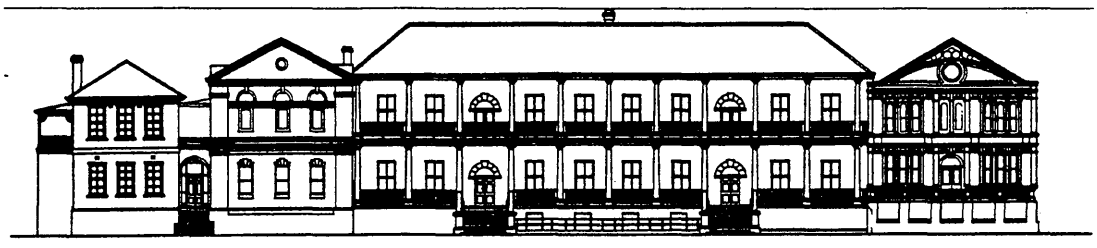
PUBLIC ACCOUNTS COMMITTEE

CUSTOMER SERVICE IN COURTS ADMINISTRATION

THE MISSING DIMENSION

A Review by the Public Accounts Committee of the Preliminary Performance Audit Report by the NSW Audit Office into Courts Administration



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Terry Rumble was elected Labor Member for Illawarra in March 1988. Before entering Parliament he qualified as an accountant and was employed in public practice and in the coal mining industry. He has served as a member of the Regulation Review Committee and is the Chairman of the Premier's Backbench Committee which involves Treasury, arts and ethnic affairs. Mr Rumble was elected Chairman of the Committee on 24 May 1995.

Mr Pat Rogan, MP, Vice-Chairman

Pat Rogan has been member for East Hills since 1973. He has been active on numerous parliamentary committees in that time including the Joint Committee upon Public Accounts and Financial Accounts of Statutory Authorities. This was the Committee that reactivated a dormant Public Accounts Committee in 1983. Pat Rogan has also served as Shadow Minister for Minerals and Energy with a background as a senior sales engineer in automation.

Mr Joe Tripodi B.Ec (Hons), MP

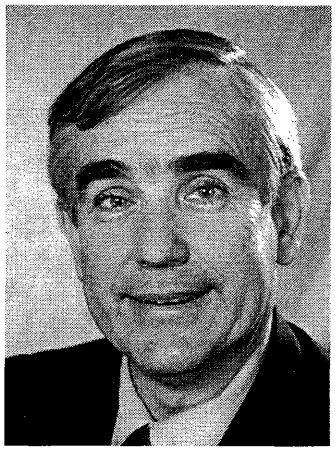
Joe Tripodi was elected to Parliament in March, 1995 as the Labor Member for Fairfield. Before entering Parliament he worked as an economist with the Reserve Bank of Australia and as a union official with the Labor Council of NSW.

Mr Ian Glachan, MP

The Liberal Member for Albury since 1988, Ian Glachan has had a varied background. He served five years at sea as a marine engineer, was a farmer for ten years, and operated a newsagency in Albury for 18 years. Mr Glachan is also a past president of the Albury-Hume Rotary Club and a Paul Harris Fellow, an active member of the Anglican Church, and was the Legislative Assembly member on the Board of Governors of Charles Sturt University. He was Chairman of the Public Accounts Committee in late 1994 and early 1995.

Mr Ray Chappell, MP

Ray Chappell was elected National Party Member or Northern Tablelands in May 1987. He has worked in university administration and in the building and retail industries, and he served four terms as an alderman on Armidale City Council. During his Parliamentary career Mr Chappell has served as Minister for Small Business and Minister for Regional Development, Shadow Minister, Chairman of several Select Committees and member of the Board of Governors of the University of New England.



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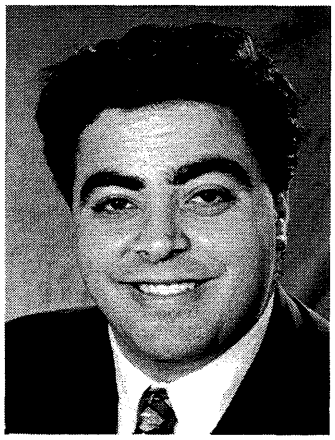

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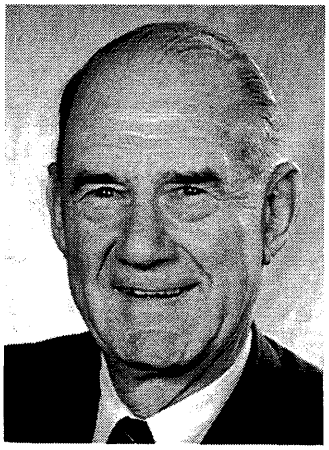

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Implementation by successive government departments of the recommendations of a number of studies, some seven years old, has been remarkably slow and patchy. These studies include the Performance Audit, whose recommendations have been only partially implemented after one year.

The Department needs to give much higher priority to the interests and needs of court users and should prepare a Guarantee of Service to customers of courts.

"Most courts in which I have spent any time are organised for the convenience of judges, of court staff, and of lawyers; usually in that order. If the convenience of the public is considered at all, it comes well behind those courthouse 'regulars'. This implicit ranking of priorities is seldom examined, or even discussed. If it were, it would probably be justified as merely a recognition that judge time is the most precious resource a court dispenses, that court staff are overworked in these days of budget cutting, and that lawyers must be minimally accommodated if the courts are to function at all. Yet no consumer-orientated establishment could set its priorities in this way. Department stores and airlines and accounting firms, and even other professional bureaucracies such as hospitals and universities, must pay attention to the consuming public. With the exception of the prison service...I know of no organisations, in or out of the public sector, which appear to be quite as cavalier about their clientele as are the courts of the English speaking world."

Professor T.W. Church, previously Professor in the Law Faculty, Melbourne University, and presently Professor in the Department of Political Science, State University of New York at Albany.

Chairman's Foreword

This is the first review the Committee has carried out of a Performance Audit prepared by the Auditor-General's Office.

Members of the Committee have determined that their best approach in these cases is not to seek to redo the Auditor's Performance Audit, or to second-guess his conclusions, but rather to add value to his findings and recommendations using their own unique advantages:

- as practising politicians, they are in constant touch with the community;
- they can hold hearings at which interested community groups and individuals can give a wide range of evidence;
- they have the force of bipartisanship, which makes it virtually mandatory for the government to give their recommendations serious consideration.

This is the approach we have sought to take in the present review and to this end, we have adopted an emphasis on customer service.

Members of the Committee, in their work as local parliamentarians, constantly deal with constituents who have had unsatisfactory experiences in the courts. The public suffers from delays; from the lack of explanations in clear English of what is going on; from having to mingle with the opposing party in court premises; from lack of knowledge about who to approach to find out what is happening; and, in general, from a powerlessness in the face of a new and bewildering situation.

PAC Members believe that there are many concrete steps that can be taken to improve a court experience for the public and we have made a number of specific recommendations.

Some of these steps are the responsibility of the Attorney General's Department, and these are the ones we have sought to identify. The Committee is very mindful of the restrictions imposed by the separation of powers, and in no way seeks to infringe on judicial independence. Indeed, the Committee is grateful for the time and trouble which senior judicial officers, namely Chief Justice Hon. Gleeson, Chief Judge Hon. Blanch and Chief Magistrate Mr. Pike have taken to help this inquiry. None of the Committee's recommendations are addressed to the judiciary.

A subsidiary aim of the Committee's reviews of Performance Audits is to evaluate how well those Audits have been carried out by the Performance Audit Branch (PAB) of the Audit Office. In this case, the Committee has been mindful throughout that this

was not a complete and final Performance Audit, but merely a Preliminary Report.

However, there were a number of observations which the Committee sought to make about the PAB's selection and handling of this topic. Throughout, the Committee's intention was to be constructive and to add value.

I would like to thank my fellow members, Pat Rogan (Vice-Chairman), Ray Chappell, Ian Glachan and Joe Tripodi for their unfailingly bipartisan approach to this inquiry. As ever, it has been a pleasure working with them.

The Committee thanks all those who assisted it with this inquiry. First and foremost are the senior judicial officers mentioned above. They unstintingly provided detailed analyses and recommendations, and the Committee values their contribution.

The Committee thanks the Department for its willing co-operation with this inquiry, and for preparing long and detailed submissions.

The initial work on the report was conducted by Ross Kendall, whose enthusiastic approach the Committee appreciated. We wish him well in his future endeavours. The project was carried out and completed under the supervision of the Director, Ms Patricia Azarias. We are grateful for her tireless efforts. We also thank Kendy McLean who edited the draft and prepared it for publication.

We trust that the Department will quickly move to improving its customer service, and that the Committee's report will have been instrumental in the change.

Terry Rumble MP
Chairman

FINDINGS AND RECOMMENDATIONS

Charters and standards of service

p.35

FINDINGS

The Committee strongly supports the recommendation by the Sackville Committee that charters should be developed and implemented specifying standards of service to be provided to members of the public coming into contact with courts or tribunals.

The Committee also supports the recommendation by the Performance Audit that an official Guarantee of Service to Court Users should be prepared by the Attorney General's Department.

The Attorney General's Department's Guarantee of Service

p.35

RECOMMENDATION

The Department's Guarantee of Service should be ready by the end of 1996. It should include (but not be limited to) the following:

- provision of interpreters;
- education programmes;
- standards for accessibility and time taken for various legal proceedings;
- physical facilities of various courts and tribunals;
- the provision of information in clear English about various court proceedings;
- identification badges for court staff;
- standards of courtesy towards members of the public;
- access to the courts;
- facilities to separate the family of the accused from that of the victim;
- accountability for service delivery, including complaints handling procedures and methods for drawing the existence of these procedures to members of the public; and
- special support for women and children.

Court User Forums

p.36

RECOMMENDATION

That the Department investigate and report by 31 October 1996 on ways in which members of the public could play a bigger role in Court User Forums. For instance, more extensive representation from groups such as the Court Support Scheme should be explored.

Community Access to Court Premises and Facilities

RECOMMENDATIONS

p.37

That the Department finalise by 31 October 1996 its Policy on Community Access to Court Premises and Facilities.

That this Policy include a costing for making separate facilities available for supporters of the accused and of the victims.

That the Policy be implemented by the end of 1997.

Performance Standards

RECOMMENDATION

p.39

That the Department fully investigate the University of Wollongong initiative and evaluate it for possible adoption by the Department in its Guarantee of Service.

Training for the judiciary on public needs

RECOMMENDATIONS p.39

That since the Guarantee of Service is to deal with matters in which the Judiciary should play a prominent role, the Department discuss with senior members of the Judiciary and with the Judicial Commission the most appropriate training programmes for ensuring that the needs of the public are taken into account in court proceedings.

That the Department seek further funding from the Treasury to finance such programmes.

Information technology

FINDINGS p.44,46

Improvements to data collection for the purposes of ongoing performance analysis have not been achieved. Consequently, the management information available to the Department is inadequate.

Computerised data dissemination for court users also needs to be improved.

The level of information technology adopted in the Courts is not acceptable.

There have been too many reports and too little action in the development of management systems.

The poor level of technology exacerbates the delays already inherent in the system.

RECOMMENDATIONS (Information technology cont.)

That the Department proceed swiftly with the implementation of its Information Technology Strategic Plan, particularly in regard to management information systems. p.46

That the Department explore the possibilities of putting court transcripts online for heavy users like Legal Aid.

That the Performance Audit Branch of the Audit Office be provided with:

a) a detailed time schedule of the implementation process,

b) quarterly updates on the progress actually achieved in regard to this schedule.

Any major anomalies between the two could then be referred back to the Public Accounts Committee. This information would also provide the Audit Office with an objective standard which could be used as a basis for any further Performance Audits.

Funding for courts

p.48

FINDING

Treasury's funding strategy for the Attorney General's Department for the operation of courts is inappropriate to ensure a reduction in court delays.

RECOMMENDATIONS

That Treasury review the Attorney General's funding system as soon as possible with a view to identifying a less perverse arrangement.

That Treasury complete this review by the end of November 1996, and inform the Committee of the results by the end of December 1996.

Court fees

FINDING p.50

While the Committee endorses the use of court fees, these have been inequitably levied.

RECOMMENDATION

That the Department examine the possibility of lower fees for some applicants, that lower fee to be determined after a means test.

Attorney General's Department's discussion paper on revenue p.51

RECOMMENDATIONS

That the Attorney General's Department ensure that its discussion paper on revenue:

- definitely appears on 31 July 1996;
- is followed by a list of recommendations for consideration by the Minister and by Treasury, this list to appear by 31 October 1996 at the latest;

That the Department also ensure that this list of recommendations includes a clear and definite timetable for implementation.

Evaluation of extended services

RECOMMENDATIONS p.53

That the Department proceed with its evaluation of extended services, giving due regard to client consultation. This should primarily involve the public and not only legal practitioners.

That this evaluation and recommendations that flow from it be made a public document. The evaluation should also include a timetable for the implementation of the recommendations it contains.

That the above be completed by early 1997.

Not value for money

p.60

FINDING

Despite several valuable features, it appears that the Performance Audit did not, overall, represent value for money, although a final judgement would have to await the completed report.

No reporting of agencies which have just been reviewed

p.61

RECOMMENDATIONS

That the Performance Audit Branch not prepare extended reports on agencies which have just been reviewed.

That, instead, it consider, in those cases, obtaining simply and cheaply a list of the reforms envisaged and a timetable for their implementation; and then that it undertake the full Performance Audit at the *end* of the stipulated time.

CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THIS REPORT

1. 1 Introduction

1.1.1 General Observations

This is the first follow-up report prepared by the Public Accounts Committee which deals with a performance audit published by the Auditor-General.

Virtually all Public Accounts Committees in the Parliaments of the Westminster system follow up on the performance audits of their respective Auditors-General. Together, the Public Accounts Committee and the Auditor-General constitute a formidable accountability mechanism.

They bring different strengths to the task.

Public Accounts Committees have a unique authority in parliamentary democracies. Their reports, coming as they do from Parliaments' leading "watchdogs", carry singular weight and command serious attention. This is because a Public Accounts Committee, composed of members of Parliament, is one of Parliament's strongest tools for ensuring the accountability of the Executive to the people's elected representatives through its inquiries into the way the Executive manages its business.

In addition, the perspective of a member of Parliament is necessarily quite different from that of a non-elected official. Visited every day by constituents, MPs are inevitably aware of community concerns and are keen to address them.

As well, the Committee can hold hearings at which the public can give its views. The Committee is free to ask whomever it wishes to give evidence. As a result, consumer groups, producer groups, community groups, and interested individuals all have the opportunity to make their views heard on how a particular government department affects them.

One of the major advantages enjoyed by Public Accounts Committees is the strength that their bipartisanship gives them. It is very hard to ignore the unanimous conclusions and recommendations of a committee composed of all the major parties of a Parliament, and Governments virtually always take them very seriously.

Many of these are not advantages enjoyed by any Auditor-General. However, the Auditor-General brings to the task his considerable resources and the accounting skills of his staff. In NSW the Auditor-General has a staff of 278 (plus contractors) who are trained in auditing and have virtually free access to all government documents.

The Committee has taken the view that in its reviews of the Auditor-General's performance audits, it should not simply reiterate the Auditor's findings, or try to duplicate his research, or try to second-guess his conclusions. The Committee believes that its best approach is to seek to add value to the Auditor's original Performance Audit. In particular, it will seek to add a value that can only come from the Public Accounts Committee, with its unique advantages, its roots in the community, its ability to hear community concerns, and the strength that comes from bipartisan conclusions.

It was the Public Accounts Committee which in 1990 recommended that the Auditor-General establish a Performance Audit Branch to carry out non-financial audits of government bodies. These non-traditional audits, termed performance audits, had as their main aim the examination of the economy, efficiency and effectiveness of the operations of government departments.

So far the NSW Auditor-General has published 26 performance audits. The Committee selected the Performance Audit of the former Department of Courts Adminstration for its first follow-up.

A subsidiary aim of the Committee's present report is the examination of how the Performance Audit Branch has itself been performing. The Performance Audit Branch spent $1.7m in 1994-5[1], all of it ultimately public money, and the Committee sought to form its own view of how the PAB has been carrying out its task.

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[1] Communication to Committee from Audit Office, 19 June 1996.

1.1.2 The Committee's approach to this particular Performance Audit

The major value which the Committee sought to add in its review of this performance audit was a particular stress on the community service aspect of the original inquiry.

Delays seriously affect court users: they spend time, money, and emotional and physical resources, and sometimes they even lose respect for the judicial system. The problem has been identified and various attempts have been made to solve it, but it remains. In their electorates, all Committee members have worked to help constituents and other members of the public affected by court delays and, in general, by the lack of consumer orientation of the courts.

In this review, the Committee was able to call on a wide range of those affected by court delays. In particular, it obtained the views of the Court Support Scheme, a group of volunteers who seek to support litigants as they try to find their way through the complex and unfamiliar world of the courts. The evidence of Ms Julie Foreman, Co-ordinator of the Court Support Scheme, weighed heavily with the Committee, because she raised problems which members of the Committee often hear in their electorates from members of the public.

In addition, the report of the (federal) Sackville Committee, *Access to Justice: an Action Plan*, published in 1994, provided many ideas.

1.2 Background to this report

1.2.1. Performance Audits: definition

At a conference on Performance Management in the Public Sector held in 1994, the Auditor-General of NSW began his address titled: *Auditing To Improve Performance of Government* with the following words:

> Throughout the world governments have introduced programmes, policies and incentives to stimulate better public management, improved performance, more highly valued public services and renewed public confidence....
> Many of these changes have been in response to greater public demand for improved efficiency, economy and effectiveness of government

programmes.[2]

The primary concern of a performance audit is to determine whether or not a government agency is achieving the goals of efficiency, economy and effectiveness in the delivery of its programmes or services. Performance audits can also monitor the extent to which government agencies comply with the statutory framework and obligations that are relevant to their operational environment.

In addition to making recommendations which are designed to help a government department to make improvements in these areas, performance audits also communicate to the Parliament and the public the success, or otherwise, a government agency has achieved in reaching these goals. Accordingly, they are a mechanism that strengthens the ability of the Parliament to hold executive government accountable for its activities, particularly in the expenditure of public resources.

A more detailed picture of what a performance audit entails can be found in the above mentioned address. The Auditor-General went on to state that:

> In general a performance audit will examine:
>
> - whether the authority manages the acquisition, protection and use of its resources (financial, human, physical, information and natural) economically and efficiently;
> - the cause of inefficiencies or uneconomical practices;
> - the extent to which the desired results or benefits established by the Government or legislation are being achieved (effectiveness);
> - compliance with relevant legislation;
> - the adequacy of procedures for budgetary control; and
> - the adequacy of internal control systems for promoting and monitoring economy, efficiency, effectiveness and compliance.[3]

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2 Address by NSW Auditor-General Tony Harris, *'Auditing to Improve Performance of Government'*, seminar on Performance Management in the Public Sector (1994), p.1.

3 ibid. p. 8.

In an attempt to bring as much clarity as possible to the concept of performance audits, it is worth examining the Australian Accounting Research Foundation's Statement of Auditing Practice, AUP 33 "Performance Auditing". In this document the following definitions are provided:

> (a) "economy" means the acquisition of the appropriate quality and quantity of financial, human and physical resources at the appropriate times and at the lowest cost;
>
> (b) "efficiency" means the use of financial, human and physical resources such that output is maximised for any given set of resource inputs, or input is minimised for any given quantity and quality of output; and
>
> (c) "effectiveness" means the achievement of the objectives or other intended effects of programmes, operations or activities.

Performance audits can be distinguished from the traditional function of the Audit Office which concentrates on fiscal regularity audits. This latter type of audit requires the Auditor-General to provide an opinion on whether the financial statements issued by government agencies are a 'true and fair' description of an entity's financial position. These fiscal regularity or attest audits do not, as performance audits do, make recommendations which aim to improve the performance of the government agency beyond what is needed to achieve soundness in the area of financial accounting.

Performance audits can also be differentiated from management consultancy reports. The latter do not make an attempt to 'audit' or check that the claims of the audited department are a true description of the current state of affairs, while performance audits do.

A final indication of what a performance audit is designed to achieve can be illustrated by noting that the Audit Office gauges the success of its activities in this area by "*...the extent to which performance audits have been catalysts for beneficial change in the public sector*".[4]

1.2.2 Development of the performance audit mandate

The current mandate to undertake performance audits derives from the *Public*

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[4] Audit Office, *Performance Auditing in New South Wales,* 1995, p.2.

Finance and Audit Act 1983. The Act does not refer to performance audits but instead uses the term "special audits". The relevant section of the act states:

Special Audit by Auditor-General

38B (1) *The Auditor-General may, when the Auditor-General considers it appropriate to do so, conduct an audit of all or any particular activities of an authority to determine whether the authority is carrying out these activities effectively and doing so economically and efficiently and in compliance with relevant laws;*

(2) *A special audit is separate from, and does not affect, any other audit required or authorised by or under this Act or any other Act.*

Special audit not to question policy

38D *Nothing in this division entitles the Auditor-General to question the merits of policy objectives of the Government including:*

(a) any policy objective of the Government contained in a record of a policy decision of cabinet; and

(b) a policy direction of the Minister; and

(c) a policy statement in any Budget Paper or any other document evidencing a policy decision of the Cabinet or a Minister.

The Public Accounts Committee has played a significant role in the development of the mandate for the Audit Office to undertake performance audits.

In PAC report No. 49 (July 1990): *Report on the New South Wales Auditor-General's Office,* it was specifically recommended that funds be allocated for the purpose of developing a performance audit capability. This inquiry found that while the traditional mandate of the Audit Office (that pertaining to financial or attest audits) was consistent with practice in other jurisdictions, its development of a more comprehensive mandate was lagging behind developments elsewhere. Both within Australia (e.g. the Federal and Victorian

audit offices) and internationally (e.g. Canada, the United Kingdom and New Zealand), the role of the Auditor-General had been expanded to permit an examination of the way in which the various units of the public sector operate. There were some differences between mandates, but all dealt with the examination of some aspects of the efficiency, effectiveness or value-for-money performances of auditees.

In PAC report No.70 (June 1993): *Review of the Special Audit Function of the NSW Auditor-General's Office*, the involvement of the PAC in the performance audit mandate was continued. The terms of reference of that inquiry required a review of:

1. The method and level of recurrent funding for performance auditing;
2. Progress achieved in moving towards comprehensive auditing;
3. The objectives and results of performance work already carried out; and
4. The Auditor-General's proposals for future funding of performance auditing.

This report made several recommendations which had the aim of fine-tuning the work of the Audit Office so that it would more consistently be able to satisfy Parliament's expectations in regard to performance audits. It was also recommended that further funding be provided to the Audit Office to develop and continue its performance auditing capability.

The present inquiry should thus be viewed in the context of an ongoing relationship between the Audit Office and the PAC which aims to develop and refine a performance auditing capability in NSW. [5]

An account of various performance audit mandates in other Australian jurisdictions is provided in the PAC's 1996 Review of the Audit Office (Vol.2)[6]

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5 For a broader overview of the development of performance auditing in Australia see J.J. Glynn, *The Development of Performance Auditing in Australia,* Research Lecture in Government Accounting, Australian Society of Accountants, September 1987.

6 P. 93 of Coopers & Lybrand report incorporated in the PAC Review on the Audit Office Vol. 2.

1.2.3. Origin of the inquiry

This inquiry is not the result of a reference from Parliament.

Rather it is conducted as part of the PAC's statutory obligations, set out in section 57 of the *Public Finance and Audit Act* 1983, which require it, among other things, to examine any or all of the reports tabled in Parliament by the Audit Office.

The origin for this inquiry can also be viewed as part of the above mentioned ongoing development of the performance audit capability in NSW which, in turn, is a shared goal of both the Audit Office and the PAC.

In its internal review of its Performance Audit Branch (in effect, a Performance Audit of its own Performance Audit Branch), the Audit Office made a recommendation to the effect that a government body investigate the extent to which government agencies, which had been the subject of performance audits, had implemented the findings of those audits.[7]

Moreover, a similar recommendation was expressed in the relevant sections of the above mentioned *Review of the Audit Office, 1996 (Vol.2).* Part of this review, the Coopers and Lybrand report on the Performance Audit Branch of the Audit Office, recommended that:

> The PAC review Performance Audit conclusions and recommendations following tabling in Parliament.[8]

The motivation for having a system of follow-up inquiries into performance audits was expressed in PAC Report No. 70. It states that:

> ...there seems to be no process in place whereby someone takes ownership of the Auditor-General's reports and recommendations and follows up on their implementation. The Auditor-General has no mandate to implement change. There is a consequent risk that the benefits that should be obtained from performance audits are not realised due to lack of follow up.
>
> The need for someone to take this role is particularly important where an audit deals

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7 Audit Office, *Performance Auditing in New South Wales*, p. 6.

8 p. xiv of Coopers & Lybrand report incorporated in PAC review on the Audit Office, Vol. 2.

with issues that cross the responsibilities of multiple administrative units.[9]

If the benefits of performance audits are to be fully realised, then government agencies must implement recommendations, rather than agreeing with them yet remaining idle. Thus, the degree to which the former Department of Courts Administration has implemented the recommendations of the relevant performance audit will be the primary focus of this inquiry.

The Committee has a responsibility to review and carry out follow-up studies on the work of the Auditor-General to ensure that the public monies he controls have been spent efficiently and effectively. This is the case in regard to NSW's performance audit capability. Accordingly, a subsidiary purpose of this inquiry is to investigate the conduct of the Audit Office in undertaking its report.

1.3 Method of inquiry

As part of this follow-up review the Committee used several methods of inquiry.

First, correspondence was entered into with the relevant agencies, namely the Audit Office and the Attorney General's Department. Both these agencies also made submissions which can be found in Appendix 2.

Second, representatives from the Attorney General's Department provided an informal briefing on issues raised in the performance audit.

Third, public hearings were held on 18 April 1996. These hearings involved users of the justice system including representatives of lawyers, barristers and the public. The full text of these hearings can be found in Appendix 1.

Moreover, other submissions were received either as evidence at the hearings or as a follow-up to that evidence. These submissions can be found in Appendix 2.

Committee staff also visited the Downing Centre court complex so that first hand experience of issues raised in the report could be obtained. This included

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9 PAC Report No. 70, *Review of Special Auditing Function of the NSW Auditor-General's Office*, p. 57.

attending a meeting of the Downing Centre's Court Users Forum as an observer.

Finally, the Committee took the opportunity to canvas the opinion of judicial officers in regard to issues raised in the report. The full text of the responses provided by judicial officers to the questions of the Committee are provided in Appendix 3.

1.4 The history of court management review

1.4.1 Court management review: the NSW experience

The administration of the courts was first reviewed in 1988.

In that year a major external review of the NSW court system was jointly commissioned by the then Premier and the Attorney General's Department. The report was conducted by Coopers and Lybrand[10] and contained several recommendations, the major one being that a new government agency be established: the Department of Courts Administration. The cost of this report was $900,000.

The Department of Courts Administration began operating in 1991.

In January 1994, a Review of Court Services undertaken by Anderson Consulting was completed on behalf of the Department of Courts Administration. This report laid the foundations for the adoption of information technology consistent with the Case Management System (CMS) project. This report cost approximately $180,000.

The performance audit conducted by the Audit Office commenced in February 1994. The cost of this report was approximately $106,000. A detailed examination of the recommendations is the focus of Chapter 3 of this report.

In April 1995 the performance audit was tabled in Parliament. In the same month, the Department of Courts Administration was merged with the Attorney

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10 Coopers & Lybrand, W.D. Scott, *Report on a review of the New South Wales Court System*, 1989.

General's Department.

In January 1996 the Attorney General's Department engaged KPMG Management Consultants to develop an Information Technology Strategic Plan (ITSP). In part, this report reviewed the CMS which the former Department of Courts Administration had intended to introduce. It recommended that this system be superseded by the ITSP it developed. The Attorney General's Department has begun the early phases of this project. The cost of this consultancy was $98,000.

The Attorney General's Department has also contracted with the Australian Quality Council to introduce quality management into the whole department. Stage One of this project has been completed at a cost of approximately $20,000. Stage Two, at the time of writing, has begun and is expected to cost approximately $13,000.

Box 1. Overview of Review process in NSW concerning courts administration.

Name and Producer of Report/Consultants review:	Sponsoring Department:	Timing of Report:	Major Recommendations of the Report:	Implementation Status as of May 1996:
Review of the NSW Court System. Coopers & Lybrand	Attorney General's Department and the Premier's Office.	Oct. 1988-May 1989	-Improve the adequacy and quality of management information. (Improve data collection) -Create the DOCA -Introduce case management techniques -Develop alternative dispute resolution techniques	-still in planning phase/beginning implementation -implemented (since reversed) -implemented -implemented
Court Services Review: Anderson Consulting	Department of Courts Administration (DOCA).	Completed in Jan 1994	-implement case management system (this included information technology needs) - 32 major recommendations.	-superseded by the ITSP (see below) - implementation ranges from complete to not at all.
Performance Audit of DOCA:	Audit Office.	Feb. 1994 - Jan. 1995	- 6 major recommendations	- All partially implemented.
Information	Attorney General's	Jan. 1996-	-Implement Information	-Implementation has

CHAPTER TWO

COURT BACKLOG AND DELAY: CAUSES, STATUS AND EFFECTS

2.1. The causes of court backlog and delay

During this inquiry, the Committee was presented with a number of causes for delays and backlogs in the court system. The delay involved in the hearing of a case can be caused by a combination of any or all of these factors. The factors are listed below.

2.1.1 Variability of incoming cases

The length of court backlog and delay is a direct function of the number of new cases coming into the system. The Attorney General's Department has stated:

> The speed at which matters in court can be dealt with depends largely on the rate at which new cases enter the system. To this extent the courts can be described as "demand driven". Sudden and unpredictable increases in new cases will lead to delays, and this is always a significant factor with which the courts and court administrators have to contend.[11]

This point was expanded on by the Chief Magistrate of the Local Court. He stated:

> In many instances where there is delay it is simply that the inflow of cases is too great for the magisterial resources available. The court has no power to control the incoming work. Court work is generated by the public and government agencies. Every time the Government provides additional police in response to a "law and order campaign" more work is generated for the courts. However, there is never any increase in judicial resources to deal with the increased work load.[12]

This factor applies to both criminal and civil cases.

The opinion given to the Committee by the Chief Executive Officer of the New South Wales Bar Association, Mrs B. Smith, provides insight to the growth in civil cases.

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11 Bulletin of NSW Attorney General's Department, *Court Delays*, 1987, p. 1.

12 Correspondence with the Committee. See Appendix 3, Chief Magistrate Pike, p.1.

She stated at the public hearings that:

> ...common sense would probably tell us that there has been an upsurge of rights in the community, where people have a greater sense of right, therefore there is definitely a general trend to pursue those rights more...This chasing rights aspect can be at least observed in two areas...One of them is the self litigants, some of them will persist in cases well beyond all the best legal advice and will keep going through every layer [of the legal system]... ...The other is there are new matters I think probably that go to court in the higher courts too, than there were maybe twenty years ago, more stated conflict business matters, more domestic matters...You can see how the social sense is creeping in as well.[13]

The court system has to contend with a variability not only in entry rates but also in the complexity and type of cases that come before the courts.

Mechanisms for alternative dispute resolution, such as arbitration and negotiated settlements, reduce court backlog and delays by cutting down on the number of cases entering the system. They also do not require the amount of resources used for a trial. The Chief Judge of the District Court has stated the following:

> I believe we should be seeking to dispose of as many cases as possible through alternative dispute resolution because we cannot afford to guarantee to every litigant the full majesty of a court hearing.[14]

2.1.2 The level of resources applied to the court system

As noted above, one factor which does have an effect on court backlog and delay is the amount of resources made available to the justice system. Like other public sector programmes the justice system would be able to increase its throughput, and accordingly reduce court backlog and delay, if additional resources were made available to it.

This view was raised on more than one occasion at the Committee's public hearings. For instance Mrs B. Smith, Chief Executive Officer of the New South Wales Bar Association, stated in regard to the cause of court delay:

> ...It all boils down to a lack of money in administration and I believe

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13 Evidence to Committee, p. 13.

14 Correspondence to Committee, Appendix 3, Chief Judge Blanch, p.2.

> personnel as reflected in judges.[15]

The Chief Justice of the Supreme Court told the Committee:

> The principal cause of delay is the mismatch between the workload of the court and the resources that are made available to it.[16]

In regard to reducing delay, the Chief Judge of the District Court informed the Committee:

> The major thing courts can do is hear cases...but the primary problem is the absence of an appropriate amount of judge-time. New South Wales deals with almost as many civil and criminal cases as probably the rest of Australia put together. We do not have as many judicial officers as every other state in Australia... [17]

A clear example of the "mismatch" between resources and workloads can be seen in the Court of Appeal (a division of the Supreme Court). The workload of this appellate court increases in direct proportion to increases in the number of first instance Judges who make the decisions which are the subject of appeal. In 1966, when the Court of Appeal was established, there were 8 Judges to hear appeals arising from the work of 48 first instance Judges. In 1995, the number of first instance Judges had grown to 117, while the number of Judges in the Court of Appeal had languished at 10.

As the Supreme Court's 1995 Annual Report states, the "*...increase in the business of the Court of Appeal has been grossly disproportionate to the increase in the size of the Court.*"[18] The estimated time to dispose of matters before the court has increased from 18 months in 1992 to 30 months in 1995.

The ability of courts to process cases will also be affected by staff levels generally. From the table presented below, it is clear that aggregate staffing levels for the Courts have fallen. Without efficiency gains, this will result in a reduced throughput of the Courts.

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15 Evidence to Committee, p.14.

16 Correspondence with the Committee, see Appendix 3, Chief Justice Gleeson, p. 2.

17 Correspondence with the Committee, see Appendix 3, Chief Judge Blanch, p.1.

18 Supreme Court 1995 Annual Report, p.2.

	Staffing Levels of the Courts[19]			
Court	**1993-4**	**1994-5**	**1995-6**	**1996-7**
Local	1,519	1,433	1,362	1,335
District	575	602	560	576
Supreme	450	469	472	484
Total	2,544	2,504	2,394	2,395

The level of resources applied to other areas of the justice system also affect the throughput of the Courts. The Chief Magistrate has noted that:

> Other causes of delay include insufficient, and inefficient, court room accommodation. If the defendant or one or more witnesses are in custody, a custody venue is required and all custody courts might be...in use for some time. Sometimes there is a shortage of court rooms even where custody facilities are not required. Frequently, I could provide additional magisterial resources to assist in overtaking arrears but there is no accommodation available. This is particularly the case in the western metropolitan area. At Penrith delays are in excess of 28 weeks and there is inadequate court room accommodation to provide assistance nearby. At Parramatta, though arrears are not nearly so great, there is a shortage of courtroom accommodation.[20]

It should be noted that the median level of delay in Local Courts across the state is 10 to 13 weeks.[21]

2.1.3 Outdated court procedures and processes

The justice system has only recently had to focus on problems associated with court backlogs and delay. Court processes and procedures which have developed over time are not necessarily compatible with modern efforts to reduce court backlogs and delay. In some instances, they exacerbate the problem. In regard to this system it has been noted by P.A. Sallmann, Director of Australian Institute of Judicial Administration Inc.:

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19 Budget Papers 1996-97 No.2, pp.170-181.

20 Correspondence with Committee, see Appendix 3, Chief Magistrate Pike, p.2.

21 ibid. p.1.

> Lawyers effectively ran the litigation process, both at the trial and pre-trial levels, and judges generally behaved in the traditional 'cuckoo clock' style, popping out at some critical stage when the lawyers indicated that judicial intervention was required. Litigants who wished to press on with things and to get a quick result had to be extremely patient, generally passive and could do little to speed up the course of events. On the other hand, the system provided plenty of latitude for those who wanted to delay the process for any number of strategic reasons[22].

These "strategic reasons" for delaying a case could include the following:

- a desire to postpone "the evil day";
- a hope of failing memories in witnesses, or even loss of witnesses through travel or death; and
- a means of bringing financial pressure on your adversary by more ably coping with the costs associated with delay.

A major technique used to modernise the operation of the Courts has been the implementation of case management techniques. Case management essentially concerns the pre-trial conduct of litigation. Judicial officers, and courts generally, have become active managers of the caseloads that they deal with. Instead of being substantially controlled by lawyers, courts now assume a greater level of control over the litigation process and timetable. An integral component of such management is the setting of time standards for each of the major phases in the preparation of a case.

Moreover, procedures or processes of law within the court system can be modified so that the flow of cases within the Courts is increased. Two examples of such measures are briefly outlined below:

Self Enforcing Infringement Notice System (SEINS)

SEINS has been used successfully in the traffic jurisdiction and could be adapted for use in connection with minor criminal offences as an alternative to arrest and charge. The court superintends the infringement notice system and would only be required to hear the case in instances where the defendant is dissatisfied with the notice for any reason. The reduction in court time required to hear these cases could then be used to alleviate pressures in other areas.

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22 P.A. Sallmann, "*The Impact of Case Management on the Judicial System*" , Journal of Judicial Administration Vol.18, No.1, 1995, p.195.

Legislation to provide for paper committals

Committals are procedures which determine the strength of the charges made against someone. This procedure determines whether or not the accused should face a trial. In many respects, however, committals duplicate work done in the trial. An example is the presentation and testing of evidence. By making this a 'paper' process, court resources could be channelled elsewhere.

2.1.4 Listing procedures

The length of time required for a particular case is hard to determine. Moreover, many cases settle "at the door" of court or so close to a hearing date that a replacement case cannot be arranged. Rather than risk having courts stand idle (either because cases have moved more quickly than planned or have settled) on any day, or part thereof, cases are often over-listed. That is to say, more cases are listed for a day than could be dealt with if all the cases required a hearing.

This can cause two related problems. Firstly, all parties to litigation who are listed for that day are required in court at 10 o'clock even though their case may not be heard until the late afternoon. Secondly, in instances when no cases have settled or when some cases take longer than expected, the days list cannot be completed. This will mean that some parties will spend all day at court and not be heard. Consequently, their case will have to be relisted for another day.

The following exchange, involving a member of the Committee and Mr. Humphreys from the Legal Aid Commission, details the detrimental effects that over-listing can have on court users.

Committee:	What areas of court operations do you see as having the most negative impact on court users?
Mr Humphreys:	The chronic over-listing of matters in the District Court and the Supreme Court and Local Court. I am aware of many occasions where, from my point of view, it causes the commission difficulty because we have to have the matter prepared, which means we would pay for a barrister to turn up on the day, we have a solicitor there, they have may have issued subpoenas, we may have got witnesses ready, people get called in. The same applies I might add with the prosecution, and I am only talking criminal matters here. They have got the police there, the witnesses there, and the matter is not reached and we are told to go away and come back another day. That is taking police off the streets; it is alienating witnesses

> who on many occasions really do not want to be there, but they accept they are part of it, they give up their time to come in, having to take a day off work and they are not fully compensated for the amount of time that they have taken off. You have got increased costs on the prison sector services. They have to bring people back into court and keep them elsewhere. Matters that are not reached, they cannot classify people. If a person gets a sentence they are classified, which might mean they go to a lower security area. When they are on remand, there is maximum security. The quicker people are sentenced or their matters are finalised, they are either out of the system because they are found not guilty or they are sentenced and they can be classified to a lower security prison which is generally far cheaper than having them in maximum security.
>
> The fact of the matter is it costs more than it costs to house a prisoner at the Hilton per night to keep him in maximum security. It is $2,000 to keep him in maximum security. It would be very, very cost effective if we can get people through the criminal justice system quickly.[23]

Thus it is clear that the court system is shifting costs from itself to court users.

2.1.5 Co-ordination problems

Another cause of delay within the courts system relates to the problem of co-ordinating a diverse range of groups or individuals who are required for the hearing of any particular case in court.

The Chief Magistrate told the Committee:

> In cases which are otherwise ready, witnesses sometimes become ill, travel overseas, or for a variety of reasons fail to attend Court. In all those circumstances the Magistrate has to give serious consideration to granting an adjournment.[24]

Essentially, there are situations in which the court system can provide a hearing date but the case is delayed as not all parties to the hearing can be organised for that day.

Similarly delays may occur because processes outside the court system, but on which it is dependent for its operation, have not taken place. The Chief Justice told the

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23 Evidence to Committee, p. 44.

24 Correspondence with Committee, see appendix 3, Chief Magistrate Pike, p.2.

Committee that:

> ...there are significant delays in the Legal Aid system which processes applications for aid. Since the overwhelming majority of criminal appellants rely on legal aid, the consequence is that there is a system delay. [25]

A similar type of problem was brought to the Committee's attention by the Legal Aid witnesses themselves. In their case, they had problems in seeing clients before cases were to begin as the Department of Corrective Services did not always have the defendant at the court house in time. Once again, delay occurred due to the Courts' dependence on other parties.[26]

The Courts, however, do have co-ordination problems which they could control. One such instance brought to the Committee's attention was in regard to the use of interpreters. It would appear that there is very little forward planning relating to when and where interpreters will be needed. If an interpreter is required but cannot be found at short notice by the court, the result is that the case will have to be postponed, with consequent impact for delays.[27]

The most glaring examples of co-ordination problems are presented when certain parties to the trial do not even appear on the scheduled day. A case in point was provided by Mr Marslew, Chairman of the Enough is Enough Anti-Violence Movement Inc., at the public hearings. He stated:

> I suppose if I started from the beginning, my experience with the legal system began in 1994, about the middle of the year, when a brief from the Police Service regarding the murder of my son Michael at the Pizza Hut in Jannali on 27 February 1994 was handed across to the DPP.
>
> The DPP did not even turn up at that original hearing which was held at the Coroner's Court...[28]

While the exact cause of this instance of non-attendance is not of particular concern to the Committee, it does take it as evidence that parties attending a court hearing do not always co-ordinate their activities effectively. This lack of co-ordination adversely affects court backlog and delay.

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25 Correspondence to Committee, see Appendix 3, Chief Justice Gleeson, p. 1.

26 Evidence to Committee p. 48.

27 Evidence to Committee, pp.54-55.

28 Evidence to Committee, p.1.

2.1.6 Court delays in perspective

The delivery of justice, due to its very nature, will be time consuming. Some of the time consumed will be necessary, and some will not. Ms Angela Karpin, former Deputy Chief Magistrate of NSW, explained that:

> In dealing with 'delay', we must acknowledge that some delays are inevitable and unavoidable because of the human process. Just as the ambulance has to get to the hospital, so a case has to be prepared. It is also the case that some delays are beneficial. The law is supposed to be dispassionate, to sort out issues and to deal with them on their merits: 'closeness' to the event blunts vision of it...
>
> The delay that should be avoided is unnecessary delay, the delay we should minimise is unavoidable delay. Unnecessary delays are certainly caused by incompetence and ignorance. Every judicial officer has had experience of them as they apply to practitioners and, sometimes to litigants and sometimes, it must be said, to judicial officers and their support staff...
>
> There is another kind of delay. That is delay engineered or exploited by practitioners. This is not 'necessary' delay needed for example, to prepare a case, interview witnesses, and so on. It is a delay serving only the purpose of the litigant...[29]

The challenge when faced with determining the causes of delay is to be able to distinguish in each particular case what "type" of delay is occurring. Some are justifiable, others are not. The Committee sees no way around this problem other than to collect statistics which allow the categories and extent of the delays occurring in each queue to be identified. Solutions will then be able to be directed at specific issues.

On this note, it is worth noting the views of the Senate Standing Committee on Legal and Constitutional Affairs, which stated that "*evidence about the legal system tends to be anecdotal rather than statistical, and while important, does not serve to give a thorough picture of its workings.*"[30] The degree to which the Attorney General's Department collects adequate statistics of the workings of the legal system is discussed in Chapter 3.

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29 Karpin, A. "Delays in Local Courts" *Current Issues in Criminal Justice*, Vol.2, No.1 (1990), p.49.

30 Senate Standing Committee on Legal and Constitutional Affairs, *'The cost of justice - foundations for reform.'* February 1993, p. 8.

2.2 Current status of court backlogs and delays

Two primary indicators used to measure performance of the courts are:

- matters on hand (as a measure of backlog); and
- estimated disposal time (as an indicator of expected future delays).

A selection of these types of statistics is presented below for the Supreme, District and Local Courts. All statistics have been made available by the Attorney General's Department.

The Committee is pleased to observe that, in certain divisions and jurisdictions, court backlog and delay have fallen. This applies in particular to the Common Law Division of the Supreme Court; both the Civil and Criminal divisions of the District Court; and the Local Court. The Committee does note, however, that in regard to the District and Local Courts, the improvements in the last two years have been minimal. More importantly, however, in some jurisdictions, backlog and delay have increased. This is particularly true of the Court of Appeal and the Criminal Division of the Supreme Court.

FINDING

While some success has been achieved in reducing court backlog and delay, this has not been universal. Accordingly, the objective of reducing court backlog and delays is as important now as it was in the late 1980s.

SUPREME COURT:

Matters on Hand:

Division:	Jun-91	Jun-92	Jun-93	Jun-94	Jun-95
Common Law	7275	7009	4970	4139	5200
Equity	1244	999	894	894	643
Criminal	207	179	102	102	264
Commercial	411	351	296	296	171
Court of Criminal Appeal	722	786	787	787	568
Court of Appeal	607[31]	1027	1056	1056	1230

[31] This figure only includes cases in the General List awaiting hearing. It does not include all matters on hand.

Common Law Division:

Time Spent in General List-Current Matters Pending

June 1994

Age of Case:	Number of Cases:	Cumulative of Total (%):
0 to 1 year	846	31
1 to 2 years	713	57
2 to 3 years	639	81
3 years or more.	517	100
TOTAL:	**2715**	**100**

June 1995

Age of Case:	Number of Cases:	Cumulative of Total (%):
0 to 1 year	376	17
1 to 2 years	521	40
2 to 3 years	561	65
3 years or more	786	100
TOTAL:	**2244**	**100**

Annual Trends In Number of Notices to Set Down for Hearing Filed and the Number of Matters Disposed from the Active Pending List

Number of ...	1991	1992	1993	1994	1995
Set Downs	1,629	1,183	1,210	714	378
Disposals	2,045	2,554	3,110	1,813	2,156
Estimated time to dispose of matters on hand (years)	3.6	2.7	1.6	2.3	1.5

Criminal Division:

Annual Trends in Committal Registrations and Disposals

Number of ...	1991	1992	1993	1994	1995
Registrations	236	150	135	130	152
Disposals	225	242	127	155	113
Estimated time to dispose of matters on hand (months)	11	9	10	6	14

Court of Appeal:

Annual Trends in Number of Appeals Lodged and Number of Appeals Disposed

Number of Appeals...	1991	1992	1993	1994	1995
Lodged	n.a.	861	783	793	969
Disposed		561	526	674	925
Estimated time to dispose of matters on hand (months)	n.a.	18	19	21	30

DISTRICT COURT

Civil Matters on Hand:

Region	Jun-91	Jun-92	Jun-93	Jun-94	Jun-95
Sydney	15,191	9,448	5,860	4,675	5,237
Sydney West	5,414	3,228	2,536	1,956	1,481
New South Wales	25,687	17,967	11,982	9,476	9,857

Civil Jurisdiction:

Median Time from Filing a praecipe to Finalisation (Months)

	Matters Finalised		
Period	At Hearing	At Arbitration	By Settlement
1991	50.2	47.5	45.4
1992	50.8	41.4	39.0
1993	43.9	24.9	22.3
Jan.-Jun. 1994	32.2	15.0	16.7
Jul.-Dec. 1994	37.1	14.0	16.1
Jan.-Jun. 1995	31.4	8.6	8.2

Annual Trends in Number of Matters Registered and Finalised

Number of Matters...	1991	1992	1993	1994	Jun.-1995
Registered	18,450	12,655	11,783	12,002	13,713
Finalised	27,132	20,333	16,984	13,463	14,648
Estimated time to dispose of matters on hand (months)	10	10	7	9	8

Criminal Trials:

Matters on Hand

Region	Jun-91	Jun-92	Jun-93	Jun-94	Jun-95
Sydney	1,695	1,251	782	710	731
Sydney West	1,417	1,090	858	558	519
Country	1,432	1,054	981	796	767
New South Wales	4,544	3,395	2,621	2,064	2,017

Median Time from Committal to Finalisation for Trials in New South Wales. (Months)

Period	Custody	Bail
1991	10.2	16.8
1992	9.2	15.8
1993	8.1	12.7
Jan-Jun 1994	6.6	10.3
Jul-Dec 1994	5.4	7.4
Oct 1994-Mar	5.4	7.4
1995	4.6	8.0
Apr-Jun 1995		

Annual Trends in Number of Trials Registered and Finalised

Number of Trials...	1991	1992	1993	1994	June 1995
Registered	3,567	3,109	2,985	3,046	3,045
Finalised	3,895	4,116	3,443	3,048	2,863
Estimated time to dispose of matters on hand	14 months	10 months	9 months	8 months	8 months

LOCAL COURTS

Matters on Hand

Types of Matters	Jun-91	Jun-1992	Jun-1993	Jun-1994	Jun-1995
General Matters	25,813	18,731	20,740	18,587	19,779
Children's Matters	3,338	3,599	2,658	3,163	3,226
Family Law Matters	1,549	1,775	1,535	1,458	1,190
Civil Claims Matters	1,738	2,354	2,922	3,032	3,006
All Matters	32,438	26,459	27,855	26,240	27,201

Local Court Criminal Appearances Defended Hearings Finalised

	Median Time from First Appearance to Finalisation (days)				
Outcome of Appearances	1991	1992	1993	1994	1995
PROCEEDED TO DEFENDED HEARINGS					
Charges dismissed	98	97	94	99	99
Guilty of at least one charge	98	92	90	78	78
Other	86	81	75	78	78
TOTAL DEFENDED HEARINGS	97	92	91	84	84

2.3 Effects of court backlog and delay

In previous sections of this report, the Committee has referred to some of the detrimental effects of excessive court delays on the administration of justice, the participants and the community. These are brought together and summarised below. The detrimental effects of excessive delays can be that:

(a) evidence dissipates or deteriorates; witnesses' memories fade with time, and witnesses may die or go missing;

(b) gaols become overcrowded, with detainees on remand awaiting trial for lengthy periods of time;

(c) delay causes anxiety for the victims of crime, the persons accused of crime and close family members of both the victims and the accused;

(d) the deterrent effect of the criminal justice system becomes undermined;

(e) community respect for the justice system becomes eroded;

(f) delay has a compounding effect: for example, delay can be used, in some instances, by some parties to postpone a hearing which would be detrimental to the interests of that party; this may reinforce the power of the financially stronger party - the one better able to withstand the financial consequences of delay;

(g) court resources are wasted; and

(h) witnesses, juries and other participants in the system are inconvenienced.

Despite the improvements that have been made in this area, the Committee feels that there is still great scope for improvement in the management of the courts. The findings and recommendations on which this opinion is based upon constitute the topic of the next chapter.

CHAPTER THREE

MAJOR ISSUES IN THE COMMITTEE'S INQUIRY

3.1 Introductory comments

This chapter focuses on the primary aim of this inquiry, namely on the degree to which the recommendations of the Performance Audit have been implemented.

It was made clear from the beginning of this inquiry that, while all the recommendations had been accepted by the Department, none of them had been fully implemented. Indeed, some of them are still in the planning phase.

An assessment of whether or not this represented adequate progress was clouded by the fact that the original Department of Courts Administration, which was the focus of the Performance Audit, underwent a complete reorganisation between the time of tabling the Performance Audit report and the beginning of this inquiry.[32]

The effect of this organisational change was outlined at the PAC's Public Hearing. In response to the Committee's question on why the Performance Audit recommendations were only partially implemented, Mr Glanfield, Director-General of the Attorney General's Department, replied:

> There are a number of reasons...First and foremost is...that at the time this report was handed down the State Government had determined to abolish the Department of Courts Administration and to merge it with the New South Wales Attorney General's Department, so there was a need to review many things, including implementation of this particular report. There were many issues that were addressed in this report...all of which had to be reviewed in the light of the merging of two significant departments[33].

Of concern is the length of time spent reviewing issues as opposed to implementing reforms. As evident from an exchange between the Auditor-General and members of the Committee during the public hearings, the problem is one of finding an objective benchmark as to what would constitute a reasonable time for "reviewing issues".[34]

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32 See Chapter 1.4 for details of the timing of this reorganisation.

33 Evidence to Committee, p.57.

34 Evidence to Committee, pp.84-6.

Without this benchmark, it is difficult to make judgements as to how well the Performance Audit recommendations have been implemented.

However, in reviewing the Performance Audit, the Committee was also aware of a longer time-frame of reform applicable to the management of the Courts. In particular, a Coopers & Lybrand report in 1989 addressed the same topic.[35] Disturbingly, some of the recommendations in that report are closely related to problems highlighted in the Performance Audit. In instances where these issues have not yet been resolved, the Committee has little option but to take a critical view of the reform efforts of the Department. This means that it will have taken close to *seven years* since some problems were raised which are virtually the same problems as those in the Performance Audit.

The Committee finds this extraordinary.

The Committee recognises that the Department of Courts Administration, and not the Attorney General's Department, was responsible for implementing many of the Coopers & Lybrand recommendations. The Department of Courts Administration clearly failed in this task, as evidenced by the similarity between the Coopers' recommendations, on the one hand, and those of the Performance Audit and this review, on the other.

The Committee seeks through this report to obtain concrete and specific assurances from the Attorney General's Department, with deadlines for implementation, that the same failings will not be permitted this time round, and that action, not just further reviews, will be undertaken.

3.2 Measures to improve customer service in the courts

3.2.1 Current absence of customer service orientation

During the inquiry, the Committee was made vividly aware of how difficult and frustrating a court experience could be for those who had no prior involvement with the Courts.

