplified and consolidated court forms;*
- b) *subject to resources, the existing section manuals will be updated and consolidated to incorporate the new practices established under the Joint Rules of Court; and*
- c) *subject to resources, Bench Books will be progressively developed in all ACT court & tribunal jurisdictions.*

Recommendation 22 (page 81)

The LC&T Unit should:

- a) better integrate Magistrates Court counter services with the rest of the registry;
- b) in the review of registry functions, seek both to achieve fewer and better-trained teams and to encourage multi-tasking within teams; and
- c) consider the merits of combining the Supreme and Magistrates Courts registries.

JACS' Response:

Agreed.

- a) *structural changes to the Magistrates Court counter services are in scope of the Registry Renewal Project;*
- b) *that project has as one of its objectives to consolidate the existing small sections and achieve multi-tasking; and*
- c) *the merits of achieving a single registry structure will be considered following completion of the Magistrates Court Registry Renewal project and in light of consultation with the Judiciary and the users of the courts.*

Recommendation 23 (page 84)

The LC&T Unit should seek to improve HR management practices and provide as much certainty as possible to staff by:

- a) not recruiting at all if the position is not justified;
- b) recruiting permanently where the need has been established;
- c) recruiting for the period to the predicted completion of the Magistrates Courts renewal project if the future of the position is subject to this review; and
- d) where a temporary vacancy has been created, and requires filling, the position should be filled for the duration of the vacancy rather than for a portion of it.

JACS' Response:

Agreed. In light of the action underway in respect of the 2005-06 Budget Strategy and the centralisation of recruitment processing to the department's corporate HR unit, an assessment of recruitment action will be undertaken.

Recommendation 24 (Page 86)

The LC&T Unit should implement measures to address staff concerns raised, including performance management and staff training and development.

JACS' Response:

Agreed. In relation to training and development issues, the LC&T is in the process of establishing a Liaison Officer to the National Committee for Court Education, a recent initiative of the Australian Court Administrators Group, to implement nationally-consistent and externally accredited training for non-judicial court staff.

2. STRATEGIC PLANNING AND GOVERNANCE

INTRODUCTION

2.1 This chapter discusses the overall governance arrangements applied to the ACT Court system, including the relationship between the LC&T Unit and JACS and the judiciary, the LC&T Unit's functions, structure and its strategic planning and management framework.

KEY FINDINGS

- The current governance arrangements for the ACT Courts system indicate a lack of alignment between responsibilities and accountability.
- Clear accountability is difficult to achieve. The Courts Administrator has conflicting accountabilities to the Attorney-General, the Chief Executive of JACS, the Chief Justice, and the Chief Magistrate. Some financial accountability issues are also unclear. For example, judicial officers effectively make some expenditure decisions, but legally they are departmental decisions.
- It appears that actions better suited to a Business Plan are contained in the Strategic Plan and vice versa. The Law Courts and Tribunals Business Plan is much more general in nature and its actions appear to be less targeted.
- There is no overall risk management plan and no evidence that the risks identified in 2002 were monitored and addressed.
- There have been many reviews of the ACT Courts, dating back to the early days of self-government. The repetition of themes within these reviews indicates that there has not been a consistent process of formally analysing recommendations and either rejecting or accepting them, nor have there been sound processes to implement agreed recommendations.

ORGANISATIONAL STRUCTURE

2.2 The LC&T Unit provides integrated administrative, policy and operational support to the Territory's judiciary. It provides registry, case management and associated services to clients and stakeholders. It also manages contracted services in the areas of court recording and transcription, and physical security services.

2.3 As a business unit within JACS, the LC&T Unit is subject to overall JACS policy and direction; for example, its budget is coordinated through JACS, and its staff are staff of the Department. The LC&T Unit has internal support staff providing services such as finance, human resources, building management, and library, and also receives services from JACS such as additional finance and HR support, and internal audit.

2.4 The LC&T Unit is headed by the Courts Administrator, who is also on the JACS executive team. Other senior executive staff are the Registrars appointed for both the Supreme and Magistrates Court. Registrars also conduct hearings, at which times their functions are judicial or quasi-judicial. At June 2005, the LC&T Unit consisted of 141 staff. Figure 1 above shows the organisational structure of the LC&T Unit.

Supreme Court

2.5 The Supreme Court is a superior court of record, and is the senior court of original jurisdiction in the Australian Capital Territory. The Supreme Court has unlimited civil and criminal jurisdictions, and exercises an appellate and supervisory jurisdiction in respect of the Magistrates Court and Tribunals.

2.6 The Supreme Court has four resident judges. At the end of 2004, there were 19 additional judges, each of whose primary commission is as a Judge of the Federal Court of Australia, and the Master (who has broad jurisdiction in personal injuries matters).

Court of Appeal

2.7 The Supreme Court is known as the Court of Appeal when exercising its appellate jurisdiction under Part 2A of the *Supreme Court Act 1933*. The Court of Appeal usually sits for 2 weeks in each sitting. Sittings are scheduled in February, May, August and November each year although there may be circumstances where a matter is listed outside of normal sittings.

Magistrates Court

2.8 The Magistrate Court has jurisdiction to hear and determine civil and criminal cases across an extensive range of disputes, including:

- offences under the criminal law;
- domestic violence and personal protection orders;
- civil debt and damages; and
- workers' compensation matters.

2.9 Magistrates also make up the Coroner's Court and the Childrens Court. One Magistrate is appointed as a dedicated Childrens Court Magistrate, as required by legislation. The Chief Magistrate is the Chief Coroner, and all Magistrates act as Coroners on a rotational basis.

2.10 The Magistrates Court consists of nine resident Magistrates, including the Chief Magistrate. Special Magistrates are appointed on a temporary basis as required. The Registrar of the Magistrates Court is also a permanent Special Magistrate.

Independence and accountability

2.11 There are several key issues to consider on the governance of courts. Perhaps the most significant is the interplay between the key issues of independence of the judiciary and the accountability to government and the Legislative Assembly for public expenditure.

2.12 There has been a distinction between adjudicatory independence, ‘a state of affairs in which judges are free to do justice, ... protected from the power and influence of the State and also made as immune as humanly possible from all other influences that may affect their impartiality’,³ and administrative responsibility. The relative weight ascribed to these partially conflicting principles will tend to influence the way in which courts administration is governed.

2.13 Judicial independence is vital, as without it, there would be no public confidence in the judicial system. At the same time, all organisations need good governance, which implies being administratively responsible to an outside body. In this regard, Courts are public institutions, part of the system of representative and responsible government and funded by the taxpayer. Those in charge, like all public officials, are accountable for their work. A significant element of judicial accountability derives from the fact that they conduct their business in open court and give reasons for their decisions. Nevertheless, there remains accountability for non-judicial matters such as administrative efficiency and proper expenditure of public moneys.

2.14 An Audit review of literature on courts administration indicates that in recent years there has been greater support for courts to manage their own affairs, with a robust accountability framework in place to report on their performance. Audit is aware of the importance of judicial independence and accordingly limits the audit scope to the administration of the Courts to support the judicial functions.

Governance of other courts

2.15 There are various governance models, each with its own advantages and disadvantages, that apply to courts systems in Australia and overseas. Some models appear to work well in some jurisdictions but not in others, reflecting the many factors at play, including complex issues of leadership, culture and political environment.

2.16 The majority of courts in Australia, including the ACT, follow the pattern of administrative services provided by an Attorney-General’s Department or similar. In such a system, many commentators have observed that since neither the judiciary nor the executive have complete management authority, each can avoid responsibility for any shortcomings of the courts. Church and Sallman have observed that:

³ Sir Ninian Stephen, quoted in Thomas Church and Peter A Sallman *Governing Australia’s Courts*, AIJA, 1991, p. 7

Regard for the independence of the judiciary has tended to make judges hesitant to participate in executive department reform efforts, and executive departments wary of intervening in judicial administration affairs. A mutual reluctance to tread in the no-man's-land between the ill-defined borders separating executive and judicial authority has retarded initiative, reform and modernization of court administration.⁴

2.17 However, there are some exceptions. In South Australia, services are provided by a Courts Administration Authority (CAA). The Authority is independent of Government and is a means for the judiciary to control the provision of the administrative facilities and services required by state courts to carry out their judicial functions. The CAA provides administrative support to the three levels of courts in SA, namely Supreme, District and Magistrates Courts, and to a number of specialist courts and tribunals. The Supreme and District Courts share the same registry.

2.18 Commonwealth courts, namely the High Court, the Federal Court, the Family Court and the Federal Magistrates Court, all have integral administrative units that report to the Chief Justice or the Chief Magistrate, who is thereby both the judicial and administrative head of the court. For the Family Court, for example, there is a Chief Executive Officer responsible to the Chief Judge and appointed by the Governor-General on the nomination of the Chief Judge. The relationship between the Head of Jurisdiction and the CEO has been described as analogous to that between a minister and the head of a Department.⁵ The difference between the South Australian CAA and federal models is that the CAA is a separate statutory authority consisting of the Chief Justice, the Chief Judge of the District Court and the Chief Magistrate.

2.19 Audit acknowledges that Statutory Authorities or Territory-Owned Corporations can be means by which government activities are carried out, still subject to constraints such as the Public Sector Management Act and the Financial Management Act, but with less direct control by government. Universities also combine public funding with a vigorously defended independence.⁶

2.20 There are variations within the 'traditional' model of services provided by an Attorney-General's department that can provide for more or less administrative independence. These include the degree of separation of the courts administration as a separate business unit within the Attorney-General's department, whether the courts produce their own annual report or reports, and the degree of direct access by the courts in submitting budget proposals to the Attorney-General or the Treasurer. However, even in models such as federal courts with their independent structures, the practice has been for the Attorney-General to prioritise budget proposals from the

⁴ Thomas Church and Peter A Sallman, *Governing Australia's Courts*, AIJA, 1991, p. 64

⁵ *Report of the Working Party on the Review of the Family Court*, September 1990, p.93 (quoted in Thomas Church and Peter A Sallman *Governing Australia's Courts*, AIJA, 1991, p. 44)

⁶ Alford, John, Royston Gustavson and Philip Williams, *The Governance of Australia's Courts: A Managerial Perspective*, AIJA, 2004.

various bodies in the portfolio, with the advice of his or her department, before submitting them to Cabinet.⁷

Achieving good governance

2.21 From a managerial perspective, Alford, Gustavson and Williams proposed three principles for effective court governance:

- authority should be aligned with responsibility;
- interdependencies should be optimised (i.e. group like functions together); and
- economies of scale or scope should be optimised.⁸

2.22 The Australian National Audit Office (ANAO) defined public sector governance as ‘including how an organisation is managed, its corporate and other structures, its culture, its policies and strategies and the way it deals with its various stakeholders. The concept encompasses the manner in which public sector organisations acquit their responsibilities of stewardship by being open, accountable and prudent in decision-making, in providing policy advice, and in managing and delivering programs’.⁹ The ANAO listed the processes and practices of good governance as including:

- leadership, ethics and performance culture;
- stakeholder relationships;
- risk management;
- external conformance and accountability (e.g. annual reporting and responsiveness to bodies such as the Legislative Assembly, the Auditor-General and the Ombudsman);
- internal conformance and accountability (e.g. internal audit, fraud control and sound operation of executive committees);
- planning and performance monitoring;
- information and decision support; and
- review and evaluation of governance arrangements.

Assessment of the governance of ACT Law Courts

2.23 Of the above list, planning, risk management and elements of internal and external accountability and decision support (e.g. executive committee) are discussed in this chapter. Performance monitoring is discussed in Chapter 3 and stakeholder

⁷ Thomas Church and Peter A Sallman, *Governing Australia’s Courts*, AIJA, 1991, p. 47

⁸ Alford, John, Royston Gustavson and Philip Williams, *The Governance of Australia’s Courts: A Managerial Perspective*, AIJA, 2004.

⁹ Australian National Audit Office. *Public Sector Governance – Better Practice Guide*, July 2003, p.6.

relations in Chapter 5. Internal audit and fraud control are handled centrally by JACS and are not covered in this report.

External accountability

2.24 The preparation of an Annual Report by courts is common in Australia and contributes significantly to accountability and transparency. In all jurisdictions other than the Northern Territory and the ACT, Courts provide either a full annual report, or an annual review. The 'review' model normally contains selected information and statistics, but does not have all of the components normally found in an Annual Report of a Government Department. The most common arrangement is for the Head of Jurisdiction to address the report to the Attorney-General.

2.25 An annual report allows judicial officers to issue a public statement on administrative issues of concern, and allows better communication to the public of results of interest. Annual reports prepared by the courts can also give more information to the public about what the courts actually do.

2.26 In the ACT, some components of the courts already supply annual reports, annexed to the JACS Annual Report. The Annual Report of the Chief Coroner is mandated by the Coroners Act 1997. This report covers not only a summary of findings from inquests but also general issues related to the administration of the Coroner's Court. The Annual Report of the Childrens Court, covering key issues in the administration of that court, is also annexed to the JACS Annual Report. The Childrens Court Annual Report is called for by the Annual Reporting Directions rather than directly by legislation. In addition, each Tribunal has an annual report annexed to the JACS report.

2.27 Currently, the Supreme Court and Magistrates Court do not produce their own annual report, so the information reported by them in the JACS Annual Report is limited.

2.28 External accountability can also be enhanced through Courts' responsibility for its budget outcomes, and report it as part of the annual report.

Internal Accountability

2.29 As a smaller body, the LC&T Unit occasionally needs to call on expertise from others in areas such as human resources. Such services could be provided by an arrangement with JACS or indeed with other agencies, noting that JACS has itself arranged for financial services to be provided by the Chief Minister's Department. At the time of audit, recruitment functions were in the process of being moved to JACS Corporate Services.

2.30 Some financial accountability issues are currently not clear. For example, judicial officers effectively make some expenditure decisions, but legally they are

departmental decisions. Conversely, these judicial officers may not be responsible or accountable for the financial consequences of the decisions they make.

2.31 Listing decisions are formally those of the Heads of Jurisdiction. They are assisted by listing clerks who help to arrange, for example, allocations of Magistrates to lists. Heads of Jurisdictions are conscious of the need to dispose of cases quickly, and seek advice from officers such as Registrars and the Courts Administrator.

2.32 Accountability links for court staff are also described in organisational structure documents and in duty statements. Some formal duty statements do not relate clearly to the tasks that are actually performed. This is discussed more in the section on staffing.

Governance – some concluding comments

2.33 In the ACT, effective court management is difficult to achieve under current governance arrangements, due in part to lack of clarity of roles and clear lines of responsibility and accountability. The Courts Administrator has sometimes conflicting accountabilities to the Attorney-General, the Chief Executive of JACS, the Chief Justice and the Chief Magistrate. On occasions, for example, he can be providing advice to both the Head of Jurisdiction and the Minister, who have different views on the same issue. As the Courts Administrator reports to the CEO of JACS, the CEO also has ambiguous responsibility in relation to the efficient operation of the Courts.

2.34 The current arrangements do not appear to be conducive to effective administration of courts and indicate a lack of alignment between responsibilities and accountability between JACS and the courts; different ethos and processes, and a degree of misunderstanding between the organisations. In particular, Audit observed that there exists a concern from both the judiciary and the Department to potentially step over the boundary separating executive and judicial responsibilities. This makes it difficult for the ACT to achieve a partnership culture, which is critical for the achievement of Court efficiency.

2.35 Better governance arrangements would give the courts full control over their staff, internal financial management, facilities and operations, with the role of the Executive being confined to the appointment and remuneration of judges and the provision of an annual global budget.¹⁰

2.36 The Government could move towards providing enhanced independence to courts administration to align with public accountability for their own performance. In the first instance, this might extend to inviting an annual report by the Heads of the Jurisdiction and a submission of their own Budget proposals to the Attorney-General or the Treasurer.

¹⁰ Alford, John, Royston Gustavson and Philip Williams, *The Governance of Australia's Courts: A Managerial Perspective*, AIJA, 2004, pp 20-22; p. viii.

2.37 In the long term, for any governance model to work well, it is important that there is clarity of vision and the commitment to shared common goals. A better outcome is more likely to be achieved if the Courts and Government, working in partnership, start from first principles and remain focused on desired outcomes, rather than choosing a model of governance based on patterns elsewhere. Practical cooperation between the Executive Government and the judiciary is essential.

2.38 Audit was advised that there will be a proposal to resume meetings of the Courts Strategic Committee. This committee consists of the Chief Justice, the Chief Magistrate, the Chief Executive of JACS and the Courts Administrator. This body planned to meet quarterly, but it has not met since September 2003.

