

Australian Capital Territory

DPP

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

**SUBMISSION OF DIRECTOR OF PUBLIC PROSECUTIONS ON THE
PERFORMANCE AUDIT REPORT OF THE ACT AUDITOR-GENERAL INTO
COURTS ADMINISTRATION**

INTRODUCTION

In September 2005, the ACT Auditor-General completed a Performance Audit Report on the ACT Courts Administration.¹ The Report noted in its “Report Summary and Audit Opinion” that “the administration of the court system in the ACT is pivotal to achieving justice”.² That is a sentiment with which I strongly agree. It has long been acknowledged that procedure can be as influential in the just outcome of curial proceedings as the substantive law.

The scope of the audit included “providing case management services ... scheduling of court appearances and case flow management”. The audit recognised judicial independence and so focused “solely on the administrative aspects of courts”.³

Nevertheless, the audit was wide-ranging and dealt with issues of central concern to other participants in the criminal justice system (a sub-set of the justice system, with which the audit was concerned) and, as such, I feel it important to comment on the Report.

I think, however, it is important that, before I comment on the recommendations, I make some general remarks first about the context of the criminal justice system and then about some specific issues.

CONTEXT

The criminal justice system is a system in the true sense of this word⁴ and the interdependence of its parts cannot easily be separated from the whole. In this system, the parts are for the most part independent in a particular way but nevertheless interdependent.

¹ ACT Auditor-General’s Office, *Performance Audit Report Courts Administration* (Canberra, ACT, September 2005). This is referred to in the Submission as “The Auditor-General’s Report”.

² Ibid at p1, paragraph 1.2.

³ Ibid at p1, paragraph 1.7.

⁴ The Macquarie Dictionary relevantly defines “system” as “an assemblage or combination of things or parts forming a complex or unitary whole”.

Thus, the prosecutor has a deal of statutory⁵ and common law⁶ independence; similarly, a bastion of the civilized society is the independence of the judiciary.⁷ Another relevant agency, the police, too, must, at least, at an operational level be independent.⁸

Nevertheless, the parts have to work as a system. The victim no longer decides who is to be prosecuted,⁹ but is usually the key witness in criminal proceedings. The prosecutor does not investigate crimes¹⁰ but must rely on the police (or other regulatory agency) to do so and obtain sufficient evidence to demonstrate the guilt of the person accused of a crime to the requisite standard. Similarly, the courts have no power¹¹ to direct that charges be laid and must await the decision of the parties to refer a case to them.

The courts, although one of the arms of government,¹² have a particular role. The High Court has described “judicial power” thus:

“... the words ‘judicial power’ as used in section 71 of the Constitution mean the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action.”¹³

That is to say, courts have power to resolve disputes that are presented to them, though they also have power in certain circumstances to change the status of people.¹⁴ Disputes are presented to the court by the parties and until that court is approached by a party, the court has no jurisdiction to act at all.¹⁵ Even then, the

⁵ See, for example, section 6 in combination with section 20 of the *Director of Public Prosecutions Act 1990*.

⁶ Set out in cases such as *Barton v The Queen* (1980) 147 CLR 75 and *The Queen v Apostolides* (1984) 154 CLR 563.

⁷ See, for example, S Shetreet (ed) *Judicial Independence: The Contemporary Debate* (Amsterdam, Kluwer Academic Publisher, (1985) for a very useful and comprehensive discussion of this issue.

⁸ John McKechnie, “Directors of Public Prosecutions: Independent and Accountable” (1996) 15 *Aust Bar Rev* 122 at 126.

⁹ See Richard Refshauge “Prosecutorial Discretion” in G Moens & R Biffot, *The Convergence of Legal Systems in the 21st Century* (Brisbane, Australian Institute of Foreign and Comparative Law, 2002) p353.

¹⁰ See Office of the Director of Public Prosecutions New South Wales, *Prosecution Policy and Guidelines* (Sydney, ODPP, 1998) p2.

¹¹ Save in the very exceptional case of certain contempts of court where the “extraordinary and exceptional” procedure of the judge charging a person can be carried out (*European Asian Bank AG v Wentworth* (1986) 5 NSWLR 445 at 457-8; *Keeley v Brooking* (1979) 143 CLR 162 at 174) a court has no power to charge or lay a charge for a criminal offence: *Maxwell v The Queen* (1996) 184 CLR 501 at 534.

¹² See, for example, H E Renfree *The Federal Judicial System of Australia* (Sydney, Legal Books, 1984) p1.

¹³ *J Huddart, Parker & Co Pty Ltd v Moorehead* (1909) 8 CLR 330 at 357 per Griffith CJ.

¹⁴ Such as by making an adoption order under section 9 of the *Adoption Act 1993*, a decree of dissolution of marriage under section 48 of the *Family Law Act 1975* (Cth) or a sequestration order under section 43 of the *Bankruptcy Act 1960* (Cth).

¹⁵W Anstey Wynes, *Legislative, Executive and Judicial Powers in Australia* (Sydney, Law Book Company, 1970) p395. Thus, in criminal proceedings, there is no jurisdiction until an indictment

jurisdiction in a particular case depends upon the ability of the court to have the other party to the dispute appear before the court.¹⁶

It is true to say as New South Wales Chief Justice Spigelman has that

“[t]here is a tendency today to treat the Courts as some form of public[ly] funded dispute resolution service. Such an approach would deny the whole of the heritage we have gathered here to commemorate. This Court does not provide a service to litigants as consumers. The Court administers justice in accordance with law. This is a core function of government”.¹⁷

Nevertheless, His Honour was not suggesting other than that the Courts are fundamentally reactive in the sense that they can only respond when approached by a litigant. Indeed, His Honour earlier noted

“Throughout the history of this Court, in any proceedings, including those in which the State is a party, the litigants determine in large measure, what issues are raised and how they are fought. This system reflects the significance our society attaches to the autonomy of individuals and to the maintenance of personal freedoms. Individuals are entitled to exercise control over their own lives. They are entitled to participate in decisions which affect their lives to the maximum degree possible. No arm of the State controls how they conduct their legal affairs”.¹⁸

The courts have an important role, but that role is reactive and determined to a large part by other participants in the system, each of which influences and affects the other.

