

# **ACT Auditor-General's Office**

## **Performance Audit Report**

### **Follow-up Audit - Courts Administration**

**Department of Justice and Community Safety**





## ACT AUDITOR-GENERAL'S OFFICE



PA 10/05

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

Dear Mr Speaker

I am pleased to forward to you a Performance Audit Report titled '**Follow-up Audit - Courts Administration**' for tabling in the Legislative Assembly, pursuant to Section 17(5) of the *Auditor-General Act 1996*.

Yours sincerely

Tu Pham  
Auditor-General  
12 November 2010



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# LIST OF ABBREVIATIONS

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CMH	Case Management Hearing
DPP	Director of Public Prosecutions (ACT)
ICT	Information and Communication Technology
ICTAG	ICT Advisory Group
JACS	Department of Justice and Community Safety (ACT)
LC&T	Law Courts and Tribunals
MAX	Courts case management system
PAC	Standing Committee on Public Accounts (ACT Legislative Assembly)



# 1. REPORT SUMMARY AND CONCLUSION

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## INTRODUCTION

- 1.1 In September 2005, the Auditor-General's performance audit report *Courts Administration* was tabled in the ACT Legislative Assembly. Following the 2005 audit report, the Standing Committee on Public Accounts (PAC) held an inquiry and issued a report, *Review of Auditor-General's Report No 4 of 2005: Courts Administration*, in August 2008.
- 1.2 The 2005 audit report made 24 recommendations, 23 of which were agreed to, and the remaining recommendation was partly agreed to, by the Department of Justice and Community Safety (JACS). The PAC review in 2008 made ten recommendations, eight of which had direct relevance to some of the 2005 audit recommendations, and were agreed to by the Government.
- 1.3 This follow-up audit presents the results of a follow-up performance audit that reviewed the progress made by JACS in implementing the recommendations from the Auditor-General's 2005 report and the relevant recommendations from the PAC 2008 inquiry.

## BACKGROUND

- 1.4 The ACT Law Courts and Tribunal (formerly the Law Courts and Tribunals (LC&T) Unit) has four broad areas of functional responsibility:

- the Magistrates Court;
- the Supreme Court;
- the ACT Civil and Administrative Tribunal; and
- the Forensic Medical Centre.

This follow-up audit focussed on the role of the ACT Law Courts and Tribunal (referred to as Courts Administration in this report) in relation to the Magistrates Court and Supreme Court.

- 1.5 Although being a business unit of JACS, the ACT Law Courts and Tribunal (Courts Administration) provides direct support to the judiciary in the delivery of justice to the ACT community. Courts staff are accountable as employees of the executive arm of Government under ACT public sector legislation, but have responsibilities and accountabilities to the judiciary, who are the distinct and separate judicial arm of Government.
- 1.6 To the extent that audit recommendations could impact on judicial functions, Courts Administration can only implement them with the agreement of, and in co-operation with, the judiciary.

### AUDIT OBJECTIVE

- 1.7 The objective of this Audit was to provide an independent opinion to the Legislative Assembly on whether the ACT Law Courts and Tribunal (Courts Administration) has implemented agreed recommendations to address deficiencies previously identified in the administration of the Courts.

### AUDIT CONCLUSIONS

- 1.8 The audit conclusions drawn against the audit objectives are set out below.

Since the 2005 audit, the Department of Justice and Community Safety (JACS), in conjunction with the Courts, has implemented a number of measures to increase efficiency in the administration of Courts. These include:

- improved communication between the Department and the judiciary, and between the Courts and Courts users;
- significantly improved practices in the areas of case scheduling and conferencing in the Magistrates Court;
- reforms within the Registry; and
- better management of Courts human resources.

However, the improvement process has been slow and there were delays in implementing other measures such as:

- exploring alternative Court governance models;
- reviewing funding issues;
- redeveloping the ICT system for case management; and
- thoroughly analysing collected statistics to support decision making by the judiciary and the ACT Law Courts and Tribunal (Courts Administration).

Of the 24 recommendations examined, JACS fully implemented nine, mostly or partly implemented ten, one was overtaken by later developments, and there was limited or no action on the remaining four recommendations.

## STATUS OF IMPLEMENTATION BY JACS OF THE 2005 AUDIT REPORT RECOMMENDATIONS

Rec'n No.	2005 audit report recommendations	Audit conclusion in 2010
1	<p>JACS should work with the judiciary with a view to:</p> <ul style="list-style-type: none"> <li>a) establishing a more collaborative relationship between the judiciary and the Department;</li> <li>b) putting in place regular forums for communication between the judiciary, the Department and the executive arm of the Government; and</li> <li>c) establishing a governance model for LC&amp;T unit that provides greater administrative independence and hence better alignment of Courts' responsibility with public accountability.</li> </ul>	Partly implemented.
2	<p>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.</p>	Not yet implemented.
3	<p>The LC&amp;T unit should develop a risk management plan to assist in identification and amelioration of significant risks.</p>	Implemented.
4	<p>The LC&amp;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.</p>	Partly implemented.
5	<p>The LC&amp;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.</p>	Partly implemented.
6	<p>The LC&amp;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.</p>	Overtaken by later developments.
7	<p>The LC&amp;T unit should ensure that there are procedures in both Courts for:</p> <ul style="list-style-type: none"> <li>a) collecting relevant statistics on long-wait cases; and</li> <li>b) analysing the information and informing the judiciary.</li> </ul>	Partly implemented.
8	<p>The LC&amp;T unit should:</p> <ul style="list-style-type: none"> <li>a) record and analyse the cause and extent of all short-notice adjournments or cancellations to hearings;</li> <li>b) report this analysis and assist in developing strategies to improve utilisation of LC&amp;T unit' resources; and</li> <li>c) consider, in particular, greater overlisting to compensate for the current pattern of case cancellations.</li> </ul>	Partly implemented.

## Report summary and conclusion

Rec'n No.	2005 audit report recommendations	Audit conclusion in 2010
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.	Not yet implemented.
10	<p>Given the effectiveness of conferencing, the LC&amp;T unit should:</p> <ul style="list-style-type: none"> <li>a) monitor conferencing processes and outcomes in order to further enhance efficiency and Court user satisfaction; and</li> <li>b) consider implementing measures such as improved guidance material and identification of training needs for conferencing staff.</li> </ul>	Implemented.
11	<p>The LC&amp;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:</p> <ul style="list-style-type: none"> <li>a) modified running lists;</li> <li>b) managing timeliness of cases by exception; and</li> <li>c) use of more efficient procedures for routine Court appearances.</li> </ul>	Partly implemented.
12	<p>The LC&amp;T unit should consider measures to improve services to Court users, such as:</p> <ul style="list-style-type: none"> <li>a) identifying needs of different Court user groups (including users such as unrepresented litigants);</li> <li>b) publishing combined Court user service standards for all Court services; and</li> <li>c) ensuring that Court user service standards are met.</li> </ul>	Implemented.
13	<p>The LC&amp;T unit should improve the usefulness of Court user satisfaction surveys by:</p> <ul style="list-style-type: none"> <li>a) addressing the surveys to a more diverse sample of Court users;</li> <li>b) publishing the results in the Annual Report and on their web site; and</li> <li>c) implementing appropriate action to address issues identified in the survey.</li> </ul>	Implemented.
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.	Implemented.
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.	Partly implemented.
16	JACS should establish LC&T unit as a separate Output Class to provide more visibility of its budget and performance against it.	Implemented.

Rec'n No.	2005 audit report recommendations	Audit conclusion in 2010
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.	Not yet implemented.
18	The LC&T unit should continue to seek efficiencies, either through suggestions in this report or elsewhere, in order to achieve budget targets.	Mostly implemented.
19	The LC&T unit should put in place sound project management practices to deliver the case management system redevelopment with minimum risk.	Not yet implemented.
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 LC&T unit.	Implemented.
21	<p>The LC&amp;T unit should:</p> <ul style="list-style-type: none"> <li>a) consult the judiciary and then advise Government on ways to simplify forms and reduce their number;</li> <li>b) establish consistent procedures for use by staff in the Magistrates Court Registry; and</li> <li>c) prepare improved manuals and procedures to assist Magistrates.</li> </ul>	Implemented.
22	<p>The LC&amp;T unit should:</p> <ul style="list-style-type: none"> <li>a) better integrate Magistrates Court counter services with the rest of the Registry;</li> <li>b) in the review of Registry functions, seek both to achieve fewer and better-trained teams and to encourage multi-tasking within teams; and</li> <li>c) consider the merits of combining the Supreme and Magistrates Courts registries.</li> </ul>	Partly implemented.
23	<p>The LC&amp;T unit should seek to improve HR management practices and provide as much certainty as possible to staff by:</p> <ul style="list-style-type: none"> <li>a) not recruiting at all if the position is not justified;</li> <li>b) recruiting permanently where the need has been established;</li> <li>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</li> <li>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.</li> </ul>	Implemented.
24	The LC&T unit should implement measures to address staff concerns raised, including performance management and staff training and development.	Mostly implemented.

### KEY FINDINGS

1.9 The audit conclusions are supported by the following key findings:

#### Support for the judiciary (Chapter 2)

- A Courts Governance Committee comprising the Attorney-General, the Heads of Jurisdiction, the President of the Court of Appeal, the Chief Executive of JACS, and the Courts Administrator was established in late 2005. Regular meetings of the Committee have enabled a more collaborative relationship between the Executive, JACS and the Judiciary.
- The development of a *Memorandum of Understanding* between JACS and the Courts in May 2007, and the accompanying *Service Level Agreement* in May 2009, clarified responsibilities and accountabilities, and improved governance in Courts administration. However, the long time taken to finalise the two documents delayed their overall benefit on Courts administration.
- There was no formal discussion or consideration of any future model of Court governance to provide greater administrative independence and better alignment of Courts' responsibility with public accountability.
- The ACT Law Courts and Tribunal (Courts Administration) gathered good practices in other jurisdictions through various forums. Information obtained led to or influenced a number of changes in the administration of the Courts.
- In 2010, JACS conducted a survey of ACT Court fees compared to those of other jurisdictions. This survey, conducted under the auspices of the Standing Committee of Attorneys-General, is still in progress. Apart from this work, there has been no review and little change to the structure of court fees since 2005. The use of appropriate fees may improve compliance, and deter behaviours and practices that have caused inefficiencies in Courts.
- Statistics on Case Management Hearings at the Magistrates Court were collected by the Listing Clerk and reported to the Chief Magistrate quarterly. Due in part to system limitations, statistics on Pre-Arraignments were not analysed by the Supreme Court. There was no formal evaluation conducted on Case Management Hearings or Pre-Arraignment Conferences.
- Good processes have been adopted in the area of conferencing in the Magistrates Court. The Manager of the Conferencing Unit monitored progress and outcomes of conferences. Statistics were collected, analysed and reported to the Registrar and the Chief Magistrate on a quarterly basis. Improved guidance materials for conferencing staff were available, and specialist training such as mediation was planned.
- There were major reforms in case scheduling in the Magistrates Court, including establishment of a Listing Unit and introduction of the daily call-over process conducted by the Registrar. Courts Administration played an active role in these reforms by providing analysis on relevant statistics and recommending possible options for consideration by the judiciary.

- Although recent enhancements of the Courts' case management system (MAX) enabled the system to function in the medium term, there were significant risks associated with the continued use of the system. There was no final strategic ICT plan to inform and assist JACS in considering and making decisions regarding the replacement of the MAX system.
- Statistics on long-wait cases and adjournments were collected and reported on a regular basis to the Chief Magistrate and the Chief Justice. However, the use of these statistics to implement measures to improve court efficiency varies between Courts.

### Services to Court Users (Chapter 3)

- The introduction of the *Court Procedures Rules 2006* has provided a set of uniform rules for both the Magistrates Court and Supreme Court, and has streamlined most Court proceedings. At the same time, there has been an increase in the number of approved forms in both Courts, and the approved forms are now more complex for self-litigants at the Magistrates Court.
- Most sections in the Registry now have well-documented administrative procedures, which are easily accessed by staff.
- Registry functions at both Courts have been reviewed and restructured to be more efficient, and are now overseen by one Registry Manager.
- Considerable progress has been made to integrate the registries at both Courts. The feasibility of locating the Registry of the Supreme Court to the Magistrates Court building has been explored by a working party group, established in April 2010. The working party group, however, could not reach a consensus view. A report containing a number of options for consideration by the Chief Justice and the Chief Executive of JACS was drafted in July 2010 but has not yet been finalised.
- A Courts Service Charter has been developed and a customer/client complaint handling process has been implemented.
- Implementation of findings of client satisfaction surveys was a standing agenda item for the Courts Stakeholders Forum meeting. However, quarterly reports on complaints were not provided to the Heads of Jurisdiction for their information.
- The Courts Stakeholders Forum provides a mechanism for consultation with a broad cross-section of stakeholders, and engages the attention of senior judicial and JACS personnel. The forum, however, did not always take the opportunity to consider the challenges faced by the Courts, such as the Single Registry, and how they may be effectively overcome.
- In June 2008, the ACT Law Courts and Tribunal (Courts Administration) undertook three user satisfaction surveys - Supreme Court, Magistrates Court and a cross-Court survey for professionals only. Audit observed that responses to the general Supreme Court and Magistrates Court surveys were favourable on all indicators. However, respondent numbers were small – from two to 23 per question.