Recommendation 1

JACS should work with the judiciary with a view to:

- a) establishing a more collaborative relationship between the judiciary and the Department;
- b) putting in place regular forums for communication between the judiciary, the Department and the executive arm of the Government; and
- c) establishing a governance model for the courts that provides greater administrative independence and hence better alignment of courts' responsibility with public accountability.

Recommendation 2

JACS should invite the heads of jurisdictions to contribute comprehensive annual reports for incorporation in the overall JACS Annual Report. Alternatively, heads of jurisdictions should provide their annual report directly to the Attorney-General or the ACT Legislative Assembly.

STRATEGIC PLANNING

2.39 A strategic plan should include aims, objectives, as well as targets and strategies to achieve desired outputs and outcomes.

2.40 The Strategic Plan 2002 – 2005 for the ACT Criminal Justice System applies to the work of a number of different criminal justice agencies, including the courts administration. The Strategic Plan lists 15 key actions where the Courts Administration is the lead agency and one key action that relates to all agencies. These 16 key actions are reproduced at Appendix 2.

2.41 The Strategic Plan states that 'it is not intended that this document should contain either performance measures or time-lines in relation to each of the key actions' but 'it is envisaged that the key actions will be reflected in the separate business plans of each of the criminal justice agencies.'

2.42 The Business Plan for Law Courts and Tribunals is for the period 1 July 2004 to 30 June 2006, and therefore, overruns the duration of the Criminal Justice System Strategic Plan. The Business Plan identifies key outcomes, objectives and performance indicators, as well as identifying the actions that need to be taken. Each action is prioritised, assigned to an action officer and has a target date.

2.43 Audit notes that actions better suited to a Business Plan are contained in the Strategic Plan and vice versa. The Business Plan is much more general in nature and its actions appear to be less targeted. For example, the Business Plan stated that Customer Service Surveys were to be conducted, however it did not identify how survey results would be used. Further, the Business Plan action to 'Develop and publish a customer service charter' falls short of the Strategic Plan, where the action is 'develop, implement and review a client service charter with performance indicators'.

2.44 The LC&T Unit stated that the Unit attempted to make their Business Plan consistent with the draft JACS Strategic Plan. Although it was broadly consistent with the draft JACS Strategic Plan, the Business Plan did not reflect the LC&T Unit vision as described in the 'our organisation' section of the JACS Strategic Plan. Similarly, it did not refer to the activity of developing court rules that was listed in the Strategic Plan. It would also be helpful to have references in the Business Plan to these Strategic Plans.

MONITORING OF DELIVERY AGAINST THE STRATEGIC PLAN

2.45 The LC&T Unit Business Plan, designed to commence from 1 July 2004, was not approved by the CEO of JACS until November 2004. The Courts Executive set up reasonable plans at that time for consideration of progress at 6-monthly intervals and for discussions at staff meetings. Audit's assessment is that there has been reasonable progress in that some of the key priorities described in the Business Plan have been already achieved.

RISK MANAGEMENT

2.46 In early 2004, the ACT Government adopted a risk management policy that included the statement that 'Chief Executives are responsible for developing risk management strategies and practices within their agencies and for ensuring that these strategies are communicated to and practised by all employees.'

2.47 An 'initial risk assessment' was prepared for the courts in 2002 as part of a consultant's review of financial management processes. The risk assessment naturally focused on financial management issues, but extended to some wider concerns. There has also been some risk assessment work related to individual projects in the courts. However, there is no overall risk management plan in place, and no evidence that the risks identified in 2002 were monitored and addressed.

Recommendation 3

The LC&T Unit should develop a risk management plan to assist in identification and amelioration of significant risks.

IMPLEMENTATION OF AGREED RECOMMENDATIONS OF REVIEWS

2.48 There have been many reviews of the ACT Courts, dating back to the early days of self-government. Those that Audit became aware of are listed in Appendix 3. The repetition of themes within these reviews indicates that there has not been a consistent process of formally analysing recommendations and either rejecting or accepting them, nor have there been sound processes to implement agreed recommendations. There seems to have been a pattern of commissioning reviews and only partly implementing their findings.

Curtis Review

2.49 The Curtis Review of 1990, among other things, recommended:

- integrated administration of the two courts;
- integrated listing procedures;
- the overall authority of the Chief Justice for operation of the system; and
- scales of costs should encourage efficient processing of the work¹¹.

Ernst & Young report

2.50 The Ernst and Young report of 1994 also supported an integrated framework of court administration. It recommended that a new agency be responsible for administering the ACT Court and Tribunal system, with the agency head responsible to the Attorney-General for the administrative functions of the court and tribunal system.

2.51 The review envisaged a later transition to a Court Administration Authority under the control of a Board of Management including the Chief Justice, the Chief Magistrate, and the Authority Executive.¹²

Hunter Review

2.52 Most of the recommendations of the Hunter review of 1997 were implemented; for example the creation of a Courts Administrator position and a number of other structural changes. However some problems observed relating to IT and the use of acting positions have not been resolved. Indeed, the Hunter report

¹¹ Lindsay Curtis, *Review of Court Structures in the ACT*, August 1990.

¹² Ernst & Young, *Scoping Study for Review of ACT Court Administration*, November 1994.

noted that ‘in many cases the solutions are known but implementation has been either lacking or ineffectual.’

Byron Report

2.53 In 1999, Gary Byron, then a consultant, conducted a review of the listing system in the Magistrates Court. Subsequently, the main recommendations were implemented through a statement of procedures known as the Somes Report (after Magistrate Somes). This Report was agreed by representatives from the police, ACT and Commonwealth DPP, Legal Aid, Bar Association and Law Society. However, some of the remaining recommendations were not implemented. Those that were not implemented included:

- introduction of timeframes for each major stage of the system;
- establishment of a list management committee (covering all lists); and
- conducting a research project to examine merits of sentence indication.

2.54 The report also recommended consideration of devices to enforce compliance with the court listing system, including differential sentencing discounts, costs awards, adjournment applications to be in writing only, payment of administration fees for late changes of pleas or withdrawal of prosecution; recording and publishing of details of non-compliance by any person or organisation, and requiring the prosecution and defence to confer privately within one week of the date of hearing. These recommendations have not been implemented.

McFeat report

2.55 A report by Insight Business Solutions in 2002, known as the McFeat report (after its principal investigator) did lead to a strengthening of the financial management position and establishment of customer satisfaction surveys; but others of the 76 recommendations were neither formally rejected nor taken up. The report, amongst other things, recommended re-engineering of business processes, introduction of time recording, devolution of budget management, development of skill profiles and introduction of activity-based costing. None of these were implemented.

Ngambra Circle Evaluation

2.56 The courts conducted an evaluation of the Ngambra Circle Sentencing Court, which was established on a pilot basis in 2004. This was based on a participant survey, and led in part to continuing the Circle permanently. The survey gave very positive feedback from a participant point of view. However, there were no victims or victim representatives responding to the survey. Partly on the basis of this evaluation, funding to continue the Circle was sought and gained (although not to the full amount sought) in the 2005-06 budget.

Internal Audit

2.57 As a business unit of JACS, there has been a program of internal audits within the LC&T Unit. Most of these related to corporate services.

2.58 After the Magistrates Court identified in early 2004 some errors in the issuing of warrants, an internal audit was commissioned that made recommendations to improve the control and efficiency of this process. Most recommendations were agreed or agreed in principle. However, as this internal audit was not formally accepted by the Audit Committee until May 2005, there was no implementation update scheduled until August 2005. Accordingly, Audit is not aware of any progress made on this issue.

Recommendation 4

The LC&T Unit should, for recent and future audit and evaluation reports, establish implementation plans that address each agreed recommendation, and monitor and report on the progress against these plans.

3. PERFORMANCE MEASURES AND REPORTING

INTRODUCTION

3.1 This chapter discusses the appropriateness and comprehensiveness of performance indicators for the LC&T Unit, the extent to which they are monitored and acted on, and the public reporting of performance.

3.2 This chapter also presents some of the key performance measures and compares the performance of the ACT against other Australian jurisdictions.

KEY FINDINGS

- Based on comparative data available, and subject to its limitations, the performance of ACT Courts did not generally compare well against other jurisdictions with respect to some performance measures:
 - Statistics in the Australian Bureau of Statistics (ABS) report on the Criminal Courts for 2003-04 indicate that the ACT Magistrates Court had the highest proportion of its cases taking longer to finalise than other states and territories. On state and territory average, 44% of cases were finalised in under 6 weeks, but only 16.8% in the ACT were finalised over the same period. At the 26-week mark, 76% of cases in the ACT Magistrates Court were finalised, compared with 90% nationally.
 - For the Supreme Court, the ACT's timeliness is close to the average for other states and territories.
 - Although ACT Courts have improved their performance on costs against other states in recent years, the ACT Childrens Court remained the most expensive of all jurisdictions in recent years.
 - On average, the number of attendances for criminal matters was higher than any other state or territory for the ACT Supreme Court and Magistrates Court in 2003-04. The Coroner's Court had the highest average number of attendances in 2003-04, and the Childrens Court had the second highest for the same period.
- Notwithstanding improvements in recent years in ACT Court reporting, there is still less information available to the ACT community compared with some of their counterparts in other states. Unlike the ACT, many Federal and State Courts provide their own comprehensive annual reports.

PERFORMANCE MEASURES FOR ACT COURT ADMINISTRATION

3.3 Prior to 2005-06, indicators for ACT Court administration were structured according to quantity, quality/ timeliness and cost.¹³ The quantity indicators, namely number of court sitting days, number of matters lodged, number of matters listed and number of matters finalised, will no longer be reported as part of the financial statements.

3.4 The 2005-06 Budget introduced changes to the overall structure of performance measures in the ACT Government. Each organisation will now report on both strategic indicators (representing a longer-term broader target for achievement by Government with the community) and accountability indicators, intended to measure a department's effectiveness and efficiency in delivering its outputs.¹⁴

Strategic indicators

3.5 Strategic Indicator 1, Fair Justice System, is relevant to the courts and reads as follows:

The ACT justice system seeks to ensure fairness to all persons involved. A fair justice system is accessible, deals with matters in a reasonably expeditious manner and is one in which all persons involved conduct themselves in a way that promotes, protects and respects rights.

3.6 There are two components to this indicator:

- **Courts Clearance Indicator** - the percentage of total lodgements finalised.
The clearance indicator measures whether the court is keeping up with its workload. The target for the indicator is 100% as this indicates that the court finalised as many cases as were lodged. A figure of greater than 100% means that the pending caseload of the court is decreasing. The clearance indicator can be affected by external factors such as changes to legislation as well as changes in the court's case management practices.
- **Level of complaints against criminal justice agencies** – the number of upheld complaints under the Ombudsman Act 1989 (ACT) about criminal justice agencies, per 100,000 population.
This is a new measure. The objective of the measure is to achieve a zero result.

Accountability indicators

3.7 The LC&T Unit stated it would report against national Key Performance Indicators (KPIs) in the Annual Report from 2005-06 onwards. The indicators are:

- backlog indicators - percentage of cases exceeding benchmark timeframes;

¹³ Budget 2004-05. Budget paper 4, p. 304

¹⁴ *A guide to changes in 2005-06 Budget presentation.* Part of the 2005-06 Budget papers.

- attendance indicator – a measure of expedition that examines the number of attendances for parties for each finalised matter (this indicator is also a proxy indicator for cost);
- judicial resources – per 100,000 head of population;
- clearance indicator - finalisations, divided by the number of lodgements; and
- cost per case - reasonable cost efficiency.

3.8 The clearance indicator is duplicative, in that it is used as both a strategic and an accountability indicator.

ASSESSMENT OF PERFORMANCE MEASURES

3.9 The Annual Report for the LC&T Unit is incorporated into the JACS Annual Report, which also includes brief reports for each of the Tribunals, the Childrens Court, and the Coroner's Court. The relevant Annual Reports address accountability requirements such as statistics on performance, and in the case of courts, comment on performance against key targets, including those that were not met.

3.10 The performance statistics reported for the courts in 2003-04 represent the first stage of reporting more consistent, comparable and meaningful information. The second stage is to report against the National Key Performance Indicators (KPIs) in 2005-06, which will show the courts' comparative performance against national benchmarks. Audit supports the courts' current moves towards standard and comparative performance reporting.

3.11 Audit's view is that performance measures reported to date are reasonable, and that work is proceeding on improvements. The measures were assessed as reliably reported in 2004-05. However, 'level of complaints against criminal justice agencies' is more relevant to the justice system as a whole, with limited relevance to courts. Consideration of complaints addressed specifically to the courts, or more broadly the results of community consultation, might give a better view.

3.12 The clearance indicator is forward looking, in that it shows whether timeliness will improve or deteriorate in the future. However, it does not show the current level of timeliness, which is of more interest to litigants. This is better expressed by the backlog indicator.

3.13 Productivity Commission staff with the Australian Courts Administrators Group have indicated a move in the longer term (2006-07 at earliest) to more useful workload measures that are akin to the case-weighted workload used in the health system, for example, not focusing on number of cases at Tribunals, Magistrates Court or Supreme Court, but on number of (for example) traffic offences, assaults, planning disputes, murders etc. This will place incentive on handling cases at the right level. Audit supports the move to improved indicators. Adoption of common indicators across jurisdictions will allow for better comparability between jurisdictions and hence better accountability, despite some differences between jurisdictions.

3.14 The Magistrates Court kept statistics on the case management process, including reductions in estimated court time achieved through criminal case management conferencing, but collection of these statistics was stopped as a cost-savings measure. The statistics showed that in 2003, with conferencing, 368 defendants (53%) were finalised at Case Management hearings, with an estimated saving of 1635 hours (327 days) of court time, and 3806 witnesses not having to attend court. Audit considers that such statistics help improve caseflow management, and cost-effective means to reinstate the data collection should be explored.

3.15 There is no analysis conducted of timeliness of classes of cases broken down by the stage of the case, e.g. application to conference to trial to result. There was an attempt to analyse this for Domestic Violence cases, but this was not completed.

3.16 Determining what time delay is reasonable for cases or each of the main types of case is inherently difficult because in some cases delays may deliver a more desirable outcome. Timeliness of court cases is also influenced by factors other than those in control of the courts (e.g. a witness not being available) and in most cases (both criminal and civil jurisdictions) one party has an interest in delay.

COMPARATIVE PERFORMANCE BY THE ACT COURTS

3.17 The ABS and the Productivity Commission are the two authoritative sources of comparative performance data on Courts across Australia.

3.18 The national Report on Government Services (ROGS), to which the ACT Courts provides input on its statistics, has been prepared annually by the Steering Committee for the Review of Government Service Provision since 1996.¹⁵ This report provides a range of statistics for all states and territories of Australia, as well as for the Australian Courts (which includes statistics for the Federal Court of Australia, the Family Court of Australia and the Federal Magistrates Court). As the Report on Government Services 2005 (ROGS) explains:

Differences in court jurisdictions, along with the use of specialist courts and tribunals, can mean that the allocation of cases to courts varies across states and territories ... As a result, the seriousness and complexity of cases heard in each jurisdiction's equivalent court often vary. Any performance comparison needs to account for these factors.

3.19 For example, the ACT, the Northern Territory and Tasmania have only a Magistrates Court and a Supreme Court whereas other Australian states also have an intermediate court (County or District). In addition, it has been put to Audit that legislative requirements in the ACT limit the opportunities for improving efficiency.

¹⁵ The Report on Government Services 2005 is available at <http://www.pc.gov.au/gsp/reports/rogs/2005/index.html>

Backlog Indicator

3.20 The 'backlog indicator' measures a court's pending caseload against time standards. The indicator recognises that case processing must take some time and that such time does not necessarily equal delay. Timeliness can be affected by delays caused by factors other than those related to the workload of the court (for example, a witness not being available).

3.21 In the USA, standards were suggested as long ago as 1967.¹⁶ The first national standards for backlog indicator in Australia have been set as follows:

Magistrates, Childrens and Coroner's Courts and the Federal Magistrates Court.

- No more than 10 per cent of lodgements pending completion to be more than 6 months old.
- No lodgements pending completion to be more than 12 months old.

District, Supreme and Family Courts, the Federal Court and all appeals.

- No more than 10 per cent of lodgements pending completion to be more than 12 months old.
- No lodgements pending completion to be more than 24 months old.

3.22 Audit considers that the setting of this standard is a positive move toward identifying not only how the ACT Courts are performing compared to other jurisdictions, but also in determining what are acceptable and reasonable timeframes. Audit also understands that there may be variations between jurisdictions that make it difficult to draw direct comparisons. Despite such challenges, the setting of benchmarks and publicly reporting against them ensures that the courts have greater accountability for their performance.