Thus, a victim can complain of an alleged crime, but cannot require a prosecution to be conducted¹⁹ or not conducted or choose the charges; the police can arrest people, but cannot determine guilt or punish; the prosecution can decide not to prosecute the charges an alleged offender is to face, but cannot determine guilt or punish; a court can hear cases and determine guilt, punish and stay proceedings, but cannot force charges to be brought, decide which charges are to be brought²⁰ or call witnesses;²¹ corrective services agencies can deliver punishment but only as ordered by the court and for as long or in the terms of any applicable court order.

In this sense, police are dependent upon crimes being reported or otherwise coming to notice, prosecutors are dependent upon police or other investigative agencies identifying alleged crimes and alleged offenders, courts are dependent upon prosecutors presenting cases to them and corrective services agencies are dependent upon courts making decisions. Thus, workflow for each agency is not self-controllable.

The importance of this is to show the interdependence of the various agencies in the criminal justice system. Thus, whilst one agency can be considered by itself, it is an

is filed: *W* (2001) 124 A Crim R 545 at 565-6; *R v His Honour Judge Noud; ex parte MacNamara* [1991] 2 Q d R 86 at 90-1.

¹⁶ *Laurie v Carroll* (1958) 98 CLR 310 at 323-4; *R v Hughes* (1879) 4 QBD 514 at 622.

¹⁷ Address on the occasion of the 175th Anniversary of the Supreme Court of New South Wales.

¹⁸ *Ibid.*

¹⁹ *Mensinga v Director of Public Prosecutions* [2003] ACTCA 1.

²⁰ *Barton v The Queen* (1980) 147 CLR 75 AT 94-5.

²¹ Except in very exceptional circumstances: *R v Apostolides* (1984) 154 CLR 563 at 575.

incomplete consideration which does not recognise and give due consideration to the other interdependent agencies.²²

To this extent, the comment in the Auditor-General's Report that the courts "have more power over the system than other participants"²³ has to be moderated to give it context. That is to say, whilst the courts exercise the co-ercive power of the State and determine guilt and punishment, the most influential decision in the criminal justice system, they do not have such influences that reform of the courts will reform the system. Indeed, over defendants, their control is really quite limited.

The second important issue is that for effective delivery of services the constituent agencies must work co-operatively together. The criminal justice system cannot be managed by one agency alone. Although courts have a degree of coercive powers,²⁴ the experience in the criminal justice system is that these are relatively ineffective because they are rarely used or inappropriate.²⁵ It is difficult to see a court excluding evidence of a defendant which may contribute to an acquittal because of a failure to comply with procedural requirements or time limits.²⁶

As noted above, the Auditor-General's Report, however, suggests that the courts "do have more power over the system than other participants".²⁷ While this might have a superficial attraction, it is by no means clear that the obvious implication of it can be drawn. In the ordinary course, the courts cannot stop litigants

- bringing their cases to the court (other than vexatious litigants and even then only in certain circumstances), nor
- proceeding in accordance with the procedures of the court (other than where the actions are, for example, an abuse of process), nor
- withdrawing their cases from the court (though there may be significant consequences, such as costs orders).

In the criminal justice system, the power of a court to order an accused person to take a procedural step is, in fact, quite limited and no court would permit an accused to be unjustly convicted or sentenced because he or she failed to comply with some procedural or case management requirement.

²² This point is made in the submission of the ACT Bar Association, namely that the resourcing of other agencies is an important factor to be considered when the efficiency of the courts is to be considered: ACT Bar Association, "Recommendations Response by the Australian Capital Territory Bar Association to the ACT Auditor-General's Performance Audit Report Courts Administration – September 2005" p9.

It is also worth noting that the New Zealand Law Commission's recent Report No 89, *Criminal Pre-Trial Processes: Justice Through Efficiency* (Wellington, New Zealand Law Commission, 2005) included a chapter on the relevant Prosecution Service and the Defence participants: chapters 3 and 5. It also specifically addresses resources for these agencies in chapter 13.

²³ The Auditor-General's Report, p1, paragraph 1.6.

²⁴ Such as awarding of costs, including against legal practitioners: *Re Dunstan* (2000) 155 FLR 189.

²⁵ The New Zealand Law Commission, op cit note 13, observed "... there are no levers on parties other than the exercise of judicial authority": p14.

²⁶ For example, failure to file an alibi notice in time rarely leads to the exclusion of the evidence; more likely is the granting of an adjournment so that the prosecution can investigate the claim. This, of course, leads to further delay.

²⁷ at p1, paragraph 1.6.

Thus, the system requires co-operation from the agencies involved. This is more than just the parties co-operating with the court; it also requires the court to co-operate with the parties. Hence, it is desirable for there to be consultation about changes in listing procedures and other operational issues around hearings.²⁸ Sometimes changes will have significant resource implications²⁹ and there needs to be an opportunity for these to be addressed before implementation. This involves proper consultation and not merely informing stakeholders.

At a more practical level, co-operation includes the agencies involved recognizing their inter-dependence and establishing relations which enhance co-operation while respecting their respective roles. Thus, it is critical to good criminal case management that the prosecution and defence confer, prior to trial, preferably at an early stage.³⁰ Similarly, the co-operation of the courts is critical to the efficiency of the system. Small matters, such as advising the Office of the DPP and Legal Aid of when multiple criminal lists will be conducted or early notification of cancellation or postponement of hearings can make the difference between an efficient system and one that is not. Punctuality is another example of how the co-operation of the relevant agencies can impact on efficiency.

Regrettably, this is not a theme that appears with any strength in the Auditor-General's Report. Collaboration (recommendation 1³¹) is mentioned but with the Department alone and not the independent agencies that comprise the criminal justice system.

