

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**REVIEW OF
AUDITOR-GENERAL'S REPORT
NUMBER 6, 1996**

Collection of Court Fines

STANDING COMMITTEE ON PUBLIC ACCOUNTS
Report Number 24

April 1997

RESOLUTION OF APPOINTMENT

The Standing Committee on Public Accounts was appointed by the Legislative Assembly on 9 March 1995 with the following terms of reference:

- (a) examine:
 - (i) the accounts of the receipts and expenditure of the Australian Capital Territory;
 - (ii) the financial affairs of authorities of the Australian Capital Territory; and
 - (iii) all reports of the Auditor-General which have been laid before the Assembly;
- (b) report to the Assembly, with such comments as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed;
- (c) inquire into any question in connection with the public accounts which is referred to it by the Assembly and to report to the Assembly on that question; and
- (d) inquire into and report on the implementation of the *Public Sector Management Act 1994* with particular reference to:
 - (i) the public interest; and
 - (ii) any other related matter.

MEMBERSHIP OF THE COMMITTEE

Mr Andrew Whitecross MLA (From 18 February 1997. Elected Committee Chair 19 February 1997)

Ms Louise Littlewood MLA (From 18 February 1997. Elected Deputy Committee Chair 19 February 1997)

Ms Lucy Horodny MLA

Mr Bill Wood MLA (From 26 March 1996 to 18 February 1997. Former Committee Chair)

Mr Trevor Kaine MLA (To 18 February 1997. Former Deputy Committee Chair)

Ms Rosemary Follett MLA (To 26 March 1996. Former Committee Chair)

Secretary: Bill Symington

1. INTRODUCTION

Background

1.1. Auditor-General's Report No 6, 1996 was presented to the Assembly on 16 May 1996.

1.2. The report covers a review of the effectiveness and efficiency of the recording and collection of court fines [and court imposed penalties] within the ACT justice system over the period October 1995 to January 1996.

1.3. The audit covered the Magistrates, Childrens and the Supreme Courts as well as relevant processes employed by the Motor Registry which is responsible for the collection of overdue traffic fines imposed by the Magistrates Court.

1.4. It should be noted that the Magistrates Court is also known as the Childrens Court when it exercises its authority under the relevant legislation. Revenue collected from court fees and fines in 1994/95 approximated \$1.0m with some 89% collected by the Magistrates Court, 1% by the Childrens Court, 3% by the Supreme Court and 7% by the Motor Registry.¹

1.5. In summary, the audit concluded that

- the recording of court fines has been effective, although both the Supreme Court and the Motor Registry could implement improved internal controls
- the collection of court fines has not been effective
- the lack of performance information related to the administration of court fines prevented the audit from reaching a view about the efficiency of administration.

2. COMMITTEE APPROACH

2.1. On 17 May 1996 the committee sought comment on the audit findings from the Attorney-General.

2.2. By late November 1996, despite a number of approaches at officer level the committee had received no response from the Attorney-General and this situation was drawn to the Minister's attention. Following further approaches at officer level, the Attorney-General replied on 26 February 1997² blaming the delay on officials and advising that comments on the audit report would be sent to the committee shortly. A substantive response was provided by the Minister in a letter dated 11 March 1997.³

¹ Audit report, pp10/11

² Attorney-General, letter to the committee Chair dated 26 February 1997

³ Attorney-General, letter to the Committee Chair dated 11 March 1997

2.3. The inordinate delay by the Attorney-General in providing a substantive response to the committee on the audit findings is of concern especially given that the committee is charged by the Assembly with responsibility to review and report to the Assembly on all reports of the Auditor-General. This particular audit report was a relatively straight forward performance audit and, as advised by the Attorney-General, most of the shortcomings in procedure and practice had been rectified before the audit report was presented or soon after.

2.4. It is timely that committee inform the Assembly that the Chief Minister, in September 1995, notified the committee that, as part of the Government's commitment to be more responsive to the Auditor-General's recommendations, the Government would present to the committee a coordinated response to each Auditor-General's report within three months of the report being tabled in the Assembly.

2.5. The Attorney-General's response provided the Government's position in relation to each of the findings of the audit report noting, however, that many deficiencies identified had been overcome by the time the audit report was tabled and that necessary action in relation to a number of others had since been implemented.