### Other management issues (Chapter 4)

- Aspects of governance arrangements for Courts administration have been improved. The Courts Governance Committee has been involved in some management issues, such as endorsing the implementation plan for the 2005 audit recommendations and other subsequent reviews.
- There was no separate comprehensive annual report of the jurisdictions, as referred to in the JACS and Government responses to the 2005 audit report. Further, judicial officers were not involved in the preparation of JACS' annual reports.
- There has been no review of funding issues since 2005 to determine the adequacy or otherwise of the base funding for the operation of the courts.
- The ICT Committee was yet to finalise an ICT strategic plan. Without a strategy, ICT projects may be planned in isolation, and priority based on urgent and possibly short-term business needs.
- There were significant improvements made to human resource management, including staff development and training, and some performance management processes. To build on these improvements, Courts Administration should develop performance agreements for the remaining staff, as required by the HR policy of JACS.

### RECOMMENDATIONS AND RESPONSES TO THE REPORT

- 1.10 The audit made eight recommendations to address the audit findings detailed in this report.
- 1.11 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 for her consideration and comment. The Auditor-General also invited comments from the Heads of Jurisdictions.
- 1.12 The Chief Executive has provided the responses to each recommendation as below.

#### Recommendation 1

The Courts Governance Committee should review the *Memorandum of Understanding* between JACS and the ACT Law Courts and Tribunal (Courts Administration), as planned, to evaluate its usefulness and improve it as appropriate.

#### Response from JACS

*Agreed-in-principle.* JACS will provide this recommendation to the Courts Governance Committee for its consideration.

### Recommendation 2

JACS should thoroughly review the Courts' fee setting, based on the results of the survey conducted in early 2010, to advise the Government and the Courts on options for improving the effectiveness of compliance, and hence encourage efficiency in caseload management.

### Response from JACS

*Agreed.* JACS will build on work undertaken previously which identified and compared ACT Courts' fees with other jurisdictions and work underway under the auspices of the Standing Committee of Attorneys-General. The use of fees as a tool to improve the effectiveness of compliance and provide price signals to clients of the Court to encourage efficiency in case flow management will form an integral part of the review.

### Recommendation 3

JACS should support the Heads of Jurisdiction in formally evaluating the Case Management Hearings (Magistrates Court) and Pre-Arrestment Conferences (Supreme Court) with a view to recommending improvement measures to the Heads of Jurisdiction.

### Response from JACS

*Agreed.* JACS will support the Heads of Jurisdiction in the formal evaluation of case management hearings and pre-arrestment conferences.

### Recommendation 4

JACS should expedite plans to replace the case management system, MAX.

### Response from JACS

*Agreed-in-principle.* Work has begun to identify case management systems used in other jurisdictions and lessons learned from their implementation.

### Recommendation 5

JACS should provide further assistance to the Heads of Jurisdiction by analysing statistics collected on long-wait cases or pattern of cancellations at both Courts, with a view to informing decision making by the judiciary in improving caseload management.

### Response from JACS

*Agreed.* Statistics on long-wait cases are collected for each of the Courts and the analysis of these statistics will be formalised and provided to the judiciary on a regular basis. Discussion with the judiciary on the type of analysis that would be most useful in informing decisions around caseload management will be undertaken and a timetable agreed for provision of the analysis.

### Recommendation 6

JACS should, as a matter of priority, work with the Heads of Jurisdictions to reach an agreed conclusion on the feasibility of co-locating the registries of the Magistrates Court and the Supreme Court.

### Response from JACS

*Agreed.* JACS is of the view that the co-location of the registries would provide operational efficiencies, enable management of administrative workloads across jurisdictions, improve business continuity and succession planning, enhance career development of staff and provide for improved communication.

*Feedback from stakeholders indicates support for JACS position.*

*JACS has elevated this to the Courts Governance Committee for its consideration.*

### Recommendation 7

JACS should consult with the Heads of Jurisdiction on the need for, and the contents of, reporting by the Courts, which would incorporate commentary by the judiciary on any matter the judiciary considers appropriate.

### Response from JACS

*Agreed-in-principle.* JACS will seek comment from the Heads of Jurisdiction on the contents of Courts Administration's annual reporting which are incorporated in the JACS annual report. The nature of reporting by the judiciary is a matter for the Chief Justice and Chief Magistrate to determine.

### Recommendation 8

JACS should ensure that all staff comply with the JACS Personal Achievement and Development Framework.

### Response from JACS

*Agreed.* The introduction of the JACS Personal Achievement and Development Plan (PADP) Framework at the Courts has ensured that Court staff are able to receive timely feedback on performance from their managers. In addition, training and development needs of individual staff are identified and appropriate training provided by JACS.

*The Registry Manager will put in place a program to ensure that all staff work towards compliance with the Department's PADP Framework with a view to all staff having PADPs in place by June 2011.*

## 2. SUPPORT TO THE JUDICIARY

### INTRODUCTION

2.1 This chapter assesses whether JACS implemented the recommendations of the 2005 audit report, *Courts Administration*, that relate to provision of support to judicial officers in undertaking their roles. These are Recommendations 1, 5, 6, 7, 8, 9, 10, 11, and 19.

Recommendation 2005 Audit report	Issues	Status
1	Communication and collaboration between ACT Law Courts and Tribunal (Courts Administration) and the judiciary.	Partly implemented.
5	Implementation of better practices from other jurisdictions.	Mostly implemented.
6, 9, 10, 11, 19	Caseflow management.	Recommendation 6: Overtaken by later developments. Recommendations 9: Not yet implemented. Recommendation 10: Implemented. Recommendation 11: Partly implemented. Recommendation 19: Not yet implemented.
7, 8	Collection and analysis of statistics on long-wait cases and adjournments.	Partly implemented (both).

### KEY FINDINGS

- A Courts Governance Committee comprising the Attorney-General, the Heads of Jurisdiction, the President of the Court of Appeal, the Chief Executive of JACS, and the Courts Administrator was established in late 2005. Regular meetings of the Committee have enabled a more collaborative relationship between the Executive, JACS and the Judiciary.
- The development of a *Memorandum of Understanding* between JACS and the Courts in May 2007, and the accompanying *Service Level Agreement* in May 2009, clarified responsibilities and accountabilities, and improved governance in Courts administration. However, the long time taken to finalise the two documents delayed their overall benefit on Courts administration.
- There was no formal discussion or consideration of any future model of Court governance to provide greater administrative independence and better alignment of Courts' responsibility with public accountability.
- The ACT Law Courts and Tribunal (Courts Administration) gathered good practices in other jurisdictions through various forums. Information obtained led to or influenced a number of changes in the administration of the Courts.
- In 2010, JACS conducted a survey of ACT Court fees compared to those of other jurisdictions. This survey, conducted under the auspices of the Standing Committee of Attorneys-General, is still in progress. Apart from this work, there

has been no review and little change to the structure of court fees since 2005. The use of appropriate fees may improve compliance, and deter behaviours and practices that have caused inefficiencies in Courts.

- Statistics on Case Management Hearings at the Magistrates Court were collected by the Listing Clerk and reported to the Chief Magistrate quarterly. Due in part to system limitations, statistics on Pre-Arraignments were not analysed by the Supreme Court. There was no formal evaluation conducted on Case Management Hearings or Pre-Arraignment Conferences.
- Good processes have been adopted in the area of conferencing in the Magistrates Court. The Manager of the Conferencing Unit monitored progress and outcomes of conferences. Statistics were collected, analysed and reported to the Registrar and the Chief Magistrate on a quarterly basis. Improved guidance materials for conferencing staff were available, and specialist training such as mediation was planned.
- There were major reforms in case scheduling in the Magistrates Court, including establishment of a Listing Unit and introduction of the daily call-over process conducted by the Registrar. Courts Administration played an active role in these reforms by providing analysis on relevant statistics and recommending possible options for consideration by the judiciary.
- Although recent enhancements of the Courts' case management system (MAX) enabled the system to function in the medium term, there were significant risks associated with the continued use of the system. There was no final strategic ICT plan to inform and assist JACS in considering and making decisions regarding the replacement of the MAX system.
- Statistics on long-wait cases and adjournments were collected and reported on a regular basis to the Chief Magistrate and the Chief Justice. However, the use of these statistics to implement measures to improve court efficiency varies between Courts.

### **COMMUNICATION AND COLLABORATION BETWEEN COURTS ADMINISTRATION AND THE JUDICIARY**

2.2 The 2005 audit recommended (Recommendation 1) that JACS should work with the judiciary to:

- establish a more collaborative relationship between the judiciary and the Department;
- hold regular forums for communication between the judiciary, the Department and the executive arm of the Government; and
- establish a governance model for the ACT Law Courts and Tribunal (Courts Administration) that provides greater administrative independence and hence better alignment of Courts' responsibility with public accountability.

2.3 JACS agreed to this recommendation, and stated that:

- 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;<sup>1</sup>
- the Courts Governance Committee, comprising the Attorney General, the Chief Justice, the Chief Magistrate, the Chief Executive of Justice and Community Safety and the Courts Administrator would meet every six months to monitor progress in the Courts and facilitate joint action in areas of concern; and
- the proposed Courts Governance Committee would consider any future model of Court governance.

2.4 The recommendation was strongly supported by the then Chief Magistrate.

2.5 JACS has partly implemented this recommendation by establishing a more collaborative relationship with the judiciary through regular forums for communication. However, there was no formal discussion or consideration of any future model of Court governance that may provide greater administrative independence and better alignment of Courts' responsibility with public accountability.

### *Courts Governance Committee*

2.6 As undertaken by JACS in its response to the 2005 audit, a Courts Governance Committee (the Committee) was established in December 2005. The Committee comprises the Attorney-General, the Chief Justice of the Supreme Court, the Chief Magistrate, the President of the Court of Appeal,<sup>2</sup> the Chief Executive of JACS, and the Courts Administrator.

2.7 The Committee meets quarterly and is a forum for discussion of strategic issues affecting administration of the Courts, monitoring progress of initiatives, and facilitating joint action in areas of concern.

2.8 General feedback from most participants was that the Committee enables more communication among the Attorney-General, JACS and the Heads of Jurisdiction. Participants for the most part were satisfied with the operation of the Committee.

2.9 Audit found that topics discussed by the Committee canvassed most key areas that affected the operation of the Courts such as ICT Support, Human Resources, Accommodation, and Budget and Finance. The Committee was also briefed on outcomes of major reviews or initiatives relevant to Courts operation, such as the *Final Report on Implementation of the Reorganisation of ACT Law Courts and Tribunals Registries* (Semple Registries Review) (discussed in Chapter 3), the Supreme Court Working Group report (discussed later in this Chapter), or the proposal for a combined single Registry (discussed in Chapter 3).

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<sup>1</sup> These meetings commenced in December 2005.

<sup>2</sup> The Court of Appeal is not physically separate from the Supreme Court. Judges of the Supreme Court are also appointed to the Court of Appeal.

### *Memorandum of Understanding and Service Level Agreement*

- 2.10 In May 2007, the Courts Governance Committee endorsed a *Memorandum of Understanding* (MoU) between JACS and the ACT Law Courts.
- 2.11 Under this MoU, JACS is ‘to provide and arrange for the provision of the administrative facilities and services necessary to enable the Courts and their staff to carry out their judicial and administrative functions’. The responsibility of the Courts is to ‘identify the required administrative facilities and services that are necessary to enable the Courts and their staff to carry out their judicial and administrative functions’.
- 2.12 Details of administrative services provided by JACS are set out in the *Service Specifications for the Provision of Administrative Support Services*, also called the *Service Level Agreement*. This was approved by the Heads of Jurisdiction and the Chief Executive of JACS at the Committee meeting of 14 May 2009.
- 2.13 The development of an MoU between JACS and the Courts in May 2007, and the accompanying *Service Level Agreement* in May 2009, were useful means to improve governance in Courts administration, and clarified responsibilities and accountabilities. However, the long time taken to finalise the two documents delayed their overall benefit on Courts administration.
- 2.14 The MoU was due for triennial review in May 2010. Although there was discussion at the Courts Governance Committee on amending the MoU to allow for the inclusion of the Tribunals, a review was yet to be commenced.

