LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: Inquiry into Auditor-General's report No 4 of 2005: courts administration)

Members:

MR R MULCAHY (The Chair)
DR D FOSKEY (The Deputy Chair)
MS K MACDONALD

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 1 MARCH 2006

Secretary to the committee:
Ms A Cullen (Ph: 6205 0136)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents relevant to this inquiry which have been authorised for publication by the committee may be obtained from the committee office of the Legislative Assembly (Ph: 6205 0127).

The committee met at 2.06 pm.

RENEE LEON,

JENNIFER COOKE and

BRETT PHILLIPS

were called.

THE CHAIR: Good afternoon. I declare the proceedings commenced for the current inquiry into Auditor-General's report 4 of 2005: courts administration. For the information of witnesses, you should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation, for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter. Ms Leon, we had advice from the Attorney-General yesterday that he would not be appearing and that you would be taking questions from the committee on his behalf. Do you wish to make any form of statement in relation to the Auditor-General's report before you take questions from the committee?

Ms Leon: We don't have a formal statement but I draw your attention to the formal government response that I understand has since been provided to you. I regret the fact that it was not provided a little earlier for your consideration. The officers here today will do our best to walk you through the response and any issues arising from it.

THE CHAIR: With the obvious pressure on members of the committee, I cannot emphasise enough how important it is that we get advance notice. That enables us to do our job more efficiently. I hope that will be appreciated for future situations. I note that all the recommendations are agreed to by JACS and, where appropriate, have been supported by the Chief Magistrate. What progress has been made in implementing each of the 24 Auditor-General's recommendations?

Ms Leon: Recommendation 1 relates to the relationship between the government and the executive in the judiciary. The recommendations are being implemented by the establishment of a courts governance committee, which first met in December and is scheduled to meet again in March. That will be the formal vehicle for collaboration in developing a governance model for the courts. In addition to that, both the Chief Minister and I meet regularly with the heads of jurisdiction on a more informal basis.

Recommendation 2 concerns the annual reports. That has been agreed and will simply be implemented with the annual reporting cycle for this year. In respect of recommendation 3, the risk management plan is in progress but is not yet in a detailed form. Recommendation 4 concerns implementation plans. The implementation plan for the Auditor-General's report is at a fairly advanced stage. We will leave finalisation of that until after we have the benefit of the committee's report, in case there are recommendations made by the committee that influence the implementation we propose to take in acting on the report.

There are then a number of recommendations grouped together concerning case flow management. They are at a fairly developed stage. The Chief Magistrate has, with the department's assistance, conducted a review of listing and case management practice in the Magistrate's Court. That has been developed in a consultative fashion with the DPP and other affected agencies. That report is now with the courts and is subject to implementation within the courts. We have taken some action to assist the courts to identify resources that can be used to implement that. A process is actively under way to rearrange the structure of staffing in the registry so a new position can be created that will provide support to the judiciary for listing, case management and performance reporting. That deals with recommendations 5 to 9.

Conferencing is also an issue currently under consideration in the courts, but it is at a fairly early stage. Looking at that, the Auditor-General noted the effectiveness of conferencing and the need to monitor it to ensure it is working the way it should. We are doing that but we have not as yet gone down all of the recommended paths, such as detailed guidance materials and so on, although work is in progress to develop those.

I spoke about case flow management in recommendation 11. Recommendations 12 and 13 deal with stakeholder and user issues. Some of those will be progressed with the annual customer satisfaction survey. Recommendations 14 and 15 also deal with relationships with stakeholders, in particular recommendation 15. The harmonised rules of court are now at a very advanced stage. I am hopeful that they will be ready for implementation by 1 July. The courts have indicated to me that they are at the final stage of developing those. They have been developed in full consultation with users of the courts. The establishment of the courts unit as a separate output class has, I think, been agreed at officer level with Treasury. I expect that it will progress for the 2006-07 financial year on that basis.

As the government response indicates, recommendation 17 depends on us first implementing a number of reforms to the structure of the registry and the operation of the courts before we are in a position to ascertain what the appropriate level of base funding would be. So that won't be occurring in this financial year, although the reforms we envisage are already in train. That also covers recommendation 18. We are already engaged in a process of seeking efficiencies in the registries. The case management system will be subject to the same processes for risk management as all the rest of the activities of the court. The case management system depends both on decisions about management and on software to support them. Both of those are in train.

The information technology advisory group has been mooted but I do not believe members of it have yet been formally nominated. However, there has been some contact on ICT issues already with the courts in advance of the formal establishment of the group. The harmonised rules project is already dealing with many of the issues to do with reforms. I am expecting to be in a position to establish what, if any, additional work needs to be done once the harmonised court rules are completed. Issues about reform of the registry covered by recommendation 22 are already in train. Already under way are a registry renewal project and a restructuring of staff. Those restructures then flow on to the implementation of recommendations 23 and 24 which, by putting more focus on the separate responsibilities for management and administration, as opposed to quasi-judicial work, will lead to people who have clearer responsibility for human resource

management and staff training and development.

THE CHAIR: Thank you for that comprehensive response, Ms Leon. It is interesting to hear about the varying degrees of progress. Perhaps you could summarise how you feel about it. Obviously I was a little worried when I got this submission from the government so close to this hearing that I did not have time to read it. Maybe this exercise is a high priority and maybe it is not. In the scheme of things, how seriously have you and your officers taken this audit report? Do you understand the cost to the community of delays in the judicial process and the angst it causes people? Are you treating this as a fairly serious matter or not?

Ms Leon: I can confidently assure you that it is on my list of very high priority items. It is a matter I discuss regularly with the Attorney-General; it was one of the very first matters that we discussed on my assuming the position of chief executive; and it is a matter that has my personal and constant attention.

THE CHAIR: Kill the mobile phones, if you would not mind, so we can give this total attention. The matter of conferencing is referred to on page 34. The collection of statistics on criminal case management conferencing seems to be the sort of information that could be used to allocate staff resources more efficiently. You said you have made a start on that conferencing area. Can you indicate how much you have been able to reallocate and what sort of savings you have achieved through this procedure, or is it at too early a stage to report on that?