2.6. The committee believes that the three months allowed for by the Chief Minister to respond to Auditor-General's reports should have been more than adequate in this case and that there is no evidence that the additional time taken in this case has significantly enhanced the quality of the response. The committee affirms the view that it is the responsibility of the Minister to ensure that responses are timely in accordance with Government policy.

2.7. The next section of this report discusses the audit findings and the Government's responses to those findings.

3. AUDIT FINDINGS

3.1. In summary, the audit found that:⁴

- (i) there are adequate controls to ensure effective recording of court fines in the Case Management System in both the Magistrates Court and the Childrens Court
- (ii) there are inadequate controls to ensure that court imposed traffic fines which become overdue for payment are completely and accurately recorded on the Transport Registration Information Processing System [TRIPS] at the Motor registry, although sample testing did not disclose omitted or incorrect recording
- (iii) case details are recorded manually in the Supreme Court and, although there is no review or checking, sample testing did not disclose omitted or incorrect recording

⁴ Audit report, pp2-5

- (iv) 53% of Magistrates Court fines are not collected within the time specified by the Magistrate and 30% remained uncollected after 12 months
- (v) some 850 persons were in default of Magistrates Court fines [amounting to about \$200,000] for which no warrants had been issued
- (vi) warrant execution is apparently delayed because of limited police resources, and new warrant execution procedures should be considered
- (vii) consideration should be given to amending the Magistrates Court Act 1930 to provide for alternatives such as garnishee of wages and asset seizure to meet fines
- (viii) unauthorised extensions of time to pay fines are being given by Magistrates Court staff
- (ix) the Magistrates Court has no formal disaster recovery plan for the Case Management System
- (x) the legislation hampers the collection of fines by the Childrens Court
- (xi) the Childrens Court makes no contact with the offender between the date of conviction and fine default, and a reminder notice outlining the possible consequences of default may result in less fine defaulting
- (xii) the Supreme Court has no power to set default terms or issue warrants for the arrest of fine defaulters, and no other agency takes responsibility for recovery of fines imposed by the Supreme Court
- (xiii) no realistic sanctions can be applied to interstate offenders by the Motor Registry
- (xiv) the courts had no identifiable levels of outputs or established performance indicators associated with the administration of fines recording or collecting and, as a result, the audit could not determine whether the functions were being performed efficiently.

Motor Registry - Adequacy of Controls

3.2. With regard to traffic fines the audit noted that court lists of overdue fines were periodically sent to the Motor Registry and entered sequentially into the TRIPS system. However, the audit found there was no review of the sequential numbers to ensure that all cases had been entered.⁵

⁵ *ibid*, 32

3.3. The audit noted that the Motor Registry collected \$75,000 from overdue fines during 1994/95 that some \$37,000 in court fines was currently outstanding and that about 70% of this amount had been outstanding for a month. A three step process in the administration of traffic fines provides, as the final step, for the suspension of licence or vehicle registration where the fine is unpaid. Once such licences are cancelled the TRIPS system will not allow renewal until the fine is paid.⁶

3.4. Where an offender is not an ACT resident the only sanction which can be applied is to cancel that person's right to drive within the ACT. However, the audit noted there is only a small possibility of such an offender being detected driving within the ACT, and thus there is little incentive for the offender to pay the fine.⁷

3.5. The Attorney-General advised that appropriate changes were implemented shortly after and well before the Auditor-General's report was tabled. The Minister advised that during the audit, it was recommended that the Registrar of Motor Vehicles meet with the Registrar of the Magistrates Court to establish a procedure for the transfer of fines. Relevant officers met in October 1995 and it was agreed that an appropriate procedure would be that, when Motor Registry staff have entered fines on the TRIPS database, a list of the fines entered would be returned to the Magistrates Court for reconciliation with court records. That system was put in place.

3.6. The Minister further advised that arrangements in place in the ACT in relation to interstate drivers mirror the arrangements that exist in other Australian States and Territories, but that the National Road Transport Commission is examining options for better management of drivers and vehicles which may lead to improved reciprocal enforcement arrangements in future.

