

LISTINGS IN THE MAGISTRATES COURT

A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE	
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1. The audit opinions set out in paragraph 1.12 of the Auditor-General's Report, Court Administration Report No.4 of 2005, are said to be supported by the findings set out in paragraph 1.13. Whilst we generally support the recommendations of the Report, it is important to address some of the findings set out under the headings "Performance Measures and Reporting" and "Scheduling and Management of Cases" on pages 4 and 5 of the Report. It is important to address these findings for two reasons. First, so that the comments of the Auditor-General can be evaluated in the correct factual context. Secondly, any consideration of reform should be grounded in a full understanding of the Court's work and the limitations of the Court's power to control proceedings.

Performance Measures and Reporting

2. When considering these issues the Report refers to statistics derived from the Australian Bureau of Statistics (ABS) Report for 2003 – 2004. These statistics must be viewed with caution, as is annually acknowledged by the ABS in its report: see paragraph 3.18 of the Auditor-General's report. Firstly, the data provided to the ABS by the Court is problematic. The Court simply does not have the information technology available to it to produce reliable figures. Secondly, the decision to compare reported results for the ACT Magistrates Court against reported results for other Local or Magistrates Courts is not based upon a conclusion by the ABS that the jurisdictions exercised by those courts are comparable. Rather, the grouping of results is dictated by the designation given to the judicial officer hearing the case. Thus, reported results for the ACT Magistrates Court are grouped with, and invite comparison with, the results for the NSW Local Court because both courts are Magistrates Courts. The ABS has attempted no intellectually rigorous examination of similar types of cases heard by these courts, instead recording results across the range of cases dealt with by these courts, and under the broad headings of



“criminal” and “civil”. Presumably the reason they have chosen to collect and collate data in this way is because it is relatively easy. In doing so they have sacrificed accuracy for facility.

3. This is important because the ACT Magistrates Court exercises a unique jurisdiction. There is no intermediate court in the ACT, such as a District or County Court, which results in many matters being heard in the Magistrates Court in the ACT that would be heard in a District or County Court elsewhere. Many of these cases are the difficult and time consuming ones. For example, sentencing criminal offenders with a drug or alcohol addiction is often a time consuming process, involving attendance at rehabilitation programs over months or years. In NSW most such cases are directed towards the Drug Court, which was established at the District Court level. This simple expedient of establishing the Drug Court at the District Court level means that the timeliness standard for disposition of these cases is 24 months, rather than the 12 months allowed in the Magistrates Court. The offenders are the same, their problems are the same and the offences are the same, but the District Court has 2 years to complete the case whereas the Magistrates Court has 12 months. Similarly, in the ACT, more than 40% of the criminal cases heard in the Supreme Court could be heard in the Magistrates Court if the accused consented to the jurisdiction of the Magistrates Court. Despite the fact that these cases are the same cases that are dealt with by the Magistrates Court the timeliness standard for the Supreme Court is two years, as opposed to the standard of 12 months applicable in the Magistrates Court.
4. In addition, many Local or Magistrates Courts in the States or Territories still deal with high volume, low duration cases in the area of traffic offences that are no longer dealt with routinely by the ACT Magistrates Court. We have also adopted practices designed to assist other agencies in the conservation of their resources, but which skew the timeliness figures. A good example is the practice of issuing “again summonses”. Before a summons for an offence is issued, the informant must swear an information. If the summons is then returned without service on the

defendant, the Court has adopted the practice of issuing a further summons based on the original information. When the summons is eventually served, the commencement date for the proceedings for the purposes of the ABS statistics is the date of the swearing of the information. In many cases this means that the case is, for the purposes of the ABS statistics, 12 months old before the defendant makes his or her first appearance before the Court. The Court could address this by requiring the AFP to swear fresh informations each time before we issue a further summons, but this will result in a waste of AFP resources.

5. ACT Magistrates exercise jurisdictions under the Workers Compensation Act and the Leases (Commercial and Retail) Act that are largely unparalleled in Magistrates or Local Courts elsewhere. ACT Magistrates also routinely sit on numerous Tribunals, including:

- The Mental Health Tribunal;
- The Guardianship and Management of Property Tribunal;
- The Credit Tribunal;
- The Health Professions Tribunal; and
- The Discrimination Tribunal.

Whilst our work on these Tribunals does not count towards the ABS key performance indicators, our work on these Tribunals reduces the judicial resources available to the Court to undertake the core business measured by the ABS, thus affecting timeliness and other key performance indicators. We note that in other jurisdictions these tribunals are entities separate from the courts and established at the District or County Courts level.

6. The conclusion in the Report that the ACT Childrens Court “*remained the most expensive of all jurisdictions in recent years*” is based upon data that is quite misleading. The result occurs because of the process of attribution

of the cost of resources, particularly judicial resources, to the Childrens Court in a jurisdiction of only nine Magistrates where there is a legislatively mandated dedicated Childrens Court Magistrate.

7. Attendances in criminal matters are recorded as higher in the ACT than in other jurisdictions. There are two circumstances that need to be considered when evaluating what this means. First, the ACT Magistrates Court has implemented a rigorous process of case management in criminal matters. Hands-on case management is desirable because it keeps the litigants on track for an early resolution of the real issues in each case, but it comes at the cost of requiring extra attendances at court. Secondly, the finalisation of complex criminal matters involving drug and alcohol abuse, to which I referred earlier, requires attendances in the ACT Magistrates Court that would be spread between the Magistrates Court and the District or County Court elsewhere.