Indeed, in the ordinary course of their work as local parliamentarians, the members of the Committee are regularly approached by constituents who have had unsatisfactory

35 Coopers & Lybrand, WD Scott, *Report on a Review of the NSW Court System*, 1989.

experiences in the courts. Committee members have visited courts on constituents' behalf, and have dealt with lawyers and court officials themselves.

Thus members of the Committee have direct experience of some of the failings of the court system.

While the processes that occur within a courtroom are a responsibility of judicial officers, the environment outside the courtroom, such as court registries and court house staffing levels, are a responsibility of the Attorney General's Department.

Despite developments over the last several years which improve the experience of court users by making the system more efficient and effective, the Committee was given the impression at the public hearings that much of the following statement made in 1990 by Professor T.W. Church, still rings true. He stated:

> Most courts in which I have spent any time are organised for the convenience of judges, of court staff, and of lawyers; usually in that order. If the convenience of the public is considered at all, it comes well behind those courthouse 'regulars'. This implicit ranking of priorities is seldom examined, or even discussed. If it were, it would probably be justified as merely a recognition that judge time is the most precious resource a court dispenses, that court staff are overworked in these days of budget cutting, and that lawyers must be minimally accommodated if the courts are to function at all. Yet no consumer-orientated establishment could set its priorities in this way. Department stores and airlines and accounting firms, and even other professional bureaucracies such as hospitals and universities, must pay attention to the consuming public. With the exception of the prison service...I know of no organisations, in or out of the public sector, which appear to be quite as cavalier about their clientele as are the courts of the English speaking world.[36]

The Committee is of the opinion that this "cavalier" attitude shows itself in the way non-initiated court users are dealt with by the court system. In effect, the system is not geared to first-time court users.

For instance, Mr Marslew stated at the public hearings that:

> ...a statement made to me by a magistrate...was "It is none of your business, Mr Marslew. It is between the prosecution and the defence" still rings true

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36 Professor T.W. Church, *'A Consumer's perspective on the courts'*, The Second Annual Oration in Judicial Administration, The Australian Institute of Judicial Administration Inc, 1990, p.7.

> in my ear because everywhere down the system I think I have been treated with almost contempt by the system.[37]

Mr Marslew was enquiring about a case which involved the murder of his son.

On a more general level, Ms. Julie Foreman, Co-ordinator of the Court Support Scheme, made the following remarks:

> People going to court often for the first time find it a very bewildering experience and they are quite anxious, they have no idea what is going on. The actual information for clients in courts, defendants, witnesses, their families, is very, very limited...[38]

The remarks of Mr. Richardson, Chief Executive Officer of the NSW Law Society, are also pertinent. He stated at the public hearings in regard to the Courts that:

> ...It is after all a place to which hopefully none of us will go, but if you do go, it is naturally going to be a foreign environment to you, whether you are an Australian born person or from whatever part of the world you come from it is going to be an alienating experience.
>
> That is going to be here with us for a long time. The challenge really is to provide more information to people about the system and the way it operates and there have been many attempts to do that but I would say the level of understanding in the community of the court system today is no greater than it was when I started in the law.[39]

Ms. Foreman went on to described an average experience for a first-time user of the Courts.

> ...What happens is, you walk into a courtroom and you have been told to be there at 10 o'clock, so you are assuming that you are going to be dealt with at 10 o'clock. You walk in and there is a whole bunch of people sitting in a waiting area. You might see a few doors that look like they could be courts, but you have absolutely no idea what to do at all.
>
> As far as I am aware, there are five courts that have information desks, actually desks that could be used as information desks. Two of those are not staffed; one at Fairfield has just been staffed the last week and two others are staffed between 9 and 10. So you sit there and you think: Oh, at 10 o'clock they will probably call me, and it gets to 10.30 and nothing has happened, it

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37 Evidence to Committee, p.1.

38 Evidence to Committee, p.17.

39 Evidence to Committee, p.40.

> gets to 11, it could go on and on, and then someone, a court officer, might come out of a room and say something like, "Anyone wanting adjournments, call over, anyone pleading guilty", you know, you don't hear what is going on. If you are lucky some local courts might have a sign "See court officer", but you don't know who a court officer is. They don't have a uniform or a name tag or anything, and you see a few people in suits who look like they might have something to do with the court, rushing around and moving backwards and forwards, so at this point you are getting quite anxious about what you need to be doing and you might go up to the office and someone might point you somewhere else, but you really have no idea of what the process will be, so there is all this sort of anxiety building up...[40]

Ms. Foreman is the Co-ordinator of the Court Support Scheme. The scheme is designed to help people in the position described above by providing general court information, for example directions and locations of various sites within a court complex. The position of Co-ordinator is funded by the Legal Aid Commission for 20 hours per week. The rest of the Court Support group consists of 35 volunteers who help service 16 Local Courts. The service provided is of a most basic nature and is directed at uninitiated court users including defendants, witnesses and their families. Ms. Foreman also explained to the Committee that if her group did not provide this service, then it would not be provided at all.

3.2.2 Access to Justice: an action plan (The Sackville Report)

The Access to Justice Advisory Committee, chaired by Ronald Sackville QC, was set up by the Federal Minister for Justice in 1993 to report on ways in which the legal system could be reformed in order to enhance access to justice and make the legal system fairer, more efficient and more effective.

Its report of almost 600 pages contained numerous ideas for making the court system more responsive to consumers' needs. The Committee commends the Sackville report for its innovative and humane approach to the wishes and the convenience of court users.

Among its 77 recommendations were the following:

- **each federal court and tribunal should develop and implement a charter specifying standards of service to be provided to members of the public coming into contact with the court or tribunal;** (emphasis added)

- adequate resources should be provided for interpreters in the courts;

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[40] Evidence to Committee, p.18.

- community education programmes on legislation should be instituted;
- minimum standards should be prescribed for industry-based consumer complaint bodies;
- funds should be provided for community-based programmes to provide assistance to court users which cannot be provided by court officers;
- the Commonwealth should explore, with the States, the possibility of establishing an independent national judicial education centre.

All of these recommendations are consumer-oriented. Although the Sackville report appeared in May 1994, very few of its consumer-oriented recommendations have been implemented at state level.

The Committee finds this disturbing and, below, makes recommendations aimed at addressing this situation.

First, however, the Committee believes the Department should prepare an explicit strategy for the implementation of the Sackville Report recommendations.

RECOMMENDATION

That the Department prepare a strategy for the implementation of the Sackville Report recommendations as they apply to court administration in NSW.

3.2.3 Need for an Official Guarantee of Service to Court Users

The Performance Audit recommends that a guarantee of service should be introduced for users of the Courts. In many respects, the discussion that supported this recommendation pertained to performance standards and did not specify what was meant by "service".

In 1992, the Premier's Department issued Guidelines relating to Guarantees of Service. At the beginning of these Guidelines, a definition appeared:

> A guarantee of service is a very clear expression of what services an agency provides. It enables customers to check their expectations against what is offered and provides a mechanism for giving feedback if those expectations are not meet. It also enables the organisation to describe the way it allocates its scarce resources and to explain to customers the realistic level of service they may expect in view of finite resources.[41]

In correspondence with the Attorney General's Department, the Committee was advised that a Guarantee of Service appropriate to the merged department would be prepared "*...over the next few months*".

The Committee is concerned that a low priority appears to be attached by the Department to the development of this guarantee.

During this inquiry it became very clear to the Committee that such a guarantee is urgently needed in NSW. Members of the Committee were influenced not only by the evidence they heard from witnesses at the hearings, but also by constituents who regularly draw to their attention their unsatisfactory experiences with the Courts. This is a major public issue.

The Committee fully supports the Performance Audit's recommendation that an official Guarantee of Service to Court Users should be established as soon as possible.

A guarantee of service, while not in itself reducing court delays, could help to mitigate their effects by informing users why the delays exist and what is being done about them. Or alternatively, it may explain that there is no personnel available to answer questions in information booths because resources have been diverted into more tangible solutions aimed at reducing delay.

FINDING

The orientation of the Courts does not adequately provide for members of the public who, at one time or another, have to use its services. First-time users of the Court system enter a foreign environment where information sources are severely deficient.

41 Office of Public Management, *Guidelines - Guarantee of Service* 1992 , p.2.

FINDING

The Committee strongly supports the recommendation by the Sackville Committee that charters should be developed and implemented specifying standards of service to be provided to members of the public coming into contact with courts or tribunals.

The Committee also supports the recommendation by the Performance Audit that an official Guarantee of Service to court users should be prepared by the Attorney General's Department.

RECOMMENDATION

The Department's Guarantee of Service should be ready by the end of 1996. It should include (but not be limited to) the following:

- **provision of interpreters;**
- **education programmes;**
- **standards for accessibility and time taken for various legal proceedings;**
- **physical facilities of various courts and tribunals;**
- **the provision of information in clear English about various court proceedings;**
- **identification badges for court staff;**
- **standards of courtesy towards members of the public;**
- **access to the courts;**
- **facilities to separate the family of the accused from that of the victim;**
- **accountability for service delivery, including complaints handling procedures and methods for drawing the existence of these procedures to members of the public;**
- **special support for women and children.**

The Department should prepare, as part of this Guarantee of Service, the following documents
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- Information pamphlets explaining who is who at the court, where they can be found, and what responsibilities they have. These or alternate pamphlets could explain the priorities of the Attorney Generals' Department - how they are to be achieved and what effects on court users they are likely to have. They could also detail the reason for over-listing procedures, and the reasons for court delays (and what does not constitute a real delay);

- Details of the daily workings of the Court which they are expected to follow. For instance, how they will be notified that it is their turn in court and the way this will be done;

- Clear signage or the provision of maps identifying all relevant areas of a court should be identified to users;
- Information in a similar form provided to defendants *prior* to arrival at court detailing what is required of them and where legal advice can be obtained; and

- All phone numbers which may be relevant including interpreter services.

3.2.4 Court User Forums

The Committee believes that there is a great need for the community to have a much bigger say in how the courts are run.

Participation in Court User Forums has so far been largely limited to lawyers, police and other officials. Consumers have not been very prominent in court user forums, despite the fact that they are major players.

The Committee believes that consumers should play a much bigger role in Court User Forums.

RECOMMENDATION

That the Department investigate and report by October 31 1996 on ways in which members of the public could play a bigger role in Court User Forums. For instance, more extensive representation from groups such as the Court Support Scheme should be explored.

3.2.5 Policy on separating supporters of accused and victims

Members of the Committee are clearly aware of the problems which can arise when the supporters of the accused and of the victims are forced to mingle in the same premises of the court. Apart from the trauma of confrontation, there is also a safety aspect.

The Committee understands that the Department is preparing a Policy on Community Access to Court Premises and Facilities, and urges the Department to take concrete steps to avoid this undesirable situation.

RECOMMENDATIONS

That the Department finalise by 31 October 1996 its Policy on Community Access to Court Premises and Facilities.

That this Policy include a costing for making separate facilities available for supporters of the accused and of the victims.

That the Policy be implemented by the end of 1997.

To sum up, the Committee believes that it is now time for the Attorney General's Department to adopt an explicit strategy of customer service. This strategy should give as high a priority to the needs of consumers as to the interests of court professionals. The Committee further wishes to see concrete action on this issue by the end of 1996.

3.2.6 Lack of fully developed performance standards targeted to court users

Currently, performance standards for the courts largely relate to the time which cases ought to take to get through the system. Each of the three court jurisdictions (Supreme, District and Local) has established criteria for the time in which different types of cases coming before it ideally ought to be dealt with. A simple example of a time goal is the one set by the District Court, which is that judgement should be delivered within twelve months of commencing the action in 90% of cases[42].

[42] Correspondence to the Committee, see Appendix 3, Chief Judge Blanch, p.2.

The Performance Audit noted in 1994 that these case management techniques were only beginning to be introduced. Since the Performance Audit there has been considerable progress. The Supreme Court has introduced the Deferential Case Management system; the District Court has also set standards[43] ; and in the Local Courts, Chief Magistrate I.H. Pike has set Time Standards for various procedures including adjournments, hearings, and time taken by defence to reply to prosecution.[44]

The Committee is encouraged to note these positive developments, and supports them fully.

It should be noted, however, that this progress has been initiated not by the Department but by the Courts themselves. In fact, the Department stated in its submission:

> . . .all of those standards have been developed on the initiative of the judges and with our support[45]

This support consists of participation in the planning of these time standards.

The Performance Audit raised the question of whether other performance standards besides that of time should be introduced. It said:

> The performance measures do not consider the accessibility of court services to its users or the cost effectiveness of the services provided.[46]

The Committee believes it is important for such standards to be developed, although it fully recognises how difficult it may be to fix measures for them. It appears that the Centre for Court Policy and Administration of the University of Wollongong has developed, on an American model, standards and benchmarks which also take into account qualitative features such those mentioned above. The benchmarks identified by this "Client Services Project" include matters like equality, fairness and integrity, access to justice (including physical, remote, geographical and cultural access to court services, and communication), independence and accountability and public trust and confidence.

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44 Practice Note (no. 1.1995) made available to the Committee by Chief Magistrate I.H. Pike, see Appendix 3.

45 Transcript of Hearings, p.60.

46 NSW Audit Office, *Performance Audit on the Department of Courts Administration* 1995, p.31.

The Committee applauds this initiative and would like to see it extended. There is a need for other criteria besides that of time to be adopted in the Guarantee of Service which the Department is to prepare by the end of 1996.

RECOMMENDATION

That the Department fully investigate the University of Wollongong initiative and evaluate it for possible adoption by the Department in its Guarantee of Service.

3.2.7 Training for the judiciary in managements systems and issues

In correspondence, the Attorney General's Department said that training the judiciary was not its responsibility. Training is the task of the Judicial Commission of NSW.

The Department, however, has been allocated $1.07m in 1995-6 to continue development of the Judicial Support System. Under this project the Department provides funding to the Judicial Commission to conduct systems training and computer awareness courses for judicial officers.

RECOMMENDATION

That since the Guarantee of Service is to deal with matters in which the judiciary should play a prominent role, the Department discuss with senior members of the judiciary and with the Judicial Commission the most appropriate training programmes for ensuring that the needs of the public are taken into account in court proceedings.

That the Department seek further funding from the Treasury to finance such programmes.

3.2.8 Substandard management systems

Managing the Courts is a complex task and requires first-rate management information systems. It was evident to the Committee that the Department currently did not have

such systems in place. A principal shortcoming was in information technology. This lack of suitable computer facilities causes several problems:

a. Court staff have no personal computers and do all paperwork by hand. This causes unnecessary processing delays.

b. On a broader basis, it is hard to collect and analyse data without suitable computers.

c. More specifically, a principal element in the data that needs to be collected and analysed is the cost of services. Without good data on costs, it is hard to determine their real level. Because fees are based on costs, it therefore becomes hard to set fees.

All these problems ultimately exacerbate court delays. Court staff continue to use handwriting or typewriters in the absence of personal computers. Clearly this slows proceedings down very considerably. Poor data encourages misallocation of court resources, with consequent delays. Perverse and unpredictable fee systems are also unhelpful in dealing with court delays, since they do not encourage the use of alternative dispute resolution systems.[47] The lack of fully-developed targets for the time that various court procedures ought to take also contributes to court delays, as does the lack of an official guarantee of service.

It is the public which bears the brunt of these shortcomings. The delays, which these failings exacerbate, impose heavy costs on the community in terms of time and money wasted, in emotional and physical resources spent, and, less tangible but no less real, the loss of respect for the system of law.

These problems are dealt with separately below.

3.2.8.1 Court staff have no personal computers

In many Local Courts there is no access to personal computers. All the paper work, including correspondence and the writing of receipts, is done by hand or with the use of a typewriter. Clearly, there are courts which do not have access to the basic tools required to support daily operations.

The Committee finds this situation extraordinary in the late 1990s. Computers have been integrated so thoroughly in virtually all other government departments, and have

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[47] For further details see Section 3.2.9 below.

contributed to such a marked increase in productivity elsewhere, that it is remarkable that in the courts paperwork is still done by hand.

The lack of information technology also has an adverse impact on general administration within the courts. This was an issue raised by several witnesses at the public hearings, including representatives of court users and legal practitioners. For example, Ms Julie Foreman, Co-ordinator of the Court Support Scheme, said:

> Things like organisation systems or information systems and technology in many areas is poor. Receipts, for example, are still handwritten in many courts and that would seem amazing for the volume that goes through and that must add to delays.[48]

She also said:

> Some interpreters are in high demand and it is very hard to get someone and so the court might schedule a matter for someone who was speaking that language and it keeps getting adjourned because there is not that particular interpreter and then there happens to be another matter, someone who needs the same interpreter, and there is no way of looking it up and saying, well, really we should put those two people in on the same day because we know an interpreter is coming that day, but because it is just handwritten on a date they cannot look up under language, whereas if the service was computerised they could, just very simple things that would make things run smoother, but I really cannot stress enough the information aspect.[49]

Another example is evident in the lack of electronic lodgement of documents[50]. It was noted at the hearings that the electronic lodgement of documents was only available in limited areas of the court system. With the advances that have taken place in electronic mail, communication processes within the Courts should benefit from its adoption. Clearly the gains from doing so can not be realised while personal computers are not available to court staff.

Yet another notable area of inefficiency that can be traced to a lack of information technology is debt collection. The 1995 Auditor-General's Report to Parliament notes[51] that a qualified audit opinion was made in regard to the Department's financial accounts. This was because:

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48 Evidence to Committee, p.21.

49 Evidence to Committee, p.20.

50 Evidence to Committee, p.39.

51 NSW Auditor-General's 1995 report to Parliament, Vol.II, p.480.

> ...the Department's accounting system was not capable of recognising court fees earned but not yet received at balance date and there was uncertainty as to the materiality of the amount of such uncollected income.

This report then noted that after collecting the information manually, the Department was able to show that $18.8m worth of court fees and victims' compensation levies remain unpaid.

3.2.8.2 Data collection and dissemination

Recommendation 4 of the Performance Audit urged that:

> efforts be directed to making further improvements to court performance indicators, and to collecting expanded operational data to assist ongoing performance analysis.[52]

Data collection and performance analysis are very difficult without computers to sort and tabulate the information. The absence of appropriate computers has meant that data collection and analysis have been incomplete and inappropriate for management purposes.

It was noted in Chapter 2.1 that a major obstacle encountered when attempting to reduce court backlogs and delay is that of pinpointing the particular areas, systems or participants in the justice system that are slowing down the whole process. The management tool required to help solve this problem is the provision of meaningful statistics. Simply put, before solutions can be implemented, particular problems need to be isolated. Moreover, the collection of statistics allows the effectiveness of reform initiatives to be assessed.

Mr Richardson, Chief Executive Officer of the Law Society of New South Wales, in reply to a question regarding what priorities should be in place to address court delay, stated:

> I think the first thing that needs to be done, and it is a matter that is not new...is that there must be decent information system[s] available to the courts, because I think that most of the discussion about court delays is only starting. While some courts do produce information about the volume of cases they have going through their system and the delays that they experience, there is by no means universal collection of information across

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52 NSW Auditor-General's *Performance Audit on the Department of Courts Administration* 1995, p.6.

> all courts in this state and until you have that you have got no means by which you can measure delays in an accurate fashion.[53]

A bulletin released by the Attorney General's Department in 1987[54] discussed the introduction of COURTNET, an integrated computer network for the whole of the court system. Benefits of this system were to include an ability to provide up-to-date information to public and government inquiries. Whether this capacity was ever achieved in the past is unknown.

The Committee certainly experienced difficulty in obtaining such up-to-date material. During the course of this inquiry, the most recent detailed information the Attorney General's Department could provide on the status of court delays were for June 1995. This meant that it was almost a year old.

This seemed strange to the Committee considering that the Department had stated in its submission that, in general, "*...the courts have available to them extensive statistics on the current caseload, disposals and delays.*"

On this issue, the Chief Judge of the District Court made a pertinent reply to a question concerning data collection:

> I have introduced a whole new system of gathering statistics in the Court. I am happy with the format of the statistics but because most of them need to be gathered manually and not through a computer, the system is extremely deficient[55].

Mr Glanfield said at the hearings that "*COURTNET is a very old and tired system.*"[56]

Another shortcoming lies in the dissemination of data, especially court transcripts. In the next section, the Committee discusses in further detail the inequity that prevails when Legal Aid must pay $6.50 for a page of court transcripts while the Crown pays nothing. The Committee believes that court transcripts ought to be available online to ensure easier and less expensive access for heavy users like Legal Aid. This would of

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53 Evidence to Committee, p.32.

54 Bulletin by NSW Attorney General's Department, *Court Delays*, October 1987.

55 Correspondence to Committee, see Appendix 3, Chief Judge Blanch, p.2.

56 Evidence to Committee, p.59.

course diminish the Department's revenue; however, the Committee believes the Treasury should make that up.[57]

FINDING

Improvements to data collection for the purposes of ongoing performance analysis have not been achieved. Consequently, the management information available to the Department is inadequate.

Computerised data dissemination for court users also needs to be improved.

3.2.8.3 Cost of services

One of the major elements of the data that needs to be collected and analysed is information on costs. The Performance Audit notes that:

> ...resolution of the funding issues will at least in part be related to resolving the issue of cost recovery...Whilst a number of considerations are always involved in any decision concerning cost recovery and fee setting, the accurate determination of operational costs is a key factor[58].

The Performance Audit then goes on to show areas where costing information is imprecise and states in relation to these that:

> Apart from any accountability issues, information which is costed...in this manner can act as an impediment to effective performance management.[59]

Mr. Glanfield acknowledged that this is still a problem. He stated at the hearing that:

> I think our systems are adequate to let us know where we need to put resources, but what they are not fined tuned on is activity based costing,

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57 See Chapter 3.2.9.

58 NSW Auditor-General's Office, *Performance Audit on Courts Administration*, p.29.

59 ibid.. p.30.

much more detailed information that we really need going to the future for the management of the court system.[60]

3.2.8.4 Department's efforts to rectify these shortcomings

The Department does appear to be moving towards addressing these shortcomings, albeit with some delay. In January 1996, nine months after it was merged with the Department of Courts Administration, the Department commissioned a study from KPMG Management Consulting. The aims of this study were to review the previous plan which was prepared by the former Department of Courts Administration, and to develop the Department's Information Technology Strategic Plan. The KPMG study was completed in May 1996.

In its submission, the Department also stated that it would take two years to fully implement the Information Technology Strategic Plan. The provision of personal computers and printers to courts is the first phase of the plan.

From the Committee's point of view, it seems that there have been too many reviews and too little action in this area. The inadequacy of management information systems was a finding of the 1989 Coopers and Lybrand study of the court system.[61] There have also been two separate internal reviews by the relevant Departments addressing the same issue within the space of three years. This does not include the Performance Audit which also addressed deficiencies in management systems.

Given such reviews, the Committee considers it a priority that the current plans for the implementation of information technology, and management systems generally, be fully implemented as quickly as possible.

There is also a need for the Department to be held fully accountable for the implementation of the Plan. To this end, it needs to set clear deadlines for the implementation of each successive phase of the Plan, and to comment in its Annual Report on how well it has met those deadlines.

The Committee makes further recommendations below.

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60 Evidence to Committee, p.60.

61 Coopers & Lybrand, W.D. Scott, *Report on the review of the NSW Court System* 1989.

FINDINGS

The level of information technology adopted in the Courts is not acceptable.

There have been too many reports and too little action in the development of management systems.

The poor level of technology exacerbates the delays already inherent in the system.

RECOMMENDATIONS

That the Department proceed swiftly with the implementation of its Information Technology Strategic Plan, particularly in regard to management information systems.

That the Department explore the possibilities of putting court transcripts online for heavy users like Legal Aid.

That the Performance Audit Branch of the Audit Office be provided with:

a) a detailed time schedule of the implementation process;
b) quarterly updates on the progress actually achieved in regard to this schedule.

Any major anomalies between the two could then be referred back to the Public Accounts Committee. This information would also provide the Audit Office with an objective standard which could be used as a basis for any further Performance Audits of the Courts' administrator.

3.2.9 Problems with the Department's revenue base

A significant component of the Department's funding is revenue from fees. There are three main problems with the way the fee revenue system works in the Department. These are:

1. The more cases come before the Courts, the more fee revenue the Department obtains. This superficially logical arrangement has undesirable consequences.

Principally, it removes the Department's incentive to take cases out of the court system through alternative dispute resolution techniques. One result is an inordinately high number of cases coming before the courts, and consequently delays.

The converse of this is that the fewer cases come before the Courts, the less revenue the Department obtains. It therefore has less money with which to address the issue of court delays. One result is that even if fewer cases come before the Courts, the Department cannot address backlogs.

2. The total amount of fee revenue received by the Department is unpredictable and often inadequate.

3. The Department applies the "user pays" principle selectively when setting fees for court users. For example, Legal Aid pays $1.4m a year for photocopies of court transcript, while the Crown pays nothing.

These problems are dealt with separately below.

3.2.9.1. Illogical system for setting Department's revenue according to number of cases in the courts.

As outlined earlier in the report[62], an uncontrollable variable in the justice system is the number of new cases coming before the courts in any one year. If the Department is dependent on a certain number of new cases each year so that it can obtain funding to operate, a perverse situation then arises in regard to court backlog reduction strategies. To sum up, the more cases come into court, the more money the Department gets.

It is reasonable to assume that a fall in new cases would allow court delays and backlog to be addressed as court rooms and staff are freed up. However, with less funds from a reduced caseload, the ability of the Department to fund backlog reduction programmes is similarly reduced. The Director-General of the Attorney General's Department explains further:

> When matters coming into the court are falling, under normal circumstances you would expect then you may be able to reduce the amount of resources that you apply until the resolution of those cases, but where you have a significant backlog, of course that is not the case, so in fact it just exacerbates the problem, so the fewer matters coming in, the less resources we have, the greater the backlog gets.[63]

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62 See Chapter 2.1 of this report.

63 Evidence to Committee, p.61.

The current system of funding, which relies on court fees, creates a related problem for the Department. A major strategy for reducing court delays is to transfer disputes out of the court system and deal with them through alternate dispute resolution mechanisms such as mediation and arbitration. These processes are much cheaper to pursue, both for the Department and litigants, and achieve similar results to a court case. By encouraging the use of these mechanisms, however, the Department also reduces the revenue base which is required to fund these programmes. The Director-General explained to the Committee that:

> It would be much more commercially sensible for us to encourage people to come to court so that we had the fees to enable us to employ more judges to handle the matters...I have no difficulty about the payment of filing fees for matters, but I do not think it should be deducted from the cost of running the department.[64]

It is also noted by the Director-General at the public hearing that on two occasions he has requested Treasury to amend this situation. It appears that there has been little success to date.

FINDING

Treasury's funding strategy for the Attorney General's Department for the operation of courts is inappropriate to ensure a reduction in court delays.

RECOMMENDATION

That Treasury review the Attorney General's funding system as soon as possible with a view to identifying a less perverse arrangement.

That Treasury complete this review by the end of November 1996, and inform the Committee of the results by the end of December 1996.

64 Evidence to Committee, p.61.

3.2.9.2 The total amount of fee revenue received by the Department is unpredictable and often inadequate.

A related problem is that court fees are often unpredictable and inadequate, particularly in 1995-6, when a shortfall of $17m in the Department's revenue had to be dealt with.

In the Performance Audit it was noted that "*...too many unplanned variations due to unanticipated funding problems could hinder effectiveness, particularly where interdependencies exist between components of the reform programme.*"[65]

In this regard the Committee notes the decrease in revenue which was reported in the 1994/95 Annual Report of the Attorney General's Department. The Department's revenue for 1994-5 was $5.3m less than budget and $3.9m less than 1993-4 receipts.

This affects the whole range of the Department's activities.

The Department adopted various strategies to deal with this large budget gap, including service by post, reduction in number of jurors summonsed and establishment of an enforcement bureau. While commending the Department for implementing these strategies, the Committee is concerned that the Department's preoccupation with dealing with the big budget shortfall has led to other considerations, such as court delays and the provision of court services, being neglected. This then has the effect of increasing court delays.

It appears that, as a result, the Department's effectiveness has been reduced, thus bearing out the Performance Audit's warning.

3.2.9.3 The Department applies the "user pays" principle selectively when setting fees for court users.

An issue raised at the public hearing was that the level of fees was inappropriate. This was particularly so in the case of court transcripts. Mr Humphreys, Manager, Criminal Law Section of the Legal Aid Commission, stated:

> We pay $6.50 a page for any transcript that we require in a criminal trial. The Crown does not. We pay the full fee. The cost to the Legal Aid Commission is $1.4 million...[for] photocopies of what has been prepared anyway. They cause us a lot of difficulties.[66]

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65 NSW Audit Office, *Performance Audit of Department of Courts Administration*, 1995, p.29.

66 Evidence to Committee, p.45.

Mr. Humphreys makes the point that the user pays principle that underlies this charge was inequitably applied, as only certain groups of court users had to pay for transcripts. As a result the rate has to be high to cover those that do not have to pay. In effect, some users of the transcript subsidise other users. This is at odds with the notion of "user pays".

The Attorney General's Department has accepted that this fee is a problem area.[67]

The Committee believes that court transcripts ought to be online to ensure less expensive access for heavy users like Legal Aid, and recommends that the Department explore this possibility.[68]

FINDING

While the Committee endorses the use of court fees, these have been inequitably levied.

Pat Rogan MP, one of the members of the Committee, submitted material from a constituent to the effect that some of the gazetted filing fees were too high for low income earners. In the case of Mr Rogan's constituent, the filing fees in the District Court were more than his fortnightly pension cheque.

At present, the Department has no direct power to lower the level of fees in particular cases, since these are prescribed by regulation. The only exception is in the case of pro bono work carried out by a legal practitioner, in which case filing fees can be waived or postponed. There appears to be nothing in between to cover low income earners who nevertheless cannot benefit from pro bono work.

RECOMMENDATION

That the Department examine the possibility of lower fees for some applicants, that lower fee to be determined after a means test.

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67 Evidence to Committee, p.70.

68 See Section 3.2.8.2 above for the detailed recommendation.

The Committee notes that the Department plans to release a discussion paper on the issue of revenue by 31 July 1996. This will allow approximately two months for comment and is likely to be followed by a further paper setting out recommendations for reform to the system of setting court fees.

The Committee is dismayed that a further discussion paper is necessary even after many years of reports, recommendations, discussions and studies. As noted above, the Coopers & Lybrand report is eight years old, and the Audit Office report was prepared over a year ago.

Action has been slow and scarce in this area.

Reluctantly, however, the Committee accepts that this discussion paper may be necessary in the light of the reorganisation of the Department, but believes that:

a. The Attorney General's Department should have its list of recommendations fully ready by 31 October 1996 for consideration by the Minister and by Treasury.

b. This list of recommendations should include a timetable for implementation.

RECOMMENDATIONS

That the Attorney General's Department ensure that its discussion paper on revenue:

- **definitely appears on 31 July 1996;**
- **is followed by a list of recommendations for consideration by the Minister and by Treasury, this list to appear by 31 October 1996 at the latest;**

That the Department also ensure that this list of recommendations includes a clear and definite timetable for implementation.

3.2.10 Intensity of use of the courts

There are three ways usage of existing courts could be improved:

- extending court hours;
- employing more judges; and

- employing more court staff.

These are obviously not mutually exclusive.

3.2.10.1 Extending court hours

At present, the Supreme Court, the District Court and the Local Courts mostly sit between 10 a.m. and 4 p.m.

Several initiatives have been developed to extend court hours.

- The Department has allocated $250,000 in 1995/96 to implement night sittings in the Local Courts.

- The Blacktown Model Court project included a trial of a Night Court which began operating in July 1986 but was discontinued in December 1991.

- Extended registries, which provide opening hours from 9.00 a.m. and also late Thursday night, have been introduced.

Clearly the community wants extended court hours.

The Committee notes that in the Community Justice Centre's 1994/95 Annual Report it is shown that approximately 50% of scheduled mediation times are outside the regular operating hours of the courts.[69]

The evaluation of the Blacktown Model Court Project states "*...the public finds night courts more convenient for a variety of reasons. First among these is work: approximately 70% gave this as their reason for attending court at night*"[70] . It should also be noted that when this study undertook a cost/benefit analysis of the Night Court, the benefits outweighed the costs when income lost through taking a day off work was included in the calculation.

However, the legal profession is apparently not in favour.

The comments of Mr Glanfield are worth noting. He stated at the public hearings, in regard to the extended hours in operation at Blacktown Local Courts, that:

> There just does not seem to be the interest...by the legal profession for out of hours sitting of courts...[71]

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69 Community Justice Centre 1994/95 Annual Report, p.29.

70 Richard Mohr, *Model Court Project: Night Court Evaluation*, 1987, p.7.

71 Evidence to Committee, p.65.

The Committee is of the opinion that the interests of the public should feature as strongly, if not more so, than those of the legal profession in matters of courts management.

All this is not to say that the options of extended hours have not been considered by the Attorney General's Department. It has communicated to the Committee that the current opening hours of registries are an acknowledged problem. In terms of service outside business hours, such as night courts and extended registries, the Department is evaluating current initiatives being carried out. Client consultation is envisaged before a strategy is developed for extended services.

Again, the Committee believes that the Department could be more proactive in developing initiatives to make court hours more accessible to working people.

RECOMMENDATIONS

That the Department proceed with the above mentioned evaluation of extended services, giving due regard to client consultation. This should primarily involve the public and not only legal practitioners.

That this evaluation and recommendations that flow from it be made a public document. It should also include a timetable for the implementation of the recommendations it contains.

That the above be completed by early 1997.

3.2.10.2 More judges to run courts

In 1966, there were eight Judges on the Court of Appeal of the Supreme Court and the Court heard cases coming from 48 first-instance Judges. In 1995, the Court of Appeal heard cases from 117 first-instance Judges, but only had ten Judges of its own.

Concomitantly, the delays in the Court of Appeal have increased.[72]

The Chief Judge of the District Court, Judge R.O. Blanch, told the Committee:

> I question the utility of using the courtrooms in shifts. Particularly so when we do not have enough judges to use them fully during the year.[73]

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72 See Chapter 2 of this report.

73 Correspondence to Committee, Appendix 3, Chief Judge Blanch, p.2.

The Chief Magistrate of the Local Courts, Mr I.H. Pike, also told the Committee:

> In many instances where there is delay it is simply that the inflow of cases is too great for the magisterial resources available. . . Every time the Government provides additional police in response to a "law and order" campaign more work is generated for the courts. However there is never any increase in judicial resources to deal with the increased work load.[74]

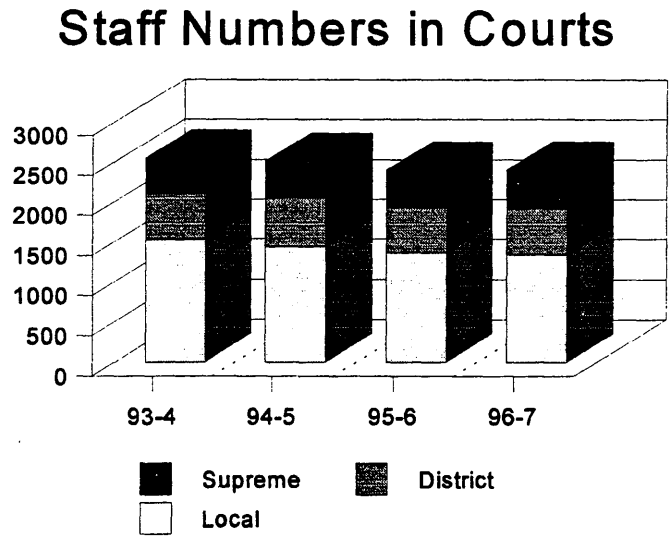
Clearly a strong case could be mounted for having more judges. This means that the courtrooms can be used more intensively.

In its response of May 1996 to the Committee, the Department said that funding had been provided by Treasury for more judges in 1994/5, and that as a result of the success of this programme, it had worked together with the judiciary to develop an enhancement bid for 1996/7. This bid has now been approved by Government.

The Committee commends this initiative.

3.2.10.3 More staff to run courts

The Committee was made aware that in many areas the system is under strain not because of lack of courtrooms but because of a lack of staff to operate them. From 1987 to date, more than $200m has been spent on courtrooms. Over the last four years however, staffing levels of the Supreme, District and Local Courts combined have fallen.



Source: 1996-7 Budget Papers

[74] Correspondence to Committee, Appendix 3, Chief Magistrate Pike, p.1.

3.3 The relationship between the Attorney General's Department and the judicial officers

The Committee asked senior judicial officers whether they were satisfied with their relations with the Department.

The questions were:

> *What is your perception of the level of support provided to judicial officers by the NSW Attorney General's Department generally, and for addressing court backlogs and delay in particular?*
>
> *Do you find that the reaction and processing time of the Attorney General's Department is adequate to meet the needs of judicial officers in your jurisdiction?*

Mr Pike replied:

> I offer nothing but praise for the standard of staff provided by the Attorney General's Department to my office personally.
>
> Sadly, this standard is not universal across the whole system. . . . there still exists, in my view, a tendency amongst the bureaucracy to demean the Court's achievements, certainly to underestimate its value to the overall administration of justice and to act grudgingly in response to its legitimate requests . . unquestionably the approach taken by the current Director-General is one of co-operation but there are areas where improvements could have been made but for reasons which are not always understood, are not even attempted. The computerised magistrates' rostering and listing system and ongoing problems with Court Officers and secretarial assistance are just some of the larger problems which appear to me to be capable of resolution but for the want of a will to do it . . .
>
> I . . .note that in the area of Court Officers, the Northern Territory, South Australia and the Family Court of Australia seem to have managed to achieve a standard, at least of appearance, which seems beyond that of this State. . .
>
> In answer to the final sub-question in this part the role played by the Department is perhaps adequate. I have no objective comparison . . . [75]

The Chief Judge of the District Court said:

> Support provided by the Department is adequate[76].

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75 Correspondence to Committee, see Appendix 3, Chief Magistrate Pike, pp. 18-19.

76 Correspondence to Committee, see Appendix 3, Chief Judge Blanch, p.2.

The Chief Justice of the Supreme Court said:

> I have no complaints to make about the level of support provided by the Attorney General's Department.[77]

By and large, the level of support does appear to be adequate, although the Committee might perhaps have preferred to see more enthusiastic endorsements from the judicial officers.

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77 Correspondence to Committee, see Appendix 3, Chief Justice Gleeson, p.4.

CHAPTER FOUR

THE CONDUCT OF THE PERFORMANCE AUDIT

The Performance Audit cost $106,000[78] It took 10.5 months to complete, and was worked on by seven individuals, excluding printers, for varying lengths of time.

The breakdown of costs was:

	$
Director salaries costs	74,882
Overheads[79] charged on staff time	18,720
Printing of report	3,298
Subtotal ("Real Costs")	96,900
Value of unpaid overtime	9,100
Grant total as reported to Parliament ("Notional Cost")	**106,000**

78 Although there is a slight discrepancy in the figures provided to the Committee by the Audit Office. See Appendix 2.

79 PAB operates as a cost centre. Overheads are allocated onto time charged to audit projects by PAB staff to cover the following costs: employer's superannuation contribution, worker's compensation insurance, payroll tax, recruitment expenses, accommodation rental, building services, depreciation on capital equipment (including computers), equipment maintenance, stationary and non capital office expenses, postal expenses, telephone expenses, purchase of books and subscriptions.

The breakdown of time was:

Executive Review		
Assistant Auditor-General	28 hours	$3,630
Project Controller		
Director	317 hours	$35,459
delegate (during leave)	11 hours	$906
Team Leader		
no. 1 (Snr Perf. Audit Manager)	108 hours	$8,899
no. 2 (Perf. Audit Manager)	700 hours	$43,107
Team Member		
Audit Senior	221 hours	$10,440
Administrative Support		
Executive Assistant	16 hours	$614
Direct Costs		
Printing		$3,298
TOTAL	**1401 hours**	**$106,353**

The question posed by the Committee was: ***Did the State get value for money from this Performance Audit?***

The Performance Audit had some valuable features and some flaws. The valuable features included:

Its original intention was sound: to inform the public and Parliament about progress being made in the reduction of court delays.

It distilled the major issues from a complex management area.

It summarised past studies.

It made comparisons with other jurisdictions.

It stressed the importance of clarifying funding arrangements.

However, it had some major drawbacks:

It was undertaken at the wrong time and was pursued for too long. This was despite the Department's view that it should be postponed and, later, the Audit Office's own view that a full audit should be suspended.

The Department of Courts Administration had barely received the results of its own internally commissioned review. Its operations had just been examined and were about to be changed. For this reason, the Director-General of the Department of Courts Administration recommended to the Audit Office that its Performance Audit be postponed. The PAB nevertheless continued with the Audit. Two months later, the Audit Office's own internal review system determined that the Audit should be suspended. Despite this the PAB went ahead and spent a *further* six months on the Audit. It should possibly have spent something like two weeks collecting the Department's proposals for change and a time-table for their implementation, and then suspended the Audit.

It did not add much value.

Compared to other Performance Audits undertaken later, this report largely confined itself to reviewing existing and already planned operations. It did not present many new ideas or recommend any innovations.

It simply quoted the Department's own statistics without critically examining their validity. This is contrary to one of the main stated objectives of Performance Audits, that is, that they aim to test management's assertions.

It only stated the Department's own proposed reforms and changes without giving a view on their worth and gave the Department's own deadlines.

However, it should be stressed that it was only a preliminary report.

It mentioned major issues without providing any detail.

It flagged three major issues without providing any background or any discussion on their merits. These were the macro model for management of the courts; training for the judiciary; and the intensity of use of present courts.

The Committee reluctantly came to the conclusion that this Performance Audit did not represent value for money. It took too long, and was too expensive. An agency about to change its operations should not have been audited in the first place.

Again, however, the Committee stresses the preliminary nature of this report.

FINDING

Despite several valuable features, it appears that the Performance Audit did not, overall, represent value for money, although a final judgement would have to await the completed report.

In fairness, it should be stressed that the Audit Office itself recognises that the time and cost of this Report were excessive. In a submission to the Committee, it said:

> We regard the costs and time taken on this audit as less than ideal. There were several factors influencing the result:
>
> - this was one of our relatively early performance audits. Between February and April 1994, the period when this audit started, the Performance Audit Branch (PAB) was, in practical terms, established. It grew from a staff of four to seventeen plus. Our methodology, and project management processes, were still evolving. In fact, a new process for project management in PAB was introduced part-way through this audit.
>
> - this was the very first performance audit undertaken in this portfolio area. Thus, some of the research required related to establishing the "permanent file" for this area. Future audits need only to update the file for major changes.
>
> - to replace the team leader, owing to resource constraints a lower-level officer was given the opportunity to take on the role. This was the first time this had been attempted, and necessitated a greater amount of controller-level involvement (Director) than current policy dictates.
>
> - the audit was terminated at the conclusion of the preliminary stage. Because of the large number of very significant changes taking place at the Department, it was decided that it would be more beneficial to terminate the audit and continue at a later stage when many of the proposed improvements had been implemented. As a consequence, some of the benefit of time spent that would normally yield value at a later stage of the audit and was not fully realised. However, this benefit will again come into play when the audit resumes.

The Committee understands that there is inevitably an element of "learning on the job" when a new field like performance auditing is entered. The Committee also understands that it is impossible fully to control the movement of staff. However, although this goes some way towards explaining the deficiencies of this Performance Audit, it does not fully excuse them.

The Committee recommends that in future the Performance Audit Branch avoid carrying out extended audits on agencies that have just been reviewed and are about to

undergo change. Shorter audits to review departments' implementation of previous reviews are, however, encouraged by the Committee.

RECOMMENDATION

That the Performance Audit Branch not prepare extended reports on agencies which have just been reviewed.

That, instead, it consider obtaining simply and cheaply a list of the reforms envisaged and a timetable for their implementation; and then that it undertake the full Performance Audit at the *end* of the stipulated time.

APPENDICES

1. TRANSCRIPT OF EVIDENCE

2. SUBMISSIONS

3. CORRESPONDENCE FROM JUDICIAL OFFICERS

APPENDIX 1:

TRANSCRIPT OF EVIDENCE

REPORT OF PROCEEDINGS BEFORE

PUBLIC ACCOUNTS COMMITTEE

PUBLIC HEARINGS

CUSTOMER SERVICE IN COURTS ADMINISTRATION: THE MISSING DIMENSION

A Review of the Public Accounts Committee of the Preliminary Performance Audit Report by the NSW Audit Office into Courts Administration

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At Sydney on Thursday, 18 April 1996

The Committee met at 9.00 a.m.

PRESENT

Mr T. Rumble (Chairman)
Mr R. Chappell
Mr I. Glachan
Mr P. Rogan
Mr J. Tripodi

KENNETH BORGE MARSLEW, Chairman, Enough is Enough Anti Violence Movement Inc., Unit 8, 479 The Boulevarde, Kirrawee, sworn and examined:

CHAIRMAN: Did you receive a summons issued under my hand to attend before this Committee?

Mr MARSLEW: Yes.

CHAIRMAN: You have already made a written submission to the Committee?

Mr MARSLEW: No, I have not.

CHAIRMAN: Could I ask you to begin by explaining the experience you have had with the justice system and the operation of the courts in particular?

Mr MARSLEW: I object to you calling it a justice system. I found it to be a legal system and justice is not appropriate as far as I am concerned. That is the way I found it.

CHAIRMAN: Could you elaborate?

Mr MARSLEW: Yes. I suppose if I started from the beginning, my experience with the legal system began in 1994, about the middle of the year, when a brief from the Police Service regarding the murder of my son Michael at the Pizza Hut in Jannali on 27 February 1994 was handed across to the DPP.

The DPP did not even turn up at that original hearing which was held at the Coroner's Court and I think that a statement made to me by a magistrate, at about the time the four accused murderers were apprehended, was, "It is none of your business, Mr Marslew. It is between the prosecution and the defence" still rings true in my ears because everywhere down the system I think I have been treated with almost contempt by the system.

Having elaborated on that, I found that during the last eighteen months, the amount of times - I think I have been into court somewhere - and I have not had a chance to go back through my diary and actually get a lot of things in exact figures but the situation is such that I have been into court over seventy times so far and many of those trips into court have been just for moments, where they have brought in the accused, there has been a little legal toing and froing and then we have left the court. I have literally taken a half day off to perhaps spend five or ten minutes in front of a judge or a magistrate.

I think that a lot more could be done to eliminate putting people such as myself through the court process, and even the offenders at that stage, or the accused, are

dragged in and out of court unnecessarily, with call overs, hearings and mentions, and even the committal hearing, which I thought was a total farce. Why can't those sorts of issues be done outside of the court process and just open up the courts to what is necessary?

CHAIRMAN: What is your general perception of the status given to members of the public who become involved with the courts? In other words, what sort of reception do you think a first time user of the courts can expect?

Mr MARSLEW: I certainly did not find them user friendly. I stepped into that and I must say I regarded myself as an innocent victim. I was a victim at that stage, I see myself differently now, but at that stage I thought that there would be some embracing of someone like myself by the system, so that not only having to put up with the devastation of the crime, we would be looked after. It was not the case. It was very cold, unfeeling, and really I thought alienated by the whole process.

CHAIRMAN: Following on from that, what improvements do you think could be made to this situation?

Mr MARSLEW: First of all, all of the call overs, hearings and mentions, I think they could have been cut by about fifty percent. I was told if I didn't like what was going on I didn't have to go into court, and that is not the way I would operate. We are talking about my son's life here.

CHAIRMAN: Who told you that?

Mr MARSLEW: That was given to me by a magistrate and also it was one of the people associated with the DPP, very early in the piece, if I was finding it hard going I need not go in, they would let me know what happened. I am sure you would be a lot like me; I wanted to be there and know exactly what was going on.

These unnecessary trips to court I felt could have been done on paper, perhaps in a chambers somewhere, between the prosecution and the defence, and only when everything had been correlated, then go in and perhaps spend a morning in court and get everything done in one go, rather than backwards and forwards and backwards and forwards, taking up court time and people's time as well.

CHAIRMAN: To help improve court delays, what areas do you see as needing improvement and in what way? I know you have spoken about call overs and that type of thing.

Mr MARSLEW: The committal hearing itself - I have done a little reading, I would have liked to have done a lot more but I am actually involved in education programmes at schools at the moment that I had booked in and the third murder trial is going on for my son at the moment, but I did some reading on the Annual Report of the Law Reform Commission, Report Number 66, 1993, and I found of great

assistance this Performance Audit Report of the Department of Courts Administration. I found that very interesting and it actually made me feel quite good when I read that, to see that some of the issues that I was prepared to bring up with you are already being addressed or have already been recognised but there is a definite need to start moving on them.

Talking to you this morning, having been involved in a group where some 250 families have been affected by murder, the things that I am talking to you about are not just specific to me. I think I can pretty well identify with most of the people in the group who have experienced what I am telling you I have experienced; it is a common denominator through the whole thing.

CHAIRMAN: You were saying you thought there were some positive recommendations in that report?

Mr MARSLEW: That is true.

CHAIRMAN: Could you elaborate for us other matters that are not mentioned in the report which from your perspective that would improve the system?

Mr MARSLEW: If I go to the committal hearings themselves, which I found very, very hard, because that is the first time we had to come to grips with the evidence, autopsy reports and the discussions about the wound, and actually the whole cold hard facts of my son's murder, and the evidence was tried, but I must say two of the three defence solicitors were - what is the word - it was comical if it had not been so serious, their attitudes and their prancing around the court, and I thought that by the committal hearing, that a lot of that evidence had been tested and then would only surface during the trial, but we had the committal hearing, we had voir dires, which was done prior to the trial starting, then we had the evidence during the trial, then we are back for more voir dires during the trial to test the same evidence that had already been tested two, three and four times.

I cannot understand why the process would have to go through it three or four times. I would have thought that two would be fair. I do not know whether that is the judge's fault. Remember, I am a little naive with these processes so far. I do not know whether that is the judge's responsibility or that is part of the process at this stage, that we just keep going and going and going.

CHAIRMAN: These were separate committal hearings?

Mr MARSLEW: Yes.

CHAIRMAN: Or various parts of one committal hearing?

Mr MARSLEW: The judge, in his wisdom, chose to give the accused, at that stage, separate trials. This committal hearing was for three of the people involved in

the murder at that stage. So it was a combined committal hearing, and just prior to the start of the trial there was an application for separate trials. That was done on the voir dire. But, again, the evidence was gone through and I see really, without affecting the outcome of the trial, there could have been far less input, people, money, court time. Whereas, knowing well that that evidence, I didn't at that stage but now do, that the evidence could be tested again and again and again, that particular issue, why couldn't the committal have been of a paper type, done between solicitors and barristers in a room somewhere prior to going to court?

CHAIRMAN: As a user of the court system, do you see any need for an extension of the court operating hours?

Mr MARSLEW: Actually, one of the things I had written down to discuss with you further on is that yes, I couldn't see why they couldn't start at 9.30 and finish at 4.30, where currently it is a 10 o'clock start and it is a 4 o'clock finish and they sometimes go a little bit over.

CHAIRMAN: Do they close for lunch?

Mr MARSLEW: Absolutely, spot on time.

CHAIRMAN: So it is ten 10 o'clock to when?

Mr MARSLEW: It is 10 o'clock to - there is a short break during the morning and then they break again from 1 to 2 for lunch. I would like to see them start promptly at 9.30, with perhaps a morning tea break, still the hour break for lunch, and then a short break in the afternoon, because listening to the evidence does sometimes cause you to get a little weary.

CHAIRMAN: Thank you. Any questions of Mr Marslew?

Mr ROGAN: I think you have basically answered the question I was going to put to you. You have indicated that 250 families comprise the group Enough is Enough?

Mr MARSLEW: No, that is not Enough is Enough. Enough is Enough is a totally different body. This is a Homicide Victims Support Group.

Mr ROGAN: Obviously, in your discussions with members of the public who have experienced the court system, what you have related to us today is very typical of what they have experienced.

Mr MARSLEW: Yes, it is, very typical. It is not just isolated cases. The trauma that - is it okay for me just to waffle on a little bit?

Mr ROGAN: Yes.

Mr MARSLEW: The trauma that was caused by the DPP not turning up at that first committal, it was unbelievable.

Mr ROGAN: Did they give a reason why?

Mr MARSLEW: Yes, the paperwork had not been processed. We had the Coroner sitting there, we had the accused and all of Michael's friends, all of our family, were all sitting there and I think the expectation that Michael had been murdered, we cannot do anything about that, but now justice is going to be done. I know it is not that way, but you think the prosecution is going to defend Michael and it is has just been that way ever since.

Mr ROGAN: What was the judge's reaction when the DPP did not proceed simply because of paperwork?

Mr MARSLEW: He was extremely irate. It was the Coroner at that stage. That was in the Coroner's Court at Glebe. He was extremely irate as to why no-one from the DPP had turned up.

Mr ROGAN: Was there any action that he could take or in fact did take?

Mr MARSLEW: Not to my knowledge.

Mr GLACHAN: Can I interrupt you and say everyone is there waiting?

Mr MARSLEW: That is right.

Mr GLACHAN: And not only were they not ready but they did not tell anyone that they were not ready?

Mr MARSLEW: Nobody from the DPP actually turned up at the Court. We had the Police Prosecutor, all of the friends.

Mr GLACHAN: Nobody even showed?

Mr MARSLEW: Nobody even showed.

Mr GLACHAN: So you just sat around for how long?

Mr MARSLEW: I think it started to register after about five minutes that there was nobody there.

Mr GLACHAN: Somebody made a phone call, did they?