#### **Recommendation 1**

The Courts Governance Committee should review the *Memorandum of Understanding* between JACS and the ACT Law Courts and Tribunal (Courts Administration), as planned, to evaluate its usefulness and improve it as appropriate.

### *New model of Courts governance*

- 2.15 The response from JACS to the 2005 audit and the Government’s submission to the subsequent PAC inquiry 2008 stated that the Court Governance Committee would ‘consider any future model of Court governance’. There was no commitment in the responses to actively seek out a new model for application to the ACT Courts.
- 2.16 In its 2008 report, the PAC recommended that:<sup>3</sup>
- the ACT Government commission an independent report on the appropriateness of applying the South Australian model of Courts administration in the ACT, including a comprehensive examination of the associated costs and benefits.

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<sup>3</sup> Public Accounts Committee Report 15, *Review of Auditor-General’s Report No 4 of 2005*, Recommendation 9.

2.17 The Government responded that:

The ACT Government is committed to the Latimer House Principle that an independent, impartial, competent and honest judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice. The Government is also committed to the Latimer Principle of ensuring adequate resources are provided for the judicial system to operate effectively without undue constraints. Where there is some merit, especially in larger jurisdictions, for maintaining a separately resourced Courts administration, **the relative cost of duplicating existing administrative resources to service the needs of the small judiciary in the ACT outweighs the potential benefit to be gained from establishing a full independent arm of Government.** [Audit emphasis]

2.18 Audit was unaware of any cost and benefit analysis to support the Government's view that increases in administrative resources outweigh the potential benefit from a separate Courts administrative arm. In addition, adoption of a new governance model, such as the model currently in place in South Australia, may not necessitate severing administrative links with JACS or duplicating administrative services.

2.19 The Courts Governance Committee did not consider wholesale changes to Courts governance, instead directing its attention to more immediate issues as mentioned above.

2.20 Audit noted that modern Court governance models have been mooted in other jurisdictions. For example, in a submission to the Victorian Law Reform Commission,<sup>4</sup> Chief Justice Marilyn Warren of the Victorian Supreme Court suggested that the Commission explore the benefits of a more independent Court governance structure, citing the Attorney-General's Justice Statement and the Courts Strategic Directions Statement, which noted:

A modern governance system needs to be introduced to enable the Courts and VCAT [Victorian Civil and Administrative Tribunal] to respond adequately to the changing needs of the community.

2.21 Improvements to Courts administration are expected to result from discussions such as these, and from forums such as the Australasian Court Administrators Group, of which the Court Administrator is a member.

## IMPLEMENTATION OF BETTER PRACTICES FROM OTHER JURISDICTIONS

2.22 The 2005 audit recommended (Recommendation 5) that ACT Law Courts and Tribunal (Courts Administration):

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.

2.23 The above recommendation arose from a concern that the ACT Childrens Court was the most expensive of all jurisdictions in the years preceding the audit, and

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<sup>4</sup> Victorian Law Reform Commission, *Civil Justice Review: Report*, page 727.

the cost per case in the ACT Magistrates Court was higher than Tasmania, Victoria and Queensland.<sup>5</sup>

2.24 The latest data on the comparative performance of the Courts was from the Productivity Commission's *Report on Government Services 2010*. A summary of the ACT Courts' performance against some key indicators is at Table 2.1.

2.25 These data should be treated as indicative, because:

- there were differences in quality of the data between jurisdictions, and varying criteria for their collection, as explained in the footnotes to the tables in the *Report on Government Services 2010*;
- States and Territories were not identical in their allocation of civil business between their Court levels. The roles and responsibilities of the Courts also vary between jurisdictions;
- the average cost per matter (total national expenditure over total matters nationally) was skewed by the relative economies of scale of the larger jurisdictions; and
- the table above only compares backlogs over 12 months. Comparison of backlogs of matters over six months may show a different result. In the Childrens Court, for example, some 28 percent of criminal cases, and 26 percent of civil cases are older than six months.

2.26 The *Report on Government Services 2010* itself also notes:<sup>6</sup>

Results can be affected by the complexity and distribution of cases, which may vary across Court levels within each State and Territory and the Australian Courts...

Additionally, Tasmania, the ACT and the NT have a two-tier Court system (that is, they do not have a district/county Court level), whereas the other states and territories have a three-tier Court system. This difference needs to be taken into account when comparing the results of the backlog indicator.

The following factors may affect the timeliness of case processing in the civil Courts:

- where civil cases are contested, a single case may involve several related applications or issues that require judgments and decisions by the Court;
- the parties to a case can significantly affect the conduct and timeliness of a case — that is, matters often may be adjourned at the instigation of, and by the consent of, the parties — such consent arrangements are outside the control of the Court;
- the Court may employ case management or other dispute resolution processes (for example, mediation) that are alternatives to formal adjudication; [and]
- an inactive case is regarded as finalised (or closed) 12 months after the last action on the case (in accordance with the counting rules for this data collection).

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<sup>5</sup> Auditor-General's Report No 4 of 2005, *Courts Administration*, paragraph 3.42, page 40.

<sup>6</sup> *Report on Government Services 2010* pp 7.25 – 7.28.

The age of the pending caseload and case processing timeliness in criminal cases (and for some civil cases) can also be affected by orders or programs that are initiated following a Court lodgement, but prior to a Court finalisation.

**Table 2.1: Comparative backlog and cost data – Australian jurisdictions – 2008-09**

Court	Indicator	ACT	Comment
<b>Supreme Court</b>	Criminal cases greater than 12 months – appeal	15.7%	ACT is second highest. Victoria is the highest at 24.6%. Lowest is WA, at 1.9%.
	Criminal cases greater than 12 months – non-appeal	31.1%	ACT is the highest in Australia. Victoria is second at 26.7%. Lowest is NT at 7.1%
	Civil cases greater than 12 months – appeal	25.8%	ACT is third highest – Tasmania leads with 30.5%. Qld, NT and SA are less than 10%.
	Civil cases greater than 12 months – non-appeal	44%	ACT is the highest, followed by NT at 39.4%. All states and territories except Victoria are above 20%.
	Cost per finalisation, criminal	\$13 036	ACT cost is below the national average (total expenditure divided by total matters) of \$15 118.
	Cost per finalisation, civil	\$3 061	ACT cost is below the national average (total expenditure divided by total matters) of \$4 315.
<b>Magistrates Court</b>	Criminal cases greater than 12 months	19%	ACT is second lowest. NT is the highest at 41.4%; the lowest is NSW at 11.5%
	Civil cases greater than 12 months	13.9%	ACT is the highest, ahead of Victoria (12.7%) and SA (12.5%). Qld, WA and Tasmania are under 7%.
	Cost per finalisation, criminal	\$1 255	ACT is the highest. Average (total expenditure over total matters) is \$414.
	Cost per finalisation, civil	\$809	ACT is the highest. Average (total expenditure over total matters) is \$173.
<b>Childrens Court</b>	Criminal cases greater than 12 months	2.5%	ACT is second lowest. NT, Qld and Tasmania are above 10%.
	Civil cases greater than 12 months	3%	ACT is the third lowest. Tasmania is the highest at 21.3%
	Cost per finalisation, criminal	\$1 995	ACT cost is the highest. Average (total expenditure over total matters) is \$503.

Source: *Report on Government Services*, Steering Committee for the Review of Government Service Provision, 2010

- 2.27 Within the inherent limitations of these data, the results suggest that in 2008-09:
- backlogs in the ACT Supreme Court were significant, compared to other jurisdictions, although costs per matter (civil and criminal) were lower than the average;
  - the backlog of criminal matters in the Magistrates Court was low compared to other jurisdictions; however, the civil case backlog percentage is the highest in the country. The Magistrates Court also had the highest costs per matter and was well above the national average for criminal and civil matters; and
  - backlogs were low in the Childrens Court, although the cost of each matter was high by national averages.
- 2.28 Audit concludes that the on-going focus by Government and the Courts on the backlogs of matters in the Supreme Court is needed, and notes that the observation of the 2005 audit regarding the relative high costs in the Magistrates and Childrens Courts remains.
- 2.29 As suggested in the 2005 audit, improved performance could be achieved if Courts Administration analyse other jurisdictions performance against each key performance indicator. From that analysis, better practices may be identified which could be applied in the ACT Courts system.<sup>7</sup>
- 2.30 Audit was advised that various Courts Administrators accumulated information on good practices for cost efficiency from the Australasian Court Administrators Group, the Australian Committee for Court Education, and the International Association of Courts Administrators.
- 2.31 Information obtained from these forums influenced or led to a number of changes or initiatives in Courts administration. These were:
- the launch of the International Courts Excellence Framework;
  - the introduction of the ticketing system, *Smartqueue*, at the Magistrates Court;
  - a plan for a research project for a new case management system based on Tasmanian experience and other jurisdictions; and
  - changes in care and protection matters at the Childrens Court.
- 2.32 Audit considers that, following the introduction of new processes and practices, it is important that Courts Administration also conducts formal analysis to identify the cost savings, or to evaluate whether the changes mentioned above have led to improved performance. This has not been done, and the issue is discussed further later in this report.

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<sup>7</sup> Auditor-General's Report No 4 of 2005, *Courts Administration*, paragraph 3.47, page 42.

## CASEFLOW MANAGEMENT

- 2.33 The 2005 audit made several recommendations relevant to caseflow management, including having recommended that JACS should:
- review the effectiveness of compliance and other mechanisms to encourage efficiency in caseflow management, and advise the government and the judiciary on options (Recommendation 6);
  - 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 (Recommendation 9);
  - monitor conferencing processes and outcomes in order to further enhance efficiency and Court user satisfaction; and consider implementing measures such as improved guidance material and identification of training needs for conferencing staff (Recommendation 10);
  - work with the Magistrates to improve caseflow management. Approaches might include modified running lists, managing timeliness of cases by exception, and the use of more efficient procedures for routine Court appearances (Recommendation 11); and
  - put in place sound project management practices to deliver the case management system redevelopment (Recommendation 19).

### Fee setting and efficiency in caseflow management

- 2.34 The 2005 report discussed fee setting in influencing behaviour that can affect the Courts' program. For example, setting a filing fee could deter trivial civil disputes. This approach is consistent with the Federal Government's recent request through the Standing Committee of Attorneys-General that all states and territories should work towards parity on Courts fees to reduce jurisdiction shopping.
- 2.35 The 2005 audit also noted that other measures could be used to manage demand on the Courts, such as alternative dispute resolution services, and greater use of services such as social workers, mediators and protective service workers. The expanded use of conferencing is discussed later in this Chapter.
- 2.36 JACS undertook to examine costs, fees and other sanctions and to advise Government and the judiciary in response to Audit's recommendation to encourage efficiency in caseflow management (Recommendation 6).
- 2.37 In early 2010, ACT Law Courts and Tribunal (Courts Administration) commenced a review comparing ACT Court fees to that of other jurisdictions. This work was undertaken as part of consideration of courts fees by the Standing Committee of Attorneys-General and is still in progress.
- 2.38 Apart from the recent work done under the auspices of the Standing Committee of Attorneys-General, as noted above, there has been no review and little change to

the ACT court fees structure since 2005. Audit considers that a full review is important to:

- inform a response to the Federal Government's initiative for uniformity of fees;
- complement a thorough review of Courts' costs, particularly in light of the comparatively high costs of the Magistrates Court and the Childrens Court (see Table 2.1 above); and
- encourage or discourage behaviour of Court users, that could result in efficiencies for the administration of the Courts.

### **Recommendation 2**

JACS should thoroughly review the Courts' fee setting, based on the results of the survey conducted in early 2010, to advise the Government and the Courts on options for improving the effectiveness of compliance, and hence encourage efficiency in caseflow management.