3.23 Tables 1 and 2 below are an excerpt of results drawn from the ROGS and data provided by the LC&T Unit for 2004-05:

¹⁶ 'President's Commission on Law Enforcement and the Administration of Justice', quoted in Tim McGrath, *Caseflow Management*, February 1989. Attorney-General's Department of NSW, p.20

PERFORMANCE MEASURES AND REPORTING

Table 1 –Backlog indicator compared to other states and territories (2003-04) and for the ACT (2004-05).

Percentage of cases that did not meet the basic timeliness standards ¹⁺								
	NSW	Vic	Qld	WA	SA	Tas	ACT 2003-04	ACT 2004-05
Supreme Court – criminal (non-appeal)	27.1	24.3	13.9	21.9	33.3	21.5	10.7	3.3
Supreme Court – civil (non-appeal)	40.3	35.6	46.2	38.5	23.6	48.5	45.5	52.1
Magistrates Court - criminal	11.5	17.4	25.4	52.5	28.9	19.0	21.7	18.3
Magistrates Court - civil	n.a	35.6	39.0	58.7	44.5	38.7	46.1	47.3
Childrens Court - criminal	11.5	6.6	22.5	24.8	20.1	28.2	24.1	16.2
Coroner’s Court	47.5	46.3	50.2	54.1	n.a	38.9	37.6	42.0

¹ Basic standards: 12 months for Supreme Court, 6 months for all others. The target is that no more than 10% of cases exceed these times.

Northern Territory figures not available.

Table 2 –Backlog indicator compared to other states and territories (2003-04) and for the ACT (2004-05).

Percentage of cases that did not meet the long-wait timeliness standards ¹								
	NSW	Vic	Qld	WA	SA	Tas	ACT 2003-04	ACT 2004-05
Supreme Court – criminal (non-appeal)	2.8	5.4	2.2	6.9	10.4	0.9	5.4	0.0
Supreme Court – civil (non-appeal)	23.7	10.6	26.6	21.1	4.7	26.8	22.0	23.8
Magistrates Court - criminal	2.8	4.5	10.3	38.2	9.0	8.3	9.6	6.1
Magistrates Court - civil	n.a	23.3	8.4	26.4	15.2	3.8	15.2	14.4
Childrens Court - criminal	2.5	1.2	9.3	11.7	6.6	12.4	11.4	6.1
Coroner’s Court	26.0	25.8	29.7	32.1	n.a	19.7	22.2	30.2

¹ Long-wait standards: 24 months for Supreme Court, 12 months for all others. The target is that no cases exceed these times.

Northern Territory figures not available.

3.24 Tables 1 and 2 show the following:

Criminal jurisdiction

- no jurisdiction met the standards for either the Supreme Courts (non-appeal) or the Magistrates Court in 2003-04. However, the ACT met the long-wait standard for Supreme Court (criminal) in 2004-05;
- for the Childrens Court, Victoria was the only jurisdiction that met the basic standard; and
- for the Coroner's Court, no jurisdiction met the standards.
- in 2004-05, the ACT significantly reduced the percentage of cases that did not meet the standards in the Childrens Court and Supreme Court (criminal), compared to 2003-04.

Civil jurisdiction

- no jurisdiction met the standards for either the Supreme Courts (non-appeal) or the Magistrates Courts.

3.25 Figures reported to Audit for ACT Childrens Court (civil) for 2004-05 also improved and showed a significant decrease in the percentage of cases that did not meet time standards. These figures were not reported separately in ROGS for the civil jurisdiction.

3.26 Statistics on court timeliness are also reported by the Australian Bureau of Statistics (ABS) report on the Criminal Courts for 2003-04. This identified that:

- the ACT Magistrates Court consistently had the highest proportion of its cases taking longer to finalise than other states and territories;
- the ACT finalised only 16.8% of its cases in fewer than 6 weeks, where the average proportion of cases finalised in less than 6 weeks across the states and territories was 44%. At the 26-week mark, 76% of cases in the ACT Magistrates Court were finalised, compared with 90% nationally.
- for the Supreme Court, the ACT's timeliness is close to the average for other states and territories.

3.27 Initial scheduling of cases at both courts occurs within a reasonable time. However, delays after case commencement mean that sometimes the overall period to disposing of the matter is too long. For example, the ACT is consistently in the bottom half of performers on timeliness as reported in various comparative statistics.

3.28 The courts produce a 'Monthly Performance Statistics' summary sheet for internal monitoring. This sheet provides for recording compliance with timeliness, but no information is produced. The specifications for the data also refer to compliance with timeframes. Audit found that similar gaps in the statistics apply to the Childrens Court.

Attendance Indicator

3.29 The attendance indicator is a measure of effectiveness that shows the number of times that parties or their representatives are required to be present in court to be heard by a judicial officer (including appointments that are adjourned or rescheduled). It can affect timeliness of cases.

3.30 Table 3 below compares the highest and lowest average number of attendances per finalisation for the criminal jurisdiction (2003-04) and provides the ACT result for 2004-05.

Table 3: Attendance indicator comparisons in criminal jurisdictions (2003-04) and for the ACT (2004-05).

	Lowest average number of attendances and the jurisdiction 2003-04	Highest average number of attendances and the jurisdiction 2003-04	Average number of attendances per finalisation in the ACT for 2004-05
Supreme Court	2.3 in Vic	6.3 in the ACT	5.7
Magistrates Court	1.7 in Qld	4.9 in the ACT	4.2
Coroner’s Court	0.1 in Vic, WA, Tas and NT	0.2 in the ACT	0.1
Childrens Court	2.0 in Qld	5.4 in the NT	6.1

Source: ROGS 2005, attachment titled ‘Attach6A.xls’, Table 6A.19 and data provided by the LC&T Unit for 2004-05.

3.31 Table 3 shows that, on average, the number of attendances for criminal matters was higher than any other state or territory for the ACT Supreme and Magistrates Court in 2003-04. The table also shows that the Coroner’s Court had the highest average number of attendances in 2003-04, but this was lower in 2004-05.

3.32 The table also shows that the average number of attendances per finalisation in 2004-05 decreased for the Supreme and Magistrates Courts and increased for the Childrens Court.

3.33 The ROGS report also showed that in 2003-04 the average number of attendances for the ACT Childrens Court was the second highest of the states and territories (at 5.2).

Judicial Officers

3.34 Table 4 below compares the number of judicial officers, full time equivalent, per 100,000 head of population (2003-04) in the ACT to some states and territories. The ACT result for 2004-05 is also provided.

Table 4: Judicial officers, full time equivalent, per 100,000 head of population (2003-04) and for the ACT (2004-05).

Lowest number of judicial officers and jurisdiction	Highest number of judicial officers and jurisdiction	Number of judicial officers in the ACT 2003-04	Average across the states and territories 2003-04	Number of judicial officers in the ACT 2004-05
3.3 in Queensland	10.4 in the Northern Territory	4.1	5.0	4.3

Source: ROGS 2005, attachment titled 'Attach6A.xls', Table 6A.20

3.35 Table 4 shows that the ACT had a below average number of judicial officers per 100,000 head of population in 2003-04. The number of judicial officers per 100,000 head of population increased in 2004-05.

Clearance Rate

3.36 The table below, Table 5, shows the clearance rate (finalisations/lodgements) across states and territories (2003-04) for the Magistrates Court (including Childrens Court) for both criminal and civil jurisdictions.

Table 5: Clearance rate for states and territories (2003-04).

Magistrates Court	NSW	Vic	Qld	WA	SA	Tas	NT	ACT
Criminal	98.0	94.2	99.5	104.4	46.8	91.6	89.8	102.0
Civil	95.7	85.8	104.7	66.2	67.2	102.7	62.2	106.4

Source: ROGS 2005, attachment titled 'Attach6A.xls', Table 6A.21 and 6A.22

3.37 Table 5 shows that in 2003-04 the ACT was the only jurisdiction to have a clearance rate in 2003-04 of over 100 per cent in the Magistrates Courts for both the criminal and civil jurisdictions. This means that they not only kept up with their current workload, but actually reduced their pending workload in 2003-04.

3.38 The LC&T Unit reported that the clearance rate for the ACT Magistrates Court in 2004-05 remained above 100 percent.

Costs per case

3.39 A number of jurisdictions report on costs per case (or per lodgement) in their Annual Reports. For example:

- the Northern Territory reports on costs per lodgement for both the higher courts and the lower courts and tribunals;¹⁷

¹⁷ Excerpt from Northern Territory Department of Justice Annual Report 2003-04, p. 55.

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- Western Australia reports on average cost per case for each court (i.e. Supreme, Magistrates, Family, Childrens and District Courts);¹⁸ and
- the Attorney-General's Department of New South Wales' 2003-04 Annual Report states that: 'Net expenditure per finalisation in the NSW Supreme Court and NSW District Court is less than the average for Australia, although in NSW Local Courts it is slightly higher than the average for Australia.'¹⁹

3.40 Cost per case in the ACT was reported in the 2003-04 Annual Report, and cost per case is one of the national Key Performance Indicators that will be reported on from 2005-06.

3.41 As previously discussed above, Audit recognises the limitation of comparative data across states and territories, but considers that it remains useful as an indicative benchmark.

3.42 Statistics from the ROGS are similar to those presented at Table 8 of the JACS Annual Report 2003-04 relating to cost per matter. This table is reproduced below at Table 6. It indicates that although Tasmania, Victoria and Queensland almost always have lower costs per matter, it appears that the ACT has improved its performance against other states in recent years, with the exception of the Childrens Court, which is the most expensive of all jurisdictions in recent years. Audit was advised that because of legislative requirements that there be a dedicated Childrens Court Magistrate, there is reduced flexibility in the use of this Magistrate, which in turn reduces efficiency and contributes to high costs.

¹⁸ WA Court Statistics at <www.justice.wa.gov.au/portal/server.pt/PTARGS>

¹⁹ Attorney-General's Department of NSW, *Annual Report 2003-04*, p.13.

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Table 6 - Cost per matter

Real net recurrent expenditure per finalisation, criminal and civil (2002-03 dollars) Including payroll tax where applicable

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust.	Total
										courts
Supreme/Federal Courts (excl. probate)										
2002-03	4 563	4 693	2 596	5 441	10 026	2 098	4 232	11 274	13 004	5 689
2001-02	3 558	4 651	4 463	7 486	8 480	2 880	5 810	17 782	14 840	5 761
2000-01	3 618	6 628	3 338	6 280	9 003	3 069	6 850	16 439	13 750	5 757
District/County Courts										
2002-03	2 430	3 804	2 028	3 838	4 346	..	..	..	..	2 895
2001-02	1 891	3 344	1 768	3 301	6 239	..	..	..	..	2 460
2000-01	2 359	2 785	1 753	2 906	5 727	..	..	..	..	2 504
Magistrates' Courts only (excl. Childrens Courts)										
2002-03	363	172	291	407	351	125	310	561	..	294
2001-02	527	173	323	436	365	130	348	na	..	339
2000-01	661	165	na	362	278	96	na	na	..	246
Childrens Courts										
2002-03	595	349	na	666	na	475	1 236	na	..	533
2001-02	na	359	na	623	na	129	1 475	na	..	816
2000-01	711	na	na	412	na	142	na	na	..	418
Total Magistrates' Courts (incl. Childrens Courts)										
2002-03	376	181	302	426	358	138	351	562	..	307
2001-02	583	180	327	451	374	130	399	550	..	355
2000-01	666	173	271	366	288	98	468	541	..	320
All courts (excl. electronic and the Family Courts and the Federal Magistrates Court)										
2002-03	628	394	458	778	684	234	586	1 040	13 004	595
2001-02	870	375	523	797	696	255	700	1 242	14 840	676
2000-01	1 027	329	447	683	566	187	787	1 318	13 750	631

Source: JACS Annual Report 2003-04, Table 8, page 37.

3.43 The LC&T Unit reported that cost per matter for both the Supreme and Magistrates Courts have increased in 2004-05, as shown in Table 7, below:

Table 7 – Costs per matter for the ACT

	2002-03	2003-04	2004-05
Supreme Court	\$2,983	\$3,182	\$3,376
Magistrates Court	\$462	\$538	\$650
All Courts	\$689	\$713	\$839

3.44 The Magistrates urged caution in the use of costs per case, as they are not indicative of quality of the judicial process and outcomes.

3.45 At present, the courts have a range of processes in place that are aimed at constraining costs across their operations, as the courts work toward budget savings. One such process is the courts renewal project, which is discussed in paragraph 9.10.

3.46 In Tasmania, Justices of the Peace are used for minor matters such as traffic offences in an effort to reduce costs.²⁰ In 2003-04, the LC&T Unit introduced a pilot program that involved volunteer Justices of the Peace witnessing and certifying non-court documents. This was aimed at reducing the need for counter staff to carry out this work, but Audit is not aware whether this resulted in any significant cost savings.

3.47 Work is continually being done to improve the quality of data so that comparability across jurisdictions is improved. As a result of this, and the courts' reporting in the Annual Report against National KPIs, Audit considers that courts will be better placed to identify cost reduction opportunities. That is, improved performance could be achieved if Courts analyse the leading jurisdictions identified for each KPI, and in turn, identify best practices for adoption.

3.48 Audit considers that, in line with this, the LC&T Unit should work to keep abreast of developments in other jurisdictions that may offer cost savings through, for example, its continuing participation in the Australian Courts Administrators Group.

3.49 Audit recognises that case management can achieve greater efficiency, as discussed in Chapter 4.

Recommendation 5

The LC&T Unit should analyse better practices from other jurisdictions, and consult with relevant government departments with a view to advising government and the judiciary on ways to reduce costs, with particular attention to the Childrens Court.

²⁰ Magistrates Court Tasmania, Annual Report 2003-2004.

CONCLUSION

3.50 Performance measures adopted by the courts are reasonable in that they broadly reflect the business of the courts and are consistent with good practice as set out in national forums. However, there is always a need to continually review performance measures to ensure that they remain appropriate and, ideally, further improve their relevance.

3.51 Performance against many of the key performance indicators, especially for the Magistrates Court, has been below the standard achieved by many other Australian Courts, although there has been some improvement in 2004-05.

4. SCHEDULING AND MANAGEMENT OF CASES

INTRODUCTION

4.1 This chapter outlines the current systems used for caseload management, considers the reviews and other measures that the Courts have undertaken to address the issues, and provides some information on the level of performance. Caseload management is formally the responsibility of heads of jurisdictions, but much of the work is done by administrative staff. The audit focus is on administrative aspects, and all recommendations are addressed to the administrative body, the LC&T Unit.

4.2 Measures undertaken by the Courts to address caseload management include intervention in the form of call-over and directions hearings to try to organise, schedule and expedite cases, and the introduction of Case Management Hearings for criminal cases in the Magistrates Court. There have also been reviews of the caseload management process in the Magistrates Court, including a review by a consultant that occurred concurrently with this audit.

KEY FINDINGS

- There was significant under-use of court time and facilities in both the Supreme Court and the Magistrates Court. In particular:
 - of the 74 criminal trials listed for hearing in the Supreme Court in 2004, only 33 trials occurred. Of the cases that did not proceed, 21 defendants changed their plea to guilty, 9 trial dates were vacated, the prosecution abandoned 10 cases, and one accused absconded;
 - this resulted in there being only 101 days of criminal trials in the Supreme Court in 2004, compared with 297 planned days; and
 - in the Magistrates Court, there was a high level of unexpected adjournments, leading to court resources being under-utilised. Only about 50% of cases proceeded when scheduled.
- There have been occasions, both in the Supreme Court and the Magistrates Court, in which there have been concerted efforts to address particularly long-wait cases. These actions are useful, but may be more productive if adopted on a continuous basis.
- There are a large number of lists²¹ in the Magistrates Court, which could be streamlined for improved efficiency.
- Little use is made of demand management measures to encourage parties to resolve civil disputes outside the court system.

²¹ These are lists of different types of court proceedings, that are grouped together and carried out in the same session

BACKGROUND TO CASEFLOW MANAGEMENT

4.3 Caseflow management is a complex issue that significantly effects the overall efficiency of the Court system. It involves several interacting parties – the court, litigants, prosecutors, defendants, legal representatives, police, corrective services and other agencies – who have different aims. There are potentially conflicting objectives such as increased efficiency, increased timeliness, and improved justice. This complex set of interactions means that the issues are best considered as a **system**, rather than as a set of elements that can be optimised individually.