Mr MARSLEW: I did my cruet, for want of a better word, and it was the Police Service, a fellow called Geoffrey Beresford that took me aside and explained what

had happened.

Mr GLACHAN: How did he know what had happened?

Mr MARSLEW: He was there with us. He was the officer in charge of the case from Sutherland and it all of sudden appeared that there was going to be nobody there from the DPP. There was someone from the DPP on another case that came over and they just did a callover. The trauma from that was unbelievable. It really was gut wrenching stuff.

Mr ROGAN: Again, drawing on the experience of other members of the public, particularly members of your group, have there been other similar experiences to that, maybe not necessarily because the DPP did not turn up, but because of other involved people not being there?

Mr MARSLEW: Yes, there has been other instances. The lack of information, that is improving I must say, but eighteen months ago the lack of information that was given to people such as myself was minimal. Notice of something happening, you would find out, and people must have known weeks and weeks ahead, a day before, a couple of days before, that something was going to happen in such and such a place and then you re-organise yourself and go in.

Again, that statement that "You don't have to be there" has been said to quite a few people, that things will be looked after in your absence. The need for us to know what is going on and have an understanding of the whole process is paramount to perhaps our rehabilitation or understanding of what is going on. So it is not an issue, "Don't be there", because we are going to be there anyway. We just need the information.

There are a couple of other things that I would like to cover. I do not know why the call over, hearings and mentions, why there were so many. It seems to me that there could be far better organisational skills applied, management skills applied to that area, so you could reduce it by some fifty percent. Obviously, the finance side of it would be diminished as well and it would not take up the court.

Why can't committal hearings be done on paper? Because the evidence is going to be tested by voir dires prior to the trial and voir dires during the trial, it still gets done over and over again. So I see no need for committal hearings as such with everybody present. I believe that they should be done outside of court. I believe a lot of people within the legal profession need an attitude change and if I might just cite a case - is that relevant to what we are talking about?

Mr ROGAN: Yes.

Mr MARSLEW: On another instance we were back in court and there was Louis Soravia, whose wife had been shot dead and died in her son's arms outside the BP

Service Station in Summer Hill; there was the Indian lady that was stabbed to death out at Bankstown, she was a welfare worker and was stabbed to death; there was the Harveys, the young girl that was kicked to death in the stairwell of a hotel in Kings Cross; and myself.

Those four cases were up for a mention or a hearing, and you can imagine the tension and the pain that was in that area, and there were two defence - and I am not just picking on the defence guys here - but it was apparent, they were making jokes in the foyer, with all of this going on, and laughing. Really, don't think I am trying to be nitpicking here, but there would obviously need to be some sort of ethics involved in understanding what was going on within the room and yet one of these blokes, a fellow called Warwick Hunt, laughing hysterically over a joke told to him by another defence solicitor, I thought was absolutely tasteless and I was stopped from going over and having a word with them, again, by one of the guys from the Police Service.

If I could ask you some questions here about Legal Aid, I believe the system is being rorted tremendously by people. The DPP, I think this came up in the Royal Commission, they want to take over the Police Prosecutor's job. I think that Nick Cowdery should concentrate on doing what he is doing now because they are not even doing what they are supposed to do properly.

I believe the current excuse I got from Nick Cowdery was the lack of funding. I have not been kept informed on several issues and I took it upon myself to confront Nick Cowdery personally about those issues and there is definitely a communication breakdown between people like myself and the DPP, although I must say the majority of the people that I have dealt within the DPP are most co-operative, helpful and professional people.

With appeals, that was another issue that I would like to bring to your attention, even reading through that Performance Audit Report, it is an issue now, the high rate of appeal and that they are running behind with those. If someone is allowed to appeal and there is no financial cost on them and no other penalties associated with appealing, and there are unscrupulous lawyers out there that would see it would be a financial benefit to make an appeal even if the appeal did not look like working, I would feel that the money that is wasted in some of those appeals, and I understand that the appellants do have rights, but perhaps we could look at some sort of penalties put up to perhaps slow unscrupulous solicitors down for making appeals that are unnecessary and do not have a great deal of basis in winning and perhaps the appellant should also be brought to task in as much as, if it is an appeal that is not fair dinkum, for want of a better word, perhaps there should be something tacked on to the end of the sentence to slow these people down for appealing, using funds, knowing full well that the appeal will never be gotten through.

CHAIRMAN: Time is moving on, Mr Marslew. Have you got much more?

Mr MARSLEW: Just a couple of quick points. The Witness Assistance

Program, which has been very supportive for people such as myself, that is funded by the DPP. There was some talk of that being undone or reduced and I would say that anything that has to be done to keep that going, and even expand it, should be addressed because it is most beneficial when you walk into court to have somebody beside you that is experienced in the process that can help you with some of the understanding, because it really is scary.

To keep people out of court, youth diversionary conferencing. That is a process that I have a lot of belief in. Are you all aware of what that is about, youth diversionary conferencing? Why can't that be extended into adult cases as well, the first time non-violent? I think there would be a lot of merit in keeping people right out of the court process and if that is handled properly I believe you would deter people from re-offending.

I would like to see judicial education programmes addressed - there has been some talk of it but the judiciary seems to put a block up to it - where people such as myself can give them some indication as to what we go through during the process. The court seems to worry about one element of a crime and there are three elements, not only the offender, but victims and the community, and, as I said, the longer court hours. They were the other issues that I wanted to address.

CHAIRMAN: Any questions for Mr Marslew? Thanks for coming along and I think a lot of members of the public are very appreciative of people like you highlighting in the community the trauma that victims of crime have to go through and it is only because of people like yourself that highlight it in the media, that people who are victims of violent crime, not victims of petty crime, victims of violent crime have got some sort of recognition. The scales seem to be evening up as far as victims are concerned as distinct from perpetrators.

Mr MARSLEW: I think victims also have a lot of responsibility. A lot of people dwell in the role of victims for too long. We are at one stage a victim of violent crime but there is a very real necessity to move beyond that into a role of a survivor and start looking at what we can do for ourselves, rather than laying there and asking the system to support us, and that doesn't go a long way with a lot of victims, I have got to tell you, but I think that is a responsibility that we have. Thank you very much for the opportunity to come and speak with you this morning.

(The witness withdrew)

BABETTE ALISON SMITH, Chief Executive Officer of the New South Wales Bar Association, of 174 Phillip Street, Sydney, sworn and examined:

CHAIRMAN: Did you receive a summons issued under my hand to attend before this Committee?

Mrs SMITH: Yes, I did.

CHAIRMAN: In your capacity as the Chief Executive Officer, what has been your experience with court delays? Have they been improved over the last eight years or so?

Mrs SMITH: I have an overview. I am not a barrister, I am not practising daily in the court and I was going to bring a barrister with me this morning. If there are some questions that only a practitioner can answer I might have to return on another occasion with a member of the Bar.

I have been in this job since late 1993, so I cannot really compare back eight years, although once again I have some general knowledge of the situation, but obviously I read research on aspects of court proceedings, I attend Bar Council meetings, committee meetings and I participate in discussions, so I should be able to answer a lot of your questions, and I liaise with the department as well.

CHAIRMAN: With your overview of court delays are they improving or getting worse?

Mrs SMITH: There is some improvement but my impression is the load has shifted, that they have improved in Common Law for instance where case management is helping and we are co-operating with that, but the delays for instance in the Court of Appeal now are extremely bad.

We see the human cost in not only the effect on our clients that is caused by the delays and the effect of some of the reform initiatives which have an extreme impact on our clients, but we also see the effect on the judges and in terms of the Court of Appeal in particular there is a bunch there of exhausted men who are working extremely hard. I have not got the exact figures with me, but the number of first instance courts from whom appeals are now drawn have, I think, from something like forty to one hundred and seventy. I might have to supply that figure subsequently. But the judges have increased from I think eight twenty years ago to about ten.

The increase is not proportionate and yet the number of sources of appeal coming through is enormous, so it is not surprising that there is a backlog in the court. Nobody is slacking off; it is just lack of personnel to handle the matters and the only answer is more judges. This is where the delay at the moment is treatable and the only answer to that is more funds. This is the Supreme Court of Appeal.

CHAIRMAN: And what hours are they open?

Mrs SMITH: It is not only the hours they are in court and the basic framework of the court is ten to five though it varies. There is one Supreme Court, it is not the Court of Appeal, that is sitting nine to two at the moment, straight through. But the framework of the court remains at ten to four. It is the judgment writing time and the administrative time behind the scenes which is not seen, and perhaps it is assumed that judges are not working when they are not in the court room, but that is far from being the case.

Mr CHAPPELL: If more judges equals more work, then more judges again will equal even more work and more delays. More seriously, is anyone confronting the appeals situation and analysing whether that upturn in the numbers of appeals and so forth is valid in terms of ultimate outcomes?

Mrs SMITH: It is a citizen's right to appeal from a trial at first instance if they believe that they should. They may be advised even against it by their lawyer but if they still want to appeal that is their right.

Mr CHAPPELL: Is anyone tracking that and the ultimate outcome?

Mrs SMITH: I understand that both the department and the judiciary are tracking it very carefully. There is also some external research being done by the Civil Justice Research Centre which is funded by the Law Foundation. They are tracking all aspects of what is going on in the courts, whether it is the special sittings, the effect of differential case management and they are also looking at filing fees.

What strikes you about this is, firstly, it is somewhat out of date; there are things in it which are dated. It refers to the Department of Courts Administration being separate from the Department of the Attorney General, which is no longer the case. It refers to the Sentence Indication Scheme as a reform and it was discredited. It did not succeed.

Mr ROGAN: Could I just intervene? When you say "this", you are referring to a document in your hand. Could you perhaps identify the report?

Mrs SMITH: Yes, the Performance Audit Report from the Department of Courts Administration.

It also seems to me that we agree with the message that is coming through in the report, which is that fundamental administrative decisions have to be taken, in other words, setting the goals as to what is to be a priority and deciding on the funding.

This report is saying that and we certainly say the same thing because that is what we see and hear as being action, and if you look at what is listed here as the actions for 1995, they are all strategies, or most of them are strategies. But what about the

action? That takes money. You can talk and plan forever but actually getting things moving takes the money.

The District Court, for instance, is not computerised administratively. The judges are computer literate; they have laptops, they have had access to research that affects their judicial role but that is done by the Judicial Institute. It is the basic administrative back-up that needs some money put into it.

Even something like court reporting, just getting access to transcript, there is twenty-six sitting judges in the District Court but the court is limited to ten running transcripts of proceedings on any particular day. The District Court does not necessarily need a transcript for every single one of the twenty-six courts every day but it needs the option of more than ten. The Supreme Court has access to a transcript for every court for every day.

That is a basic administrative back-up which is starved of funding and there are many other areas which one can point to. The Supreme Court - within here for instance there is much mention of alternative dispute resolution procedures as a solution and that is in many strategies and documents and in the media. The bar has co-operated extensively with the courts to plan, and in some instances pilot some of these ADR procedures, and that is on a pro bono basis.

The early evaluation pilot of the Supreme Court, the Bar participated in that, with no charge, individual barristers doing the work, looking at the cases, appraising them and evaluating them. I understand that it did not produce an increase in settlements. One of our barristers described it as basically giving the big party in the case, more often than not an insurance company, a free kick, but it did not produce settlements. However, we participated in that.

We also, with the Law Society, have co-operated again with the Supreme Court in preparing a pilot strategy for a mediation scheme, again, a much touted reform. It got turned down - no money. So there are a lot of cosmetic proposals, a lot of cosmetic strategies, there is a lot of co-operative plans and not being charged for by barristers, or solicitors for that matter, and yet again it keeps falling down through lack of government funding.

I understand, I think it is the Supreme Court, there has been a really steep increase in filing fees. I think it was eight million, now 16 million dollars worth. It is not being reflected in court funding. It is going into consolidated revenue.

There are other very basic administrative discretions that you need if you are going to run something efficiently and cost effectively, and that is the discretion to manage your money. For instance, if you save on phone calls but you need more stationery, you want the discretion to be able to move within a set budget from one to the other category. I understand that both chief judges of the District and Supreme Court do not have that discretion.

Mr CHAPPELL: They do not have an en globo budget?

Mrs SMITH: They do not have the discretion to manage the budget. I think it is something worth looking further at because it is a basic administrative tool. I use it in managing the Bar Association. I have more discretion in managing my budget than they do.

I think it is the District Court that recently got some user pays arbitrations which I think the Chief Judge does have the discretion to use those funds and he has been able to apply them to get more judge time and it has given him a management flexibility which he is really feeling the benefit of. It does not apply across the board in the way that the courts are managed.

Mr CHAPPELL: Basically, what you are saying is there are some improvements but some deterioration.

Mrs SMITH: In other areas there is deterioration.

Mr CHAPPELL: It seems to me what you are saying is that the root cause of that is administrative.

Mrs SMITH: Lack of funding which is handicapping it.

Mr CHAPPELL: Or decisions about allocation of funding.

Mrs SMITH: Now, I am not in any way casting stones at the department. I think the amalgamation into the one department makes sense, although I dealt with Garry Byron, the head of Courts Administration effectively, I deal to some extent with staff in the Attorney General's Department and find them very efficient and they appear to have amalgamated the two departments into one very satisfactorily, from the Director General down through the whole range, I find them very efficient, but I think they too in their planning are very handicapped by, one, lack of funds, inadequate funds, and, two, probably the policies, just which goals are getting priority and a tendency for cosmetic solutions.

Mr ROGAN: You talked in a general sense but can you identify any aspects of the court system which are specifically contributing to the impact on the delay in the court backlog?

Mrs SMITH: Improving the delay?

Mr ROGAN: I suppose identifying the very specific causes or reasons for the delays and I suppose half the solution of the problem is identification in the first place.

Mrs SMITH: My personal opinion, I do not think anyone has really researched it, but common sense would probably tell all of us that there has been an upsurge of rights in the community, where people have a greater sense of right, therefore there is definitely a general trend to pursue those rights more. So there is that aspect. It is offset to some extent, of course, by the costs as well, so there is a balancing factor in.

This chasing rights aspect can be at least observed in two areas in my opinion. One of them is the self litigants, some of them who will persist in cases well beyond all the best legal advice and they will keep going and keep going through every layer and the legal personnel staff in the courts, whether they are judges, registrars, members of the profession, will bend over backwards to accommodate such people but they are really living examples of people often pursuing their rights beyond reason. Some are very reasonable and we assist many in pro bono ways as well but they are chasing rights and that also I think was probably playing a part in chasing the appeal process, in other words the verdict has not been accepted and that is a factor that should be taken into account.

The other is there are new matters I think probably that go to court in the higher courts too, than there were maybe twenty years ago, more sophisticated conflict in business matters, more domestic matters, the growth rate of divorce and violence, even though we are not talking about divorce matters in the State courts. You can see how the social scene is creeping in as well.

I think the funding and the staffing of the judicial system has not matched these changes and we are chasing our tail. Differential case management is certainly a worthwhile thing. It has got some problems. The Bar, for instance, was at first dubious and still has some doubts about that system particularly in terms of whether or not it in fact increases costs for the litigant upfront. On the other hand, it clearly has some benefits in fast tracking matters through the court. But the more that go through, the more appeals.

Mr ROGAN: Within the actual administration you cannot identify any areas that need to be changed?

Mrs SMITH: I can only point to the general. I think it is probably for others to more specifically point out. I have mentioned the transcript, for instance. That can cause delays in courts if you have not got access to a transcript when you need it. That is something that has got to be checked.

I have just been through the process of modernising the Bar Association's financial and administrative systems, so I know very well the difference in efficiency once you get your administration upgraded. In fact, I think the previous Government through its Attorney had allocated considerable sums of money to what he termed an electronic court. That has not happened but it certainly needs to happen. The publicising of ADR procedures as the answer needs to be backed by the funding to implement that. The Supreme Court mediation pilot that was recently knocked back

for lack of funds is a good example of that. And judge time is another. There needs to be more judges.

CHAIRMAN: Do you know where the knockback in the funding approval was? Was it within the system?

Mrs SMITH: As far as I am aware, it was in the department and/or ministers, obviously. I don't know precisely and whether they had applied for funds for it and maybe they did.

Mr CHAPPELL: It could well be that they did not have the discretion to reallocate funding within their own budget.

Mrs SMITH: Certainly it was not within the court's power. The court wanted it. Both judges and practitioners, for instance, and barristers had participated in working out a pilot. Then it had to go forward, as I understand, either to the Minister or to the department, probably both. What happened after that I do not know. I only know that there was no money.

Mr TRIPODI: You have already addressed a lot of this but are there any other suggestions or strategies that you could make to introduce changes into this area, apart from the ones you have already mentioned?

Mrs SMITH: I do not think there is anything additional and I can only reiterate the basic approach, which is to take a very realistic look at it and not be misled by cosmetic suggestions or endless strategies and no action. It all boils down to lack of money in administration and I believe personnel as reflected in judges.

Mr TRIPODI: Justice Wood has partly attributed delays in the country in the courts to party delays. He states that party delays occurred because of the failure of a party to take appropriate steps to bring a case to the earliest possible hearing and to be ready for trial on in a fixed date. To what extent do you think that barristers are responsible for such delays and does the association have a policy on this issue?

Mrs SMITH: Yes, we have been talking to our members and we distributed the research into delays in courts to all our members. However, we also believe that our members are the easy scapegoats for the delays. DCM, differential case management, with which we are co-operating, is one answer to that.

It involves talking earlier to the clients about their prospects and it involves getting the various stages of the case prepared upfront. Now, the off-side to that can be that your costs are moving upfront too. It was not just unconscionable delays in the past; it was that the expensive things that had to be done were often left until it was more obvious how the case was going to pan out, whereas DCM brings them upfront.

Apart from that, to be diverted into thinking it is substantially barristers or

solicitors causing the delay is to ignore these other very real factors. The practitioner side of it, and we are not perfect and I am not claiming that, but we are nowhere like as bad as people allege, and certainly members of the Bar do have the interests of their clients at heart and there was great stress on the members of the Bar during the special sittings, which was a well meant attempt to clear a backlog. It caused enormous distress to clients and to the barristers who represented them.

What I am really saying is that the reforms to date, and differential case management being the most obvious, have attempted to address some of those problems and to linger on them now and to not address the delays in courts within the court system is to just stay stuck in the groove and it is time to move on. I think this report has basically done that.

Mr TRIPODI: How many personnel do you think would be involved in terms of staff, including the judge, in an average case?

Mrs SMITH: I cannot actually answer that, I am sorry.

CHAIRMAN: Five, twenty?

Mrs SMITH: It just varies so hugely from case to case. A very basic case would probably be - no, I cannot, it would be a misleading answer.

Mr TRIPODI: Let us say, for example, a major corporation or an owner of a major corporation is involved in some kind of litigation. They often will have considerable debt and major expenses every day. Even if they did not have a debt, any asset would have a considerable opportunity cost but it is not functioning. Therefore, the cost of waiting for some litigants would be quite considerable.

If they were given the option to bear the full cost, they already bear the full cost of legal representation, if they were given the option of bearing the full cost of providing the court and the judge, the judge is provided at a charge-out rate, do you think that there would be a lot of litigants who would be happy to pick up that cost and actually would make a saving by being able to get justice straight away?

Mrs SMITH: I think that it is creating an inequity in the system. I think that rich litigants, which is what we are really saying, have that option now by way of ADR procedures. They can settle, they can mediate, out of a solicitors' office if they wish. They do not have to go into court.

Mr TRIPODI: But there are some who do not.

Mrs SMITH: There are some who do not and I do not think that whatever you suggest, by way of user pays, to that extent will solve that problem. They are going to fight it out regardless and have somebody adjudicate it. What you do, you are creating an inequity in the system by allowing those parties that can afford it to buy the time

by priority.

Mr TRIPODI: Can I suggest, if there is a queue of twenty people waiting and five can hop out of the queue and get quick justice, how long does the queue become?

Mrs SMITH: It becomes shorter but those five people who hop out and pay for it, they get there first.

CHAIRMAN: Everyone gains, everyone in the queue benefits.

Mrs SMITH: Yes, but probably the most fundamental principle of our justice system is access for all on equal terms. That is what the Bar is about. It empowers the little person and that is the other reason why the Bar has a cab rank rule, that is what we call it, and work as sole practitioners, so that any of them, whether they are a top silk or a senior junior or a junior junior, is available to any client. I think that that role of the Bar has perhaps been lost sight of in the last twenty or twenty-five years, but that is what they are there for. So the big corporation has a silk and so does the little person.

Mr ROGAN: One last question if I could. In a pamphlet explaining the Bar Association's Duty Barristers Scheme, which was published in July 1995, it was explained to potential uses that if they cannot pay on the day, then the case can be postponed to a date when they can pay. To what extent do you think this promotes the interests of particular barristers to the detriment of the court system in general?

Mrs SMITH: We revised the brochure and deleted that because we felt it was misleading. First of all, the fees in that scheme are so nominal, like $30 or something, I mean we are not talking big money. It was to try and make people feel that they should not be scared of coming and saying: Look, I have got this matter and I can't afford it, and actually most of the duty barristers are doing it for free, but the way it came across in that brochure we decided was wrong and not what we intended so we deleted it.

(The witness withdrew)

JULIE ANN FOREMAN, Court Support Scheme Co-ordinator, Level 1, 2 Holt Street, Stanmore, affirmed and examined:

Mr ROGAN: Did you receive a summons under the name of the Chairman to attend here?

Ms FOREMAN: Yes.

Mr ROGAN: Do you have a submission that you want to give to the Committee?

Ms FOREMAN: No, I don't.

Mr ROGAN: You are just happy to answer questions?

Ms FOREMAN: Sure.

Mr ROGAN: We have a number of issues we would like to raise with you in the very short time that we have allocated, but, firstly, what service do you provide to the users of the court system?

Ms FOREMAN: Court support provides a network of thirty-five volunteers in sixteen local courts and they provide information, personal support and a referral service for people. They don't provide legal advice at all, so it is people involved in local courts in criminal proceedings. I have a brochure about it.

Mr ROGAN: That will be distributed. I suppose the leaflet explains it, but, for the purpose of the record, why is there a need for this service?

Ms FOREMAN: People going to court often for the first time find it a very bewildering experience and they are quite anxious, they have no idea what is going on. The actual information for clients in courts, defendants' witnesses, their families, is very, very limited, so it is a way of alleviating that anxiety, I guess.

Mr ROGAN: With the current resources, can you meet the demands?

Ms FOREMAN: Not at all, no. My job is half time and I am co-ordinating thirty-five people in sixteen courts, so even if I wanted to, you know, do a credible supervisory role, I could get around to each of the courts maybe three times a year or something, and of course there is demand in other courts that we are not meeting, there is demand on other days that we are not meeting.

Mr ROGAN: If you did not provide this service, who would?

Ms FOREMAN: As far as I know, the service would not be provided.

Mr ROGAN: Before Mr Chappell asks you questions, you may have been present

or you may not have been present when Mr Marslew gave evidence very early. He represents an organisation, Enough is Enough. Were you here when he was speaking to the Committee?

Ms FOREMAN: Just at the very tail end, yes.

Mr ROGAN: He had a lot of positive points and a lot of criticism as to the way in which the system is not, I guess you could put it, user friendly. Would the experience that you have had with the courts be supportive of that? He thought it was very cold - -

Ms FOREMAN: Sure.

Mr ROGAN: The system was not geared to, I suppose, take account of the emotions of the victims and so forth and really just a very daunting experience?

Ms FOREMAN: Yes. We also assist defendants' witnesses and their families as well as victims and it is a daunting experience. What happens is, you walk into a courtroom and you have been told to be there at 10 o'clock, so you are assuming that you are going to be dealt with at 10 o'clock. You walk in and there is a whole bunch of people sitting in a waiting area. You might see a few doors that look like they could be courts, but you have absolutely no idea what to do at all.

As far as I am aware, there are five courts that have information desks, actually desks that could be used as information desks. Two of those are not staffed; one at Fairfield has just been staffed the last week and two others are staffed between 9 and 10. So you sit there and you think: Oh, at 10 o'clock they will probably call me, and it gets to 10.30 and nothing has happened, it gets to 11, it could go on and on, and then someone, a court officer, might come out of a room and say something like, "Anyone wanting adjournments, call over, anyone pleading guilty", you know, you don't hear what is going on. If you are lucky some local courts might have a sign "See court officer", but you don't know who a court officer is. They don't have a uniform or a name tag or anything, and you see a few people in suits who look like they might have something to do with the court, rushing around and moving backwards and forwards, so at this point you are getting quite anxious about what you need to be doing and you might go up to the office and someone might point you somewhere else, but you really have no idea of what the process will be, so there is all this sort of anxiety building up and our volunteers will often approach people who are sitting waiting and say, "Are you going to court? Have you got any questions? Do you know what you're doing?" I thoroughly believe that there is a responsibility of the courts to be assisting people.

Mr ROGAN: What we are talking about now impacts upon the administration, but it does not impact upon the efficiency of the court, does it? Do you have any comments to do with efficiency?

Ms FOREMAN: I guess it exacerbates the stress of delays. Delay is one of the things you are talking about here.

Efficiency, yes, I give a couple of examples: An elderly, isolated woman, possibly on anti-depressants, with poor English, was charged with shoplifting. Perhaps because of the medication she was on, she did genuinely forget to pay for the goods. A court appearance causes enormous personal grief and shame upon the family. She goes along after waiting two or three weeks for the matter to be listed and then, when she gets there, either to seek legal advice or because an interpreter is not available, the matter is adjourned for another three weeks. The stress is prolonged when that could have been avoided. I cannot see why there could not have been better scheduling of an interpreter at an appropriate moment.

Perhaps you have been called to be at court at 10 o'clock, and you get in at 3 or 4, but you have made no arrangements to have your children picked up from school because you thought, if it is 10 o'clock, it might take a couple of hours, my matter, or the matter might not get in at all because it was over-listed or whatever.

Another example is a matter is scheduled for the local court and the police, the witnesses, the Legal Aid solicitor and the defendant have all turned up. The prosecution decide that they are not yet ready to proceed or perhaps the magistrate has run out of time that day or the drug analysis is not available. Either way, the matter is adjourned. Obviously there are costs in having those people waiting around court all day and again they could be organisational issues.

There are also logistical problems, for example, at Fairfield court, with people that are held in the cells. I think there are several cells there but there is only one interview room and, although it is believed that most magistrates, although not all, try and deal with people in the cells first, with only one interview room, the police and Legal Aid are trying to use that and what happens is that, with people in the cells, it actually takes all day before everyone is dealt with and it may be that a person does get bail at the end of the afternoon but it is after the actual court office is closed, so they cannot pay the bail or their family member cannot pay it, and the van has been waiting and wanting to get people back to Long Bay, so someone is taken in the van back to gaol from Fairfield, even though they were ready and able to give bail, so they are spending another night in gaol; their family has to get out from Fairfield to Long Bay to see them, so they are the sorts of issues.

There is poor co-ordination and delay in receiving probation reports or transcripts and other matters like that; over-listing of matters.

Mr ROGAN: You are reading from material there. You might make that available to the Committee.

Ms FOREMAN: It is probably not in a form to do that at the moment, but I would be happy to make a submission.

Mr ROGAN: We would appreciate that.

Mr CHAPPELL: Could you categorise the areas of court operation you see as having the most negative impact on first-time offenders, the uninitiated? Are they administrative, are they simply lack of information? What do you categorise the biggest problems as?

Ms FOREMAN: I think those two things are the biggest problems: The lack of information and the systems, and some of the systems are still a mystery to me about the order in which things are dealt with. I don't quite understand why there cannot be at least a break down into two times of the day that people attend court, 10 and 2, rather than people getting there at 10 and not being dealt with until 4. I understand that there is no computerised case management of matters and that that has an impact on how things are dealt with and how efficiently things are dealt with, or even a scheduling of interpreters on the organisational side of things. Some interpreters are in high demand and it is very hard to get someone and so the court might schedule a matter for someone who was speaking that language and it keeps getting adjourned because there is not that particular interpreter and then there happens to be another matter, someone who needs the same interpreter, and there is no way of looking it up and saying, well, really we should put those two people in on the same day because we know an interpreter is coming that day, but because it is just handwritten on a date they cannot look up under language, whereas if the service was computerised they could, just very simple things that would make things run smoother, but I really cannot stress enough the information aspect.

Mr CHAPPELL: On the day or before the day?

Ms FOREMAN: Both, yes, that's true. In the letter that people receive, I understand there is nothing that really encourages people to seek legal advice prior to going to court, which would often I think reduce that first adjournment, or the fact that, even though they are to be there at 10, the matter will be dealt with along with a whole bunch of other people, just explaining that before I'm sure would assist people, and explaining to people what the process will be, that when they get there they go and see the court officer and explain who the court officer is and how they find him or however that particular local court procedure is.

Mr CHAPPELL: Just send the brochure with the letter?

Ms FOREMAN: Yes, obviously available in different languages.

Mr CHAPPELL: Obviously you are only covering some courts?

Ms FOREMAN: That's right.

Mr CHAPPELL: What happens in all the other courts? No support, no nothing?

Ms FOREMAN: Yes, I think that is the case, although as has been mentioned there are some witness support schemes that assist individuals and there are certainly domestic violence support schemes. We're a generalist scheme, so I can't comment on that work, but for generalist court support, I understand we are the only service in Sydney.

Mr CHAPPELL: As a regular attender at court in support of other people and their cases and so forth, have you formed any view as to the major issues contributing to court delays?

Ms FOREMAN: I have mentioned a few things and I might just quickly go over it again. Things like organisation systems or information systems and technology in many areas is poor. Receipts, for example, are still handwritten in many courts and that would seem amazing for the volume that goes through and that must add to delays. Things like poor co-ordination of prison delivery vans which often don't arrive until after 10 o'clock at courts. Legal Aid are then delayed in seeing clients in the cells. It then delays the duty solicitor seeing other clients and it delays them getting into court. Poor co-ordination and delays in receiving probation reports, transcripts, analyses of drugs, et cetera. The unavailability or poor scheduling of interpreters. The over-listing of matters. The impact of those sort of matters such as the unavailability of interpreters, et cetera, is increased because of poor communication. If parties were aware that critical information was not available, the matter could be rescheduled prior to everyone going to court. It seems to me that police, Legal Aid and courts very rarely talk to each other in a way that could alleviate delays. As we mentioned, defendants not being aware of things before they get to court, so that is a communication issue.

I also understand that there are inappropriate charges laid by police and matters are charged at a higher court than necessary, leading to appeal and then the matter being dealt with later at a lower court, for example robbery when stealing from a person might be more appropriate. I understand that the DPP have discretion in changing those charges whereas police prosecutors don't. So, in effect, you could have a situation where one matter is tried three times, the first time in a higher court on appeal - not tried but, you know, it goes through three stages.

Mr CHAPPELL: Is that a regular occurrence?

Ms FOREMAN: I guess it is just anecdotal evidence from talking to other people but it was from more than one source, so I understand it is something that people are concerned about.

Staff resources: For example, Burwood has seven courts sitting next week and I understand they have enough staff for three. I don't know how they deal with that. The availability of legal resources for people seeking legal advice, so they don't have to get an adjournment if there are not enough resources, and that includes the resources at local courts. For example, I understand because of staffing issues there is

no chamber magistrate at Kogarah court at the moment and there is a two week delay to see the chamber magistrate and get advice at North Sydney court.

Another matter which is a bit of a mystery to me is why some magistrates are regularly able to get through significantly more cases than others. I don't know why that is.

I think they are some of the things that contribute to court delays.

Mr TRIPODI: On that point, do you think there is a legitimate reason for the difference in the productivity of judges? Do some areas deal particularly with cases that might take longer to deal with?

Ms FOREMAN: I'm sure there are those issues and I'm sure there are other issues as well. I really don't feel that I could say anything or add anything more to that.

Mr TRIPODI: Do you believe there is any scope for the extension of court operating hours?

Ms FOREMAN: Yes.

Mr TRIPODI: Are there any other issues regarding the operation of courts or the justice system that you would like to bring to the Committee's attention?

Ms FOREMAN: Well, there are some suggestions. Would it be an appropriate time to mention those?

Mr TRIPODI: Yes.

Ms FOREMAN: A lot of these are nothing new: Improved court list management and scheduling; modernised organisational systems; improved communication between the local community, police, Legal Aid and local courts. I'm sure on some matters that people know are going to be long there could be pre-conference hearings or even over the telephone to ensure the availability of information and witnesses before things go to court. I'm sure that the clerks of the court, if they were able to make changes at the local level, would be able to find how to make changes that were appropriate to their court to improve things. That would be useful. Introduction of benchmarks and standards for how long things are dealt with. I know that that is mentioned in this report. We cannot measure how well they are doing and what changes need to be made if they don't have those benchmarks and standards. Improved community information to reduce the stress of the delay. Perhaps improved training of the court officers. Some are excellent and very supportive and others are very dismissive of people and treat them as a nuisance. Perhaps some sort of identification of those court officers, either a uniform or a badge. A position dedicated to community access within the local courts department. I understand there is not someone who is just responsible for that and I think it is quite

an important area. I understand also the police are not able to order interpreters and if they could do that at an early stage in the process that would assist having interpreters' useful time.

Mr CHAPPELL: Who ultimately does that?

Ms FOREMAN: The court.

Mr CHAPPELL: And when?

Ms FOREMAN: When the person gets to court at the moment.

Mr CHAPPELL: The person is already in court?

Ms FOREMAN: Yes.

Mr CHAPPELL: Then they go and look for an interpreter?

Ms FOREMAN: Yes. People aren't aware that they are entitled to it, but obviously they are told about it inside the court room and it gets adjourned.

Mr ROGAN: You are going to provide us with some material following this, some of which would be confirming your evidence?

Ms FOREMAN: Yes.

Mr ROGAN: Could I just, as a final question, ask you, if you were to rate the system from 1 to 10 on the basis of its delivery of service to the users, from the point of view of efficiency and administration, how would you rate it?

Ms FOREMAN: Efficiency for the actual person, the defendant going to court, I think would be about 2 or 3. The administration I feel that I am less able to give a comment on because I am really not aware of the detailed scope of the work of the clerical officers or the court officers and I am sure they are working very hard, but it just seems to be quite archaic with definite room for large improvement.

There are two things that I would like to commend and that is the community access project at Fairfield local court, which is a joint initiative of Local Courts Administration and the Ethnic Affairs Commission. That seems to be working well to be making some changes, and also Client Services in Local Courts Standards and Benchmarks, which is a project of the University of Wollongong and Local Courts Administration that I understand has run out of funding, but it would seem to have been a very important step.

Mr CHAPPELL: Where was that project being run, only in Wollongong?

Ms FOREMAN: No, it was developing standards that could be applied across the board in consultation with local courts, but I understand it has stalled because of the funds.

Mr ROGAN: All of your remarks are really directed at the local court?

Ms FOREMAN: That's correct.

(The witness withdrew)

PETER CLEMENT BRONNER SEMMLER, Queen's Counsel, Level 31, 52 Martin Place, Sydney, affirmed and examined:

Mr ROGAN: Did you receive a summons issued under the hand of the Chairman to attend before this Committee?

Mr SEMMLER: Yes.

Mr ROGAN: Do you have a formal submission?

Mr SEMMLER: No, unfortunately I was only asked to give evidence yesterday.

Mr ROGAN: Just to acquaint the Committee with your Association, it was formed to campaign for the rights of people using courts to pursue personal injury claims?

Mr SEMMLER: Yes. We basically represent plaintiffs in personal injury litigation.

Mr ROGAN: What is your general perception of the status given to members of the public who become involved with the courts? In other words, what sort of reception do you think a user of the courts can expect?

Mr SEMMLER: From the Supreme Court?

Mr ROGAN: Well, the courts that you deal with, and if you could identify those courts?

Mr SEMMLER: Well, I think they can expect to wait a long time to have their cases disposed of. I think that is the first point I would like to make. I think in terms of the way they are treated once they finally get into court before a judge it is quite satisfactory, but in terms of what they can expect if they are unfortunate enough to be involved in, say, an accident, which is the majority of the litigants in this State, I think they can expect intolerable delays.

Mr ROGAN: Your remarks now are relating to the Supreme Court?

Mr SEMMLER: And the District Court. I think that the delays in this State in the disposition of civil cases, which are principally personal injury cases, is nothing short of a disgrace.

Mr ROGAN: Do you identify any particular reasons for those delays?

Mr SEMMLER: Yes, there is one major reason and that is a lack of judges. There are not enough judges.

Mr ROGAN: What about the procedures and the administration? Do you believe that there could be changes there that might lead to a reduction in delays?

Mr SEMMLER: I think putting money into management systems and procedures and audits and overviews and publishing glossy brochures and things like that is, to use the colloquial expression, like moving the deck chairs around on the Titanic in the sense that if you have ultimately very limited judicial resources there is a limit to the extent to which all of these bells and whistles of management and audit and procedure are going to make much difference to the ultimate outcome.

Mr CHAPPELL: Wouldn't it be true, though, that a great deal of delay from the individual plaintiff's point of view is prior to the matter being ready for court anyhow?

Mr SEMMLER: No. I know that is a perception and the corollary to that perception is that basically the problem is that of the lawyers, that they delay in getting the cases ready for court.

Mr CHAPPELL: Or insurance companies?

Mr SEMMLER: Yes, or insurance companies. Well, certainly it is not in the interests of insurance companies to have these cases heard quickly, and that is the reason why I am here today because I represent an Association of lawyers who principally look after the interests of the injured people, and of course you are not going to have insurance representatives coming along here and saying, "We want to pay out the money quicker." That is not going to happen. There are very few people who actually represent the interests of the people for whom the system has been set up, and the bulk of the litigants are people who have been injured in various accidents, and they get a very, very bad deal out of the system, not because the judges are not performing properly but because there are not enough judges, and it is as simple as that, and you can publish all the reports you like, you can have all the audits and move the management system around, but you are not going to get around that fundamental problem.

I don't even know the terms of reference of this inquiry, but if you want to do something about it, recommend that there be more judges appointed because, as far as I am concerned, the delays in the court system in this State and their effect on seriously injured people who are in great need of assistance forthwith are as serious as the delays in the public hospital system. It is just that they are not ventilated to the same degree.

Mr ROGAN: Does your Association have any comparative studies and figures as to how cases are dealt with in other States, jurisdictions, dealing with the same types of cases?

Mr SEMMLER: No, we don't, but my understanding is that the delays in New South Wales are as bad as anywhere else in the country, if not worse. We have not

got to the stage of preparing a detailed statistical analysis of it, but my view is you simply look to what is actually happening here to determine whether the system works or not and it clearly does not work and I have had a quick look at this - I've only just seen this report this morning - and I see things like --

Mr ROGAN: That is the Performance Audit Report?

Mr SEMMLER: Yes. It says, "Progress has been made in reducing delays and backlogs". The report highlights initiatives which have had high impact up to this point, including greater use of alternate dispute resolution, things like the acting judge scheme and special sittings programme.

What someone who is directing their attention and cerebral activity to this problem should recognise is that you must not simply look at statistics and say, well, it looks like we are disposing of more cases more quickly. That may be correct over the last few years, but you have to look at the quality of the justice that is being dispensed in order to dispose of those cases and I think, if you look carefully at the statistics, the cases are not being disposed of because more of them are being heard in court, which is really what it is all about. They are being disposed of because more people are settling their cases and I think there are a number of reasons for that. A principal reason is that they just cannot wait any longer.

The court does its best with the limited resources to institute things like the special sittings programme and alternative dispute resolution, but from the perspective of the plaintiff, the punters out there in the world who are unfortunate enough to have accidents and be in need of some kind of justice, very often what they are getting is not complete justice at all, but rather they are taking what they can get at the time it is available because, as I say, it is not in the interests of the insurance companies to expedite these cases and alternative dispute resolution does not necessarily deliver a good result for these people.

The report praises the progress being made and it talks about how cases are being disposed of more quickly, but they are being disposed of because of settlements and a lot of the settlements are occurring because people cannot wait any longer and the insurance company dangles an amount of money in front of them and says: Here you are. Alternatively, you can wait three or four years to get your case into court.

A lot of these people are at the bottom of the socio-economic heap, they have lost their jobs, they have suffered severe injuries, they have often lost their house, they have no income and the idea that they can get now half of what they should get under the system if they went into court tomorrow becomes very appealing to them. So the court institutes this system of alternative dispute resolution, which, in my view and the view of my Association, while it might help to dispose of cases, it does not really deliver the quality of justice that should be delivered to these people because the insurance companies take advantage of them, they say: Well, here's something, and these people cannot afford to wait any longer.

The solution is not, as I say, to have more inquiries or management

assessments of these things, it is to appoint more judges and give everyone the right to get into court. The big business community in this State is served very well. The Commercial Division disposes of cases within nine months or so, I think the latest statistics show; the big companies get great results, there is a streamlined fast-track system for them, but for the average man or woman on the street, they wait years. The median disposal time of cases in the Supreme and District Courts has dropped over the last five years, that is apparent, but if you look at the real statistic, which is why has it dropped, it has not dropped because more cases are being heard in court, it has dropped because people are settling and, if you look behind the statistics, if you have personal experience of why they settle, you see that it is because of the fact that they just cannot wait any longer.

Mr ROGAN: Putting aside your strong recommendation for more judges, just looking at the courts administration, do you identify any areas there where the court could be made more efficient?

Mr SEMMLER: In terms of administration?

Mr ROGAN: Yes.

Mr SEMMLER: Well, that question begs the question of efficient to what end? If the end is to deliver quality justice as quickly and as cheaply as possible, which surely must be the aim of a civilised system of justice, then again the answer is don't move the deck chairs around, appoint more judges. If your inquiry - as I say, I don't know the terms of reference - is simply how can we better use the limited resources and not increase the judge numbers but somehow or other change the management structure, there may be ways of doing it, but ultimately it is not going to make a difference to the people for whom the system has been set up.

Mr CHAPPELL: A couple of situations have come to my attention from constituents. Several in fact have given me the impression that participants in the system, the defendants and particularly those backed by large insurance companies and so forth, have managed to drag out the court process by often not being ready on the day, not having all the evidence completed and witnesses not appearing or whatever, and so to me that means two or three appearances in court where perhaps one would have done. Do you see that as a major contributing factor in terms of the efficient use of judges' time and, if that was disciplined better, then the judges would in fact hear more cases?

Mr SEMMLER: Yes. I mean, as I said, it is not in the interests of insurance companies to have judges deliver verdicts whereby their money is distributed to somebody else, so inevitably within the court process that is going to be a factor, but I do not know that greater strictures on the litigants will solve the problem.

In the last five years we have had things like differential case management introduced in the Supreme Court which, in effect, keeps the parties on their toes

throughout the process leading up to the trial and I have no criticism whatsoever of the judges in terms of the way they handle the litigants and the way they handle applications for adjournments, which is what you are really talking about.

I think that, while it is in the interests of insurance companies to adjourn cases, to delay them, to stop the inevitable process of justice being done, in the final analysis that is not the problem because if you go over to the Supreme Court any day of the week these judges are fully occupied. In fact they are working harder, I think, than they ever have in decades gone by. They are working day and night and the idea that somehow or other you are going to fix the delays and the problems by forcing a particular litigant to go on tomorrow is not an answer because you have thousands of other litigants champing at the bit to get into court. So your point is valid in the individual case, but I think the judges, in terms of the management of their courts and the litigants coming before them, are working pretty well to stop that. I think in the last five years it has been managed better than it was.

Mr CHAPPELL: That has improved over recent times.

Mr SEMMLER: But it does not solve the problem of all the people waiting to get on in court. People out there are losing their houses because they cannot pay the mortgages. Anyway, I've given you my view about that.

Mr ROGAN: The Chairman has now returned, but I will conclude this segment.

Mr TRIPODI: This question is difficult to answer because there is no typical case, but on average how many courts administration personnel are involved in a personal injury case and how long would a case take on average?

Mr SEMMLER: Well, in terms of averages, I mean the latest results I think are contained in this Department of Courts Administration thing, I think, but there may be another one out now, they tend to delay the publication of these things. It is called the New South Wales Department of Courts Administration Key Performance Summary and it basically sets out statistical analyses of the matters on hand in the Supreme Court and the District Court, the disposal rate and things of that nature.

I think the most telling statistic in answer to your question is that - and the most recent information I have is in the publication, Bulletin of the Civil Justice Research Centre, Civil Issues, September 1995, Number 8 - the median duration of claims differed depending on the type of procedure. For instance, the cases that go to arbitration that don't get before a judge, the median duration time as at September 1995 was twenty months, just over twenty months; settlement at pre-trial conference, if they were settled at that stage, it is under ten months, but the most telling statistic is the bottom line of this graph on page 5 which shows that, if you want to get into court, if you want to go to trial, if you are a litigant who actually wants the system to deliver, a judge who listens to your case and gives you a verdict, you wait nearly sixty months, fifty something months, and what happens of course is that when all these

reports come out which say, well, we are really achieving a lot and we are disposing of a lot of cases, they are not disposing of them by court hearings because if you say, "I don't want to settle my case, I want it to go to court", you wait fifty-five months on average as at September 1995. Sure, the median for disposal of all cases by all means will be less than that, will be a lot less, because people are settling at an early stage because they just cannot wait. As to the other question, which was about court personnel --

Mr TRIPODI: Yes, roughly what would it cost to run a case? What do you think the department would be paying to run a case?

Mr SEMMLER: The Department of Courts Administration?

Mr TRIPODI: Yes, what would it be costing them in terms of personnel and the judge?

Mr SEMMLER: Well, Supreme Court judges only get about $150,000 a year, plus an associate and a tipstaff, and then the department pays for the court reporters. That is a very difficult question to answer. In terms of actual staff in court, it is probably costing $300,000-odd a year. Divide that by the number of court sitting days and you've got the result.

Can I make this point about that enquiry: I believe the cheapest element in the whole process is the court, the judge in particular, and this is where people make a major error. They think, well, we can't afford to have judges waiting around, we have to bank up these cases, we have to allow them to be not reached. A case gets fixed for hearing and they fix six or seven other cases with it and two of them get on and five litigants have to pay their lawyers, their barristers, their solicitors, their doctors, in some cases overseas experts. In one case earlier this year there were two experts, one from Harvard and one from Oxford, who had come out on I think a medical negligence case fixed for three weeks hearing - I can tell you this from personal experience - and the case doesn't get on. Now all right, okay, the judge has other cases to deal with, but his salary is the cheapest element of the whole thing. Who has to pay for these experts? In the final analysis, it is the litigants, and very often the plaintiffs - these were two plaintiff's experts - as well as their barrister who set three weeks aside and the solicitors. It is a disgrace.

Mr TRIPODI: If the litigants had to pick up the full cost of a court, of supplying a court, do you think a lot of litigants would be happy to do that?

Mr SEMMLER: That is the user pays?

Mr TRIPODI: Yes, or even some litigants. Would there be some litigants who are happy to do it?

Mr SEMMLER: I am sure there would be, for instance, badly, catastrophically

injured plaintiffs whose cases are worth millions of dollars. I'm sure they would be prepared to pay out $10,000 or $20,000 or whatever it may cost, because what they lose in interest on that verdict would make it worthwhile and in fact I would recommend it for commercial litigants. I think it would be a very good idea for them to pay, because they can clearly afford it, they are having a fight with each other over profits, but for the average plaintiff I don't think it would be fair, any more than a civilised society does not require people who go to hospital to pay. There is a safety net there for them and there ought to be a safety net there so far as litigation is concerned.

Mr TRIPODI: It may not be fair, but it may be cheaper and in their interests in certain cases.

Mr SEMMLER: Yes, I would not rule it out as a possibility, particularly in the larger cases, the most deserving cases.

(The witness withdrew)

MARK RICHARDSON, Chief Executive Officer, Law Society of New South Wales, 170 Phillip Street, Sydney, sworn and examined:

CHAIRMAN: Did you receive a summons issued under my hand to attend before this Committee?

Mr RICHARDSON: Yes, I did.

CHAIRMAN: Mr Richardson, the Law Society is the representive body for solicitors. What has been your experience with court delays? Have they improved over the last eight years or so?

Mr RICHARDSON: The experience has been mixed. It is certainly true to say the Law Society does represent all solicitors in this State and I think most solicitors would say that there have been improvements in some areas and not in others. There was a time I think during which there was noticeable improvement in the performance of the District Court in the Criminal Jurisdiction but I believe that I believe that has slowed up a bit in recent times. It just depends on what jurisdiction you are looking at.

There are delays obviously evident now in the Supreme Court, particularly in the Court of Appeal, and in the Supreme Court in its first instance jurisdiction, that were not evident some time ago. As a former witness pointed out to you, there are Divisions of the Supreme Court, such as the Commercial Division, where there are relatively speaking fewer delays than you would expect to find in other areas of the system.

As far as local courts are concerned, again, it depends on where you are in the State but generally speaking their performance has been quite stable over the last five years, although there has been in some parts of the State an erosion and on other occasions a benefit in the turnaround time for cases. So the answer to your question is it varies.

CHAIRMAN: Would you say would help in trying to get a reduction in court delays, say, more judges, differential case management, greater reliance on mediation and pre-trial hearings or additional infrastructure or organisational administrative changes, that type of thing.

Mr GLACHAN: Longer hours.

CHAIRMAN: Would you like to outline what your priority would be to achieve less delays?

Mr RICHARDSON: I think the first thing that needs to be done, and it is a matter that is not new as I suggested, is that there must be a decent information system available to the courts, because I think that most of the discussion about court delays is only starting. While some courts do produce information about the volume of cases they have going through their systems and the delays they experience, there is by no

means an universal collection of information cross all courts in this State and until you have that you have got no means by which you can measure delays in an accurate fashion.

I stress across all jurisdiction because what is happening in the State is that changes are taking place in some parts of the court system that have direct impact on other courts. Whilst the change might be productive of a reduction of a reduction in delay in the first court, it produces consequences in the second court.

I will give you an example. If you start making amendments to the jurisdiction of the Supreme Court in relation to the civil area in terms of money, all you are doing in effect is pushing cases that would otherwise be heard in the Supreme Court down to the District Court. The consequence of that may well be that the treatment of the Supreme Court might improve, and I am talking theoretically here, but the performance of the District Court might be adversely affected because they would have more cases to deal with.

Until you have a comprehensive set of information by which you can measure performance and set benchmarks, and I think basically we will be discussing anecdotes from here on in.

CHAIRMAN: This information that you speak about, that is not available now?

Mr RICHARDSON: You can go to a particular court, you can go to a department and you can get information about bits and pieces of the system, but the courts have different criteria that they apply to the collection of information and there is no systematic, overall view of the system such as is necessary to answer questions about the impact of procedural change, for example, on the problem of delays throughout the system.

Mr CHAPPELL: Is there an ideal model operating in some State or other jurisdiction that you are aware of that and that ought to be looked at?

Mr RICHARDSON: I do not know the answer to that to be honest with you. I imagine that in the American jurisdictions, which have much more sophisticated information systems than ours, you will find some models of that kind. People back in time spoke highly of the South Australian system, but it is not my area of expertise. Maybe Mr Glanfield would be able to talk about that.

Mr TRIPODI: Can you identify any aspects of the court system which you feel have a contributing impact on the court backlogs and delays?

Mr RICHARDSON: It is an open question I presume. I think that the key to this whole issue is to look back at the administrative changes that have taken place so far as the Department of Courts Administration and the Attorney General's Department are concerned. We now, I think, have return to the position as it was, whereby we

have an integrated department under the leadership of Laurie Glanfield who is responsible for the administration of the courts and of the Attorney General's Department.

The separation of those two functions into two departments was, in my view, a mistake and I think it has been proven that that was a mistake because it had the consequence that two departments were created which required their own administrative infrastructures and support and the separation of policy from operational function has never worked. I can see no reason why it would have worked in this instance.

You now have the bringing together of those two functions once again and, I think, an opportunity now presents itself for the new department under its new leader to develop a plan that will result in efficiencies in the administration of the court system. That is point one.

Point two is you still have in this State separation of the management of the courts between the Department of Courts Administration and the judges themselves. The judges, after all, in this jurisdiction, in this State, do not control the budgets that have been established to allow the courts to administer their operations. The budgets are controlled by the Department of Courts Administration.

You go to the federal sphere in this country, the Federal Court or the Administrative Appeals Tribunal, you find there the judges actually control the budgets; they control the expenditures; they control the allocation of funds within the budgets. That is not the case here.

Accordingly, if you have a judge, say the chief judge of the District Court has in mind that he could effect an efficiency by transferring money from one area of his budget to another area of his budget, assuming the money in the first instance is available, the decision to do that is not one that he can make. It is made by the Department of Courts Administration, no doubt on his advice but he does not have direct control over it.

Until you achieve a situation where judges who run the courts have more control over budget, then you are not going to achieve a situation where they can effectively manage their operation. That is the second issue that needs to be looked that.

Mr CHAPPELL: You are talking about the chief judge in each jurisdiction?

Mr RICHARDSON: Yes, that is correct. In the federal sphere you do not have a Department of Courts Administration at all. You have a Federal Court which is administered by the chief justice of the Federal Court and he has available to him a staff of professional people who assist him to provide the services and infrastructure to enable that court to operate. That is not the fact in New South Wales. That is an issue that I think needs to be looked at. It is not a new issue, it has been around for

yonks.

Mr GLACHAN: Is it the case in any other State?

Mr RICHARDSON: Yes, there are differences in each State but the federal jurisdiction is the clearest example of what I am talking about. I am not suggesting for one minute that there is an easy solution; there is not an easy solution; it is a difficult issue, but it is one that needs to be looked at. There are two suggestions. There are many more that could be made.

The fact of the matter is, if you are concerned about delays in the criminal jurisdiction, which I imagine you would be, one of the simplest ways to try and attack that problem is to allow the committals in the State to be properly funded. Committal hearings and preliminary hearings before trials in criminal cases at the moment are not funded so far as accused people are concerned through the Legal Aid system.