Recommendation 15³² does refer to "communication and liaison" and the preceding comment³³ to negotiated arrangements, but this is hardly the collaboration that will make for an efficient and effective criminal justice system.

The third issue is the independence of each agency. Whilst the various agencies have varying degrees or sources of independence, they are, by and large, properly independent, not only of each other but of direction by government. This is important for the integrity and credibility of the criminal justice system. It does mean, however, that reform is not easily achieved and, apart from legislative imperative, the process has to be dealt with in a way that respects this independence.

It is, of course, expected that all agencies would approach the issue of reform in good faith. Indeed, much has been achieved in this way:

²⁸ This has not always been done. For example, despite there being a Criminal Law Committee of the Supreme Court, recently a change in the way objections to jury service was introduced without consultation as was a trial and then extension of the provision of transcripts to jurors where trials were listed for more than 3 days. This is not limited to the ACT; recently the District Court of New South Wales announced the introduction of an additional criminal trial list without any consultation with the profession, including the Director of Public Prosecutions.

²⁹ As would, for example, the introduction of "running lists" in the courts, especially the Magistrates Court, for the prosecution and defence.

³⁰ This was a key plank of the *Best Practice Model for the Determination of Indictable Charges* agreed between the Directors of Public Prosecutions and National Legal Aid (Directors of legal Aid Commissions): see, for example, paragraphs 4, 5 and 6. This approach was then adopted by a Criminal Trial Forum convened by the Standing Committee of Attorneys-General: *Standing Committee of Attorneys-General Report Deliberative Forum on Criminal Trial Reform*, June 2000, p39.

³¹ The Auditor-General's Report p26.

³² Ibid p64.

³³ Ibid p64 paragraph 5.20.

1. The Case Management Hearing (based on similar processes in Tasmania and Victoria) in the ACT Magistrates Court was successfully implemented by Practice Direction³⁴ after a lengthy consultation process;³⁵
2. The Family Violence List in the ACT Magistrates Court was similarly introduced by Practice Direction³⁶ after a detailed investigation of Family Violence prosecutions under the auspices of the Domestic Violence Prevention Council.³⁷
3. The Pre-Trial procedures in the Supreme Court, including Pre-Arraignment Conferences were also introduced after consultation³⁸ between relevant stakeholders by Practice Direction.³⁹
4. Circle Sentencing in the Magistrates Court which was also introduced by Practice Direction⁴⁰ after extended consultation with the stakeholders and prior agreement on the Practice Direction.

Such processes inherently respect the position of each agency, and the methods of co-operation ultimately has lead to better results.

SPECIFIC ISSUES

1. **Targets.** It may be assumed that part of the background to the Auditor-General's Report is the reports of the Productivity Commission⁴¹ which have shown from time to time that the ACT Courts have performed below that identified as the national average.⁴²

³⁴ ACT Magistrates Court, Practice Direction No 2 of 1999, "Case Management Hearings.

³⁵ See the Report "A Reform of the Listing Practices of the ACT Magistrates Court Criminal Jurisdiction" 24 August 1999 signed by the Chief Magistrate, the Chief Police Officer, the Director of Public Prosecutions, the Chief Executive Officer of the Legal Aid Office (ACT), the President of the ACT Bar Association, the President of the ACT Law Society and by the Commonwealth Director of Public Prosecutions.

³⁶ ACT Magistrates Court, Practice Direction No 2 of 2000, "Family Violence Case Management Hearings". This has recently been superseded by ACT Magistrates Court, Practice Direction No 2 of 2005, "Family Violence List".

³⁷ ACT Department of Justice and Community Safety, *Annual Report 1998-1999* (Canberra, ACT, 1999) p47; Victims of Crime Support Program, *Annual Report 2001-2002* (Canberra, ACT, 2001) pp11-12.

³⁸ See, for example, ACT Department of Justice and Community Safety "Criminal Trial Forum", Hotel Kurrajong 18 November 2000.

³⁹ ACT Supreme Court, Practice Direction No 2 of 2001 "Criminal Jurisdiction: Procedure on Committal from the Magistrates Court". This has also recently been superseded by ACT Supreme Court, Practice Direction No 3 of 2004 "Criminal Jurisdiction: Procedure on Committal from the Magistrates Court" although there was less unanimity about the revised processes in this Practice Direction. This has led to a significant degree of non-compliance with some of its procedures.

⁴⁰ ACT Magistrates Court, Interim Practice Direction Ngambra Circle Sentencing Court, 20 April 2004.

⁴¹ Steering Committee for the Review of Government Service Provision, *Report on Government Services 2006* (Canberra, Commonwealth of Australia, 2006). Similar Reports have been produced in earlier years. The Report is commonly called "the Productivity Commission Report" because the Productivity Commission acts as the Secretariat for the Steering Committee.

⁴² For example, in the 2005 Report the average attendance at court by a party to criminal proceedings was higher in both ACT courts than in any other jurisdiction. The 2006 Report noted that the ACT Magistrates Court had the third lowest and the Supreme Court the second lower percentage of criminal cases finalised within 12 or 6 months respectively.

Whilst the measures set out by the Commission have been the subject of discussion, it cannot be said that they are universally recognised as accurate measures of a court's performance or appropriate to measure the effectiveness or efficiency of the criminal justice system.

There is ongoing discussion with the Australian Court Administrators' Group and the Australian Institute of Judicial Administration about these measures and the identification of more appropriate ones.

Without digressing into a detailed treatise of how the current measures may be flawed, I wish to make a number of points.

In the first place, the measures are generally event-focused and pay no regard to the quality of the outcome.⁴³ Of course, the quality of the outcome is quite challenging to measure and yet integral to the effectiveness of the system and, through it, to the credibility of government as a whole.