### **Case Management Hearings and Pre-Arrestment Conferences**

- 2.39 As reported by the 2005 audit, Case Management Hearings (CMHs) at the Magistrates Court, or Pre-arrestment Conferences at the Supreme Court are a major feature of caseflow management of criminal cases. These initiatives were designed to expedite and control the flow of criminal cases in the Courts.
- 2.40 For example, at the Magistrates Court, criminal matters where a plea of not guilty was entered were referred to a Case Management Hearing with the aim that a greater amount of information would be shared at an earlier time. The expected outcome was that it would lead to better decision-making by the defence and reduce the rate of matters listed for hearing that had a change of plea on the morning of the hearing or had to be adjourned for some reason.
- 2.41 Pre-arrestment Conferences at the Supreme Court serve a similar purpose to that of Case Management Hearings in the Magistrates Court.
- 2.42 The 2005 audit recommended that Courts Administration (Recommendation 9):
- 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-Arrestment Conference in the Supreme Court.
- 2.43 Audit did not find any formal evaluation to assess the effectiveness of Case Management Hearings and Pre-Arrestment Conferences. Audit sought but was not provided with any explanation as to why the recommended evaluations of Case Management Hearings and Pre-Arrestment Conferences had not occurred.
- 2.44 Audit was advised that, in the Supreme Court, the value and purpose of Pre-Arrestment Conferences have been discussed in the Supreme Court Working Group and the Criminal Procedures Committee, and that the results of Pre-Arrestment Conferences were monitored.

- 2.45 The Listing Clerk at the Magistrates Court collected statistics on Case Management Hearings and reported to the Chief Magistrate quarterly on:
- number and type of defendants (represented or self-represented);
  - reasons of adjournments (for example: ‘adjourned for further Case Management Hearings’, ‘adjourned and back to the A list’, or ‘remand remains’); and
  - outcomes (finalised and set for hearing/finalised and no need for hearing).
- 2.46 This quarterly report also provided some information on the outcomes achieved by Case Management Hearings through:
- the percentage of Case Management Hearings adjourned;
  - the percentage of Case Management Hearings proceeding to hearings;
  - the percentage of Case Management Hearings finalised without proceeding to hearings; and
  - the number of cases where time is saved by Case Management Hearings and the hours saved.
- 2.47 The Chief Magistrate advised that these reports provided him with sufficient information to inform his decisions on case management.
- 2.48 Statistics on number of Pre-Arrestment Conferences at the Supreme Court were available from MAX, the case management system; however, the system is unable to analyse the information.

### **Recommendation 3**

JACS should support the Heads of Jurisdiction in formally evaluating the Case Management Hearings (Magistrates Court) and Pre-Arrestment Conferences (Supreme Court) with a view to recommending improvement measures to the Heads of Jurisdiction.

### **Conferencing at the Magistrates Court**

- 2.49 The Conferencing Unit at the Magistrates Court provides alternative dispute resolution services for the effective and efficient disposition of cases in a range of matters including care and protection applications, domestic violence and restraining orders and general civil claims. The Unit also provides a range of case management activities through the exercise of delegations.
- 2.50 The 2005 audit reported that Courts use conferences to reduce or eliminate the time needed in Court. Outcomes can be better if parties agree to the terms of an order rather than have one imposed by the Court.
- 2.51 Conferences allow the use of more informal settings, and better use of officers below judicial rank, who try to reach an agreement to the question at issue. The 2005 audit observed that conferencing appears to be an effective contribution to the operation of the Courts. Given the significance of the function, the 2005 audit considered it beneficial to continue to monitor conferencing processes to assess

whether additional support is required to ensure viability, and to maintain efficiency and user satisfaction.

2.52 The 2005 audit recommended that (Recommendation 10):

...the Courts 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.

2.53 Following the 2005 audit, in May 2006, the Chief Executive of JACS together with the Chief Magistrate commissioned an evaluation of the conduct of Care and Protection cases (*Policy Options on Conferencing for Care and Protection Cases* - the Semple Care and Protection Review). The Review concluded that:

To achieve efficient management of Care and Protection matters requires a clear understanding of the case management policy and procedures from early intervention by OCYFS [Office for Children, Youth and Family Support, Department of Housing and Community Services] through to final hearings conducted by the Childrens Court.

2.54 Audit found conferencing processes and outcomes were monitored by the Manager of the Conferencing Unit at the Magistrates Court. Statistics were collected, analysed and reported quarterly to the Registrar and the Chief Magistrate. This report contained information on:

- settlement rates and conferences conducted for domestic violence, restraining orders and workplace orders;
- care matters;
- commercial leases, taxation and civil conferences;
- significant trends; and
- recommendations.

2.55 The report also identified emerging issues and recommended better practices to make conferences more flexible for Court users.

2.56 Audit considers this a good process that provides statistical analysis to the Head of Jurisdiction on the effectiveness of conferencing, and also enables the Conferencing Unit to further enhance efficiency and Court user satisfaction.

2.57 Audit also found that the Conferencing Unit implemented a number of measures as recommended by the 2005 audit, such as:

- issuing an Induction Training Protocol;
- issuing a conference instruction manual and procedure statements;
- developing information sheets and practice documents; and
- investigating specialist training for conferencing staff (training in mediation is planned.)

## Case scheduling

- 2.58 Case scheduling is a central function of Courts administration and is also closely allied to judicial functions. It plays a key role in management of caseflow in Courts.
- 2.59 Accordingly, the 2005 audit recommended that:
- the Courts Administration should (Recommendation 11) ...work with the Magistrates to formally analyse and advise on approaches to improving caseflow management...
- 2.60 In particular, the 2005 audit recommended three potential approaches that may assist case scheduling, particularly in the Magistrates Court.<sup>8</sup> Those were:
- modified running list (Recommendation 11(a));
  - managing timeliness of cases by exception; (Recommendation 11(b)); and
  - use of more efficient procedures for routine Court appearances (Recommendation 11(c)).
- 2.61 Audit found that the above recommended approaches have been either considered, discussed or will be trialled by the Magistrates Court in the future. For example, Audit was advised that the 'modified running list' will be trialled at the Magistrates Court from December 2010.<sup>9</sup> 'Managing timeliness of cases by exception' has been adopted to some extent in the Court's dealing with major cases, which require more than three days hearing, or involve significant pre-hearing arguments or rulings, or require an extended timetable for the completion of the brief of evidence due to the nature and complexity of the case.<sup>10</sup>
- 2.62 Audit acknowledges that decisions on scheduling cases, or the allocation of time for a case, rest with judicial officers.
- 2.63 Audit found that Courts Administration on its part actively supported the judiciary by providing analysis and proposing options as to how caseflow could be improved.
- 2.64 In December 2005, Courts Administration commissioned a review of the Court Registries. Of the 17 recommendations of the review, four recommendations (Recommendations 2 to 5) refer to caseflow management and listing of cases. Court internal documents indicate that these have been implemented. The *Final Report on Implementation of the Reorganisation of ACT Law Courts and Tribunals Registries* (the Semple Registries Review) is discussed in Chapter 3, Review of Registry functions.

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<sup>8</sup> Auditor-General's Report No 4 of 2005, *Courts Administration*, Chapter 4, Some Potential Approaches, page 57.

<sup>9</sup> Magistrates Court Practice Note, issued by the Chief Magistrate on 15 September 2010.

<sup>10</sup> According to the Magistrates Court Practice Direction No 1 of 2009, major cases may be identified at, or prior to, Case Management Hearings (CMHs). Where major cases are identified prior to a CMH, the matter will still be allocated a CMH date. Prior to the CMH date, the DPP will notify the List Coordinator of any likely major cases in the upcoming CMH list. The Court will then be in a position at the CMH to allocate a specific Magistrate and available dates to separately case manage and hear those matters.

2.65 In February 2007, the Magistrates Court initiated a number of reforms to the listing procedures for criminal matters (the A list) and to the listing of defended criminal matters, with practice directions being issued in July 2007. Those reforms were made with a view to:

- enhancing access to justice;
- improving the use of the resources of the Court and other stakeholders;
- improving the effectiveness of the Court's listing procedures; and
- reducing waiting times for litigants, legal practitioners, the Director of Public Prosecutions (DPP) and the Police, as well as making better use of Magistrates' time.

2.66 Measures taken included:

- the Registrar assuming responsibility for the call-over;
- the creation of a Listing Unit to support the List Co-ordinating Magistrate, and the Magistrates generally. The Listing Clerk position was upgraded to the ASO 6 level, and an ASO 4 position was allocated to provide support to the Listing Clerk;
- additional functions allocated to the Listing Clerk, including:
  - management of the Court Services unit;<sup>11</sup>
  - post Case Management Hearing liaison with the Director of Public Prosecutions and with representatives of accused persons to identify those listed defended criminal matters that may not proceed to hearing;
  - identifying time available for listing defended criminal matters, complex pleas of guilty, or urgent civil hearings, and providing that information to the List Co-ordinating Magistrate so that cases may be allocated;
  - assisting the Registrar in the call-over; and
  - collecting, collating and analysing statistical data designed to inform the Magistrates Court of the efficiency of its processes and identify causes of delay.

2.67 Courts Administration conducted a further review of listing arrangements in the Magistrates Court in 2008 – *Review of the Current Administrative Arrangements in relation to Listings in the ACT Magistrates Court*. The review evaluated the changes made in listing arrangements following the 2007 Magistrates Court reforms, examined the effect on caseload management, and at the same time also explored ways of further improving listing and case management arrangements to ensure that matters proceed to hearings as listed.

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<sup>11</sup> The 2008 PAC review recommended that:

*the staffing arrangements for the Court Services Unit be reviewed in six months to ensure the best use of existing resources, that succession plans for all staff have been put in place and appropriate training has been made available to all members of the Unit.*

- 2.68 Among other things, the internal review found the major change that was successful and helped achieve greater access to justice was the introduction of the Registrar's call-over in the morning. The call-over process had resulted in:
- significant reduction of the delayed times of cases (the monthly average dropped from 180.2 minutes to 58.8 minutes), which means less time is lost by litigants for waiting; and
  - more efficient use of magistrates' time (cases that are not ready to proceed can be determined by the Registrar at the call-over).
- 2.69 For further improvements, the review made nine recommendations to the listing practices at the Magistrates Court. Four of the nine recommendations were implemented, resulting in the following changes:
- statistics on hearings being regularly collected and reported to the Chief Magistrate;
  - post hearing statistics being maintained;
  - continued operation of the Court Services Unit; and
  - upgrading the position of the Listing Clerk and recruitment of a Listing Assistant.
- 2.70 The remaining recommendations have not yet been implemented, pending on consultation with the judiciary.
- 2.71 In regard to the Supreme Court, Audit noted that the Government's paper *2010 Access to Justice Initiative* of May 2010 pointed to increased workload in the criminal jurisdiction, mainly through defence election for offences to be heard in the Supreme Court rather than the Magistrates Court, and the hearing of bail reviews from the Magistrates Court.
- 2.72 In the civil jurisdiction, the paper estimated that approximately 60 percent of matters heard in the Supreme Court could be dealt with in the Magistrates Court, if its civil jurisdictional limit were increased to \$100 000.
- 2.73 In April 2010, the Supreme Court Working Group reported to the Courts Governance Committee on issues affecting the ACT Supreme Court's ability to complete cases currently coming before it in a timely manner. The Working Group concluded that:
- Put simply, the only changes that would enable the Court to reduce waiting times for matters moving through the Court, while operating with its current resources, are those which will reduce the numbers of matters finding their way to the Supreme Court or will reduce the work required of the judicial officers at any stage while a matter is progressing through the Court.
- 2.74 The Working Group recommended also that:
- The Supreme Court should review case management practices at the Court to ensure time spent on procedural matters is used most effectively. (Recommendation 3)

- 2.75 It is evident that Courts Administration is aware of difficulties with caseload management and case scheduling, and has taken steps to address them, where these factors are under the control of the Courts. Often, factors complicating case management are not under the control of the Courts.
- 2.76 Audit noted the opportunities to improve caseload management, many of which were raised in the reports listed above:
- rectification of the video link to the Alexander Maconochie Centre, and its use in bail hearings;
  - automation of paper-based procedures in case management;
  - quicker access to legal aid where a litigant qualifies to receive it;
  - use of a secure internet connection, or other electronic communications in listing cases and communicating with litigants and their counsel;
  - avoiding a large number of case conferences where they are not making progress toward any outcome;
  - provision of an interview room in the Magistrates Court;
  - review of the merit of the policy of allowing some litigants to have matters heard in the Court of their choice; and
  - a modern case management system, replacing the MAX system (discussed in the following section).
- 2.77 Few of the above suggestions have been progressed to date.
- 2.78 Improvements in case management require strong and continued commitment from both Courts and JACS so that the reform agenda is closely monitored and appropriate measures are planned and implemented.

### Upgrade of the case management system (MAX)

- 2.79 The Courts' management of cases is supported by an ICT case management system called MAX.<sup>12</sup>
- 2.80 Originally built for the Magistrates Court, the system was later made available to the Supreme Court. Subsequently, changes were made to MAX in each of the Courts, and each version of MAX has evolved into a distinctive case management software catering for the specific needs of each Court.
- 2.81 The 2005 audit reported that JACS has commenced action to replace MAX, but progress was slow due to a limited budget. The report recommended (Recommendation 19) that Courts Administration:
- should put in place sound project management practices to deliver the case management system redevelopment...