3.7. The Attorney-General advised that at the next meeting of the Standing Committee of Attorney-Generals [in March 1997] he would propose that all jurisdictions consider implementing mutual recognition arrangements for fine default enforcement. This procedure would take account of contemporary methods for fine enforcement available in the receiving State/Territory without the need for further amendment of the receiving jurisdiction's legislation once it was in place. The Minister advised that such a scheme would enable orders for licence and registration suspension to be recognised and enforced as if they were orders of the receiving jurisdiction.

3.8. The Attorney-General was subsequently reported⁸ as saying that the [Standing Committee of Attorney-Generals] meeting of 14 March 1997 had worked out a scheme which would probably involve things such as the suspension of driver's licences for people who owe fines interstate, and a greater use of civil enforcement procedures such as garnishee orders on wages. The Minister was reported as saying that legislation would be introduced in the ACT to support the scheme.

⁶ *ibid*, p33

⁷ *ibid*

⁸ The Canberra Times, 18 March 1997

Supreme Court

3.9. With regard to manually entered case details in the Supreme Court, the audit found there was no review of details entered to ensure accuracy or completeness. While the audit found no errors from the sample taken, it considered the controls not sufficient to provide confidence that the risk of errors is minimised. The audit noted the Court was considering a computerised management system which, in the audit opinion, could resolve the issue of accurate and complete recording of case details.⁹

3.10. Responding to this matter, the Attorney-General advised that appropriate changes had been made, the Supreme Court on 13 March 1996 having introduced a manual checking system to ensure the accuracy of the details entered into the Suitors Payment Book. The Minister advised that the system includes checking the benchsheets, receipts and payments and will remain in place until the introduction of a computerised case management system.

3.11. The Attorney-General also responded to an audit comment about a Supreme Court review of the feasibility of implementing a new computerised system for the management of all Supreme Court operations including the option of adopting the Case Management system currently utilised in the Magistrates Court.¹⁰ The Minister advised that changes are being implemented progressively. Following completion of its examination, the Supreme court has decided to implement the Case Management system used in the Magistrates Court. The Attorney-General advised that on 1 July 1996 the Supreme Court implemented the case-linked accounting component of the Case Management system while work continued on a detailed examination of the criminal case management component of the system and its suitability for the Supreme Court's needs. The committee was advised that work on this aspect is nearing finalisation and it is anticipated that a criminal case management system will be in place by the end of the first quarter in 1997.

3.12. With regard to the lack of power of the Supreme Court to set default terms or to issue warrants for arrest of fine defaulters, the audit noted that there were about \$22,000 in fines imposed by the Court which were outstanding, but that the Court considered the initiation of warrants against defaulters was the responsibility of the Director of Public Prosecutions (DPP). Officers of the DPP advised the audit that such action was the responsibility of the Government Solicitor. However, the audit found there had been no communication between the DPP and the Government Solicitor on this matter, and that the Office of the Government Solicitor advised it had no responsibility in criminal matters.¹¹

3.13. The audit concluded that revenue collection from fines could be increased if a system similar to the Magistrates Court was to be implemented, and noted that the Attorney-General's department had advised that Supreme Court fines would be included in centralised arrangements being developed whereby fines imposed by all courts would be enforced in a scheme administered by the Registrar of the Magistrates

⁹ Audit report, pp35-36

¹⁰ *ibid*

¹¹ *ibid*, p37

Court. The proposed scheme would provide for options of claims against defaulters including writ of execution against personal property and garnishee orders.¹²

3.14. The Attorney-General advised that while the lack of legislative provisions for the enforcement of fines imposed by the Supreme Court was acknowledged the audit had failed to recognise the work undertaken by individual agencies in exercising powers that they do have to enforce payment of monies ordered as a condition of recognisances. The Minister noted, for example, that the DPP does enforce payment of monies ordered to be paid as a condition of a recognisance but has no power to collect fines imposed by the Supreme Court. The Attorney-General advised that the current deficiencies will be overcome by granting legislative power to the Registrar of the Magistrates Court to enforce and collect Supreme Court fines under the proposed centralised fine default scheme.