Ms Leon: At the moment we have identified that there is very high use of the conferencing facilities in courts. That has some consequences for users of the courts, in giving them access to a process that is less formal and judicial than going before the courts. It can also lead to circumstances where there are multiple attendances, which is perhaps less useful for people who are trying to get a matter settled in court. But we are not yet at the stage where we have conducted a detailed analysis that would enable us to split the cases into different sorts. Fundamentally, the issue of case management is one that rests primarily—

THE CHAIR: Excuse me; just hold for a few seconds. I make it very clear to all in attendance that we do not accept mobile phones being in operation. These are proceedings of the ACT Legislative Assembly; there are serious matters before the committee and I want to allow my committee members to give them their undivided attention. So please turn off all mobile phones. If you must make calls, please leave the committee room.

Ms Leon: The issue of how conferencing fits in with the work of the court is fundamentally tied up with the issues of case management. They are not issues on which we have acted unilaterally, they are issues on which we are working with the courts and the judiciary to analyse. At this stage we have identified that there is a very high use of conferencing. We are interested in exploring the extent to which that is beneficial to users of the courts and the extent to which it is not.

THE CHAIR: Perhaps I can take you to the area of case management hearings, which is referred to on page 54. The specific area is 4.47. Reports I have received from the profession correlating with point 4.47 indicate that case management hearings are not

always efficient. Could you or one of your officers give us your view on the efficiency of the process? Do all these hearings in fact save court time? Has a way to streamline the approach and improve efficiency been considered in relation to these hearings?

Ms Leon: It is intended that one of the functions of the new conferencing case management and listing position will be to analyse the extent to which the case management process is working effectively. It is intended to do that in a way that streams the cases more suitably so they are conferenced when appropriate and not conferenced when that process is not appropriate. That position, which was recommended in the reform of the registries that we have commissioned following on from this, has not yet been filled. It is only just in the process of being sized for advertising and filling.

THE CHAIR: I am not sure if you commented on the first part of my question about the efficiency of the process and saving court time. Do you have a view on that?

Ms Cooke: My name is Jennifer Cooke. I am acting courts administrator for ACT courts and tribunals. In relation to the case management hearings you are referring to, the court is dependent, to an extent, on the police, the DPP and other players in terms of material before the court. As Ms Leon said, one of the functions of a listings unit—this applies across all courts—is to make sure a matter is actually ready to proceed. That sometimes involves work in contacting other agencies to make sure the right material has been lodged and only having the hearing when the material is before the judge or magistrate so they can proceed. We are anticipating that, with an expanded and more effective listings function within the courts, the number of times magistrates have matters that are not ready to proceed and have to be adjourned will be minimised.

THE CHAIR: I suppose the message that emerges, or gathers most attention, is our performance in respect of use of court time and facilities. I have an open mind, as I am sure the other committee members do on this, as to where the problem lies and what we might be able to do to improve it. Aside from these 24 recommendations, do any of the officials have a view on what would be the most critical reform that could be implemented to improve the court times? The subset of that is that most of the issue in respect of the times progressing court matters relative to other states is within the magistrates area. Is that a reasonable observation, or is it not accurate?

Ms Leon: As you are probably aware, the Productivity Commission does a report every year on the performance of various aspects of government, including the courts. The Productivity Commission has set a number of indicators of what they consider to be appropriate timeframes for the completion of cases. In relation to those—for example in the Magistrate's Court—they measure the percentage of cases that go past six months and the percentage that go past 12 months. The figures for the higher courts show longer lead times. They are measured against 12 and 24-month benchmarks because those cases tend to be more complex and go for longer periods.

The figures for the Magistrate's Court in the ACT show us that we are about in the middle of the pack in relation to backlog. About 18 per cent of cases go past six months. That compares unfavourably with New South Wales, Victoria and Tasmania, but we are still ahead of the pack compared with the performance of Queensland, Western Australia and South Australia. Also relevant to note is that in the past year the number of cases that

went past six months has decreased. Last year 21.7 cases went past six months, whereas this year the figure was only 18.3. So we are seeing some improvement in timeliness although, obviously, while you still have nearly 20 per cent of your cases going for longer than six months, there is no sense that the job is done. And when a jurisdiction such as New South Wales can achieve 10 per cent of its cases going past six months, then, obviously, we think we still need to improve the rate going through.

THE CHAIR: I believe the figures are a lot less attractive within six weeks, are they not? They are about 17 per cent versus 45 per cent.

Ms Leon: The Productivity Commission's case statistics don't go down to the six-week point; they only measure them at the six-month point.

THE CHAIR: I thought we had other data in this report but I have not reread it today. We will come back to that. Do you have thoughts on any single key factor that might improve the progress of matters being proceeded with?

Ms Leon: I think active case management is recognised throughout judicial administration in Australia and overseas as being a significant contributor to getting effective throughput of cases.

THE CHAIR: Could you amplify what you mean by "judicial administration"?

Ms Leon: In relation to the management of courts in Australia, active case management is well recognised as being a considerable benefit to the efficient throughput of cases. If courts operate in a purely reactive way to cases before them, then you will get the worst efficiencies; and if courts operate in a very active way to stream cases according to their nature and complexity to actively manage all of the parties, as Ms Cooke has said, to ensure that the parties are ready for hearing when the hearing is scheduled, then you will get a much better use of allocated court time and facilities, and therefore a much faster throughput of cases.

THE CHAIR: So you see or you feel that the courts administration in the ACT is not doing the job as well as it might when it comes to case management.

Ms Leon: The courts themselves have commissioned a review of listing and case management. They did that on the basis of their own analysis of underutilisation of court time—that is referred to in the Auditor-General's report. Something like 50 per cent of cases are not ready to proceed on the day on which they are scheduled. So the court is at one with the government in thinking that that is an area where there is room for improvement and that, if we are able to increase the number of cases that go ahead when scheduled, then undoubtedly we will improve the throughput of cases in the courts.

THE CHAIR: I take your attention to page 31. Earlier today I talked to you about a six-week period. You can see there, from the state and territory average among the key findings of the Auditor-General's Office, that 44 per cent of cases were finalised in under 16 weeks and only 16.8 per cent in the ACT were finalised over the same period. Those are fairly dramatic differences in performance, aren't they?

Ms Leon: Yes. I might take that on notice to provide more recent figures. I do not think

we have them with us. The Australian Bureau of Statistics has produced more recent figures than those available at the time the Auditor-General did the report. I will ensure that we get the more recent figures to you. It is true. Undoubtedly, one would like to improve the percentages.