For example, a common sentencing option, especially for addicted offenders is the Griffiths Bond.⁴⁴ This permits the court to explore the likely response of an offender to a rehabilitative sentencing option. It has the psychological advantage that the offender must return to court and account for his or her behaviour during the remand period and before sentence. This often concentrates the offender's mind and improves his or her motivation for the rehabilitation program to be pursued. In strict terms, the sentence does not occur until the offender returns to court. Thus, there is an elapse of time between the finding of guilt and the imposition of sentence, yet this is generally regarded not only as highly desirable, especially if some rehabilitation is achieved or, at least, not contra-indicated, but also is a more just outcome. The current delay statistics would, however, show this as a delay in the process.

In the second place, the event reliance can, in fact, compromise the quality of the system. Justice David Ipp, a strong proponent of efficient case management has, nevertheless, sounded an important note of caution. He has written,

"Modern record-keeping systems coupled with computer technology permit court administrators to gather, analyse and distribute vast amounts of information about cases. This data is used to measure judicial performance. In consequences, judges may become more concerned with statistics as to their performance than with the quality of their decisions.

⁴³ It is fair to note that the Steering Committee has identified quality as an important measure of court administration performance but has not yet identified indicators of quality for court administration. See, Steering Committee for the Review of Government Service Provision, *op cit*, note 41, volume 1, page 6.23.

⁴⁴ So named because it was the kind of order the subject of decision by the High Court in *Griffiths v The Queen* (1989) 167 CLR 372. It ordinarily consists of an adjournment of 6 to 12 months or so following a finding of guilt (usually but not necessarily following a plea of guilty) to permit the offender to take part in a rehabilitation program or otherwise show evidence of reform with the implicit promise that if the offender performs well in the program or otherwise shows evidence of reform he or she will not receive a sentence of imprisonment which would otherwise be appropriate.

Furthermore, judges with supervisory obligations may acquire what amounts to a personal interest in cases they manage. Their prestige may depend on efficient management as measured by the speed and number of dispositions. Competition and peer pressure may tempt judges to rush litigants for reasons unrelated to the merits of the dispute. Furthermore, forcing judges to act within the confines of a time standard may pressure them to seek less formal procedures in order to expedite the litigation process.

These comments have considerable validity and there is no easy answer to them. The overriding factor, however, is that the limited resources nowadays available to the courts make case management an essential element in the proper and efficient administration of justice. Realistically, without case management the lists in most jurisdictions would collapse. The gathering and analysis of statistics are, in turn, vital to proper and efficient case management. Accordingly, there seems little prospect of the system being changed.

It is, nevertheless, crucial that all judges involved in case management should be aware of the dangers posed by the use of court statistics, and should guard against allowing targets and other statistical goals to be improper influences in managerial decision-making.”⁴⁵

Although His Honour was writing about civil litigation, the issues are equally applicable to criminal litigation.

The experience often is that when the perceived “national time standard” is reached, the court may take a negative view of the proceedings or the parties or both notwithstanding that the interests of justice legitimate the increased time being taken.

Thus, I have experienced criticism for seeking adjournments despite the interests of justice, more because of the perceived risk to the court’s statistics rather than the merits of the application.⁴⁶

This is an important caveat to be borne in mind when considering what measures of performance should be identified and used.

Of course, some of the measures of efficiency are important but comparisons also can be difficult. In a small jurisdiction such as the Territory, a few difficult cases can alter the proportions and rates widely.

The influence of other participants in the system is also relevant. For example, an increase in the funding to police can result in a significant increase in cases proceeding through the courts which would distort measures such as the backlog indicator.⁴⁷ Similarly, a new program, such as

⁴⁵ The Hon Mr Justice D A Ipp, “Reforms to the Adversarial Process in Civil Litigation – Part 1” (1995) 69 *ALJ* 705 at 719.

⁴⁶ See, for example, the comments of Chief Magistrate Cahill “The delay left the courts open to criticism when it was not its fault” *The Canberra Times*, 22 February 2006.

⁴⁷ See Steering Committee for the Review of Government Service Provision, *op cit* note 30, vol 1 at p6.24.

the Family Violence Intervention Program,⁴⁸ Restorative Justice⁴⁹ or Circle Sentencing⁵⁰ can change the dynamics of criminal litigation, by, for example, substantially increasing the number of defendants appearing in court⁵¹ or delaying the finalisation of the proceedings. A new program will, of course, make historical comparisons of limited value and, if not nationally implemented,⁵² make national comparisons difficult.

The Auditor-General suggests that “it is generally accepted that it is within the court’s responsibility to set targets and achieve performance”.⁵³ It is by no means clear who it is that “generally accepts” this and what it means.

As noted above, the court is an interdependent but independent participant in the system with an inevitable interaction with other independent entities over whom the court has limited control. Whilst many cases that enter the criminal justice system do end up in court, by no means all do and court statistics do not give an accurate picture of the whole system.⁵⁴

2. **Delay.** Delay provides challenges to the criminal justice system. The delay in the criminal justice system may not, however, just occur within the courts. As noted above, the courts have an important role but only a part in the criminal justice system.

The legislative attitude to delay is expressed at one level through the imposition of limitation periods. In the criminal justice system, there are few and are of very limited reach.⁵⁵

As is now known, there are offences which are prosecuted although they were alleged to have been committed many years, sometimes decades ago.⁵⁶ That is to say, there is an elapse of time between the date of the alleged offence and the commencement of proceedings. A court, of course, can influence this by ordering a stay of the proceedings, once commenced, on account of prejudice created by the delay or as a result of it, though this is regarded as an exceptional remedy.⁵⁷ Other than this, there is nothing that the courts can do to reduce such delay.

⁴⁸ Robyn Holder and Nicole Mayo “What do Women Want? Prosecuting Family Violence in the ACT” (2003) 15 *Current Issues in Criminal Justice*, no 1, p5.

⁴⁹ *Crimes (Restorative Justice) Act 2005*.

⁵⁰ ACT Magistrates Court, Practice Direction “Ngambra Circle Sentencing Court”, 20 April 2004.

⁵¹ Director of Public Prosecutions, *Annual Report 2000-2001* (Canberra, ACT, 2001) pp12-13.

⁵² As none of these programs have yet been.