Collection of Court Fines - Magistrates Court

3.15. The audit noted a number of aspects of the collection of court fines which are summarised in paragraph 3.1 above.

3.16. The Attorney-General advised that he considered the level of default unacceptable and is seeking to address it via the [centralised] fine default scheme referred to in paragraphs 3.13 and 3.14 above. The Minister noted the scheme has as a particular focus improving enforcement procedures and increasing the expectation that defaulters will be made to pay. The Attorney-General further advised that, as at 1 February 1997, the amounts outstanding were as follows [figures in \$]:

	Not yet Due	Overdue <30 days	Overdue 30-60 days	Overdue >60 days	TOTAL
Supreme Court	N/A	N/A	N/A	N/A	25,769
Magistrates Court	490,900	61,373	28,074	1,068,278	1,648,626*
*including Childrens Court					
TOTAL					1,674,395

Number of Persons in Default

3.17. The audit noted that there were, at the time of the audit, 2149 individuals in default of Magistrates Court fines and of these warrants had not been issued for 850 totalling \$212,749 in outstanding fines. 26% had been in default for greater than one year. The audit found that the average time to issue a warrant was six months due to a

¹² *ibid*, p37 and 18

backlog from previous years and although the Court planned to increase the collection rate the general staff freeze across agencies had prevented this.¹³

3.18. The Attorney-General advised that it was an unfortunate coincidence that the audit was conducted at a time when the issuing of warrants had been temporarily suspended to enable the upgrading of the software that supports the system. The Minister advised that as indicated in departmental comments reproduced in the audit report, this backlog was quickly cleared once the issuing of warrants was recommenced and that, in fact, most of the backlog had been cleared by the time the audit report was tabled. The Attorney-General advised that recent advice [for the period ending 31 December 1996] indicates that, with the exception of where the period for payment of fines has been [legitimately] extended, warrants have been issued where any fine has become in default.

Warrant Execution

3.19. The audit noted advice from the Attorney-General's Department that collection of overdue fines was affected by the availability of police resources to serve warrants, but the AFP Unit responsible for this task had been disbanded.¹⁴

3.20. The Attorney-General advised that the execution of warrants is not being delayed by limited police resources. The Minister advised that the disbandment of the Legal Services Branch of the AFP in 1995 led to a reduction in the proactive execution of Commitment Warrants by the AFP and an adoption of a more reactive approach whereby warrants are executed on an "as time permits" basis or as defaulters come to notice for other offences such as speeding or drink driving. Concomitantly, the Government has formed the view that the current system is inappropriate and has sought to develop civil remedies for fine defaulters as set out in the [centralised] fine default scheme referred to in paragraphs 3.13 and 3.14 above. The Minister advised that it is not seen as appropriate for valuable resources in the form of trained police officers to be used as debt collectors.

Amendment of the Magistrates Court Act to Allow Alternatives for Fine Collection

3.21. The audit noted the limited alternatives available for the collection of court fines, and proposed that consideration be given to amending the Magistrates Court Act 1930 to permit alternatives such as garnishee of wages and asset seizure.¹⁵

3.22. In response, the Attorney-General put the view that the audit proposal was the most significant audit finding and supported Recommendation 121 of the Royal Commission into Aboriginal Deaths in Custody which found that options other than imprisonment should be available for fine default. The Attorney-General also noted that the House of Representatives Standing Committee on Aboriginal and Torres Strait

¹³ *ibid*, p16

¹⁴ *ibid*

¹⁵ *ibid* p24

Islander Affairs recently recommended that the Prime Minister seek an undertaking from the ACT Government to implement this recommendation without delay.

3.23. The Minister advised that with the exception of parking and traffic infringement notices [where suspension of driver's licence and motor vehicle registration already applies], the ACT has no general fine enforcement options other than imprisonment. In all other Australian jurisdictions, imprisonment remains the final option with at least a community service option interposed between default and imprisonment.

3.24. The Attorney-General further advised that considerable work has and is being done to develop fine default options that should:

- improve the process of enforcement;
- reduce the incidence of non-compliance;
- enable early determination that civil enforcement will result in satisfaction of the amount owing; and
- increase the expectation that defaulters will be caught.