THE CHAIR: They paint a picture a lot worse than the six-month Productivity Commission figures. Thank you.

DR FOSKEY: First of all, I want to congratulate you on getting on top of all this material, Ms Leon. You have had a few challenges in your comparatively short time in heading up this department. What is the exact time period by which the government is required to respond to Auditor-General's reports? Do you know?

Ms Leon: I think it is three months.

DR FOSKEY: That is right. We have just checked that. It makes this report very overdue. It certainly makes it difficult for us to ask appropriate questions because we have not had time to really digest the government's response. I am aware that there would be many reasons why it is late, but it is of concern.

Ms Leon: I appreciate that; I regret the lateness of it. As you referred to in your opening remarks, I came to the position at the end of January. And the fact that we had a change of chief executive at around the time this report was due to be responded to will undoubtedly have had an impact upon that. I regret that that has had the impact it has had on the committee.

DR FOSKEY: It is not entirely fair that you should be wearing the blame for my saying that, given that situation. The Auditor-General has a relatively limited brief, in that her job is to look at financial arrangements, in particular relating to courts administration, but a number of other issues are raised by the report. Is decreasing costs, or managing money efficiently, the most important consideration you will bring to any ideas of reforming the existing system?

Ms Leon: It is impossible to separate the issue of managing money efficiently from the issue of providing better service. My approach, and the government's approach, is that the purpose of managing the budget of the courts—or of any other arm of government—efficiently is significantly in order to ensure that the money we expend is properly directed to good service delivery and is not being wasted on inefficiencies. I don't see the two issues as being at all separate, I see them as being intrinsically linked.

DR FOSKEY: They can be opposed as well.

Ms Leon: They can be, but that is certainly not an approach we are taking in relation to the management of the courts.

DR FOSKEY: That is reassuring. The Attorney-General raised concerns about the conflicting accountabilities of this position. Ms Cooke, the acting courts administrator, is here. The position is accountable to the Attorney-General, to the chief executive of JACS, to the Chief Justice and to the Chief Magistrate. Whilst I do not think this is a formal recommendation, there is a suggestion that this be cleared up, to ensure that the

lines of accountability do not conflict with each other. It must be quite a difficult position to run.

Ms Leon: Yes.

DR FOSKEY: In the absence of the Attorney-General, I am treating Ms Leon as that body.

Ms Leon: I am happy to say something about the lines of accountability. There has been in-principle agreement by the courts governance committee, which comprises the heads of jurisdictions as well as the Attorney-General and me, that the lines of accountability need to be clarified. A project is already being undertaken whereby the lines of accountability of the positions within the administrative and quasi-judicial parts of the court have been better identified. Part of that involves rewriting the duty statements for a number of positions to make clear who reports to who and on what matters, and who is accountable for what and to whom. That project is under way. As an outline of how I see the accountabilities running—and I do not think you will find anything dramatic in this—we and the government entirely respect the independence of the judiciary in the management of the cases before them. There is no question about that—that the trust of the government is reposed in the judiciary to decide the cases that come before it.

Matters of administration—they cover the non-judicial aspects of the court—are my responsibility. I report on those to the Attorney-General. Anything that falls in a grey area is covered by the role of the courts governance committee in the formal sense—and my own regular and less formal meetings with the heads of jurisdiction. Where there is any overlapping of what might be termed quasi-judicial and what might be termed administrative, we approach that in a collaborative fashion and seek to be clear about who is responsible for what in those situations. For instance, all the staff of the courts are staff of the department, so clearly I am responsible for their occupational health and safety and I am responsible for ensuring that proper human resource management practices apply to them. I am responsible for ensuring there are management arrangements in place so we are in a position to assess the level and number of people required for each position, and the best way to structure the staffing of the courts unit so that the services of the courts can be delivered.

DR FOSKEY: One of the issues identified is that the courts have too little control over their administration and that there might be a more effective allocation of resources if they were given more independence over that. This goes to the heart of the issue of separation of powers. I want your comment on that.

Ms Leon: The separation of powers between the judicial and executive arms of government is designed to ensure that the judiciary is completely free to decide the cases that come before it without any influence, fear or favour from the executive government. To that end, judges have tenure. The government is not capable of removing them; they can decide cases against the government without fear or favour and they are not subject to any interference in their judicial functions. As you are probably aware, the model by which courts administration is provided throughout Australia is not uniform; there is not one single model or template for courts administration. Other jurisdictions also arrange matters so that the administrative aspects are dealt with by the executive arm of government, while the judicial matters are entirely within the province of the judiciary. I

see that as being entirely compatible with the separation of powers.

MS MacDONALD: This follows on from that. My understanding is that between 2001 and 2005 there was an increased allocation of $3 million to the courts. Is that correct?

Ms Leon: The allocation for 2000-01 was $18.5 million. The allocation for 2004-05 was $22.8 million. That included nearly $1.4 million for extraordinary expenses which were for matters concerning Mr Eastman and matters arising from the bushfire inquiry. Not counting the Eastman matter and the bushfire, there has been an increase of about $4.4 million over that period of time.

MS MacDONALD: Is it also true that they have spent over the amount that was allocated?

Ms Leon: Yes. The Auditor-General goes through that in the report and discusses the overspends each year. There are between $1 million and $2 million each year in overspends.

I should explain a little about the increases in funding that occurred through the budget process. Some of the increases in funding are the automatic passing on of wage increases under the enterprise bargaining arrangements. There are also automatic increases through government administrative expenses that cover non-wage costs.

In relation to that, I note that the courts' budget has also been supplemented from within the whole-of-department budget. In the most recent financial year the whole-of-government was subject to an efficiency dividend, which means that we all had to find some savings from our own resources. Within JACS we did not apply that uniformly across the entire organisation. In fact, some parts of the department contributed to the efficiency dividend and others, including the courts, did not. The savings that were required from the department as a whole were shared around in a way that protected the courts from having to come up with savings for the efficiency dividend.

THE CHAIR: This follows Ms MacDonald's question. I know this precedes your appointment to the department. Have your predecessors suggested, or do the records of your department suggest, that there has been general agreement on the budget and that, in going forward, they had run into problems? I see that things like depreciation have been left out. There has been no proper assessment of the cost of running the courts. Is it a case that it is very loose or is it a matter that you could never reach agreement on the real costs in the budget?