In the United States, where they do not have committal proceedings but they have preliminary hearings, you have got a situation where both the defence and the Crown come into contact with one another very early in the piece and can arrange for certain processes to be put in place that lead to the early disposal of criminal trials. It does not happen here because the Legal Aid system in this State does not become involved in the process until after a person has been committed for trial and is to stand trial in the District or Supreme Court. So whilst the Crown has been represented from the outset, the defence has not necessarily been represented from the outset, and that is the problem that has been identified way back. 1979 was the first time that suggestion was made and it has not been taken up by any Government in the State since 1979 as a serious proposition.

Mr CHAPPELL: Does that imply additional Legal Aid funds or re-allocation of the available funds?

Mr RICHARDSON: It certainly requires the allocation of additional funds but I guess you could run an argument that the efficiencies that would be created theoretically because of a reduction in the number of trials that go to full hearing would provide some offset. But it does require funding, yes. Whether it is achieved by offset or by new money allocations from Treasury is the question.

Mr CHAPPELL: You said a case had been made back in 79 about that?

Mr RICHARDSON: Yes.

Mr CHAPPELL: Has that been pursued over time?

Mr RICHARDSON: Yes, it has been pursued.

Mr CHAPPELL: By way of a fully developed presentation?

Mr RICHARDSON: I think there is a fully developed presentation that was prepared by the Legal Aid Commission last year and it was put forward to Government then, and as I say, in the case of 1979, it was a fully presented case then. It is an issue that the Legal Aid Commission at this stage has been trying to see satisfied since 1979-1980 and if they do they have got the full support of the Bar Association and the Law Society of New South Wales. It is a very simple way to actually try and reduce the number of criminal trials that go to court hearing in this State.

Mr TRIPODI: Justice Wood has partly attributed delays in the functioning of courts to party delays. He states:

> "Party delays occur because of the failure of the parties to take appropriate steps to bring a case to the earliest possible hearing and to be ready for trial on a fixed date."

To what extent do you think solicitors are responsible for such delays and does the society have a policy on this issue?

Mr RICHARDSON: I do not think the assertion is accurate at all. I think the causes of delays are many and varied and sometimes it can be a problem with the parties, but I think you have got to understand that the New South Wales Law Society and the solicitors in this State have been at the forefront of designing procedures and systems to reduce the problem of delays. Many of these options have been considered by the courts, some taken up and others not.

Settlement Week, for example, which is a week set aside, no longer than a week, whereby cases are brought to speedy mediation, is a Law Society initiative, not a court initiative. It has support from the courts but it was our initiative. Mediation programmes generally have been initiated by the profession and have been supported by the profession for many years.

In 1992 the Law Society had an access to Justice Forum, which involved all parties, including judges and court administrators, in considering a discussion paper as to the reasons why there were delays in the courts and matters of this kind. One of the recommendations that came out of that particular inquiry was that there should be established by Government a civil justice forum presided over by the Attorney General and appropriately, in the criminal area at least, the Minister for Police.

That forum was established, it was created, that was a Law Society initiative. That was a solicitors' initiative. There have, of course, been other examples of steps taken by other players in the game which impact upon delay, and I heard the previous witness talk about differential case management techniques in the Supreme Court. Differential management techniques in the Supreme Court are an effective way to deal with the problem of delay but it cannot work unless the solicitors of this State

co-operate with it, and they do fully co-operate with it.

Differential case management really is a process whereby processes involved in litigation are dealt with earlier than they would otherwise be. That is really all it is and to achieve that you have to have co-operation from all. That co-operation has been forthcoming from the solicitors and certainly from the Law Society of New South Wales and will continue to be.

There are other examples; I can think of many. The fact is to attribute delay tritely to the parties is in my view misunderstanding the fundamental problems which you are trying to deal with if you are concerned about the problem of delay. It is not just the parties; there are many issues involved in this.

Mr GLACHAN: Time targets and fixed periods for various court processes have been introduced over the last few years. Are these an effective tool to reduce court delays and do these initiatives present problems to your members?

Mr RICHARDSON: They are an effective way of reducing court delays if they are realistic and if the court system has the resources available to it to enable it to adhere those time standards. If you are talking about a time standard that says that when a person is taken into custody the time between that event occurring and the trial of that person should be a certain amount of time, then that is all well and good and it is desirable.

In America they have speedy trial provisions and they have legislation that backs it up and if you do not achieve the time standard then the accused person walks free. That is what happens in the United States; that could happen here if you want it to. If you have time standards, as long as they are reasonable, as long as the courts have the resources and the parties have the resources to meet those standards you can have an effective way of dealing with them.

Mr TRIPODI: Do they cause problems?

Mr RICHARDSON: I think the practitioners in this State basically are prepared to go along with any changes to time standards, provided that they are reasonable, and I think so far as things like differential case management is concerned, which is one way of reducing costs, you will get that kind of co-operation because I think it is in the interests of all parties to have matters dealt with in a quick and efficient fashion, whether you are acting for the defence a civil case or the plaintiff, I think there is an interest in having that matter disposed of.

Mr GLACHAN: Do you think that these measures should be expanded?

Mr RICHARDSON: I think they should be expanded but I do not necessarily believe that the measurement of the time between interviews and cases is necessarily the only solution. I think they should be used as a way of assisting and making

progress with the problem of delay but it is only one component of it. There needs to be the resources and the procedures and the process. We need to go back and look at things like court forms.

Court forms are different for every jurisdiction and yet the type of procedure that is taken in the District and Supreme Court in a personal injury case, for example, is very much the same and yet courts have different processes, they have different forms. These kind of complications are really unnecessary in today's world and there ought to be more uniformity in the forms.

Every court has its own set of forms, it has its own set of processes and that is an issue I think that needs to be addressed, because it adds to problems, it adds to delay, it adds to cost. Particularly, when courts start changing these things without consulting others who might be affected by those changes, you are going to have more problems down the track which is the point that I made earlier on.

If the Department of Courts Administration wanted to have a major onslaught of these types of problems, one of the fundamental things they must have, apart from a good set of statistical information available to them, which is my first point, is adequate technology. They do not have it. The Wood Royal Commission has evidently great technology available to it. You can go across there and see it for yourself. It is high tech stuff and it works. Why can't that be available generally through the system?

It would make for a hell of a lot more efficient justice system than we currently have now if that kind of technology were available. Of course, that is big money, big dollars, a lot of work involved in it but it is an issue worthy of consideration.

Mr CHAPPELL: We have asked a few people about hours of operation of courts. Do you see any opportunity for the extension of the hours of court sittings?

Mr RICHARDSON: Yes, I think there is opportunity. I think individual judges are perceiving that for themselves. There is one judge in the Supreme Court now who sits very different hours to most judges in the Supreme Court, basically starting early and finishing early. What it means is that that particular judge goes between two and whatever hour in the afternoon he decides to leave available for his chambers work, but he is starting early. If the parties are agreeable to it, if a judge is involved in a long case, twelve months, if the parties find it satisfactory, there is plenty of scope for it, and some judges have seen that and recognised that ability.

You talk about judicial vacation, the sitting of judges during judicial vacations. I guess it is no secret that the chief judge in the District Court is very keen to see that issue explored so that the judges sit during the mid year vacation and the end of year vacation. There are all sort of strategies you can implement to achieve that, but the result is going to be more judge time available for the disposal of cases.

If you have a judge sitting in January, if it is a criminal case, the DPP has got to be available, the Legal Aid Commission has got to be there, so there are flow on effects in these kinds of situations, but there are savings and if you are interested in reducing delay you may see an interest in throughput which is the key to solving delay problems.

Mr CHAPPELL: Can I just go back then to your information systems? You talked about the need for better statistical information and also standardising of procedures between different jurisdictions. Are there any other aspects of computer technology particularly available to the administration of courts which would be clearly of advantage?

Mr RICHARDSON: Filing - all filings at the moment are basically manual filings and there is no reason why, if technology is available through the Internet and through many other different sources, barristers use this technology quite regularly, there is no reason why a solicitor or barrister could not file all cases and proceedings electronically with the courts. The courts are very keen to have that themselves. Again, it takes the infrastructure, it takes the technology, it takes the software to achieve that final result. Electronic filing is a real possibility. Whether that is another adjunct to the utilisation of management information systems, it is one I am sure the courts would be very happy with.

Mr CHAPPELL: Are there mechanisms in place then to enable all of these different opportunities to be regularly discussed amongst all of the players in the justice system?

Mr RICHARDSON: I made reference to the forum, the Civil Justice Forum and the Criminal Justice Forum. The idea of that was to enable there to be some discussion of the issues by the key authority, the heads of jurisdictions, the Attorney, the Minister for Police and so on. It was at that level these discussions would take place.

Mr CHAPPELL: Do they?

Mr RICHARDSON: They do in that forum, yes. But the forum needs to be properly resourced. It needs to have the support of all the parties and it needs to have real issues on its agenda. If it were to have those issues on its agenda and the will was there, much of this is about will, then you would see some progress being made I feel sure.

Those opportunities do exist. There is the possibility for this to occur and I am optimistic that under the new administrative arrangements, with the new head of the department, there is a real chance that something will occur that will progress these issues. In fact, they are very simple problems that do emerge. Ask yourself why does it cost $6.50 for me as a litigant to get hold of a photocopy of a page of transcript in a court proceeding? Why does it cost me $6.50? It is a horrendous figure to

contemplate when you are looking at a 2000 page transcript as can be the case.

Mr ROGAN: Earlier on today - I do not think you were here during this evidence - but Mr Marslew, representing an organisation Enough is Enough, basically representing some victims of serious crime, made some fairly strong observations about how the court system generally is very alienating to these people and not very user friendly. Is there any way in which solicitors could play a role in making the court system user friendly?

Mr RICHARDSON: There have been programmes over the years. There was a court programme run by the law Foundation which was designed to achieve a more user friendly Local Court where the needs of all the parties that appeared before the court were taken into consideration and addressed. There is now a programme running down at the University of Wollongong which is similar to that.

Yes, there are ways in which you can do that sort of thing and it is important to do it, but if you want to have a user friendly court, you need to have court staff, chamber magistrates, those ancillary staff who work at courts, sheriffs officers, solicitors, barristers, all involved in some programme to achieve that kind of end.

Courts I think basically will be alienating to people so long as people in the community have a limited knowledge of the judicial system. It is, after all, a place to which hopefully none of us will go, but if you do go, it is naturally going to be a foreign environment to you, whether you are Australian born person or from whatever part of the world you come it is going to be an alienating experience.

That is going to be here with us for a long time. The challenge really is to provide more information to people about the system and the way it operates and there have been many attempts to do that but I would say the level of understanding in the community of the court system today is no greater than it what it was when I started in the law.

Mr ROGAN: Does Law Society have specific programmes that are directed at that?

Mr RICHARDSON: Directed at people? We have a Community Assistance Department which is directed at people, besides giving information about the legal system. It is a phone-in system, it is computerised, it has got prerecorded tapes, on different areas of the law and procedure. It also enables live communication to the person on the phone and an officer of the Law Society and, if necessary, a referral to a practitioner to help a particular individual with his or her problem.

That is not nearly enough to deal with the problem that you are concerned with which is a far bigger problem. It can have cultural issues to be addressed and all sorts of things. In the end, the desirability of making the systems in the courts more user friendly is an objective issue in the community. The department really should call

upon all of those who have an association with the courts, including the Law Society and the Bar Association and the judges, to participate in achieving the particular strategies that will make the courts more user friendly.

Somebody has to sieze the problem. I think too often individual players are thought up new ideas and run off with them without involving everybody else in the system in the design of the idea and its implementation. That is the difficulty. The model court project is a classic example of that. A lot of money was spent on designing a model court at Blacktown but the flow on effect of the findings from that project into the Local Court system was minimal.

Mr CHAPPELL: Because of lack of resource?

Mr RICHARDSON: Because of lack of adoption of the ideas within the plans of the department that designed the system. You have to embrace it and drive those changes through the system to achieve meaningful change. As it was, it was a huge new project and it was very interesting and a lot of things came out of it, but in the end are we better off than we were before the model court project started and the answer is probably, no, we are not.

Mr ROGAN: This is the last question, I understand. Do you have any other observations to make, generally speaking, on the efficiency or the administration of the court system for the Law Society?

Mr RICHARDSON: One observation is I think that the courts ought be allowed to have greater flexibility in the way that they use their resources. I think that the relationship between the Department of Courts Administration and the heads of jurisdiction does need to be changed, it needs to be looked at, possibly freed up a bit. I am sure the new head of the department has that in his mind.

I think that is probably one of the areas, and probably I think that Government has to acknowledge that justice is not cheap, it does cost dough, but it also is entitled to expect that the judges and the courts give good performance and I think the one way in which they can encourage better performance is by giving real incentives to the courts, such that if, for example, there is a revenue generating activity that is administered by the court, rather than that money just pouring into consolidated revenue to pay for road development or other projects, I think it would help the courts if they were able to use the advantages of that commercial activity to better the system themselves.

I think that sort of strategy ought be adopted to give some encouragement to people who administer the courts to in fact make the changes, which they probably have in mind anyway. The courts administration system is full of very good people and they have ideas and I am sure that if they were given the incentive to realise the commercial opportunities, the incentive being the realisation of those opportunities, and give them more budget to use on enhancements, then you will start seeing some

exchanges.

At the moment, as I understand it, a lot of the efficiencies just result in a reduction in the Government's allocation to the budgets of the court, which is not really the right approach I do not think.

(The witness withdrew)

DOUGLAS JOHN HUMPHREYS, Manager Criminal Law, Legal Aid Commission, Level 1, 323 Castlereagh Street, Sydney, sworn and examined:

CHAIRMAN: Did you receive a summons under my hand to attend before this Committee?

Mr HUMPHREYS: I did, Mr Chairman.

CHAIRMAN: Can you provide us with a brief overview of the types of people who use your services?

Mr HUMPHREYS: I can only speak in relation to the criminal law area of the commission. We represent persons charged with criminal offences who fit in with the commission's means test and policies. The means test is basically if you are earning, after adjustments are made for housing and dependants, more than $195 per week you do not receive Legal Aid.

In relation to our policies, we provide Legal Aid to persons charged generally with criminal offences, although there are exceptions. We do not provide Legal Aid in traffic matters; we do not provide Legal Aid in - Mr Richardson made a comment - committal matters except if the person is charged with murder or attempted murder; we do not provide Legal Aid for people charged with some particular offences which are before the Supreme Court in its originating jurisdiction, for example contempt; matters under the Land and Environment Act; matters like that; but generally if it is a charge of any sort of criminal offence, you are entitled to Legal Aid. Another significant area we do not provide Legal Aid is to respondents in domestic violence matters and we do not provide Legal Aid generally in summons matters unless there is a possible gaol term involved.

Mr CHAPPELL: Could you just for the record tell us the scope of services you provide to your clients?

Mr HUMPHREYS: We provided aid last year to in excess of 77,000 people. I have a budget of approximately $36 million per year and our aid is provided through a mix of providers, that is salaried to the Legal Aid solicitors and through assignments to the private profession. We estimate we aid 70 percent of matters of defendants appearing before the District and Supreme Court. We are probably providing a higher proportion of aid to appellants in the Court of Criminal Appeal and the High Court.

Mr CHAPPELL: You are supporting reporting 70 percent of those people that go to court?

Mr HUMPHREYS: In the District and Supreme Court.

Mr CHAPPELL: What proportion of those who seek aid are granted aid?

Mr HUMPHREYS: Our guidelines are well known to the private profession and we have a refusal rate of about five percent. We believe we target very well those people who are eligible for aid to the private professionals through our own ability. We target those people who are eligible for aid very well. People know if they are not eligible for aid.

Mr CHAPPELL: Are people falling through the net because at the end of the year you have run out of money?

Mr HUMPHREYS: No. If they are eligible for aid, we have to grant aid. I believe a lot of people fall through the net because they are simply ineligible for aid because on the means criteria they are outside our means test.

In my belief the average person in the street who is maintaining employment, has a wife who may not be working and has two kids, if they are charged for an offence which there but for the grace of God could go all of us, like a culpable drive or involved in an accident, something like that, they would be ineligible for aid. People who are unemployed, people who are in gaol are entitled to Legal Aid and they receive it. There is a vast pool of people who are middle-class, working, even lower class, who do not receive Legal Aid.

Within the criminal area there is a requirement under a High Court decision of Dietrich v The Queen to provide Legal Aid or that legal assistance should be provided to a person who is indigent and through no fault of their own does not have legal representation, which dictates to us that we must provide Legal Aid.

The more money that is provided in the criminal area, means the less money we can provide in other very very important areas of people's existence, personal injury law, consumer law, family law and all the other areas that we do provide aid. It is a concern of the commission that we cannot provide aid where we would like to.

We are budget driven, rather than being demand led. So we will alter our policies and our current points such that we do not receive our budgets. It simply means we just refuse aid in more matters.

Mr CHAPPELL: Does the commission have a set of priorities, in other words you look after criminal applicants first?

Mr HUMPHREYS: No, we try to balance, the commission is always reviewing its priorities and its policies for the grant of aid. We review those constantly and change them where we believe we have some additional resources. For example, we have been provided by the Commonwealth, under their access to justice programme, additional funding which is specifically targetted at family and civil areas. Through that we have been able to introduce some new programmes and we have been able open an office in Coffs Harbour, which targets very much a civil and family area.

There has been no new money for crime. We have to make do with what we have, and try and see what we can do by way of efficiencies to make the money go further. For example, such efficiencies that have been introduced in the last few years are the introduction of solicitor advocates, the use of uninstructed counsel, instead of having solicitor and counsel, you may just have either solicitor, who appears as advocate, or you may have counsel only.

We are using lump sum funding. We will estimate the length of time a matter is likely to go and we will offer the counsel or the solicitor an amount of money to finish that case. If it goes over, then that is solicitor's problem. If it goes under, that is our problem. It is a sort of a roundabout system where we believe can get better value for money out of the legal fees that we offer.

Mr CHAPPELL: So you have made those sorts of adjustments but you have not had to drop basic criteria, you have been working down from $250 a week?

Mr HUMPHREYS: No, the basic criteria are pretty much the same. We introduced late last year a national means test which we believe is one of the problems requested that Legal Aid should be available across the States to generally the same sort of people. The means test is pretty much the same as it has always been with some adjustments for CPI, but again I say most people who have a job, mum and dad are working and a couple of kids and they have got a mortgage, will not get Legal Aid even in a serious criminal matter.

Mr CHAPPELL: For those people who fall outside, even just outside your safety net, your criteria, is there is there any other support available for them in the system anywhere?

Mr HUMPHREYS: The only support that is available is the pro bono system that the Bar Association and Law Society run which is private practitioners who give up their time for nothing to appear in a matter, or as generally happens, people buy, beg, borrow, sell their home, sell their car, do what they have to do to pay the fees that they are required to see a matter through.

Mr ROGAN: What areas of court operations do you see as having the most negative impact on court users?

Mr HUMPHREYS: The chronic over listing of matters in the District Court and the Supreme Court and Local Court. I am aware of many occasions where, from my point of view, it causes the commission difficulty because we have to have the matter prepared, which means we would pay for a barrister to turn up on the day, we have a solicitor there, they have may have issued subpoenas, we may have got witnesses ready, people get called in. The same applies I might add with the prosecution, and I am only talking criminal matters here. They have got the police there, the witnesses there, and the matter is not reached and we are told to go away and come back another day.

That is taking police off the streets; it is alienating witnesses who on many occasions really do not want to be there, but they accept they are part of it, they give up their time to come in, having to take a day off work and they are not fully compensated for the amount of time that they have taken off.

You have got increased costs on the prison services. They have to bring people back into court and keep them elsewhere. Matters that are not reached, they cannot classify people. If a person gets a sentence they are classified, which might mean they go to a lower security area. When they are on remand, there is maximum security. The quicker people are sentenced or their matters are finalised, they are either out of the system because they are found not guilty or they are sentenced and they can be classified to a lower security prison which is generally far cheaper than having them in maximum security.

The fact of the matter is it costs more than it costs to house a prisoner at the Hilton per night to keep him in maximum security. It is 2,000 to keep him in maximum security. It would be very, very cost effective if we can get people through the criminal justice system quickly.

Mr CHAPPELL: The point is it is just as costly to the Legal Aid Commission for each of these delays in the system as it is for anyone else paying their own fees?

Mr HUMPHREYS: Exactly. If we are paying for a matter that does not get reached, it is costing us money and it is dead money and it is very important for us that we can put our money into services, not into administration.

I can give you an example. I read in the Law Society Journal, this is the first I knew about it, about a week ago that the Police Department are going to introduce a fee of $30 for processing each subpoena that they receive. In any criminal matter that I know of there is normally two or three subpoenas to the Police Department. I suppose it is necessary for us to try and corroborate as best we can what the police may say has happened and get corroborating documentation, and that may lead to further subpoenas being issued, but normally we issue at least one subpoena, possibly two, on the Police Department in any criminal case.

The then impact of that fee could be up to $100,000 on the Legal Aid Commission for that 3,000 subpoenas issued per year. That is going to be $100,000 out of the Legal Aid Commission's pocket in administration and no net effect for it.

We pay $6.50 a page for any transcript that we require in a criminal trial. The Crown does not. We pay the full fee. The cost to the Legal Aid Commission is $1.4 million a year in transcript. That is $1.4 million out of my budget that I am not getting for, except pieces of paper, essentially photocopies of what has been prepared anyway. They cause us a lot of difficulties.

Mr Richardson made a copy earlier about the lack of Legal Aid for committals. The Legal Aid Commission, as does the DPP, as does the Bar Association, believes that if we had Legal Aid in committals, we would in the long-term save money. It would take two years before we would see the impact on it because it would take that amount of money time for us to be paying for it. It would stop the matters going up and also disposes of the matters that were there.

We ran a pilot at Sutherland and Hurstville Local Courts with aid for committals. The results from that were significant in that we believe it warranted a much greater trial to be run. We put up a proposal which had independent analysis from an accounting firm and it was going to be overseen by Dr Don Wedderburn, the head of ^ BOSCA. We put that up and it was rejected.

Again, we are in a situation whereby we have got nowhere really to go. We require additional funding. We are talking about a million dollars, and I say only a million dollars because in real terms in terms of the justice system that is peanuts. For a million dollars we could do a pilot in the Sydney Western District Courts which would show once and for all whether or not Legal Aid in committals is cost effective because it would be take two or three years before the savings become an apparent.

The savings we are talking about are savings to the Police Department, with the matters being disposed of in the Local Courts, Corrective Services in getting the matters through the system more quickly and not bringing people back and forwards all the time, savings to us in not having matters go to trial where they are pleaded. Also when they do go to trial we believe they will be shorter because the issues will have been defined and useless lines of cross-examination will be disposed of, the witnesses that were not going to be helpful would not be cross-examined at all.

Mr CHAPPELL: Can I just take you back to $6.50 for a photocopy of a page of transcript? I assume that it is just regular, that there will be a number of people seeking copies of transcripts in pretty well any case. Can I also assume that the transcripts ultimately come out at the other end of a word processor these days? In other words, why are not multiple copies made there or then and you could probably sell a whole bundle of them for the cost of the paper, rather than $6.50 a page.

Mr HUMPHREYS: I believe the genesis of the $6.50 a page goes back to a Curran Report and a requirement that transcripts pay for themselves and they went from $2.50 to $6.50 in one hit, which had a huge impact on us and of course we lost money as a result. There is no doubt that transcript is costly to prepare and the user pays principle, which I think is the genesis of the $6.50 figure were to be equally applicable the Crown then the DPP should be paying for that as well as us and the Courts Administration should be paying a proportion of that. The judge gets a copy, the DPP gets a copy and we pay for it but we are the only ones that pay the money.

Mr CHAPPELL: Could you from your perspective give us an idea of what you see as, and rank them in order, the major issues contributing to court delays?

Mr HUMPHREYS: I think that firstly the introduction of the Director of Public Prosecutions Office into all prosecutions, that is taking over from the Police Prosecuting Branch, would have an enormous effect.

Mr CHAPPELL: It would be deleterious or beneficial?

Mr HUMPHREYS: It would be beneficial having the DPP in place of the police prosecutors. In my experience the police regularly over charge. I spoke to a solicitor this morning - because the person was charged with attempted murder we were involved in the committal - the person was charged with attempted murder, the DPP become involved, it was then broken down to a plea assault. It was a fairly serious assault, but assault is capable of being disposed of in the Local Court. Because of the police prosecutors do not have authority to substitute charges, withdraw charges and negotiate with the DPP.

We believe that would have a substantial effect in keeping more matters in the Local Court and we believe it would also allow more matters to be disposed of by way of a plea of guilty than is currently the situation. For a Police Prosecutor to withdraw a charge he has to have the permission of the Legal Services Branch. It is the complete hierarchical structure and they have got no independent authority to substitute charges. They have got to proceed, they have got no authority. The DPP do.

I think there is a need in relation to all of the courts systems for a holistic view to be taken. One of the problems I think is that iniatives happen but in taking initiatives there is no real looking beyond what the effects will be in the particular jurisdiction. So that the effect of what happens to the Legal Aid Commission or the effect of the DPP or the effect of whether the Department of Corrective Services can deal with the iniative. None of that is looked at.

Okay, particularly where you have got individual departments who are receiving separate funding and they have got to go to Treasury to seek separate funding, if you can pass burden on to somebody else, that is a really good of way in administration to make your patch pretty good and make somebody else's problem.

An example of that would be that two years ago the Supreme Court were concerned at the level of delay in murder trials, so they had a blitz, they had about eight judges of the Supreme Court in the Supreme Court and they were going to knock over the list. That took them out of other areas but it met the problem in that area. Of course, we did not get any additional funding for that. Because we have only got a set number of people who are in-house, we had to brief out and that was far more expensive. We could not use all of our public defenders that we have got employed. So whilst the Supreme Court matters solved their delay problems, they put on us additional expense which we had to try and make up for in other ways.

Corrective Services do not have sufficient protective custody places in Sydney. So what they do, they transfer them down to Goulburn or other places. That means we have a client to who is Sydney based, Sydney charged, when he appears in court, we have got to go and see them. Rather than being able to take an hour and a half to go out to Long Bay to see them, get instructions and come back, we have got to go all the way down to Goulburn and all the way back.

We get people from Newcastle being brought down to remand at Long Bay, rather than holding them at Maitland, so the solicitors at Newcastle can service Maitland. It is all a problem of different departments have got different problems that they are solving in different ways but they have ripple effects that are enormous. I think there needs to be a co-ordinated approach and I believe the forums that are being spoken about are a good start but I think it needs to be taken a lot further. We have regular discussions with the public defenders and the Director of Public Prosecutions Office.

Mr CHAPPELL: Are you a participant in that forum?

Mr HUMPHREYS: No, my managing director.

Mr CHAPPELL: The Legal Aid Commission is?

Mr HUMPHREYS: Yes, we take up issues but I think it needs to go down to a far far greater level. I think Treasury needs also to understand that sometimes money that is being spent upfront in the long-term will save money. There is a difficulty in convincing Treasury that that might be the case. Particulary they are concerned about cutting budgets overall rather than spending more money.

Mr CHAPPELL: Do you believe that those issues that you see as being appropriate to discuss in the forum should also be addressed by other some other party in the system?

Mr HUMPHREYS: I believe the forum would be the best way of saying we want other bodies to look at nuts and bolts issues, if you like, are there enough interview rooms in the courthouses, what can we do to stop the problem there, let's try to push matters down, but it also requires a lot of will and drive to ensure that when issues are addressed, that action is taken.

In Wollongong courthouse there is one custody interview room there. I was down there last Monday. There were ten clients in custody. The people do not arrive with Corrective Services until 9.30. Realistically, it took us, one set of solicitors, you have only got one interview room, until about 11.30 to see all those clients and that is allowing ten or fifteen minutes per client, which is fairly minimal I would have thought. The net result was that the magistrate had finished the work he had available, the non-custody, but he was waiting on the Legal Aid Service to finish seeing people in custody before he could come up and start those people, so you just waste in inefficiencies.

There is a lot of things like that, and I believe the witness, the young lady from Courts Administration, was able to identify a lot of nuts and bolts. Things like interpreters. Cannot get interpreters. Standing around waiting, not being able to get an interpreter. The matter is stood down, the magistrate goes off and has a cup of tea.

Mr CHAPPELL: There is no logical reason in the world why that should not have been known in advance.

Mr HUMPHREYS: Exactly. There are some systemic things I think the DPP needs to talk about. The DPP adopted a new policy of not consenting to judge alone trials in high profile matters. The net result is that trials where there is a judge alone would probably take somewhere between one third and one half of the time than if it goes the full length but the DPP would rather have the matter dealt with by way of a jury. The sort of thing I am talking about is murder with diminished responsibility or provocation, they don't want a judge dealing with that, they prefer a jury to deal with that. That is the new director's policy.

I am aware of one high profile matter, that I would prefer not to name because it is running in court, where the DPP refused to consent to a judge alone trial and the net result is the trial is going to run four months longer than it might have otherwise done, and I cannot say whether or not it will affect the result. But that is an issue needs to be looked at.

The DPP have an insistence in New South Wales of running trials again whether there is a hung jury. I am aware of some matters where there were two hung juries, where the DPP presented a third indictment. What you are doing in terms of throughput is slowing them down enormously. They tend to be longer company frauds, long conspiracies, and at some point in time there needs to be made a value judgment as to whether or not if you put these people up and have them tried, a jury cannot agree on a verdict, is it really worth the effort to the community, the cost? We are talking about $20,000 a day.

Mr CHAPPELL: Are those matters that you are referring to there, are they subject to active debate in the legal profession at the present time, the matters of judgment and policy development by the DPP, as to specifically judge alone for instance?

Mr HUMPHREYS: They are the sole prerogative of the Director of Public Prosecutions.

Mr CHAPPELL: He has authority to make that but is there dispute in the profession about whether the judgment is valid or not?

Mr HUMPHREYS: Yes, there is considerable concern in the defence community at the basis upon which the DPP is refusing to consent to judge alone trials and there

is enormous concern that almost as a matter of course clients or defendants are being present again for trial where there has been a hung jury. Some of the matters are ten years old, twelve years old, company fraud matters, where they put it up, they come to trial, hung jury, and they are going again. The cost to me, when I say me, I am talking about the Criminal Law Branch, is enormous.

A third point is that the Court of Criminal Appeal in this State have a reluctance to order acquittals where there is a successful appeal. They would prefer to order a retrial and go back to the beginning.

There are many grounds of appeal. One of them is unsafe or unsatisfactory verdict, which is on the evidence that was presented the jury reached a verdict that is wrong. In many cases they will not rule on that particular verdict as a ground, they will prefer to rule on a fairly simple legal point and they have sent it back. It is far easier and quicker get it out of the CCA and get back to the District Court. The DPP have to represent the trial.

I think also there is a need for the Director of Public Prosecutions to screen cases a little more carefully. A matter this week that again has caused me concern was a longstanding company fraud. There was a committal; the two clients were both discharged at committal; the director presented an ex officio indictment, which means that notwithstanding the fact that they were discharged at committal, they still have to appear for trial in the District Court. We paid a barrister twenty-odd days' preparation fee because it's a huge fraud, there's 46 binders of material. He had to look at that and be ready for trial. The matter came up for trial on Monday and an adjournment was asked for and it was no billed on Wednesday. Now I find that just extraordinary. It is outrageous. These people have had to pay. One of them was legally aided and one was not. Because they have no billed it, they have no right to ask for costs because you have to have a verdict by jury in order to get costs. The Director no billing it - and there is no control on the Director when they no bill that - means they are denied the opportunity of asking for costs.

Mr CHAPPELL: And is that outcome assessed by any part of the system?

Mr HUMPHREYS: No.

Mr CHAPPELL: So it is just an experience that is put behind us and it has cost them a lot of money.

Mr HUMPHREYS: That's right. The statistics that come from the court, they only look at how many matters are disposed of, they don't care how they have been disposed of, so a guilty verdict or a not guilty verdict or a case no billed is all recorded as being finalised.

Mr CHAPPELL: It is a factual recording.

Mr HUMPHREYS: A bit like the hospital system. They use a measure of efficiency of separation. Now that is either discharge or death, they don't care which, as long as you separate it. I don't regard that as a particularly valid measure of efficiency.

Mr TRIPODI: Do you see any benefits in the extension of court hours?

Mr HUMPHREYS: I think there are benefits, but it is going to require resourcing of all of the people that are involved in the court system, so it is not just responding and saying, "Okay, we will open courts later and let them run later", you have to give extra resources to the DPP, you have to deal with the Corrective Services problems, the police problems and the defence problems. I think we can make better use of the time we have got.

Mr TRIPODI: Are there any other issues of concern involving court delays that you would like to raise? You have gone through quite a few.

Mr HUMPHREYS: Possibly just the funding issues in relation to Legal Aid. I touched earlier on what money we have. The Commission is very concerned that it is being increasingly diverted in fees and charges away from service delivery to administration, and I set the example of the Police Department.

Another good example is the fact that we have been recently denied access to what little money was available under the Suitors Fund and the Costs in Criminal Cases Act. The department, or what was the Department of Courts Administration, has sought advice and they are of the view now that because we are the Crown, in those limited areas where we could get costs orders, if a person is legally aided, we are no longer entitled to do that. What that does is it takes away an avenue of funding that we might otherwise have had to put into service delivery.

I think you need to very carefully look at what imposts and charges are placed on legally aided matters, an overall prime cost, and try and allow us to put money into service delivery rather than writing cheques to other government departments.

(The witness withdrew)

JOHN THOMAS HENSHAW, Solicitor, of 16 Conjola Crescent, Leumeah, practising at 179 Bigg Street, Liverpool, sworn and examined:

CHAIRMAN: Did you receive a summons under my hand to attend before this Committee?

Mr HENSHAW: I did.

CHAIRMAN: Could you give us your opinion on the major contributing factors to court delays and possible solutions?

Mr HENSHAW: I have heard the speakers before me and I endorse what they say.

Mr ROGAN: Do you have a submission?

Mr HENSHAW: I do.

CHAIRMAN: Is it your wish that the submission be included as part of your sworn evidence?

Mr HENSHAW: Yes. I heard what was said here by the last two witnesses and I have to say I agree with what they say. They have a lot more knowledge in those areas than I do and I am not a full-time litigant myself, I have been involved in Law Society affairs over the years and touched on litigation and been involved in litigation, but not in an exclusive way as much as they have, and I certainly agree with what they say.

I have also experienced delays in matters and what led to this one was a case where we were suing a company on behalf of a client for some substantial sum of money to both of them and it took four years for the matter to get dealt with in the District Court at Liverpool and finally, when it was dealt with, the judge took a year to give his verdict and, at the end of the day, the company we were suing went broke, even though it got the verdict against them. Whilst that was a bad instance of the system, it was rather disgraceful at that time, the way the court system was unable to meet the requirements of the average litigant. If you owe me money I should be able to expect that, within a period of three months or four months of the case becoming a defended one, the thing is dealt with. Until the system gets down to that it is not working properly and I think that whatever needs to be done in order to meet demands of people, to stop people hiding behind the system as a means of avoiding debts and what have you, until that is achieved there is no success and I think that, quite apart from the money that is spent from the State, there is an enormous amount of money.

Clients who are owed money just simply are not prepared to spend money and time and wasted effort, they're relying on a court system where people use it to avoid paying money. That is a disgrace, I think. I think it has improved over recent years,

but certainly what existed before was terrible. In the middle of it was a whole whack of third party personal injury cases which were blocking the whole system. I think a lot of those have been disposed of in the meantime and perhaps they should be dealt with in a separate division anyway so that average commercial litigation where people are chasing money that is rightly owing to them should have fairly speedy judgments.

CHAIRMAN: We understand that you open your office until 10 p.m. of an evening. What were the factors that made you do that or led you to do that?

Mr HENSHAW: We had the perception that there were a lot of people who, whether they were buying their first home or whether they were in family law matters, would find it handy to not have to take time off from work to see us and we advertised and we have continued to advertise for two years and obviously because we continue it has proved to be somewhat successful, but it proved also to be something that business people appreciated as well and, as far as I know, we are the only late night lawyers. We are there until 10 o'clock every night, there is a lawyer there until that time, and that is certainly appreciated by people who use the system.

CHAIRMAN: So the response from your peers is that they are still looking at you. As far as you know, there is no other firm that opens up late?

Mr HENSHAW: As far as I know.

CHAIRMAN: Have you had any experience with Blacktown court's extended operating hours? What is your opinion of extending the operating hours of courts generally?

Mr HENSHAW: I think there is a problem because I think there is a difficulty getting professional people, who work long days anyway, to work after hours. The way we do it within our firm is that they start at 2 o'clock and work virtually a shift on the day they are rostered to work the late night system, but I think that generally to apply it at night time there would be a lot of unrepresented people. I heard that it was not a successful operation, that it was not used very much and it faded out because it was not used, so I suspect that is still the position.

CHAIRMAN: In brief, would you like to give us a couple of ideas of your major concerns, apart from that specific example that you mentioned earlier?

Mr HENSHAW: What I put forward was put forward at a meeting of Law Society presidents some three or four years ago and it was unanimously endorsed by them. It went forward, but nothing happened because of some objections in principle to it, and it was briefly this: Litigants are so keen to get their matter dealt with on a number of occasions that they would gladly pay for the services of an arbitrator out of their own pocket to hear the matter and get rid of it, rather than have it sitting around waiting for three or four years in the court list to finally get around to hearing it. I know those delays have reduced, but the concept of it was that the Attorney-General

would apply, on a statewide basis and on a regional basis, groups of experts who would act as arbitrators in selected areas, so that you would have building experts, you would have experts in road traffic matters, you would have experts in the various types of matters that go before the court.

When a litigant was in a position where he wanted a matter to be heard and there was a defence on, he could go to the registrar and ask for the matter to be dealt with by an arbitrator. The registrar would then, having found out what length of time it was likely to take, seek out an arbitrator from his list and obtain an estimate of the fee that would be required to be paid up front. The litigant would pay that fee into the court and then the arbitrator would hear the matter within a time lapse of, say, two months or thereabouts. The idea of that was where I think your Committee might well be interested, that it would take the matter completely outside the court system.

Mr CHAPPELL: But managed by the court?

Mr HENSHAW: Yes. In my view, and it was the view of my peers, it would be proper for the decisions of arbitrators who were such experts to be non-appealable except on a question of law, in other words you would not have rehearings of facts again in the court system, but at the end of the day people would have prompt justice by people who knew what they were doing.

As for the venues, there are a number of venues particularly throughout the State where there are old courthouses that are no longer being used, old town halls, historic buildings and schools of art, old police stations and what have you, where there would be facilities, and hopefully they could be made available free of charge to these arbitrators to hear the cases. If that could be achieved, you are saving, from the government point of view, the cost of it being heard in a court system, which costs a mint - I used to work in the court system once - and the support staff would not be needed and the accommodation would not be needed. You would have people having the matter dealt with quickly; the lists would be reduced and, as time went by and as your waiting lists diminished, so would the need for this system to be used, so that if you got back to the stage where there was a very short time for normal matters to be dealt with in the court system then people would not have resort to the system because it would not pay, so it would be a user pays system, but one which would resolve itself over a period of time.

Mr CHAPPELL: Is it based on the agreement of both parties to participate?

Mr HENSHAW: No, it would be for the plaintiff presumably, who wants to get paid a debt or whatever else his cause of action is.

Mr CHAPPELL: He would apply to --

Mr HENSHAW: The registrar.

Mr CHAPPELL: -- the court to have this matter dealt with in this way. A court officer would decide, the registrar would decide, and therefore that is the way it is dealt with?

Mr HENSHAW: That's right, and he would say: Right, lodge $1,800 or $2,000 or $3,000. The average person in a personal injury case would be very happy to have that. Ultimately it was my submission that costs be met by the unsuccessful party as well, so that it may increase the ultimate costs of the person who pays, but that is a small amount for a person who is going to wait around for four years to get a commercial matter done and find the company has gone into bankruptcy in the meantime. They would be happy to stop people using the system to avoid paying.

Mr ROGAN: You were talking about one of your clients where there was delay in the handing down of the judgment. To a lay person like myself, can you offer any reasons why - and I know you cannot speak on behalf of judges - there should be that delay?

Mr HENSHAW: No, I don't know what the delay was and I don't want to mention the name. I did make some enquiries at the time, but of course the problem is that, if someone makes a complaint, you are not exactly sure what the outcome of that complaint is. I am not suggesting the judges would alter their views or otherwise, it is just not something that you would loudly proclaim from the rooftop that you hadn't had your case dealt with because you might find it dealt with very quickly to your disadvantage. I don't know, but the former Attorney-General was looking at that area and I think he offered to intervene in cases where there was a problem, but at that stage we were just about to send a happy birthday to the judge, happy anniversary for the case.

CHAIRMAN: So it was primarily the judge's fault or were there other factors involved?

Mr HENSHAW: I didn't go and ask him, all I know is that he reserved his decision and it was a year before he handed it down and in the meantime the company went broke.

Mr ROGAN: One can only assume that the judge had not written his decision up, otherwise he could have done it there and then or within a very short time. It therefore suggests to me that, if the judge writes it up, say, twelve months after the case, memories being what they are and impressions being gained in the court at that time, a person of my mind would have to then say: Well, how deliberate is that judgment? How sound is that judgment?

Mr HENSHAW: I agree. I don't know what system they use for their note keeping, it would vary from judge to judge I assume, but I would hate to rely on my memory after twelve months as to whether someone looked like he was a thief or whatever.

Mr ROGAN: I guess you have also experienced the problem that was referred to by the witness from the Legal Aid Commission where cases are arranged and they simply don't get to them on the day and the resources of the court plus the solicitor and everybody is then wasted for that day?

Mr HENSHAW: It is a most frustrating thing and, when you look at it from the point of view of the umpteen people that are sitting around waiting for a case to get dealt with, it is just a disgrace really and there is no commercial acceptance, there should not be any commercial acceptance of that. What I am suggesting to you is that judges should spend their time deciding matters of law and I think, when it comes to deciding the general facts, in most matters it can be done by people far less qualified than judges at far less expense to the State and the function of the law should be left to the judges, but I don't think that they would have to be involved in every bit of facts that are put before courts.

Mr ROGAN: It really goes beyond the lack of efficiency of the court because some years ago they caught a person burgling my office. A young lady who was driving along reported that burglary. Subsequently she appeared as a witness in the court and spent a whole day, took a day off work, and that case was not reached. The view she expressed to me was that that was absolutely the last time she was going to report any wrongdoing because she simply was disadvantaged by it, so therefore that is one person out there in the community who is not going to be assisting in the justice system.

Mr HENSHAW: Yes, I can understand that. I feel it many times and what I am suggesting to you is that, in an arbitration system such as this, it would be set down on the day, it would be heard on the day, it would be done in a far less formal atmosphere than a court and achieve exactly the same result that would be achieved by a court hearing at no cost to the State.

(The witness withdrew)

CLAUDE LESLIE WOTTON, Principal Courts Administrator of the District Court, John Maddison Tower, Goulburn Street, Sydney,

LAURENCE GEOFFREY GLANFIELD, Director General, Attorney-General's Department, 8-12 Chifley Square, Sydney, and

RUSSELL MERVYN COX, Director, Finance and Strategic Services, Attorney-General's Department, 8-12 Chifley Square, Sydney, sworn and examined:

CHAIRMAN: Did you receive a summons issued under my hand to attend before this Committee?

Mr WOTTON: Yes.

Mr COX: Yes.

Mr GLANFIELD: Yes, I did.

CHAIRMAN: The Committee has been notified that the majority of the recommendations made in the Audit Office report, while accepted by the Attorney-General's Department, are only partially implemented. Why is that at this stage?

Mr GLANFIELD: There are a number of reasons, Chairman. First and foremost is, of course, that at the time this report was handed down the State Government had determined to abolish the Department of Courts Administration and to merge it with the New South Wales Attorney-General's Department, so there was a need to review many things, including implementation of this particular report. There were many issues that were addressed in this report which trespassed upon issues such as the keeping of management information and systems, all of which had to be reviewed in the light of the merging of two significant departments.

I think in our written submission to the Committee we have set out more particularly our views on those recommendations and frankly we have no difficulties with the Auditor-General's recommendations and we are progressing very strongly down all of the directions that he identified. It would be true to say that some of these issues have turned out to be much greater than might have been thought of in the past. For example, the introduction of a completely new financial management system for the merged department is a massive task. It will cost in excess of $1 million, but we hope to have that on track and operational from 1 July.

CHAIRMAN: Can you describe the communication channels between the department and the judicial officers?

Mr GLANFIELD: To describe it I would say it is a positive working relationship. We recognise, in our system of government, that there is a role, an independent role, for the judiciary. The department provides services to the judiciary,

but I think it would be true to say that both the judiciary and the department recognise the need for accountability in the performance both of the department's functions and of the judicial officers. Can I say there has been a much more active interest by the courts, the judges and the magistrates over the last few years in accountability for their own performance. Each of the courts now produces annual reports or reviews that set out the performance of that court.

Mr CHAPPELL: Would you say that judicial officers are creating or reducing court delays in the way that they are addressing a number of the issues that you would wish that they address?

Mr GLANFIELD: That is a difficult question to answer. Can I say the one thing I think the Auditor-General identified in the report is the complexity of managing the court system where so much of what happens is out of the control of both the Attorney-General's Department and the judiciary. The argument of cases before the court is entirely in the hands of the legal profession. I would have to say that, if you look historically, there has been an increasing trend by the judiciary to take more active interest in the management of cases within their courts and we would applaud that. It would be true to say in the past that generally the courts have believed that they should leave the progress of matters, the pace of matters, to the parties themselves and, for a range of reasons, there are many parties who do not wish matters to be dealt with quickly. The introduction in the Supreme Court, the District Court and even the Local Court now of a number of strategies at the initiative of the judicial officers has been designed to have the judicial officers managing much more closely the progress of those matters, so we work very closely with the judiciary and try and support them in what I believe is a genuine commitment to reducing delays within the courts.

Mr CHAPPELL: From a departmental perspective, what strategies have you currently got in place?

Mr GLANFIELD: Well, a lot of our strategy, of course, we have in cooperation with the judiciary. I mean many things we might think are good ideas but require the support of the judiciary to implement them. On the other hand, the judiciary have many ideas, but they require our support. A lot of the ideas tend to be jointly worked out proposals.

You have heard earlier the suggestion that the more matters we keep out of the courts then obviously the less the delay. I would have to say the principal strategy or philosophy underlying most of what we are doing in reducing numbers coming into the court by referral of matters to ADR or arbitration is really designed to reduce the number of matters coming into the court. That raises a different issue in relation to civil matters, I must say, where that also reduces the revenue the department gets and therefore makes it more difficult for us to fund the court system. That is a matter I have raised previously with Treasury.

We have a range of other initiatives, as do the judges, within the court when matters are there. The Supreme Court has a differential case management system that sets very clear time standards for the handling of process right through to resolution. The District Court equally has a strategic plan which I am aware the Committee has a copy of and the Local Court is developing a strategic plan that also has time standards. So there are time standards there, in an attempt to keep as much as possible out of the courts. To the extent that there are peaks in demands, we strongly support additional funding for acting judge or magistrate programmes and both the current and former governments have been very supportive of that being the mechanism to handle the peaks or to address increasing backlogs.

Mr CHAPPELL: Back in 1987 Court Net was going to provide the information systems which were going to lead to management efficiencies. Would you care to comment on that? There has been a lot of criticism this morning about the inadequacy of management information systems and disjointedness from one jurisdiction to another.

Mr GLANFIELD: I think all I can say is that I share those concerns, but I would like to think that we now will have in place very clear strategies for addressing that. It is true that in the local courts there are many courts who just simply do not have access to personal computers or computers of any form. Court Net is a very old and tired system. The former Department of Courts Administration recognised that that needed to be replaced. When the departments were merged it was our view that that needed to be revisited to see whether there had been significant technological changes in the meantime, whether the complexity of the system proposed was appropriate to replace the old Court Net system. Now we have engaged consultants to assist us in reviewing not only the case management system that was proposed but also to develop an IT strategic plan for the department. At the end of this month we hope to have the final report from those consultants, and can I say that the draft report they have already prepared confirms that we made the right decision in deciding to review the CMS because they are proposing that we approach it from a different point of view. In terms of computerisation, in terms of having access to information about how the system is operating, we would see that as a major priority which we would propose to be proceeding with during the course of this year.

Mr CHAPPELL: Funds were allocated in previous budgets or at least in this year's budget to proceed according to whatever the consultants say.

Mr GLANFIELD: Yes, although in relation to the full computerisation of the courts we have to go back now to Treasury to report on our review of the CMS system and I'd be confident that the need is so great that we will be in receipt of the funds that we need to implement that plan.

Mr CHAPPELL: In the absence of whatever that new system may eventually turn out to be, what is the status of your current information and analysis of management of the overall court system?

Mr GLANFIELD: What we are doing is we are not waiting until we have some world shattering system in place. There is a need to just get out some basic computer hardware into the courts to simplify the way we require information to be reported to us and we are currently doing that.

Mr CHAPPELL: Is that adequate to the task of really pinpointing where the problems are, the bottlenecks are, that system changes are necessary?

Mr GLANFIELD: I think we have a fair idea of where the problems are and where the bottlenecks are. There are currently in place very good systems for being able to identify where delays are and where the backlogs are and in fact recent change made in the District Court circuits was a direct result of analysing that very information. I think our systems are adequate to let us know where we need to put resources, but what they are not fine tuned on is the activity based costing, much more detailed management information that we really need going into the future for the management of the court system.

Mr TRIPODI: The performance audit recommended that more and better data be collected to help manage courts. It was suggested that data be collected in relation to adjournment rates and courtroom utilisation rates. In the Department of Courts Administration's response to the performance audit they stated that steps are being taken to ensure that such information is collected. Specifically then, does the department keep statistics on adjournment rates and courtroom utilisation rates?

Mr GLANFIELD: Courtroom utilisation rates, yes. As to adjournments, yes, but you have to appreciate that it varies between jurisdictions. We have six separate jurisdictions and so the degree of information that is maintained varies between those jurisdictions.

Mr COX: With the courtroom utilisation rates, it is very difficult when matters are adjourned and there is not somebody else there who is going to move into the court, particularly in the local courts, so sometimes you can get varying fluctuations in those statistics. It is really getting behind those statistics and understanding the reasons for the fluctuations. The figures in themselves do not necessarily tell us that we have a problem.

Mr TRIPODI: To what extent have you adopted the performance audit recommendations concerning the development of performance standards?

Mr GLANFIELD: Well, as I mentioned earlier, in fact in all of our particular jurisdictions now there are in place time standards. Can I say this: It is not for the Attorney-General's Department to impose those standards. We can impose them, but we have no power to force judicial officers to rush matters through to meet the standards. However, all of those standards have been developed on the initiative of the judges and with our support, so that we have participated in the planning processes in the Supreme Court, District Court and Local Court and there are now clear

standards in place for all three courts which were not there at the time the Auditor-General did the reports, so I feel fairly comfortable that we have those standards in place.

There was mention earlier about the handing down of judgments and standards in relation to that. In fact there are standards for that as well and the District Court, for example, has a time standard of two months for the delivery of a written judgment after completion of a matter.

CHAIRMAN: And that is being complied with?

Mr GLANFIELD: If it is not being complied with there is a system in place to ensure that the legal profession know that they can draw attention to the fact that that standard has been breached and, although there was reluctance on the part of the legal profession in the past to do so, as was referred to earlier, the former Attorney-General, John Hannaford, made it very clear to the profession and to the heads of jurisdiction that he welcomed receiving any complaints about tardiness in delivery of judgments and I would have to say, although some years ago I received complaints from time to time about delivery of judgments, I have not received any in recent times.

Mr TRIPODI: In your 1994/95 annual report it states that the department's budget comprises, in significant part, revenue from court fees. As the number of actions commenced has reduced, so has the department's budget, with the result that it has been unable to fund additional backlog and delay reduction strategies in the courts. Can you provide some background and expand on this issue?

Mr GLANFIELD: Well, I have, on two occasions now, submitted to Treasury that it just is wrong to include in the department's budget revenue from court fees. It acts as a disincentive to the very strategies I mentioned earlier, strategies which I might add we are pursuing to reduce the number of matters coming to the court at our own cost. It would be much more commercially sensible for us to encourage people to come to court so that we had the fees to enable us to employ more judges to handle the matters. When matters coming into the court are falling, under normal circumstances you would expect then you may be able to reduce the amount of resources that you apply to the resolution of those cases, but where you have a significant backlog, of course that is not the case, so in fact it just exacerbates the problem. So the fewer matters coming in, the less resources we have, the greater the backlog gets. I have no difficulty about the payment of filing fees for matters, but I do not think it should be deducted from the cost of running the department.

Mr GLACHAN: I wanted to ask you a question about unanticipated funding problems. Within the report we saw mention of this and there was to be review of it. What have been the results of the review and to what extent has the problem of unanticipated funding been overcome?

Mr GLANFIELD: I guess the greatest uncertainty about funding problems is the

one which we have just addressed, but the problem that the court system faces is that it really has no idea of the number of cases in any one year that it is going to be confronted with and, with the creation of new rights and obligations, new legislation creating new rights, publicity being given to a particular area that results in people pursuing their rights more actively, it really is very difficult to be able to meet the changes in demand with a fixed budget.

Mr GLACHAN: Do you have any strategies to address this problem?