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<sup>12</sup> MAX is in effect two systems – the original system has been replicated and customised for the Supreme Court's use.

- 2.82 The 2005 audit reported that Courts Administration, recognising that the MAX system was being superseded, commissioned a review in December 2000. Since that report was published, a total of \$1.423m has been allocated to improve the useability and functionality of MAX.
- 2.83 These more recent projects to upgrade MAX in the Courts have had different results in each Court. In the case of the Magistrates Court, MAX was modified with the help of the Australian Bureau of Statistics (ABS) to allow for the partial automation of the collection and provision of statistics used in ABS and *Report on Government Services* publications. A parallel project to automate statistical collections did not occur in the Supreme Court.
- 2.84 The enhanced system was generally well received by staff of the Magistrates Court. However, its reporting functionality was still restricted, resulting in considerable amounts of manual checking and consolidation. Furthermore, the system still did not compare well to case management systems increasingly used by other jurisdictions.
- 2.85 It was identified by Courts Administration in early 2009 that the continued use of the MAX system, with its aged technology, could result in:
- heavy continued reliance on specialist technical staff that are becoming increasingly difficult to source;<sup>13</sup>
  - excessive cost for support and maintenance provided by specialist technical staff;
  - difficulty in scheduling resources for initiatives aimed at improving functionality, data quality and accuracy of statistical and managerial reporting due to backlog of support and maintenance work; and
  - loss of opportunity for current and future efficiency gains due to difficulty in accessing skilled staff.
- 2.86 Courts Administration recognised the risks associated with the above issues, and submitted a business case for replacement of the MAX system in 2009-10 and 2010-11 Budgets. This funding was not approved.
- 2.87 Audit was advised that a research project to review case management systems used by Courts and Tribunal has been initiated.
- 2.88 Audit found the risks associated with the continued use of the MAX system as identified by Courts to be significant. Although recent enhancements will enable the system to function in the medium term, it is inevitable that the system will need to be redeveloped using up-to-date database technology.
- 2.89 Any major ICT project would require a significant timeframe for planning, installing and testing before the system can fully operate and the proposed timeframe for replacement of MAX is three years. Accordingly, Audit considers

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<sup>13</sup> Currently the specialist technical staff are based in Perth and Adelaide, and fly to Canberra to maintain the system.

there is an urgent need for Courts Administration to expedite plans to replace the MAX system.

- 2.90 Audit also found that all initiatives by Courts Administration to replace the MAX system were made in the absence of a finalised strategic ICT plan, which is essential to provide strategic directions for any major ICT reforms. The absence of a strategic plan is discussed at Chapter 4, Strategic planning for ICT systems.

### **Recommendation 4**

JACS should expedite plans to replace the case management system MAX.

## **COLLECTION AND ANALYSIS OF STATISTICS ON LONG-WAIT CASES AND ADJOURNMENTS**

### **Background**

- 2.91 The importance and benefits of collection and analysis of reliable data was stressed in the 2005 audit.<sup>14</sup> Reliable statistics are needed to support planning and listing decisions, as well as to enable feedback and monitoring of progress.

### **Collection of statistics on long wait cases**

- 2.92 The 2005 audit recommended that the ACT Law Courts and Tribunal (Courts Administration) (Recommendation 7):

should ensure that there are procedures in both Courts for:

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

- 2.93 JACS agreed to this recommendation and undertook to include all adjudicative and dispute resolution activities of the Courts in the monthly Backlog Indicator reports to the judiciary.

- 2.94 Since the 2005 audit, procedures have been put in place in both Courts to collect relevant statistics on long-wait cases. From JACS' annual report 2005-06 onwards, the Courts have been reporting against the National Key Performance Indicators, among which are the Backlog Indicators – percentages of cases exceeding benchmark timeframes.

- 2.95 The national standards for backlog indicator in Australia are set as follows:

- Magistrates, Childrens and Coroners Courts and the Federal Magistrates Court:
  - no more than ten percent of lodgements pending completion to be more than six months old; and
  - no lodgements pending completion to be more than twelve months old; and

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<sup>14</sup> Auditor-General's Report No 4 of 2005, *Courts Administration*, paragraph 4.35, page 50.

- District, Supreme and Family Courts, the Federal Court and all Appeals Courts:
    - no more than ten percent of lodgements pending completion to be more than twelve months old; and
    - no lodgements pending completion to be more than 24 months old.
- 2.96 As noted above, compared to other jurisdictions, the Supreme Court has significant backlogs of civil and criminal cases. The Magistrates Court has a low backlog of criminal matters compared to other jurisdictions, but the highest civil case backlog percentage in the country, and the highest costs per matter for both criminal and civil categories.
- 2.97 At both Courts, there are now procedures to identify and report cases pending over 12 months and 24 months to the Chief Magistrate and the Chief Justice.
- 2.98 The Chief Magistrate advised that he reviewed outstanding cases every six months, identified reasons for delays and took actions to expedite the case where possible. However, he noted that most delayed criminal matters were due to defendants failing to appear in court or electing to elevate the matter to the Supreme Court. This had a flow-on effect for the Courts.
- 2.99 The Chief Magistrate also advised that a significant proportion of the delays in the commencement of civil matters occur when parties to them are unprepared, and request a delay in their hearing dates.
- 2.100 In the Supreme Court, the Registrar advised that she analysed causes and patterns of long-wait cases and presented them at meetings of the judges. The issue of backlogs has been subject to discussions, analysis and investigation, mainly by the Supreme Court Working Group, which consisted of representatives from the Supreme Court, JACS and the Supreme Court's stakeholders. The Group submitted a report to the Chief Executive of JACS and the Chief Justice making a number of recommendations, some of which have been actioned on.
- 2.101 Recognising that many external factors influence the length of a Court case, Audit is of the view that any strategies to improve backlogs would be better informed if causes and patterns of long-wait cases were systematically examined, analysed and documented. To this end, Audit considers that Courts Administration can further assist the Heads of Jurisdiction by analysing and reporting patterns and trends from the statistics on long wait cases.

### **Cause and extent of short-notice adjournments or cancellation of hearings**

- 2.102 As acknowledged in the 2005 report, decisions on adjournments of cases are part of judicial discretion, and are therefore outside the audit scope. However, Courts Administration can support the judiciary by monitoring the relevant statistics and advising on the impact of adjournments.

- 2.103 The 2005 audit recommended (Recommendation 8) that Courts Administration should:
- record and analyse the cause and extent of all short-notice adjournments or cancellations<sup>15</sup> to hearings (Recommendation 8(a));
  - report this analysis and assist in developing strategies to improve utilisation of the Courts' resources (Recommendation 8(b)); and
  - consider, in particular, greater overlisting to compensate for the current pattern of case cancellations (Recommendation 8(c)).
- 2.104 Courts Administration has now recorded and reported adjournments and cancellations to hearings. This work is done by the Listing Clerk of each Court. The extent of analysis of those statistics varied between the Courts.
- 2.105 For example, in the Magistrates Court, adjournments of adult criminal hearings were recorded by categories such as: 'no evidence to offer', 'plea guilty', or 'other'. At the Supreme Court, causes of adjournments were recorded with greater details such as: 'judge not available', 'DPP witness not available', or 'expert evidence not ready'.
- 2.106 In 2009-10, 14 percent of the listed criminal hearings in the Magistrates Court were adjourned. The equivalent figure for the Supreme Court is not yet known as its 2009-10 civil hearings statistics have not been finalised. In 2008-09, 29 percent of the listed criminal trials in the Supreme Court were adjourned.
- 2.107 Statistics obtained on adjournments were reported monthly to the Chief Magistrate, and half-yearly to the Chief Justice and other Supreme Court judges at the Judges Committee meetings.
- 2.108 In the Magistrates Court, the Listing Clerk also collected statistics on various aspects of Court proceedings such as:
- number of charges in the month;
  - number of hearing lists;
  - number of represented and self-represented defendants;
  - percentage of hearings proceeded;
  - difference between set time and actual time for hearings;
  - reasons for hearings not proceeded; and
  - Court time lost when hearings not proceeded.
- 2.109 Audit was advised that the Magistrates considered analysis of these statistics valuable in informing judicial officers when it comes to decisions on listing, such as whether to over-list, and to what extent, and assisting the Court to work better with the Director of Public Prosecutions (DPP) on proceeding with charges.

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<sup>15</sup> References to cancellations mean cases that do not proceed because the accused enters a plea of guilty or the prosecution declines to proceed.

- 2.110 By contrast, Audit found little documented evidence of the same extent of analysis and use of statistics at the Supreme Court, particularly with respect to the causes of adjournments, to support judicial decisions. Audit noted that the Court resources are still being under-utilised, for example only about half of the estimated days for criminal trials were actually taken.
- 2.111 Audit considers more extensive analysis would help to identify details such as the various factors that lead to cancelled hearings. Factors causing delays that are within the Court's control can be identified and addressed, and external causes can be taken up with relevant bodies, such as the DPP. Similarly, it is important that any strategies developed and agreed to by the judiciary to address the causes of adjournments be followed through to implementation.

### Overlisting

- 2.112 The 2005 audit recommended (Recommendation 8(c)) that greater overlisting be considered, to compensate for the case cancellations and to maximise use of Court resources. Such practice would require reliable data on case adjournments or cancellation of hearings. It would also require proper analysis of cancellation patterns to assist setting the appropriate overlisting ratio.
- 2.113 Overlisting is currently a practice at the Magistrates Court. Although Magistrates actually sit for five hours a day for hearings, cases are listed for a nominal ten hour sitting day.
- 2.114 Similarly, the Supreme Court has a 'civil running list', for those civil matters which have an estimate of one to four days, in which the Court lists three or four civil matters on the same day, for about three days a week. This is because approximately 74 percent of civil cases settle before hearings.
- 2.115 There is, however, no overlisting for 'special fixture' civil cases (cases which have an estimate of five days or more),<sup>16</sup> or for criminal cases at the Supreme Court. Smaller matters may be listed behind 'special fixtures'.
- 2.116 Audit noted although there has been a significant improvement in the percentage of 'actual sitting days' over 'listed days' for criminal cases at the Supreme Court, the percentage of criminal trials that did not proceed still remains high. In 2004, criminal trials were conducted in 101 days, compared with 297 planned days (34 percent). In 2008-09, there were 144 actual days for criminal trials compared with an estimated 334 days (43 percent).

### Recommendation 5

JACS should provide further assistance to the Heads of Jurisdiction by analysing statistics collected on long-wait cases or pattern of cancellations at both Courts, with a view to informing decision making by the judiciary in improving caseload management.

<sup>16</sup> These are more complex matters such as serious motor vehicle accidents, medical negligence, defamation or complex commercial litigation. The Bushfire matters currently proceeding are an example of a long, complex special fixture, with 12 weeks of hearing in 2010 and another 13 weeks in 2011.



### 3. SERVICES TO COURT USERS

#### INTRODUCTION

This Chapter assesses whether JACS implemented the recommendations of the 2005 audit report, *Courts Administration*, that relate to services to Court users. These are Recommendations 21, 22, and 12-15.

Recommendation 2005 Audit report	Issues	Status
21	Court forms - Administrative process	Implemented.
22	Review of Registry functions	Partly implemented.
12, 13, 14, 15	Feedback from stakeholders	Recommendations 12, 13, 14: Implemented. Recommendation 15: Partly implemented.

#### KEY FINDINGS

- The introduction of the *Court Procedures Rules* 2006 has provided a set of uniform rules for both the Magistrates Court and Supreme Court, and has streamlined most Court proceedings. At the same time, there has been an increase in the number of approved forms in both Courts, and the approved forms are now more complex for self-litigants at the Magistrates Court.
- Most sections in the Registry now have well-documented administrative procedures, which are easily accessed by staff.
- Registry functions at both Courts have been reviewed and restructured to be more efficient, and are now overseen by one Registry Manager.
- Considerable progress has been made to integrate the registries at both Courts. The feasibility of locating the Registry of the Supreme Court to the Magistrates Court building has been explored by a working party group, established in April 2010. The working party group, however, could not reach a consensus view. A report containing a number of options for consideration by the Chief Justice and the Chief Executive of JACS was drafted in July 2010 but has not yet been finalised.
- A Courts Service Charter has been developed and a customer/client complaint handling process has been implemented.
- Implementation of findings of client satisfaction surveys was a standing agenda item for the Courts Stakeholders Forum meeting. However, quarterly reports on complaints were not provided to the Heads of Jurisdiction for their information.
- The Courts Stakeholders Forum provides a mechanism for consultation with a broad cross-section of stakeholders, and engages the attention of senior judicial and JACS personnel. The forum, however, did not always take the opportunity to consider the challenges faced by the Courts, such as the Single Registry, and how they may be effectively overcome.