Ms Leon: No. The courts have been supplemented several times in order to meet what were identified as base-funding pressures, which is shorthand for saying, "This is really what it costs to run the courts." Notwithstanding that, the budget overspends have continued. When you ask the question about the cost of running the courts, the answer to that is that it depends on how you run it. That is the process that I am now engaged in. I am seeking to identify an efficient and effective way to run the court so that we can then identify the cost of that.

As far as I am aware, the staffing structure of the court has remained fairly static over the

past four years, including not just the numbers but also the structure of the staffing and the duties attributed to particular positions. At this stage, the Auditor-General certainly identified that there was a possibility for more efficient use of staff resources by things such as multiskilling, breaking down silos and features of human resource management that are not particularly rocket science but need to be applied to the courts before we can say the true cost of running the service that the courts provide.

THE CHAIR: You said that the structure remained largely unchanged. I am looking at an article of 23 February, last week, in which the Law Society president, Mr Walker—I assume you would have seen the article—spoke of the removal from the Magistrates Court last year of ACT Corrective Services intake officers. Hopefully, Mr Walker will be a witness here. He said:

> Resources of that sort are being taken away from the court which makes it more difficult for them to operate efficiently.

That sparked a comment from the Chief Magistrate, Mr Cahill. There were various other players, including Mr Refshauge. Does not that contradict the view about the change in personnel? Do you have a view on that particular exchange?

Ms Leon: The court liaison unit were not court staff; they were staff of Corrective Services.

THE CHAIR: Their removal has obviously had an impact?

Ms Leon: There was not any reduction in court resources by the removal of that function. The court liaison unit used to provide on-the-spot advice about some matters that were before the court. Now that advice is provided by way of a written report. The courts have indicated some concern that that means it is not as quick for them. On the other hand, it is worth noting that the reports that are provided with the benefit of proper consideration of the paperwork and of the person's history are undoubtedly more in depth and probably more useful than what was provided by a quick, five-minute, on-the-spot assessment within the court. It is worth while looking not only at the cost but also at the benefits of the change.

THE CHAIR: It has been criticised by Magistrate Burns, Magistrate Cahill and Mr Walker of the Law Society. The Director of Public Prosecutions had to adjourn a matter because of associated problems. There seems to be a fairly loud body of critics, notwithstanding your belief. Do you still hold that view?

Ms Leon: The reports that would be obtained from Corrective Services are only one of the reports the courts might need to have before them. For any other matter where a report is required, the court would ordinarily adjourn and seek a report. Of course one could provide on-the-spot psychiatrists and on-the-spot medical experts and everyone else whom you might want to get a report from but, for any of those services, one has to weigh up the costs and the benefits.

The process that was undertaken in relation to on-the-spot reports being provided by the court liaison unit was that, ultimately, the benefit in time saving is outweighed by the cost of having an entire staff at court just to provide that service. Had that unit not

already been there and been put up to establish a reporting unit within the court, we probably would have some difficulty convincing Treasury or anyone else who was asked to fund it that it was, overall, a benefit that justified the cost.

It is not unusual for courts to have to adjourn the matter in order to get reports from experts about a particular matter. The change to these arrangements simply puts those Corrective Services reports on the same basis as any other report that the court might need to get.

DR FOSKEY: In that article the Attorney-General is quoted as having said—and obviously it is not a direct quote; it is a paraphrase and I am quoting that paraphrase:

> … if the courts found the situation to be intolerable, that the courts could offer to find the money to restore the on-site officers.

This comes back to my previous question. If the courts do not have control over their own budgets and how they allocate them, how can they do that?

Ms Leon: As I say, I meet regularly with the heads of jurisdictions. Obviously, I also have a regular liaison with the courts administrator about all those matters. Any proposal by the courts to conduct their matters in a way that might be more efficient or more effective are always ones that I am very open to. For example, we are discussing with the courts at the moment their IT needs and whether anything can be done by way of putting additional resources in now in order to improve the efficiency and the effectiveness of the courts in the future by way of IT and electronic management of cases. They are exactly the kinds of initiatives that I would always be interested in hearing from the courts about.

The question of whether the courts have control over it comes down to the fact that no-one in government has control over their expenditure, other than in a system—

DR FOSKEY: They are not in government, are they?

Ms Leon: They are expending public money, and every aspect of public expenditure has to come out of the budget of the ACT. The same applies even in jurisdictions where the courts have complete administrative independence. They can seek funding from government, but they do not have separate-source funding which they can simply allocate to themselves as they need. Whether the courts are independently administered or administered by the executive still does not affect the fact that the source of funding for all public expenditure has to come from the budget.

THE CHAIR: To lead on from Dr Foskey's point, for the Attorney-General to say, "Find it within there," is a fairly ludicrous response to the problem they have identified?

Ms Leon: That assumes that the assumption on which you have predicated your assumption, which is "if they do not have enough money", is correct.

MS MacDONALD: You earlier outlined the respect for the independence of the judiciary and that the financial allocation has no bearing on the independence of the judiciary. We are talking about the way the courts are administered. Obviously there will

be a variety of views from a variety of sources. One source might even have more than one view. Obviously they will have a view as to how it is best expended. In the interests of the territory, you will be trying to make sure it is expended in the best way possible.

Ms Leon: To return to the issue of the court liaison unit by way of example, if an assessment were made by the courts that the costs they were experiencing as a result of not having on-the-spot reports were of such an order that it would be cheaper to put staff on to staff that kind of unit, rather than whatever the costs were that were associated with adjournments and seeking written reports, then I would be easily convinced of the desirability of doing that and there would not be any issue about it. But if the cost of staffing the unit, of full-time people at the courts, amounts to substantially more than the cost of adjourning the matter and getting a written report, whoever is paying for it, there is not a justification for doing it.

THE CHAIR: That takes me back to Dr Foskey's first question. Is the objective driven by cost or other factors, including the process of justice? I am paraphrasing the question. That is the general theme. Factors other than taxpayer costs, obviously, have to be considered?