Mr GLANFIELD: Well, as I mentioned earlier, I think the best strategy is, rather than having a system that is funded to its fullest extent to meet the very greatest demand, that we have core funding that represents an adequate level of funding for the general range of matters that are coming in and then we have an understanding that the appropriate way of addressing those dips and peaks is through an acting judge programme where you employ resources specifically to handle increases. The other thing, of course, is to recognise when new rights are being created that it all has an impact on the court system and that it is fine to create rights for people to be able to litigate, but we must resource the system properly to handle it when they come on track.

Mr GLACHAN: In 1994 $180,000 was spent on a consultant's report called Court Services Review and this was about technology requirements. As a result of that consultant's report, what technology have you put in place?

Mr GLANFIELD: Well, it went well beyond raising issues of technology, it also went into issues of the changes in processes. What we have decided to do is address the issues of court administration much more broadly. We have contracted with the Australian Quality Council to introduce quality management into the whole department, but primarily we are under way with the court registry areas. The Court Services Review also identified a number of savings that could be made, a lot of which were small incremental savings which probably, to be frank, could never be realised because they were identified as being a task which occupied a certain amount of time and in fact, as a result of taking that task away, there were many other tasks which took its place, so we have tried to address as many of those recommendations that were in there that would actually deliver savings to the department. Given that the former Department of Courts Administration was significantly overspent at the time of the merger, during the course of this year we have had to reduce the expenditure in that area by $8 million. We have done that principally by addressing a number of the proposals in that report and also the corporate services area.

Mr GLACHAN: But you have not introduced any new technology?

Mr GLANFIELD: I'm sorry, I mentioned technology earlier, it may have been before you joined us. We have an IT strategic plan. We have engaged consultants who will be preparing or who are preparing and will deliver a report at the end of this month for an IT strategic plan for the whole department.

Mr GLACHAN: How long after the report is delivered would you actually have the technology installed?

Mr GLANFIELD: Well, we are increasing our technology day by day, but this is really about setting an infrastructure for the whole department and the whole court system so there is some commonality between all of these areas. At the moment individual areas have their own different systems. We are not waiting for that to improve technology within the department, we are doing it day by day, we are purchasing computers, but what we will have is a much more consistent and coherent strategic approach to the implementation of technology and we are going to be rolling it out. The proposal calls for a phased introduction of technology rather than waiting until there is one great big system ready to introduce, but we will be going straight to Treasury as soon as we have that plan.

Mr CHAPPELL: Could I interpose another question there on technology: One of the things we have heard several times today is that there is a great deal of disjointedness across the whole of the justice system. If you are putting together a management information system, a computerised system, right across all of your legal jurisdictions, are you also talking with the police, with the legal profession and perhaps other user groups to see that they too are all then part of the system?

Mr GLANFIELD: Yes, every two months the chief executive officers of all of those justice agencies meet. We have an IT Committee and in fact we had some funding in this current year from Treasury to support review of the electronic exchange of data between the agencies. We have already agreed as a group that we will use common protocols in a range of areas, for example common codes for offences, common codes for the identity of an individual going through the system.

Mr CHAPPELL: This is with the police, for instance?

Mr GLANFIELD: Exactly, so that in fact the police criminal index number will be the number that flows right through the system. At the moment each agency effectively has its own separate system, so that is being dealt with in a different area, that is a cooperative inter-agency relationship, but I can safely say that is well under way and we will certainly be bearing in mind, in our implementation of our technology, the need to fit in very neatly with all of those other agencies to provide them with information electronically.

Mr CHAPPELL: And for individual solicitors to be able to file matters electronically?

Mr GLANFIELD: Well, we actually already have in place in our major centre at Downing Centre the ability for electronic filing, but yes, we would like to see that across the whole.

Mr GLACHAN: At what stage are you with the development or implementation

of the guarantee of service for all court consumers?

Mr GLANFIELD: Well, the guarantee of service, again there are different positions in relation to each court, but one of the focuses for the new department is very much on client service. There have been some comments earlier I overheard where really the court system has perhaps been said not to be focused so much on the needs of clients. We certainly propose, particularly in consultation with our staff, to identify how we can improve the way in which we deliver services. Now the guarantee of service also talks about time and it implies the delivery of justice within a certain reasonable period and the time standards that have already been put in place in the major jurisdictions go a significant way to fulfilling many of those guarantee of service issues, but I think we would see the future going well beyond that and providing much more responsive services to people, not necessarily in the court room but through the registries throughout the State.

Mr GLACHAN: Do you think it is reasonable for people to expect that delays will be reduced and justice will be delivered or do you think that our justice system is such that people should expect delays and not be concerned about them too much?

Mr GLANFIELD: That is a difficult question to answer because there is a range of reasons why matters are perhaps delayed and we also need to remember that the moment we talk about delay we tend to talk about from when a matter starts to when it is finished, but in fact there is an optimal period which the standards would reflect in which you would expect a matter to be resolved and, if a matter is resolved in, say, four months and that is the optimal period when the lawyers and others can prepare the case and it can be heard, then the matter is not delayed at all. At the moment when we talk about delay, we say that is four months' delay. My view is that what we really need to be focusing on is what is genuine delay and start to look at addressing that.

Mr GLACHAN: So you are saying you should be focusing on what are delays that can be avoided, that need not occur?

Mr GLANFIELD: Yes, and there are many matters delayed frankly because the parties do not wish, or one of the parties does not wish the matter to come on.

Mr GLACHAN: Should they have that right though, to hold it off?

Mr GLANFIELD: Well, I think the judiciary have now taken the view that they should not because in fact, for example, in the Supreme Court, the differential case management system is all about forcing the preparation of cases and forcing them on.

Mr GLACHAN: Does that deny justice to people, though, at times? Couldn't a lawyer or someone representing a person say, "I didn't have the proper time, I needed more time, I could have used more time"?

Mr GLANFIELD: There is flexibility in all of these time standards to enable a case to be made as to why there should be delay in a particular matter. In fact I would then say that is not delay. For example, where the injuries in a personal injury matter have not stabilised, it may well be sensible that the matter be deferred until there is a clearer picture of the future of the individual who is seeking damages, but it would not be fair to say that that is a delayed matter caused by the delay of the court system. At the moment we measure all of those matters as delayed matters and they all go into the averages that are produced.

Mr GLACHAN: What about the extended hours at Blacktown Local Court and the registry at Parramatta? Have they had an effect on reducing unnecessary delay?

Mr GLANFIELD: They have been very successful and we are looking at a strategy for providing out of hour services. The demand appears to be more in the area of chamber magistrate service and advice and the public being able to access registries out of hours. There just does not seem to be the interest, as Mr Henshaw mentioned earlier, by the legal profession for out of hours sittings of courts, but the Parramatta registry I think has been an overwhelming success and we would be looking to seeing if there is some way of expanding that.

Mr GLACHAN: You say that people involved in the profession do not want extended sitting hours? Lawyers and barristers do not want extended hours?

Mr GLANFIELD: I guess that they are humans like the rest of us who are already working long hours and it is fine to talk of court hours being from 10 to 4, but they have to prepare. Before the matters are heard they have to talk to witnesses and talk to their clients. When these night courts have been trialled before, they found it difficult. Now we are not saying there should not be any, but I think the greater capacity for improvement is in the area of registries.

CHAIRMAN: The extended sitting hours at Blacktown and discussions at Parramatta Registry, have they contributed to a reduction in court delays?

Mr GLANFIELD: It is difficult to answer that. What they have contributed to is a much improved service for the community. The courts provide a lot more than simply determination of matters. So we have to remember when we are talking about the courts that the vast bulk of the staff of my department in courts are actually dealing directly with members of the public, not necessarily just sitting in courtrooms hearing matters, and a lot of that involves giving advice, giving assistance, processing documents. So those extended hours for court registries I would put down as being a significantly enhanced client service, rather than addressing court delays.

Mr CHAPPELL: Convenience though rather than extension of service?

Mr GLANFIELD: Both. I think also because there is more time that perhaps the quality of the service can also be better.

CHAIRMAN: Does the department have any further reforms planned in regard to the exigency of use of present facilities?

Mr GLANFIELD: Is it true to say that we are working with judicial officers all the time to ensure that whatever court accommodation we have we endeavour to use to its fullest. We monitor court utilisation times and we try and ensure that, particularly acting judges and acting magistrate programmes, that if there are court facilities vacant, that we get the resources to enable matters to be dealt with in those courts. So we have got continuing programmes to ensure that that is the case.

CHAIRMAN: So it is ongoing?

Mr GLANFIELD: Yes.

Mr ROGAN: During the course of the hearings this morning, generally speaking the barristers and the solicitors, the organisations representing those two, have been putting that really one in particular, that any changes are cosmetic, it really needs the appointment of more judges to tackle delays in the hearings and appeals and the like. I think that is rather avoiding the real issues. Quite obviously you could reduce the delays by doubling the number of judges, but how do you respond to that comment by the law bodies?

Mr GLANFIELD: I think it is often said to be the answer, to simply employ more judges, but you need to also look at the processes and the systems. I think the judges themselves, as I have mentioned earlier, with these new very tightly managed timeframes and case management systems, would recognise that judicial officers could take a much more vigorous role in managing the progress of matters, and I suspect that also involves less judicial time per case.

It is not simply about throwing more resources at the problem, I think it is also looking at the way in which we have traditionally resolved cases, the way in which we select cases for referral to what is almost a private legal system now, a private judicial system, through arbitration and mediation. I am not in favour of expanding those private systems too far, then there would be two classes of justice, those that have money who can go to the private system and those who do not have the public system, but I think there is a balance between those.

I think we need to make sure we are balancing resources to support a lot of those alternative mechanisms for the community to be able to resolve their disputes, without them coming to courts in the first place. The other area is the area of preventing disputes arising in the first place. I think we have a responsibility to the community to endeavour to reduce crime, to reduce civil disputation.

In my department there is a Juvenile Crime Prevention Division which is specifically targetting how we can develop strategies to reduce crime in the first place.

Instead of just looking at the bandaid at the end of it, looking at how we can manage the problem up front.

Mr ROGAN: Bit like preventative health?

Mr GLANFIELD: Absolutely.

Mr ROGAN: Keep them out of hospital, keep them out of court?

Mr GLANFIELD: Absolutely. I think every dollar invested upfront is probably worth many many more dollars invested in resolving the matter at the end of the day. The other thing that needs to be borne in mind is that a lot of matters are settled anyway, without the intervention of the judicial officer. The last thing we want is to have every matter being resolved by a judicial officer, when many of them would have been resolved without the need for those resources to be used.

Mr ROGAN: It has been referred to this morning that the frustration, the waste of time and money where a person appearing in the court has got their barristers and all the support people there and cases just do not get on, they do not get to the them that day, so everybody has got to go home. What do you perceive as the real cause of that and what measures are the department really putting place to work with the judiciary to ensure that they are minimised?

Mr GLANFIELD: We certainly endeavour to minimise that but it is a problem I think will always be there no matter what we do. The fact of the matter is a large number of cases settle. 95 percent of cases that actually commence are settled without a formal determination being handed down. It is impossible to predict which matters are going to be settled.

It is equally impossible, although we endeavour to have legal practitioners certify how many witnesses they are going to call and how long they expect the case to go. The fact of the matter is when cases begin, issues arise that were not predicted or estimates have been wrong and the case drifts on. If we were to simply under-list matters in terms of the lists in courts, gave a bit of extra time in case the matter gets on, when the matter settles it means you have an even greater gap in the judicial resources. It is impossible to just wheel people in. We cannot just give somebody an hour's notice to say, Come down to court, we will now hear your matter. Witnesses need to be advised, people need to be brought together.

All I can say is that we work as closely as we can with the judges to ensure that the listing is as effective as possible and the number of not reached cases is kept to a minimum, and I know the judiciary share that view, they really do not wish to see people hanging around outside the courts with their matters not coming on. On the other hand, there may be some very good reasons why justice can only be disposed of, if it is the case that they cannot be heard, by letting it drift on to a conclusion.

Mr TRIPODI: On that point just further, can you see from a global perspective that there is a situation where there is a cost transfer. You are shifting your costs, you are managing your resource more efficiently because you are able to get all these other people to front up, and it cost them a fortune to wait outside. It is a typical cost transfer situation. And at the end of the day, if you look at the global cost, look at your costs and their costs, they are incurring a lot more costs than you are and it is a very inefficient system and it is a very big source of discontent in the community.

Mr GLANFIELD: Can I say I agree with that absolutely and certainly in Local Courts, equally, we should not be calling everybody to turn up at ten o'clock although matters will be dealt with during the course of the day, because that happens to suit the system to do it that way. On the other hand, my comments were in light of the fact that we have a limited budget. If we were resourced to provide that sort of service that you are talking about, then there would be no difficulty.

Mr TRIPODI: What I am suggesting, this is only theoretical, if your resources are being managed efficiently in terms of taking everyone's costs into account, there would be periods when there would be no-one in the courts, because you got it wrong, on the balance of probabilities you got it wrong. The situation at the moment is you have always got people waiting. So you have always got cost transfers.

Mr GLANFIELD: No, I do not think that is quite right. There are certainly times when there is a court vacant. The problem is we have so many venues, that in fact you might have a vacant court in the country, but you have cases in the city.

Mr TRIPODI: I am looking at a particular court for a particular listing on a particular day.

Mr GLANFIELD: It varies. It is not possible to say everyone is always waiting.

Mr GLANFIELD: Can I ask you something? I have got a matter, I live in Albury and I have waited a long long time to get to court and I am told it will be on on a certain date and I come up by plane, I have got legal advice that is costing me a lot of money and they are with me, waiting for this to get on, I have got other key witnesses, all waiting, and suddenly we learn that it is not on today, we will let you know later when it might be. Does anyone go to the trouble of explaining to those people why it is not on and trying to help them understand, because I get a lot of phone calls from people who really are irate about it?

Mr GLANFIELD: We do but can I say I can understand people nevertheless being distressed, even though they understand the reason that their matter was not dealt with. They do not understand why another judge cannot be pulled from somewhere else to hear the matter. I am not saying that that is a price that the community has to wear but if sufficient resources are not given to put in place a system where you had relieving judges who would spend some considerable time sitting around perhaps not hearing matters but available for those sorts of

circumstances there will always be those sorts of problems occurring.

Mr GLACHAN: It is not always judges who cause the delays?

Mr GLANFIELD: Not at all. I am sorry, I was not suggesting it was the judges at all. I am talking more about the system. What I am saying is if a matter is to be heard and there is no judge available, the only answer to that is to have resources, a court room available, transcription staff, security, all that cost available on the off chance that one matter is going to drift on or two matters are going to drift on. We do try our very best to minimise those sorts of problems.

Mr ROGAN: Again, it has been raised this morning, and this question I suppose should be more directed to the Chief Judge or somebody like that, that where cases are determined and the verdict is not handed down, and it was pointed out by a witness here just a little while ago, a solicitor, that he had a case where it took twelve months for a judge to hand down a decision. It was a civil case and by that time the firm had gone broke that this person was suing, so they received no justice in the system. Is there some reason why judges cannot hand their decisions down earlier than they do in some cases?

Mr GLACHAN: Can I say that issue was raised. I think you might have been absent, Mr Rogan. I indicated in fact we do have a system in place. The former Attorney General, John Hannaford, made it clear to the profession that they are welcome to raise concerns about delays in judgment. Twelve months is clearly unacceptable in anyone's standards. In fact, a number of courts have standards now for delivering judgments. The District Court, for example, is two months from date of hearing to date of delivery of judgment, and there is a system in place that if it has not been delivered by two months, the legal practitioners can feel comfortable about saying, Where is it? And we will follow it up. As I said earlier, I have not had any complaints in recent days about failures to deliver judgment, although prior to the former Attorney General's initiative it was more frequent.

Mr ROGAN: In the original response to the former board, it was suggested that the Local Courts should feature in any further reviews of court management owing to the success of court delaying issues adopted in this jurisdiction. Have initiatives taken in the Local Courts been adopted in other jurisdictions?

Mr GLANFIELD: I guess what we endeavour to do is ensure that all of the initiatives throughout the court system are shared by others. Some are more adaptable in some jurisdictions than others. Specialist jurisdictions often apply quite different practices to an area like local courts, where we are generally talking about less complicated, less legally complex issues being dealt with. They would be dealt with much more quickly. Whereas, for example, in the Supreme Court the nature of cases is quite different.

I think it would be true to say that following that report, that we try to ensure that

every jurisdiction is aware of what is happening in a court and of course the Judicial Commission, on which the heads of each of the jurisdictions sit, meets regularly to discuss issues and initiatives between the various jurisdictions.

Mr ROGAN: Can you explain how employment conditions, namely, hours and vacations, are determined for judicial officers?

Mr GLANFIELD: The remuneration is determined for us by Statutory and Other Officers Remuneration Tribunal. The other terms and conditions have been historically set generally with the Attorney General's advice but I do not think they have been varied for many many years.

If there is any suggestion of varying terms and conditions, I think it needs to be borne in mind that many people accepted appointment to judicial office based on the conditions that existed at the time of their appointment and it is important to realise that most of our judicial officers, most of the judges, have actually taken drops in remuneration at the time of becoming judicial officers.

Mr ROGAN: This question is really more to Mr Wotton, the Registrar of the District Court. In the strategic plan issued by the District Court in New South Wales of July 1995 one strategy listed refers to establishing effective communication with executive and legislative branches of Government. Are you aware of any developments taking place in this area?

Mr WOTTON: I think that one is still with the Chief Judge's Policy and Planning Committee. We are still working out how to address it. A number of the strategies in that area do not in fact require any further action. We are working on it within the committees but it may take a fair while to establish that.

Mr ROGAN: Was the performance audit of value to the department and did it provide insight or a new direction for the reform process or was it felt that it only included initiatives already under way?

Mr GLANFIELD: I guess the value of the report was limited only by the fact that the Department of Courts Administration was abolished. Had that department continued I think it would have been of even greater assistance to them. With the merging of the two departments, I guess in a sense we wanted to take stock and revisit a number of issues. To that extent the report was very useful in identifying what the strategies were in the former department and perhaps an independent view upon the value of those strategies. As it turns out, as I said earlier, we have no difficulty with any of the recommendations that the Auditor-General made in that report and we would certainly look forward to the Auditor-General's further report in due course on our progress over perhaps the next year.

Mr ROGAN: Do you think you got good value for the $106,000 cost of the report?

Mr GLANFIELD: I don't think I paid it, I think the Department of Courts Administration paid for it. I couldn't offer a comment on that.

Mr ROGAN: So you do see potential benefits arising from future performance audits?

Mr GLANFIELD: Certainly. I think we have a good relationship with the Auditor-General and I think they have a significant contribution to make to the improvement of our performance.

Mr TRIPODI: With courts administration, we have had a lot of people complain today about the $6.50 per photocopy for transcript. Do you have any comments to make about that?

Mr GLANFIELD: Well, in fact one of the promises of the government was that it would review the whole pricing mechanism within courts and that includes court filing fees. I would have to say that personally I am not happy about the way in which the whole filing fee is structured, including transcript fees. We are reviewing all of that. We propose to produce a discussion paper that talks about initially the philosophy, because it is very important to know why you are charging fees and in what areas it is appropriate to charge fees before you start to determine the level at which they are set, and I think in a sense we have to go back to fundamentals and say: What part of the system should people be paying for the use of?

Mr GLACHAN: Could I just make a comment there: Business people do not develop philosophy statements about whether you should be paying fees or not. They just say it costs so much to provide the service, therefore we will charge so much.

Mr GLANFIELD: That's true.

Mr GLACHAN: If you keep on doing all these reports, you will never get anything done. You will get a lot of reports done, but you will never get any progress.

Mr GLANFIELD: That's true, but can I say, if we are only talking about commercial matters, I would not necessarily disagree with that, but we are talking about criminal matters and transcripts are paid for in some areas in criminal matters, so there are people who have been charged with offences who, to some extent, are expected to then pay for the community dealing with them. So there are some issues there that just need to be dealt with. I would like to think we would have a paper out very shortly, we are not talking about years of reviews. We need to address this pretty quickly and we intend to.

Mr GLACHAN: Well, it seems to me that you have had lots of reports about technology and all sorts of reviews and yet the delays go on and I cannot understand it. Everyone knows there are delays; everybody is concerned about delays. Why doesn't someone actually solve the problem?

Mr GLANFIELD: I think during the course of our discussion with the Committee here I have indicated the sorts of strategies that we and the judiciary have in place to address the matters.

Mr GLACHAN: Are they working?

Mr GLANFIELD: Well, certainly in some of the jurisdictions there have been very significant improvements in the way in which matters are handled. As I said earlier, though, you have to remember that demand fluctuates as well, so there is no point in just taking a static look at court delays, we have to look at much more fundamental issues about the way the court system operates, but we are not sitting on our hands.

CHAIRMAN: Could I ask about the administration of the courts where people turn up, both the accused and shall we say the victim, and they are all milling around outside the court and most probably there are problems of them bumping into each other and it causes trauma. Is this being addressed at all?

Mr GLANFIELD: It is. It varies between courts. As you appreciate, we have a lot of very old courts, heritage listed, and it is very difficult to make much change in the accommodation in those areas. We are trying to identify rooms and we have in many courts already safe rooms, shrine rooms, where people who are victims of domestic violence, or people otherwise need some safe and secure environment, to have a room set aside for them. There are a number of courts that have that and we are trying to increase the number and what we propose to do is to work very closely with the court support groups that work in these areas and try and establish a way in which they also can have access to these rooms as we create them, but it is difficult when you have also got other demands for rooms for legal practitioners, Legal Aid and public defenders, and you only have a limited number of rooms, but we are doing our very best to try and identify facilities.

CHAIRMAN: Can I ask another question: Separate rooms have been set aside in certain courts. I know in my own area in Wollongong they are for victims of child sexual assault. Is that type of thing on the increase, not only for kids who are victims of child sexual assault, but you mentioned domestic violence, where women can go into a court and they might not want to face the perpetrator, who is not sitting very far from them. Has there been any thought given to that, where women can go into a separate room?

Mr GLANFIELD: Absolutely. These rooms are available for whoever might be needing them and generally they would either be children or women. I guess it would be true to say that in recent years we have more clearly identified the need for those sorts of facilities than used to be the case, so yes, it is certainly increasing. In terms of our making rooms available for things like child witnesses, you also would have heard the Premier announce the other day that we will be putting closed circuit television in a significant number of courts throughout the State so that that will also reduce the

trauma for child witnesses.

CHAIRMAN: Could I ask, from what you have just talked about, has anything come to you that there has been resistance from the judiciary?

Mr GLANFIELD: Not at all.

(The witnesses withdrew)

THOMAS BELA JAMBRICH, Assistant Auditor-General, Audit Office of New South Wales, GPO Box 12, Sydney;

ANTHONY CLEMENT HARRIS, Auditor-General, Audit Office of New South Wales, GPO Box 12, Sydney, and

STEPHEN JAMES HORNE, Director, Performance Audit, Audit Office of New South Wales, GPO Box 12, Sydney, sworn and examined:

CHAIRMAN: Did you receive a summons issued under my hand to attend before this Committee?

Mr JAMBRICH: Yes.

Mr HORNE: Yes.

Mr HARRIS: Yes, I did.

CHAIRMAN: Can you explain your motivation for choosing this topic for a performance audit?

Mr JAMBRICH: Basically there were a number of indications that delay in court was an issue, certainly an issue in the community. We also considered that the administration of courts would be a relevant topic for a performance audit. As a consequence, we have commenced to do a performance audit on the administration of courts which later on will go more to the backlogs rather than full administration.

CHAIRMAN: What is your aim in undertaking these reports?

Mr JAMBRICH: It is basically to highlight areas where our recommendation could lead to improved efficiency and effectiveness and economy. We also aim to inform both the Parliament and the public at large.

Mr HARRIS: I suppose it has another function as well, Mr Chairman, and that relates to the compliance part of the Act. There is a compliance function that certain reports might concentrate on rather than the efficiency, effectiveness and economy. This issue is quite simple, probably of no importance.

Mr CHAPPELL: Is there a standard methodology you use in performance audits or is there any particular aspect of the methodology in this performance audit that you did?

Mr JAMBRICH: I suppose you could say the standard methodology we use is basically to identify the area for the audit, determine criteria against which we would assess the activities. We always try to ensure that we agree with the body or the agency where we are conducting the audit that those standards and the criteria to be

used would be acceptable. Also part of the methodology is that, at the end, we have a continuing dialogue with the entity and bring matters to their attention, and obviously we rely on facts rather than just hearsay.

Mr HARRIS: There is an interesting discussion in the review that the Chairman tabled the day before yesterday about the difference between a special audit and a consultancy and when you ask departments were they happy with the expense, if they have in their mind the recommendations, they could be delivered significantly more cheaply by having a consultancy report, significantly more cheaply than an audit can do it. Basic to the methodology is that it is an audit and that means that we are unable to take on board as evidence the attestation of management. We have to test what they are saying to us in order to report to you with some assurance that that is accurate, so not everyone - and I don't think the reviewers themselves - understood the difference between a KPMG contract to go in and look at administration of the courts and a special audit, but in the Coopers and Lybrand paper attached to the review there is a good discussion on the difference.

Mr CHAPPELL: Is the cost differential usually justifiable in any discrete terms?

Mr HARRIS: It depends what you are looking for. If you are just looking at recommendations, probably not. If you are looking at certitude, probably yes.

Mr GLACHAN: When you first begin this, did you say earlier that you consult with the people involved about what criteria you should use to determine whether their performance is good or not? I mean if you came along to me and you were going to do an audit on something I have done and you said, "Tell us what criteria we should use", I could set a level of criteria that might show me up in a very favourable light. Shouldn't you compare them with other jurisdictions or other similar practices elsewhere?

Mr HORNE: Perhaps I could answer that one: Yes, indeed. We do not ask them what criteria they would like to be measured by, we do research and determine what criteria we think they should be measured by, but then we discuss that with them because it could often happen that the criteria we might think are good, through discussion, would be unfair, or other things would need to be taken into account, so in discussion we reach agreement on criteria. There may at times, though, be cases where we just cannot reach agreement on the criteria, in which case we will say, "Well, we will have to agree to differ", and use the criteria that we intended, but we do, rather than just race in, discuss it and try and reach some agreement.

Mr GLACHAN: What makes you experts in the criteria that should be used in the performance of courts?

Mr HORNE: Nothing makes us experts in a specific area but our expertise is in developing a research methodology to examine any matter and to do that we will need to bring in expertise and bring in information from wherever. In this case you

mentioned benchmarks and we decided we would use already published benchmarks from the United Kingdom just to give us a gauge and we can say we will use all of this or not and that gives us some ideas and I think that is the important thing that we have. Our methodology, which is quite detailed, is all about how we go about developing a research plan to examine something and bring forward valid findings.

The important part of the methodology, if I can just point out here too, is that audits are expensive, there is no doubt about that, because of the reliance that Parliament must be able to place on what we can provide and so part of our methodology, a very important part, is that we cut out of them as early as possible and in this case we produced a preliminary report, rather than a fuller report, because the circumstances we judged to be such that it was not worthwhile going on to do a full one which would have cost even more money. So we produced a report as at this stage to provide information that Parliament had not had before on the situation in the courts and so we could then reach some views about the way things were and suspended a full audit until it would be a more appropriate time. That is a very important part of the method so that value for money is reached.

Mr CHAPPELL: Can I ask you if you are happy with the pace of change so far Attorney General's implementation of reforms?

Mr JAMBRICH: If you are referring to the responses, it is very difficult to gauge just from reading the response. It certainly would seem to us that in certain areas they have focus but nevertheless we still feel that in a number of areas they are still lagging behind the pace that was expected back when we finished the audit in April 1995. So certainly in respect of some of the recommendations we would have expected to see more rapid changes and improvements but that has not happened from the paper we received, but as I was saying before, it is very difficult to judge just from here. We have not in fact.

Mr CHAPPELL: Is it standard procedure to go back and say: We have reviewed this report now and we feel that perhaps points A, B, C should have been more expedited, they should have reached a higher status than they have. Do you do that as a matter of course?

Mr JAMBRICH: We have a methodology where we like to go back within eighteen months or two years after completion of an audit to see to what extent some of those recommendations have in fact been implemented. In this particular case, it is slightly different, to the extent that we have stated that we have terminated the audit at an earlier stage, with the simple reason that we wanted to or wished to continue some time later on, when as my colleague said a minute ago, that the department would have been able to implement all changes. Certainly, on the face of it, it does not seem that the changes that we expected have been implemented in all the recommendations.

Mr CHAPPELL: At the beginning of that answer you said you would like to. Is it a matter of course that you do go back to follow up?

Mr JAMBRICH: Always?

Mr CHAPPELL: Yes.

Mr JAMBRICH: No, we have not as yet gone back because basically we have not got to a stage at this stage where the eighteen months or two years has elapsed for one thing and part of this is we have a number of other audits in the pipeline, so at this stage we will have to determine what is more possible value from the department's point of view, whether us to go back or for us to conduct an additional audit.

Mr CHAPPELL: I guess I am really asking the question whether it is appropriate for you to revisit or whether it is for someone else to do.

Mr HARRIS: No, we think it is appropriate for us to revisit to see whether the agency did what it said it was going to do in its response.

Mr HORNE: As part of that methodology, at the end of every audit we work up a follow-up plan, which is not a rigid, sculptured plan, but rather an on-going, keeping tabs of things, so we can see what is happening and what is developing and that can then lead us into a follow-up audit if that seemed appropriate.

One reason that we finished this audit when we did was that the department's view at the time was that there were a lot of changes imminent and it would be very bad to do the audit at that time, not that they were going to happen sometime later but they were going to happen right now. So we left the field at that point on the basis of that advice.

Clearly, many of those changes have not happened straight away and are still being worked through and contemplated and obviously the moving of the department back into the Attorney General's was a major factor in all of that. So I guess the change has not happened at the rate that it was planned at and we expected it to be at.

One of the reasons we did the audit from the start was that as long ago as 1988 there was a major review into the courts by the Government. A large report was brought forward and a large raft of reforms were developed and a lot of money was pumped into bringing reforms about and we thought this has gone on for quite sometime and, as was pointed out earlier, everyone knows there are problems and has talked about it and read lots of reports about it. So what has actually happened? So we did the audit and we found then that things were still happening, so it seems we were going to have to wait a little bit longer and it seems we are still going to have to wait a bit longer yet.

Mr CHAPPELL: It seems to me that there was no preliminary study report done in this case? Is that the case?

Mr HORNE: This probably is that preliminary study report. Because of the nature of the audit, we decided to terminate it early at the preliminary stage but still produce a report for Parliament. Our other option would have been just to go away and come back later but we thought we have already got a lot of useful information which Parliament would find of value, so this is that preliminary report.

Mr CHAPPELL: So your normal preliminary study report on any special performance audit would basically take the form of that report?

Mr JAMBRICH: Yes, to a certain extent, it would. Ideally, the preliminary report would also identify criteria that I referred to before that you would wish to use in order to assess the achievements at the end of the audit against which would be reported.

In this particular case, we did not put those in but obviously as part of the audit we had issued a number of what we call discussion or briefing papers. We discussed with the department this particular instance, but for a number of reasons we thought that an earlier termination would warrant what we call a preliminary report stage and it is in fact that.

It is probably the only audit where we have pulled out at the preliminary stage. In all of the other reports we have gone right through and we reported the full audit. So I will not say it was not a full audit.

Mr HORNE: There is a point there that we did provide five, as we called them, briefing papers to the department which were quite sizable and gave our feedback and our views on what we did see in a number of different areas, information technology and various other ones, on the detailed research that we got. So in terms of the value for money, if you like, that the department would have received out of the audit, they got a lot more information out of the audit than is just contained here.

This has been a condensed report for parliamentary and public consumption, but management got a lot more and they responded formally in writing to each of those discussion papers. We made sure we got our facts straight before we went to a full report. Those discussion papers, in this case, represent the formation of a preliminary study report and then we decided to pull the plug and go the way we did because of the factors at the time.

Mr JAMBRICH: If I may I just add to the answer to the previous question asked as to the cost, a lot of the cost went into the research and part of that cost was obviously based on the fact that we go to a full audit and the full benefit is seen only when you complete the audit. That has not happened but we still believe that a report was warranted and we think it was quite worthwhile.

Mr CHAPPELL: Can I ask just a general question before Mr Rogan asks questions. That interaction, those four or five interim studies that you sent across, is

that routine? Is there a fair bit of that toing and froing through the course of any audit?

Mr HORNE: Yes, we follow what we call a no surprises approach and basically we prefer to provide discussion papers and briefings as we go, so if we get anything wrong, if we get a part of the story, we get corrected very quickly and get all the facts that we need. It is also part of trying to begin writing the report as early in the process as one can, so there is not all that right at the end. It is really part of our quality control but it is also a good part of client management, so that everyone knows exactly what is going on. It is an effective way of bringing the issues out as quickly as you can.

Mr ROGAN: I guess you have covered it in your report, but what were the potential benefits following on from the report?

Mr HARRIS: If I can address that as for a number of reports, it is hard at the beginning to say what you are going to find. There is a suggestion somewhere that we should indicate the savings, for example, before we undertake the audit. I would find that to be very hard. We look at an area because of its topical importance or because of its monetary importance and then we go in to see what we find to some extent. We do not have a particular predisposition.

Mr HORNE: In this case, for example, it has been identified as a major area of both Government and community concern, a lot of effort has gone into it, five million dollars a year has been pumped into a special programme to fix things up, as well hundred of millions of dollars in court building programmes.

It seemed a reasonable proposition to provide some opinion of whether that money was making any difference or not and, if the answer was not, then that would give the department a question to answer and rightly so. Or if those things were having an effect, then we could see where the best effects were being generated and that would give the department an independent view of where its successes and where its failures were and where there was still work to be done.

I think simply the fact that it was of such great public and community interest and that there was such money being spent on it was a valid enough reason anyway to have a look at it and just see if results were being achieved as they were expected.

Mr TRIPODI: Were the costs associated with this report expected or were there unforeseen cost escalations?

Mr HARRIS: Could I start with the question by saying that the way we put down our costs is not well understood and I think in future reports we are going to have to be much more careful how we describe it as costs. They obviously include direct costs. They also include overheads.

In direct costs you would expect that, although in many organisations you do not see overheads added to the costs of individual reports but they also include other economic costs, which are basically the costs of SES officers or other officers who are not recompensed for the additional time they spend on a report. They work in their own time, they do not get overtime for it, and that is added to the cost, even though it is not borne by this State or by the office; it is borne by the individual officers. We thought that we should do that to give you an indication of the total resources that have been used in the report.

Mr GLACHAN: So that is all profit?

Mr HARRIS: To whom?

Mr GLACHAN: To you I guess. If you personally put say forty hours of your own personal time in, but you charge for that and you are paid for it?

Mr HORNE: No.

Mr HARRIS: We are not paid for it.

Mr GLACHAN: But you include it as part of the costs.

Mr HARRIS: We do not get recompensed by the Government or from Parliament for it. If you add up the total cost of all our reports, they will significantly for performance exceed the amount of money that comes for performance audit from the taxpayer.

Mr JAMBRICH: I think that Mr Chappell said a minute ago, that is described as a notional cost because that includes all unpaid overtime, for which people just have to put in.

Mr CHAPPELL: So the most efficient way for the Audit Office to do these sorts of audits is for you to do it all in voluntary overtime?

Mr HARRIS: Yes, you are quite right, and what I think we shall do from now on is distinguish those three categories of costs so that people can understand what they are. This Committee was appraised by the person who undertook the first audit of the Victorian Audit Office, Fergus Ryan, who said, I think, from memory, that the audit of the Victorian Audit Office cost $400,000, but they charged $250,000 and it is that kind of concept. That is a generality, but I am not privy with the details about what kind of costs were expected.

Mr HORNE: I guess the day that an audit does not have unexpected complications in it will be a wonderful day, but we have not reached it yet, so certainly there were unexpected complications. It is a very complex jurisdiction. We were looking at all the court jurisdictions and all the courts in those jurisdictions, so

the Supreme Court, the criminal, the civil, the courts of appeal and all that. Once one starts to look into each of those black holes and what has been happening in them and the reforms that have been going on and the hundreds of reports that have been written about them and so forth, I think there was a lot more work in that than we had perhaps originally intended. You don't know when you walk in quite what you are going to find.

We knew that it was a very busy area of reform, so that should tell us that there is going to be a lot of dirt that has been dug up that we are now going to have to rake over, and indeed that was the case, so I think that the task probably was quite big and one of the reasons I guess we decided to suspend the audit was that there were still too many things changing for us to sensibly make an audit of it at that time, which was going to take even more time and more cost, so a very steep learning curve, yes, and of course that is reflected in the cost of the job, but that would be offset against the benefits that would come out of a full audit if a full audit had gone on, but that will occur in the future, so all the ground work that has been done in terms of understanding how they work, how they do not work and the issues that are involved is still resting with us at the moment and we will pick that up again when the audit continues.

Mr TRIPODI: So to date, for the outlays involved, are you happy with the return that you got in terms of the report?

Mr JAMBRICH: I think you can only judge it in its complete stage. It is the first stage of an audit. We believe it already shows benefit, but we believe that it will show substantial, great benefit when we can get back to the audit and continue it. Obviously we have a reasonably full understanding of the court procedures and so that learning curve that our colleague referred to is eliminated, but nevertheless we believe it would have shown sufficient benefit already.

Mr HORNE: I tend to think that it may have continued a process of reform a bit more vigorously than may otherwise have been the case. Once the spotlight is turned on something it tends to draw some attention to it. People talk about significant reforms that have been made in the courts, and that is true, but when we benchmarked it against the UK courts with a much bigger population base than here, their delays are much smaller, so we were trying to make sure that people were not gloating unnecessarily about improvements that perhaps still have a long way to go. Perhaps a lot has been achieved, but there is still much more to go. I think it is important to put a context on that and that has now been put and the Parliament has been made aware of it and the community has been made aware of it, the legal profession, and judging by the people that came in today, they seem to have all looked at it and thought about it and talked about it, so it has opened the issue up and that is accountable and that is what we are after, making these things more accountable so that the agencies have to then deal with the problem.

Mr CHAPPELL: Do you think it really is possible to identify those best practice

sort of parameters when you take the UK or the US or any other place and then say: This is the way their court system runs; ours should do the same.

Mr HORNE: From the methodology point of view, you can never find a comparison with anything in life, but if you had enough comparisons and they tell a general picture, then you have a question to answer. If the orders of magnitude were not much different, then you would say, well, yeah, but when the orders of magnitude are large, as they were here, you know, the UK courts are four, five, ten times different in their results, it at least gives you a "Please Explain" and you have at least got a starting point, but you are entirely right, I mean every organisation is against being compared to anything else, but nonetheless, I think it is very important as a methodology to do that because to examine something of and in itself only is a very single-sided way to do it. You really do need to compare something to something else. Even if you can't get a perfect comparison, a rough one is better than none at all.

Mr TRIPODI: At what stage in the undertaking of this performance audit were you aware of the internal reforms being undertaken by the Department of Courts Administration?

Mr JAMBRICH: I think it was reasonably soon after we started the audit that the department told us that they were initiating or undertaking a number of reforms, but I suppose that is where the difference between an audit and consultancy work is, that we have to take evidence, so we have to understand the business, we have to examine and in fact have some assurance that those statements in relation to improvements are in fact in train or about to be in train or are actively proposed.

Mr HARRIS: I suppose, Mr Tripodi, another issue that is relevant to your question is that there was some considerable discussion within the Audit Office before we pulled the plug on the audit and there were differences of views about pulling the plug on the audit, and I think there still are. Some of us would have continued on in the face of this changed context because of the time elapsed and because of the resources that had been put into courts administration and some of us were of the view that we should let the agency hang itself, if you like the term, by saying, "If we come back later, they will have done everything".

In some respects I was a bit surprised that you picked this report because it is the only report of its kind in the array of reports that we have done, it is the only unfinished report, but I note from representations to you that it is an important issue, but some of the $100,000 I suppose comes from a discussion as to whether it is appropriate to finish it or not and, if we are going to finish it earlier, at what stage do we finish it earlier so that we can provide something for the money?

Mr HORNE: We knew that there were reforms going on well before we started to deal with it, that is one of reasons we picked it, we knew that it was an area of reform that people were working on, that it was an important one, but at the very opening interview with the chief executive at the time, Gary Byron, and his deputy, he pointed

out in no uncertain terms a whole range of things that they were working on and our very first step in the audit was to gather all those several metres high of reports that had been written about all these different areas and to examine them and to see what was being proposed and what had been done and what was yet to be done and to then decide, after we had looked at that, where our audit should go and where it should focus or if indeed it should go on at all, so we were aware of it, but I am not of the view that, because an agency is working on something, we ought not go in and do an audit. Hopefully most agencies would always be working on something, on bettering something, and so it will always be the case that something is happening. That is okay, we can still report things as they are and, if it is just not worth going on too far, then we will do this, but under most circumstances the amount of reform would not be enough to warrant holding the audit, we would just report things the way they are and, if they get better in the next couple of years due to some changes, well, that is all right.

Mr JAMBRICH: I think this audit also highlights our philosophy at least that we try to be "proactive" and try to make recommendations for changes, so it has happened in a number of audits where agencies have reminded us, "We are making changes, but nevertheless we would like the auditor to be involved", so that we can make recommendations to them. That is the same thing that has driven us in this particular audit as well.

Mr GLACHAN: The agency would be carrying out some internal sort of reviews, wouldn't they?

Mr HARRIS: Which agency?

Mr GLACHAN: The court organisation.

Mr HARRIS: Attorney-General's, yes.

Mr GLACHAN: So they have been doing some internal reviews. You have done an audit on them. Have they had any consultants in as well?

Mr HORNE: Very substantial.

Mr GLACHAN: So they are doing it themselves, they are looking themselves at what they are doing, they have had consultants in and you have been in.

Mr HORNE: Yes.

Mr GLACHAN: Is everyone agreeing on what they are seeing? Have you found your recommendations different to those of the consultants that have been in?

Mr HORNE: I think there seems to be quite general agreement on the nature of delays and what causes them. There probably is not great agreement on exactly the

way to solve them. I mean every consultant seems to have a different view as to what computer system one should use or what legal reforms are most appropriate to deal with the matters. Most people agree that better management systems and better legal processes are needed, but the means by which one fixes those are not necessarily uniformly agreed. I guess that is one of the things that takes so long, and perhaps an audit like this helps to nip in the bud: Look, it's been going on for some time, can't we start to see some results? Can't we start to see some actual changes as a result of all of this?

One of the big reviews that hadn't been conducted when we left the field was a review of all the local courts which was about to be undertaken by the department. That was another large consultancy that has now been undertaken and a whole lot of other things have come out of that.

I think there is a point to what you say, that there have been lots of reviews that have examined it and Mr Glanfield made the point that a previous consultant had proposed some computerisation ideas and they have now got another consultant to look at that and they have some different views about that. I think that is typical of this sort of area. You could review it for a long time and, at the end of the day, there may be 100 solutions that you could implement for any one problem and it does not matter which one you pick, just pick one. So I guess we were trying to set out: Where are you now? Where are you planning to go in the next short period? What are your targets to achieve? That is why we tried to document and get the department to agree to that, so that it could then be held accountable: This is where we are going; this is the time table we are going to get somewhere in, and then we can go back and see if they have achieved that. Unfortunately, the restructure seemed to move all of that down another year or so, but I think that agenda of reform, from what I have heard today, sounds to be pretty much still where things are at.

Mr GLACHAN: So you made a preliminary report because changes were going on and you felt it was better to wait until those changes were concluded before you did the final report. What advantage then do you think your preliminary report can be to the Parliament and the people, the taxpayers of the State, if you are just waiting for changes to be implemented? What was the point in just tabling a preliminary report?

Mr HARRIS: I suppose the choice that we had in front of us was to not do anything and just leave the information with us until we conducted the final phase, in which case we would not be sitting here and $100,000 would not have appeared anywhere, or to say: Well, we have got some information which we thought that Parliament might find interesting. It also commits the agency to goals and targets against which it can be measured in the future. Why don't we table that?

Mr GLACHAN: When you go to your clients and ask for information about whether or not they are satisfied with the work that you have done for them, do you include performance audit requirements?

Mr HARRIS: No. We do not include performance audit in the questions that we ask, in the main because most of the clients have not seen the performance audits and would not know what a performance audit is. I mean we have got 400 clients.

Mr GLACHAN: Of those for whom you do performance audits, do you ask them about their level of satisfaction with the result of the performance audit?

Mr JAMBRICH: It is a question which we are addressing in fact right now. We have tried to ascertain some sort of satisfaction from them. It is very difficult because generally we are not invited, we are sort of the uninvited guests, and that makes a lot of difference but, nevertheless, we are addressing that particular problem and we are thinking of a number of ways of trying to seek that sort of information from them.

Mr GLACHAN: It must be useful to you, if you feel that you are the uninvited auditors in this particular area, it must be interesting for you to know, when that process is completed, whether or not people can see that it was of advantage to them and perhaps change their view about it and say: You were uninvited but we are pleased you came, or we are disappointed you came and we wish you had not.

Mr HORNE: There are a lot of discussions during the course of an audit. We have discussions right through each phase of it with the people concerned and we have what we call an exit interview with the chief executive and they are not usually very backward in telling you if they don't think you have done a good job. You get that feedback pretty readily. They also provide us with a written response which we incorporate into the report and, again, they are not usually too reluctant to say what they think and that is part of the published report, so we get that feedback and we get some idea of the satisfaction of the clients we have audited.

Mr JAMBRICH: If I may just say, that a couple of organisations have invited us back and they have said they wish us to proceed with a particular audit or wished us to continue to assist them with performance audits.

Mr GLACHAN: So then what are you proposing to do now with this organisation? Are you going back?

Mr JAMBRICH: We would like to.

Mr GLACHAN: Do the proper audit, complete the audit?

Mr JAMBRICH: We would like to. Our concern at this stage, as I think I said before, is that based on the progress so far, I just do not know whether we would be able to get much further.

Mr GLACHAN: If that is the case, wouldn't it be an advantage to the Parliament and to the taxpayers if you went back and put our report and say, They have not advanced very far at all, they undertook to do certain things, we believed they were

going to do and in fact they did this and they did that but they missed all these others. Would that not be an advantage to the Parliament and the taxpayers?

Mr HARRIS: I suppose the current management could say that we could even have this responsibility until recently, that they have to take stock and to acquit their own responsibility, to be satisfied themselves as to what they were going to do, and all that took a year, or a year and a half or whatever, and that response makes us pause as to whether we should go back again.

Mr GLACHAN: But the new people are able to develop criteria by which all this can be developed you told us earlier.

Mr HARRIS: "All this" being?

Mr GLACHAN: People's performance and surely you should be able to say: Look, you have had enough time.

Mr HARRIS: No, that is the hard part. I think it is very easy and a very easy response to make to give some justification for them to say, I did not have this responsibility a year ago and it has taken me a year to find out where I am and to be comfortable with the direction we are going because I am now responsible for it, and I have lost a year. Then we could explain to Government and say: Hey, Government why didn't you re-organise this body because we have lost a year, but that does not get you anywhere.

Mr CHAPPELL: That is pretty much saying that all of the responsibility for all of the improvement, the efficiency gains, the management change and all the rest of it rests in the hands of the CEO rather than the organisation as a whole.

Mr HARRIS: I think the CEO would see himself in this case as being responsible, yes.

Mr GLACHAN: I would have thought someone should be able to get hold of them by the scruff of their neck and say: Listen, you have had a fair bit of time and you have not done much. Who is the appropriate person to do that?

Mr HORNE: That is the reason we did the preliminary report because they had had a fair bit of time and we did get them by the scruff of the neck and ask them what they had done.

Mr GLACHAN: It is easy enough for them to say: We have not had enough time, we have only had this for twelve months. That is easy.

Mr HARRIS: But you might actually believe them.

Mr GLACHAN: Surely, someone must have the capacity to determine whether

that is a fair statement or not, whether they have not had enough time.

Mr HARRIS: I suppose we could firstly ask whether they think they have had a reasonable amount of time and if they say yes, then the door is open, and if they say no, then the second question would be: When do you think it is reasonable?

Mr GLACHAN: Or the second question might be: Can you show me why you have not had enough time?

Mr HARRIS: I think they might use the easy answer: I have to satisfy myself, I have to employ my own consultants.

Mr GLACHAN: The easy answer seems too easy to me.

Mr HARRIS: Probably is.

Mr GLACHAN: Because if you are in private enterprise they would not be able to give that answer, they wouldn't be able to give that easy answer.

Mr HARRIS: No.

Mr GLACHAN: Someone would say to them: We are looking at results and we are not getting those results and if you cannot get them somebody else should or will.

Mr HARRIS: Yes, it is reasonably unusual to have a change of CEO though four or five months after we have started. We have just seen one. That is reasonably ununusual.

Mr CHAPPELL: Can I just ask one sort of can of worms question that came out of some information given earlier in the day? Quite clearly a lot of people have identified that there is a whole lot of focus on efficiencies within the administration of the courts but which has implications for all of the rest of the world, all of the clients and all of that, Joe talks about cost shifting and all of that sort of thing.

Mr HARRIS: I agree with that.

Mr CHAPPELL: Is there any way in which as part of your process of performance audit you can get at least a notional account of the impact of efficiency gains in one level, implying all sorts of additional cost burdens at another level? Can that be built into methodology somewhere with any sense of reliability?

Mr HARRIS: It is very expensive to examine external benefits and costs from a recent change and you have got to measure external benefits and costs beforehand, then see the change, and then measure external costs and benefits afterwards and try to make sure that that change was the causality of the difference. That is quite expensive and difficult.

I think what is easier, and what I do not think we have done but what we could do, is to see what costs are being borne now in the current situation, still, with a view to whether they may be reasonable or unreasonable.

One of the letters we received, or the one of the letters that has come to me on this issue, was from a person charged with a criminal offence who had spent $30,000 or $40,000 trying to acquit himself of the charge and had appeared in a court room with his barrister on four or five occasions, only to have the case held over, whose solicitor wrote to the then relevant judge and said, "Could you please use all your powers to expedite the hearing on the next scheduled date?" The judge's tipstaff, or whatever they are called, wrote back saying that the judge thought the question was impertinent.

Mr GLACHAN: That would be right.

Mr HARRIS: That quite set my hair on end, and at the next hearing the case was dropped by the Crown. So the person then had incurred $30,000 or $40,000 worth of expenses for no case. That was really a matter of some anxiety.

Mr GLACHAN: I believe that the dispensation of justice is a very important issue and I recognise that in our system we do everything we possibly can, whatever that might be, to ensure that no innocent person is unjustly convicted. We bend over backwards to make sure that never ever happens as far as we can. But there must be simple management practices that can be adopted by the court system somewhere along the line that will reduce delays that truly are unnecessary.

Mr HARRIS: Yes.

Mr GLACHAN: If I were accused of a crime, and for the sake of a month or two months or three months I felt that I had not received justice I would be very upset. If I thought that by putting it off for another month would enable more evidence to be prepared or a better case to be prepared, I would certainly want that to happen. But the case you have just mentioned about appearing five times in the court and all of that cost and then the Crown dropping the case, that is inexcusable.

Mr HARRIS: Yes, I thought inexcusable. I thought the event was poor but I thought the response was poorer.

Mr GLACHAN: Inexcusable.

Mr CHAPPELL: I guess behind my question is the prospective aspect of it, that is, if we can measure afterwards the benefit to the community from management changes, is there anyway we can begin to assess the value of spending a little bit more in this part of the system or that part, or reallocating priorities within the system, because it is going to produce definable goods?

Mr HARRIS: Yes. During the break I was told that the mere addition of resources to the system does not necessarily guarantee a better result and actually on some occasions additional resources leads to an average reduction in output, so that the total output is unchanged. That is reasonably daunting.

Mr HORNE: There needs to be a fairly sophisticated approach to dealing with delays in the Court. If the courts administration people simply look to their own best interests, they might in fact be disadvantaging everybody else and that is quite likely when that is all you are concerned with. So there is a very great need for any submissions to gather all the relevant players.

When we started the audit we were aware of a study in Scotland that had looked at police waiting times. As a result of court reforms there, all of a sudden police were spending most of their time waiting at the court for the cases to come up. The costs to the Police Service were huge and they were pretty unhappy about it.

I believe in Victoria a study has just been started, and I am not entirely sure by who, but a very large study has been started of the whole model about this, about police and the courts and Corrective Services and the flow through of the whole thing to try and attack it in a more holistic way, and I think that is the answer, that it needs to be attacked in a more holistic way and that if a reform in the courts is being pursued only without the other players a party to it, it will just end up moving the problem from one area to the next and we will be no better off.

CHAIRMAN: With the computerisation system they had there, what was your opinion of the computerisation system when you went through it?

Mr HORNE: We only had a preliminary look at it, so I would have to preface my comments on that, but at the time I think we thought the computerisation was not meeting the needs of the day, if it ever met the needs of the day, and I could not comment on that, but it was not meeting the needs of the day. It was not able to break information down to operational levels that were now needed; it was not able to separate information between jurisdictions; it was not able to allocate costs on the jurisdiction basis well enough for anyone to make the sort of management decisions they wanted to make.

The computer systems were not integrated across the entire courts area and they still are not and that will be a continuing problem because of historical factors. As it has grown up at different rates in different regions there have been piecemeal solutions to different parts. There has no been no big picture approach, a whole strategy for the whole thing, which I guess makes a lot of sense, if it can be done.

The information systems were considerable, there was a lot of them, producing lots of reports, there was a lot of money spent on that and they were serving the needs of individual users fairly well, but from a total management point of view in terms of trying to manage the courts, they were not achieving the purpose that they were there

for.