- In June 2008, the ACT Law Courts and Tribunal (Courts Administration) undertook three user satisfaction surveys - Supreme Court, Magistrates Court and a cross-Court survey for professionals only. Audit observed that responses to the general Supreme Court and Magistrates Court surveys were favourable on all indicators. However, respondent numbers were small – from two to 23 per question.

### COURT FORMS - ADMINISTRATIVE PROCESS

- 3.1 The 2005 audit found that there was significant scope for improvement in the streamlining of processes, including use of simple forms. The audit recommended that the ACT Law Courts and Tribunal (Courts Administration) should (Recommendation 21):
- consult the judiciary and then advise Government on ways to simplify forms and reduce their number;
  - establish consistent procedures for use by staff in the Magistrates Court Registry; and
  - prepare improved manuals and procedures to assist Magistrates.

#### Simplification of forms

- 3.2 Since the 2005 audit report, there have been significant changes in the area of Courts procedures. The *Court Procedures Rules 2006* (the *Rules*) commenced in the ACT Supreme Court on 1 July 2006, and in the ACT Magistrates Court on 1 January 2007. The *Rules* provide a uniform set of rules for both the Magistrates Court and Supreme Court, and has streamlined most proceedings.

#### The Courts Procedures Rules

- 3.3 Audit was advised that the civil jurisdiction is where the *Rules* have simplified most proceedings. Within the criminal jurisdiction, there are still some areas where forms differ between the Courts. This is explained by differences between the Supreme Court and Magistrates Court jurisdictions, and the fact that all criminal proceedings commence in the Magistrates Court. More serious crimes, known as indictable matters, are heard in the Supreme Court.
- 3.4 Since the *Rules* were derived largely, though not entirely, from the *Supreme Court Rules*, there were fewer requirements for the Supreme Court's processes and forms to change to conform to the *Rules*.
- 3.5 However, Audit noticed that the number of approved forms has increased at both Courts. There are now 173 approved forms for the Magistrates Court, compared to about 163 in 2005, and 200 approved forms for the Supreme Court compared to about 176 in 2005.
- 3.6 At the Magistrates Court, Audit was advised that many approved forms are now more complex for self-litigants to understand, and required Registry staff to generate more paper work. For example:

- Redirection orders: there are now three redirection orders and an affidavit to complete, and many self-litigants have problems completing and understanding these forms. The forms generate four documents, from which five copies are collated and returned for service, including sets for the employer, debtor and creditor.
- Seizure and Sale orders: these orders now generate eight pages, and must be copied twice for the Sheriff and for the creditor.
- Both Redirection orders and Seizure and Sale orders as per *Court Procedures Rules 2006* require affidavits to be filed with the Court within two days of making them. This can be unrealistic, especially when these documents are coming from interstate.

3.7 Audit noted that from the time of commencement of the *Court Procedures Rules 2006*, the Courts and the Joint Rules Advisory Committee has conducted a continuous and consultative review of the rules and the forms. The Rules-Making Committee, chaired by a Supreme Court judge, meets regularly and continues to provide opportunities for ongoing improvements into Court rules.<sup>17</sup>

3.8 Audit observed that similar forms are processed by more staff in the Supreme Court compared to the Magistrates Court before they can be finalised or approved by the Registrar. There appears to be scope for sharing better practices between the two Courts.

### **Improving administrative procedures at the Magistrates Court**

3.9 Written administrative procedures are essential to provide instructions to staff who process Court forms, particularly when there is always movement of staff in Courts Administration. The 2005 audit found that written administrative procedures were variable, not well-organised and lacked consistency.

3.10 In addressing the finding, a project to document all procedures across the Registry was conducted. Most sections in the Registry now have well documented procedures, which are easily accessed to by staff. Audit was advised that it will be an ongoing project to keep procedures up to date with changes in legislation or operational needs.

### **REVIEW OF REGISTRY FUNCTIONS**

3.11 Registry functions play a key role in the operation of a Court. At the Magistrates Court, Registry staff provide counter, commencement, after-Court and listing administrative support to judiciary officers. At the Supreme Court, Registry staff perform similar functions, with additional appeal administrative support duties.

3.12 The Supreme Court had approximately 1 200 civil lodgements and 400 criminal lodgements during the year ended 30 June 2009. The Magistrates Court had 4 600 civil lodgements and 6 400 criminal lodgements in the same year.

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<sup>17</sup> The Rule-Making Committee may make rules in relation to the practice and procedures of ACT Courts and the registries pursuant to section 7 of the *Court Procedures Act 2004*, and under section 8 approve forms for the same purpose.

- 3.13 The 2005 audit recommended that the ACT Law Courts and Tribunal (Courts Administration) should (Recommendation 22):
- better integrate Magistrates Court counter services with the rest of the Registry;
  - in the review of Registry functions, seek both to achieve fewer and better-trained teams and to encourage multi-tasking within teams; and
  - consider the merits of combining the Supreme and Magistrates Courts registries.
- 3.14 In response, JACS and Government agreed to this recommendation and undertook that:
- structural changes to the Magistrates Court counter services are in scope of the Registry Renewal Project;
  - the project has as one of its objectives to consolidate the existing small sections and achieve multi-tasking; and
  - 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.
- 3.15 The above recommendation of the 2005 audit report has been implemented, resulting in the following changes:
- Registry functions at both Courts were reviewed and restructured to be more efficient, and are now overseen by one Registry Manager, with Unit Managers responsible for discrete areas, those being the Supreme Court Registry, Magistrates Court Civil, Magistrates Court Criminal, Tribunal, and Business and Client Services. (Each week, the Registry Manager works three days at the Magistrates Court, one day at the Supreme Court and one day at the Tribunal);
  - generic duty statements were implemented with rotation and multitasking of positions were common throughout the Registry;
  - a Client Services Unit was set up with generic positions that act as relief officers in all areas of the Courts and Tribunal; and
  - the feasibility of co-locating the Supreme Court Registry into the Magistrates Court building was explored and a decision is to be made.
- 3.16 Since the 2005 audit report, Courts Administration conducted two major reviews of the Registry structure and processes, namely the Lansdell review and the *Final Report on Implementation of the Reorganisation of ACT Law Courts and Tribunals Registries* (the Semple Registries Review). Against the background of the findings of the 2005 audit and other reviews, the Semple Registries Review made seventeen recommendations. The review aimed to:
- analyse the resource and service delivery implications and assess the risk management and timing issues that relate to the reorganisation of the ACT Law Courts and Tribunals Registries; and
  - provide an implementation plan incorporating proposed adjustments and with appropriate timelines for the reorganisation of the ACT Law Courts and Tribunals registries.

- 3.17 The latest copy of the implementation plan of the Simple Registries Review was issued in December 2008. Courts Administration reported that it had completed the implementation of 12 recommendations, mainly relating to staffing in the new Registry.
- 3.18 Notwithstanding this progress, Audit did not find evidence that the following recommendations had been implemented:
- approval by the Courts Governance Committee of a clearer separation of quasi-judicial for administrative responsibilities (Recommendation 1 of the Simple Registries Review);
  - reporting by the respective Registrars to their Head of Jurisdiction on quasi-judicial responsibilities (Recommendations 2 and 3); and
  - case management, listing and evaluation unit to be expanded to incorporate case management responsibilities and conferencing activities. (Recommendation 4)

### Combined single Registry

- 3.19 The 2005 audit report identified that increased efficiencies may be possible within the ACT Law Courts and Tribunals by combining the Courts' registries.
- 3.20 As mentioned above, the Simple Registries Review has resulted in one Registry Manager now overseeing all Registry functions in both Courts. However, a Registry is provided on-site to each of the Courts. The Magistrates Court Registry, housed in the Magistrates Court building, comprises 42 staff. The Supreme Court Registry, housed in the Supreme Court building, comprises a Unit Manager/ Sheriff responsible for ten Registry staff positions.
- 3.21 The physical departure of the ACT Civil and Administrative Tribunal (ACAT) from the Magistrates Court building in early 2010 provided an opportunity to look at the feasibility of physically amalgamating the Supreme Court and Magistrates Court registries in the Magistrates Court building. The approach was also expected to address the concerns regarding shortages of available and experienced staff within the Supreme Court and Magistrates Court registries, particularly with the expected retirement of key staff.
- 3.22 Considerable progress has been made to integrate the two registries. It was envisaged that a 'one stop shop' would also provide an improved service for the public and for legal practitioners. Further objectives and rationale for co-locating and integrating the registries were identified as:
- leveraging staff skills and expertise;
  - management of workloads across jurisdictions;
  - operational efficiency;
  - improved business continuity and succession planning;
  - enhancing career development opportunities for staff;
  - efficiency in the use of accommodation; and

- improved communication between the registries.
- 3.23 In April 2010, a Working Group was established to further explore the possibility of merging the two registries. The following issues were discussed:
- access to Supreme Court files;
  - staffing of the counters;
  - assisting all areas in times of high work volumes;
  - managing the special requirements of individuals such as defendants in custody and applicants for probate; and
  - engaging with Court users.
- 3.24 Audit attended one of the Working Party's meetings and observed divergent views among members of the party; in particular, representatives of the Supreme Court expressed a strong view against the approach, concerning the potential loss of support and resource currently available to them. A submission on behalf of the Supreme Court was made to the Working Party expressing the view.
- 3.25 The main point of contention is the re-location of the Supreme Court files to the Magistrates Court Building, and transportation of files between the Magistrates Court and the (current) Supreme Court buildings when they are needed by the Supreme Court Justices. The distance between the buildings is approximately 100 metres. However, research by the Working Party showed that in other jurisdictions, such as South Australia, it is not uncommon for files to be kept in a separate building from judicial chambers.
- 3.26 Another issue to be overcome is the concern for potential loss of files en route and in storage. The Working Group's draft report emphasised a need to review hard copy file management, and supported the introduction of a bar coding system to track files. Audit notes that file management systems for hard copy files using bar codes are well established technologies and, with compatible software, can be used to track hard copy files easily and efficiently.
- 3.27 The Working Group could not reach a consensus view regarding the feasibility of establishing a single Registry. Possible models for a single Registry were put forward by members of the Working Party, and were detailed in its draft report to the Chief Justice and the Chief Executive of JACS. The Working Group also initially agreed to combine counters in the Magistrates Court building, although at a later meeting, the Group reversed this decision.<sup>18</sup>
- 3.28 The Working Group's draft report recommended that:
- the Chief Executive of JACS and the Chief Justice of the Supreme Court work towards a further staged move to implement a single Registry for the ACT Law Courts.

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<sup>18</sup> The Working Group last met in July 2010 to discuss its draft report; however since then the draft report has not yet been finalised.

- 3.29 It appears to Audit that to achieve the full integration of the Registry, practical solutions need to be found to address the issues highlighted by Supreme Court staff and contained in the Working Group report.
- 3.30 During discussions with Audit, the Director of Public Prosecutions, the Law Society, and Legal Aid expressed strong support to a combined single Registry, believing that a ‘one stop shop’ would save time for frequent users of the Courts.
- 3.31 Audit considers that a decision on whether a physical merger of the Registries can proceed needs to be reached by the Chief Executive of JACS and the Chief Justice, having regard to any practical difficulties highlighted by Supreme Court staff and contained in the Working Group’s draft report, balanced against the potential efficiency and other benefits offered to Court users.

### **Recommendation 6**

JACS should, as a matter of priority, work with the Heads of Jurisdictions to reach an agreed conclusion on the feasibility of co-locating the registries of the Magistrates Court and the Supreme Court.

- 3.32 Since the audit, JACS advised that the matter has been elevated to the Courts Governance Committee.

### **FEEDBACK FROM STAKEHOLDERS**

- 3.33 The 2005 report made a number of recommendations to address findings on communications and liaison with stakeholders. In brief, these recommendations (Recommendations 12 to 15) recommended that the ACT Law Courts and Tribunal (Courts Administration):
- improve communications and liaison with stakeholders, including a regular stakeholders meeting;
  - improve user services by identifying the needs of users, publishing service standards and ensuring these standards are met;
  - address satisfaction surveys to a more diverse sample of Court users, publish the results, and act on the findings;
  - formalise procedures for responding to administrative complaints; and
  - improve the usefulness of Courts user satisfaction surveys.
- 3.34 Table 3.1 on the following page summarises the actions intended by JACS and Government in response to the recommendations, and audits findings in relation to these actions.