Ms Leon: Government, obviously, has to exercise some balance in that matter. If one wished to provide a justice system whereby no-one waited for more than a week to have their matter dealt with and on-the-spot experts were available for all matters, one could—

THE CHAIR: I do not think anyone has advocated that.

Ms Leon: There is always a balance to be struck.

THE CHAIR: Being sensible, I do not think anyone here, in the courts or in the legal profession has advocated that, from what I have read.

Ms Leon: It was an illustration. There is always a balance to be struck between the cost of services and what the community can afford to pay for those.

DR FOSKEY: It is a tricky one. We are well aware of that. Some of the recommendations are about issues that I would not think are related to cost. I would say that some of them are really concerning. The final page of the report, page 86, states that only 37 per cent of the staff surveyed agree that they would recommend the law courts and tribunals unit as a good place to work. That was a decrease from 2003.

I know your response is an acceptance that there is a problem. It is a really big problem. Is it in any way related to the fact that the courts administrator is an acting position and there is a tendency to not fill positions in the substantive way? I am doing the suppositions here, the hypotheticals, to explore this. A workplace where people are not happy is not a stable workplace and is not a productive workplace. It is obviously a cost issue as well as a workplace issue. You say that you will address it. Please give me some indication of how.

Ms Leon: I could not agree more with you about the importance of having a happy and productive workplace. It is an issue of concern to me, to the courts administrator and to

the courts. That is certainly a matter that is very much on my agenda.

There are a number of matters that I would say are already in train that I have signed to address that. Chief amongst those is the alignment of responsibility and accountability that we talked about at the outset and the need to ensure that there are positions in the courts whose responsibility is primarily about administration and management, rather than about judicial and quasi-judicial roles, so that there are positions that see it as their role to ensure the human resource practices of the department flow through to all staff of the courts and tribunals. That matter has been recognised in terms of the restructure of the registry and is part of the duties of the new position that has been created of registry manager.

In relation to the courts administrator, I will say that the previous courts administrator was in the position for three years and we only have an acting administrator because the previous administrator has gone to serve the public interest in the Solomon Islands. It is not the case that the administrator position has ordinarily been on a temporary or uncertain basis.

There is a significant amount of unhappiness in a significant number of lower level positions that are currently being filled on a temporary basis. Part of the job of the registry manager will be to conduct a better assessment of all of those positions, to ascertain not only which ones need to be filled but, even before that, how we should structure the positions best to achieve the services we want within the registry. Once that restructuring of positions has occurred, then we ought to fill the number of positions that are identified as needed on a permanent basis, wherever possible.

DR FOSKEY: What time line would you be putting on that process?

Ms Leon: The registry manager position has just been advertised. There will be a two-week period for applications. Then there are normally a few weeks involved in short-listing and selecting the suitable applicant. It ordinarily takes about six to eight weeks to fill a position from start to finish.

DR FOSKEY: That person then sets in train this process that you are talking about? Will a year—

Ms Leon: I would not want that process of identifying the duties of positions and the appropriate numbers and levels to be running for that long.

DR FOSKEY: Would you want that person to consult with people within the system who have constructive suggestions?

Ms Leon: I would not think that would take a year. Obviously, also, there are consultative mechanisms provided for under the department's enterprise bargaining agreement. They are and will be fully deployed throughout any workplace change process.

THE CHAIR: I draw your attention to page 38. These figures indicate that the average number of attendances per finalisation in the ACT in 2004-05 were 5.7 per cent in the Supreme Court and 4.2 per cent in the Magistrates Court. They seem to be reflective of

the number of adjournments occurring. Certainly paragraph 4.43 on page 53 makes it perfectly clear that this leads to underutilisation of the courts' time. Given the impact on the administration of the courts, is there anything that can be done, without interfering with the judiciary's independence, about the management of this?

Ms Leon: That matter has been the subject of the listing review that the Chief Magistrate undertook with the support of the department towards the end of last year. That has recommended an approach to ensure that cases are ready for hearing and that there are not adjournments.

THE CHAIR: Is that report complete now? Is that what you are saying?

Ms Leon: It is with the Chief Magistrate.

THE CHAIR: The committee would be quite interested in seeing the contents of that report. Is that something that you could provide us with?

Ms Leon: I will ask the Chief Magistrate if that can be provided to the committee. It is a report that he has.

THE CHAIR: If you could get back to the committee secretary.

MS MacDONALD: While we are talking about clearance rates, we should talk about magistrates' availability. Can you comment on the number of days that magistrates are available for and how this compares with other jurisdictions?

Ms Leon: I do not know that I have any separate statistics on that, other than what is in the Auditor-General's report. The Auditor-General indicated that, on the data, as reported by the courts—and this is on page 53—the average recorded daily sitting time in the Magistrates Court was 2½ hours. That was across the 2001-02 and 2002-03 financial years. I am not aware whether there has been an update of those figures.

Ms Cooke: From looking at those figures, an important point needs to be made. Certainly that is time sitting in court. The judges and magistrates would also say that, in terms of looking at judicial workloads, in any analysis, you need to look at time in court, time preparing for court and writing judgments. It is one part—and it is an important part—but there are many other aspects of the judicial workload.

MS MacDONALD: Is there a comparison of the time sitting in court in the ACT and in other jurisdictions?

Ms Cooke: Not that I am aware of.

MS MacDONALD: I appreciate that it is only a small part, obviously. The judicial officers need to prepare for the case, analyse the case and do all the jurisprudence that they need. That takes time. It seems like a small amount of time, when you average it out, 2½ hours per day. It would be very useful to know how that compares with other jurisdictions.

Ms Leon: We can see whether those figures exist. I do not know whether they do.

Ms Cooke: No court publishes those lists. If you were looking at the context there, perhaps backlog clearance is a strong indicator. If a court is getting through more work than is coming into the court, it indicates that those processes are working in terms of the judicial efforts applied to it. That is generally accepted throughout judicial administration as the indicator in terms of the application of judicial time to hearings.

DR FOSKEY: People say to politicians, "You sit for only 14 weeks of a 52-week year. What do you do for the rest of the time?"

MS MacDONALD: I have indicated that I appreciate that there is more to it than just court time. It seems like a low figure. It is curiosity as to how that compares.

THE CHAIR: How are magistrates allocated matters?

Ms Cooke: The Chief Magistrate really has the role there in terms of the allocation of the particular streaming and matters.