(The witnesses withdrew)
(The Committee adjourned at 2 pm)

APPENDIX 2:

SUBMISSIONS

PUBLIC ACCOUNTS COMMITTEE

FOLLOW-UP INQUIRY INTO PERFORMANCE AUDIT REPORT

Management Of The Courts

SUPPLEMENTARY INFORMATION

1. Breakdown of Audit Costs

A breakdown of costs for the audit, in the manner requested, is provided below.

Direct salaries costs	$74,882	
Overheads[1] charged on staff time	$18,720	
Printing of report	$3,298	
Subtotal ("Real Costs")		$93,602
Value of unpaid overtime		$9,100
Grand total as reported to Parliament ("Notional Cost")		**$106,000**

In respect of the above costs there are a number of issues that should be mentioned. We regard the costs and time taken on this audit as less than ideal. There were several factors influencing the result:

- this was one of our relatively early performance audits. Between February and April 1994, the period when this audit started, the Performance Audit Branch (PAB) was, in practical terms, established. It grew from a staff of four to seventeen plus. Our methodology, and project management processes, were still evolving. In fact, a new process for project management in PAB was introduced part-way through this audit.

[1] PAB operates as a cost centre. Overheads are allocated onto time charged to audit projects by PAB staff to cover the following costs: employer's superannuation contribution, worker's compensation insurance, payroll tax, recruitment expenses, accommodation rental, building services, depreciation on capital equipment (including computers), equipment maintenance, stationary and non capital office expenses, postal expenses, telephone expenses, purchase of books and subscriptions.

- this was the very first performance audit undertaken in this portfolio area. Thus, some of the research required related to establishing the "permanent file" for this area. Future audits need only to update the file for major changes.

- the original project leader left PAB during the early stages of the audit. The new leader had to learn about the area and the issues before being able to continue the audit effectively. Costs incurred by the original project leader amounted to some $8,900. Not all of this value can be captured in the workpapers and carried through.

- to replace the team leader, owing to resource constraints a lower-level officer was given the opportunity to take on the role. This was the first time this had been attempted, and necessitated a greater amount of controller-level involvement (Director) than current policy dictates.

- the audit was terminated at the conclusion of the preliminary stage. Because of the large number of very significant changes taking place at the Department, it was decided that it would be more beneficial to terminate the audit and continue at a later stage when many of the proposed improvements had been implemented. As a consequence, some of the benefit of time spent that would normally yield value at a later stage of the audit was not fully realised. However, this benefit will again come into play when the audit resumes.

A breakdown of costs and time by personnel is provided below.

Executive Review		
Assistant Auditor-General	28 hours	$3,630
Project Controller		
Director	317 hrs	$35,459
delegate (during leave)	11 hrs	$906
Team Leader		
no. 1 (Snr Perf Audit Manager)	108 hrs	$8,899
no. 2 (Perf Audit Manager)	700 hrs	$43,107
Team Member		
Audit Senior	221 hrs	$10,440
Administrative Support		
Executive Assistant	16 hrs	$614
Direct Costs		
Printing		$3,298
TOTAL	**1401 hours**	**$106,353**

2. Agreed Improvements

In its formal response (set out at pages 8-10 of the report), the Department provides a series of acknowledgments and agreements to various issues raised by the audit. These matters derive from the Chapter titled *Priorities for Continuing Reform* which commences at page 28 of the report.

At page 28, the report observes that the Department had taken stock of what reforms had been achieved, had further considered the overall needs for reform, and had set out plans for what remained to be done. The report goes on to note that the Department had set a substantial agenda over the next three to four years to implement a range of reform actions. The report also emphasises that reforms in the ensuing eighteen months would be particularly important, so that the effectiveness and pace of reform was not impaired.

The report did not seek to set out a detailed inventory or timetable for all reform activities. However, the audit collected a considerable range and quantity of documentation from the Department setting out details of many reform actions and the timing proposed. This material is contained in the audit's workpapers, which are fully cross referenced to the report. This material can be provided to the Committee if desired. The report did however, attempt to provide a summary of the reform action proposed in the short term, and to focus on key aspects of reform efforts.

In this context, eleven key short term reforms are set out in the box at the bottom of page 28 of the report. An extended list of 22 items is provided in Appendix 2 of the report, at pages 37-38.

At the time of preparing the report the Department had agreed that many of these reform elements would be in place by the end of 1995, or at least within eighteen months. The Department's acceptance of this statement in the report, and its formal response included in the report, evidences this agreement.

The report also goes on to provide some specific observations and recommendations concerning the Department's proposed program over the following several years. These comments are provided at pages 29-31 of the report, with recommendations summarised at page 6. The Department's response addresses these recommendations.

The agreement which the Department provided the audit concerning the nature and timing of reforms needs to be set in the context that not long after the audit the Department was abolished and amalgamated back with Attorney-General's. The current Director-General indicated at the Committee's hearing on 18 April that this amalgamation led to the new administration putting many matters on hold whilst it undertook a review of reform plans and considered its own approach to the situation.

3. Further Audit

The report indicated that it would be appropriate for a further audit focussing on the management of the courts to be commenced by mid 1996, or as close to that time as practicable.

As mentioned earlier, the abolition of the Department soon after the audit served to slow matters down. Attorney-General's provided the Committee with a status report on action taken to date. That update indicates that only a limited amount of progress has occurred in the twelve months since the audit report was tabled. As a result, it was our assessment that a further audit at this stage would not be of sufficient value, and no audit of this area during 1996 has been scheduled at this time.

The Audit Office is continuing to monitor the situation, and will liaise with Attorney-General's to assess an appropriate timing to initiate further audit work in this area. Should The Audit Office be requested to undertake the audit at a specific time, every effort would be made to include this into our forward planning.

4. Duration of the Audit

Significant dates for the audit are set out below:

- early Feb 1994 — basic background research commenced to consider the merits of a suggested performance audit in the courts.
- 24 Feb 1994 — report on initial background research submitted, and approval obtained to proceed to formally initiate discussions with the agency.
- late Feb 1994 — audit team leader leaves PAB. Replacement not available at same level in the short term. Decision taken to give opportunity for an officer at Performance Audit Manager level to lead the project.
- **7 March 1994** — ***opening interview*** **held with CEO and deputy of DOCA by AAG and project controller.**
- 30 March 1994 — major lines of inquiry for the audit formally confirmed following initial inquiries and a meeting of (new) team leader with the DOCA liaison officer.
- 22 May 1994 — preliminary research completed and report on the audit prepared (see response to question 5).
- 1 June 1994 — decision taken to suspend the full audit, and to prepare a *preliminary report* to Parliament.
- 1 June 1994 — audit team commences work to identify and undertake further supplementary research required to enable a satisfactory *preliminary report* to be prepared. (note: this was the first time that the concept of a preliminary report to Parliament had existed. The nature, content and format of such a report had to be developed by the audit team)

- 3 Aug 1994 — formal briefing of CEO by project controller on audit status and process to be followed to finalise.
- 26 Aug 1994 — CEO advised in writing of the preparation of a series of *briefing papers* by audit for review by DOCA.
- 1 Sept 1994 — briefing papers 1 & 2 formally issued to DOCA.
- 5 Sept 1994 — briefing papers 3 & 4 formally issued to DOCA.
- 12 Sept 1994 — briefing paper 5 formally issued to DOCA.
- **17 Nov 1994** — **draft report formally issued to DOCA.**
- 7 Dec 1994 — *exit interview* held with CEO by project controller & team leader to discuss draft report in detail.
- 7 Dec 94 — CEO formally advised that 28 day period had commenced.
- 8 Dec 94 — draft report formally provided to the Minister.
- 23 Dec 94 — first version of formal response received from DOCA (to be incorporated into the report): subsequently modified.
- **4 Jan 95** — **modified formal response received from DOCA.**
- **5 Jan 95** — **report finalised, ready for printing.** (however, Parliament had been prorogued pending an upcoming election, and The Audit Office determined that no report should be made to Parliament until after the election)
- 8 February 1995 — CEO formally advised that tabling of the report would be held over until 5 April 1995.
- **5 April 1995** — **report tabled in the Legislative Assembly.**

From the detailed chronology outlined above, taking the opening interview as the formal commencement date and tabling as the formal completion date, it can be seen that the audit took place over a period of thirteen months. However, the chronology also shows that the audit report was finalised three months prior to tabling, but was held over due to Parliament being prorogued at the time. Allowing 2 weeks of that three months delay for the report to be printed, **the overall duration of the audit can be defined as 10.5 months.**

5. Preliminary Study

The preliminary study is a vital part of the performance audit process. As the Committee has observed, Section 4.1.1 of the Performance Audit Manual explains its purpose. Section 4.1.2 outlines the form of report normally prepared from the preliminary study.

This audit did involve a preliminary examination, and an internal report was produced from this. However, we have refrained from formally describing that document as a *preliminary study* report. Our methodology was still evolving at that time, and we were experimenting with variations of process.

When initiated, the initial examination period for this audit was referred to as a *preliminary survey*. This term is used quite commonly in the internal audit field when undertaking comprehensive/management audits. The defined role and scope of that process, as applied to this audit, are somewhat different from what is now current practice as reflected by our Manual.

To clarify this situation, attached at Appendix 1 is a document from the audit's workpapers which was prepared at the time, and provided to the department, to set out what the preliminary survey process was intended to do.

The report which was subsequently produced from the preliminary survey satisfied the objectives it was required to address. It was a sizeable document, running to thirty pages of report, plus another 37 pages of attachments. A copy can be provided to the Committee if desired.

Although commissioned with a slightly different approach, the preliminary survey report achieved most of the intentions which our Manual today sets out. The current term, preliminary study, had just started to come into use at that time and some internal documents even used that term in processing the report.

Attached at Appendices 2 to 5 are copies of internal memoranda from the audit's workpapers which clarify the steps used to process the preliminary survey report for this audit.

Whilst different from our current methodology, the preliminary survey report for this audit still served as a major control tool. As can be seen from Appendices 2-5, the major function of the document was to make, and support, a recommendation to terminate the audit at that point. This addresses precisely the extract from section 4.1.1 of the Manual which the Committee quoted in asking for further information on this matter.

Whilst the preliminary survey report did serve as a major control device for this audit, we would still not regard it as a fully functional preliminary study report in terms of our present practices. The difference showed up most clearly when we attempted to terminate the audit at point but also to make a report to Parliament.

Such a report had never been made before. It soon became apparent that whilst the preliminary survey had collected an assessed a large amount of material, it did not provide a sufficient base upon which to prepare a satisfactory report to Parliament. As a result, further research and consultation had to be undertaken before a report for Parliament could be prepared.

This experience has contributed to the ongoing evolution of our audit methodology. However, it did <u>not</u> mean that management involvement with the project was less than would occur today. The reverse is in fact the case.

Owing to circumstances, the team leader assigned for most of the audit was an officer at a lower level than we would normally assign for an audit of this complexity and

magnitude. This factor necessitated a higher level of intensive project controller involvement than would usually be required (see data provided in response to question 1).

Because our methodology was still evolving (and we were hence experimenting with various processes and approaches), and also because most of our operational staff had very limited performance audit experience at that time, it was a deliberate policy for project controllers to have a high level of detailed involvement with each audit.

Our operations have evolved since then. Current policy has increased the number of projects for each controller, necessitating less controller time (and hence cost) on each project. A redefinition of roles has accompanied this evolution. That definition varies what was stated previously in the Manual. The new definition is set out in our current Branch Business Plan. An extract of the relevant material is attached at Appendix 6.

6. Briefing Papers

As mentioned at the Committee's hearing on 18 April, a series of *briefing papers* was provided to the Department as part of the audit process. This is reflected in the chronology of events set out earlier in this paper in response to question 4.

Today, the briefing papers which were prepared would be called either *issues papers* or *discussion papers*.

Five such papers were issued to the department, viz.

- Briefing Paper 1 - *Impetus for Change*
- Briefing Paper 2 - *The Initiatives taken to Improve the Courts System*
- Briefing Paper 3 - *Outcome of Changes Implemented*
- Briefing Paper 4 - *The Proposed Future of Reforms*
- Briefing Paper 5 - *Accountability and Performance Measures*.

These papers, and any feedback or formal responses received from the Department or specific court jurisdictions, provided the basis for developing our report to Parliament.

Two examples are attached, as requested, at Appendices 7 and 8.

As can be seen from the attached examples, whilst similar to the final Parliamentary report, there is greater detail and discussion provided in those papers to management. This reflects a longstanding practice in audit, including attest audit, of summarising key issues for Parliament and providing more detailed comment and feedback to agency management.

SECTION 1

Question 1

Evidence	Question
"*....the introduction of a completely new financial management system for the merged department is a massive task. It will cost in excess of $1m. but we hope to have that on track and operational from 1 July*". (page 64).	Will the "*completely new financial management system*" have any relation at all with the new courts management computer system? If yes, what exactly will that relation be? Please provide details.

Response

The new financial management system (FMS) and the new court management computer system (CAS) will be electronically linked.

CAS will provide a computerised debtors system for all monies owing in courts throughout the State. It will be linked to FMS to ensure financial reports reflect the debt situation in an accurate and timely manner. The link will also enable information on revenue collected in the courts and related statistical information to be transferred from CAS to FMS.

It is expected that revenue data would be updated to FMS on a daily basis and debt data on a less frequent basis - with the capacity for daily updates of both revenue and debt, if required.

As well as establishing for the first time a fully integrated database for debt and revenue data, the link between CAS and FMS will provide vital information for activity based costing, future pricing policies and productivity measurement.

In addition, the Information Technology Strategic Plan includes the development of an Executive Information System which will collate and analyse key performance information from the CAS operating system, the FMS and the new Human Resources System , to provide integrated resourcing information across the system of courts.

Question 2

Evidence	Question
"There has been an increasing trend by the judiciary to take more active interest in the management of cases within their courts and we would applaud that". (Page 65).	2.1 Who sets the timetable for the day? The court registrar, who is appointed by your Department? The judge? If it is the registrar, what is the kind of interest that the judiciary can take in the management of cases? 2.2 In what concrete ways has this *"more active interest"* on the part of judges manifested itself? Since when has this *"more active interest"* been evident? What has caused it?

Response

2.1

The enabling legislation for each court makes it clear that listing cases is a judicial function. The specific references are :

Supreme Court	*Supreme Court Rules*	Part 1A.1
Land & Environment Court	*Land & Environment Court Act 1979*	s.29
District Court	*District Court Act 1973*	s.33
Compensation Court	*Compensation Court Act 1984*	s. 21
Local Courts	*Local Courts Act 1982*	s.11

These provisions embody the general principle that courts must control such activity to ensure that the interests of justice are served. That principle applies across all the courts and divisions, and is also reflected in the Rules of Court and Practice Directions issued periodically. Typically, the Head of Jurisdiction establishes the daily listing rates and relative priorities between case categories. That is usually done in consultation with the other members of the court, its administrators and registrars, the legal profession and other interest groups.

There are a number of variations in the systems currently employed in the courts to manage the management and listing of cases. These systems are tailored to the type of work they do. In some cases, this also means that there is variation between the systems used within a particular court or its various divisions, again depending on the type of cases dealt with, the extent of delays and the management regime within which those delays are being reduced.

The practical application of those judicial guidelines is an active partnership between independent judicial officers and the registrars and registry staff employed by the Department. The application of a court's case listing system usually comprises action by registry officers to initially list cases and registrars who call them over to ascertain their readiness, compliance with pre-trial directions and/or suitability for alternate dispute resolution. Once listed for judicial hearing, individual case management is directly undertaken by a judicial officer, often the same judge or magistrate who will ultimately hear the case.

Again, there are some variations between the different categories of cases within a court, and between the courts themselves. For instance, registrars in the Common Law Division of the Supreme Court allocate priorities using the following general criteria :

Criminal cases	Civil cases
▪ retrial of a case	▪ reduced life expectancy
▪ whether it involves a juvenile accused	▪ whether being relisted
▪ whether the accused is in custody	▪ overseas witnesses
▪ the date of committal for trail	▪ order for expedition

Issues relating to relative priority of any individual case can be considered by a judge through an application for expedition or review of a registrar's decision.

In other areas of the Supreme Court, like the Commercial Division, the Administrative Law Division and defamation matters, case listing, call over and subsequent management is assumed directly by the relevant Chief Judge and members of the Court.

In a practical contrast, the Industrial Court will decide within predetermined guidelines which individual cases receive pre-trial management from the Registrar, and which will be managed from commencement by a Judge. Often, the nature of the dispute will be the determining factor, with large-scale industrial disputes receiving intensive judicial management from the outset to maximise the opportunities for the case to be resolved without lengthy conciliation or arbitration proceedings.

2.2

The movement to introduce contemporary caseflow management systems into the State's courts began in 1988 with the establishment of the Supreme Court's *Common Law Delay Reduction Committee*. In 1989, the *Report on a Review of the New South Wales Court System*, commissioned by the then Premier and conducted by management consultants Coopers & Lybrand WD Scott, confirmed the desirability of that approach.

Under case flow management practices the court assumes an active role in the management of cases. This is a major departure from the traditional approach to case management which allowed the parties to determine the speed with which litigation progressed, a factor which was identified as significantly contributing to delay in both the United States, where the caseflow management systems originated, and in New South Wales. The court's more active role is implemented by cases being "event driven", that is by establishing a timetable based on settled standards for each phase of the litigation cycle.

Under this approach the parties are required to prepare their cases for trial according to a number of events controlled by the court, such as pre-trial conferences, directions hearings and call overs. At each point in the cycle, opportunities are taken to explore possibilities for settlement or referral to ADR schemes to encourage more timely disposals and to maximise the availability of judicial resources to deal with those matters which require a full judicial determination.

A useful discussion of the history of active case management initiatives in the Supreme Court can be found in the Civil Justice research Centre's September, 1995 report *An Implementation Evaluation of Differential Case Management.* A copy of that report is available for the Committee's information, if required.

Other, illustrative, examples of this active interest can be found in :

- the promulgation of new Rules of Court for the Land & Environment Court from 1 January, 1996 to minimise delay and expense to the parties;

- the publication of the District Court's 1995 Strategic Plan, the first in Australia, and in particular the commitment to *discharging the Court's responsibilities in an orderly, cost effective and expeditious manner* and the accompanying 9 strategies to achieve that goal;

- the Compensation Court's new 1996 case listing and management system, now embodied in Rules of Court;

- the extension of Registrar's Call Overs in the Local Courts and the publication of the Chief Magistrate's 1992 Time Standards for selected case categories, and their subsequent revision;

- the introduction of alternate dispute resolution schemes, principally arbitration based, in the general jurisdictions;

- judicial participation in seminars, conferences and research projects focussing on case management and delay reduction, either within the courts themselves at annual planning days, or through other bodies such as the *Australian Institute of Judicial Administration.*

The general motivation for these extensive efforts is well expressed by a Judge of the Supreme Court as :

> *..a combination of the mounting public disquiet concerning the efficiency of the litigation process and a waning confidence in it, coupled with steadily increasing budgetary pressures upon the courts themselves, have combined to both catalyse and accelerate what is now a national movement towards the positive case flow management approaches being developed within most courts.*[1]

The courts have, therefore, taken up the challenge of delay reduction on the basis that unacceptable delay has inequitable consequences for those seeking justice before them.

[1] The Hon Justice LT Olsen, 1993. "Civil Caseflow Management in the Supreme Court of South Australia - Some Winds of Change:. Journal of Judicial Administration, 3, pp.3-26

Question 3

Evidence	Question
"A lot of the ideas tend to be jointly worked out proposals". (Page 65).	Precisely which ideas were *"jointly worked out proposals"*? Within which organisational framework were they worked out? Did the Judicial Commission play any role here?

Response

At the general level, almost all delay reduction initiatives introduced in the courts have required the active participation of judicial officers, public officials from within the Attorney General's Department and other justice agencies such as the Director of Public Prosecutions, as well as representatives of the legal profession through the NSW Law Society and Bar Association and other interest groups.

In particular, the relationship between the responsible Minister and the various Heads of Jurisdiction is crucial in developing delay reduction initiatives and securing support for them from both the executive and legislative branches of Government. The Department's Director-General plays a pivotal role in establishing and maintaining clear lines of communication between the various Heads of Jurisdiction and the responsible Minister, the Attorney General.

In respect of the wider Attorney General's Department, joint proposals are generally dealt with at two levels. Firstly, the Senior Executive Officers and Registrars are involved at very early stages when the judges or magistrates determine that action is required to specific problems. They work with judicial officers in the design of new practice and procedures and, often through the courts' own Rule Committees, contribute to the process of implementing them by rule or practice direction.

Secondly, at the corporate level, officers are involved in both the process of legislative and regulatory change according to the Attorney General's directions, as well as the resourcing of proposed initiatives, either through direct financial allocation or by expenditure designed to enhance or modify information technology systems and enable more effective implementation. Additionally, the Department can assist in conducting post implementation reviews to help determine whether an initiative has been successful, as was the case with the recent report of the Bureau of Crime Statistics & Research on the trial of the District Court's *Sentence Indication Scheme*.

It is accurate to say that the overall delay reduction program introduced by the courts in the last decade has had significant support from the Department. In addition, court administrators have also been active in other initiatives, such as the Law Society's *Settlement Week* where access to the court database is essential in identifying the cases which are targeted for settlement efforts.

Given these circumstances, there has been little formal interaction with the Judicial Commission in respect of the development and implementation of case management and delay reduction initiatives. However, the Commission has actively promoted and conducted education programs for judicial officers on caseflow management techniques.

Question 4

Evidence	Question
"I would have to say the principal strategy or philosophy underlying most of what we are doing in reducing numbers coming into the court by referral of matters to ADR or arbitration is really designed to reduce the number of matters coming into the court". (Page 66).	4.1 What proportion of cases ends up going to ADR? Has this proportion increased or decreased in the last five years? Do you keep records on this? 4.2 What recent strategies (including practical support) have been directed towards ADR techniques by the Attorney General's Department?

Response

4.1

The following table is a summary of the proportion of civil cases determined by the major ADR programs over the past five years.

It should be noted that the term "Alternate Dispute Resolution" is generic, and includes the following schemes operating within the courts :

- external arbitration
- court-annexed (Philadelphia) arbitration
- court-annexed mediation
- early neutral evaluation
- registrar's settlement conferences
- diversionary schemes, such as the mediation program in Community Justice Centres

The following table represents the proportion of civil cases resolved through the established arbitration schemes and more recent mediation schemes :

Jurisdiction	1991/92	1992/93	1993/94	1994/95	1995/96
Supreme Court	24%	34%	23%	10%	7%
Industrial Court	-	-	3.7%	3.6%	4%
Land & Environment Court	1.9%	2.4%	3.1%	3.2%	3.5%
District Court	43%	38%	36%	20%	30%
Compensation Court	-	-	-	-	-
Local Courts	8%	5%	5%	5%	10%

It is difficult to determine the exact overall impact of these programs, as the trends in these statistics need to be interpreted in light of :

- the existing guidelines on suitability for referral to arbitration
- the voluntary nature of the arbitration schemes
- changing priorities over time which can see significant adjustments in the judicial resources made available between the criminal and civil jurisdictions and the practice of using arbitration to maintain civil disposals while judges concentrate on criminal cases or those civil cases requiring a full trial.

They should also be seen in light of the Department's support for :

- the Australian Commercial Disputes Centre, in the form of periodic grants ($168,000 in 1995/96 & 1996/97); and
- the Community Justices Centres operations

both of which result in disputes being resolved before they reach the point of litigation and generate demand on the system of courts.

Departmental expenditure on the core arbitration programs since 1991/92 has been :

Jurisdiction	1991/92	1992/93	1993/94	1994/95	1995/96
Supreme Court	$0.199M	$0.265M	$0.466M	$0.306M	$0.340M
District Court	$1.134M	$1.175M	$0.982M	$0.818M	$0.750M
Local Courts	$0.825M	$0.710M	$0.660M	$0.710M	$0.550M
Total expenditure:	$2.158M	$2.150M	$2.108M	$1.834M	$1.640M

In addition to this expenditure, the Department offers practical support in the following ways:

- court administrators and registrars refer suitable cases to ADR schemes during the pre-trial management phase;
- registrars conduct pre-trial sessions such as "settlement conferences", as well as actually conducting mediation sessions;
- the Department arranges accommodation for court-annexed arbitration operations and meets the rental and maintenance costs;
- Departmental officers attend to the payment of arbitrators from court funds and the registration of arbitration awards as judgments of the courts as provided in the legislation;
- Departmental officers, at the Attorney General's direction, assist in review and amendment of current ADR enabling legislation, including necessary amendments to the *Civil Arbitrations Act* and the more recent *Courts Legislation (Mediation and Evaluation) Act* 1994.

In the District Court, a 1996 rule amendment has introduced litigant-funded arbitration which is designed to provide better access to ADR right across the State and to ensure that the funding available to the program matches demand for arbitration services.

The Department also has a major role in community-based conflict resolution through its *Community Justice Centres* program. The last Annual Report of the Community Justice Centres (1994/95) has been tabled in the Parliament and contains extensive information on this area. The relevant statistics have been extracted and are attached.

While it is known that 77% of all persons seeking assistance from Community Justice Centres have indicated that without that service they would have sought a legal remedy, it is not known at this time how many would actually have instituted legal proceedings and placed a direct demand on the system of courts.

Question 5

Evidence	Question
"The Supreme Court has a differential case management system that sets very clear time standards for the handling of process right through to resolution". (Page 66).	Are there any sanctions or penalties imposed for non-compliance with these time standards in any of the Local, District or Supreme Court jurisdictions?

Response

There are a range of sanctions available to the Courts for non-compliance with a time standard. It should, however, be noted that these sanctions predominantly apply in the civil jurisdiction.

The possible sanctions are :

- removal from the hearing list, with an award of costs against the defaulting party
- loss of priority in the hearing list
- exclusion of evidence not provided in accordance with judicial direction
- dismissal of a case for lack of prosecution - requiring a fresh commencement
- entry of a directed or default judgment against a non-complying party

In the criminal jurisdictions, unnecessary delay in bringing a minor or summary prosecution is controlled by the provisions of the *Limitation Act*.

In addition, there is a right of an accused to seek a permanent stay of the proceedings if delay is likely to be unfairly prejudicial to a fair trial. However, since the case of *R v. Jago* in the High Court, it is settled law that unlike the United States, there is no general enforceable right to a speedy trial in New South Wales.

Question 6

Evidence	Question
"We strongly support additional funding for acting judge or magistrate programmes and both the current and former governments have been very supportive of that being the mechanism to handle the peaks or to address increasing backlogs". (Page 66).	What has actually happened in this connection? How many extra judges have been put on? How much did this cost? When did it happen? What difference did it make? What is happening now in this connection?

Response

Acting Judges and Magistrates have been used in NSW since at least the 1960s in various jurisdictions.

The various court enabling legislation provides for the appointment, tenure and remuneration rates for acting judicial officers. The following table shows the relevant statutory provisions for the major courts :

Jurisdiction	Act	Section	Tenure	Age Limit
Supreme Court	Supreme Court Act	s.37	12 months	75 [s.37(4)]
Industrial Court	Industrial Relations Act	s.294	12 months (max)	Not prescribed
Land & Environment Court	Land & Environment Court Act	s.10	12 months	75 [s.11(4)]
District Court	District Court Act	s.18	12 months	75 [s.18(3)]
Compensation Court	Compensation Court Act	s.11	12 months	75 [s.11(6)]
Local Courts	Local Courts Act	"Limited tenure" s.13(1)	Not prescribed	Can be set by Governor

The Acting Judicial Officer scheme did not receive additional Consolidated Fund support in 1995/96. However, a number of acting appointments were funded from existing resources as indicated in the following table :

Jurisdiction	Funding	Purpose
Supreme Court	Commonwealth	To defray the costs of additional Commonwealth criminal trials elected to be prosecuted in the NSW Supreme Court
Industrial Court	Internal	1 Acting Judge
Compensation Court	Internal	310 additional sitting days resulting in 1410 disposals
Local Courts	Internal	Acting Magistrates to fill the positions of Chairman, Victims Compensation Tribunal, State Coroner and to assist in delay reduction.

In the previous year (1994/95), the following additional Consolidated Fund support was provided for the indicated purposes:

Jurisdiction	Funding	Purpose & results
Supreme Court	$1.075M	3 Acting Judges to target delays in both civil & criminal cases. Specific results of the program are incorporated into the general disposal statistics.
District Court	$0.914M	3 Acting Judges to relieve experienced Judges dedicated to eliminating pre-1989 motor vehicle injury cases, disposing of a backlog of 4,200 cases.
Local Courts	$0.550M	3 Acting Magistrates targeted lengthy criminal committal cases and achieved significant delay reductions - including reduced waiting time at the Sydney Downing Centre from 39 weeks as at June, 1994 to 13 weeks in December, 1994.
Total expenditure:	**$2.539M**	

In light of the very positive results obtained in 1994/95, and advice from the Heads of Jurisdiction that particular areas of the courts' caseloads were again coming under pressure, the Department developed an enhancement bid for the 1996/97 Budget Estimates consisting of :

Jurisdiction	Funding	Purpose
Supreme Court	$1.0M (1996/7) $1.288M (1997/8)	3 Acting Judges over 2 years (1996/7 - 1997/8) to target delays in the Court of Appeal; and 4 Acting Judges over 2 years (1996/7-1997/8) to target pre-Differential Case Management backlog cases in the Common Law Division.
District Court	$0.934M (1996/7) $0.934M (1997/8)	5 Acting Judges to facilitate a 2 year trial of abolishing the traditional mid-year court vacation and reducing the Christmas vacation from 6 to 4 weeks to target pre-Active Case Management backlogs.
Local Courts	$0.645M	3 Acting Magistrates targeting lengthy criminal committal cases and long running "special fixtures".

That bid has now been approved by Government and those allocations made for the 1996/97 year. The joint development of these proposals between the relevant judicial officers, court administrators and corporate financial officers is a typical example of the current partnership between the courts and the Department.

Question 7

Evidence	Question
"Now we have engaged consultants to assist in reviewing not only that case management system that was proposed but also to develop an IT strategic plan for the department". (Page 66).	7.1 Please identify the consultants you have engaged for this project? How much did the consultancy cost? When did it start? Are you satisfied with the performance of the consultants? Were they chosen as a result of competitive bidding? If so, please provide the terms of reference and the letter soliciting proposals. 7.2 Are you presently engaging any other consultants in areas related to the administration of the courts? If so, for what purpose?

Response

7.1

KPMG Management Consulting was engaged for this project.

The consultancy costs totalled $98,000 for the development of the Department's information technology strategic plan and for the review of the Case Management System project.

The consultancy commenced on Monday 8 January 1996 and the performance of KPMG Consulting has been very satisfactory.

KPMG Management Consulting was chosen as the result of competitive bidding. Five management consulting firms - DMR Group Australia, Management & Technology Consulting, Deloitte Touche Tohmatsu, Coopers & Lybrand and KPMG Management Consulting were invited to submit competitive proposals for the work. These firms are all on the Department of Public Works and Services list of approved consultants for information technology strategic planning.

The terms of reference and the letter soliciting proposals are attached.

7.2

The following table indicates current consultancies being used in the courts area :

Area	Consultant	Purpose	Cost
Local Courts	Timmins Consultants	Strategic Planning	$8,000
Corporate Services	Stephen Gan Consultants	Premises Refurbishment	$5,000
Capital Works Unit	D Wilson, Architects	L&E Court relocation/fitout	$75,275
Capital Works Unit	John D'Anvers - Architect	Wagga Court refurbishment	$19,500
Capital Works Unit	Peddle Thorpe Architects	Banco Court refurbishment	$16,667
Quality Program	Australian Quality Council	Guided Self Assessment	$19,700

Question 8

Evidence	Question
"They are proposing that we approach it from a different point of view..." (Page 67).	Please explain the *"point of view"* of the consultants as outlined in their draft report.

Response

At the time of the merger, the Department immediately identified the need for effective information technology support across the courts. It then developed a strategy to review the former CMS proposal to accelerate the delivery of that support.

It should be noted from the outset that information technology applied to registry operations is targeted at improving the speed and efficiency of the administrative tasks undertaken, and provide opportunities to improve the level and quality of services provided by the Department to the community. It is not, of itself, likely to deliver significant reductions in court delays.

KPMG Management Consulting in developing the new IT strategic plan for the Department independently confirmed that a modified strategy to provide court systems was desirable. The strategy known as the Courts Administration System (CAS) replaces the proposed Case Management System (CMS) project. The differences are summarised in the new IT strategic plan as follows:

> *CMS included the roll-out of basic IT infrastructure and this investment will now be undertaken as a separate exercise. The CAS initiative will only include the cost of upgrading the IT infrastructure to meet the specific processing needs of the CAS applications.*

A primary objective of the CAS initiative is to provide basic IT support to as many courts as possible in the shortest time-frame. This will be achieved by the separation of the IT infrastructure delivery from the application development project. The roll-out of basic IT infrastructure such as Personal Computers, Local Area Networks and printers has a number of direct business benefits to the many courts that rely largely on manual processing and the use of typewriters for their operation.

KPMG supported the Department's strategy that rather than wait three years for all the court systems to be developed before providing the courts with some basic computer processing facilities, the IT infrastructure delivery should be expedited. Further details of the first phase infrastructure implementation are provided in the answer to Q 17.

> *CAS will be based on distributed rather than centralised processing and it is envisaged that each court house (or group of physically close court houses) will have its own server to run the CAS applications.*

The original CMS project proposed a highly integrated centralised corporate database which was designed to allow instantaneous sharing of data between jurisdictions and court locations. A centralised database meeting the needs of multiple jurisdictions, KPMG advised, increases the database complexity and increases the potential impact of a failure in the system. KPMG

recommended that the use of stand-alone databases with regular data transfer between court locations would meet the majority of business needs.

> *Each project that is undertaken as part of the CAS initiative is to have a separate, stand-alone deliverable. Under this approach if, at any time, the CAS initiative is cancelled or significantly altered, benefits will still be obtained from the investments made to that point.*

KPMG in its review of the CMS project indicated that best practice for IT projects involves keeping them small and as manageable as practical, with stand-alone deliverables produced in as short a time frame as possible. KPMG advocated that applications be developed and implemented for one jurisdiction first and then progressively tailored and implemented to the other jurisdictions. This differs from the CMS project which proposed common applications be developed for all the jurisdictions. In the view of KPMG this would increase the lead time in the delivery of applications to users and would increase the complexity of the application software.

Question 9

Evidence	Question
"There are currently in place very good systems for being able to identify where delays are and where the backlogs are". (Page 67).	Please describe these systems and provide evidence of their operation.

Response

Generally, the courts have available to them extensive statistics on the current caseload, disposals and delays. The following is a synopsis of the information regularly maintained in each jurisdiction :

Jurisdiction	Caseload and Delay Information
Supreme Court	Caseloads and estimated delays are monitored through monthly statistical reports for all Divisions and provided to the Chief Justice and Judges of the Court. A sample "Table of Contents" of those reports is attached to indicate the breadth of the information reported on.
Land & Environment Court	The Court has a dedicated research section which provides monthly performance information to the Chief Judge and Registrar. In addition to these routine reports, a more detailed analysis is provided each quarter, and all information regularly reviewed by the Chief Judge, List Judge, Registrar and Senior Assessor to determine whether alterations to the planned sittings are required.
Industrial Court	Monthly statistics are collated on : ▪ matters commenced & the cause of action ▪ matters disposed & the average, median & mode times for disposal (delay) ▪ matters listed at Registrar's call over ▪ referrals to mediation and the results of that process
District Court	From 1 January, 1996, a Statewide management information system was introduced for the Court. The system provides monthly reports on the number of cases registered and finalised for each venue across the State, and discriminates between cases commenced pre-Active Case Management and those subject to the new case management regime. Reports on median disposal times (delay) are produced periodically for review by the Chief Judge.
Compensation Court	Comprehensive statistics are available on the monthly performance of the Court, both for its Sydney sittings and the 46 different circuits undertaken across the State. The Chief Judge's List Committee regularly reviews those reports and makes any necessary changes to listing arrangements to meet emerging needs.
Local Courts	Since 1990, monthly returns are submitted by all Clerks of the Local Court, identifying among many other items of management information, the current waiting time to list a defended case before their court. This information is extracted directly from the local Magistrate's Court Diary. In addition, the Chief Magistrate is provided with a special monthly report which indicates the number of matters either not reached after being listed for hearing, or those which become part-heard and requiring a further hearing.

Apart from the periodic adjustment to court sittings made on the basis of this information base, this information has been used to provide support for specific initiatives, such as that detailed in the response to Question 6 relating to funding of the Acting Judicial Officer program in 1996/97.

In addition, the current Local Courts statistical base has been utilised by an increasing number of external bodies, such as :

- University of Western Sydney
- NSW Police Service
- Judicial Commission of NSW
- Australian Law Reform Commission
- Legal Aid Commission of NSW
- Director of Public Prosecutions

It has also been utilised to provide information in recent efforts to review the current system for dealing with Apprehended Violence Orders in Local Courts, with a wide range of clients, including :

- North Sydney Council
- Domestic Violence Advocacy Service
- University of New England
- Mullumbimby Womens' Information & Support Network
- Marrickville Legal Centre
- Benevolent Society of NSW
- Western NSW Public Health Unit
- Warrina Women & Childrens' Refuge
- Law Society of NSW

Question 10

Evidence	Question
"I think our systems are adequate to let us know where we need to put resources, but what they are not fine tuned on is the activity based costing, much more detailed management information that we really need going into the future for the management of the court system". (Page 67).	What more detailed management information would you still need? Is this being addressed by the consultancy referred to in question 8 above?

Response

Since the merger, the Department has identified a need for more comprehensive management statistics in the courts area. In particular, the following areas require attention :

- customer service information, such as numbers of non-court clients, customer contacts & satisfaction levels
- demographic trend information
- lead indicators of demand
- comparative efficiency scoring
- comparative costing & benchmarks
- uniform caseload & delay information
- distribution of delay in caseloads
- uniform asset utilisation rates
- comparative scale efficiency
- activity-based costings & cost allocation

Many of these areas are being addressed, either through the consolidated business planning process, or in concert with other NSW agencies such as Treasury, the Premier's Department, the Council on the Cost of Government, as well as Federal initiatives through the Commonwealth Grants Commission and the Council of Australian Governments. The Department intends to make greater use of the services of the information available from the Australian Bureau of Statistics , and in particular the National Courts Statistical Collection now under development.

The Information Technology strategic plan acknowledges that the Department has a fragmented approach to obtaining management information, with a number of systems in place for individual cost centres. Such systems range from manual data collection to sophisticated IT systems that serve the needs of management reporting. It states that the timeliness of current management reporting mechanisms is poor and a significant time lag exists between the collection and interpretation of key performance indicators.

The IT strategic plan, developed with the expert assistance of KPMG Management Consulting, proposes supports the acquisition of an integrated Management Information System (MIS) / Executive Information System (EIS) that consolidates information from individual cost centres to:

- improve the timeliness and accuracy of management reporting
- improve the ability to measure key indicators of the Department's overall performance;
- provide the capacity to evaluate individual cost centre performance; and

- provide the ability to formulate ad-hoc queries regarding the Department's operations to assist and support decision making.

Implementation of the computerised MIS/EIS will take approximately 18 months to two years. It is dependent upon the development of appropriate IT infrastructure to allow the required data to be cost effectively collected from around the State in electronic format, principally from the proposed Courts Administration System (CAS). Additionally it will draw upon data provided by the Financial Management System (FMS), the Human Resources Management System (HRM) and some manual operations.

The one-time capital cost of the MIS/EIS is in the order of $500,000 with annual recurrent costs of $30,000.

Question 11

Evidence	Question
"... *it is difficult when matters are adjourned* ..." (Page 68).	Has any study ever been done on which matters are commonly adjourned, or whether there is any kind of pattern in the types of cases which are adjourned?

Response

Awareness of adjournment rates is generally part of a wider case management system, as they have been identified as a contributor to overall delay. Most courts currently have in place an "adjournment policy" which applies to cases which have progressed to the point of being listed for hearing. Generically, a party seeking an adjournment must demonstrate to the List Judge, trial Judge or Registrar, that circumstances beyond their control have arisen since the matter was listed. If they fail to do so, any of the sanctions mentioned in the response to Question 5 may be applied, or the request for adjournment refused.

It must be acknowledged that this is a particularly difficult area of case management. In its September, 1995 *Implementation Evaluation of Differential Case Management* (DCM) in the Supreme Court, the Civil Justice Research Centre noted that the Court did not control adjournments as fully as intended during the first year of the program. This finding has been incorporated into the revised DCM program implemented from 1 January, 1996.

The issue of adjournment has also been examined by the Bureau of Crime Statistics & research. In its 1991 Crime and Justice Bulletin Number 19, *Grappling with Court Delay*, discussed the effect of adjournments on criminal court delay. The bulletin noted that, although adjourned cases take longer to reach finalisation than those that are not adjourned, adjournments only have an impact on overall delay when court time is wasted as a result of adjournments. If, when a case is adjourned, another case can take its place, then no court time is wasted.

The average delay (over all cases) is not affected in these circumstances because the adjourned case takes longer to be finalised but the replacement case takes a shorter time to reach finalisation. However, if no replacement case can use the unused court time resulting from an adjournment, then there is an impact on overall delay.
(See the section *The effect of Adjournments* at p. 3 of the bulletin, attached.)

The bulletin also noted that in 1991 less than a third of cases dealt with in the NSW District and Supreme Courts reached finalisation without an adjournment. This contrasts with the situation in the Local Courts, where the vast majority of cases are resolved without adjournment, principally due to the high rate (@90%) of pleas of guilty to minor prosecutions.

An updated Crime and Justice Bulletin, *Measuring Trial Court Performance : Indicators for Case Processing* notes a similar pattern and suggests that it may not be necessary to monitor trends in the number of adjournments *per se*, but that it is desirable to keep track of their effect on the utilisation of available trial court time.

That draft bulletin has been circulated to court administrators and other interested professionals for comment and is being revised in accordance with the responses, prior to publication.

Question 12

Evidence	Question
"It is really getting behind those statistics and understanding the reasons for fluctuations". (Page 68).	Has anybody done this? If so, please provide documents.

Response

There is no ongoing analysis of the causes of adjournments in the NSW Courts, and the issues identified in the response to Question 11 suggest that this may not be warranted in isolation from other indicators, such as available trial time, which are properly reported and analysed.

However, there have been studies of delay which have incorporated this issue. In the civil jurisdiction of the Supreme Court for instance, the Civil Justice Research Centre (CJRC) published a 1991 report, *The Pace of Litigation in New South Wales*. This study drew on a random sample of motor accident injury cases then being dealt with. That report found that the most common cause of unreadiness, and adjournment, was that information appropriate to the matter had not been supplied, and that delay in meeting the then court procedural requirements was largely attributable to the parties themselves.

The report also noted that the Court needed to look at its procedural requirements to ensure they continued to fulfil their role in achieving resolution of the cases to which they applied. It was through this type of re-examination that the Supreme Court implemented the Differential Case Management approach and significantly modified its requirements.

In respect of the criminal jurisdictions, the Bureau of Crime Statistics & Research does not routinely monitor adjournment rates because the numbers of adjournments are not recorded in the Bureau's database for the District and Supreme Courts.

The Bureau's Crime and Justice Bulletin Number 19, *Grappling with Court Delay*, cites three possible causes of a high rate of adjournments:

(1) overlisting of trials;

(2) a lenient approach on the part of judges to requests for adjournments;

(3) late changes of plea.

The practice of 'judge shopping' may be one reason for late changes of plea. The bulletin notes (p.7) that

> It is sometimes suggested, however, that defendants and their counsel frequently preserve a plea of not guilty and make requests for adjournments in order to 'judge shop'. The incentive behind 'judge shopping' is to secure a hearing before a judge who is known to sentence leniently.

The latest analysis of these issues will be contained in the upcoming Bureau of Crime Statistics & Research *Crime & Justice Bulletin - Measuring Trial Court Performance : Indicators for Case Processing* (refer to response in Question 11). It is proposed that this Bulletin will form the basis of a forum between senior court administrators, registrars and the judiciary within 2 months of its publication.

Question 13

Evidence	Question
"In 1994, $180,000 was spent on a consultant's report called Court Services Review". (Page 70).	What if any were the deficiencies of the 1994 review? Please detail the recommendations of the review. Did the review provide value for money? What happened as a result of the review? (Please also see question 16 below).

Response

The January 1994 *Court Services Review*, commissioned by the former Department of Courts Administration, made a total of 34 separate recommendations, 12 of which had identified specific savings. The overall projected "efficiency saving" from implementing those recommendations was claimed to be $16.1M over five and one half years, with an annual benefit thereafter of $13.3M per annum to Government. The projected savings were all estimates, and included :

$25.1M increase in capital costs $11.1M increase in recurrent costs
$40.9M decrease in recurrent costs $11.4M increase in revenue

The major limitation in the report was that while its stated purpose was *"..to identify major opportunities for improvement of delivery of services to the Courts..."*, its almost exclusive focus was limited to the Local Courts system. Twenty seven of the thirty four recommendations (80%) related to the work of the Local Courts.

The report did not provide any methodology for testing the cost-benefits of the proposals. For example, the recommendation at 2.1 on the attached table proposed an increase in the monetary limit of cases to be dealt with in the Local Court's Small Claims Division. During the course of assessing the feasibility of that recommendation, it was found that given the current sliding court fee structure for small civil claims, there would be a significant loss in revenue.

The attached table details the major recommendations.

At the time of the merger of the Department of Courts Administration and the Attorney General's Department, an assessment of the review was conducted and found that of those recommendations, 2 had been fully implemented, with a further five having been partially implemented through trial projects .

No attempt had been made by April, 1995 to return any of the identified savings to the budget, despite a projected major budget deficit for the former Department in 1994/5 and 1995/96 and the steps that had been taken to implement a limited number of identified initiatives . In formulating the 1995/6 consolidated budget for the merged Department, the projected savings for those recommendations that were being, implemented were applied to the relevant operational areas. In the face of the serious projected budgetary position, this was done even though the impact of some of those initiatives were only just beginning to be felt.

In particular, budget allocations were adjusted in the areas of :

- New subpoena handling procedures
- Changes to the Jury management system
- Service of process by mail
- New fine enforcement procedures
- Arrangements for examining debtors
- Electronic lodgement of documents
- Extended hours for service of process

The net reductions in allocations implemented by the new management amounted to $842,000 in the second half of 1995/96, and formed an important part of the Department's overall deficit reduction strategy (see Question 16 for further detail). The potential for full year savings in 1996/97 is being considered following finalisation of the global allocation to the Department.

Given that the Attorney General's Department has implemented actual savings, albeit 2 years after the report was provided to the former administration, it has provided some value for money. Further opportunities to identify and deliver savings will be taken during the course of implementing the 1996 *Information Technology Strategic Plan.*

In particular, the report provided some useful guidance in applying savings in areas where the Department was already implementing large-scale changes, such as allowing court process to be served by mail, rather than personally by Sheriff's Officers, and changes to the jury management system to reduce the number of persons called for jury duty but not used.

The passage through the Parliament in the current session of the *Jury (Amendment) Act* 1996 now provides a legislative framework within which significant additional efficiencies can be realised.

Court Services Review, 1994 - Major Recommendations

No.	Project Title	Description
2-1	Extended Small Claims Division	Increase limit of Small Claims Division from current $3000 to $5000
2-2	Civil Arbitration Strategy	Review the arbitration services offered across the Court system.
2-3	Default civil arbitration scheme	Require all civil matters to be diverted to arbitration (or other ADR) prior to call-over.
2-4	Civil Time Standards	Introduce time standards in all jurisdictions.
2-5	Call-Over/Pre-Trial Strategy	To more clearly define rules for call-overs & pre-trial conferences.
2-6	Recording & Transcription Services	To determine what recording & transcription is unnecessary or discretionary.
2-7	Criminal Pre-sentence Reporting	Improve provision & charging for pre-sentence reports.
2-8	Party Retention of Subpoena Documents.	Remove requirement that documents under subpoena be physically produced to the Court prior to being admitted in evidence.
2-9	Improved criminal fine payment scheme	Reduce administrative effort by allowing instalment payments in the 1st instance.
2-10	Pre-approved civil instalment orders.	Incorporate a nominated amount for instalment repayment in all commencing actions.
2-11	Greater incentives for early pleas of guilty.	Encourage early pleas by : 1. Implementing Sentence Indication in Local Courts; 2. Codify discounts x stage of proceedings
3-1	Restrict Stays of Proceedings in Local Courts civil.	Proposal to restrict right to stay of proceedings after seizure under Writ.
3-2	Review hours of the Sheriff's Office operations.	To allow execution of Writs before 7am & after 8pm - Implemented effective 3 January, 1995.
3-3	Repeal Civil Examinations	Replace existing procedures to reduce Registrar time spent in examinations.
3-4	Remove Court administration of Instalment Orders	Discontinue practice of court registries receiving civil instalment payments on behalf of creditors.
3-5	Improve efficiency of Local Court Garnishee Orders.	Review structure, scope & enforcement of Garnishee to make it a more attractive option to cost-intensive writs of execution.
3-6	Extended powers of Sheriff's Office.	Provide Sheriff's Officers with greater legislative powers, such as : Right of entry/seizure of spouse property/demand name & address/access to public authority data.
3-7	Validity of Facsimile Record	Proposal to allow faxed documents to be part of the legal record.
3-8	Validity of Electronic Record	Proposal to allow electronic records to be recognised as valid legal records.
3-9	Bond Breach Review	To allow any judicial officer to deal with a breach of recognizance.
5-1	Service by Post	To allow postal service of originating process by officers of the Court.
5-2	Bulk User Payments	Operate monthly accounts for bulk users.
5-3	Outsourcing Sheriff's Office sales	Proposed use of private auctioneers instead of centralised sales.
5-4	Forms Redesign	Proposal to make court forms more "user friendly"
5-5	Interim Electronic Lodgment	Stabilise & extend basic electronic lodgment capabilities.
6-1 6-2	Enforcement Bureau GLC Roll-out	Implement General Local Courts System at 5 additional sites & consolidate fine enforcement for 15 other sites.
6-3	Increased use of SEINS	Direct more matters to SEINS, particularly Commonwealth matters.
6-4	Court Attendance Counters	Provide a facility to stream matters between courts & arrange adjournments without appearing before the Court.
6-5	Jury Management	Reduce the number of jurors summonsed & used, & reduce the cost of juries.
6-6	Dedicated Bail Courts	Reduce Local Court matters being heard by the Supreme Court.
6-7	Electronic Statement of Surety's Financial Circumstances & Criminal Record.	Proposal that Police Service provide Courts with prospective surety's financial status & criminal history.
6-8	Voice Response - Stage I	To apply Voice Response technology to routine court enquiries.

Question 14

Evidence	Question
"We have contracted with the Australian Quality Council to introduce quality management into the whole department". (Page 70).	Why did you do this? What are the nature, the purposes and the contractual obligations of each party under this contract?. Does the contract involve the transfer of any funds? Please provide a copy of the contract. To your knowledge, has any other government department entered into such a contract?

Response

The decision to review current work practices, processes and systems within a quality management framework was taken in light of a number of considerations. The principal ones were:

- direct feedback from staff during the new Director-General's visits to courts
- an apparent lack of motivation and morale in court staff, impacting on productivity and service delivery standards

Shortly after the Department's initial decision to adopt a quality management framework for improvements in this area, the Government itself recognised the value of such programs and issued the clear policy guidelines and directions contained in the attached Premier's Memorandum No. 95-49 & Premier's Department Memorandum No.95-25.

The Australian Quality Council was approached on the basis that :

- the AQC had been working with one section of the Department for some time and the approach adopted was yielding positive results
- the Premier's Department suggested AQC as a possible source of expert advice
- the Department did not have the necessary in-house expertise to implement an across-the-board quality management program

The contract does involve a transfer of funds. The relevant agreements are attached. The assessment process leading to those Agreements complies with the current public sector guidelines for the engagement of consultants.

The direct cost of Stage 1 in the courts area has been $19,700, which has been paid on satisfactory completion. Stage 2 is now underway in the balance of the Department and the anticipated cost is $12,700 which is yet to be paid and is subject to satisfactory performance as specified in the relevant Agreement.

General information relating to the Australian Quality Council, and its current select client list is attached. It should be noted that the NSW Government, represented by the Premier's Department, is a Gold Member of the Council.

Question 15

Evidence	Question
"The Court Services Review also identified a number of savings that could be made, a lot of which were small incremental savings which probably, to be frank, could never be realised because they were identified as being a task which occupied a certain amount of time and in fact, as a result of taking that task away, there were many other tasks which took its place . . . " (Page 70).	Which savings did the Court Services Review identify which could not be realised? Which tasks did it recommend *"taking away"*? Why did it recommend taking away these tasks? Who was already performing the tasks which "took the place" of the tasks which were to be taken away?

Response

An example of the difficulty in simply applying the report's estimated "savings" is :

New subpoena procedures	$300,000 pa.	Based on a single sample from one registry and averaged across the entire court system. (see attachment for detailed costing).

The difficulty here is that while the selected sample registry, one of the largest in the State, had a full time position performing these tasks, in the smaller registries those same tasks occupy a small amount of time each day/week/month. In those circumstances, removal of the task does not allow a direct saving in staff, but would allow that time to be redeployed to other activities. In that sense the $300,000 "saving" is not fully realisable.

In addition, almost $8M of savings were directly predicated on development of the computerised *Case Management System* . Without the proposed capital expenditure, those savings were classed as "unrealisable".

The attached extracts from the *Court Services Review - Volume II - Economic Analysis* of 21 January 1994 summarised the efficiency gains, much of which would not result in direct savings to the budget.