⁵³ The Auditor-General’s Report, p2 para 1.6.

⁵⁴ An excellent example is sexual assault. See the “attrition triangle” in D Lievore *Non-Reporting and Hidden Recording of Sexual Assault: An International Literature Review* (Canberra, Commonwealth of Australia, 2003) p41; for actual statistics, see Jacqueline Fitzgerald “The attrition of sexual offences from the New South Wales criminal justice system” *Crime and Justice Bulletin* No 92, January 2006, (Sydney, NSW Bureau of Crime Statistics and Research).

⁵⁵ Section 170, *Legislation Act 2001*.

⁵⁶ C R Williams, “Warnings occasioned by delay in paedophile prosecutions” (2003) 27 *Crim LJ* 70.

⁵⁷ *Jago v District court (NSW)* (1989) 168 CLR 23 at 33-4. See also P Byrne “The right to a speedy trial” (1988) 62 *ALJ* 160 and Andrew L-T Choo, “Abuse of Process and Pre-Trial Delay: a Structured Approach” (1999) 13 *Crim LJ* 178.

Of course, delay has many causes. One form of delay, often called “systemic delay” is caused by lack of institutional resources.⁵⁸ This is not uncommon. As the US Supreme Court has pointed out

“Our speedy trial standards recognize that pre-trial delay is often both inevitable and wholly justifiable. The government may need time to collect witnesses against the accused, oppose his pre-trial motions or, if he goes into hiding, track him down.”⁵⁹

Thus, the notion of delay has various aspects to it:

- (1) Some pre-trial delay is “inevitable and wholly justifiable”.
- (2) Delay in commencing proceedings may be caused by delay in reporting and nothing to do with the courts or, indeed, the criminal justice system.
- (3) Prejudice to the accused is the gravamen of delay.

As can be seen, the identification of benchmarks for delay is by no means as easy as setting average targets. First, the court may have no control over the delay. Second, the actual prejudice is not lineally related to the elapse of time. Third, there is a risk that, as noted above, the standard times will not meet individual cases and will, in fact, risk prejudicing cases which require more time in the interests of justice.

One of the causes of delay is the fact that many hearings do not proceed because the defendant pleads guilty at the beginning of the case or the prosecution withdraws the charges.

The evidence that is available shows that

- (1) Of Magistrates Court cases managed through the Case Management System, 53.7% were in 2002-03 finalised at the Case Management Hearing.⁶⁰
- (2) Of cases that then proceeded to a hearing, about half proceed at hearing. The reasons the other half did not proceed were:
 - 12% were discontinued at the hearing by the prosecution
 - 43 % did not proceed to a hearing because the defendant pleaded guilty
 - 23% were adjourned
 - 22% the defendant failed to appear.⁶¹

⁵⁸ *U v R* [1995] NZFLR 966 at 969; P Rishworth “Affirming the Nation’s Fundamental Values – The Bill of rights on Trial without Undue Delay” [1995] 1 HRLP 56 at 59.

⁵⁹ *Doggett v US* 505 US 647 (1992).

⁶⁰ This compares with 40% resolved at a similar process in New Zealand: New Zealand Law Commission, op cit, note 22, p9.

There is, of course, a very strong view that there is an inevitability that defendants will procrastinate until there is no further opportunity.⁶² In effect, the most important contribution of the courts is that a judicial officer is available to hear the case. That is when the mind is most concentrated.

There is, from time to time, criticism of the time judicial officers spend out of court.⁶³ Whilst this can be a wasted resource, it is difficult in a small jurisdiction to manage lists more effectively.

As noted above, the most important contribution of a judicial officer is to be available to hear a case. This “point of no return” leads to a large number of cases being resolved.⁶⁴ Whilst running lists in larger courts can help remove the “wasted time” that “door of the court” pleas of guilty may cause,⁶⁵ there are very significant resource implications for not only my Office and the Legal Aid Office (ACT)⁶⁶ but also for witnesses who may be left waiting in court and have to return day after day only to find, if the case is not reached, that they have to return at a later date.

Running lists have the capacity to delay pleas of guilty and to risk even greater delay for those cases which do not get reached during the running list.

This problem of delay is universal and, as yet, no system has found a silver bullet for it.

3. **Quality.** As also noted above, the measurement of events and times may not at all be related to quality. As Chief Justice Spigelman pointed out,⁶⁷ the objectives of the courts is the administration of justice. Whilst it is true that “justice delayed is justice denied,”⁶⁸ the fact is that the content of justice is much more complex than the delivery of a speedy decision.

It is true that sometimes the criminal justice system is regarded as being a Rolls Royce system⁶⁹ but it is clearly not resourced as such. This, of course, affects the quality of outcomes.

⁶¹ This was a manual analysis undertaken by the Magistrates Court List Clerk of cases between January and June 2003. Because of the poor state of criminal justice statistics, not much further can be stated, other than that the impression is that this snapshot continues to be accurate.

⁶² M Rozenes “The new procedures for the prosecution of complex fraud – will they work” Paper given to the 28th Australian Legal Convention, September 1993.

⁶³ For example, the Auditor-General’s Report, p44.

⁶⁴ Kathy Mack and Sharyn Roach Anleu, *Pleading Guilty: Issues and Practices* (Melbourne, Australian Institute of Judicial Administration, 1995) p122-3.

⁶⁵ Victorian Attorney-General’s Steering Committee on Delays in Criminal Proceedings, *Newsletter*, May 1989, page 3.

⁶⁶ ACT Bar Association, loc cit, note 22.

⁶⁷ Chief Justice J J Spigelman, loc cit, note 17.

⁶⁸ *R v Lawrence* [1982] AC 510 at 517.

⁶⁹ See, for example, the comments of Victorian Attorney-General Rob Hulls, *Hansard*, Victorian Parliament, 9 December 1999 p1040. I have made elsewhere the point that the system “does not come cheap”: Director of Public Prosecutions, *Annual Report 2004-2005* (Canberra, ACT, 2005) p1.