THE CHAIR: Does he make that decision?

Ms Cooke: He makes that decision, in consultation with the magistrates. There is a council of magistrates. For example, the Children's Magistrate is appointed by the Chief Magistrate for a period of 12 months or longer, but mainly for a 12-month period. In the actual workload of the court, there are particular lists, obviously, and different lists. That is worked out by the Chief Magistrate in consultation with the magistrates.

THE CHAIR: I think I know the answer to this question, but I will ask it anyway. Given you had non-salary saving measures put in place to reduce expenditure by that $911,000, have salary expenses continued to rise, as reported at page 69? Is that because of the EBA negotiations that were overriding all your efforts to reduce costs?

Ms Cooke: By and large, yes. The number and staffing of the courts have remained fairly static over time. There was a bit of a slide upwards between 2000-01 and 2002-04 where the numbers of staff in the courts went from 141 to 149. By and large, the increase has been in staff salaries, just the normal movement of salaries upwards. The courts are supplemented, as is all the public service, for the increases in salaries.

THE CHAIR: Yes, through the EBA. On the increase in personnel, do you have the record as to what areas those increases were allocated? Could you take that on notice, please.

Ms Leon: I can endeavour to do that, yes.

THE CHAIR: One of the themes that comes through in the Auditor-General's report is this business of ownership of the budget. I suppose my question is, looking at page 71: who's taking ownership of the budget and making the decisions necessary to make full cost savings? Or is there in fact, as the report suggests, a culture that it is acceptable to be in deficit; a feeling that no real action is required?

Ms Leon: As a formal matter, I'm responsible for the budget; it's my annual report that

reports against the overall budget, so I'm responsible for the budget in a formal sense. But, in terms of how we are approaching it, it is being approached in a collaborative fashion inasmuch as I discuss with the Chief Magistrate, the issues that are before us and the proposals, for example, for reform of the registry. We will work through that together, because I'm of the view, and the government is of the view, that you can't achieve very much unless you're working collaboratively between the two arms of government on these matters. Although, obviously, there is a clear formal distinction between the judicial role of the judges and the administrative role of the executive, the two are related inasmuch as, if the judges were not given any administrative support, they couldn't fulfil their judicial functions. So we have to work together to make the courts operate efficiently and effectively, and that's what we are doing.

THE CHAIR: You certainly get the impression from the media last week that the Chief Magistrate doesn't feel that the resources are being met adequately. I'm not passing observation one way or the other until I hear all the evidence, but how is that dialogue going? You say you've had meetings and so on. Is there a meeting of the minds here? Is there an appreciation either from the magistracy that things need to be brought under control or by your side of the equation that maybe more funds need to be provided? Where does the land lie?

Ms Leon: I think that's still a work in progress, the meeting of minds on those issues.

THE CHAIR: It would appear that way.

DR FOSKEY: Does the court collect data on the effectiveness of varying sentence options and mixes and, if so, what? I expect there would be a guide to the magistrates when deciding on sentencing, and I am just wondering if there is any follow-up as to the effectiveness of particular sentencing regimes.

Ms Cooke: The court doesn't do its own research; it's dependent on, obviously, statistical collections, such as the report on government services, and specific research done by law reform commissions and other research bodies that the court draws on. The court itself doesn't have the capacity to do its own internal research.

DR FOSKEY: I went to a sentencing conference a couple of weeks ago and it was excellent for me. I don't have a legal background. I see this as an issue about efficiency of courts, because, obviously, there is less recidivism if sentencing is appropriate, if programs are set up that might lead to rehabilitation and reform. That would seem to me to be business that you would like someone to be doing.

Ms Leon: In relation to sentencing options, that is work that is done by and under the auspices of the corrective services part of the department that does conduct evaluations of the various rehabilitation programs that are offered to people on community corrections within the ACT. Once we have repatriated our prisoners to the prison in the ACT, we'll also be in a position to conduct and evaluate the outcomes of programs for prisoners while they are serving a sentence—and that information will, of course, be fed back into sentencing by the courts.

You may already be aware that the Chief Magistrate and a senior member of the staff also attended the sentencing conference. I think I could say with some confidence that

the magistrates and the judges of the Supreme Court would see it as part of their professional duty to stay abreast of literature and research in the fields where they work.

DR FOSKEY: Yes. It was apparent, though, that that varied a huge amount across judges and so on. I'm sure that the ACT is well placed in that regard, but the issue is really recording. You can have an intuitive response, an idea about these things, but the statistical data is the essential tool.

Ms Cooke: This isn't talking quantitative statistics, but, in terms of the way magistrates—and judges, but particularly magistrates—operate, they deal with their own breaches in terms of the orders that they make, so it is part of being an experienced magistrate to get a sense of matches of particular sentences with particular clients and particular situations. It is not denigrating the research side, but it is also part of building up experience on the bench as a magistrate.

DR FOSKEY: But that stays within that individual magistrate's field of knowledge and isn't available for the public, for instance, or for people who might follow him. That's good—just the usual thing of can do better. One of the conversations that I've been having leads me to ask a question about the position of solicitor-general. A number of jurisdictions have such a position and I'm led to believe that in the ACT the chief government solicitor used to, in a certain way, quasi-fulfil that role, and that included going to meetings with other state solicitors-general or their similar position, and that currently nobody does that. I'm interested in whether there is consideration of a role such as solicitor-general, or recognition that the chief solicitor position could fulfil that duty. Isn't it important to be part of state-commonwealth meetings of solicitors-general?

Mr Phillips: The current Chief Solicitor, Mr Garrisson, has been attending solicitor-generals meetings since he's been chief solicitor. He has participated in providing joint advices, and I have participated with him in joint teleconferences of solicitors-general, so in that regard he does fulfil that role in the ACT at the present time of solicitor-general, and has done since his appointment.

DR FOSKEY: Is that seen as part of his duty or is that something that he or she—one day it may be a she—may or may not do in terms of what they see as the priorities, or is it part of that position?

Mr Phillips: I don't think it's part of his job description per se; it is something that he does and he is invited to do by this government and by his fellow solicitors-general across the country, so he is part of the landscape at that national level.

DR FOSKEY: Does he then feed back into other areas of JACS or elsewhere?