3.25. The Minister advised that under the [centralised] fine default scheme referred to in paragraphs 3.13 and 3.14 above the Registrar of the Magistrates Court would administer a scheme that would apply to all fines and levies imposed by the Supreme Court, the Magistrates Court and the Childrens Court with the Registrar of Motor Vehicles administering any suspension of vehicle licences and registrations. Essential elements of the proposal will include:

- licence and registration suspension;
- civil recovery methods [writ of execution and/or garnishee of wages];
- community service for offenders who have no capacity to pay; and
- use of periodic detention or imprisonment as a last resort following referral back to the Court.

3.26. The Attorney-General advised that the Government's legislation program for the Autumn 1997 Sittings includes a Magistrates Court (Amendment Bill 1997 - Fine Default) which will achieve the above policy objective, and that it was proposed to introduce legislation for debate prior to 30 June 1997.

Unauthorised Extensions of Time to Pay

3.27. The audit revealed cases where unauthorised extensions in time to pay fines were being given to offenders by staff other than the Registrar and Deputy Registrar of the Magistrates Court and the Magistrate as provided in the Magistrates Court Act 1930.¹⁶

¹⁶ *ibid*, p21

3.28. The Attorney-General advised that this situation had been rectified and that Deputy Registrars are now the only persons approving requests for extensions of time to pay.

Disaster Recovery Plan

3.29. The audit noted there was no formal disaster recovery plan for the Case Management system at the Magistrates Court.¹⁷

3.30. The Attorney-General advised that this situation has been rectified, the need for such a plan having been acknowledged for some time but delayed by cost and lack of funds. At the time that the audit was conducted, work on the plan had commenced but had not yet been completed. By the time the audit was completed, a draft plan was available and had been forwarded to relevant staff for comment. The plan was finalised in April 1996, prior to the audit report being tabled but remains under constant review. The Minister advised that the plan is currently being revised to ensure that any changes required as a result of the move to the new Magistrates Court building are taken into account.

Childrens Court - Fine Collection

3.31. The audit found that Childrens Court fine collection is hampered under current legislation. The Children's Services Act 1986 provides that orders must be served personally upon the offender, often resulting in the utilisation of resources in excess of the fine. The audit noted that no contact is made with the young offender between the date of conviction [in the Children's Court] and the default of the fine. The audit proposed that a reminder notice or "Notice of Conviction" detailing the seriousness of the offence and possible consequences might result in fewer fine defaulters.¹⁸

3.32. The Attorney-General advised that following discussions between the Attorney-General's Department and the Childrens Youth and Family Services Bureau it was agreed that the requirement to personally serve orders upon the offender served no particular purpose and that the Children's Services Act 1986 should be amended to bring the requirement into line with that applying to adult offenders. While it had initially been intended to amend the legislation separately, this matter is now part of the comprehensive centralised fine default scheme referred to in paragraphs 3.13 and 3.14 above to be administered by the Registrar of the Magistrates Court.

3.33. The Minister advised that under the new scheme, the Registrar's discretion will be exercised with the spirit of the Children's Services Act 1986 in mind, noting that the Act stipulates that the Court must have regard to the capacity of the young person to pay. The Minister advised that it is recognised that some special factors that relate to juveniles, however, may reduce the new scheme's effectiveness as an enforcement

¹⁷ *ibid*, p23

¹⁸ *ibid*, p26

mechanism. These include infrequent possession of a job or the ability to pay a fine, lack of assets and lack of driver's licence or ownership of a registered vehicle [due to age].

3.34. The Attorney-General also advised that with regard to contact with young offenders the audit proposal had been implemented. Following preliminary advice on the outcome of the audit, the Case Management system had been modified to provide for the automatic production of a notification of a fine to be forwarded to all young persons who attend before Court, and not just those who were convicted in their absence as happened previously. The Minister advised it is accepted that the timely issue of such a notice may prove to be an effective means of increasing fine collection and reducing default, and further advised that the revised procedure is being monitored to determine whether there is any perceptible improvement relative to previous years.