4.4 There are problems in achieving efficient system operations, not least of which is that each agency decides separately what resources are deployed to the overall justice system. Scheduling of cases directly effects the overall efficiency and effectiveness of the courts. In a complex court system, Audit recognises that it is difficult to organise case flow so that clients receive expeditious service, the resources of the Court are used efficiently, and most importantly that justice is not delayed. Many competing interests must be balanced.

4.5 Church and Sallman observed that:

Effective case management requires close linkages between the judicial and administrative components of a court. It involves the quintessential judicial duty of directing and supervising the actions of parties and their lawyers in the litigation process, but cannot operate successfully without extensive administrative support, in record keeping, giving notices to parties and so on. ... Yet in most Australian courts that staff is directed by, or at least subject to the direction of, another branch of government. Case management necessarily involves judicial officers in functions that were previously considered administration; and it just as clearly involves administrators in aspects of the litigation process previously regarded as the special province of the judiciary.²²

4.6 There is an understanding of system issues at senior levels in the courts, together with some frustration that although they are not fully in control, blame for delays and other inefficiencies is primarily directed at Courts.

4.7 Audit considers that although control is not fully with Courts, they do have more power over the system than other participants to influence change and achieve better outcomes. The responsibility of the Courts to manage their cases and caseload has been accepted and implemented in Australia for the past 20 years.

4.8 A major study of courts in the US concluded, among other things, that:

the pace of criminal and civil litigation is influenced more by conduct of the ‘local legal culture’ (i.e. the informal expectations, attitudes and practices of legal practitioners, judges and court staff) than court structure, procedures, caseload or

²² Thomas Church and Peter A Sallman, *Governing Australia’s Courts*, AIJA, 1991, p.4

backlog; [and] the most influential technique for reducing delay is the management of all cases by the court from the time of inception to disposition.²³

4.9 Case flow management requires:

- the willingness of the courts to deal with the matter, and in particular leadership that recognises the problem and the need for action;
- rules requiring that parties certify when they are willing and ready to proceed;
- existence of good management information on the extent of delays;
- setting time standards for dealing with cases;
- establishing policies to deal with backlog reduction and, in particular, any cases that are grossly delayed;
- training for all those involved in managing the caseflow system; and
- cooperation between judicial and administrative staff at Courts, and external parties, possibly in the form of a caseflow management committee.²⁴

PROCESS IN THE ACT COURTS

4.10 This section outlines processes in the ACT Courts, with a focus on criminal cases at the Magistrates Court. These processes are subject to judicial decision, and so are not within the scope of the audit, but are presented for completeness of discussion.

4.11 Magistrates Court criminal matters are entered on the criminal mention list, known as the 'A-list'. Arresting police either issue a summons with a return date, provide police bail or detain the suspect in custody for hearing within 48 hours. Police are asked to limit their summonses to no more than 30 to be returned on any given day. Matters on the A-list can be disposed of on the day if they are minor and the accused pleads guilty. Accused persons can seek adjournments to apply for legal advice, make representations to the Director of Public Prosecutions, or to seek a restricted licence (in the case of traffic offences). Sometimes there is a second adjournment, especially if the accused are still unrepresented.

4.12 If there is a not guilty plea, a date will be set 6-7 weeks from the A-list hearing for a case management hearing (in criminal matters) or for hearing (traffic matters). From the initial not guilty plea, the DPP has 65 days to prepare and serve a brief, except if the accused is in custody, in which case it is only 21-30 days. Practice Directions are that matters should be listed within 14 days of the case management hearing, but the prosecution or defence is often not ready. Committal hearings (for

²³ Thomas Church Jr et al: *Justice Delayed: The Pace of Litigation in Urban Trial Courts*, National Center for State Courts, Williamsburg Va., 1978, quoted in Tim McGrath, *Caseflow Management*, February 1989. Attorney-General's Department of NSW, p. 59

²⁴ Based in part on Tim McGrath, *Caseflow Management*, February 1989. Attorney-General's Department of NSW.

trial in the Supreme Court) bypass case management. Overall, the Court considers that four to five months to dispose of a case is good performance.

4.13 However, only about 50% of cases proceed on time. There can be adjournments, negotiations on charges before the suspect pleads guilty, delays for drug treatment, and waits for pre-sentence reports. As previously discussed in Chapter 3, timeliness in some ACT Court jurisdictions is poor.

4.14 Applications may be received for extensions, in the form of messages from the DPP to apply for vacation of the hearing date, for example, if forensic evidence is not yet ready. Forewarning of any delay is variable, and is rarely more than a week. The defence can also apply for more time; and can also notify if the defendant goes missing, whereby a warrant will be issued. The concept of 'therapeutic jurisprudence',²⁵ which has more court involvement, can be effective, but takes longer. Unusual or complex cases are managed separately.

4.15 Serious criminal cases proceed to the Supreme Court after a committal hearing at the Magistrates Court. There is a range of offences for which the defendant can elect to be heard summarily (i.e. at the Magistrates Court). However, this choice can be rescinded, leading to committal proceedings at short notice.

4.16 At the Supreme Court, there are direction hearings one to two weeks after committal, followed by a pre-arraignment conference. These arrangements provide for an expeditious commencement of the process at the Supreme Court. The intention of the pre-arraignment conference is to set the timetable for the trial and define the issues to be considered. At the arraignment, charges are formally announced, and the plea taken. The trial follows at a later date, and there can then be a further adjournment for sentencing.

4.17 Family violence cases are handled separately. They are identified by the police as such, and start in the general A-list of the Magistrates Court. On adjournment, they go to a special weekly Family Violence mention list approximately three weeks later. If the plea is 'guilty', they are dealt with. If the plea is 'not guilty', they go to Family Violence case management after a further three weeks and then to a Family Violence hearing list.

4.18 Applications to the Magistrates Court for personal protection orders often lead to the granting of interim protection orders, which are then followed by conferencing between parties and possibly a hearing to consider issuing a longer-term protection order. These and other civil cases such as debt recovery, damages claims and small claims, rely on the parties pursuing their own case. Most civil cases are subject to conferencing to try to resolve the matter or at least isolate the issues in dispute before the formal hearing.

²⁵ Briefly, therapeutic jurisprudence involves the court working with other agencies such as drug and alcohol counselling, mental health bodies or other assistance groups. This often involves adjournments without sentencing, with the subsequent sentencing being dependant on the progress of the offender under the care of these other bodies.

- 4.19 For civil cases, the Supreme Court divides the cases into several categories:
- **A: personal injury (before the Master)**
The Court does not take control until parties certify as ready. The case is then managed, conferenced, and listed.
 - **B: debt**
This often does not result in any action. Parties usually resolve or abandon the action.
 - **C: complex, e.g. medical negligence**
There is a Monday directions list, which sets out the requirements for parties to produce information.
 - **D: other, e.g. corporate**
There is no active management by the Court; instead the Court relies on parties to initiate actions.

STUDIES OF CASEFLOW MANAGEMENT

4.20 In 1999, there was work by a subcommittee led by Magistrate Somes and by a consultant, Gary Byron. This led to a new system being introduced to the criminal jurisdiction of the Magistrates Court, centring on the use of a Case Management Hearing (CMH), based in turn on the Contested Mention system used in Victoria and Tasmania.

4.21 Byron suggested several incentives to encourage compliance. As well as sentencing discounts, he mentioned such things as costs awards for unreasonable non-compliance, administration fees where late changes of pleas or late withdrawal of charges apply; and recording and publishing of instances of non-compliance. With the exception of the administrative fees, such actions are judicial decisions and so outside of audit scope.

4.22 Byron also suggested establishing a list of matters that can be dealt with at short notice, noting this may be more relevant to civil cases. Further, he suggested establishing time standards for each major stage of the system, and enforcing these times through electronic monitoring. Byron also recommended an independent assessment within two years of commencement of the process. However, none of the recommendations mentioned in this and the previous paragraph were implemented.

4.23 In 2004-05 the ACT Magistrates Court commissioned a review of ACT Magistrates Court listing, which was carried out concurrently with this audit. The objectives of this review were:

- to establish whether the current listing functions are providing the best means of delivering objectives and legislative accountabilities;
- to identify specific changes that would improve the Court's performance; and
- to begin the change process, both within the Court and with stakeholders.

4.24 The results of this review were not available to audit at the time of drafting. However, Audit was advised by the Chief Magistrate that a new model of judicial court governance was under active consideration for introduction in the second half of 2005, involving:

- a Council of Magistrates as the primary means by which the Court manages its business (introduced on 18 August 2005);
- a Listing Coordinating Magistrate to oversee listing and management of cases;
- individual Magistrates to take responsibility for supervising the operation of the various jurisdictions exercised by the Court; and
- a Central Listing Office, led by a senior officer, drawing together all the listing functions of the Court.

4.25 Audit's view is that the implementation of such changes will assist in addressing many issues reported in this Chapter.

CASEFLOW MANAGEMENT PERFORMANCE IN THE ACT MAGISTRATES COURT

Use of incentives for better caseload management

4.26 The court is only one of many independent players in the system, each of which can influence timeliness. The courts therefore need to consider incentives to other parties in order to allow for better caseload management overall. Justice Sulan, then of the District Court of South Australia, commented that avoidance of delays and late cancellations of cases offer enormous overall savings. (In this chapter, references to cancellations mean cases that do not proceed because the accused enters a plea of guilty or the prosecution files a Notice of Declining to Proceed.) Justice Sulan also noted that although the range of effective incentives and penalties is limited, reforms are possible.²⁶

4.27 Audit was advised that barristers are not briefed about civil matters until about a week before the listing; and if they decide to settle the case, it is difficult to adjust court schedules within the short time. Parties should discuss the matter between them before meeting at case management conferences, but often they do not. Comments were made at the criminal list coordinating committee that there was a lack of full commitment or preparation by members of the profession.

4.28 Courts are aware of this issue, but have done little to improve performance by influencing other participants in the system. For example, there is an incentive for accused who consider themselves guilty to nevertheless plead not guilty as the Belconnen Remand Centre is considered 'soft time' compared with Goulburn Gaol. Accused can also hope that witnesses do not turn up on the trial date; and there can be

²⁶ J. R. Sulan, *Defence Cooperation in the Trial Process*, Criminal Trial Reform Conference, 25 March 2000.

an incentive for some lawyers to extend proceedings, and have more formal (Court) rather than informal proceedings as they can attract higher legal fees. For Magistrates Court civil matters, filing is allowed until 1.00 p.m. on the day before the hearing. This means there can be late filing of an agreement, or of a motion to defer because parties are not ready, which then disrupts the program of the Court.

4.29 Audit was advised that work is currently being undertaken on drafting new harmonised rules for the ACT Courts. This is expected to improve caseflow management by providing discretion to impose cost sanctions in relation to directions hearings.

4.30 Suggestions made to Audit included that some trivial civil disputes could be deterred through a filing fee, and that there could be a fee for on-the-steps settlements as they interfere with use of courts. The ACT Supreme Court already has 'setting-down fees' that apply when a party decides to take the case to a hearing. The Victorian Civil and Administrative Tribunal (VCAT) has set some hearing fees (in addition to application fees) to encourage economic uses of courts by parties.

4.31 Audit understands the concerns that imposition of fees could affect access to justice. Currently, Registrars have discretion to waive fees for economically disadvantaged court users.

4.32 Setting of fees is a matter for Government. Audit is of the view that the Government should consider the range and quantum of fees imposed in other states and territories with the view to developing an appropriate fee structure.

4.33 Audit notes that there are other measures, which could be used to manage demand on Courts, such as the provision of alternative dispute resolution services outside the Courts, and greater use of services provided by relevant departments such as social workers, mediators and protective service workers.

4.34 Audit was advised that decisions made by ACT Government departments may not take into account the flow-on impact on Court services, for example the recent removal of a corrective services official previously outposted to the Courts.

Recommendation 6

The LC&T Unit should review the effectiveness of compliance and other mechanisms to encourage efficiency in caseflow management, and advise the government and the judiciary on options.

Management of lists

4.35 To put an effective method of scheduling in place, there needs to be reliable data that defines the likely length of court cases and the probability that they go ahead, based on past experience. Some Magistrates' views were that there are no useful statistics to support proper planning. For example, it would be useful to know

how many civil cases were pending, and how many at which stage, and based on prior patterns, what percentage will reach a hearing. Statistics are needed to support listing decisions, for example how many lists to plan into the future for criminal, civil, workers' compensation etc. There also needs to be good statistics on performance to enable feedback and monitoring of progress.²⁷

4.36 The pattern of lists at the Magistrates Court has been derived from precedent and judgement, as opposed to review of the statistics of numbers of cases in the lists. Previous reviews have suggested a strengthening and consolidation of the listing activity into a specialist cell.

4.37 There are a large number of lists, which could be streamlined for improved efficiency. Audit was advised that there was inadequate support for the Chief Magistrate on listings. With only one list clerk for criminal listing, with civil and workers' compensation listing separate, there is little scope for strategic thinking. Nevertheless, there appear to be other measures that can be adopted (without significant resources) for efficient listing. For example, an experiment to hold a directions hearing a week prior to civil list hearings forced settlement of many matters on that day.

4.38 There have been occasions, both in the Supreme and Magistrates Court, in which there have been concerted efforts to address particularly long-wait cases. For example, the Magistrates Court trialled a new approach to intensive running lists in civil cases in January and April 2005. These are useful, but may be more productive if addressed on a continuous basis. The Supreme Court runs directions lists for some types of long-wait cases to actively manage them. JACS also advised that the Magistrates Court has commenced quarterly audits and call-overs²⁸ of pending criminal cases in excess of 12 months old. Audit agrees that these are positive steps.

Recommendation 7

The LC&T Unit should ensure that there are procedures in both Courts for:

- a) collecting relevant statistics on long-wait cases; and
- b) analysing the information and informing the judiciary.

²⁷ For example, Tim McGrath, *Caseflow Management*, February 1989, Attorney-General's Department of NSW, p. 26, 29, 31

²⁸ Call-overs involve all participants and are held in order to schedule cases.

CASE STUDY - WORKERS' COMPENSATION LIST

The Workers' Compensation list in the Magistrates Court is unusual as it is held in four sessions per year, each of two weeks duration. Concentrating the cases into a two-week period is considered convenient both for the court and for practitioners, some of whom are senior interstate counsel who specialise in workers' compensation. It is an intense period of activity for the counsel, but stakeholders have stated that it is manageable.

Two months before each scheduled hearing period, a 'call-over' involving all participants is held in order to schedule the cases for the two-week period. A small number of cases (4% in 2004) are settled or discontinued, and of the remainder 36 cases are selected for hearings at the next period; any remaining are stood over to the next call-over session.

The 36 cases are scheduled for hearing at four per day over a two-week period, but only two on each Friday to allow for any adjourned cases to be dealt with. At each hearing, the parties will normally immediately request a short adjournment. They will then conduct negotiations in the vicinity of the courtroom and normally reach a negotiated outcome (87% of cases listed for hearing in the 12 months to February 2005 settled prior to or at the hearing). When this happens, they get in touch with the magistrate, who will come down from chambers and if he or she sees fit, will make the consent order to settle the case.

The normal pattern of the day is therefore for a series of very brief hearings involving the magistrate in court time, but with the result that about four significant cases are disposed of in a single day. The Magistrate will, if all cases settle, be in court for only 10 to 20 minutes of the sitting day. Only when a settlement is not reached does a hearing proceed. As these are complex matters, the hearing may take several days to conclude.

Audit Comment

The Workers' Compensation list is considered effective as it leads to disposal of a large number of complex matters in a relatively brief period. On the other hand, it highlights the weaknesses in the scheduling system, as despite the call-over process, a large number of cases that are likely to settle are still listed for hearing. The Magistrates' view is that the listing for hearing is useful because it brings the parties (some from interstate) to the vicinity of the courtroom where they can negotiate.

Audit's overall view on the Workers' Compensation list is that there is still scope for further improvement, for example by scheduling more cases per day.

Adjournments

4.39 Decisions on adjournments of cases are part of judicial discretion, and are therefore outside audit scope. Nevertheless, as adjournments have an impact on the scheduling of cases, some issues are briefly mentioned, mostly with a view that the administration should be monitoring and advising on the impact of adjournments.

4.40 Courts record statistics on the number of adjournments. These contribute to the overall count of attendances per case, which is a performance measure, as discussed earlier. However, they do not record the cause of adjournments.

4.41 Adjournments can lead to problems such as significant numbers of part-heard matters in the lists, and extended intervals to settle cases, as discussed in Chapter 3.