Another example can be found in the recommendation that civil process in the Local Courts be served by mail, rather than by Sheriff's Officers. While the potential efficiencies in this change were acknowledged, there was no cost-benefit study of transferring the posting function from the Sheriff's Office to Local Courts staff. While there is no question of a net benefit from that initiative, its true saving is masked by distributing the postal task across all Local Court registries.

While the *Court Services Review* did make a number of these types of recommendations, it did not provide any framework for determining where the "freed up" staff time was to be applied. By introducing the *Quality Program* in the courts' registries, it is proposed that additional efforts can be made in providing quality customer services to the courts' clients, and provide a more responsive and timely approach to issues such as the collection of fines, fees and other debts to the State.

Question 16

Evidence	Question
"*We have had to reduce the expenditure in that area by $8m. We have done that principally by addressing a number of the proposals in that report and also the corporate services area*". (Page 70).	Which area is being referred to? Why $8m and not $17m. which was told to the Committee as being the original amount the Department of Courts Administration had overspent? What proposals in that report were "addressed"? How were they "addressed"?

Response

The area referred to is the budget program for the former Department of Courts Administration.

Due to the projected budget shortfall of $17 million in 1995/96, it was necessary to reduce expenditure in the former Department of Courts Administration. Accordingly, in framing the 1995/96 budget for submission to the Treasurer, a comprehensive strategy to meet the funding shortfall was proposed.

The Cabinet Standing Committee on the budget endorsed most of this strategy and implementation is proceeding. Included in this approval was additional funding of $9 million provided from the Consolidated Fund in 1995/96, thus decreasing the reduction in expenditure required to $8 million. This additional funding falls to $4.4 million in 1996/97 and then to zero in 1997/98.

Proposals in the *Court Services Review* which are being addressed include:

- Increased efficiency in jury management through a reduction in the number of jurors summonsed with a consequential reduction in costs.
- Repeal of civil examinations by replacing existing procedures to reduce dedicated registrar time.
- Establishment of an enforcement bureau which will consolidate fine enforcement for Local Courts sites.
- Introduction of service by post by allowing postal service of originating process by courts.
- Extension of hours for execution of writs by removing restriction on the execution before 7 am and after 8 pm.
- Remove requirement that documents under subpoena be produced to courts.
- Stabilisation and extension of basic electronic lodgement capability.

Question 17

Evidence	Question
Mr Glachan: *How long after the report is delivered would you actually have the technology installed?* Mr Glanfield: *Well, we are increasing our technology day by day, but this is really about setting an infrastructure for the whole department and the whole court system so there is some commonality between all of these areas. At the moment individual areas have their own different systems. We are not waiting for that to improve technology within the department, we are doing it day by day, we are purchasing computers, but what we will have is a much more consistent and coherent strategic approach to the implementation of technology and we are going to be rolling it out. The proposal calls for a phased introduction of technology rather than waiting until there is one great big system ready to introduce, but we will be going straight to Treasury as soon as we have that plan".* (Page 70).	How long after the report is delivered would you actually have the technology installed?

Response

There are four components to the roll-out of basic Information technology infrastructure:

- *Stage One* - the roll-out of Local Area Networks (LANs), Personal Computers (PCs), printers, proprietary office automation software and some PC-based forms to seven large local courts.

  A pilot implementation at Sutherland Local Court presently under way will determine the nature of requirements for other local courts. It is expected that each of the seven courts will take six weeks to complete, with all seven sites being completed within 6 months;

- *Stage Two* - an extension of the stage one roll-out to an additional 73 medium to large local courts over a two year period;

- *Stage Three* - the provision to smaller courts of PCs, modems, printers and access to electronic forms. These courts suffer from the lowest level of IT infrastructure and current plans provide for an immediate installation of 100 PCs and 50 printers over the next four months. Once this is complete, every full-time court in the State will have an up-to-date PC, printer and office automation software. The remaining distribution will be completed within approximately 18 months.

- *Stage Four* - the upgrade and replacement of PC and printer infrastructure in other areas of the Department. These centres have LANs installed but require additional PCs, printers and ISDN links to the Wide Area Network. It is expected that approximately 375 PCs and 70 printers will be needed and the project will last one year.

Stage One and the provision in Stage Three of 100 PCs and 50 printers to the smaller courts are already under way, and has been funded from existing resources.

Funding for the remainder of the work will need to be obtained from Treasury, and this will be sought as soon as the IT strategic plan is approved and has the support of the IT & T Division of the Department of Public Works and Services.

The primary business benefit that is expected from this staged roll-out of IT infrastructure is an immediate improvement in the levels of service across the Department's functions by providing the basic tools required to support daily operations, while providing the basis for the delivery of the more sophisticated CAS systems as they are developed.

Question 18

Evidence	Question
" . . .*in fact there is an optimal period which the standards would reflect in which you would expect a matter to be resolved* . . ." (Page 72).	According to which criteria are "*optimal*" delays set?

Response

The most appropriate criteria for measuring optimal delays is evolving as more detailed management information becomes available about the operation of the system of courts in New South Wales. Research into the question of *optimal delay* has been identified as one priority in the area of court management information.

The most appropriate time standard is dependent upon the type of case being dealt with, as a standard for minor claims in the Local Court would be likely to differ from that applying to large and complex disputes between multi-national companies dealt with in the Supreme Court.

However, there are a number of recognised sources which have been looked to in the various courts, as detailed below :

Jurisdiction	Standard	Source
Supreme Court	18 months (civil)	*Ontario Law Commission Standards*
Land & Environment Court	12-16 weeks	*The Court's experience*
District Court	As published (civil)	*US Trial Court Performance Standards*
	(criminal)	*England & Wales*
Compensation Court	16 weeks	*Internal*
Local Courts	As published	*In consultation with District Court*

There are two competing influences which must be reconciled in the setting, implementation and monitoring of time standards, namely :

- maximisation of available judicial sitting time and utilisation rates of capital assets such as court rooms;

  and;

- the need to provide certainty in hearing dates so that parties actively prepare for the case in the knowledge that their hearing will proceed, and to minimise the chance of the time of litigants, legal representatives and witnesses being wasted attending court when their case does not proceed to a hearing.

Question 19

Evidence	Question
"*We are looking at a strategy for providing out of hour services*". (Page 73).	What strategy? How far have you got in "*looking at*" that strategy? Is there a timetable for providing out of hour services? Is there a plan for doing so? Have the costs and benefits of such a strategy been formally set out and evaluated?

Response

Local Courts provide a range of "after hours" services including:

- Saturday, Sunday and Public Holiday Bail Courts throughout metropolitan and country New South Wales;
- the After Hours Search Warrant Panel (including urgent, interim Domestic/Personal Violence matters) which operates between 11.00pm and 8.00am daily;
- Parramatta Extended Registry which operates between 8.00am and 11.00pm daily;
- a "duty Magistrate" at the Downing Centre for the consideration of urgent, interim Domestic/Personal Violence applications until 4.30pm;
- the Blacktown Chamber Magistrate service each Wednesday evening between 5.00pm and 7.30pm;
- the State Coroner and Deputy State Coroners are available 24 hours a day and country Clerks of the Local Court who have been appointed as Coroners are available on an "on call" basis.

The expansion of "after hours" services are continually being examined with the view to improving client access to the registry in a cost-effective manner.

A review is presently being conducted by the Clerk of the Local Court, Parramatta, of the operation of the Extended Registry and the After Hours Search Warrants Panel. The findings of this review will be incorporated into a proposal for extension of out-of-hours services being developed in the Legislation & Policy Division of the Department.

As a result of a Supreme Court decision which determined that persons in Police custody were to have access to courts for the purposes of the *Bail Act 1978*, weekend and public holiday bail courts operate at Parramatta and Central Local Courts and Lidcombe Children's Court and at a number of country locations. The operation of these Bail Courts are continually monitored by the Director, Local Courts to ensure an effective service is provided.

Cost-benefits of these extended services will be conducted as part of the current evaluation.

Question 20

Evidence	Question
"I think the greater capacity for improvement is in the areas of registries" (Page 73).	In what way can registries be improved? What are you doing about improving them? Have you any plan for improving them?

Response

At a general level, the Government's commitment to quality customer services and the Department's *Quality Program* right across the courts are designed to improve the processes and systems in place in court registries to ensure that :

- they add value to the services being provided
- processes are simplified and do not create unnecessary barriers to accessing justice
- available resources are being directed to areas of greatest need
- services are provided when, where and in the form that customers require

Likely areas for improvement include improved services at court registry counters, including reduced waiting times, and a more widely available telephone enquiry service.
Specifically, as part of a major reform process being implemented in Local Courts, a number of initiatives are to be implemented that will improve the efficiency and service delivery capacity of registries. These include:

Regional Co-ordination
The introduction of Regional Co-ordination will facilitate a collaborative approach to management within Local Courts so that initiatives developed in one location can be extended to other registries. Local facilitation of rostering and staffing arrangements will also improve the targeting of resources.

Registry Operating Hours and Extended Services
Current opening hours are an acknowledged problem. It is envisaged that extended opening hours will be negotiated with staff and unions as part of structural reform that may arise from job and process re-design. In terms of services outside business hours, such as Night Courts and Extended Registries, an evaluation of current initiatives is being carried out and client consultation is envisaged before finalising a strategy for extended services.

Training
Operational "job skills" training is now recognised as a priority and the Local Courts Training Programme has now recommenced. Client Service and Management are two further training priorities for the coming year that have the capacity to improve registry operations.

Technology
The limited use of technology in Local Court registries is acknowledged as a major problem which is now being addressed, with the provision of basic IT support to Local Courts being an immediate priority. The Department is currently implementing a pilot site for a Local Area Network (LAN) at Sutherland Local Court. This site is part of a LAN implementation program and is a forerunner to LAN and WAN (Wide Area Network) implementation in Local Courts across the State.

Further detail on this project is given in the response to Question 17.

In respect of the other jurisdictions, recent improvements have included :

- The District Court has recently taken the opportunity on relocation to the John Maddison Tower to plan the amalgamation of its three former offices, the Executive Office, Civil Registry and Criminal Registry, into one unit.

- In the Compensation Court, a similar recent move to new premises and the introduction of a new computer system provided an opportunity to establish a "one stop shop" for clients of the Court.

Question 21

Evidence	Question
Chairman: *The extended sitting hours at Blacktown and discussions at Parramatta Registry, have they contributed to a reduction in court delays?* Mr Glanfield: *It is difficult to answer that. . .*" (Page 21).	Has any assessment been done of the effect of the extended sitting hours at Blacktown? If so, can you provide the details?

Response

There has been a number of evaluations of the Night Court pilot scheme conducted under the Model Court Project between July, 1986 and December, 1991.

The first was commissioned by the NSW Law Foundation in April, 1987 and conducted by a social policy researcher, Mr Richard Mohr. The review analysed only the first six months' operation of the Night Court. The *Mohr Report* found that the Night Court services were not being supported by the public to the predicted extent, nor had they had an appreciable impact on delay at the trial site. It did, however, recommend that the trial be continued and expanded to other Local Courts. A copy of that report is attached.

However, toward the end of 1988, the then Chief Magistrate reported that "*..as fewer defendants are now availing themselves of its services, it would seem that it is no longer necessary. I would strongly urge that consideration be given to cancelling further sittings of the Night Court from the end of 1989*". Despite evidence of falling interest from both the legal profession and litigants, the project was extended to the end of 1991.

Given a strong commitment to improve client service and efficiency in Local Courts the Night Court model, and others, are now being subjected to more rigorous review and analysis. However, it must be acknowledged that given the success of other delay reduction initiatives in the Local Courts since 1991, this type of initiative in that jurisdiction is aimed at improving access to a range of justice services, rather than simply addressing delay issues.

Question 22

Evidence	Question
"We should not be calling everybody to turn up at ten o'clock" (Page 76).	Is this still being done? If so, why? If not, what system has replaced it?

Response

As a general proposition, the majority of the court's caseload listing involves the calling of all cases at 10.00am.

The traditional reasons advanced for this practice in the past were :

- to maximise the use of judicial and physical assets by ensuring that if any particular case is adjourned unexpectedly, another will be ready to take its place (refer to the response to Question 18);

- allowing for all cases to be called over at the commencement of a list to determine their individual state of readiness and assign relative priorities; and

- a more refined system of scheduling cases does require very accurate estimates of the likely time each case will occupy and that level of accuracy has not been achieved in any Court to date. This is largely due to the apparent vagaries of litigation and a propensity for cases to be resolved, either by settlement of a civil claim or plea of guilty in criminal cases, "at the door of the court", that is, on the day when the hearing is to commence. This is one of the important features which is sought to be better controlled in a comprehensive case management regime.

Exceptions to the general rule have developed over time, including :

- *Registrar's lists* which commence at 9.30am
- *Running Lists* in the Supreme Court where litigants are placed on "stand by" to be called up at short notice at any time of the day
- a limited number of special fixtures commence at 9.30am in the Supreme Court
- District Court *Country Lists* where the first day of a sitting week is utilised to indicate which day and time a case is likely to be called during that session
- Some *Local Court Special Fixtures* start before 10.00am, although there is resistance from the legal profession on the basis that early starts do not allow sufficient time for preparation prior to a case commencing

The Department currently believes that a far more flexible approach to case scheduling can be designed to dramatically reduce the impact of the listing system on litigants. It is planning to commence research in this area to test whether a more accurate system is feasible, where it is feasible and whether there is a genuine demand for that type of service. This issue has already been flagged by the Director General with a number of the Heads of Jurisdiction.

Given that reluctance on the part of the legal profession to participate in extended sittings has been identified as a significant obstacle to further development of that concept, a period of consultation with the Heads of Jurisdiction and professional representatives will be undertaken.

Question 23

Evidence	Question
Mr Glachan: *Does anyone go to the trouble of explaining to those people [who learn at the last minute that their case will not be heard when they appear] why it is not on and trying to help them understand . . .?* Mr Glanfield: *We do . . .*" (Page 77).	What does the Department do to explain to people why their case is not on?

Response

Litigants whose cases are adjourned are generally advised of the reasons by :

- the presiding judicial officer at the time the adjournment is ordered;
- if they are represented, by their solicitor or barrister; or
- court staff

Question 24

Evidence	Question
"*. . .We do try our very best to minimise those sorts of problems...* [having resources available when needed]" (Page 78).	What actions does the Department take to "*minimise those sorts of problems*"?

Response

Subject to the over-riding responsibility of judicial officers to control the allocation of cases and judges, Departmental officers are actively involved in refining the listing system to achieve optimal listing rates, principally through the development and implementation of case flow management systems.

Instances of "not reached" cases in the courts lists, where a case fixed for hearing cannot be heard because other matters have over-run their estimated duration, are generally closely monitored. A "not reached" marking will often give priority over other cases on the next available hearing day in recognition of the impact such an event has on the cost of justice for individual litigants.

Question 25

Evidence	Question
"I guess what we endeavour to do is ensure that all of the initiatives throughout the court system are shared by others". (Page 78).	What actions does the Department take to *"ensure that all of the initiatives throughout the court system are shared by others"*?

Response

Upon merger of the Departments in April, 1995, the need to improve communication between the courts was identified as a critical issue in enhancing the overall efficiency of the system of courts.

The Director General meets each month with each of the Heads of Jurisdiction to discuss a wide variety of operational and policy issues, including sharing information about ongoing initiatives in the courts. The Director General also plays a pivotal role in disseminating information between senior court administrators through monthly meetings.

The Department also now facilitates the sharing of information on particular initiatives in a number of ways, including :

- its publication "Agenda"
- bi-monthly senior executive meetings
- annual corporate planning conferences
- planning conferences for judicial officers
- regional conferences for Local Courts registrars & staff
- participation of officers in the *Australian Institute of Judicial Administration* program
- convening of the *Criminal Justice Forum* and *Civil Justice Forum*

The need to provide better communication between court administrators has been confirmed through the *Quality Program* and this will be addressed in the development of a corporate *Communications Strategy*.

In addition, the respective Heads of Jurisdiction meet each month in the chambers of the Chief Justice.

Question 26

Evidence	Question
Mr Rogan: *In the strategic plan issued by the District Court in New South Wales of July 1995 one strategy listed refers to establishing effective communication with executive and legislative branches of Government. Are you aware of any developments taking place in this area?"* Mr Wotton: . . .*We are still working out how to address it . . .*" (Page 79).	Has any progress been made in the last few weeks in this area? Do you have any information on the latest developments within the Chief Judge's Policy and Planning Committee?

Response

I am advised that the matter is still under consideration by the Chief Judge's Policy & Planning Committee, which is due to publish its report in December, 1996, as detailed in the *Strategic Plan.*

I am also advised that the Chief Judge would welcome any comments that the Legislature has on how communication between it and the Court can be improved.

Question 27

Evidence	Question
"*We propose to produce a discussion paper that talks about initially the philosophy . .* " [about charging fees] (Page 80).	When do you anticipate this discussion paper will appear? When do you anticipate any action to be taken on this issue?

Response

The Fees Review discussion paper will be released by 31 July, 1996.

The discussion paper will allow approximately two months for comment and is likely to be followed by a further paper setting out recommendations for reform to the system of setting court fees.

Question 28

Question
An issue brought to the attention of the Committee (see page 43) during the hearing was that of the Criminal and Civil Justice forums. Could you provide to the Committee general detail on these forums including information about there origin. constituency. how often they meet. their objectives and any recent initiatives which have resulted from their work?

Response

The forums provide an opportunity for the major service deliverers and stakeholders of the criminal and civil justice systems to discuss strategic and policy issues. The objective of these discussions is to improve the performance of the criminal and civil justice systems. Membership of the forums is as follows:

Criminal Justice Forum

- Attorney General;
- Minister for Police;
- Minister for Corrective Services;
- Minister for Community Services;
- Chief Justice;
- Chief Judge, District Court;
- Chief Magistrate;
- Director of Public Prosecutions;
- Director General, Ministry for Police and Emergency Services;
- Director General, Juvenile Justice Department;
- Senior Public Defender;
- Commissioner, Department of Corrective Services;
- Commissioner, New South Wales Police Service;
- Managing Director, Legal Aid Commission;
- Director General, Attorney General's Department;
- President, Bar Association of New South Wales; and
- President, Law Society of New South Wales.

Civil Justice Forum

- Attorney General;
- Chief Justice;
- Chief Judge, District Court;
- Chief Judge, Land and Environment Court;
- Chief Magistrate;
- Managing Director, Legal Aid Commission;
- Director General, Attorney General's Department;
- President, Bar Association of New South Wales;
- President, Law Society of New South Wales; and
- Chief Executive Officer, Insurance Council of Australia.

The forums were first convened in 1992 at the suggestion of the Attorney General's Department and last convened in September 1995. The forums are to be convened again within the next two months. Generally, the aim is to set these meetings every six months.

Some of the outcomes of the *Criminal Justice Forums* include:

- Support given for the development of time standards in the criminal jurisdictions of the courts;
- Resolution of concerns over the electronic recording of interviews;
- Support given for changes to the Evidence Act to improve court procedures for dealing with translated evidence;
- Support given to changes to procedures for lodging and dealing with legal aid applications;
- Investigation of the use of apprehended violence orders;
- Investigation of delays in processing legal aid applications;
- Support given for the conduct of committals on consecutive days; and
- Support given for the abolition of de novo hearings (appeals to the District Court from Local Courts) except where new evidence is presented or the verdict is unsafe.

Some of the outcomes of the *Civil Justice Forums* include:

- Support given for the development of time standards in the civil jurisdictions of the courts;
- Support given for the development of guidelines for courts to use in the assessment of general damages in personal injury cases; and
- Support given for the standardisation of court rules and procedures.

In 1992, the then Government sponsored an *Executive and Judicial Liaison Committee*, comprised of the Attorney General, Minister for Justice, Chief Justice, Chief Judge of the District Court, Chief Magistrate, Directors General of the Attorney General's Department and Department of Courts Administration, Cabinet Office, Premier's Department and the Treasury. In early 1994, the then Attorney General and Minister for Justice decided that in light of the progress being made in the *Civil and Criminal Justice Forums*, the Liaison Committee was to be disbanded.

SECTION 2

Question 1

Question
Can the Department provide the Committee with the latest set of court performance statistics?

Response

The publication complete *Key Performance Summary* to December, 1995 has been deferred due to the requirement to finalise Program Statement information for publication with the 1996/97 Budget Papers (see Budget Paper No. 3, pp.157-183).

However, attached for the Committee's information are the major trend graphs and tables for all court jurisdictions, as at 31 December, 1995.

In addition, the Bureau of Crime Statistics & Research publishes its annual report *New South Wales Criminal Courts Statistics*. An extract of the type of management information provided in those reports is attached in the extracted and attached *Summary of Main Features* from the 1994 report.

Question 2

Question
Could you provide the Committee with details of the extent to which the Law Reform Commission considers issues of court delay and backlog in the work that it does?

Response

The Law Reform Commission traditionally works on projects referred to it by the Attorney General. The terms of reference are formulated by the Attorney General and it is these terms of reference which set the parameters of the Commission's work. To date, the Commission has not been requested by an Attorney General to undertake a specific project on court delay or backlogs.

In general terms the issue of court delay and backlog is not directly relevant to the core work undertaken by the Commission, as the major focus during its 30 year operation has been substantive law, rather than administrative or procedural law (which sets out the processes which are followed during litigation).

However, the general issue of court delays and backlogs may arise for consideration in the context of projects undertaken by the Commission. For example, the Commission's review of the *Anti-Discrimination Act 1977* requires it to examine the processes and procedures of the Equal Opportunity Tribunal. The issue of the Tribunal's backlog was raised in a number of submissions to the Commission. The Commission has also recently completed a Report on Defamation and recommended a new procedure of a declaration of falsity as a speedy and effective way to vindicate a plaintiff's reputation. Part of the reasoning behind this recommendation was that the existing rights of action for defamation can be slow and cumbersome and are not necessarily what all persons defamed consider desirable. The Commission considers that this recommendation has the potential to reduce the number of defamation cases which proceed in the courts in New South Wales.

In some of its projects the Commission has to make recommendations about which courts should hear particular matters and what the appropriate appeal process should be. The efficiency of the court system and delay and backlog may be a factor which influences a decision in this area.

The Commission's Reports are an aid to statutory interpretation and the Commission is, therefore, concerned to ensure that its Reports are clearly written so that they are easily used by Judges and Magistrates, and hence may assist in matters proceeding in court in an efficient way.

The Commission has conducted a project on the training and accreditation of mediators. (LRC 67, October 1991). The Commission recognises the growing importance of alternative dispute resolution (as an alternative to the court system), and this is certainly a relevant consideration in a number of current Commission projects, eg. Neighbour and Neighbour Relations.

The Commission is also aware of the need not to clog the courts with matters that are inappropriate for courts to deal with, or which can be dealt with more efficiently in another way, or in another forum.

Question 3

Question
What programmes to reduce court delays are not able to be implemented by the Attorney-General's Department due to funding constraints?

Response

The funding provided by the Government in the 1996/97 budget will enable the Department to assist in addressing delays in a number of the court jurisdictions.

Enhancement funding for 1996/97 and 1997/98 will enable the Supreme Court to deal with unacceptable delays in the Common Law Division and in the Court of Appeal.

In the Industrial Court and the Land and Environment Court delays are considered to be manageable within existing resource levels. Funding has been provided in the 1996/97 Budget for an Acting Judge Scheme in the Compensation Court to overcome increasing delays.

The enhancement funding provided by the Government in 1996/97 will permit the Local Courts to alleviate delays in Special Fixtures Matters.

The introduction of variable vacations in the District Court, for which enhancement funding has been provided by the Government on a trial basis for 1996/97 and 1997/98, will assist in the Civil Case Management System that was introduced in the Court as from 1 January, 1996.

Details of this funding are contained in the response to Question 6.

In addition, the approval of funds for construction of a new Children's Court facility at Campbelltown to service the expanding Macarthur region will meet a clearly identified need. Similarly, the approval of a new court complex at Toronto will provide facilities in a major regional growth area.

While this funding will assist in specific delay reduction efforts, the Department does not believe that its core Consolidated Fund support is such as to allow a more comprehensive and cohesive approach to both immediate delay reduction efforts and longer term reduction maintenance programs.

The Department currently sees value in a proper evaluation of the following options :

- review of existing facilities and standards to ensure that growing demand for accommodation of associated support services, such as victim/witness assistance schemes, can be met

- acceleration of the program to apply advanced information technology to court management systems, processes within the court room during hearings, court reporting functions, electronic filing and data exchange

- extension of proven ADR diversionary systems, such as the Community Justice Centres

- an increased capacity to support external delay reduction initiatives, such as the Law Society's *Settlement Week*
- a more structured Acting Judicial Officer program to provide the opportunity to adjust judicial resources in line with demand
- funding of additional circuit sittings in regional areas where delays accumulate.

Question 4

Question
What response was made by the former Department of Courts Administration to the directives of 1992 regarding the preparation and implementation of a Guarantee of service? What action has been taken by the Attorney-General's Department in this regard since taking responsibility for management of the courts ?

Response

A Guarantee of Service (entitled *Commitment to Service*) was prepared by the Department of Courts Administration in 1992 in response to the Government's directive.

Similarly, the Attorney General's Department prepared a *Guarantee of Service* in 1992. Issues identified in that Guarantee were incorporated into the individual Business Plans for each unit of the former Department.

The merged Department has now completed integration of the former court registry operations into its Corporate Plan, and revised Business Plans for the court registries and associated support services will be finalised by 30 June, 1996. Performance against those Plans will, for the first time, form the basis of Senior Executive Performance Agreements with court administrators.

Having completed the Corporate Plan and Business Plans, a new Guarantee of Service which is appropriate to the merged Department will be prepared over the next few months.

Question 5

Question
What is the relationship between Court Delays and the collection of revenue due to the State? Specifically, the Auditor-General, at page 480, Vol.2 of the 1995 *Report to Parliament*, said that "... unpaid court fees and victim's compensation levies totalled $18.8 m..." at 30 June 1995. This information was collected manually. What is the expected cost of the proposed case management system? What would be the likely revenue yield once it is in place?

Response

There is little confirmed information about the relationship between court delays and the collection of revenue. The major factors affecting Departmental revenue are the number of civil cases and the level of court fees. At best, an assumption could be made that where extensive delays exist, there is a disincentive to litigation and this may act to reduce revenue generated from court fees. However, that assumption is untested.

It is estimated that the cost of the proposed court administration system will be in excess of $24M. Detailed costings will be prepared during the development of individual business cases for each of the identified IT projects under the new strategic plan.

When net funding was introduced in 1991/92 there was a level of court delays built into revenue levels, in that some fees payable after commencement or on enforcement of court orders did not fall due until a case was decided. Therefore, a reduction in delays would lead to a one-off increase in revenue as more cases are processed. There is no long term impact.

Unpaid fees (doubtful debts) will be reduced by improvements in debt collection methodology, including reducing loops in the current system and shortening the timeframe for collection so that debtors are located before they relocate. It is difficult to quantify any change in revenue yield once the court administration system is in place. However, it is expected that there will be a benefit from better information, and access to items such as prior payment histories across the court network, and more timely recovery action.

The system will permit the electronic collection of data on the value of monies owing to the State rather than the current manual collection of such information. However, there will be an increase in the accuracy and speed in the provision of such information and possibly some increase in the revenue yield from, for example, the capacity for debtors to pay outstanding revenue at any court or other designated collection centre, rather than being restricted, as at present, in the location at which outstanding monies can be paid.

The Department is also looking at improved methods of collecting debts, for example a wider range of payment methods such as credit cards, to improve revenue yields. The experience gained in addressing this type of issue in the Victims Compensation Tribunal, where is it expected that the recovery rate of restitution moneys increased by 125% in 1995/96 over 1994/95 and is again expected to increase by 100% in 1996/97, provides a firm base to address poor recovery rates for all classes of outstanding moneys, including fines, fees and other penalties.

SUBMISSION TO PUBLIC ACCOUNTS COMMITTEE
Inquiry into the Audit Office's performance audit of the former Department of Courts Administration
by
Julie Foreman, Court Support Co-ordinator

Court Support provides a network of 35 volunteers in 16 local courts. They provide information, personal support and a referral service for people involved in criminal proceedings. The coordinator is funded by the Legal Aid Commission for 20 hours per week. A brochure about the scheme is attached.

This submission will only address matters related to local courts.

INTRODUCTION
The Court Support Experience Of Court Delays

Two examples:
An elderly isolated woman, possibly on anti-depressants with poor English is charged with shop lifting (perhaps she genuinely forgot to pay). A court appearance causes enormous personal grief and shame upon the family. There is no interpreter so the matter is adjourned for 3 weeks. The stress is similarly prolonged

A matter is scheduled for the local court. Police; witnesses; Legal Aid solicitor and the defendant have all showed. The prosecution decide they are not yet ready to proceed with the matter or perhaps the magistrate has just run out of time or the drug analysis is not available. Either way the matter is adjourned. The financial cost of having professional staff waiting at courts needlessly is significant.

Both these delays and many like them are avoidable

Situations such as those given above are experienced by court users daily. For volunteers court support workers the most commonly asked question by clients is "When will my matter be heard?". The second most common question is "Why has it taken so long?". They have, after all, been asked to be at court at 10am and may wait for up to 6 hours to be told their matter is adjourned or can't be dealt with today.

Lack of Information exacerbates stress
Lack of information and understanding of the court process significantly exacerbates stress caused by delays. For example: If you had a 10 am appointment would you think that you would have to arrange for someone else to pick up the children from school at 3pm?

Court officers have an important role to play in providing information and reducing the level of stress. Unfortunately the quality of these officers varies enormously Some are excellent; others treat the public with contempt.

Special groups
The impact of delays can vary on different groups of people and priorities in delaying with matters without delay can be appropriate:

- a traveller staying for a month may need to have their matter dealt with urgently
- defendants held in the cell should have their matter dealt with first. This is not always the case.

REASONS FOR COURT DELAYS

Our experience has indicated that reasons for delays fall into two broad categories: Systems and Communication

Organisational Systems

- Information systems and technology is poor in many areas. Receipts, for example, are still hand written in many local courts. There is no computerised case management.
- Poor co-ordination of prison delivery vans which do not often arrive till after 10am. Legal Aid are then delayed in seeing clients in the cell which then delays the duty solicitor seeing other clients; which delays them getting into court and having their matter dealt with.
- Poor co-ordination or delays in receiving probation reports, transcripts and analysis of drugs etc
- Unavailability or poor scheduling of interpreters. No computerised systems
- Overlisting of matters

Communication

- The impact of matters such as unavailability of interpreters, witnesses, drug analysis results or probation reports is increased because of poor communication. If parties were aware critical information was not available the matter could be rescheduled prior to everyone going to court.
- Defendants not being aware of court procedures or other relevant information before attending court can lead to delays.

Other

- Inappropriate charges by police. Some matters are charged at a higher court than necessary leading to an appeal being made and upheld. Then the matter is dealt with at a later date in the local court (eg robbery when stealing from a person more appropriate)
- Staff resources: there is chronic understaffing in most courts eg Burwood has 7 courts sitting in the week beginning 23 April and available staff for 3.
- Availability of legal resources eg currently there is no Chamber Magistrate at Kogarah; there is a 2 week delay to see the Chamber Magistrate at North Sydney
- Some magistrates are consistently able to get through significantly more cases then others

RECOMMENDATIONS TO REDUCE COURT DELAYS

- Improved court list management and scheduling
- Modernised organisational systems

- Improved communication with local community; police; Legal Aid and local court. Eg Pre hearing conferences (if necessary by telephone) for longer matters to ensure availability of information and witnesses etc before the matter is scheduled.

- Clerks empowered at local level to make changes that will work in his or her community

- Introduction of Benchmarks and standards. Individuals are entitled to know when their matter will be dealt with.

- Improved community information to reduce stress of delay:

    - Eg If the summons or notice sent to defendants explained that the matter might take all day and encouraged them to seek legal advice.

    - Improved signage in courts.

    - Implementation of recommendations from the Model Community Access Program (Fairfield Local Court)

    - Improved training and identification of Court Officers.

    - Staffing of information desks at courts.

    - A position dedicated to community access within Local Courts Department.

- Police being able to order interpreters and to inform defendants that they should seek legal aid

- Clerks of Court to exchange information on strategies that have worked in their court to reduce delays (I understand that Clerks rarely meet)

- Registrars to deal with minor matters and to commence prior to the magistrate sitting

- Courts to sit longer hours

- Ability to prioritise some matters

Current projects to be commended

- Community Access Project at Fairfield Local Court (joint initiative of Local Courts Administration and Ethnic Affairs Commission) Contact: Caroline Largos, Fairfield Local Court 754 9827 or 018 285 540

- Client Services in Local Courts - Standards and Benchmarks (with University of Wollongong) Contact: Helen Gamble, University of Wollongong 042 213 456

A cautionary note

It is a danger to become fixated with quantitative measures of court performance. The quality of justice and the quality of decisions is just as important. This can mean that occassionally some matters may take more time to deal with.

SUBMISSION TO THE PUBLIC ACCOUNTS COMMITTEE ENQUIRY

FROM THE COMMUNITY LEGAL EDUCATION WORKERS GROUP OF THE COMBINED COMMUNITY LEGAL CENTRES OF NSW

Delays and difficulties with the local court

a) Cases are often delayed at the Local Court level when an extra appearance date/adjournment is required due to the defendant not seeking legal advice prior to the first appearance. Whilst in some cases the first court date has been changed by courts and police to 2-3 weeks after arrest so the person could get legal advice prior to the first court appearance, this has often not occurred. On many occasions the defendant has not sought legal advice because they don't know how or where to get advice.

Recommendation:

The defendant receives a pre-court information document when charged or summonsed about how or where to get legal advice and services available in their local area.

b) Defendants not fluent in English are not provided with interpreters for first appearance dates, necessitating an additional adjournment.

Recommendations:

Attorney General's Department liaise with the Police Department to have a procedure adopted by all police to complete an interpreter request form to be attached to court documents when they are sent to court. The local court is then able to ensure that an interpreter is booked for the matter.

In all other matters court papers need to clearly indicate if an interpreter is required and for which language so that the Clerk of the Court can book the interpreter prior to the first listed date.

Magistrates be provided with a record of interpreter bookings. The magistrates will then be aware when interpreters for specific languages will be attending court. This will be particularly valuable for languages in high demand.

Ensure court staff access to the Telephone Interpreter Service through installation of a dual handset telephone at each local court office counter.

c) Many NESB clients have indicated that court staff have often been insensitive to their needs.

Recommendation:

Cross cultural training (cross cultural communication and awareness) for local court staff, in particular, public contact staff.

d) Many people arrive at court for the first time and spend considerable time trying to ascertain where they are meant to be, often taking up the time of counter staff in giving directions.

Recommendations:

Permanent signs need to be put up in each Local Court to indicate the location of the courtrooms, Probation Service, Legal Aid etc.

Maps of the public areas of the court building need to be placed in the foyer area in easily visible locations.

Information desk in foyer of each local court to be staffed particularly during the peak time of 9.00am to 10.00am.

e) People of English speaking background often find the court procedures difficult to understand. People whose first language is not English find court procedures even more difficult if not impossible to understand.

Recommendation:

Community information be made available about court procedures in English and in a multi-lingual format on such procedures as: general local court procedures, evidence, bail and what to do prior to court appearance. This information needs to be available in each local court, community centres, Legal Aid, Community Legal Centres and the ethnic media.

e) Inconsistency in quality of interpreter services provided at courts.

Recommendation:

Training for court personnel about the role of interpreters and the importance of having professional and accredited interpreters in any court matters.

Given the greatly varying standard of interpreters undertaking court assignments it may be necessary to consider the appropriateness of establishing a separate Legal Interpreting Service as in Victoria where potential contractors are required to pass a 35 hour specific legal orientation course to join the service. The other alternative is the documentation of a clearly defined standard for court interpreters in Local Courts procedural manuals.

In addition, it is important to note that current Local Court statistics may not be a true record of demand on each local court. For instance, a court such as Fairfield sends hearings by arrangement to another court to keep within delay guidelines. Currently a minimum of 16 hours of Fairfield hearings are listed at Burwood every week.

LITIGANT FUNDED ARBITRATION SCHEME

INTRODUCTION.

Although there has been significant improvement in the reduction in delay in the hearing of litigation matters in the courts in this State, many debtors are still able to use the court system as a means of avoiding the payment of debts legitimately owing to creditors. The facility of early determinations in the Commercial Division of the Supreme Court only applies to large debts or matters about which there is likely to arise some important point of law. Falling short of this category are the bulk of "bad debts", where creditors are left to the unwarranted delay (and expense) of the general court system.

Unscrupulous debtor defendants often use the court delay period for the purpose of effectively "stripping" a defendant company of its assets or otherwise avoiding the consequences of a successful claim. The cost of subsequently attempting to trace the assets that have been stripped becomes prohibitive.

THE PROPOSAL

It is proposed that the following measures be adopted:

1. The Attorney General would establish, state wide, a register of experienced arbitrators, having expertise across the whole range of litigation disputes. These arbitrators would preferably be legally qualified and have extensive experience in the areas of expertise they would be called upon to use in determining matters in dispute. It is envisaged that arbitrators would be appointed in areas involving building claims, medical claims, company disputes, landlord disputes, real estate disputes, insolvencies, banking disputes and other specialist area of litigation.

These appointments would preferably be made on a regional basis so that minimum expense would be incurred in obtaining their services.

2. Any plaintiff wishing to avoid a potential delay in obtaining a court hearing, would have the option of requesting the Registrar of a particular court to set a claim down for hearing before a suitable arbitrator. The Registrar would ascertain relevant information in relation to the likely length of hearing, and require the plaintiff to lodge with the Court the provisional fee for the arbitrator's standardised cost.

3. On payment of the provisional fee the claim would be referred to the arbitrator, who would contact the various parties and set a suitable hearing schedule. The arbitrator should be given wide discretionary powers of dispensing with formalities with the aim of reducing cost, delay and inconvenience to the parties. Unused Court facilities, including non used Country Court Houses should be made available free of charge to the parties. Similar use might be made of historic buildings e.g. Old Council offices, Police Stations, Schools-of-Arts and the like in towns which no longer have any connection with the law.

4. The decisions of such arbitrators should be final except for appeal on questions of law. Successful plaintiffs should be entitled to an order for costs including the arbitrators costs.

This proposal was put forward approximately 4 years ago at a meeting of the Presidents of the Regional Law Societies of N.S.W. and received unanimous endorsement. It appears that it was subsequently rejected for reasons which are not apparent.

It might be argued that it only advantages wealthy litigants who can afford payment of the fees involved. Any system which has the effect of reducing the list of matters awaiting hearing in the Court system, must be to the advantage of all litigants. It is also a system which will cease to be utilised once the backlog of matters awaiting hearing is reduced.

One distinct and obvious advantage of this system is the reduction in cost to the State Government of providing judges and support staff for any matter which is dealt with by private arbitrators.

JOHN HENSHAW
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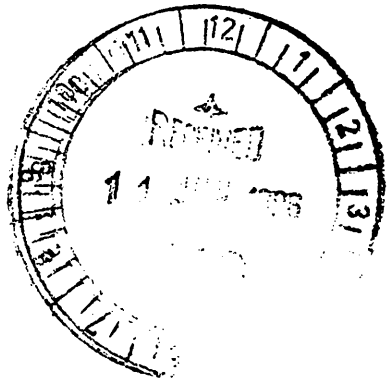
APPENDIX 3:

CORRESPONDENCE FROM JUDICIAL OFFICERS

The Chief Judge
District Court of NSW



Ms P Azarias
Director
Public Accounts Committee
Legislative Assembly
Parliament House
Macquarie Street
SYDNEY 2000

5 June, 1996

Dear Ms. Azarias,

I refer to your letter of 20 May and I provide the following answers to your 22 questions:

1. The main cause of delay is the lack of funding for judge-time. It is not necessarily a shortage of courts because with extra judges the courts could sit over vacations and sit for at least another eight weeks in a year.

2. There are arrangements in the Court for making solicitors or barristers pay costs if they are responsible for delay.

3. I have introduced a whole new system of gathering statistics in the Court. I am happy with the format of the statistics but because most of them need to be gathered manually and not through a computer, the system is extremely deficient.

4. I enclose a copy of the Strategic Plan adopted by the Court last year and a copy of an article I wrote for the Law Society Journal. That sets out the case management strategies adopted by the Court.

5. See answer to 4.

6. No.

7. There is a limited amount courts can do to reduce court delays and backlogs. The major thing courts can do is hear the cases. Of course that needs to be managed in accordance with the strategies we have put in place, but the primary problem is the absence of an appropriate amount of judge-time. New South Wales deals with almost as many civil and criminal cases as probably the rest of Australia put together. We do not have as many judicial officers as every other State in Australia put together.

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8. The introduction of user-pay arbitration at the beginning of this year has given us unlimited access to court annexed arbitrations. I believe we should be seeking to dispose of as many cases as possible through alternative dispute resolution because we cannot afford to guarantee to every litigant the full majesty of a court hearing.

9. I am very keen to study the Canadian and American systems which have been addressing this question in a more systematic fashion than any Australian jurisdiction for some time.

10. Our Rule Committee has been steadily introducing new rules over the last twelve months to allow us to put into place a fully managed civil litigation system. There are no problems.

11. The time goals we have adopted for case managed civil cases includes judgment within twelve months of commencing the action in 90% of cases.

12. I question the utility of using the courtrooms in shifts. Particularly so when we do not have enough judges to use them fully during the year.

13. I believe the courts should take the lead in directing the participants in the system as to what is required in relation to timeliness.

14. Such a forum already exists in the criminal courts at the Downing Centre. In the civil jurisdiction it is done through a Civil Listing Review Committee which serves the same purpose.

15. No.

16. Support provided by the Department is adequate. As I have indicated, the problem is shortage of judges which is something I am attempting to address through acting judge programmes.

17. Yes.

18. No.

19. Yes. This is a matter under active consideration.

20. No. The computer facilities, particularly for administration, are totally inadequate.

21. Yes, see the Strategic Plan.

22. I have in the last month rescinded the fixed vacation in July and at least 26 courts will sit through July. I am proposing to sit courts in crime in Sydney in January. My ideal would be to sit all courts for at least 48 weeks a year.

As a general comment I might say that the absence of administrative independence for the courts is something which in my view impedes the efficient operation of the courts. Moreover, it is contrary to the doctrine of the separation of powers. The model used in the Federal Courts and in South Australia, the Magistrates' Court in Victoria and the United States is a far better system. It appears to me this should be the next great area for debate in New South Wales courts administration.

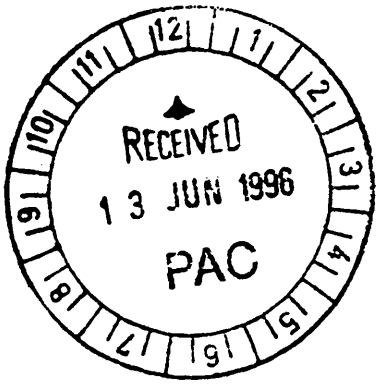
Yours sincerely,

The Hon. Justice R.O. Blanch,
CHIEF JUDGE.

The Chief Justice

New South Wales

16 June 1996



Ms Patricia Azarias
Director
Public Accounts Committee
Legislative Assembly
Parliament House
Macquarie Street
SYDNEY 2000

Dear Ms Azarias

I am writing in response to your letter of 20 May 1996.

I was appointed Chief Justice in November 1988. For every calendar year since 1989 the Supreme Court has published an Annual Review of its activities. Many of the matters the subject of the questions appended to your letter have been dealt with, at some length, in those Annual Reviews, which I presume are available to the Committee. I enclose with this letter six copies of the Annual Review for the year ended 31 December 1995.

On the subjects of court backlogs and delay, which are raised in the first three questions, I refer you to the contents of the Annual Review. The extent of system delays varies from Division to Division within the court.

In the Commercial Division, for example, there are no significant system delays. On the other hand, in the Common Law Division there are substantial backlogs and system delays. The worst delays, in my estimation, are in the Court of Appeal. In the Court of Criminal Appeal, whether or not there are system delays depends upon the system to which you are referring. So far as the court system is concerned, there are no substantial delays, but there are significant delays in the Legal Aid system which processes applications for aid. Since the overwhelming majority of criminal appellants rely on legal aid, the consequence is that there is system delay. On the other hand, if an appellant does not require legal aid, then there is no delay in bringing a criminal appeal on for hearing.

As to the causes of delay, again you are referred to the Annual Review. The principal cause of delay is the mismatch between the workload of the court and the resources that are made available to it. To give a simple example, I refer you to what is said about the Court of Appeal on the bottom of page 8 and the top of page 9 of the Annual Review. I can think of no better or clearer illustration of the problem.

As to statistical information, it undoubtedly needs to be improved, and in that respect the court should have available to it information technology of the kind that is available in some other areas of the public sector, and in the private sector.

As to case management strategies, I refer you in particular to the portion of the Annual Review relating to the Common Law Division.

As to Alternative Dispute Resolution, I would like to see its use substantially increased. A committee of the court recently formulated proposals in that respect, but we were told they could not be implemented because funds were not available. I note that this is a matter that was the subject of oral evidence to the Committee.

As to question 9, at a recent forum held in Brisbane, attended by a number of people from overseas jurisdictions, I believe it was generally acknowledged that New South Wales is well in the forefront of development of delay reduction strategies. You may be familiar with the proceedings at that forum, which was convened by Mr Justice Davies of the Supreme Court of Queensland.

I note that the questions appended to your letter raise the matter of judgment deliberation time, and court sitting hours.

The idea, sometimes reflected in public comments, that judges are only at work when they are sitting in court is about as sensible as the idea that Members of Parliament are only at work when they are sitting in the Parliamentary Chamber.

Especially in superior courts, judicial officers are required to spend an increasing proportion of their time writing judgments out of ordinary working hours. Last Sunday I completed writing a judgment in a criminal appeal. The trial had lasted for more than three months. There were more than 2,000 pages of transcript. The written submissions in the appeal covered more than 100 pages. I spent a day before the hearing reading the papers in the appeal. Oral argument in the appeal lasted for two days. I then spent four days (mostly over weekends) writing a judgment. You will understand how pleased I would be to hear it suggested that the amount of work I did on that case could be measured by the amount of time I spent in court listening to oral argument.

As a rule, the further one goes up the judicial hierarchy, the greater is the proportion of time required to be spent dealing with reserved judgments. The High Court of Australia sits for only 20 weeks a year. I do not imagine that anybody believes that they spend the remaining 32 weeks on vacation.

As to court sitting hours, you could undertake the exercise, which should not be difficult, of comparing the hours of sitting of New South Wales courts with those of courts in other Australian States, and in overseas countries. It would be easy to find out what hours courts sit in France, or in England, or in New Zealand, or in Germany. I believe you would find that the hours which courts sit in other States and overseas countries are comparable to the hours which courts sit in New South Wales. This is not because there is some universal commitment of lawyers and judges to idleness. It is because, as anyone with experience in the conduct of litigation knows, running a court case requires the parties, and the witnesses, and the lawyers, and the judge, to do a variety of things which cannot conveniently be done during court sitting hours.

For urgent cases, there are judges of the Supreme Court on call 24 hours a day, 365 days a year. So called "duty judges" in the Common Law Division and the Equity Division are from time to time contacted at their homes by litigants requiring urgent relief. Many cases come before the court a matter of hours after they have been commenced.

Last month I sat in a case in the Court of Appeal which was urgent because it concerned the disposition of a dead body. The case involved a dispute between the widow of a deceased man and the Coroner. The case was brought on for hearing by a judge of the Administrative Law Division on the third day after the man had died, the judge gave his decision that afternoon, and the appeal was heard and determined in the Court of Appeal, in which I presided, the next day.

I see no benefits in extending the current hours of operation of the Supreme Court.

We do not have the luxury, as some other courts have, of giving judges rostered time off to write reserved judgments. However, we have a protocol relating to complaints about judgments which are unreasonably delayed.

As to question 14, we have for years had user forums of the kind referred to in your question. The Commercial Division has had a user committee for several years. At least since 1989 the Common Law Division has had a Common Law Delay Reduction Committee on which there are representatives of users of the court system.

As to question 15, there have been radical changes in the last 10 years in the administrative requirements of judges. This has been the subject of extended discussion in past Annual Reviews of the court. The most important change that has occurred is that judges have now assumed a responsibility for controlling the pace at which cases are made ready for hearing. In the past, this was regarded as being none of their business unless, of course, one party invoked the assistance of a judge to compel the other party to take a certain step. In the past, the view was taken that the responsibility of judges was to hear and determine, according to law, such cases as were made ready, by the parties, for hearing. It was no part of the responsibility of judges to force the parties to make their cases ready. All that has changed. From time to time, however, (as occurred during the debate when we introduced DCM) you will hear some people expressing the public view that judges should return to the earlier system. They should, it is argued, mind their own business, and leave it to the parties and their lawyers to decide how quickly or slowly the preparation of a case should proceed. That view, however, has not prevailed.

As to questions 13, 16 and 17, I believe that there is a reasonable level of communication and co-operation between the court and the Attorney General's Department, and others involved in the justice system. I have no complaints to make about the level of support provided by the Attorney General's Department, although, as you would be aware, I have made repeated complaints about the level of resources provided to the court by the executive government.

The answer to question 18 is no.

So is the answer to question 19.

I am not satisfied with the level of information technology currently available to the court. In that connection I draw your attention to page 9 of the 1995 Annual Review.

As to question 21, I believe it is the responsibility of individual judicial officers to endeavour to ensure that court proceedings are conducted with as little stress as possible to those involved. I am not quite sure what you mean by "alienation", but it would be a very strange person who enjoyed the experience of being a party or a witness in a court case.

As to question 22, for many years now the Supreme Court has had only one fixed annual vacation, which is in mid-Summer. Even during that vacation, of course, the court remains open for business and there are vacation judges sitting at all times expect on public holidays. In addition

to the fixed annual vacation judges also have a variable leave which is, as between the judges collectively, spread over the whole year. You will find this subject dealt with in the Supreme Court Rules, Part 1A Rule 2. There are no current plans to amend that rule.

Yours sincerely

Chief Justice

RESPONSE FROM THE CHIEF MAGISTRATE

TO THE

PUBLIC ACCOUNTS COMMITTEE

IN ITS REVIEW OF THE PERFORMANCE AUDIT

ON THE

DEPARTMENT OF COURTS ADMINISTRATION:

Management of the Courts (A Preliminary Report)

QUESTIONS FROM THE PUBLIC ACCOUNTS COMMITTEE

1. *What do you see as the main causes of delay in the various divisions of your Court?*

It is first necessary to determine what is delay. For instance if a person is arrested and charged with an offence of drink-driving and is bailed to appear in 21 days time when he pleads guilty and the case is disposed of, there is no delay even though the matter has taken three weeks to finalise. Again there is no delay if when the plea of guilty is entered 21 days after arrest, a pre-sentence report from the Probation Service is required, because that takes a further 6 weeks to prepare. There is no delay in these situations because that is the earliest time the case is ready to be dealt with.

The Local Court is able to deal with all pleas of guilty **immediately** that the party is ready for the plea to be heard. Figures provided by the Bureau of Crime Statistics and Research for 1994 indicate that 68.1% of all matters dealt with to finality by the Local Court were sentenced after a plea of guilty. If these figures remain constant (and I have no reason to doubt that they will) it can be said that nearly 70% of all criminal matters dealt with by the Local Court are dealt with immediately the defendant is ready to enter a plea. There is, in fact, **no delay**.

Delay only occurs in those cases which are contested, whether criminal or civil. In a criminal matter, following arrest and charging, a defendant is generally bailed for a period of three weeks ahead to enable him or her to be legally represented. At the time of arrest, the Police are required to present the defendant with a copy of the "facts sheet" so that both the defendant and legal representative will be aware of what is alleged. At the same time the Police are required to provide the defendant with an information sheet which advises the defendant how to obtain legal representation ie. seek legal aid, or instruct a private solicitor. Ideally at the first mention date the defendant will be represented and will indicate a plea. If it is a plea of guilty it will be dealt with immediately. If not guilty then the matter is set down for hearing to the first available date. The *true measure* of delay is the time from the entering of the plea of not guilty to the date the matter is listed for hearing. At the present time this delay is measured across the State as a mean of 10 to 13 weeks. Many Courts can list matters much earlier than 10 to 13 weeks while other Courts take much longer. The same measure of delay is applied to civil proceedings ie. when the issues are joined and the matter is ready for hearing, delay is measured from that date to the date of hearing. It is generally accepted that the parties and their legal representatives require from 3 to 6 weeks from the date of entry of the plea to prepare the case and notify and subpoena witnesses etc. and thus a mean delay of 10 weeks is only 4 to 7 weeks outside the optimum period.

Causes of delay are many and varied. In many instances where there is delay it is simply that the inflow of cases is too great for the magisterial resources available. The court has no power to control the incoming work. Court work is generated by the public and government agencies. Every time the Government provides additional Police in response to a "law and order campaign" more work is generated for the courts. However there is never any increase in judicial resources to deal with the increased work load.

The nature of Local Courts requires them to service the local community. From a purely management point of view, this is not the most efficient way to dispose of court matters. Experience has shown that the most efficient way of dealing with cases is in multiple court complexes. However, while providing local communities with a local court service might not be efficient, it is none the less essential as the public is entitled to reasonable and convenient access to a local court.

There are more specific causes of delay. Often the prosecution is unable to prepare its case and serve a brief on the defendant within the time nominated by the Court. Even when a lengthy hearing is ready to commence the prosecution will prefer further charges which, as a matter of law, requires the defendant to be given a further adjournment. In the cases which are otherwise ready, witnesses sometimes become ill, travel overseas, or for a variety of reasons fail to attend Court. In all those circumstances the Magistrate has to give serious consideration to granting an adjournment.