Much of the response to this challenge is in reliance on process. Thus, it is pointed out that courts are accountable because their business is conducted in open court in public and through the appeal processes.⁷⁰

The first allows, subject to the law of contempt, robust criticism of the courts and their decisions. How much this affects the courts is problematic; it certainly cannot affect the particular decision, as it occurs after the decision.

The second, however, is also problematic but for a different reason. An appeal can affect the outcome of a particular case and in the case of criminal cases, if a miscarriage of justice,⁷¹ the original decision can be overturned.

An appeal is, however, like all proceedings before the courts, initiated not by the courts but by the parties. Thus, a party may choose not to appeal, even though the decision is thought to be a miscarriage of justice. The litigant may have no funds, may be concerned that the decision will be worse (e.g. when a lenient sentence is imposed, but on a retrial – itself a prejudice – if it occurs and there is a further conviction – the sentence may be more severe), may not be sufficiently confident of successfully challenging the decision appealed from and so on.

In the criminal justice system, also, the appeal mechanism is only available to the accused.⁷² The prosecutor cannot⁷³ appeal against an acquittal.⁷⁴

The combined effect of all these is that the accountability mechanism of the appeal is quite a limited process.

Thus, while the Auditor-General's Report does refer to a strategic indicator of the fair justice system,⁷⁵ the components of the indicator⁷⁶ do not in any sense measure the justice or fairness of the outcome.

This is an important consideration, for the point of the system must not be diverted from the delivery of justice by other quantifiable measurables unless consistent with justice (as expedition ordinarily but not necessarily is).

4. **Statistics.** One of the major problems in creating good criminal justice policy in the ACT is the absence of much by way of reliable statistics. This is a matter on which I have commented elsewhere.⁷⁷

This is a matter that has been taken up by the Legislative Assembly Standing Committee on Legal Affairs.⁷⁸ In a small jurisdiction, there are significant

⁷⁰ Chief Justice Murray Gleeson "Current Issues for the Australian Judiciary" Speech to the Supreme Court of Japan, Tokyo, 17 January 2000.

⁷¹ *BRS v The Queen* (1997) 191 CLR 225 at 306.

⁷² Apart from appeals against allegedly too lenient sentences which appeals should be rare and exceptional: *Everett v The Queen* (1994) 181 CLR 295 at 299.

⁷³ Except in limited circumstances in Western Australia (*R v Hyman & French* (1990) 2 WAR 222) and Tasmania (*R v Sender* (1992) 71 FLR 62).

⁷⁴ *Thompson v Mastertouch TV Service Pty Limited (No 3)* (1978) 38 FLR 397.

⁷⁵ The Auditor-General's Report, p32, paragraph 3.5.

⁷⁶ Ibid, paragraph 3.6.

⁷⁷ Director of Public Prosecutions, *Annual Report 1998-99* (Canberra, ACT, 1999), p4; Director of Public Prosecutions, *Annual Report 2000-01* (Canberra, ACT, 2001) p1; Director of Public Prosecutions, *Annual Report 2003-04* (Canberra, ACT, 2004) p5.

challenges, however, in providing such information. The Australian Institute of Criminology has done some work in this area for the ACT.⁷⁹

This remains a problem for the Territory, though the identification of the appropriate statistics in the criminal justice system and interpreting them is a major challenge.

Thus, in the Territory at present, cases in the Magistrates Court are counted as charges, not defendants,⁸⁰ thus making meaningful information about workload, trends and implications very hard to obtain. The measurement of delay is in exactly the same difficulty, though for other reasons.

What is being currently discussed at a national level is the possibility of taking specific types of cases (such as drink-driving cases, burglary cases, armed robbery cases) and attempting to see if patterns emerge as to process. This would give more realistic statistical information about delay in particular cases, avoiding the comparison of quite different cases.

5. **Committals.** Although the subject of discussion for many years,⁸¹ there has been little reform of the committal in the Territory. This is, of course, a major event which increases the elapse of time between initial charge and final disposition.

In New South Wales, the progress of committals has been substantially truncated, with paper committals now being mandatory⁸² and in Western Australia, they have now been completely abolished.⁸³

A paper was prepared in the Territory and circulated for discussion in 2001⁸⁴ but nothing seems to have come from that at all.

Whilst it is fair to say that, in the Territory, a large number of committals are paper committals, there are extended full hearings and the process is made significantly more complex by the defence option of choosing to proceed with the committal or elect for summary trial at the conclusion of the prosecution case and not before.⁸⁵ A requirement to elect for summary trial before the committal commences would streamline cases quite significantly.

There is a real case for renewed consideration of reform of the committal process in the context of improving the efficiency of the courts.

⁷⁸ Legislative Assembly for the ACT, Standing Committee on Legal Affairs, *Report on Annual and Financial Reports 2004-2005*, Report 2, p16, paragraph 2.18.

⁷⁹ Australian Institute of Criminology *Property Crime in the Australian Capital Territory* (Canberra, AIC, 2004).

⁸⁰ See, for example, Director of Public Prosecutions, *Annual Report 2004-2005* (Canberra, ACT, 2005) pp26-46.

⁸¹ The Australian Institute of Judicial Administration released a major report over 15 years ago: David Brereton and John Willis *The Committal in Australia* (Melbourne, Australian Institute of Judicial Administration, 1990).

⁸² *Justices Act 1902* (NSW) s48E.

⁸³ *Criminal Procedure Act 2004* (WA) Part 3 Division 4.

⁸⁴ Department of Justice and Community Safety *Discussion Paper: Reform of the Committal Process* (Canberra, ACT, 2001).

⁸⁵ I am not aware of specific authority on this point: *Stock v Hyde* [2006] ACTSC 11 proceeded on the basis that it was the law.

THE AUDITOR-GENERAL'S REPORT

Having made the comments above, I now turn to the Report itself. I propose to deal with the recommendations seriatim. Where there is appropriate comment on the text, that will be included in the comments on the recommendations.

