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, 22 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 that 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 2.01 pm.

BRYAN ALLAN MEAGHER SC and

ROBERT LEONARD CROWE SC

were called.

THE CHAIR: Good afternoon. This is an inquiry into Auditor General's report No 4 of 2005 into courts administration. I welcome the witnesses. I thank you for your valuable time you have made available today. I will just deal with a procedural matter to make sure you are familiar with the processes applying.

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.

We would like to welcome Mr Meagher SC and Mr Crowe SC, who are appearing today on behalf of the ACT Bar Association. Mr Meagher, do you wish to say something in relation to the inquiry before we ask a few questions?

Mr Meagher: If I may.

THE CHAIR: Thank you.

Mr Meagher: Thank you very much for the opportunity to provide a submission to the committee and to appear today. The submission was prepared by Robert Crowe, who is here, and also by Ken Archer. Mr Crowe, as you might know, is a former president of the association. Among other duties, he currently is a member of the courts rules committee. He has considerable experience in the way the courts work and is involved in all types of civil cases.

Mr Archer is a barrister, also of many years experience, some of it served in the DPP. He is not here today. If you have any questions that might require criminal law expertise, we might have to take those on notice. We will try and answer them in a general way, if we can.

Barristers are interested in the efficient and adequately resourced administration of the courts, not only because it is their place of work, but also because it is an important object of our association to defend the rule of law. The separation of powers is an important ingredient in this, and we are concerned to emphasise the need to guard against the possibility of the judiciary being unable to function effectively due to lack of funds because of decisions that could be made by the executive arm of government.

A key submission is to follow the model in South Australia, and this is described in the report at paragraph 2.17. The other submission is that, until such time as that might get up, it would be good to try and follow the federal model, which is described in the

following paragraph. A further key submission is the need to examine the funding base in order to understand what is required by way of a budget, rather than to rely upon what has happened in the past. This appears to be the auditor's view, as stated in paragraph 6.4.

We also make the point that the use of statistical comparisons needs to be approached with caution. They often do not take into account local differences and can overlook important questions of whether the quality of the process is the same. Key goals we see are to provide a fair hearing with courtesy but firmness, where required, and doing so as soon as can be arranged after the commencement of the proceedings so that the hearing is able to be disposed of without lengthy adjournments and that decisions are careful and reasonably prompt.

Case management, while a useful and necessary step, can often lead to expensive repeat appearances and, if seen as an end rather than a means, can lead to preventing a dilatory party putting his or her case as well as possible. We want to make it clear that we do not see this as an exercise in seeking to blame anyone for any perceived problems, rather as an opportunity to establish a model for excellence in court administration Mr Crowe, who is a part-author of the report, should be in a position to answer any specific questions in detail, and I will do so as well if I can. Thank you.

THE CHAIR: Thank you, Mr Meagher. Mr Crowe, do you have anything you wish to add at this stage?

Mr Crowe: No. I am happy to endorse what Mr Meagher has just said.

THE CHAIR: Thank you. I might lead off with a couple of questions. Mr Meagher, you said that there were risks in comparing things on a purely statistical basis, and I understand the point that the quality of the judicial process is just as important. I think it is safe to say that the members of the committee recognise and respect the separation of powers, and we have to be very careful in the way this whole process goes forward not to impinge on that in any way.

Given the challenge that always faces government and the Assembly in terms of measuring the performance of agencies and processes, if you do not solely rely on the statistical comparison and work such as the Productivity Commission's comparison of speed of processing cases and clearance of cases in between jurisdictions, what other measures might you put in place that we might be able to grasp that would give us confidence that things are going as well as they might or at a reasonably high level of performance? Do you have any in mind that you could suggest?

Mr Meagher: I do not. Do you?

Mr Crowe: I understand that both the ABS and the Productivity Commission are looking at refining their national key performance indicators. Hopefully, as part of that process, we will get to the point where the statistics that they do produce compare apples with apples and oranges with oranges. Part of the problem, which is referred to, in fact, in the report, is that, for example, we have comparisons made between the performance of our Magistrates Court with, for example, an average of the performance of magistrates or local courts in the big jurisdictions in New South Wales, Victoria and Queensland,

where those jurisdictions have three tiers of courts.

Our Magistrates Court, in fact, overlaps with the middle tier of the District Court in New South Wales and the County Court in Victoria. Those comparisons are often not really valid because you need to break up the nature of the matters that are being looked at, not just the fact that the matter happens to be in the Magistrates Court. My understanding is that that process of refinement is what is being done at a national level and hopefully, within a year or two, the statistics we do obtain will be more valid.

THE CHAIR: My memory is failing me, in terms of the numbers of courts in the Tasmanian and Northern Territory jurisdictions. They did not have a County Court in Tasmania when I lived there. How do we compare with those smaller jurisdictions, then, in terms of our efficiencies and so on?

Mr Crowe: Part of the problem is that the comparisons that are done at a national level tend to be with national averages.

THE CHAIR: Right.