Scheduling and Management of Cases

8. The Report notes a *"significant under-use of court time and facilities"*. At paragraph 4.43 of the Report the Auditor-General notes *"The latest data reported by the Courts shows that average daily recorded sitting times in the Magistrates Court was 2.5 hours per sitting Magistrate."* The first thing to note about this statement is that the figures provided to the Auditor-General were incomplete. The data used by the former Courts Administrator to provide this information to the Auditor-General was derived from running sheets of court monitors, who simply recorded the times individual Magistrates sat in a courtroom. Hearings that occurred otherwise than in a courtroom, such as proceedings of the Mental Health Tribunal at the Canberra Hospital and hearings of the Circle Sentencing Court were simply not included in the recorded data.
9. In addition, modern case management emphasises the desirability of restricting the number of witnesses called in proceedings to the minimum required to deal with the issues identified in the case. In Case

Management Hearings in criminal matters the parties are encouraged to identify witness statements and other material, such as records of interview, records of telephone intercepts and business records, that can be tendered without the necessity for calling witnesses to give oral evidence. This frequently means that a quantity of written material is provided to the Magistrate at the outset of the hearing for the Magistrate to read. The Court usually adjourns into chambers to read this material. In significant cases it is not unusual for this process to occupy a whole day or even longer. This time, when the court has adjourned into chambers to read the written evidence, is clearly an important part of the hearing, but is not recorded by the monitors as time that the court is sitting. The reason for this is that the records kept by the monitors are not kept for the purpose of recording the time taken for the Court to conduct the hearing, but in order to facilitate the preparation of a transcript of the oral evidence.

10. The courtroom is a resource used by the court to conduct its business. To attempt to use a measure of the use of one resource (a courtroom) as a measure of the efficient use of another resource (judicial time) requires a very careful analysis. To date, nobody has sought to undertake this analysis.

11. The case study of the Workers Compensation list referred to in the Report demonstrates the fact that efficiency in disposing of the Court's business is not directly correlated with hours spent by the Magistrate in the courtroom. Each week of the Workers Compensation list the Court disposes of up to 20 applications, any one of which, if it ran, would take at least a day to hear. These matters only resolve because there is a Magistrate immediately available to hear them. The Auditor General suggests that this list *"highlights the weakness in the scheduling system as despite the call over process, a large number of cases that are likely to settle are still listed for hearing"*. With the greatest of respect, the Workers Compensation list highlights no such weakness. The only reason these cases settle is because they *are* listed for hearing and there is a Magistrate ready, willing and able to hear them. The suggestion that more cases

could be listed per day is facile and ignores the fact that there is only a small pool of lawyers, particularly barristers, competent in this field, and they are already fully occupied in attempting to resolve the four cases listed each day. The suggestion that more cases be listed is based upon the proposition that more cases listed will equal more settlements (or at least more cases disposed of), which ignores the delicate dynamic between the prospects of settlement and the likelihood that the case will be reached.

12. The business of the Court is to determine cases commenced by others as efficiently as possible consistent with the requirements of justice to the parties. The Court does not commence the cases that come before it nor does it have effective powers to control conduct of either criminal or civil proceedings after they have been commenced. There are a number of delays built into the criminal litigation process, many of which are the responsibility of executive government. Considerable delays occur in the summons process, both in the preparation of informations and subsequently in the service of the summons. The court has no control over these processes. In the event of a plea of not guilty the AFP and DPP require an adjournment of between six to eight weeks to enable a brief of evidence to be prepared. The court has no control over resources available to the AFP and the DPP or how those resources are utilised. If a presentence report is required Corrective Services presently requires six weeks for the preparation of the report. This position is likely to worsen with the commencement of the Crimes (Sentencing) Act 2005 in June this year. Corrections have already indicated their belief that they will be unable to provide reports unless given 8 to 10 weeks for the preparation. The court has no control over resources available to Corrections or how those resources are utilised.
13. The Court routinely over-lists in both criminal and civil lists. It does so only after a rigorous process of case management, particularly in the criminal lists. Case management has been particularly successful in criminal cases, with at least 50% of defended matters resolving without the need for a hearing. Yet, despite the parties assuring the court that the

matter will proceed to hearing and they are ready to proceed, an unacceptable number of cases do not proceed to hearing on the date allocated. There are many reasons why this occurs. The prosecution may not proceed with the charges. The defendant may change their plea. The defendant may fail to appear. Prosecution witnesses may fail to appear. The Court has no control over any of these circumstances.

14. Despite these difficulties the Court has been active in attempting to find new and better ways to fulfil its functions. It was the Court that instituted the processes of case management that has resulted in significant savings to government. The Court has also recommended the creation of a Listing Cell, to be overseen by a Magistrate, with a view to improving communication between the parties in upcoming hearing matters. This initiative will depend on the allocation of appropriate resources by the Department. The Court is also presently considering a number of options to change its listing processes so as to more effectively use time that becomes available because of cases falling out of the list on short notice. To work effectively these initiatives will nevertheless require the co-operation of other stakeholders in the system.