4.42 Audit's review of a small number of cases showed there were many adjournments, almost all caused by parties to the action not being ready to proceed. In some cases, this happened repeatedly, to the frustration of the court and the other party.

CASE STUDY - ADJOURNMENTS

In a single day before a single magistrate, six cases were adjourned for the following reasons:

- lack of mental health assessment;
- need for DNA evidence which will take time to acquire;
- defendant has made representations to the DPP, which the DPP needs to consider;
- difficult for solicitor to get a time to appear;
- trying to get a suitable time for all parties; and
- police now charging a second defendant, so the case of the first defendant is postponed to hear them jointly.

4.43 When a case fails to proceed because of an unexpected adjournment, then the Courts' resources are left under-utilised. Several magistrates expressed irritation to Audit about such occurrences. A sample of time records indicates that only about half of allocated hearing time was used. The latest data reported by the Courts shows that average recorded daily sitting time in the Magistrates Court was 2.5 hours per sitting Magistrate (across the 2001-02 and 2002-03 financial years). In recent years, afternoon usage of Magistrates courts has been only about 35% of morning usage. Although Magistrates work on other tasks when they are not in Court, this does mean that court facilities are not being used for significant periods of time. Greater sitting times can be achieved; for example the UK Crown Court reported an average of 4.4 sitting hours per day.²⁹ In order to achieve higher average sitting hours, the courts would be required to run reserve lists. Audit was informed, however, that this is difficult in the ACT Supreme Court due to its small number of judges.

4.44 The Magistrates Court analysed the extent of judicial workload by jurisdiction for 2003 and found that 47% of criminal cases proceeded on the day, and 41% of hours set aside for the hearing of these matters were used. Reasons for matters not proceeding were:

²⁹ National Digital Data Archives (UK): Crown Court.

- the defendant changed his or her plea – 42.5%;
- a new hearing date was fixed or there was an adjournment for further case management or mention – 25%;
- the defendant failed to appear – 17.5%; or
- no evidence offered by prosecution – 15%.

4.45 The existence of a firm trial date concentrates the minds of the counsel so that a negotiated outcome is likely to be reached shortly before the trial date. This practice tends to leave courts under-utilised. Subject to an analysis of cancellation patterns, it is desirable to overlist, i.e. schedule two or three times as many cases as can be actually heard. Audit recognises that there is a risk that this can lead to, from time to time, some cases not being heard as scheduled. However, such over-listing is widely used in other jurisdictions.

Recommendation 8

The LC&T Unit should:

- a) record and analyse the cause and extent of all short-notice adjournments or cancellations to hearings;
- b) report this analysis and assist in developing strategies to improve utilisation of the Courts' resources; and
- c) consider, in particular, greater overlisting to compensate for the current pattern of case cancellations.

Case Management Hearing

4.46 A major feature of criminal caseflow management at the Magistrates Court is the Case Management Hearing (CMH). Case Management Hearings are designed as a method of expediting and controlling the case flow in the Magistrates Court.

4.47 However, some stakeholders have stated that the CMH process is not always efficient and effective, because parties are not well prepared or the court is simply following a process rather than seeking an outcome.

4.48 One issue for CMH is whether a sentence indication can be given by the Magistrate at this hearing. While sentence indication is beyond the scope of this audit, Audit notes that the *Crimes (Sentencing) Bill 2005*, currently before the Legislative Assembly, may assist in clarifying the use of sentence indications.

4.49 Statistics have been kept on the hours saved by the CMH system, but it has not been formally evaluated to assess whether its anticipated outcomes have been achieved, its advantages and disadvantages and ways in which it could be further improved. In 2001, the Criminal List Coordinating Committee commenced a review by seeking submissions from participating parties. However, the review was not completed.

4.50 Similarly, although the pre-arraignment conference system in the Supreme Court is monitored by the Law Society and by the Supreme Court's Criminal Committee, which includes external stakeholders, it has not been comprehensively evaluated.

Recommendation 9

The LC&T Unit should support the judiciary by facilitating the formal evaluation of the effectiveness of significant initiatives such as the Case Management Hearing in the Magistrates Court and the Pre-Arraignment Conference in the Supreme Court.

Conferencing

4.51 Many matters before the courts use conferences to reduce or eliminate the time needed in court. Outcomes can be better; for example, in an application for a domestic violence order, if parties agree to the terms of an order rather than have one imposed by the court, they are more likely to abide by it. Magistrates Court conferences have a high success rate in that parties rarely fail to turn up and most conferences can settle the matter without needing to refer it to a Magistrate for decision. On the other hand, stakeholders have commented that conferences (Supreme and Magistrates Courts) lacked consistency and that that written procedures and core competencies should be established for conferencing staff.

4.52 Conferences allow the use of more informal settings, and usually officers below judicial rank, to try to reach an agreement to the issue in question. They combine elements of mediation, conciliation and arbitration. For some cases, several conferences may be necessary to reach agreement; conferences will continue if the conference chair believes there are good prospects of success. In most cases, consent orders can be made by a deputy registrar. These are drawn up and formally issued by the Registry. In some cases, such as domestic violence orders and residential tenancy disputes, agreements are sent to the relevant judicial officer for endorsement. Any failed conferences then proceed to full hearing before the judicial officer.

4.53 Some conferencing has grown significantly. For example, the number of care matters finalised in the Childrens Court has risen from 40 in 2000-01 to 118 in 2003-04. Audit was informed that all care matters are conferenced, with some matters requiring about 20 conferences before they settle. Disclosure or discovery of evidence between parties is also effective before a trial, either at a conference or otherwise, in enabling parties to assess the strength of their case and hence reach a negotiated outcome. This can apply both to civil and criminal trials.

4.54 Although stating that 'pre-trial and settlement conferences should be recognised as efficient management tools which aid the timely disposition of

legislation', McGrath also noted studies had showed 'no correlation between settlement activity and judicial productivity'³⁰.

4.55 Audit's observation is that conferencing appears to be an effective contribution to the operation of the courts. Conferencers deal with a large number of small claims and applications for protection orders while working in a stressful environment. Given the significance of the function, Audit considers it would be beneficial to continue to monitor conferencing processes to assess whether additional support is required to ensure viability, and to maintain efficiency and user satisfaction.

4.56 As discussed earlier in paragraph 4.33, there is merit in the LC&T Unit working closely with other agencies and, where appropriate, making greater use of non-Court mediation services.

Recommendation 10

Given the effectiveness of conferencing, the LC&T unit should:

- a) monitor conferencing processes and outcomes in order to further enhance efficiency and court user satisfaction; and
- b) consider implementing measures such as improved guidance material and identification of training needs for conferencing staff.

Supreme Court

4.57 The Supreme Court deals with fewer cases, so the scheduling problem is simpler than for the Magistrates Court. However, there is still an issue with respect to cases dropping out at the last minute.

4.58 Of the 74 criminal trials listed for hearing in 2004:

- 33 trials occurred.
- 21 defendants changed their plea to guilty,
- 9 trial dates were vacated,
- 10 cases abandoned by the prosecution, and
- 1 accused absconded.

4.59 Notification that the trial would not proceed was often only provided on the day or with a few days notice. On rare occasions, about two weeks notice was given. The criminal trials that did not proceed resulted in there being only 101 days of criminal trials in the Supreme Court in 2004, compared with 297 planned days. The Supreme Court has a reserved trial list to try to use the freed-up time, although the

³⁰ Tim McGrath, *Caseflow Management*, February 1989, Attorney-General's Department of NSW, p.49.

size of the pending case load means that short-notice reserve trials cannot be listed as frequently as in larger jurisdictions.

4.60 There were 248 civil hearings listed in the Supreme Court for 2004. Of these, 177 settled, 38 were adjourned and only 33 proceeded to judgement. Those cases that proceeded to judgement took less than 138 court days in total. It should be noted, however, that cases that settle may have run for some time before settling.

SOME POTENTIAL APPROACHES

4.61 In this section, Audit briefly outlines three possible approaches that may assist case scheduling, particularly in the Magistrates Court. One involves a modified 'running list', the second suggests a management by exception approach to handling long cases, and the third suggests a way of streamlining some court processes.

Modified running lists

4.62 One solution to case scheduling is to have merged or running lists, involving many cases for a group of magistrates. For example, if half of cases tend to not proceed, as is currently the case, then five days' worth of cases could be listed before three magistrates. The averaging effect of combining the list means that a better match between resources and actual caseload is more likely.

4.63 This approach is already used in conferencing protection orders, where 5-6 matters are listed, and they are taken in sequence by any of the (usually three) conferencers. The running list approach would, however, cause problems if a single lawyer were involved with two cases that run on the same day. However, finding an approach that ensures that the next case to go on does have all parties available should be possible. One approach might be a variation of the workers' compensation approach described above. This is described in the following box.

A case scheduling approach

Cases that fail to settle at case management conference could be scheduled for hearing commencing at a specific date, without specifying time or magistrate. Parties would be requested to provide assurances that lawyers, witnesses and other key participants would be available that day. The scheduling would provide for a degree of over-listing, which would need adjustment according to experience.

At the start of the day in question, there would be a brief call-over to see which cases will actually proceed. The first cases on the list will start immediately, to the capacity of the number of magistrates and courtrooms available. The priority list would be at the discretion of the Magistrate, but any cases involving interstate witnesses or counsel might attract priority. A second tranche of cases would be scheduled to start at the estimated earliest possible completion times of the first-up cases. Any remaining cases would be set for starting in the afternoon.

At lunchtime, the situation would be reviewed. This would include the progress of the cases, and the availability of magistrates, whose other tasks may have been completed (e.g. the A – list may have finished by lunchtime). If there was no capacity for starting any new cases that day, parties would be advised. Any cases scheduled for that day but unable to proceed will have higher priority for the next mutually convenient day. This may not be the next day, if there are part-heard cases continuing, which would normally have the highest priority for completion.

Where cases are expected to run over to a second day, Magistrates' schedules would ideally be adjusted so that the case can continue without interruption.

4.64 Audit was informed that a nominal eight hours or more of cases are scheduled in the Magistrates Court for a five-hour sitting day. An examination of a sample of cases did not show any instance where the hearing could not commence for lack of a courtroom or magistrate, although Audit was informed that this does occur. If court usage was running closer to capacity, an inability to commence cases would be expected more frequently. The evidence available to Audit tends to suggest that there is more scope for 'overlisting' to improve the efficient use of Court resources.

4.65 Audit was informed that the Supreme Court does split lists where possible, so that if a judge becomes available they can hear a case listed to go before another judge. However, the Supreme Court said that this is often not practicable due to the size of the jurisdiction. As noted above, such over-listing is used effectively in many jurisdictions.

The management by exception approach

4.66 At present, all cases in the same Magistrates Court list go through much the same process, with little scope for expediting selected cases. In the Supreme Court, applications can be made for expedited hearings (for example, cases where a litigant seeking damages is dying) and special fixtures. Selected complex cases are allocated to judges and managed by them to completion. The Courts try to push all matters along, and collect timeliness statistics. However, there is no specific monitoring of individual cases as to when they are becoming particularly late.

4.67 Some stakeholders have commented that case management hearings at the Magistrates Court or the pre-arraignment conferences at the Supreme Court can be for form's sake as opposed to being effective. Others suggested that, in most circumstances, the Courts could leave handling of cases to the parties, intervening only when certain time limits were exceeded. Otherwise, time is wasted in unnecessary appearances before the court, when parties are not able to progress the matter.

4.68 Frequent appearances, such as conferences, call-overs and direction hearings, assist the Courts to keep pressure on the parties to bring the case forward. Stakeholders accept that there are some advantages in courts forcing the pace of cases, as it gives leverage to get clients not to delay. However, this needs to be considered against a risk of proliferation of documentation and appearances leading to inefficiency and a mentality that the job does not need to be done as it can wait until the next appearance.

4.69 Therefore, one approach might be to set standards for timeliness, but for the Courts to only intervene when those standards are not met. In this way, the majority of cases might proceed in a satisfactory way with little need for intervention.

Oral versus written submissions

4.70 Many elements of court process require attendance by parties who give oral argument. In a trial this is obviously necessary. There are also many other attendances by parties of a procedural nature that also occur in court, with parties or counsel attending, and are resolved in a straightforward way without extensive debate. There may be scope for increased use of written submissions for such purposes. Such processes could be made even speedier if such written submissions were by e-mail. Even in the late 1980's, McGrath commented that 'the introduction of motions by telephone conference, supplemented by the use of facsimile technology, should be encouraged. Applications of this nature dealt with in Chambers by a Judge frees the court to determine more pressing or urgent matters.'³¹

Recommendation 11

The LC&T Unit should work with the Magistrates to formally analyse and advise on approaches to improving caseload management. These approaches might include, but not be limited to:

- a) modified running lists;
- b) managing timeliness of cases by exception; and
- c) use of more efficient procedures for routine court appearances.

³¹ Tim McGrath, *Caseload Management*, February 1989, Attorney-General's Department of NSW, p.9.

5. SERVICES TO COURT USERS

INTRODUCTION

5.1 This general topic is often referred to as client service or customer service. Given the nature of the court activities, this chapter uses the term 'court user'.

KEY FINDINGS

- The court user satisfaction survey would be more useful if it included a more diverse sample of court users and if the courts published the results.
- There was little evidence in the Magistrates Court that systemic action on substantive complaints is occurring, nor is it clear that complainants are informed of progress.
- Communication and liaison with stakeholders has been reasonable, but could be improved further.

COURT SERVICES

5.2 The Australian Institute of Judicial Administration (AIJA) has recommended that 'all courts should state clearly the mechanisms by which complaints about the service of the court can be made by court users and how these complaints will be dealt with.'³² Complaints can refer to either judicial or administrative behaviour. This audit is only concerned with administrative issues.

5.3 Based on the AIJA report of June 2000, and other sources, Audit believes tenets of good practice for services to court users include:

- establishing and advertising a service charter that sets out rights and responsibilities of court users, and standards of service;
- brochures inviting feedback from court users should be displayed prominently in public areas, and suggestion boxes for receiving this feedback should be provided;
- phone numbers for complaints listed in telephone directories, and phone numbers and e-mail links provided on the web-site;
- involving court users in strategic planning processes;
- staff training in the reception and handling of complaints;
- conduct of court user surveys;
- clear allocation of responsibility for managing the system that monitors and reports on praise and complaints;

³² Australian Institute of Judicial Administration, *Public Feed-back Mechanisms in Australian Courts*, 1 June 2000, p.3.

SERVICES TO COURT USERS

- appropriate feedback to court users on the status of their complaint or suggestion;
- regular reporting to senior management on court user satisfaction; and
- identification of action plans to address any problems and sound project management applied to the conduct of these action plans.

5.4 The Supreme Court advised that customer feedback pamphlets are placed at the registry counter, the library and the sheriff's office. Any completed pamphlets are discussed at weekly meetings of senior officers of the Supreme Court. Where appropriate, suggestions are considered and implemented, and replies are given.

5.5 In preparing a service charter, it may be beneficial for the LC&T Unit to consider consulting court users who are not traditionally thought of as users of the court, for example victims of crime or parents of child offenders.

5.6 Audit was advised that services for unrepresented litigants could be improved. Papers are hard to understand, and unrepresented litigants often do not understand outcomes in court or at conference. Audit was also told that applicants for protection orders may not be given information on what happens next, e.g. that it is the applicant's case to run, which can result in people failing to turn up at conference or at the main hearing. One suggestion proposed to Audit was that there be a duty lawyer scheme for unrepresented litigants.

DELIVERY OF COURT SERVICES TO COURT USERS

5.7 The Supreme Court has three commitment statements for the library, registry and sheriff's office. Audit considers these statements to be reasonable. The LC&T Unit considers that the court user surveys (then called customer satisfaction surveys) provide a measure of performance against courts' service statements.

5.8 A blank page on the Magistrates Court and Tribunals website provides for a commitment statement. In 2000, the AIJA reported that the Magistrates Court did have a commitment to service statement, and was 'in the process of placing feedback forms in public areas'.³³ In 2001, the Courts intended to produce a single client service statement and, in the interim, place the Magistrates Court and Tribunals client service statements on the web. However, this did not happen, and at the time of this audit, the paper versions of the Magistrates Court and Tribunals client service statements were not placed in the foyer of the Court. Audit understands that although these documents have not been advertised, they are still formally in place.

