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**OUTLINE OF SUBMISSIONS BY ACT MAGISTRATES TO
STANDING COMMITTEE ON PUBLIC ACCOUNTS OF THE
LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

17 May 2006

INQUIRY INTO AUDITOR GENERAL'S REPORT NO.4 OF 2005

COURTS ADMINISTRATION



The ACT Magistrates welcome this rare opportunity to speak to you on important issues that go to the key of the operation of Courts and judicial administration.

In general terms, we totally support the main thrust of the Report. There are a number of specific issues that we would wish to address and put our view upon. Our comments are obviously restricted to the operations of the ACT Magistrates Court and Tribunals.

History and Background

On 1 July 1990, the ACT Magistrates Court and its Tribunals were transferred from the responsibility of the Commonwealth to the responsibility of the ACT Government. At that time a single budget figure was agreed upon between the Commonwealth and the Territory. We are not privy to the precise detail of that arrangement. The process does not appear to have been subject of any logic or scrutiny but rather a figure derived from current operations prior to transfer.

In 2000, a Court Administrator was appointed. That office was to seek to achieve a joint Courts administration between the various Courts and Tribunals of the Territory.

Two issues of concern have remained with us since the transfer:

1. Despite a number of requests there has never appeared a clear statement of the responsibilities and interrelationships of the various stakeholders in Courts and judicial administration.
2. There has never been a bottom line budget analysis to examine the appropriate costings of the operation of the Courts and Tribunals on a continuous basis.

The budget process has not been transparent. Budget allocations seem to be made on a once yearly basis. There was a period several years ago where the Court was accepted to run at a budget deficit of 1.3 million dollars. When an effort was made to examine the situation, the cry emerged that the Court should meet its budget. The question asked by the Bench is, "What is the budget for our Court and how is it derived and how are we to examine and react to it".

The financial process remains largely in the control of JACS. The Court, through the Court Administrator and to some extent the judiciary may put forward budget bids which are either rejected by the Department and never put to Government or put to Government and either rejected or accepted. This process lacks transparency.

The ACT Magistrates Court and its Tribunals

Our Court takes on the most complex and general jurisdiction of any Court of First Instance in any part of this country.

Its role includes:

- The traditional role of a Magistrates Court
- The Coroner's Court
- The Children's Court
- The Workmen's Compensation Jurisdiction
- The Guardianship and Management of Property Tribunal
- The Mental Health Tribunal
- The Residential Tenancies Tribunal
- Commercial Tenancy issues which are now part of our general jurisdiction
- Credit Tribunal
- Discrimination Tribunal
- Health Professions Tribunal

The Administrative Appeals Tribunal is headed by a separate President, Mr Michael Peedom, but its administration is the responsibility of our Court.

The administration, funding and planning for such a complex operation is extremely challenging. In other jurisdictions many of these bodies would be separately accommodated, administered and staffed. Basically, the judicial staffing of almost all of these bodies, is performed by the Chief Magistrate and various Magistrates of the Territory along with other members.

Should the operation be dismantled, as has been suggested, the additional cost to the Territory would be astronomical. The judicial involvement would have to be separately paid for, the staff would have to be separately paid for. The accommodation and other administrative matters would need to be separately attended to. Nevertheless that remains a decision for Government and I am not aware of any immediate plans to follow that course of action.

The Philosophy of Judicial and Courts Administration

The governance of Courts and judicial administration is a complex one. It is commonly viewed as a partnership model. If Court and judicial administration were taken as a one line continuum, at one end of that continuum matters would be much more the responsibility of the Executive – at the other end of the continuum conversely the responsibility would lie largely with the judiciary. There remains grey areas in the middle of that continuum. It is these grey areas that could be resolved by an appropriate form of governance.

Concepts such as “judicial independence” and “accountability” and the “separation of powers” are frequently mentioned but seldom understood. The purposes of these concepts is to ensure that there is confidence in the Court system and that the interests of the consumers of Court Services can be assured that there is equal treatment for all before the Courts without any inappropriate interference from any other source. The separation of powers recognises that the judiciary are a third and separate arm of Government. In political philosophy it was thought that the legislature, Executive and judiciary are separate arms of Government and should be observed as such to enable the necessary checks and balances in the daily operation of any social system to be maintained.

Comment re Recommendation One of the Report

The Courts Governance Committee has been set up. It comprises of the Chief Justice, the President of the Court of Appeal, the Chief Magistrate, the CEO of JACS and the Attorney General. Thus far two meetings have been held.

This Committee is a desirable step in the right direction to encourage better communication and consultation. As yet, it has made no impact upon the central question of developing an appropriate Court

Governance model for the ACT. Such a model needs to clearly delineate the roles and responsibilities of the stakeholders in court and judicial administration in the Territory. It will also need to consider financial control, responsibility and accountability and investigate relationships in relation to budgetary composition and control.

The preferred model as far as we are concerned is the authority or Court controlled independent model. We argue that this model best reflects the principles set out in judicial independence and accountability and the separation of powers. Such models in various forms exist in South Australia in the Federal Courts – the High Court of Australia, Family Court of Australia and Administrative Appeals Tribunal of the Commonwealth. We would strongly support this approach.

It is ultimately a political decision but in our view, should be based on appropriate philosophical, practical and safe grounds. Initiative and drive will need to be shown by all parties to ensure that the appropriate debate on this governance issue is held and long term decisions are made as to the appropriate form of governance. This is a matter that has drifted on since self government and in particular since our Court was transferred to Territory control on 1 July 1990.