It should be borne in mind that defendants (in criminal cases) are rarely enthusiastic about an early hearing. The longer the delay the better - witnesses might forget their evidence or leave the jurisdiction or die or otherwise cause their evidence to be lost. Defendants can also provide a variety of reasons for delaying a hearing (medical certificates seem to be fairly easily obtained to justify adjournments on the grounds of illness) and they change their lawyers regularly and the new lawyer needs further time to obtain proper instructions. Even when granted legal aid defendants regularly fail to attend for appointments to give proper instructions. As a result legal aid is cancelled. They then appeal against that determination to cancel legal aid under s.56 of the Legal Aid Commission Act, 1979 and the Court is then obliged to adjourn the proceedings under s.57 of the same Act so long as the appeal is "bona fide and not frivolous or vexatious".

Courts would be greatly helped to control the actual means by which matters pass through the court system if they had an appropriate rule making power. The Local Courts have a rule making power for civil matters as a result of the Civil Claims Rule Committee. This Committee has been extremely useful in dealing promptly with procedural difficulties. Some years ago, with the support of the Law Society, I sought a similar rule making power for criminal matters. Regrettably the former Attorney General was opposed to this proposal and no action was taken. I still believe a rule making power is essential for this Court and I intend to bring the proposal afresh to the current Attorney.

Other causes of delay include insufficient, and inefficient, court room accommodation. If the defendant or one or more witnesses are in custody, a custody venue is required and all custody courts might be temporarily in use for some time. Sometimes there is a shortage of court rooms even where custody facilities are not required. Frequently I could provide additional magisterial resources to assist in overtaking arrears but there is no accommodation available. This is particularly the case in the western metropolitan area. At Penrith delays are in excess of 28 weeks and there is inadequate court room accommodation to provide assistance nearby. At Parramatta, though arrears are not nearly so great, there is a shortage of court room accommodation. Some years ago, my

predecessor as Chief Magistrate offered no objection to the District Court using one of the Local Court rooms at Parramatta. The Local Court has an urgent need for the return of that court room yet the District Court is reluctant to relinquish it. (Of course, I am aware the District Court has its own problems with court room accommodation in that area).

It is also a fact that some Magistrates are slower than others. Some are not as efficient at presiding over busy lists as others. The same applies to Judges. However it does not mean that they are better or worse as Magistrates or Judges. It is a question of allowing for individual differences. Reference was made to this fact in evidence before the Public Accounts Committee.

Sometime there are perceived delays in country towns. A court might only sit at a particular place in alternate months. A person might be charged, or civil action come into the list say in February and be adjourned for plea or mention in April when a defended hearing is then sought. If the diary is already full for the sitting day in June, the first available date is August. On the face of it a delay of six months seems evident when in reality it is two months.

Another cause for delay in certain cases is the availability of all participants at the same time. Often the court is able to offer a date which is not acceptable to the parties for many reasons. Whilst generally the policy is that the parties be forced to take the first available date (see the *Hunt Report*) and this is followed in the majority of cases, there are instances where a genuine and legitimate reason prevents this. Often, when there are multiple accused, the difficulty in co-ordinating all parties and legal representatives increases. When a date beyond that which is available in the diary is fixed, a false impression of system delay is created. This could be described as party delay as defined by Wood J but not because *'the parties were not prepared to get the case ready for trial as soon as reasonably possible'* but because there were genuine reasons why an earlier available date could not be fixed.

Civil Claims

There are no "system delays" at the Downing Centre in the civil jurisdiction. A half-day case can be listed in two weeks and a one day case in five weeks. As it takes the parties themselves several weeks to prepare a case for actual hearing, there are in fact no systemic delays at all, simply an appropriate lead time between the call-over and the hearing day. Since January 1996 the Senior Civil Claims Magistrate has not been asked for, nor has he directed, any special fixtures beyond one day.

Civil cases that proceed to a hearing sometimes require additional hearing days. The Senior Civil Claims Magistrate has had the advantage of being able to continue the hearing on a part-heard basis within days or a few weeks of the initial hearing day. Other magistrates can be allocated further days within 6 to 8 weeks.

2. *In situations where delay is clearly the result of "party delay" does your Court impose any sort of sanction on the individual/s responsible?*

   Are you satisfied with this situation?

Criminal Matters

I have referred above to delay caused by the prosecution. Frequently they do not comply with orders to serve the brief. Reasons for non-compliance are sometimes genuine. For example, after an arrest is made further inquiries are required and potential witnesses interviewed (sometimes interstate or overseas) and it is not possible for the prosecution to comply with the order to serve the brief of evidence. The time permitted is usually 21 days. However, sometimes the reason for the delay is less defensible and can be put down to nothing more than inefficiency.

On rare occasions, in committal proceedings, when the prosecution has failed on successive occasions to comply with s.48A orders as to service of a brief and the defence objects to any further adjournments for that purpose, a defendant has been discharged. This is not done lightly. There is a need for the Magistrate to balance the public interest that requires persons who have committed offences to be dealt with, on the one hand, with the right of the citizen to have allegations of criminality determined without delay.

Another reason for invoking this sanction sparingly is that the matter not having been adjudicated upon there is no bar to the prosecution re-charging the defendant and, subject to any argument as to abuse of process, commencing the proceedings all over again.

In summary matters, Magistrates have the power to refuse adjournments where there is unreasonable delay on the part of the prosecution and if no evidence is offered, to dismiss the information with costs. Likewise, if the defence has no valid reason for further adjournments, force the matter on. It is not unusual in the latter circumstances for a plea of guilty to be forthcoming.

This situation is not completely satisfactory. There would be occasions where an order for costs against legal practitioners, who have recklessly approached their responsibilities to prepare for trial, would be an asset to Magistrates. However, one of the main reasons why the median delay in the Local Courts has remained around 10 to 13 weeks over recent years is that courts are over-listed on the statistical knowledge that not all matters will proceed or that the estimate of time is astray. Even with constant over-listing the rate of "not reached" matters has remained at less than 2%. What is predictable is that not all matters will proceed to trial on the assigned date. This situation is factored in to listing arrangements. What is not predictable is which cases will *not* proceed on the assigned date.

Sometimes the prosecution has over-charged and the defence have defended a matter which, if more appropriate charges had been laid, would have resulted in pleas of guilty. It has been traditional for police to charge the maximum number of the most serious offences which can be imagined out of any given set of circumstances. These charges have been regularly defended, taking substantial court time. However it has been notable that since the Director of Public Prosecutions has been prosecuting indictable matters in Local Courts more appropriate charges have generally been substituted and frequently a plea of guilty is entered. This rarely happens with Police Prosecutors.

The defence regularly cause delay by not consulting a lawyer as early as they might, by changing lawyers close to the hearing date and (when Legal Aid has been granted) failing to comply with requests to attend for appointment etc. resulting in Legal Aid being withdrawn. In these cases there is a right of appeal and the adjournment **must** (except in rare circumstances outlined above) be granted.

Civil Matters

In the past, parties in civil litigation who failed to be ready for a hearing, were required to pay their opponent's costs, and the case was adjourned to ensure all the issues between the parties were disposed of in the one hearing. The common law has changed substantially in recent years, whereby the cost to the community of lost hearing days is a factor to be considered by the Court in any late application to abandon a hearing date, or in late applications to amend proceedings.

In the civil jurisdiction at the Downing Centre hearing dates will not be vacated unless the Chief Magistrate's Practice Note Number 4 has been complied with (unless there are exceptional circumstances). Similarly, late amendments to pleadings are not allowed if the amendment would result in the need to abandon the hearing date set. Parties are of course put on notice of finality of the hearing date when a date for hearing is sought and accepted by them at the call over before the Registrar.

"Party delay" is hard to achieve in the Local Court, because if one party is seeking to put off the inevitable day of judgment against them, the Local Court has the ability to actually hear and determine the case within a short time. Directions can be sought from the Court which finalise the pleadings, and ensure the service on the opponent of such things as expert reports. Without court "system" delays, it is very hard to stretch our the court processes to disadvantage an opponent.

"Party delay" can also be dealt with by the imposition of costs orders, the striking out of court process of the offending party, or by conditional costs orders.

The Local Court does not have specific powers to make orders for costs against solicitors for "serious neglect, serious incompetence or serious misconduct" as are found in s.76C of the Supreme Court Act, or s.148E of the District Court Act. However, given the breadth of s.34 of the Local Courts (Civil Claims) Act, combined with the common law authorities it would seem there is no need to amend the legislation to provide such a specific provision for the Local Court.

3. *Are your satisfied with the statistical information currently compiled relating to court backlogs and delay?*

If not, what improvements would you like to see in this regard?

Statistical information provided to my office has improved significantly over recent years. However there is still room for improvement and I will be having discussions with the Director General of the Attorney General's Department concerning this matter.

Statistics are collected manually and while they give a broad picture, human error in collection and interpretation can make them less valuable.

Over recent years a Magistrates' Rostering and Listing System has been developed by my Executive Office and the Information Branch of the former Department of Courts Administration. This system has the capacity to retrieve very valuable management information. However funding has not been available to install it at any place other than the Downing Centre. If this were distributed through the metropolitan area and to major country centres we would have instant access to a range of information which would be very valuable in planning.

Overall the Attorney General's Department through its Local Courts Statistical Unit provides valuable information. However it is all manually collected and subject to human error and of course not as immediately available as would be desirable.

The Bureau of Crime Statistics and Research also provides valuable statistical information. However there is always a considerable lag in the provision of their statistics.

Civil Claims

In this jurisdiction the statistics kept appear to be rudimentary and not as valuable as they might be. For example one useful statistic in the civil jurisdiction is the average age of the hearing files being completed. Whilst the plaintiff may take months or years to decide to either sue, or pursue his litigation once a defence has been put on record, what matters as to court performance is the time between when the plaintiff files a "certificate of readiness" and completion of the court processes. Also there are no statistics kept or studies made of the nature of cases - whether they are in contract, professional negligence, personal injury etc, or on say, the settlement rate for pre-trial reviews in the Small Claims Division, or even the proportion of matters which actually require a court determination. However statistics for Small Claims (including settlements) are kept daily and totalled each month.

Statistics do not have to be endlessly collected. Sample periods can reveal just as much as long-term collections, and there is always the option of re-visiting an issue at a later date to find any trend.

4. What case management strategies are currently operating in your court?

Criminal

Because all criminal matters are placed immediately before a Magistrate either upon arrest, or upon answering bail or a summons, the case is managed by the Court from the very start. This contrasts with the District Court and Supreme Court where cases do not come before the Court until arraignment or when listed by the Criminal Listing Director for trial or sentence.

In the Local Court, the Magistrate controls the granting of adjournments and is able to monitor what efforts are made by both the prosecution and defence to get the case on for hearing. I have set *Time Standards* as the ideal to be achieved and a copy of my Practice Note setting out those standards is attached.

My Executive office constantly monitors delays throughout the State and when possible, magisterial assistance is provided to those courts where the delay is highest. Where regionalisation has been implemented, the same strategy is employed on a regional basis.

Cases which are estimated to take longer than one day are called Special Fixtures. These are mostly listed either at the Downing Centre or at regional headquarters in the metropolitan area. Magistrates to whom these cases are allocated are recommended to have a preliminary call-over prior to the starting date to ensure that all is in readiness for the start, the issues identified and only necessary witnesses called.

Special fixtures are listed for the time they are estimated by the parties to take and have a **guaranteed** starting date. If the case takes not more than the estimated time then it will be completed within the time allocated and there will be no further delay. Unfortunately where the estimated time has been under-estimated, the case becomes part-heard and there is further delay. The resumed part-heard hearing has to coincide with the availability of the Magistrate and available court room accommodation. It would be ideal if the part heard case were to continue without interruption. However this would impact seriously on the guaranteed starting date of other special fixtures. However, as a result of efforts made to ensure a more accurate estimate of time, the number of part-heard matters has diminished over recent years.

Civil Claims

Judicial control is the principal management strategy currently being used for civil matters at the Downing Centre. For this purpose I have appointed an experienced Magistrate as the Senior Civil Claims Magistrate at the Downing Centre.

Once the plaintiff has filed a certificate of readiness, then there is a call-over before the Registrar. The Registrar makes orders to ensure the matter is properly prepared for any trial. Many matters are referred to Arbitration, allowing the court to concentrate on the

lengthier, more complex matters. Pre-trial conferences are also conducted before the Registrar in appropriate cases.

There is a motions list before a magistrate each Friday, which allows parties to obtain a binding judicial decision on any interlocutory steps prior to a hearing date and urgent motions can be listed within 24 hours.

Some Local Courts have already introduced local practice directions which require the parties to exchange the written statements of their proposed witnesses, and to prepare a statement which sets out what facts are agreed, and what are the issues the court has to determine. The applicability of this approach throughout the Local Court and the utilising of the Evidence Act, 1995 to assist in case management is currently under consideration within the Local Court.

5. *Do you have any future plans in regard to case management strategies in your court?*

Judicial management techniques are constantly reviewed, whether it be within our Court User Forums, Statute Law Revision and Procedures Committee, in a wider context through continuing judicial education programmes and in the regular strategic planning which takes place within my office. At a more local level, Magistrates are constantly reviewing the manner in which work flows are controlled through their particular Court and adapting their listing approaches to suit. Suggestions for legislative change which would assist in managing the business of this Court are often made by this Office to the Attorney General's Department.

One of the significant consequences of the managerial approach to judicial administration has been to recognize regionalisation as an effective strategy. Given the success of this approach we are proceeding with an extension of that program. In addition specific delays (particularly with special fixtures) are being specially targeted.

The recommendations of the *Hunt* Committee in regard to persons within the Criminal Justice system who are charged with offences has been and will continue to be implemented.

Civil Claims

The Senior Civil Claims Magistrate at the Downing Centre has recently recommended the preparation of a Civil Litigation Reform Plan encompassing a wide range of civil litigation case management initiatives. There are a number of initiatives worthy of pursuit, some being far easier to achieve than others. For example, some reforms could be achieved by a Chief Magistrate's Practice Note, some would require changes to the Rules, and others would require amendment of legislation.

Some of the initiatives which such a plan could encompass would include the following:

- Amendments to "certificates of readiness" to ensure parties have complied with the Evidence Act as to notice, expert evidence etc.

- Renaming of the Registrar's Call-over as "Directions Hearing" with new notices advising the parties of what to expect at that Directions Hearing.

- The Registrar or Magistrate to have the power to require, either at the Directions Hearing or later:

  - The preparation of an agreed book of exhibits, page numbered and indexed.

  - The contemporaneous exchange of statements containing the evidence in chief of witnesses relied upon.

  - The preparation and filing of a statement of agreed facts and issues, setting out the short points of both the claim and the defence

  - Consideration or use of Alternative Dispute Resolution.

  - The imposition of time limits upon the evidence, cross-examination and submissions.

  - The development of standard "tracks" for cases. Guidelines would be published which advise litigants of the likely pre-trial procedures required in different types of cases.

I have approved the establishment of a Local Courts Civil Litigation Reform Committee to be chaired by Magistrate Roger Dive, Senior Civil Claims Magistrate.

6. *Are there any other particular initiatives which you feel have worked well in reducing court delays?*

The Local Court is the largest Court in Australia with a large number of cases to be dealt with. In addressing delays it has been necessary to implement a range of initiatives which have substantially reduced delays since 1988.

I mention some of those initiatives below:

Registrar's Call-overs

The introduction of Registrar's Call-overs at the Downing Centre and other Courts relived the Magistrate of much administrative or quasi-judicial work such as granting adjournments, continuing bail, listing for hearing and in civil cases making some interlocutory orders, doing pre-trial hearings etc have allowed the Magistrate more time for judicial work.

More accurate listing

A very significant and frustrating cause of delay is the drop-out of cases which have been fixed for hearing. It is frequently found that a case listed for hearing for, say, one day becomes a plea of guilty on the day listed for hearing and takes probably not more than 10 minutes. There can be other reasons why it does not proceed eg. illness of the parties, withdrawal of charges by the prosecution, settlement of a civil action etc. In order to avoid the waste of very expensive court time, over-listing is necessary. During 1988-1989 at the Downing Centre we found that there was much wasted Court time. In fact I found that frequently of an afternoon many of the courts were unused. To deal with this problem we gathered statistical information to see what was the regular pattern of cases "dropping out" of the hearing list ie. becoming pleas of guilty etc. Over time we found it was fairly consistently about 48%. We then adjusted by progressively over-listing to make up the balance. In time we eventually got the balance fairly correct and we now list enough work for an additional ten courts every day which at the time of listing do not have a court room or Magistrate to deal with them. However we consistently find that sufficient of the listed work "collapses" to enable to hearing matters to be dealt with. We rarely have a "not reached" case and went for one period of six months without even one case being not reached. Over time we found that the amount of defended worked being disposed of to finality increased by approximately 100% using **existing magisterial resources.**

This type of over-listing is regularly used throughout the state and has contributed to the gradual reduction of mean delays to 10 to 12 weeks.

Multiple Court Complexes

It has been found over many years that two magistrates working together are more effective that two magistrates working separately. Similarly, three are more productive working together than separately and so on as the size of the court complex increases. Accordingly we have tried to maximise the use of multiple court complexes. We have re-organised sittings so that there are more instances of Magistrates sitting together. For instance we reduced the sittings at North Sydney to list work only and transferred the defended work to Hornsby and Manly. This created a significant reduction in delays in defended matters without affecting the service provided locally by list courts. We also built up the defended sittings at larger court complexes such as Burwood, Sutherland and Parramatta. Generally where it was possible we have tried to reduce the work at single

court complexes to list work only with perhaps some short defended matters which can be dealt with expeditiously and transferring the longer defended cases to a multiple court complex where they can be dealt with more efficiently and expeditiously.

Regionalisation

Regionalisation was a concept which we developed mainly because of extraordinary delays at some country courts. For instance in 1990 there were significant delays (of approximately 26 weeks) in the North Coast circuits of Tweed Heads, Lismore, Ballina and Coffs Harbour. Delays were such that we were providing very extensive magisterial assistance each year. With air fares and travelling expenses for the magistrate and court staff the cost was enormous. We decided to appoint an additional Magistrate to the area covered by those four circuits (which we called a region) and that magistrate was to provide all the relief for leave and additional assistance to those four circuits. The additional magistrate is a co-ordinating magistrate who monitors each circuit and provides additional assistance in a fair manner so that each circuit can hold its delays to a reasonable period. The approach has been very successful. Delays throughout the region have been substantially reduced, as have the costs of managing the delays, resulting in substantial, and importantly, recurrent, financial savings. The allocation of an additional magistrate to the region was a transfer from an existing position in Sydney so there was no additional cost to be offset by those very substantial savings

One of the important concepts of operating a region is to have all the magistrates work as a team and accept responsibility for the whole region and not just their own circuit. This has been a very successful exercise and has boosted morale in those areas designated as regions.

As the north coast region was so successful, we then proceeded to create a region based on the Hunter/Central Coast area. This was based on the North Coast model and has been quite successful.

We have now extended the concept of regionalisation to the metropolitan area and have created three regions as follows:

Western Metropolitan Region centred on Parramatta;
South Western Metropolitan Region based on Burwood; and
Southern Metropolitan Region based on Sutherland.

To each of these regions we have added one additional Magistrate taken from our existing resources. The region is to be entirely responsible for reducing delays within its own boundaries and is again based on the concept of each Magistrate's responsibility for the whole of the region.

Though these three metropolitan regions commenced only from 15 April 1996, preliminary indications are that they will produce similar savings to the earlier regions.

The concept of regionalisation has now been further extended by creating a South Western (Country) Region based on Wagga. It is anticipated that this will also create efficiencies and economies similar to the other regions.

Special Sittings

During 1994 special sittings were arranged as part of a general delay reduction program. In an effort to reduce delays on lengthy special fixtures which were usually adjourned from metropolitan courts to the Downing Centre Courts Complex, a "blitz" on hearing those cases was conducted from 4 to 29 July 1994, the period of that years District Court vacation. The District Court made available six court rooms at the Downing Centre complex and two at Parramatta to accommodate the expanded sittings. Magistrates' recreation leave was restricted during this period so that a large number of cases could be listed and disposed of.

Despite a special call-over conducted in June to ascertain the status of the special fixtures, not all matters proceeded to hearing. A large number of civil claims special fixtures were settled prior to hearing. Most special fixtures involving criminal matters did not run the full length of the time allocated. There were no special fixtures or short matters not reached for the whole of the four week period.

Overall the results were disappointing and I have no plans to repeat the exercise.

Acting Magistrate Scheme

Following discussions with the then Attorney General concerning the waiting times experienced in the processing of lengthy committal proceedings, an approach was made to Treasury to secure funding for the appointment of four Acting Magistrates for 9 months. Funding was approved and the Acting Magistrates were employed during the period from July, 1994 until April, 1995.

Civil Claims Listing Scheme

The constant review of the practices and procedures of the Local Courts resulted in a change in the manner in which lengthy civil matters listed as special fixtures were to be approached at the Downing Centre. Experience had shown that approximately 50% of civil claims matters listed for more than one day's hearing had a tendency to "collapse" either just before or on the first day of hearing, despite being listed several months in advance. This contributed significantly to the wastage of many sitting days per month as the short notice prevented the diary time being re-allocated. It had become obvious that there was a need for a change in the way in which these matters were listed.

In mid-October 1994, the decision was taken in consultation with the Law Society and other Court users, to allocate no more than one day to a special fixture in the civil area except in very limited circumstances. The scheme has effected a dramatic reduction in

the loss of court time brought about as a result of such matters being settled either on the day allocated for hearing or shortly prior thereto.

From 14 October to 31 December 1994, 272 actions were listed for hearing after certificates of readiness were filed and call-over before the Registrar. Of these, 140 actions did not go to trial - 74 settled, 37 were adjourned generally for settlement negotiations, 10 were struck out, 3 were vacated and 16 were discontinued. All these matters would have occupied space in the diary as special fixtures. Notwithstanding the changed status of civil matters from special fixture to short matters, the 50% fall-out rate continued. Even though 21 actions became part heard and 2 were not reached, these matters were dealt with within a relatively short period, in some instances later in the same week.

Evaluation

As a consequence of the above two schemes, the waiting times for the listing of special fixtures has dramatically improved. There are 15 special fixture Courts associated with the Downing Centre/Central Court complex. The reduction in waiting time from 39 weeks as at 1 June 1994 to 13 weeks as at 1 December 1994 indicated a 66% reduction in waiting time. This represented a saving of 390 weeks in sitting time. Measured against the funding provided for the Acting Magistrates, an estimated saving of approximately 234 projected sitting weeks was achieved.

The effectiveness of the Civil Claims Listing Scheme contributed to approximately 25% of the result achieved at that date. Taking this factor into account, the savings in Magistrate sitting weeks brought about directly by the Acting Magistrates' scheme was 175.5 sitting weeks, an endorsement of the approach of specially targeting areas within the Local Courts by a concentration of experience and resources.

I am happy to say that I have been advised that efforts by the Attorney General and his Department have resulted in funding for 3 Acting Magistrates being made available in this years Budget.

Small Claims Division

The creation of a Small Claims Division in 1991 within the Civil Claims jurisdiction has been of considerable assistance in keeping delays for civil cases at an acceptable level. All actions, where the amount claimed does not exceed $3000 fall within the Small Claims Division. This represents about 60% of all civil matters in the Local Courts. At the Downing Centre complex a full-time Assessor has been appointed who presides mainly at the Downing Centre with one or two days per month at North Sydney. Defended actions, commenced at Balmain, Waverley, Redfern and Newtown, are transferred to the Assessor at the Downing Centre. When a defence is filed to a small claims action, it is listed automatically by computer for pre-trial review before the Assessor about one month ahead. Up to 80 actions are listed each Tuesday and Wednesday for pre-trail review. At the pre-trial review the Assessor is bound to attempt

settlement through conciliation. If that attempt fails to produce a result, the action is fixed for an informal hearing about 5 or 6 weeks ahead. On informal hearing days (Mondays, Thursdays and Fridays) 9 or 10 matters are listed each day. Rarely does the Assessor become part heard or have matters not reached. Prior to the Small Claims Divisions procedure being introduced these cases would have been litigated in the formal atmosphere of the General Division and may have occupied the court for more than one day in each matter. The normal waiting time from filing a defence in a small claims action to judgment is about 9 weeks.

At suburban and country courts the Registrar or Magistrate presides as the Assessor at the Pre-Trial review with the Magistrate conducting the informal hearing if a settlement, through conciliation, has not been achieved.

Miscellaneous

Procedures generally are being constantly reviewed. Even small changes have an impact. For instance we are shortly commencing the list courts at the Downing Centre at 9.30am to prevent delays caused by the lists being over-used when all Local Courts and District Courts start at 10.00am. We are also introduced experimentally some staggered listing of short defended matters in order to avoid delays to members of he public arriving at 10.00am and then having to wait all day for a hearing.

7. *Are there any initiatives that you would like to see implemented to aid in the reduction of court delays and backlog?*

   If so, what is holding back the implementation of these initiatives?

As mentioned previously, the following initiatives would be helpful:

1. Legislation to provide for paper committals.

2. Legislation to provide for a Local Court (Criminal) Rules Committee.

3. Legislation to enable the issue of infringements notices for a wider range of minor matters, as an alternative to arrest and charge, thus reducing the number of persons who might be required to appear before Court.

4. Amendments to the Justices Act to reflect the modern approach to judicial management within the Local Court and simplify procedures.

5. Completion and extensions of computer facilities to all courts.

8. *What is the capacity for alternative dispute resolution techniques (ADR) in your jurisdiction.*

Are you satisfied with this situation or would you like to see the use of ADR increased?

Do you believe there are any negative aspects to an increased reliance on the use of ADR?

The limited monetary jurisdiction ($40,000) inhibits the use of ADR in the Local Court. A panel of mediators has been established for the Local Court. However there is very little call for their services. I see value in their use. It may well be because matters **can** be dealt with at a hearing so expeditiously there is little present call for ADR. I see significant scope for ADR if there is a requirement for the parties to have considered this as an alternative approach **before** being entitled to approach the Court for a hearing date. So many civil matters settle at the door of the Court that there must be greater scope for negotiated settlement of civil litigation. The time which is lost by allocating hearing time only to have a matter settle could be better utilised in areas of unquestioned need. The issue will be looked at by the Civil Litigation Reform Committee and there could well be fresh initiatives in this area arising from those deliberations.

9. *Are there any developments, aimed at reducing court backlogs and delay, in other domestic or foreign jurisdictions which you think should be adopted in NSW?*

I regularly visit other jurisdictions to meet the Chief Magistrate and other members of the Court in other States and Territories. We regularly discuss own initiatives and share them with the other jurisdictions. In addition there are periodically organised Court Management Conferences organised for Chief Magistrates and senior managers where there is a frank exchange of valuable information. These conferences are organised by the Australian Institute of Judicial Administration and have proven very valuable. There have been a number of initiatives introduced in our Local Courts which have resulted from observing interstate and overseas procedures. As an example the proposal to amend the legislation governing committals for trial result from a suggestion I brought back from South Australia some three years ago.

10. *In your jurisdiction are there any reforms to particular court rules and procedures, planned or under way, that are aimed at reducing court backlogs and delay?*

The only proposals presently under consideration are proposals to amend the Justice Act 1902 in order to simplify committal procedures. New South Wales is one of the last jurisdictions in the world which still have a full committal procedure. The proposed amendments would provide that all committals are effectively "paper committals" with witnesses being called for examination and cross examination on cause being shown. This amendment should significantly shorten committal procedures if passed by the Parliament. My Statute Law and Procedures Committee is currently preparing a paper

to support amendments to the Justice Act to provide for a simpler method of dealing with ex-parte cases.

If so, what problems do you have with introducing those reforms?

The reforms can only be introduced if approved by Parliament.

I am also again seeking legislative support to establish a Local Courts Criminal Rule Committee so that procedures can be monitored and where necessary amended promptly.

11. In your Court are there any standards or guidelines currently in place relating to the duration of judgment deliberation times? If so what are they?

Magistrates have been advised that if a reserved decision is like to take more than eight weeks, the Chief Magistrate is to be advised of the fact and the reasons for the delay.

In addition I have set Time Standards by Practice Note.

12. Do you see any potential benefits of extending the hours of operation of the courts in your jurisdiction?

Are you of the opinion that increasing the intensity of use of present facilities would be a constructive or value for money technique, for addressing court backlog and delays?

The committee would like to point out that this question refers to the availability of access to the courts and not the work load of individual judicial officers.

The Committee is undoubtedly aware that two attempts have been made to conduct night court sittings in New South Wales. Both were unsuccessful. Generally, lawyers, Police and Corrective Services officers and other participants in the Court system seem unable to adapt to unusual court sitting hours. Extended Court sitting hours do not save on Magisterial and court resources. The only economy is the saving on capital expenditure of building additional court rooms. This has to be balanced against the extra costs associated with the Court staff working outside normal office hours and the additional allowances which might become payable. (Other Court users such as Police and Corrective Services would also be liable for additional costs). The only cost which would remain constant is the salary of the Magistrate.

It has been considered that it might be possible to operate the one court room for two shifts per day eg. 7.00am to 1.00pm and 1.30pm to 7.30pm with one Magistrate presiding over the morning "shift" and another taking the afternoon "shift". However the additional costs and lack of enthusiasm from lawyers, Police and Corrective Service Officers etc. has inhibited any serious development of the proposal.

13. *Arguably the responsibility for court delay lies with a disparate group of participants who operate in, and form the justice system. This group would include, at a minimum, the Department (sic) of Public Prosecution, legal practitioners and the Attorney General's Department.*

Do you believe the communication networks that exist between the participants in the justice system, directed towards addressing the problems involved with court backlogs and delays, are adequate?

If not, in what ways do you think they could be improved?

Generally I think the communication system is very good. The Director of Public Prosecutions meets with me and my deputies at least once each month to discuss matters of concern. I have a similar meeting with the Director General of the Attorney General's Department and the Director of Local Courts. At the regular Court Users' Forums there is ample provision for communication by all the players and many problems have been solved.

The Civil Justice Forum and the Criminal Justice Forum are a mechanism for taking a global view of the entire Justice system. However there are so many involved that the small problems which are the difficult ones are not able to be addressed. I find that when there are difficulties with other jurisdictions such as competing needs for court room accommodation I am able to speak directly to the Head of that Jurisdiction and my Executive Officer can speak to his opposite number in that other jurisdiction. Mostly the problems are solved.

14. *Are you planning to introduce Court User Forums (such as that which operates at the Downing Centre) into other areas?*

Already Court Users Forums operate at a number of Courts across the State. They are proving very valuable.

15. *Have changes to the operations of the court over the last 10 years or so, involved an increase in the administrative duties for judicial officers?*

What has been the effect on the more traditional duties of judicial officers?

Are you satisfied with this situation?

If not, what changes would you like to see in this regard?

Unquestionably so. The Local Court, perhaps because of the significant amount of administrative and managerial expertise present on its Bench, perhaps because of the sheer volume of work processed through it, has long adopted a managerial approach to managing its responsibilities. This depends, significantly so, upon the information

provided to my office by Magistrates who have responsibility for country circuits and Courts within the Metropolitan area. The collective appraisal of this information together with that provided by the Bureau of Crime Statistics and Research and other statistical units within the Attorney Generals Department enables the Court to direct its resources where they can be utilised most productively.

At the local level Magistrates are encouraged to use their role, through the Court Users forums, to take responsibility for coordinating the business of their court in a manner which takes cognizance of all the various professional and social inputs. These approaches have been particularly beneficial in devising ways to overcome local problems and to maximise the use of Court time. It has also assisted in appraising and re appraising the effectiveness of the way in which an individual Court operates and has led to a number of valuable suggestions, implemented as procedures, and which have had a direct impact on the Local Courts as a whole.

In addition all Magistrates are actively encouraged, through the Chief Magistrate's Committee system, to turn their attention to problems with the administration and effectiveness of laws and procedures and again, many worthwhile suggestions have been put forward for consideration by Government.

It remains an observable fact of life however that the lack of proper administrative support has increased the burden on judicial officers. It is a predicament with which those appointed from private practice have great difficulty in adjusting to the almost complete lack of any administrative or research support.

It cannot be said that I am satisfied with the current situation for it is the one glaring area in which the response of Government has been less than satisfactory. It fails to acknowledge the changing nature of the Local Court Bench from one which had a direct link with the administration of the Court House, to one which is today little different to that experienced by a Judge. Despite this change of culture, despite the acknowledged need for Judges to be provided with secretarial/administrative support in the form of specialised associates, there has been no acceptance of the need to address this fundamental level of inequality affecting the whole of the Local Court Bench.

16. *What is your perception of the level of support provided to judicial officers by the NSW Attorney- General's Department generally, and for addressing court backlogs and delay in particular?*

    How well do you find that the reaction and processing time of the Attorney-General's Department is adequate to meet the needs of judicial officers in your jurisdiction.?

It should firstly be noted that my Executive Office is staffed entirely by officers of the Attorney General's Department. These officers provide enormous support to my office generally. In particular the Chief Executive Officer, Mr David Griffiths, uses his considerable intellectual talent and capacity for "lateral thinking" in addressing administration of Local Courts in general and backlogs and delay in particular.

I offer nothing but praise for the standard of staff provided by the Attorney General's Department to my office personally.

Sadly this standard is not universal across the whole system. I cannot of course comment upon the level of support provided to other levels of the judiciary other than to note it is different to that available in the Local Court. This may well be for historical reasons or because of the greater prestige and status attaching to the higher jurisdictions generating a greater willingness to be responsive to the needs of those Courts.

From my experience there has been, for many years, a view held within successive administrations of the Attorney General's Department or Department of Courts Administration as the case may have been, that the Local Courts are somehow inferior in more than simply jurisdiction. Whether this attitude exists because of the historical background from which Magistrates used to be appointed, namely exclusively the public service, I do not know but I suspect that may well be the case. Such appointments of course have not been the norm for many years. The Local Court Bench is now drawn from a wide variety of backgrounds, with appointments from the ranks of practising barristers and solicitors having well overtaken history. Despite the increasing level of professionalism and sophistication there still exists, in my view, a tendency amongst the bureaucracy to demean the Court's achievements, certainly to underestimate its value to the overall administration of justice and to act grudgingly in response to its legitimate requests. Those historical resentments no longer exist on the same scale and unquestionably the approach taken by the current Director General is one of cooperation but there are areas where improvements could have been made but for reasons which are not always understood, are not even attempted. The computerised magistrates rostering and listing system and ongoing problem with Court Officers and secretarial assistance are just some of the larger problems which appear to me to be capable of resolution but for the want of a will to do it.

So far as "addressing court backlogs and delay " are concerned, these are issues which are addressed proactively by the Magistracy. The role of the Department is limited to responding to requests for additional resources when areas of specific delay are being attacked and generally to ensure there is sufficient staff to run the Courts.

I cannot comment with any great expertise on a comparison with levels of service provided in other jurisdictions although I do note that in the area of Court Officers, the Northern Territory, South Australia and the Family Court of Australia seem to have managed to achieve a standard, at least of appearance, which seems beyond that of this State. In other regards, I would suspect the relationship between the magistracy in other states and the bureaucracy is little different from that in this State.

In answer to the final sub question in this part the role played by the Department is perhaps adequate. I have no objective comparison with which to measure its effectiveness in responding to the needs of this Court.

17. *Are you satisfied with the channels of communication between yourself and the Attorney-General's Department at both an everyday and senior policy level?*

Since I assumed the office of Chief Magistrate I have endeavoured to ensure that direct lines of communication exist between the head of the Attorney General's Department, and the Attorney General of the day. I believe that has been successful. I have regular, programmed meetings not only with the Director General of the Attorney General's Department, but also with the Director of Local Courts. I believe the current approach provides an effective means of communications between the two organisations.

18. *In April, 1995 the Department of Courts Administration was merged with the Attorney-General's Department. Did this merger have any tangible effects on your Court's ability to operate?*

In a general sense, no. There were temporary dislocations in some areas of communication with my Office as staff rationalisations generated by the amalgamation took place. Given the size of the task involved however, the transition was handled with a minimum of inconvenience to the operations of my Office. The day to day operations of the Local Court proceeded almost unaffected.

19. *Do you think that changing the limits to the various court jurisdictions in NSW would have any overall benefits in regard to court backlogs and delay for the state?*

There can be little doubt that the increases in the criminal jurisdiction of the Local Court in recent years has had an enormous impact on the backlog of delays within the District Court, the criminal jurisdiction in particular. I make no attempt at false modesty in so far as the achievements of the Local Court are concerned. Had the changes to the criminal jurisdictions of the District Court and the Local Court not taken place then the District Courts backlogs would have been considerably longer than they are at present. I am informed by the Director of Public Prosecutions that since the amendments to the Crimes Act increasing the jurisdiction of the Local Courts commenced in September, 1995, the number of committals being registered for trial in the District Court had reduced by 18% as at April, 1996. Based on experience of previous changes increasing the jurisdiction of the Local Court in this area, the percentage is likely to increase in the near future.

It is far more cost effective to conduct a defended summary hearing in the Local Court before a Magistrate than to have a trial in the District Court before a Judge and Jury. The proceedings come on for hearing much sooner, the duration of the hearing is unquestionably shorter with resultant savings to the parties, the cost of a Magistrate is much less than the cost of a Judge and the savings effected are recurrent as opposed to one off savings. It is a moot point whether there is any diminution in the quality of justice for the environments between the two courts are not amenable to direct comparison. In the District Court, with limited exceptions, the Judge sits to determine issues of law and the jury issues of fact. In the Local Court a Magistrate performs both roles.

Simply changing the level of jurisdiction however, without appraising the cost in human terms may not the most effective approach. The issue is extremely complex and should not simply be seen in terms of "the cost of a judicial appointment". There have been substantial and demonstrable savings to the State in terms of the reduction of costly trials which would otherwise have been pending in the District Court but the consequence has been an inordinate increase in pressure on Magistrates.

Despite constant increases in the criminal jurisdiction, the Local Court has managed to reign in delay at a median of 10 weeks. This has not been achieved without cost in human terms, nor without an aggressive managerial approach being taken in relation to the direction of the Court.

Magistrates take great pride in discharging their judicial obligations on behalf of the community. Great emphasis is placed by them on reducing delays to the lowest level possible. This requires great commitment but it also produces high levels of stress and exhaustion. It has only been through temporary programmes, such as the acting magistrates programme, together with a vigorous approach to refining our processes that the achievements evident in recent times have been possible. This suggests the current level of resources is less than desirable. It also reflects the consequential difficulties which often ensue when decisions of Government, for example, to employ greater numbers of police is not matched with an objective re-appraisal of the impact of additional policing on the Local Court, as the Court before which all persons arrested or summonsed by those additional police will be expected to appear.

Delay of course is not simply confined to the criminal jurisdiction. I am aware of the problems experienced in the civil jurisdiction. Those problems do not apply in the Local Court and again it is because of the approach taken by this Bench. So effective have these approaches been that some time ago I wrote to the Attorney General suggesting an increase in the civil jurisdiction. That suggestion was made for two reasons. Inflation has a direct impact on the civil jurisdiction of the court, not a great one, but a real one. The civil jurisdiction of this Court is $40,000 and has been for some years. It is my belief it should be raised to a level which reflects changing values and takes account of the Courts general capacity to assist in delay reduction in the District Court.

By way of example it was decided some years ago to vest jurisdiction in this Court for actions brought seeking damages for personal injury arising out of motor vehicle accidents. The monetary limit in the first instance ensured that very few matters would be triable within the Local Court. Changes to the threshold limits under the Motor Accidents Act over the years has effectively resulted in almost no actions being commenced in this Court with the result that what was sought to be diverted from the District Court has now found its way back there. This is despite the fact that this Court can provide an early hearing and disposal of such cases and could, with an increase in jurisdiction and a modest increase in judicial resources, alleviate a significant proportion of the District Court's civil backlog.

I am aware of the arguments regarding the potential loss of revenue from filing fees and so on but I would have thought that these issues could have been accommodated by giving parties a choice, at uniform cost, of commencing their proceedings in a Court which would best serve the interests of the litigant rather than be forced into a particular Court and accepting the fact of delay by an artificial monetary limitation on a particular Court's jurisdiction. The complexity of a matter is rarely determined solely by the amount of money attaching to the result.

20. *Are you satisfied with the level of information technology currently available both in court rooms and for general administration of the Court's business?*

Information technology should not simply be seen in the context of computers. It is an unassailable fact, however, that the provision of computers to magistrates has enabled them to function with greater flexibility. It must be borne in mind however that the funds allocated for this programme have been insufficient to enable the introduction of computer technology to all magistrates, at the one time. Despite the undisputed need to provide access to such technology it will not be until the middle of this year that all magistrates will have access to computer facilities.

Given that there are no secretarial services available for the vast majority of magistrates, the word processing facilities which come with computerisation have been a vital component of a magistrate's resources. I have little doubt it has assisted in the reduction of the periods of time that reserved judgments are outstanding. I also have little doubt that the assistance provided by the Judicial Commission in the training of magistrates in the use of computers, and the provision of access to areas such as its Sentencing Information System, has provided a benefit to magistrates which has assisted in the overall administration of justice.

Each Magistrate is provided with a Bench Book. This publication, the product of the combined efforts of the Court's Education Committee and the Judicial Commission, is an excellent management and judicial adjunct. Each Magistrate is provided with a three volume set of "Criminal Practice and Procedure in New South Wales". This practice is a loose leaf service which constantly updated and again provides a valuable reference and practical tool to assist magistrates.

I think that, in general terms, the current position is satisfactory.

21. *An issue which arose from the public hearings held by the Committee (for example see pages 2 and 19 of the hearing transcript) was the alienation felt by uninitiated court users.*

Does your court have any strategies or programmes in place aimed at reducing these feelings of alienation?

To what extent do you think such matters are the responsibility of judicial officers?

I well recognize that Courts are intimidating environments. So too is the waiting room at the dentist and the doctor, but for perhaps different reasons. Magistrates are well aware, through internal judicial education programmes and the orientation programme for newly appointed magistrates, of the need to give special consideration to the unrepresented litigant, and to develop communication skills which take into account the necessity to maintain a level of formality whilst at the same time ensuring that litigants understand the nature and effect of the process. I suspect that despite the best of intentions the nature of the forum is not conducive to universal success in this area.

I have spoken earlier of the consequences which flow from having poorly trained and unprofessional court staff within the Courtroom. It is my view that an approach needs to be taken with respect to the recruitment, training and role of Court Officers which acknowledges the vital importance of their part in the judicial process. These positions can provide the communication link between the formality of the Bench and understanding of the person or persons appearing before it. I have been endeavouring for many years to address this unsatisfactory aspect within the Local Court system for I cannot accept that a system which operates effectively in the higher jurisdictions (that of Associates to Judges) cannot be modified and effectively introduced into the Local Court. I would have thought that given the commitments espoused in relation to access to justice a better attempt could be made to overcome the apparent impasse in relation to this role.

22. *Can you outline the current system of vacationing used by judicial officers in your jurisdiction?*

Are you planning any reforms to this area of the Court's operation in the near future?

It should be noted that Magistrates receive only four weeks leave per year (although those who are permanently stationed in the far West of the State receive five weeks).

This contrasts with the leave granted to :

Police Prosecutors: 6 weeks per year

Crown Prosecutors and Public Defenders: 8 weeks per year

Judges of the other jurisdictions:- 10 weeks per year (which includes fixed vacations). Judges, of course, spend a significant portion of their fixed vacations writing judgments. Magistrates have little alternative than to use their weekends.

There is no "current system of vacationing" used by Magistrates. That is an entitlement unique to all other Courts but denied to the Local Court. There are arguments both in favour of and against fixed, or inflexible Court vacations. The existence of such vacations enables those persons, such as the legal profession, to manage their entitlement to a vacation around the sittings of a Court. It must be said in this context that the fact of the legal profession operating across jurisdictions has an impact on the capacity of the Local Court.

By way of example a significant majority of legal practices scale down their activities from mid December to the end of January. This accords with the fixed vacation periods in the Supreme and District Courts. The consequence of this is that matters which perhaps could have been dealt with to finality in the Local Court receive a longer adjournment because of the unavailability of solicitors or barristers. I do not think there is a realistic way around this fact of life. However, in an attempt to achieve a balance, magistrates are encouraged to take at least part of their leave during periods of reduced demand.

So far as this Court's approach to leave is concerned, all Magistrates are required to indicate their preferences for leave early in each year. Because of the heavy and unending demands placed on the Local Court the granting of leave is subject to the obligations of the Court to meet its fixed commitments. No Magistrate can be guaranteed leave at the time she or he requires it. Because there is no such thing as a Court Vacation in the Local Court the only way in which the daily operations of the local court system and the leave entitlements of Magistrates can be accommodated is by cancelling sittings of courts at locations which have more than one court room and which would otherwise have been occupied in defended hearings. This approach has an impact on delay but does not affect the disposal of other proceedings. As a consequence, little or no inconvenience is caused to the general public.

PRACTICE NOTE NO. 1/1995

TIME STANDARDS

The Chief Judge of the District Court has convened a Committee to recommend time standards to assist in the more expeditious disposal of criminal trials. The Chief Judge and the Chief Magistrate have agreed that their Courts will co-operate with a view to achieving the time standard goals set out hereunder.

The Chief Magistrate has varied the time standards published in Practice Note 1/92, to commence from 1 April 1995 expiring on 31 March 1996. At the expiration of this period, time standards will be reviewed.

1.	Summary Charges - Plea of not guilty			Progressive Times
	(a)	arrest to first appearance.	21 days	21 days
	(b)	an adjournment not exceeding 21 days will be permitted to allow a decision to be made as to whether the matter is to be a plea of guilty or not guilty. Upon the adjourned date the defence must indicate a plea. If the matter is to be defended, all parties must be in a position to advise the Court of the number of witnesses, the anticipated length of hearing, and must be prepared to take a hearing date within a period not exceeding 63 days.	21 days	42 days
	(c)	Hearing.	63 days	105 days

2. Summary Summons - plea of not guilty

(a)	issue of summons to first appearance	28 days	28 days
(b)	an adjournment not exceeding 21 days will be permitted to allow a decision to be made as to whether the matter is to be a plea of guilty or not guilty.	21 days	49 days
	Upon the adjourned date the defence must indicate a plea. If the matter is to be defended, all parties must be in a position to advise the Court of the number of witnesses, the anticipated length of hearing, and must be prepared to take a hearing date within a period not exceeding 63 days.		
(c)	Hearing.	63 days	112 days

3. Indictable Charges - plea of guilty - s.51A

(a)	arrest to first Court appearance.	21 days	21 days
(b)	prosecution will be permitted a maximum period of 21 days within which to prepare and serve a brief.	21 days	42 days
(c)	plea will be dealt with on the return date or within 7 days thereafter.	7 days	49 days

4. Indictable Offences - committal proceedings

(a)	arrest or issue of summons to first appearance.	21 days	21 days
(b)	prosecution will be permitted maximum period of 21days within which to prepare and serve a brief.	21 days	42 days
(c)	defence will have 7 days within which to reply.	7 days	49 days
(d)	parties must be in a position to accept a hearing date within 56 days of the defence reply.	56 days	105 days
(e)	in those matters committed for trial the papers will leave the Local Court within 6 days after date of committal.	6 days	111 days

NOTE:

Custody matters: The time standards for indictable committal hearings will be the same whether the defendant is in custody or released on bail. The current practice of giving priority to those in custody will continue. Those in custody will have priority within the enunciated time standards.

I H PIKE
CHIEF MAGISTRATE

PRACTICE NOTE NO. 1/90

VACATING HEARING DATES

The Chief Magistrate is concerned at the loss of Court sitting time occasioned by applications to vacate hearing dates either on the first day of hearing or so closely proximate to it that replacement matters cannot be listed. Court time is also lost when a change of plea is entered at the commencement of a matter fixed for defended hearing.

This practice note is designed to prevent loss of Court sitting time and increase case disposition.

i) This practice note applies to all defended hearing matters whether civil or criminal.

ii) Courts with infrequent and irregular sittings will comply as far as possible with the practice note.

1. Setting matters down for hearing:

When setting matters down for hearing, parties must be in a position to advise the Court:-

(a) the dates upon which the parties and their witnesses are available;

(b) the estimated length of hearing time;

(c) that all interlocutory matters have been completed;

(d) that any other evidence (eg. analyst's certificates) will be available on the hearing date;

(e) that the matter is otherwise ready to proceed;

(f) if subpoenas are to be issued and if a date prior to the hearing date is required for return of subpoenas.

When a hearing date has been allocated, it will not be vacated unless the party seeking to vacate shows good and sufficient cause.

Any application to vacate a hearing date must be made not less than 21 days prior to the allocated hearing date, or such other period (whether longer or shorter) as in the opinion of the presiding Magistrate will allow time to list other matters for hearing on the date/s to be vacated.

The party bringing the application must give notice to the opposing party/ies of the application.

2. Urgent applications:

Applications to vacate a hearing date on the grounds of unforeseen or urgent matters (eg. illness) should be made as soon as practicable after a party has become aware of grounds for such application, and in any event not later than the next working day.

A party wishing to make an urgent application should advise the opposing party of the application and grounds for such application at the earliest opportunity. The Court should be advised, by telephone, at the earliest opportunity that an application is to be made.

Upon an application to vacate a hearing date on the grounds of illness, the party making the application will be required to produce a medical certificate within a period to be specified by the Court.

3. Change of plea;

When instructions are received to enter a plea of guilty in a matter fixed for defended hearing, the prosecution and the Court should be advised at the earliest opportunity.

Whilst it is appreciated that defendants often give instructions to change plea on or close to the day of hearing, legal representatives should advise clients that any change of instructions (whether change of plea in criminal matters or settlement in civil matters) should be submitted to the legal representative at the earliest opportunity. Early conferences in preparation for hearing will, of course, assist to this end.

4. Costs and witnesses expenses:

Practitioners should bear in mind the power of the Court to order costs and witnesses expenses to be paid in appropriate cases.

I. H. Pike
Chief Magistrate

13th August, 1990

Re: A Cooper Deputy Chief Magistrate

New South Wales Government

Licensing Court of New South Wales

Chief Magistrate I Pike
Chief Magistrate of the
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143-147 Liverpool Street
SYDNEY NSW 2000

6th Level
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Our Reference: DBA:ymh

Your Reference:

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(02) 289-8701

Dear Chief Magistrate

I refer to our discussion on 22 May 1993 and your fax of the same day. I comment in respect of the seven paragraphs referred to in the extract of the report provided by you to me.

1. The main causes of delay are the inability of the Court to provide an early date for hearing. In the Licensing Court, hearing dates are obtained before final preparation is completed. There are no formal statistics to show delays from the time the case is ready for trial.

   The Licensing Court, uniquely, sits as a bench of three magistrates on major applications involving hotel and bottle shop licenses. This is done to remove one level of appeal from a single magistrate to a full bench of the Licensing Court. These cases nearly always are given a full bench because magisterial experience indicates that the parties will always appeal from a single magistrate to the full bench. It is thus possible to dispose of matters using three magistrates instead of four.

   Court delays of their own are also exacerbated in this jurisdiction because of the duties of the magistrates as members of the Liquor Administration Board. As Board members, substantial time is required to dispose of duties and this means that magistrates are not available to sit in court five days per week. Delays are also occasioned because of the small number of legal practitioners who are retained in the jurisdiction and the clashing of cases.

   Court days are often wasted by reason of the inability of applicants to satisfy the Court that it has jurisdiction to hear a case which arguments are upheld on the first day of the hearing thus causing a waste of subsequent hearing days.

These cases then return to the system where they must again be allocated days.

Cases are also removed from the lists because of the failure of parties to properly prepare for hearing and therefore to seek approval to adjourn cases. When this is done close to a hearing date, time is wasted.

2. The usual sanction for party delay, particularly on Full Bench cases, is to place the case at the end of those fixed for hearing but only after the defaulting party is able to satisfy the Court that the reasons for removal of the case from the lists have been addressed.

3. By reason of the fact there are only four magistrates and one Court diary, delay cases can be managed without any substantial statistical information.

4. Each case is individually managed.

For Full Bench cases a date is fixed for hearing as soon as it is defended, at the moment some seven months or so in advance, and a timetable is worked back from that date. This requires each party to file and serve their evidence by a nominated date. At the end of those dates the matter is listed for further directions hearing in the Court. At that directions hearing the readiness of the parties for hearing is considered and if necessary further directions and directions hearings given. One of the magistrates to comprise the Full Bench is given the responsibility of conducting each of the directions hearings. The parties may seek additional directions hearings at any time.

Country sittings are the subject of a review of each case three weeks prior to the proposed country trip where a single magistrate case is to take place. Each case is then assessed as to what directions may be required to ensure the timely conduct of the hearing.

A regular and thorough diary review is undertaken for all cases and available hearing dates.

It is proposed to implement immediately a system for case management of all Sydney cases.

For all cases longer than two hours, staff check with the parties in the case some weeks in advance toensure that it is to continue as a defended matter.

Practice Directions are issued to deal with case management with some frequency.

5. Other than ongoing review, No. Whilst not directly affecting case management strategies, the current jurisdiction arrangements in the court and the tests which the court has to consider in many of the cases are being discussed with a view to seeking legislative change.

The implementation of any dramatic changes however, has not been effected because of proposals to abolish the Liquor Administration Board. If the Board is abolished then more magisterial time will be available and this will substantially address current delays in the Licensing Court

6. A combination of all of the above initiatives would have to be considered.

7. The magistrates have made recommendations to the Department of Gaming and Racing for legislative changes which would remove certain jurisdictional difficulties in the court which themselves occupy a considerable period of time in argument in many cases. The implementation of these changes would reduce court delays.

I trust that the above is of assistance to you.

Yours sincerely

D B Armati
Chairman

24 May 1996

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