5.9 In January 2005, the Supreme Court established a Reserved Judgements Protocol in consultation with the profession that sets out the steps that judicial officers should take to finalise cases, and the steps that representatives of the profession should take on behalf of counsel, in order to expedite reserve judgments. This

³³ Australian Institute of Judicial Administration, *Public Feed-back Mechanisms in Australian Courts*, 1 June 2000, pp.16-17

followed the Magistrates Court Reserved Decisions Protocol, which was promulgated on 1 August 2003. Such measures improve communication and understanding and are therefore likely to improve services to court users, and could be further enhanced if the protocols were listed on the Courts' website.

Recommendation 12

The LC&T Unit should consider measures to improve services to court users, such as:

- a) identifying needs of different court user groups (including users such as unrepresented litigants);
- b) publishing combined court user service standards for all court services; and
- c) ensuring that court user service standards are met.

COURT USER SATISFACTION SURVEYS

5.10 Surveys (then called Customer Satisfaction Surveys) were held in 2003, 2004 and 2005. At the time of this audit, the basic results from the 2005 survey were available, but not the report. Results are reported (as a single percentage rating for 'client satisfaction') in budget papers and annual reports. In addition, the overall result is a key performance indicator for 'Case Support and Public Services' program of the Law Courts and Tribunals. The most recent survey had a 42% response rate, an increase from 30% in the previous year. There was no feedback to participants on the 2004 results. Audit was informed that the Courts are considering putting future results on the web or in the Law Society Journal.

5.11 Many of the survey responses were from legal practitioners or their staff, who are regular users of the Courts' services. One of the Key Objectives in the Law Courts and Tribunals Business Plan 2004-05, 2005-06 is to 'ensure that our stakeholders and the community are satisfied with the level of our services, and that we respond to their changing needs'. This implies the need for a more comprehensive coverage.

Results of court user satisfaction surveys

5.12 The report on the 2004 user satisfaction surveys (titled Customer Satisfaction Survey) stated that individuals and managers can use survey results to help them to improve their own levels of service performance for clients. The results of the survey were generally very positive, with a 90% overall satisfaction rating. However, there were opportunities to improve timeliness of service at the Magistrates Court (64% satisfied) and overall telephone service (72% satisfied). On receiving the survey, the Senior Executive Group (SEG) noted that there were 'opportunities to improve document turnaround times, particularly for rejected documents in the MCT (Magistrates Court and Tribunals), and telephone services being delivered without undue transfers between sections.' In the 2005 survey, satisfaction with telephone service had increased to 94% for the Magistrates Court, and 86% overall.

5.13 It would have been useful to describe the nature of the court user sample to whom survey forms were distributed and (if known) the nature of the sample that filled in the questionnaire. The survey form currently asks whether the stakeholder was representing clients, or as a party to proceedings. However, the differences, if any, between these classes of respondents was not analysed. It may have been worthwhile to ask clients whether they dealt with criminal or civil jurisdictions, and as applicants or respondents.

5.14 Audit considers that the satisfaction survey would be more useful if it included a more diverse sample of court users and if the Courts published the results.

Recommendation 13

The LC&T Unit should improve the usefulness of court user satisfaction surveys by:

- a) addressing the surveys to a more diverse sample of court users;
- b) publishing the results in the Annual Report and on their web site; and
- c) implementing appropriate action to address issues identified in the survey.

Complaints and praise

5.15 Audit was informed that in the Supreme Court, completed customer feedback pamphlets are discussed at the weekly meeting of senior officers. Where appropriate, replies are given to respondents and suggestions are considered for implementation.

5.16 In the Magistrates Court, administrative complaints and praise received by any officer are to be forwarded to the Registrar who keeps a central file of these. Audit observed that this process of referral appears to be working. Audit recognises that there are some complaints to the Court that are of little substance, and so need no further action. However, there was little evidence that action on substantive complaints is occurring, nor is it clear that the complainant is informed of progress.

Recommendation 14

The LC&T Unit should formalise processes for dealing with administrative complaints so that they are actioned, and feedback is given to complainants. This process could also include the identification of frivolous complaints, and where no further action is to be taken, this should be recorded.

COMMUNICATION AND LIAISON WITH STAKEHOLDERS

5.17 Setting up a users' committee had been recommended in a 1989 review³⁴ and the Magistrates Court held its 1st Court User Forum on 17 November 2003. The Supreme Court has declined the opportunity to hold similar forums, but it holds

³⁴ ACT Magistrates Court Working Party, *Review*, 1989, p. 106.

monthly meetings with the President of the ACT Bar Association and the ACT Law Society. The Rules Committee (made up of senior judicial officers and members of the legal profession) and the Law Society civil and criminal committees usually meet on a monthly basis. There are also monthly meetings between the Magistrates Court and the Law Society, but a key stakeholder suggested that these meetings could be more effective.

5.18 Feedback from stakeholders, and from court staff indicates that top-level communication (i.e. between senior stakeholders and Heads of Jurisdiction) is satisfactory, but some forums appear to have ceased operation. The Criminal Listing Coordination Committee was set up in August 1999, but has not met since July 2004. Stakeholders commented that this committee was slow but effective. Others noted that suggestions for better Court processes were not dealt with. Audit has received comments from stakeholders that the service provided by registry staff has been appreciated. Other comments received include that when there will be a delay there is no communication on the extent of the delay.

5.19 Audit considers that communication and liaison with stakeholders has been reasonable, but could be improved further. A first step may be to consult with stakeholders, through the annual survey or other means, as to their preferred means of coordination and consultation. Depending on the results, committees such as the Criminal List Coordinating Committee could be reinstated.

5.20 Audit was informed in August 2005 that the Magistrates Court has recently negotiated with the DPP, Legal Aid, and the AFP, that these bodies will each nominate one of their staff to be responsible for liaison with the Court. This should also aid coordination and communication.

Recommendation 15

The LC&T Unit should work to improve communication and liaison with stakeholders, including regularly running meetings and forums where these have been identified as desirable.

ACCESS TO COURTS FOR DISADVANTAGED CLIENTS

5.21 Audit noted that acoustics in Magistrates Courts are poor, and the Magistrates confirmed this. This must be of particular concern to those with hearing difficulties. The problem has been recognised since shortly after the building opened in 1996.³⁵ There is no sound amplification in the Court.

5.22 The LC&T Unit does not arrange for interpreting services. Where these are required for witnesses or clients, they are normally the responsibility of the prosecution or defence, as the case may be, to provide the relevant service.

³⁵ John Hunter, *Review of Magistrates Court*, p.6.

5.23 The Court Assistance and Referral Service (CARS) is a community body, separate from the Courts, which has some Government funding. It provides a range of services to people appearing before the Courts. These services range from explaining processes to people who have not been to court before and helping illiterate people to fill out forms, to assisting with the organisation of rehabilitation placements and transport. The CARS occupies a small office on the ground floor of the Magistrates Court, which is provided by the LC&T Unit, rent-free.

6. BUDGET AND EXPENDITURE MANAGEMENT

INTRODUCTION

6.1 Budget and expenditure management is almost entirely in the province of the Department, with the judiciary having very little input or control.

6.2 As a part of the JACS budget, the Courts budget has little visibility. In the 2005-06 Budget Paper 4, there was no mention of any Courts issues in the '2005-2006 highlights' of the department.

6.3 The LC&T Unit does not have a full output class of its own, but is Output 1.2 of JACS. Services within Output Class 1 also include policy advice, legal advice, legislative services, human rights, public prosecutions and others. Operating Statements, which are prepared for each Output Class, provide details of revenue and expenditure, and overall loss or surplus. As this information is combined with other outputs, it is not publicly presented for Courts.

6.4 Funds are then broken down internally between the Supreme Court and the Magistrates Court.

KEY FINDINGS

- There has been a continuing pattern in recent years of planned deficits, and actual deficits exceeding those planned. There appears to be a lack of effective action to resolve these deficits.
- The ACT judiciary currently plays a limited role in generating budget proposals or approving expenditure – these activities are left primarily to the LC&T Unit and JACS.
- There appears to be a lack of ownership and clarity of accountability for the Budget outcomes, including insufficient control over special project expenditure.
- There has not been a fundamental review of the cost basis for Court services to support a decision for appropriate base funding. This has led to on-going concerns by the judiciary about the appropriateness of the Budget allocations.

MATCHING EXPENDITURE WITH ALLOCATED BUDGETS

6.5 Total expenditure for ACT Courts was over \$24m in 2004-05.

6.6 The major budget and expenditure issue is the consistent deficit budgets and deficit outcomes in recent years, and measures to address this issue. Table 7 below indicates that deficits before extraordinary items (such as the Bushfire and Eastman

BUDGET AND EXPENDITURE MANAGEMENT

inquiries) exceeded \$2m for two of the past three years. It also shows that even though the budgeted deficits have been large, the actual deficits have been larger. Indeed, there have been substantial deficits in the vicinity of \$2m, every year since July 1999.

6.7 The ACT budgeting approach does not fund depreciation, so a 'balanced budget' will have a deficit equal to depreciation. The deficits budgeted for the Courts in the period 2002-03 to 2004-05 have significantly exceeded depreciation. Audit was informed by JACS that the origin of the budget deficits was partially due to unfunded depreciation and higher than budgeted demand for Magistrates Court services. The Courts also advised Audit that there has never been an independent assessment of the actual cost of running the Courts.

Table 7: Budget and Expenditure, 2002-03 to 2004-05

Description	2002-03	2003-04		2004-05	
	Actual (\$000)	Budget (\$000)	Actual (\$000)	Budget (\$000)	Actual (\$000)
Revenue from Government	16 270	17 121	17 121	17 873	17 873
Resources Free of Charge	126	0	328	0	256
Other Revenue	1 332	1 702	1 488	1 540	1 434
Total Revenue	17 728	18823	18 938	19413	19 563
Employee Expenses	10 766	11 194	11 309	11 715	12 167
Resources Free of Charge	126	0	328	0	256
Non-employee expenses	7 963	8 115	8 719	7 971	8 412
Depreciation	844	1071	885	1309	903
Total Expenses	19 699	20 380	21 241	20 995	21 738
Net deficit before extraordinary items	(1971)	(1557)	(2 303)	(1582)	(2175)
Net Bushfire and Eastman inquiries	(80)	0	(255)	0	465
NET DEFICIT	(2 051)	(1 557)	(2 557)	(1 582)	(1 710)
Deficit net of depreciation	(1 207)	(486)	(1 672)	(273)	(807)
Deficit net of depreciation and extraordinary items	(1 127)	(486)	(1 418)	(273)	(1 195)

Source: JACS Finance section

6.8 Proposals were submitted by the LC&T Unit to seek funds to address base funding pressures in 2003-04 and 2004-05. The 2003-04 submission stated that the budget base was deficient in the order of \$545 000, and that this problem had been emerging for some time. The submission identified three components, namely recent increases to judicial salaries, an additional magistrate and rent increases above indexation provided, that added up to the \$545 000 requested. However, as the overall deficit in the preceding year had been over \$1.1m (net of depreciation and extraordinary items), the assessment that the budget base was deficient to \$545 000 seems unrealistic. The \$545 000 was provided, as a one-off funding for the 2003-04 year.

6.9 In 2004-05, a further \$1m was sought, and JACS stated that ‘the amount would fully address the budget issues associated with this cost centre’. This was despite the fact that the deficit in 2003-04 was \$1.4m before extraordinary items and depreciation. The formal submission was for \$971 000, of which the Government granted \$680 000, based on the same factors, namely judicial salaries, new magistrate and rent, as for the supplementation in 2003-04. Additional costs were later discovered, including \$171 000 for the required productivity return. By June 2004, JACS recalculated that an additional \$440 000 was required ‘to fully address the overspending in the courts’ budgets’. Therefore, JACS calculated a savings target based on:

Initial assessment of shortfall:	\$1 000 000
Additional shortfall:	\$440 000
Productivity return:	\$171 000
LESS: Additional funding provided	-\$680 000
Savings target:	<hr style="width: 100%;"/> \$931 000

6.10 Savings measures were then put in place to attempt to reduce expenses by \$911 000. However, the deficit in 2004-05 was \$1.2m before extraordinary items and depreciation; in other words, there were little savings achieved to offset the deficits. Expenses continued to rise; from \$21.2m in 2003-04 to \$21.7m for 2004-05, an increase of \$0.5m (figures excluding extraordinary items such as the bushfire coronial inquest and Eastman case).

6.11 To support the 2004-05 budget, the Courts budget was ‘zero-based’. This meant that all elements of expenditure were analysed to indicate their components, including identifying all the staff positions that made up the salary budget. However, it did not include a fundamental review of the resources needed to carry out the Courts’ functions. For the 2005-06 budget process, JACS called for a comprehensive review of expenditure. The Courts produced an ‘Expense Group Analysis Report’ that described expenditure trends over the last seven years (including estimated 2004-05) and with some projections into the future. This compendium discussed in general terms the drivers of costs, but as data were not available for a full activity-based costing analysis, the relationship between activities and total costs could only be inferred. As a statement of cost trends, the scope did not cover analysis of potential

cost savings due to efficiency measures. The McFeat Report of 2002 had recommended introduction of activity-based costing, but this was not implemented.

6.12 Several judicial and administrative officers have commented that there is no clear baseline for the budget, and that a budget separate to that of JACS as a whole would provide more clarity.

6.13 There was no additional funding for budget pressures in 2005-06.

Expenditure Control

6.14 Decisions and responsibility for spending are separate. For example, a judicial officer can call for, say, an expensive medical opinion, but the expense must be authorised formally by the Business Manager or the Courts Administrator. Audit was advised that the manager must authorise this expenditure to give effect to a court order.

6.15 Estimated total costs of operation for the courts (including JACS overhead) was \$24 713 million for the 2004-05 year, compared with \$22.822 million budgeted for 2005-06. This is mostly due to the removal of funding for the Bushfire and Eastman inquiries, which accounts for \$1.6m.

6.16 Expenditure reports are submitted monthly to the Courts Senior Executive Group. During the latter half of 2004, this group monitored the expenditure situation, which was higher than expected, but took no action at that time in addition to those savings measures instituted in June 2004. In early 2005, in response to continued higher than expected expenditure, further measures were taken, including the initiation of the Magistrates Court Renewal project (see paragraph 9.10). However, this project will have no impact until its completion well into 2005-06.

6.17 An audit analysis of the expenditure trends in 2004-05 showed that forecast savings of \$911 000 (see previous page) were achieved overall for non-salary items. In the case of salaries, however, the budget strategy, which involved deleting five positions (including a special magistrate) and not filling or partially filling seven positions, with an intended saving of \$572 120, was not achieved. Indeed, staff numbers grew during 2004-05 from 137 to 141, and employee expense rose by \$800 000. Audit recognises that more than half this amount was due to increases in salaries and costs for the new magistrate. Nevertheless, these costs were reasonably foreseeable, and should have been estimated and allowed for in the budget strategy.

6.18 Audit notes that there has been a continuing pattern of planned deficits, and actual deficits exceeding those planned. It is possible that the practice of budgeting for a deficit (over and above the depreciation) creates a culture that it is acceptable to be in deficit, and hence the planned deficits are exceeded. There appears to be a lack of effective action to resolve these deficits.

BUDGET PROPOSALS

6.19 Budget proposals are generated from sources such as:

- government initiatives;
- the judiciary, principally the Heads of Jurisdiction;
- Courts administration;
- the Department's corporate support areas;
- departmental agencies, principally those involved in the justice system; and
- community groups.

6.20 Within JACS, each Business Unit is asked to consider possible budget initiatives for the coming financial year in line with the Territory Budget cycle. As part of that process, the Courts Administrator consults senior officers within the courts and the Heads of Jurisdiction.

6.21 Internally generated initiatives are then documented in the summary form of a 'Concept brief' that is then considered by the Finance Committee within JACS, usually with the Chief Executive present. The Committee reviews all briefs from all areas and makes initial comments and suggestions, particularly in respect of possible cross-agency bids. A preliminary priority is then assigned to each concept brief.

6.22 For proposals that are accepted for the Chief Executive's consideration, a complete 'Budget Initiative Proposal' or, in the case of capital works or information technology proposals, a complete 'Business Case', is then prepared for submission through the responsible Minister. Proposals or business cases may go through a number of iterations within the Department or Business Unit prior to them being finally settled within the budget timetable.

6.23 Not every proposal proceeds through every stage. Only those proposals assessed to have the greatest merit are advanced to the Chief Executive for further consideration.

6.24 There have been few initiatives solely generated by judicial and statutory officers in the past three years. Input from judicial officers has been limited as they see such matters as primarily within the province of the Executive.

Special projects

6.25 The LC&T Unit monitors expenditure for special projects such as the bushfire inquest and the Eastman inquiry, and records it in its monthly budget reports as 'below the line' expenditure. The projected below the line expenditure is then used by JACS to put in requests for additional appropriations to cover these activities, as discussed above.