Recommendation 1 (page 26)

JACS should work with the judiciary with a view to:

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

The governance of courts is a complex matter. As has been said

"Greater involvement by the judiciary in the management of their courts in South Australia and Victoria, accompanied by a reduction in Executive government responsibility demonstrates the development of a new form of public sector management specific to the courts. This managerial form, known as judicial administration, seeks to reconcile the conceptual basis of judicial activity, adjudicative independence and security of tenure, with the contemporary requirements of managerial best practice.

However, such a balance necessarily involves compromise. Complete regard for judicial independence as it extends to the administration of the courts occurs to the detriment of accountability for those actions. Conversely, complete accountability for the administrative operations of the courts, through ministerial control and accountability, risks damage to the notions of an independent judiciary."⁸⁶

These issues must be borne in mind. With this caveat, I support the recommendation. I do, however, believe that this is not sufficient a response to governance. The court, as noted above, is one organization in a network and must engage formally at an operational level in this process.⁸⁷

This has started to some extent, with the legislative establishment of the Joint Rules Advisory Committee.⁸⁸ This, however, must continue at the various levels of operation so that proper consultation and regular communication (not merely delivery of information from the courts) can occur with all relevant agencies and collaboration

⁸⁶ Robert McMahon, "Courts Administration Models in Victoria and South Australia: Lessons for NSW".

⁸⁷ John A Martin & Nancy C Maron, "Delays and Interorganisational Networks: Managing an Essential Tension" (1991) 14 *Justice System Journal* 28.

⁸⁸ Section 11, *Court Procedures Act 2004*.

in the formulation and implementation of strategies. This is critical to the success of a justice system.

Recommendation 2 (page 26)

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

I support this recommendation. An Annual Report is an important part of accountability and a regular opportunity to review.

Recommendation 3 (page 28)

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

I do not comment on this recommendation.

Recommendation 4 (page 30)

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

This is an important recommendation and I support it. In fact, few of the reports that are noted in the Auditor-General's Report have actually been implemented. It is not really correct to say, as does the Auditor-General's Report,⁸⁹ that the Byron Report's main recommendations have been implemented.

The Magistrates Court has recently commissioned a Report from Nerida Wallace⁹⁰ on listing and governance but there has, to date, been little consultation on it nor has an implementation plan been released.

Recommendation 5 (page 42)

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

I support this recommendation.

I have, however, indicated above the difficulty with statistical information, both as it relates to the Territory and as it is used nationally.

For example, the Auditor-General's Report states that "the Childrens Court ... is the most expensive of all jurisdictions in recent years".⁹¹ This is too simplistic an analysis

⁸⁹ The Auditor-General's Report, page 29, paragraph 2.53.

⁹⁰ Nerida Wallace and Michael Hall "ACT Magistrates Court Listing Review" typescript, 2005.

⁹¹ The Auditor-General's Report, page 40, paragraph 3.42.

of the position and fails to recognise the very significant differences between childrens and juvenile courts around Australia.

Similarly, whilst the Magistrates' caution that cost per case was not indicative of quality of judicial outcomes and process,⁹² this has not been adopted in the Report.

There is much work being done in this area but national comparisons need to be approached with caution as they are not always easily adaptable to the different legislative and cultural milieu of the Territory. For example, while it has had little substantial impact to date,⁹³ the *Human Rights Act 2004* may change the course of court proceedings, such as by extending the length of trials or interrupting civil proceedings and this is a legislative provision that is, at least presently, unique in Australia.

Recommendation 6 (page 50)

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

Whilst I support this recommendation, it is difficult to apply to the criminal justice system because of the limited mechanisms available to ensure compliance and sanction non-compliance.

As noted, the issue of case flow management is complex,⁹⁴ and simplistic solutions can only create further problems.

The Auditor-General's Report is incorrect when it states that committal hearings bypass case management.⁹⁵ This is not so.⁹⁶ What can be problematic, however, is when, as does happen too frequently, an individual magistrate will remove a case from the Case Management System and manage it individually.

This usually results in less satisfactory case management and puts additional resource pressure on my staff and, perhaps, those of other agencies, such as Legal Aid (ACT).

While I note the suggested criticism of my Office in the Bar Association Submission,⁹⁷ I do not wish to respond here in detail. The issues are complex. For example, the Case Management System is more resource intensive than the equivalent Tasmanian and Victorian systems, requiring greater disclosure than either of those other jurisdictions. This means, of course, that where a plea is entered as Case Management, those resources may have been wasted. Even that is a complex statement, but there is some truth in that.

⁹² ibid page 42, paragraph 3.44.

⁹³ Richard Refshauge, *The Human Rights Act 2004 and the Criminal Law*" paper given to the ANU and Gilbert and Tobin Centre for Public Law Conference on Assessing the First Year of the Human Rights Act, June 2005.

⁹⁴ The Auditor-General's Report, page 45, paragraph 4.3. See also ACT Bar Association, op cit, note 22, page 5.

⁹⁵ The Auditor-General's Report, pages 46-7, paragraph 4.12.

⁹⁶ ACT Magistrates Court, Practice Direction No 2 of 1999 "Case Management Hearings" which states at 1, Application: "This Practice Direction applies to all contested hearings (including committal proceedings) ...".

⁹⁷ ACT Bar Association, op cit, note 22, pages 5-7.

In the absence of the ongoing Magistrates Court Criminal Law Committee, appropriate reforms are difficult to consider and implement.

The Bar Association also notes the decline in the number of charges in the Magistrates Court.⁹⁸ This again, is complex. For example, a substantial training process has been implemented with the Australian Federal Police to improve investigative pre-trial preparation. Amongst other things, this has reduced the number of back-up charges.⁹⁹ As the statistics are charge-based and not defendant-based, this is one source of the reduction.

I also note that only the first of the listed proposed reforms noted by the Auditor-General's Report has been implemented.¹⁰⁰ More importantly, there has been no consultation about the remainder. This is necessary prior to implementation.