Mr Phillips: He feeds back into those discussions in relation to JACS. Those matters before the solicitors-general are often referred back to the Standing Committee of Attorneys-General for further discussion. The solicitors-general are often required to, or requested to, provide advice to the Standing Committee of Attorneys-General, and we have representatives on both sides of that equation. I have just been informed that we included that function in the recent job sizing of the Chief Solicitor.

DR FOSKEY: That has cleared up one matter of concern for me. Thank you.

THE CHAIR: Can I just take your attention to page 63 about handling of complaints. There is a reference there that there were trivial complaints, which everyone gets in life, but it said that substantial complaints didn't appear to be progressed. I am wondering why they're not actioned. Has anything been done in the wake of that observation by the Auditor-General?

Ms Cooke: That's an area that the court is actively looking at in terms of a better system for logging, managing and responding to the complaints. We're not there yet, but it has certainly been identified by the courts as an area—

THE CHAIR: It was identified by the Auditor-General, but what has happened since then?

Ms Cooke: There hasn't actually been a change in the processes as yet, but it is at the stage of planning a better way to manage it.

THE CHAIR: Any time frame when you might get around to that?

Ms Cooke: Certainly in my time with the courts, which has been a couple of months, I've put it as a significant priority.

THE CHAIR: It's just that we are six months in from this report and it hasn't moved yet. Anyway, could I just raise another issue that emerges from the report. It talks on page 84 about large numbers of people acting in higher positions. Dr Foskey alluded to one, but that talks about people down the line acting in higher positions beyond their level of experience, and it was expressed as a concern by magistrates interviewed by the Auditor-General. Could you give us your thoughts on that situation?

Ms Cooke: The court staffing situation is complex. Part of the reason is that over a long period of time there have been longstanding acting positions—in my view, longer than appropriate. Also, a significant number of staff have gone on secondment to other departments. Again, that has sometimes been for quite long periods of time. So, as Ms Leon talked about before, I would certainly agree that there needs to be a major review of the staffing structures and arrangements and then a priority—and I have put this into place—on permanently filling positions with substantive staff.

There will always be a need for casual staff and there will always need to be some measure for relief, but my observation—as I say, only from two months—is that the mix is not right currently within the registry. We have far too many temporary positions. We have too many people who have been given too long a period of time to be away from the courts when their substantive position is within the courts, which then means that the position can't be filled. I am personally looking at every position that comes up on that basis, looking at every application for people to leave the court for periods of time to work in other agencies, to try to change that profile quite significantly.

THE CHAIR: Do you know if there has been any progress on that aspect since this report was written?

Ms Cooke: That is the progress that I'm talking about. There is active management now.

THE CHAIR: So are there fewer people in higher positions now beyond their level of experience, or does that statement still stand six months later?

Ms Cooke: We haven't achieved it yet, but certainly for the last two months there has been significant attention to that area and—

THE CHAIR: I guess what I'm trying to look for is not expressions of concern, which I'm sure we all have, but progress. Have we got any measurable improvement in this position as identified last year by the Auditor-General at this point, or are we still talking about ways of getting there? If that's the case, so be it; I'd just like to clear—

Ms Cooke: There has been some improvement, but we're not where we need to be yet. I would say it's going to take another six months for that to be in place.

THE CHAIR: The troubling thing in this observation is the second phrase used by the Auditor-General—and this is drawn from comments from magistrates—that this can lead to significant mistakes. I think that would trouble anyone who has to deal with the legal system, to know that, while this practice remains unresolved, there are opportunities for significant mistakes in the administration of justice in the territory. It's not one of those things that we can get to eventually; it seems to be something that calls for a reasonably high level of attention. Do you share that view?

Ms Cooke: I do.

THE CHAIR: There is also reference to a lack of training and qualifications, a need for more skills. I know that's a universal problem, but do you have a view on how the lack of training opportunities relates to the efficiency of the courts? Are the court delays a result of poorly trained staff, in your view, in any way, as identified?

Ms Cooke: No. The court staff are a very committed group of people. If you look at the staffing profile, people have been with the courts for a long period of time. They do need more support and training, and one of the areas that we have started on is identifying the competencies for each of the positions within the court. This is also a wider ACT initiative, but the courts are going to be within JACS the first agency where that is happening. That process has started with any position that we advertise within the court now.

First of all, we look at the competencies associated with that position. Why that is important is that, once the competencies have been established—and they haven't been externally established before—we can build up a training profile linked to those competencies. So, first of all, we can be sure what the job requires in terms of competencies, then make sure we have the right people in the job and work out what development people need in the job to meet the requirements. Having that sort of framework will greatly assist that process in terms of ensuring that we have the competencies and we have the people, on an ongoing basis, trained. As I said, I wouldn't like you to have the impression that court staff aren't both committed and highly skilled, particularly in terms of the processing side of the court and the detailed work—these people have worked for a long time—but there are gaps, and we are actively identifying those gaps through the competency process.

THE CHAIR: There is nothing in this report or that I've heard that would cast any doubt on the commitment of people in the courts. I have no reason to believe they're not committed, but there is certainly hard evidence here that does reflect on a lack of training. That's not necessarily the fault of the people concerned in any way, but it has been identified here, by both an external reviewer and those responsible for the courts, that it will impact adversely. So I think that is an area of critical attention. Do you have any feeling of when you'll have all this completed? I know we talked in the broad about that earlier on, but do you have any deadline that you have imposed for completion of the competencies and the training that will be required on the basis of those?

Ms Cooke: My estimate is around six months.

THE CHAIR: From now?

Ms Cooke: Yes.

Ms Leon: Perhaps I can add a little more information to this question of what evidence there is about the competencies of the staff. For the most recent year customer satisfaction survey, one of the questions that was asked was whether the customer service officer was knowledgeable. Of the respondents, 33 per cent strongly agreed and 59 per cent agreed about the knowledgeable service that was received in the court, and only one per cent disagreed in terms of the customer service officer being knowledgeable. So, at least in terms of the service that is being provided by the court staff to their public, we are getting a very strong rate of satisfaction with the service.

THE CHAIR: I think the area they were referring to, though, was the quasi-judicial functions—I take you to page 84—of the deputy registrars, where the magistracy had reflected on the risk of major mistakes or significant mistakes because of the lack of legal training. It's nice to hear that there are positive responses, especially in courts—I don't think many people on any side of the equation going to courts are necessarily happy—so that's good. But I think the focus in terms of the quasi-judicial work is in getting people suitably trained.