6.26 Audit considers that this approach is reasonable for the year in which the event occurred that caused the unexpected expenditure. However, subsequent to that event, and even though the expenditure may be hard to predict, it would be better practice to estimate expenses and include them in the budget in the normal way. The approach currently adopted means that the same discipline that applies to the rest of the budget is not as rigorous for the special projects funding, as the plan is for the expenses, whatever they are, to be met through the second or third appropriations.

6.27 Audit considers, based on a review of documents relating to a sample of budget proposals, that the *processes* for budget development were mostly sound. No opinion is offered on the content of the materials or the soundness of the budget decisions.

6.28 Audit observed that there appears to be a lack of ownership and accountability of the LC&T Unit budget and a lack of commitment to meeting it, and insufficient control over special project expenditure.

6.29 Audit notes that in some other Australian courts, there was greater involvement of judicial officers in budget planning and financial management. For example, in the Federal Court of Australia, one of the key objectives of the court is to 'manage the resources allotted by Parliament efficiently' and the Court reports on its performance against this objective.

Recommendations 16

JACS should establish the LC&T Unit as a separate Output Class to provide more visibility of its budget and performance against it.

Recommendations 17

For the 2006-07 Budget cycle, JACS, in conjunction with the Courts, should conduct a fundamental review of the cost basis for Court services to support a decision for appropriate base funding.

Recommendations 18

The LC&T Unit should continue to seek efficiencies, either through suggestions in this report or elsewhere, in order to achieve budget targets.

7. USE OF INFORMATION AND COMMUNICATIONS TECHNOLOGY

INTRODUCTION

7.1 In addition to the normal desktop environment, the Courts have a separate computer system for caseload management. This system, known as the AS400 system based on the computer on which it runs, enables such functions as entering cases, entering actions that occur during cases, and storing relevant information such as names and addresses of parties to cases. It can be used to produce statistical information on cases and their progress, for general management use as well as for public reporting.

7.2 The Courts also rely on efficient and effective audio and audio-visual equipment to record proceedings and to take evidence from remotely located witnesses, within the Court Building. However, Audit was informed that problems are frequently experienced with this equipment.

7.3 Information and Communication Technology (ICT) services, both new acquisition and maintenance of current systems, is managed through the Business Services section of the LC&T Unit.

KEY FINDINGS

- Current Information and Communication Technology (ICT) equipment appears inadequate to meet the needs of the courts.
- Progress to replace the caseload management system (CMS) has been slow and limited by funds.
- The Courts have not yet taken full advantage of ICT to improve administrative processes.

CURRENT STATUS OF ICT EQUIPMENT

7.4 Some Courts staff view computing equipment as inadequate due to lack of qualified staff and money. Magistrates had computers available to them in the Court a number of years ago, but these were removed as a cost saving measure. Stakeholders also consider that a range of equipment is inadequate - such as remote video links for taking evidence, which is especially useful for child victims or sexual assault victims to give evidence. Equipment for replaying audio evidence is considered by some court users to be absent, insufficient or poorly maintained and unreliable.

7.5 The AS400 system is out of date, for example, it does not use a graphical user interface such as Windows®. It has been in place about 15 years and subject to continual maintenance. It requires two on-site personnel to maintain it and provide

occasional minor upgrades. Although some standard correspondence can be generated when a case is entered, this is not always the case.

7.6 The process of generating statistics in the current system has some difficulties. It relies on dumping data to spreadsheets for further manipulation.

UPGRADE OF THE CASEFLOW MANAGEMENT SYSTEM (CMS)

7.7 A process has commenced to replace the caseflow management system (CMS). However, progress is slow and limited by funds. The LC&T Unit first commissioned a review of the existing CMS in December 2000, leading to the purchase of a system for the Court of Appeal. This system is now in place. Audit observed that the system was user-friendly and effective, at least in the simple domain of the Court of Appeal.

7.8 Business cases for extending the CMS elsewhere in the ACT Courts were not funded until 2003-04 as a capital funding for criminal jurisdictions. Design work commenced, but a lack of financial functionality led to the project being put on hold in February 2004. In September 2004, the LC&T Unit decided to implement the project in the Supreme Court and Childrens Court without financial functionality, as the infrequency of financial transactions meant these could be handled manually.

7.9 The financial module was scheduled to be available by July 2005, and on that basis a business case was submitted to complete implementation of the new system in the Magistrates Court in 2005-06. Funding for the Case Management System of \$0.07m (ongoing) and \$0.133m (one-off capital injection) was provided in the 2005-06 budget.³⁶

7.10 As with any new system, especially one that represents a new generation of software, there may be initial difficulties, especially if there is not adequate training. Staff expressed concerns about training on the new system, given that the LC&T Unit has conducted little staff training in recent years (see Chapter 9). However, Audit notes that budget proposals for the new system consider training (to be provided in-house through a train-the-trainer approach) as part of the project.

7.11 Any new system will require sound project management, financial management and a thorough assessment of all technical and financial risks. Audit is aware of a number of risk issues associated with the current project, which need to be carefully monitored.

Recommendation 19

The LC&T Unit should put in place sound project management practices to deliver the case management system redevelopment with minimum risk.

³⁶ Excerpt Budget 2005-06.

OTHER POTENTIAL USES OF ICT

7.12 Stakeholders have had consistent views back to at least 1997 that ICT tools such as electronic filing could be usefully employed. Staff have commented that communication tools such as e-mail could be employed more, but would need security. The AFP submits charges electronically, but otherwise there is no electronic link with stakeholders. Stakeholders would support better links such as e-filing. Better use of electronic processes and procedures can also force rethinking of business rules, such as simplifying forms.

7.13 Many of the court procedures such as Directions hearings could be performed electronically. This should save time and money for all court support functions. Adjournments could also be sought electronically.

7.14 Although processes and procedures in different courts vary considerably, some States make far greater use of ICT than the ACT Courts. For example, the 'e-Courts' project in Queensland offers a range of online services, including:

- e-chambers – For cases deemed suitable by the supervising case manager or presiding judge, this service offers a secure forum for parties, including Judges and associates, to post submissions, draft orders and other documents into a secure on-line bulletin board. E-chambers is password protected and every time something is posted on the bulletin board, all parties are advised by an email alert. E-chambers can help to reduce costs for litigants, as well as streamlining chambers style applications and hearings.
- e-searching – Allows for searches to be done and document lists to be obtained online, rather than requiring parties to go to the registry counter.
- e-listing – allows parties to make on-line requests for trial date allocations, without the need to attend a callover.³⁷

7.15 The LC&T Unit could seek advice from other jurisdictions regarding the success of their ICT projects, as a means of informing decisions on the further use of ICT within the court system.

7.16 There may also be savings by using electronic copies of court transcripts rather than paper, and maintaining electronic files of records. In this respect, the new IT system proposed may assist in moving to a less paper intensive court.

7.17 Similarly, video links could be used more. For example, Audit noted that several prisoners appeared in person from the Belconnen Remand Centre for very brief appearances in the A-list at the Magistrates' Court. In Victoria, persons in custody appearing for pre-trial proceedings appear by video link.³⁸

³⁷ <<http://ecourts.courts.qld.gov.au/eChambers/eChambersIntro.htm>>

³⁸ *Structure and Operations of the Magistrates' Court* (of Victoria), p.20.

7.18 It would be possible to have a more efficient arrangement in the court room with a small printer attached to the Associate's computer, allowing instant printing and signing of orders and decisions to hand to the parties in the court room, as opposed to serving such documents later.

Recommendation 20

The LC&T Unit should establish an Information and Communication Technology (ICT) advisory group comprising administrative and judicial officers to propose and sponsor projects for the better use of ICT in the Courts.

8. ADMINISTRATIVE PROCEDURES

INTRODUCTION

8.1 This chapter discusses a number of issues particularly relevant to the administrative tasks of managing and operating the courts system in the ACT. The administrative tasks in the Courts system is complex, as they need to support a wide variety of legislation in a way that is legally correct.

KEY FINDINGS

- There has been a lack of integration between administrative areas of Courts. In particular, there was little mutual support between different sections of the Magistrates Court Registry. There was also limited interaction between the Registry, conferencing cell and the Magistrates.
- The current review of Magistrates Court registry functions has the scope to integrate sections within courts administration and improve efficiencies.

COMPLEXITY OF ADMINISTRATIVE TASKS

8.2 Under the Court Procedures Act 2004, there are 171 approved forms for the Supreme Court, and 163 forms for the Magistrates Court. Tribunals are not included in this count. There are at least 54 different documents that can be submitted at the Magistrates Court counter, and each has different requirements on the counter staff for checking. There are 101 different codes describing outcomes of an appearance before the Magistrates Court. There are about 6000 field names in the database that describes and records Magistrates Court processes, and a similar number for the Supreme Court.

8.3 There is significant scope for improvement in the streamlining of processes including simple unified forms. One stakeholder commented that for small claims summonses, 12 'bits of paper' are needed in the ACT, compared to six in NSW, which illustrates there is scope for simplification. As noted above, many forms are specified in legislation, so simplification will require advice to Government on proposed changes.

8.4 Audit observed that written administrative procedures in the Magistrates Court registry are variable. Folders containing a number of relevant items are available for most sections, but some procedures folders are not well organised, consisting of various guidelines, directives, lists, checklists etc. assembled over a period without a clear structure. The Magistrates Court has a wide variety of rules and procedures, however, procedures for magistrates have been considered by some Magistrates as inadequate: no manual, no procedures (other than legislation and practice directions). There are also no procedures for magistrates acting as coroners. Modification of procedures from another jurisdiction, such as Victoria may be a reasonable approach.

Recommendation 21

The LC&T Unit should:

- a) consult the judiciary and then advise Government on ways to simplify forms and reduce their number;
- b) establish consistent procedures for use by staff in the Magistrates Court registry; and
- c) prepare improved manuals and procedures to assist Magistrates.

COUNTER SERVICES

8.5 The counter staff at the Magistrates Court provide services such as accepting documents, providing basic advice on courts process, providing information to individuals on their own cases and accepting payments for fees and fines. With the nature of the clientele, it can often be a stressful job and few choose to work there. Guidance is provided in the form of a collection of instructions, but these are ad hoc and not well organised. The complexity of the task is illustrated by the large number of documents that can be submitted at the counter (as described above).

8.6 The counter team is not well integrated with the rest of the registry. There is a physical as well as an organisational barrier. The counter is physically isolated from the registry, but is open to the public, and some staff consider it provides inadequate security. There are organisational barriers too; for example some of the instructions to counter staff reflect complaints from the registry that the counter was not doing its job, and counter staff generally feel isolated.

8.7 Given the primacy of the front counter as a key link to court users, there may be advantages in changing the arrangements to provide a more seamless service. The counter staff could be included within the Registry teams. It would then be incumbent on each of the Registry teams (e.g. civil, criminal and tribunals) to provide one or more team members (depending on demand) for the counter. This would have the advantages of providing exchanges of information and mutual requirements between registry and counter directly between team members as well as reducing the stress and isolation of some staff.

8.8 Similarly, some of the complexities at the counter come with the responsibility of handling cash as well as dealing with legal matters. Much of the guidance provided to counter officers deals with handling cash..

8.9 Audit notes that there is a current review of Magistrates Court registry functions and considers that there is scope for better integration of Counter Services and the Registry.

8.10 There are opportunities for different sections to consult and derive best practice from other sections. The current lack of a common approach is apparently a result of the 'silo' history of the courts, where the various areas used to be in separate

locations, and still operate individually. These ‘silos’ are reportedly still an issue, as they were raised in staff surveys.

8.11 Some data indicates that staff numbers in the ACT registries as a proportion of judicial officers is high compared with other jurisdictions. Combined with other comments, there needs to be a vision of a smaller, more highly trained and rewarded registry, with a sound career structure and properly supported with ICT tools.

8.12 There is, at present, little apparent direction and attention to improve administrative structure and processes to support the Court functions, as senior officers have a primary focus on judicial matters such as conferencing and, where the Magistrates Court Registrar is a magistrate himself, deciding cases. This is not a new issue; a 1997 review commented that ‘although Senior Deputy Registrars have managerial responsibilities, in practice they spend most of their time conducting conferences and related duties’ and that ‘the physical location of Senior Deputy Registrars has not been ideal as they are not easily accessible by staff’.³⁹ Better leadership may help to direct staff to the essentials of information management in support of the judiciary, rather than just working hard to move the paper.

8.13 For example, a 2004 internal audit report on warrants stated that ‘The pressures of time and the crime pattern have meant that attention to process improvement has been limited.’ Audit was informed that senior positions that were listed as vacant in the internal phone directory now form the conferencing cell. These staff are so busy with conferencing that they have limited time to manage staff and this is not part of their duties.

8.14 Audit considers that there is a lack of leadership provided to non-judicial staff and the lack of sufficient consideration given by management to process improvement leads to low staff morale, as well as missed opportunities to improve Court efficiency.

8.15 The solutions to these issues are best addressed jointly by the Courts and the LC&T Unit themselves. Audit suggests that, in the context of financial constraints, a pathway to address the above issues might include, but not be limited to, the following types of actions:

- adopt caseflow management efficiencies to free up more usable magistrates time;
- consider making greater use of non-court mediation services to free-up conferencing staff;
- redeploy some senior staff effort from conferencing to focus more on the efficient management of the registries. [This may be a partial role for all staff or the full-time move to Registry leadership of a smaller number of senior staff];
- combine counter staff with ‘back’ registry staff;

³⁹ John Hunter, *Review of Magistrates Court*, p.5, 16.

ADMINISTRATIVE PROCEDURES

- consider options for combining, or sharing resources between, the Magistrates and Supreme Court registries; and
- use any available resources to develop procedures and to enhance training for current staff.

8.16 Audit is aware that the LC&T Unit has considered the merits of combining the Supreme Court and Magistrates Court registries. Audit was advised by the judiciary that combining this would be difficult due to their physical separation.

8.17 However, Audit is of the view that any such difficulties can be overcome, based on experience interstate. South Australia has merged its Supreme and District Court registries and the Family Court is also in the process of combining registries with the Federal Magistrates Court. These jurisdictions have Courts spread across the state and country, respectively. In the ACT, the proximity of the buildings should at least allow some sharing of resources.

EFFICIENCY AND EFFECTIVENESS OF ADMINISTRATIVE SUPPORT STRUCTURES

8.18 This aspect becomes especially relevant given current budget pressures.

8.19 Within the Magistrates Court, the Chief Magistrate has overall responsibility for the Courts and is also President of all the tribunals other than the AAT. This represents a heavy workload with the potential for bottlenecks. The Byron report of 1999 suggested there be Supervising Magistrates for Criminal, Civil and Tribunals and Childrens Court.⁴⁰

8.20 Audit was advised recently by the Chief Magistrate that a Council of Magistrates that provides for such arrangements was introduced in August 2005. The Council, comprised of all the permanent Magistrates, will be the primary means by which the Court manages its business and communicates with the other branches of Government, the Executive and Legislature, as well as its stakeholders and the broader community.

8.21 Similarly, the current arrangements for Coroners may be inefficient. Coronial duties rotate each two weeks. Suspicious deaths or fires arising during this two-week period are the responsibility of the duty Magistrate at the time. Many of the routine inquests are handed to the Registrar and Special Magistrate for hearing. ACT is the only jurisdiction without a specialist coroner, and it may be worthwhile allocating coronial duties on a longer-term basis (say a two-year term, as for the Childrens Court magistrate) to one or two Magistrates. Allocating coronial duties to two Magistrates, as a Coroner and a deputy Coroner, may be necessary as it is advisable to have a Coroner always on call. This would allow the Coroner to develop expertise and to build a relationship with the coronial support staff.

⁴⁰ Gary Byron, *Listing System Development – Context and Strategy*, 3 June 1999 p.12.

8.22 Under the current system, the duty Coroner, for that two-week period, is also responsible for Saturday sittings and for considering applications for emergency warrants. It would seem reasonable to retain this arrangement, i.e. rotating the duty Magistrate each two weeks, while separating the duty Magistrate function from the Coronial function.

8.23 There have been positive developments over the last ten years that have had the effect of increasing integration within the courts. For example, a single courts administrator was appointed in 1999, to oversee the management of the courts, and a single corporate services function, reporting to the administrator, for the two courts was introduced in July 2001. A new Executive Committee was formed in April 2002, consisting of administrative leaders of the two courts. However, there are some remaining 'silos' in place, in particular in the registry functions of the Magistrates Court, Supreme Court and tribunals.