The Auditor-General's Report is, in this area, short on recommendations for improving case-flow management. In particular, its section on incentives is thin.¹⁰¹ In fact, there are few incentives that can really improve criminal case-flow management. I note that the Bar Association recommends none.

Recommendation 7 (page 51)

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

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

As will be clear from my earlier comments, this is extremely important and I strongly support it. It is a glaring gap but will be a resource challenge to fill.

Recommendation 8 (page 54)

The LC&T Unit should:

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

This is an important recommendation and I support, in particular, parts (a) and (b) in it.

⁹⁸ Ibid page 7.

⁹⁹ That is less serious charges which could proceed if the main, more serious charges do not proceed.

¹⁰⁰ The Auditor-General's Report, page 49, paragraph 4.24. The Council of Magistrates is, I understand, in operation.

¹⁰¹ Ibid, pages 49-50, paragraphs 4.26-4.34.

The third part, (c), would create significant challenges for my Office and, I suspect, other agencies such as the Legal Aid Office (ACT). Overlisting without the infrastructure of a larger jurisdiction can actually increase delay. The Workers' Compensation jurisdiction is not a suitable comparison because of some very significant differences to the criminal justice jurisdiction.

The problems of overlisting include

- The real chance of not being reached, causing further delay.
- Introducing a further element of possible delay which will discourage early pleas of guilty.
- The relatively small size of the jurisdiction and the numbers increases the delays.
- Delay can weaken witness resolve.
- Witnesses are inconvenienced.
- Delays can reduce the sentence imposed, especially multiple delays.
- There is no way to choose which case is likely to resolve quickly, and the "door of the court" and which will not.

Recommendation 9 (page 55)

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

I strongly support this recommendation.

Recommendation 10 (page 56)

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

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

I do not comment on this recommendation.

Recommendation 11 (page 59)

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

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

In general, I support the recommendation, but not (a), unless there are resources to meet the challenges for others such as my Office.

I also consider that it should be expressly noted that there are other stakeholders in the system with whom the LC&T Unit – and the Magistrates – need to work.

I have long endorsed proposals such as allowing Registrars to agree to consent to adjournments and the like, freeing up Magistrates to deal with judicial matters.

Recommendation 12 (page 62)

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

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

I strongly agree with this recommendation. I am disappointed, however, that it does not proceed on the basis of a consultative process which is important.

There is also a case for some sanction process.¹⁰²

Recommendation 13 (page 63)

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

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

I agree with this recommendation but, again, that is only one part of the process of ensuring that agencies, such as my Office, the Legal Aid Office (ACT) and the legal profession, should have to be involved in the process of reform.

Recommendation 14 (page 63)

The LC&T Unit should formalize 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.

¹⁰² Such as proposed in ACT Bar Association, op cit, note 22, page 11.

I agree with this recommendation. At present, the process is too informal, leading to fears that complainants will be victimized where they are regular court users.

Recommendation 15 (page 64)

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

I strongly agree with this recommendation, though the meetings must be more than information dissemination and contribute to genuine consultation and collaboration in reform and system improvement.

I note the comment in the Auditor-General's Report¹⁰³ about the arrangement for provision of interpreters. In the Territory, this has traditionally been the responsibility of the prosecution. This is undesirable; it is inappropriate for the prosecution to arrange for an interpreter for the defendant/accused. Resources should be provided to the courts for them to arrange.

Recommendation 16 (page 71)

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

Recommendation 17 (page 71)

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

Recommendation 18 (page 71)

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

I do not comment on these recommendations.

Recommendation 19 (page 73)

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

In general terms I agree with this recommendation. I note the reference in the Auditor-General's Report¹⁰⁴ to ICT equipment.

There is a significant lack of up-to-date technology in the courts. There is, for example, only an outdated case management system. When a new one is implemented, however, it will need to be compatible with (and preferably rolled into) a case management system at least in my Office.

¹⁰³ The Auditor-General's Report, page 64, paragraph 5.22.

¹⁰⁴ Ibid, page 72, paragraph 7.4.

Additionally, the report I commissioned on sexual assault investigation and prosecutions disclosed a significant gap in the Territory.¹⁰⁵ The Report commented

"But technology is another area where the ACT falls behind. Although ACT legislation provides for child witnesses and victims of sexual offences to give evidence by closed-circuit television from a location outside the courtroom, the current technology in the courts is outdated, inappropriate to this purpose and unreliable. If the difficulties that beset victims of sexual offences are to be seriously tackled, overhauling the technology is a priority. To progress further and adopt some of the legislative provisions currently applying in other Australian and overseas jurisdictions ... investment in the most appropriate and up-to-date technology is essential. Without a commitment to this, there is little to be gained by introducing legislation – such as legislation providing for pre-recording of evidence and admission of victims' interviews with police as evidence-in-chief – that relies on technology to be fully effective."¹⁰⁶

Accordingly, these issues need to be addressed urgently.

Recommendation 20 (page 75)

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

This follows from Recommendation 19 and I strongly support it. I note, of course, that the advisory group must consult and collaborate with the stakeholders such as my Office.

Recommendation 21 (page 77)

The LC&T Unit should

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

I support the intent of this recommendation, but it needs to be more carefully addressed. The anecdotal evidence suggests that, especially for unrepresented litigants, forms are desirable.

The current rules harmonization process will, in fact, increase substantially the number of forms, for each of use by court users, including the profession. This seems, in fact, desirable.

¹⁰⁵ Director of Public Prosecutions and Australian Federal Police *Responding to Sexual Assault: The Challenge of Change* (Canberra, ACT, 2005).

¹⁰⁶ Ibid, page 249.

What, however, is needed, is greater reliance on better procedures and training for Registry staff, whose needs appear to have been neglected over time. This consideration should also include a detailed assessment of the greater and improved use of technology in the Registry.

Recommendation 22 (page 81)

The LC&T Unit should:

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

I agree with this recommendation.

Recommendation 23 (page 84)

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

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

Recommendation 24 (page 86)

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

I do not comment on these recommendations.

Richard Refshauge SC
Director

4 April 2006