**Table 3.1: Actions intended by JACS and Government in relation to communications and liaison with stakeholders.**

Intended action indicated in the responses to the 2005 audit report	Audit findings
A combined Service Charter for both Courts will be developed and published.	A Courts Service Charter and an ACT Civil and Administrative Tribunal (ACAT) Service Charter have been developed and are available on the Courts Website, ACAT website and at counters.
Courts Service 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.	A new survey is to be undertaken in 2010. These surveys go out to practitioners and stakeholders electronically and are available to all clients in hard copy at the Courts and ACAT registries. Feedback brochures are available in both Courts. The complaints policy is on the Courts website and a complaints register has been developed with clear timeframes for complaint resolution. There is a dedicated complaints phone line and email address for oral and written complaints.
The results of the surveys will be published in the Annual Report and on the Courts' website	Results of the June 2008 surveys were not reported in the 2008-09 JACS' annual report.
Actions to address any issues identified in the surveys will be documented and similarly reported upon.	Implementation of findings is a standing agenda item for the Courts Stakeholders Forum meeting.
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.	A customer/client complaint handling process has been implemented.
Quarterly reports on complaints will be provided to the Heads of Jurisdiction for their information.	Audit did not find evidence that this had been implemented.
Registry User Forums will be implemented in all jurisdictions.	Registry User Forums have not been developed. However, Courts stakeholders can raise Registry issues at the Courts Stakeholder Forum, which meets quarterly.

### Courts Stakeholder Forum

- 3.35 A Courts Stakeholder Forum was established in 2007 in response to the need for improved communication and liaison with stakeholders. The Forum is chaired by the Chief Justice, and it draws its membership from senior staff of JACS, the legal profession and a number of community organisations.
- 3.36 With the exception of 2008, when two meetings were held, Audit found evidence of four meetings a year since May 2007.

- 3.37 It was not clear to Audit how items for the meeting agenda were determined, as Courts Administration, which provided secretariat duties, did not canvass forum members for agenda items prior to the meeting. Although the forum allows for ‘other business’, the normal practice of requesting agenda items will assure members that their concerns, if any, can be put on the agenda for discussion at the meeting.
- 3.38 Courts Administration advised that issues of ‘policy’ were discussed at the Courts Stakeholder meetings. This enabled the Committee to consider the ramification of these developments.
- 3.39 Case flow management is of prime concern to stakeholders. The *Review of the Current Administrative Arrangements in relation to Listings in the ACT Magistrates Court* in 2008 made some recommendations for the engagement of stakeholders. There was, however, no evidence to suggest that these recommendations were discussed in the Stakeholders Forum.
- 3.40 Audit notes that the now defunct proposal for the District Court, contained in the *2010 Access to Justice Initiative* paper was not discussed in the forum of May 2010, nor was the proposal raised in other meetings during 2009 and 2010. The related issue affecting the Supreme Court, a backlog of criminal matters, has likewise not been discussed in the Stakeholders forum. Similarly, the Supreme Court Working Group did not have opportunity to consider the now defunct District Court proposal.
- 3.41 Audit noted, however, that the *2010 Access to Justice Initiative* paper took into account a report of the Supreme Court Working Group that made a number of recommendations, including that the Supreme Court should review case management practices at the court to ensure time spent on procedural matters is used most effectively.
- 3.42 The District Court proposal and others in the *2010 Access to Justice Initiative* paper were exposed for public comment from 7 May to 6 June 2010. Discussions were continuing with interested parties on how the District Court could be implemented until the Attorney-General’s announcement in September 2010 that the District Court would not be formed.
- 3.43 Audit considers the Courts Stakeholders Forum a sound mechanism for consultation with a broad cross-section of stakeholders that engages the attention of senior judicial and JACS personnel, and a significant step to improve communication. Its effectiveness can be improved further, as the Forum had not always been used to comment and discuss important proposals such as the now defunct District Court proposal.

### **Court user satisfaction survey**

- 3.44 In June 2008, Courts Administration undertook three user satisfaction surveys - Supreme Court, Magistrates Court and a cross-court survey for professionals only.
- 3.45 Audit observed that responses to the general Supreme Court and Magistrates Court surveys were favourable on all indicators. However, respondent numbers

were small – from two to 23 per question. Such small samples may not be representative of all Courts users.

3.46 The survey of practitioners received a stronger response rate. Approximately 75 percent found the overall administrative processes of the Supreme and the Magistrates Courts to be satisfactory or better.

3.47 A further survey was planned for June 2010, but it has been delayed until November 2010.

## 4. OTHER MANAGEMENT ISSUES

### INTRODUCTION

4.1 This chapter assesses whether JACS implemented the recommendations of the 2005 audit report, *Courts Administration*, that relate to other management issues of the Courts Administration. These are Recommendations 2 to 5, 16 to 18, 20, 23 and 24.

4.2 The chapter considers the following recommendations:

Recommendation 2005 Audit report	Issues	Status of recommendation
2	Annual reports by the Courts	Not yet implemented.
3	Risk management planning	Implemented.
4	Process for consideration and implementation of review recommendations	Partly implemented.
5, 16, 17, 18	Resource management and budget	Recommendation 5: Partly implemented. Recommendation 16: Implemented. Recommendations 17 and 18: Not yet implemented.
20	Establishment of an Information and Communication Technology (ICT) Advisory group	Implemented.
23, 24	Human resources	Recommendation 23: Implemented. Recommendation 24: Partly implemented.

### KEY FINDINGS

- Aspects of governance arrangements for Courts administration have been improved. The Courts Governance Committee has been involved in some management issues, such as endorsing the implementation plan for the 2005 audit recommendations and other subsequent reviews.
- There was no separate comprehensive annual report of the jurisdictions, as referred to in the JACS and Government responses to the 2005 audit report. Further, judicial officers were not involved in the preparation of JACS' annual reports.
- There has been no review of funding issues since 2005 to determine the adequacy or otherwise of the base funding for the operation of the courts.
- The ICT Committee was yet to finalise an ICT strategic plan. Without a strategy, ICT projects may be planned in isolation, and priority based on urgent and possibly short-term business needs.

- There were significant improvements made to human resource management, including staff development and training, and some performance management processes. To build on these improvements, Courts Administration should develop performance agreements for the remaining staff, as required by the HR policy of JACS.

### REPORTS BY THE COURTS

- 4.3 The 2005 audit report recommended that (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.
- 4.4 The PAC in its 2008 review of the 2005 audit report recommended (Recommendation 1) that:
- ... the annual report(s) of the ACT Law Courts and Tribunals be sent directly to the Attorney-General and published separately from the annual report of the Department of Justice and Community Safety.
- 4.5 In its submission to the PAC report, the Government (and JACS) undertook to:
- ... 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.
- 4.6 The Government did not proceed with its intention for the Courts to report separately to the Attorney General. In its response to the report of the PAC inquiry, the Government noted the PAC's recommendation, and stated:
- To the extent that the annual report of the Courts and Tribunals relates to administration, as this is a service provided to the Courts by JACS, it is more appropriate for the relevant information to be incorporated with JACS annual report.
- The issue of appropriate reporting arrangements will be considered in the study considering the establishment of a Single ACT Court to be issued in 2010. In this context, to the extent that the annual report relates to the decision-making business of the Courts and Tribunals, JACS might redirect part of the operational funding for the Courts to publication costs. In the future the Chief Executive will agree on a mechanism for publication each year with the Heads of Jurisdiction and the general president of the ACAT.
- 4.7 As discussed in the 2005 audit report, the preparation of an Annual Report by Courts is common in Australia and contributes significantly to accountability and transparency. In each jurisdiction, other than the Northern Territory and the ACT, Courts provide either a full annual report, or an annual review.
- 4.8 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.<sup>19</sup>

- 4.9 Audit found that annual relevant information regarding the Supreme Court and the Magistrates Court were still included in JACS 2009-10 Annual Report (Output 3.1 - Courts and Tribunal), as the way it had been prior to the 2005 audit report.
- 4.10 The details contained in JACS annual reports in relation to the Courts and Tribunal covered basic administrative data without judicial input. By contrast, the 2008-09 annual report of the Supreme Court of Tasmania (27 pages), for example, contained more information and presented a judicial review of the year, performance data on Courts administration, a Court profile and financial accounts.
- 4.11 The Government response to the PAC above referred to consideration of reporting under a Single Court study. This Single Court study has been subsumed into the *2010 Access to Justice Initiative*, of which the Single Court study is part one. (This paper refers to the Single Court in a discussion of Government policy at Attachment A, page 29.)
- 4.12 The thrust of the *2010 Access to Justice Initiative* paper was the establishment of the District Court. The paper was exposed for public comment, but did not discuss reporting by the Courts. The Attorney-General announced in September 2010 that the District Court would not be established.
- 4.13 Audit was advised that:
- no separate comprehensive annual review of the jurisdictions, as referred to in the joint JACS and Government response to the 2005 audit report, has been prepared and provided to the Attorney-General;
  - the Chief Executive of JACS has not yet agreed with the Heads of Jurisdiction on a mechanism for publication each year of the annual report; and
  - judicial officers were not involved in the preparation of annual reports.
- 4.14 A comprehensive annual review would provide a mechanism for judicial officers to raise publicly issues of concern to the Courts, and to better communicate results and issues of interest. Such reports can also inform the public on what the Courts do, and their performance.
- 4.15 External accountability can also be enhanced through the Courts assuming responsibility for their targets and outcomes, and reporting them as part of an annual review.

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<sup>19</sup> ACT Auditor-General's Report 4/2005, *Courts Administration*, paragraph 2.24, page 24.

### Recommendation 7

JACS should consult with the Heads of Jurisdiction on the need for, and the contents of, reporting by the Courts, which would incorporate commentary by the judiciary on any matter the judiciary considers appropriate.

## RISK MANAGEMENT PLANNING

- 4.16 The 2005 Audit found that there was no overall risk management plan in place for the ACT Law Courts and Tribunal (Courts Administration), and that risks identified were not monitored or addressed.
- 4.17 The 2005 audit report recommended (Recommendation 3) that:  
the [Courts] should develop a risk management plan to assist in identification and amelioration of significant risks.
- 4.18 The PAC in its review of the audit report recommended (Recommendation 2) that:  
JACS report to the Legislative Assembly providing details on the specific steps taken to ensure that risk management practices are being included in all business and project planning within the Law Courts and Tribunals Unit.
- 4.19 JACS has implemented the recommendations. A Risk Management Plan for Courts Administration was included in the JACS *Business Risk Management Plan 2007-2009*. It included risks and mitigation strategies identified by the ACT Law Courts and Tribunal. At the time of audit, the 2010-12 plan was in draft form.
- 4.20 Courts Administration has developed an *Information and Communication Technology Business Continuity Plan*, the aim of which is to ensure that the ACT Law Courts and Tribunal can be brought online in a predetermined sequence when an ICT outage occurs.

## PROCESS FOR IMPLEMENTATION OF REVIEWS

- 4.21 The 2005 Audit found that the repetition of findings from the eleven management reviews of the ACT Courts since self-government in 1989 indicated there was no robust process in place to ensure analysis and implementation of the reviews recommendations. As a result, there seemed to be a pattern of commissioning reviews without proper follow-up to assess and implement their recommendations.
- 4.22 The 2005 Audit recommended (Recommendation 4) that the ACT Law Courts and Tribunal (Courts Administration) 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.
- 4.23 The PAC also recommended that (Recommendation 3):

JACS continues to include in its annual reports a summary of the progress made in implementing the recommendations of Auditor-General Reports in that financial year.