8.24 A 1997 review⁴¹ identified that the court was 'highly factionalised' and recommended a flatter organisation structure with fewer sections. This study in turn referred to earlier studies that had made similar recommendations with respect to flatter structures, also not taken up. Following the 1997 review, there was a reduction in the number of sections in the Magistrates Court registry, but there are still eight sections, and some are quite small – only two or three staff.

8.25 The silo factor was still identified in a staff survey of 2003. This was reflected not only in little mutual support between different sections of the Registry, but even more distant relations between the Registry and the conferencing cell, and very little connection between the Registry and the Magistrates. A further example is that, at present, files need to be reprepared when cases are transferred from the Magistrates Court to the Supreme Court.

8.26 In addition, there appears to be significant specialisation within sections. This can mean that when certain individuals are away, service declines because others either do not or cannot fill in. Specialisation also shows itself in applications for backfilling of positions, where it is stated that the overall function of a section could not be completed if any of the positions in a chain were not filled. Therefore, increased exchanges of information or people would be beneficial and may assist in spreading good practice as well as sharing workloads.

8.27 Currently, there is a review of registry functions within Magistrates Courts, with the intention both to increase efficiency and to reduce staff to meet budget limitations. This has the scope to integrate sections within the Courts, break down some silos and improve efficiencies by increasing sharing of good practice between sections and improving coordination of activities.

⁴¹ John Hunter, *Review of Magistrates Court*, p. 5, 6, 11.

Recommendation 22

The LC&T Unit should:

- a) better integrate Magistrates Court counter services with the rest of the registry;
- b) in the review of registry functions, seek both to achieve fewer and better-trained teams and to encourage multi-tasking within teams; and
- c) consider the merits of combining the Supreme and Magistrates Courts registries.

OTHER ISSUES

8.28 A review in 2002 noted that ‘there is palpable frustration amongst officers of the Court who have no source document to inform them of their entitlements’. This is still the case in 2005, with issues such as vehicle and other entitlements still unclear, being based on an old SES agreement. There has been a practice developed on these matters, for example setting vehicle entitlements at CEO level, but this is not based on an official document. The Court has commenced a project to rectify this, but this was incomplete at time of audit.

8.29 The bench sheet is a key document that records the progress of a case. Bench sheets are filled out in longhand by Magistrates on blue sheets of paper. If the case is adjourned several times, there can be many annotations on a single sheet. Together with the difficulties in reading handwriting and interpreting abbreviations, there is scope for error in interpreting the Magistrate’s decision. A checklist or fixed format for bench sheets may assist Court staff to properly implement Magistrates’ decisions. Such forms do exist for the Case Management Hearing and for conferencing.

9. HUMAN RESOURCES MANAGEMENT

INTRODUCTION

9.1 Effective management of human resources (HR) is essential to the efficiency of any organisation. This chapter briefly discusses a number of HR management practices within the LC&T Unit, which warrant further attention by the Unit.

KEY FINDINGS

- The current staff structure, in particular the lack of senior officers in the Magistrates Court registry, gives rise to a risk of lack of direction to staff and insufficient consideration of process improvement.
- Human resources management practices are poor, as shown by:
 - the high level of temporary positions;
 - the high level of acting positions;
 - some duty statements not aligning with actual duties; and
 - lack of forward planning.
- Staff satisfaction surveys indicate that courts administration performance was perceived as deteriorating in some areas.
- There was a lack of prompt action to address issues raised by staff surveys.

CURRENT STAFFING ARRANGEMENTS

9.2 A number of Unit Manager positions in the Magistrates Court (titled Managing Registrars) are no longer used. This leads to an apparent lack of leadership in some sections of the court. For example, some ASO5 officers report directly to a SOGB position. Although Audit is aware that there are significant budgetary constraints on the Courts, gaps in the reporting structure such as those mentioned above may result in:

- inefficiencies, as a senior officer's time may be required to resolve an issue that could have been resolved by others;
- lack of career path for junior officers, which may result in unnecessary staff turnover as staff leave to pursue career development opportunities; and
- an imbalance of responsibilities on the part of both the junior and senior officers as they share the workload that results from essentially unfilled positions.

9.3 The abovementioned Managing Registrar positions were moved to create the conferencing cell. Senior officers are grouped together in the conferencing cell. While the 'Behaviour Criterion' in the duty statements for the position of Senior Deputy Registrar, Conferencing, requires skills in leadership and management of an

organisational unit and a commitment to the principles of staff development and training, there is no mention of staff or unit management in the Duties/Responsibilities of the duty statement. In practice, these senior officers do not have the time to manage staff.

9.4 Audit noted that some duty statements did not align well with actual duties. However, at time of audit the LC&T Unit was undertaking a review of all duty statements.

9.5 The abovementioned staffing arrangements appear to result in the actual leadership of different sections falling to ASO6 and sometimes ASO5 or ASO4 positions. One ASO6 officer has responsibility for 17 staff.

9.6 In addition, there are a number of unusual arrangements with Higher Duties and contractor positions. It appears that there is a significant number of staff who are acting long term, in higher duties positions or who have their contracts extended a number of times. However, rather than making long-term arrangements to backfill the vacancies that this creates, short term contracts are often used that require regular approval from the Courts Administrator for their continuation.

9.7 Although this process is due, in part, to the budget pressures on the Courts, it is inefficient and involves a significant amount of work to manage. It is estimated that HR staff currently undertake as many as 10-15 transactions each month in relation to temporary staff contracts (either new contracts or extensions of existing contracts). This seems inconsistent with the spirit of the JACS Certified Agreement, which states that the Agency will endeavour to minimise the use of temporary and casual employment.

9.8 There has also been a significant use of higher duties to temporarily fill vacancies in the Court. HR staff estimate that they carry out as many as 15-20 transactions each month relating to the extension of staff acting in higher duties positions. As mentioned earlier, the subsequent vacancies created are filled by staff on temporary contracts or by other Courts staff who act in higher duties positions. Because these arrangements occur frequently, skills requirements in some areas of the Court may sometimes be difficult to meet.

9.9 In summary, human resources management practices are poor, as shown by:

- the high level of temporary positions;
- the high level of acting positions;
- some duty statements not aligning with actual duties; and
- lack of forward planning.

9.10 As previously mentioned, the LC&T Unit is undertaking a review of all position descriptions to update them and ensure that they align with the Courts key functions and objectives. In addition, a 'renewal' project is currently being undertaken by the Courts, which involves the review of the function of all positions

and changes to the administrative arrangements of the Courts. The project aims to make a 5% saving on last year's budget, which may mean restructuring or changing a number of areas, positions and functions. The project is being undertaken by a working group of Court staff, without expertise in this area and with limited resources. It is due to be completed in approximately September 2005.

Recommendation 23

The LC&T Unit should seek to improve HR management practices and provide as much certainty as possible to staff by:

- a) not recruiting at all if the position is not justified;
- b) recruiting permanently where the need has been established;
- c) recruiting for the period to the predicted completion of the Magistrates Courts renewal project if the future of the position is subject to this review; and
- d) where a temporary vacancy has been created, and requires filling, the position should be filled for the duration of the vacancy rather than for a portion of it.

STAFF TRAINING AND DEVELOPMENT AND OTHER ISSUES

9.11 Church and Sallman observed that in the case of South Australia, the thought, effort and resources put into developing career structures for court administrators and programs for professional advancement had paid off in terms of a high level of *esprit de corps* and increasing levels of professional competence.⁴²

9.12 There are some concerns on staff training in the ACT Courts. Due to funding shortages, the training position has been abolished, and there is very little funding for external training. The global training budget is \$5000 for the LC&T Unit staff, which is grossly insufficient. However, there are funds in a separate conferences budget that include attendance for training purposes. Internal training occurs within units, for the purpose of inducting and training new staff, but this has not been formalised or well documented. Audit was advised that lack of training has led to problems such as quality control for applications at the counter, and correct issuing of warrants.

9.13 Several of the Magistrates Court administrative staff have quasi-judicial functions as deputy registrars (most are middle ranking staff – ASO 4 to SOG C). In conducting conferences between parties to tribunals, they can make consent orders. Job specifications do not refer to the required legal and conciliation skills, and only some have legal training. Magistrates have supported the quality of the conferencing work done by registrars, but some commented that lack of legal training can cause difficulties. Other comments include:

- there are many staff acting in higher positions, beyond their level of experience, which can lead to significant mistakes;

⁴² Thomas Church and Peter A Sallman, *Governing Australia's Courts*, AIJA, 1991, p. 59.

- there is also a lack of training and qualifications;
- there needs to be more stability in key positions, and more lawyers; and
- with increased skills, Courts may be able to reduce overall numbers.

9.14 The LC&T Unit Business Plan 2004-2006 includes, as a single Key Performance Indicator, 'results of the annual staff survey' and also identifies an action under this Indicator to 'conduct the 2004-05 Staff Survey and feed the results back into our Business Planning system'. Although the target date for the action was December 2004, the survey was not conducted until May 2005, and analysis was completed in June 2005.

9.15 The Business Plan also identified other actions, which included:

- maintaining performance feedback for senior management in 2004;
- implementing performance feedback sessions for management and staff by June 2005 and 2006, respectively;
- developing and implementing a learning and development strategy by end of 2005.

9.16 However, there were no specific actions proposed for a number of issues raised in the 2003 Staff Satisfaction Survey. This 2003 survey was generally thought to be positive in overall satisfaction at working for the Courts. Issues raised in 2003 that needed consideration and action included dissatisfaction with performance appraisal, communication from the leadership, access to training and development and working in 'silos'. This survey also raised high staff turnover as an area of concern, as at that time 34% of staff had less than two years' service.

9.17 In 2005 the results of the staff satisfaction survey again identified similar issues, as shown by the following:

- more than half the respondents in 2005 (65% in 2003) do not agree with the proposition that 'The organisation effectively identifies and deals with poor performers'.
- more people disagreed than agreed with the statement 'I am recognised & rewarded for good performance'.
- almost half of the respondents in 2005 still do not agree, 'Plans & decisions made by management are clearly explained to me'.
- over half the respondents in 2005 still disagreed that 'Information is shared with openness and trust'.

9.18 Even though silos may have been broken down somewhat and less staff disagree that 'There is good cooperation between my team and other teams in LC&T' (down from 33% in 2003 to 24% in 2005), there is still a significant proportion of staff that indicate that silos continue to exist.

9.19 On staff turnover issues, HR staff reported to Audit that the recent turnover of staff in permanent positions is actually very low. Twelve permanent staff left the Courts in the period January 2003 to June 2005, which represents only a 10% staff turnover over the 2½-year period. HR believe that there may be a perception that staff turnover is high because there are a number of staff who are employed on temporary contracts, as outlined above. As at 8 August 2005 Audit was informed that eight vacancies existed that were not to be filled.

9.20 Another result of interest is that only 37% of staff surveyed in 2005 agreed that they would recommend the LC&T Unit as a good place to work (18% less than in 2003).

9.21 The staff satisfaction surveys in 2003 and 2005 indicate that Court performance was perceived as deteriorating in some areas. Audit acknowledges that a range of factors (such as budget pressures) would contribute to this response from staff, but lack of action or delayed action on issues raised by staff would also be a significant contributing factor. For example, although Audit was told that performance appraisal processes were being considered to address staff concerns, poor performance was not being managed. The Magistrates also expressed concern at the lack of performance management.

Recommendation 24

The LC&T Unit should implement measures to address staff concerns raised, including performance management and staff training and development.

Appendix 1 – Criteria for the Audit

The Audit assessed the efficiency and effectiveness of Court administration against the following criteria:

Strategic Planning and governance

- A strategic plan or similar document is prepared to guide the courts' activities. It should include aims, objectives and targets.
- The courts monitor delivery against the strategic plan.

Performance measures

- Courts set out timeliness standards, monitor achievement against these standards and analyse the reasons for any failure to meet the standards.
- Courts analyse costs per case and consider ways of reducing costs.
- Performance on cost and timeliness is reported publicly at least annually.

Scheduling of cases

- Number of adjournments of cases is low.
- The causes of all adjournments and delays are recorded, tabulated and reported.
- Extent to which cases are heard within a time assessed as reasonable.
- The courts have analysed case management with a view to increasing timeliness, efficiency and effectiveness, and have implemented any recommendations.
- Responsibilities for case management are clearly delineated, and responsible officers are held accountable for its performance.

Services to court users

- Appropriate surveys of client satisfaction are conducted and analysed.
- Records of client praise and complaints are kept and analysed.
- The analyses of client satisfaction are considered by management and acted on where appropriate.
- Appropriate communication and liaison are maintained with stakeholders such as DPP, Legal Aid, defence counsel, witnesses, custodial staff and prisoner transport, in order to facilitate the business of the court.
- Access to courts by disadvantaged clients is formally considered and any discrepancies identified are prioritised and, where practicable, addressed.

Budget management

- There are well-established processes for developing and progressing budget proposals in the Courts and in JACS.
- There is sound monitoring of expenditure against budget, and if any discrepancies arise, measures are proposed for correcting them.

Use of IT tools

- IT systems are assessed as fully functional and appropriate to their tasks.

Administrative procedures

- Administrative units have, where appropriate, developed and promulgated to staff written administrative procedures to assist them in their work.
- Staff are aware of these procedures and generally follow them.

Staff skills and training

- Skill requirements for each position have been identified.
- Development plans are in place to maintain and develop skills.

Appendix 2 – Key Actions for Courts Administration from the ACT Criminal Justice System Strategic Plan 2002-2005

AIM	OBJECTIVE	KEY ACTION	LEAD AGENCY
Administer justice fairly, respecting the rights of the victim, the community and the accused.	Protect and promote human rights principles	Cooperate fully with the Office of the Ombudsman	All agencies
	Increase public awareness of how the criminal justice system operates.	Improve public access by the enhancement and upgrading of Court and Tribunal Websites.	Courts Admin
		Produce videos on relevant topic matters to improve the image of the Courts.	Courts Admin
		Conduct public seminars for the ACT community on procedures and recent developments impacting the Courts and Tribunals.	Courts Admin
		Participate in work experience schemes.	Courts Admin
		Encourage and participate in educational programs dealing with legal rights and obligations.	Courts Admin and Youth Services Branch
	Provide advocacy services for persons with specific needs	Produce information in a variety of formats detailing Court and Tribunals procedures for self-represented litigants.	Courts Admin
	Expediently and fairly manage cases through the courts	Develop common Rules of Court procedures for all the areas of the Courts and Tribunals administration where appropriate.	Courts Admin
		Develop case management and court management systems to reduce client waiting times.	Courts Admin
		Upgrade the court library and rationalise holdings.	Courts Admin

KEY ACTIONS FOR COURTS ADMINISTRATION FROM THE ACT CRIMINAL JUSTICE SYSTEM STRATEGIC PLAN 2002-2005

AIM	OBJECTIVE	KEY ACTION	LEAD AGENCY
		Expand use of video conferencing.	Courts Admin
		Develop on-line transactions and lodgement of documents.	Courts Admin
		Develop courtroom technology for presentation of evidence, compilation of Appeal Books and management of exhibits in courts.	Courts Admin
		Develop Business Plans for all sections.	Courts Admin
	Implement victim-inclusive practices and policies.	Develop, implement and review a client service charter with performance indicators.	Courts Admin
Administer sentencing outcomes efficiently and effectively	Implement alternatives to imprisonment for offenders including fine defaulters.	Promote and expand direct debit facilities for payment of court fines and fees.	Courts Admin

Source: ACT Criminal Justice System Strategic Plan 2002-2005.

Appendix 3 - Previous Reviews of the Magistrates Court

1. Transformation Management Services (principal Nerida Wallace), *ACT Magistrates Court Listing Review*, (underway, as at August 2005)
2. 'Focus Groups' with Magistrates, 2004
3. Insight Business Solutions, *ACT Law Courts: Review of Financial Management Practices* (the McFeat Report) 2002
4. Magistrates Court Criminal List Coordinating Committee, *Review of Case Management Hearing Process* (incomplete) 2001
5. Gary Byron, *ACT Magistrates Court - Listing system development - context and strategy*, 1999
6. John Hunter, *Review of ACT Magistrates Court*, 1997
7. Durham Smith and Associates, *Workplace Climate Survey*, 1996
8. Ernst and Young, *Scoping Study for Review of ACT Court Administration*. 1994
9. *ACT Magistrates Court Registries and Support Areas Review*, 1994
10. Prof. Lindsay Curtis, *Review of Court Structures in the ACT*, 1990
11. ACT Magistrates Court Working Party, *Review*, 1989 (the Byrt Review)

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