Comment on Recommendation Seventeen

At the time of writing this submission, it is obvious that a fundamental review of the cost basis for court services to support a decision of appropriate base funding could not be conducted in time for the 2006/07 budget cycle. Nevertheless, the longer the delay the more acute the problem. We urge Government to accept and run with this recommendation as soon as possible, hopefully for the budget cycle of 2007/08. Without this exercise being done, there will be a continuing waste of resources in arguing and debating about issues that should not be issues. In this connection, Government policy in many areas of its operation have sought to centralize and streamline administration, finances, human resources, computerization and other issues. On the grounds of efficiency and better performance, one cannot argue with that. However, care needs to be exercised to ensure that such a demand does not inappropriately impinge upon judicial independence and accountability and the separation of powers. At present, the financial responsibility does not lie sufficiently with the Courts themselves to argue their case for resources. The budget process itself with a higher involvement of the Courts themselves, needs to be considered into the future if the thrust of this Auditor General's Report is to be achieved.

In recent times the Business Services Unit of the joint Courts administration has been wound down and largely transferred to a central pool.

If the Court is to perform its function appropriately, it needs high level expert advice in such areas as finance, strategic planning and human resources. The removal of the senior position in the Business Services Unit has in effect deprived the Court of that ability.

The Business Services Unit was set up following the lengthy "Mc Feate Report" which identified the deficiencies of the Court operations in this area. The Court would wish to have a more independent and active role in managing itself but can only do so with the appropriate expert advice. We fear that the ability of the court to do that without a fully functional Business Services Unit will be substantially compromised. We do respect the right of Government to run its business in what it considers to be the most efficient and appropriate way but emphasise that care needs to be taken in the areas we have set out above.

Internal Governance

Following a report by a consultant, Ms Nerida Wallace, in May 2005, the Court has agreed to a new internal governance structure central to which is a Council of Magistrates, chaired by the Chief Magistrate and the membership comprising all members of the bench. The object of this exercise was to introduce a more consultative process in the Court managing itself with a degree of structured guidance. Many of the recommendations by the consultant which flow into the listing review mentioned below have been stalled pending the availability of resources to introduce new systems.

Computerization

For several years the plight of the court computerization is a dismal one. For a variety of reasons computer development simply hasn't taken place. This in turn has resulted in the Court not being able to obtain necessary information to make decisions appropriate with all matters considered. The recommendations of the Report concerning computerization are strongly supported. The Department has commenced the long road back in respect of re-establishing appropriate computerization for the operation of a modern court.

Comments re Listing Procedures (Generally Recommendations 5-11 Inclusive)

Ms Nerida Wallace, in August 2005, produced for the magistrates, with the co-operation of the Department, a document entitled "Issues Paper No.2 – Active Listing".

Whilst the magistrates have some issues about the accuracy of some of the background information that Ms Wallace collected, there is a clear support for the introduction of most of her recommendations contained in that Report. A copy of that Report will be made available to the Committee. The lynch pin recommendation in the Report was the creation of a co-ordinated listing unit headed by a co-ordinating magistrate and a listing co-ordinator with appropriate staff. At the same time there was developed appropriate information points in the various stakeholder agencies, such as DPP, AFP and Legal Aid. Those agencies have already been consulted and are willing to take part when the lynch pin creation can be made.

Almost immediately upon receipt of the Report, the Council of Magistrates unanimously supported the Listing Co-ordination Unit procedure. I wrote on behalf of the Council to the then Court Administrator indicating that we were anxious to obtain the necessary additional resources to introduce this important initiative. At that time and now, the resource situation of the Court and Tribunal is at an extremely low level with further budget cuts threatened. Accordingly, the Council of Magistrates indicated they would be reluctant to introduce such a measure if it were not properly resourced or resources were taken from an already resource strapped organization. The court administration has endeavoured to make savings in other parts of the court in an endeavour to provide the necessary additional resources required to implement our key proposals.

At this stage, no satisfactory solution has been reached to provide the necessary resources to enable the introduction of this important measure. We are confident that this measure will ultimately lead to a raft of listing reforms that will aim to achieve optimum efficiency in this area. Of course this process can only take place with the co-operation of other key stakeholders.

I anticipate my colleague, Magistrate Burns, will further elaborate on listing issues as they are a matter of universal concern. In the meantime you will note the recommendations that will follow once the resources can be obtained to enable the reform to take place.

When this occurs, consultation will be continued with the stakeholders to introduce substantial reform that will more efficiently use the listing resources of the Court and its Tribunals.

Conclusion

There are many detailed recommendations in the Auditor General's Report on Courts Administration that we strenuously support. We

have concentrated largely on the matters of central importance to the issues.

The Auditor General is to be congratulated on the production of this Report which provides a unique opportunity for Government, the Courts and other stakeholders to make reforms that are long overdue that will result in a more accountable and efficient court system for the ACT.

Our jurisdiction because of its size and nature provides the opportunity to become a standard in court governance and efficiency for the rest of the country.

We stand ready to answer any question that you might wish to direct our way on any matters involved.

R.J. CAHILL
Chief Magistrate
on behalf of the ACT Magistrates

17 March 2006

Material on Court Governance

Useful guidelines can be found on current Court Governance issues in the following publications:

- Church and Sallamann
“Governing Australia’s Courts” 1991 AIJA
- “The Governance of Australia’s Courts – A Meaningful Perspective” – Alford, Gustavson, Williams - AIJA 2004
- Victorian Courts Strategic Project – September 2004