Efficiency of Administration of Court Fines

3.35. The audit found that for the period covered by this audit, the courts had not identified specific levels of required outputs or established performance indicators associated with the administration of fines recording and collections. The audit noted that without this type of performance information, it was not practical, as part of the audit, to determine whether or not the court administration function was being performed efficiently. However, the audit further noted that the introduction throughout the ACT Government Budget sector from 1996-97 of "outputs" based accrual budgeting and reporting supported by appropriate performance measures should ensure information for assessing the efficiency of court administration is readily available in the future.¹⁹

3.36. The Attorney-General advised that while this finding was noted, it is not entirely accepted. The Magistrates Court published performance indicators in both the Budget Papers and its annual report although, prior to the development of Purchase Agreements for 1996-97, these did not cover fine default and enforcement procedures. The Magistrates Court [and associated courts] outputs for 1996-97 include a specific performance indicator relating to fine default and enforcement. The Minister advised that given the relatively low level of fines that emanate from the Supreme Court and the fact that the Court does not have the power to set default terms, no performance indicator was included in its output statement. When the new fine default scheme commences, the Registrar of the Magistrates Court will become responsible for the enforcement of Supreme Court fines.

3.37. The Attorney-General also advised that the Department complied with the Government-wide financial management reforms and cleared its 1996-97 Purchase and Ownership Agreements through the Office of Financial Management. These agreements are currently being refined for 1997-98 and further development of both the measures and the Agreements is expected to be an iterative process.

¹⁹ *ibid*, p5

4. COMMITTEE COMMENT

4.1. The committee notes and accepts that the majority of the issues of concern identified by the audit have been, or are being, addressed by the Attorney-General's Department or by the court administrations concerned.

4.2. The matters either unresolved or partially addressed as at the date of this review by the committee are:

- (i) the collection of fines from persons resident outside the ACT
- (ii) completion of the case-linked accounting component of the Case Management system in the Supreme Court
- (iii) amendment of legislation to enable the Registrar of the Magistrates Court to administer a centralised fine default scheme which would apply to all fines and levies imposed by the Supreme Court, the Magistrates Court and the Childrens Court, and to provide for the Registrar of Motor Vehicles to administer any suspension of vehicle licences or registrations.

4.3. A further matter of note is that actual revenue from court, traffic and parking fines at end December 1996 was \$4.016m against budgeted revenue to that date of \$5.124m.²⁰

4.4. While lower revenues than those forecast may result from a combination of factors such as the courts levying fewer fines, the administration being more lenient in issuing parking infringements or the ACT community becoming particularly law abiding, it is reasonable to conclude, from the evidence of the audit report and advice provided by the Attorney-General (paragraph 3.16 above), that a major part of the shortfall in revenue from fines may be due to the overdue payment of fines. If this is the case, the committee is particularly concerned with the delay in drawing in these revenues at a time when the ACT is under significant financial strain.

5. RECOMMENDATIONS

5.1. The committee recommends that the Attorney-General:

- (i) **inform the Assembly on the details of the scheme reportedly developed by the Standing Committee of Attorney-Generals in its meeting of 14 March 1997 concerning mutual recognition arrangements in relation to the collection of fines and court ordered levies imposed on persons resident in State and Territory jurisdictions other than those in which the fines and levies are imposed**

²⁰ Consolidated Financial Management Report, Month and Financial Year to Date ending 31 December 1996

- (ii) **inform the Assembly as to when legislation to support the reported scheme developed by the Standing Committee of Attorney-Generals in its meeting of 14 March 1997 will be presented to the Assembly**
- (iii) **ensure that the Assembly is kept informed on progress by the Commonwealth and other States and Territories in introducing and validating legislation to support the reported scheme developed by the Standing Committee of Attorney-Generals in its meeting of 14 March 1997**
- (iv) **inform the Assembly as to when the case-linked accounting component of the Case Management system in the Supreme Court is completed [noting that it is expected to be in place by the end of the first quarter in 1997];**
- (v) **ensure that the Magistrates Court [Amendment] - Fine Default Bill 1997 is introduced to the Assembly to allow for sufficient consideration of the legislation during the June 1997 sittings of the Assembly; and**
- (vi) **inform the Assembly of the amount outstanding in unpaid fines as at the date of the Government's response to this report or 30 June 1997 whichever is the earlier date.**



Andrew Whitecross MLA
Chair