- 4.24 A comprehensive implementation work plan for the 2005 audit recommendations was developed and endorsed by the Courts Governance Committee in late 2006. The plan, comprised of 27 activities and tasks with completion times ranging from December 2006 to 2009, described the broad strategic approach to implementing the recommendations of the 2005 audit report.
- 4.25 The plan was monitored by the Courts Governance Committee through its quarterly meeting until December 2009, when the Committee decided that all recommendations had been implemented and the plan should be removed from its agenda.
- 4.26 The plan covered all the areas upon which the 2005 audit reported. For each recommendation, the plan listed the tasks involved, the expected deliverables, the resources required, the responsible units or officers, and the target timeline for completion.
- 4.27 Since the 2005 audit report, a number of reviews have also been conducted. As discussed in Chapter 2, under Caseflow Management, the Magistrates Court undertook two internal reviews of listings of criminal matters, one in 2007 and another one in 2008. Although these reviews have resulted in a number of changes in the listing area of the Court, plans for implementation of these reviews were not documented.
- 4.28 The *Final Report on Implementation of the Reorganisation of ACT Law Courts and Tribunals Registries* (the Semple Registries Review), a major review of the Registries, which was also discussed previously, aimed to:
- ... analyse the reports and provide an implementation plan for the consideration of the Courts Governance Committee. It was considered important to move the focus beyond the identification and analysis of issues addressed in earlier reports, to the implementation of organisational changes, consistent with those agreed proposed directions.
- 4.29 The Semple Registries Review produced 17 recommendations, 12 of which have been completed. The recommendations were under active review until December 2008, action since then has not been formally reported in an updated report to management.
- 4.30 It is important that Courts Administration continues to apply better practices developed and approved by the Court Governance Committee to considering and implementing relevant recommendations. The Committee should maintain a strong interest and commitment to these reviews and monitor the progress.

## RESOURCE MANAGEMENT AND BUDGET

- 4.31 The 2005 audit report made several recommendations in relation to the resource management of the Courts. The audit recommended that the ACT Law Courts and Tribunal (Courts Administration):

- be established as a separate output class (Recommendation 16);
- review, with JACS help, the cost basis of Court services (Recommendation 17). The PAC made a similar recommendation in its 2008 report; and
- seek efficiencies to achieve budget targets (Recommendation 18).

4.32 The following actions were taken by Courts Administration in response to these recommendations:

- a separate output class has been set up;
- information on practices in other jurisdictions has been gathered from meetings of the Australian Court Administrators Group. Many of these practices could be implemented, if funding was available. Courts Administration has funded a queuing system known as *Smartqueue* to improve customer service;
- Care and Protection matters are resolved in a shorter time in the Childrens Court. Some staff changes in the Childrens Court have also resulted in minor savings; and
- a research project on case management systems in other jurisdictions is planned. This report will be used to inform the Government on options for improved case management systems.

4.33 The PAC recommended also that the Courts budget should be submitted to the Attorney-General, and that a copy of it be provided to the Assembly’s Legal Affairs (now Justice and Community Safety) Committee (Recommendation 10). Government rejected this recommendation, and commented that:

... [it was] satisfied [that] existing arrangements placing responsibility (with JACS) ensure adequate resources are provided to the judicial system to operate effectively without undue constraints.

4.34 Notwithstanding Government’s confidence, ongoing questions have been raised over the adequacy of the Courts’ budget, leading to unresolved funding issues between the judiciary and the Government, especially to address workload increases.

**Table 4.1: Courts’ budgeted and actual revenue and expenses**

	2007 - 08	2007 - 08	2008 - 09	2008 - 09	2009 - 10	2009 - 10
	Actual ('000)	Budget ('000)	Actual ('000)	Budget ('000)	Actual ('000)	Budget ('000)
Revenue	24 145	23 562	26 247	25 413	27 414	26 778
Expenses	25 959	25 267	28 514	27 243	29 676	29 251
Operating deficits	(1 814)	(1 705)	(2 267)	(1 830)	(2 262)	(2 473)

Source: 2008, 2009, 2010: Output Class 3 Operating Statement, Courts and Tribunals, Annual Report, Department of Justice and Community Services, Volume 2.

- 4.35 JACS advised that the deficits in Courts Administration's budgets related mainly to depreciation and employee provisions which were non-cash expense items. Any deficits incurred in running the Courts were absorbed into the operating statement of JACS as a whole, and were not funded specifically.
- 4.36 Audit was informed that Courts Administration has not been able to fund the following cost pressures from recurrent funding:
- Remuneration Tribunal determinations increases for judicial officers in the first half of each calendar year after the budget cycle for the year has been completed. These salary increases are carried by Courts Administration until the following budget year;
  - increasing costs of monitoring and transcription services;
  - high maintenance costs for the Supreme Court building and Forensic Medicine Centre. The Supreme Court building is due to be replaced. However, a date for completion of the project has not yet been set, and may be several years away;
  - operating costs of the Forensic Medicine Centre which are demand driven;
  - maintenance costs for MAX, the case management system;
  - workload increases, especially in the Supreme Court;
  - real increases in energy prices; and
  - real increases in library subscription costs.
- 4.37 Budget papers indicated that from 2005-06 to 2010-11, Courts Administration have been allocated an additional \$12.446m for running costs, with a further \$11.551m to be spent from 2011-12 to 2013-14. An additional \$6.171m was allocated for 2008-09 and 2009-10.
- 4.38 From 2006-07 to 2010-11, Courts Administration received capital funding of \$16.0m.
- 4.39 The 2005 audit report and the PAC recommended a thorough review of Courts costs. JACS and Government responded by signalling a number of options for action:
- a review of baseline funding once the Registry merger project was completed;
  - consideration of the Courts' efficiency as part of a proposed Committee inquiry into JACS;
  - implementation of the recommendations of the 2005 report in caseflow management, Registry improvements and use of information technology;
  - engagement of a consultant to review the efficiency and effectiveness of a range of Court-based practices and procedure, in light of the February 2009 commencement of ACAT. This information will guide the study of a Single ACT Court to be issued in 2010.

- 4.40 The merger of registries is yet to be practically completed, although a single Registry Manager oversees the Magistrates and Supreme Court Registries. Also, whilst some efforts have been made to improve the case management system (MAX), its technology is becoming increasingly outdated, and modern systems can offer savings through productivity improvements.
- 4.41 Several reviews of Court functions have been completed since the 2005 audit report, and the 2008 PAC review. Those were the proposed consultancy into a range of efficiency and effectiveness measures, the Single Court study, and JACS' *2010 Access to Justice Initiative* paper (the District Court proposal, which will not proceed). None of these have considered the cost of the Courts' services.
- 4.42 Audit concludes that the need for a fundamental review of the cost base of, and matching funding for, the Courts is still apparent as recommended by Audit in 2005, or by the PAC in 2008. Without a comprehensive review, several cost pressures may not be recognised, and budgets not designed to cover all expenses in each financial year, hence relying on broader JACS resources to fund any annual deficit.
- 4.43 Of particular concern is increasing maintenance costs for MAX, the case management system. A decision on a replacement system should be expedited, as potential productivity increases and lower maintenance costs may improve the Courts' efficiency and reduce costs in the long term.

### STRATEGIC PLANNING FOR ICT SYSTEMS

- 4.44 The 2005 audit recommended that the ACT Law Courts and Tribunal (Courts Administration) (Recommendation 20):
- 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.
- 4.45 JACS and the Government responded that:
- The Heads of Jurisdiction will be asked to nominate judicial members to the new ICT Advisory Group (ICTAG). The ICTAG will be encouraged to develop a new ICT Strategic Plan for Courts Administration to update the last assessment conducted in December 2000.
- 4.46 An ICT Committee was set up in September 2008 to:
- develop policy and set direction for information and communication technology and information management for Courts and Tribunals;
  - develop budget bids for the further development of information and communication technology and information management requirements for Courts and Tribunals; and
  - discuss and resolve Courts, Tribunals and inter-agency issues associated with Information and Communication Technology and Information Management.

- 4.47 Major computer system developments, or redevelopments, should be governed by an ICT strategic plan. Such a plan enables software and hardware purchases, and system developments, to have regard to the priorities of the information needs of the organisation at large, in the short term and long term.
- 4.48 Without a strategy, projects are planned in isolation, and priority is based on urgent and maybe short-term business needs. This disconnected nature of ICT project planning has drawbacks, such as the loss of savings and other benefits from better scheduling of projects.
- 4.49 At the time of audit, Courts Administration was finalising an ICT strategic plan for presentation to the Courts ICT Committee. Given the importance of information storage and processing to the Courts' efficiency, the finalisation of this plan should be a priority.

## HUMAN RESOURCES

- 4.50 The 2005 Audit recommended that the ACT Law Courts and Tribunal (Courts Administration) should improve human resource management by:
- changing some recruitment practices (Recommendation 23); and
  - acting on some staff concerns, as notified to management in a staff survey (Recommendation 24).
- 4.51 The response to the 2005 recommendations was that Courts Administration would:
- assess recruitment and Registry practices. The review of Registry was expected to address the human resource problems identified; and
  - implement accredited training for non-judicial Court staff.
- 4.52 In June 2010, Courts Administration advised that:
- Since the review and reorganisation of Registry services and the establishment of discrete teams, where possible, all vacant positions have been advertised and filled. Some movement of staff within the Registry as a result of multi tasking and generic duty statements has resulted in some positions being filled on a temporary basis.
- All managers have been trained in performance management. The Registry manager participates on the national committee for Court education. Staff have achievement and development plans in place in accordance with Departmental policy.
- 4.53 The reorganisation of the Registry and its staffing implications have been considered elsewhere in this report. Staffing actions identified by the Simple Registries Review, and by other reviews, have been implemented.
- 4.54 Training is an important response to skills shortages, under-performance and other staffing problems, as identified in the 2005 audit report. Audit was informed of a comprehensive list of courses attended by Courts staff, and support for legal and other relevant studies. Courses and training in mediation are planned to be offered to conference staff.

- 4.55 Training is part of an overall HR management that includes performance management and effective staffing structures. Information required to correctly target these initiatives is available from a variety of sources, including a regular staff survey.
- 4.56 The 2005 audit noted that the then Courts' Business Plan adopted the results of an annual survey of staff as a performance indicator. The results of the survey would be used for business planning. The current Business Plan, however, did not include performance indicators against activities intended to achieve the Courts Administration's aims and objectives.
- 4.57 Audit noted that JACS' staff surveys were conducted in 2006 and 2008, and the results were broken down by business unit, including Courts Administration. Another JACS-wide survey is planned for 2010.
- 4.58 To manage performance, JACS required all staff to maintain a performance agreement. Audit was advised that, at 31 May 2010, 42 staff of a total of 123 staff had performance agreements.
- 4.59 Audit concluded that significant improvements have been made to human resource management, including staff development and training, and some performance management. To build on these improvements, Courts Administration should develop performance agreements of the remaining staff, as required by JACS.

### **Recommendation 8**

JACS should ensure that all staff comply with the JACS Personal Achievement and Development Framework.

# APPENDIX A: AUDIT CRITERIA, APPROACH AND METHODOLOGY

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## AUDIT CRITERIA

For this follow-up audit, Audit assessed the implementation by the ACT Law Courts and Tribunal (Courts Administration) of the recommendations made by the 2005 audit report, *Courts Administration*, based on the following criteria:

### *Implementation and monitoring implementation*

- JACS implemented the accepted recommendations in accordance with the planned course of action.
- With the partially accepted recommendation, JACS determined and implemented an alternative course of action to address the relevant findings.
- Implementation of the recommendations has been monitored and reported on.

### *Assessment of the impact of changes on the Courts and stakeholders*

- Implementation of the recommendations, and other changes, led to improved services to the judiciary and to other stakeholders.

### *Assessment of on-going proposals and initiatives to Courts administration*

- JACS assessed and communicated the impact on services to the Court and stakeholders of other current and proposed changes in Courts structure and administration, such as the Supreme Court review, the proposed District Court, Single Registry and use of conferencing facilities.

## AUDIT APPROACH AND METHODOLOGY

The performance audit was conducted under the authority of the *Auditor-General Act 1996*, and in accordance with the principles, procedures, and guidance contained in Australian Auditing Standards relevant to performance auditing. These standards prescribe the minimum standards of professional audit work expected of performance auditors. Of particular relevance is the professional standard on assurance engagements - *ASAE 3500 Performance Engagements*.

The audit approach included a combination of:

- review of information on implementation of recommendations from Courts Administration;
- review of the methods JACS used to monitor and report on the implementation of recommendations;
- review of the implementation of all recommendations, taking into consideration the recommendations of the PAC in its 2008 report on the 2005 audit report;

- review of statistics from other Australian Courts reported on the *Report of Government Services 2010*, and from the ACT Courts;
- discussions with key Courts stakeholders (DPP, Legal Aid, Victims of Crime, Law Society, Care and Protection in Department of Housing and Community Services);
- consultations with the Chief Magistrate and the Chief Justice;
- discussions with judicial officers and other Courts staff;
- interviews with senior officers of JACS;
- research into current proposals and initiatives in the Courts;
- review and analysis of JACS documents and files;
- observation at the Single Registry Working Party Group and the Courts Stakeholders Forum meetings; and
- observation at the counter of the Magistrates Court, and attendance at the Registrar's morning call-over in the Magistrates Court.

## AUDIT REPORTS

### Reports Published in 2010-11

Report No. 9 / 2010	Follow-up Audit – Courts Administration
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