DR FOSKEY: This harks back to something we have mentioned a number of times. In a judgment of the full court reported last year in the *Canberra Times* the court was critical of "the potential for public confidence in the independence and hence impartiality of courts to be undermined by administrative arrangements that treat them as sub-branches of public service departments". I note, Ms Leon, that you have at times talked about the courts and you've said that in terms of administration they are part of the government in a sense but in terms of judicial matters they are not. I think you would need to justify a little more strongly to me how that separation applies, given this situation about administration coming from elsewhere.

Ms Leon: Perhaps I can take you to the restructure of the registry that is being proposed and the proposal in order to implement the recommendation of the Auditor-General that there be a greater clarity about the accountabilities of different roles. A new structure has been developed for implementation, which clearly separates out administrative duties and the people who do those and quasi-judicial duties and the people who do those. The quasi-judicial line of work reports up through the registrar to the judiciary, whereas the

administrative work reports through the court's administrator to me. So that process of clarifying what work falls within the quasi-judicial sphere and what work falls within the administrative sphere is one that we are approaching in a concrete way by identifying the particular duties that go with particular positions and ensuring that we are separating out the accountabilities for those so that it is clear that on quasi-judicial matters the Chief Magistrate is the one who is in charge of those decisions—for example, about listing, case management and so on—and administrative matters come up through the administrative stream.

DR FOSKEY: In August 2002—I'm galloping a little, because of the time—the Attorney-General described the Civil Law (Wrongs) Bill 2002 as the first of a three-stage series of ACT reforms and said that stage 3 would deal with the management of civil claims in our courts. Have these reforms taken place yet, and, if not, when, and what is the process involved?

Mr Phillips: There has been a lot of reform in relation to the Civil Law (Wrongs) Bill 2002 and following on there have been reforms in relation to insurance claims. There has been conferencing established in relation to the small claims jurisdiction in the Magistrates Court. There has been proportionate liability. I don't know if that adds up to the three reforms, but I will take that on notice and get back to you in relation to the three steps of reform, to check if all of those reforms that have been referred to have been implemented. There has been a series of reforms over the last few years in relation to the civil law, culminating in the Court Procedures Act that was passed, which further harmonise the court processes. If I could take that on notice, I'll be able to clarify that further.

DR FOSKEY: Okay; I look forward to that. You mentioned before in response to one of the Auditor-General's recommendations, when you were giving your introductory response, I think, Ms Leon, that you were looking at other states. Have you seen any other states—or, for that matter, the commonwealth—where they have processes that look a bit promising for us?

Ms Leon: In relation to which aspect?

DR FOSKEY: In relation to the way they are organised, really—the way that governments are going to finance the courts. You said there are a number of processes, different in each state. That gives us at least seven other examples. Are there any that look interesting?

Ms Leon: I don't think that the governance model, as far as I can ascertain, really determines the effectiveness of the courts, so the features where we are more interested in cross-jurisdictional comparison are, for example, the work that is being done on case management and listing in the review that the Magistrates Court commissioned, where we can look at quite a practical level at what are the techniques used in other states to keep cases moving through their courts. I think that's where we see there being real benefit in learning from the experience of other jurisdictions, and that's certainly the approach that has been taken in doing a comparative assessment of listing and case management practices in the courts.

The Productivity Commission gives us, at a fairly high-level, analysis comparisons that

are interesting as between the courts, but without a fair amount of drilling down into those it's difficult to make realistic comparisons. For instance, the Productivity Commission tells us what the cost per case is across jurisdictions, but unless one is confident that the jurisdictions in question are directly comparable you can't really be certain that you're comparing apples with apples. For example, we are often compared with Tasmania as being a jurisdiction of similar size. But the matters that are handled in the Magistrates Court aren't quite the same in Tasmania and the ACT, because of jurisdictional rules and so on. So there is a degree of comparison that you can do across jurisdictions on that fairly crude data, but where we get the most effective cross-jurisdictional work is by looking concretely at the best practice of other jurisdictions that informs matters such as case management. The Australian Institute of Judicial Administration is regularly doing work in this area and both we and the courts always look with great interest at the work that comes out of the AIJA, with a view to keeping ourselves across best practice.

DR FOSKEY: You said there that you are looking more at the way other states do their case management, but other states have different relationships from the courts in terms of administration and it seems to me that you have ruled out looking at that.

Ms Leon: I suppose what I'm saying is that, in terms of looking at the current position that we have with the courts, the issues about governance aren't ones that appear to impact as much on the reforms that we're trying to achieve as other issues such as case management do. I'm sure you will have seen recent publicity about the model in the commonwealth sphere, where the courts are completely self-funded and self-managing. We see that the federal court has by far the highest cost per case of any jurisdiction in Australia. So that kind of statistic is not the kind of statistic that would encourage us to look at that model as a favourable one.

DR FOSKEY: I have a final question. Did you find the Auditor-General's report helpful to you in your new position, providing you a basis for potential reorganisation, rejigging, trimming around the edges, fundamental reform or whatever in order to achieve a more efficient model that delivers justice better?

Ms Leon: Yes. The Auditor-General's report is helpful in that it identifies the broad scope of the areas where we need to work on in order to identify the concrete reforms that are needed. That's what our next phase of work is—to work together with the courts to develop concrete responses to the general areas that the Auditor-General has identified.

THE CHAIR: This is my last question. You talked about your software and so forth and changes in technology, but in an informal discussion with a member of the judiciary concern was raised with me about the security of data and it being linked to the overall territory government system. Have you had that matter raised or have you given any thought to that, particularly judicial decisions that may be in the process of being written?

Ms Leon: Yes. I am very conscious of that matter and it's a matter on which I've asked for whatever correspondence has already occurred with InTACT, the IT provider for the territory, to be provided to me, so that I can progress the matter further.

THE CHAIR: Terrific. Thank you. We will now adjourn as we have reached the point where we have to have a short private conference. Thank you for your attendance today. I should signal that there is a possibility, depending on whether committee members have further questions based on the government response, that we may need to meet once again. But that is a matter the committee will consider in private conference.

The committee adjourned at 3.30 pm.