Mr Crowe: I think we are comparable with the Northern Territory. I do not think it has an intermediate court. I do not know about Tasmania, I must say.

THE CHAIR: I think in Tasmania it is just the Supreme Court and the Magistrates Court.

Mr Crowe: The Northern Territory is quite a different jurisdiction, though. It has double the number of judges per 100,000 of population. It has a particular profile within its criminal law system that we do not have. It is very difficult really to make those comparisons.

THE CHAIR: Yes. It is hard to compare again.

Mr Crowe: It is also again a matter of the size and the size of the sample. The way it is usually done is to compare across national averages, and that is where we are at a bit of a disadvantage, where you are comparing Magistrates Court with Magistrates Court.

THE CHAIR: It seems reasonable for me to assume from what you are saying, Mr Meagher and Mr Crowe, that you are not accepting holus bolus this view that our Magistrates Courts are performing rather poorly relative to their interstate colleagues?

Mr Crowe: We do not accept that as a general proposition. As in any jurisdiction, obviously you are going to have some areas of strong performance and some areas of not so strong performance. But overall I think I can speak for the bar association in saying that we believe that we are well served on the whole with our Magistrates Court. They are diligent and hard working.

One of the statistics that much is being made of in relation to the Magistrates Court particularly is the average sitting time. That, by itself, can be an unfair statistic, in fact, because courts achieve not only while you have magistrates or judges actually sitting in court. In some jurisdictions they achieve by being ready to start the case while the parties

are outside. You have heard the expression "trying to settle a matter at the door of the court". That process in a big complicated case in the Supreme Court can take days, yet it might save two or three weeks of hearing. Statistically it would look as if the court has sat for 10 minutes over three days, when in fact the court being ready to go and the parties being there and knowing that the matter is going to be taken away from them to be decided by a judge can be crucial in achieving a settlement, which at the end of the day is part of the process of dispute resolution that our courts are all about.

Mr Meagher: Just picking up and answering the first part of the question you asked, in that sort of instance, where sitting time does not look so good, you might be able to measure it by seeing in general what the waiting time is between when those sorts of cases first commenced and the time they are disposed of. The example I was thinking of was the workers compensation list, which is heard in the Magistrates Court. Quite often they might list four or five cases a day. The magistrate may not come on to the bench other than to hear that cases are settled or to hear other matters that have been listed as well, like part-heard criminal matters, but in the course of that day the whole list will be resolved. If the magistrate were not there ready to do it, it would not be resolved. There may be other ways of doing it but experience has taught us that quite often it is the only way to get to a position where the people actually make the hard decisions.

If you then look at the time between when each workers compensation matter is commenced and when it is disposed of, obviously in those sorts of cases there is an aim to get it resolved quickly because workers are without their money, and so on. There is a limit as to how quickly you can hear them because you need that medical evidence and matters of that kind. But if you can see that they are being disposed of rapidly by comparison with other sorts of cases, then that is a good thing. The indicators, I suppose, need to be balanced out a bit.

THE CHAIR: That makes sense. If we could just turn to the DPP, I guess this would relate more to your members involved with criminal law. I guess there are less "in the court" settlement situations arising with criminal matters than there would be in, say, workers comp or civil disputes. There has been criticism lately of the DPP expressed by various parties in the media. Do you have a view, or does the association feel that the DPP is not working as efficiently as it might on these matters, or is there a resource issue, or are you finding difficulties in proceedings with matters where your members are acting for particular clients?

Mr Meagher: Mr Archer provided the content of the submission in relation to criminal aspects. In the course of the submission he referred to shortcomings that do sometimes occur as a result of the way the prosecutions are prepared. It is not something within my knowledge to be able to point to why that is. I believe that part of it is a resource issue, and it is a matter of concern to our association that the DPP be supported and that their capacity to operate efficiently and well is advanced. We are not here to be critical of them but rather, if there is a perceived issue, and we see that there is one, as you say, that steps be taken to assist them.

DR FOSKEY: I have a supplementary question.

THE CHAIR: Yes. I will just finish on that. I get the impression that there are barristers who are obviously representing clients who are finding that they cannot proceed on

matters because the DPP is not ready. That would appear to be a resource related issue.

Mr Meagher: I think so. I understand also that sometimes it is the availability of evidence, which is possibly not DPP, but—

THE CHAIR: Witnesses.

Mr Meagher: AFP, preparation of forensic material and that sort of thing.

THE CHAIR: Dr Foskey, do you have a question?

DR FOSKEY: Yes. Thank you very much. I am sorry I was late. In relation to the DPP, you suggest in your submission—and we heard it elsewhere—that the administration of the courts be removed. What problems do you believe having a separate courts administration will overcome and how will it stack up in terms of cost?

Mr Meagher: Do you want to answer that?

Mr Crowe: Certainly. Part of the problem which the auditor's report appears to highlight—and from our perspective it appears to be a correct conclusion—is the blurring of roles between the department that actually administers the courts and the judicial officers who are at the service delivery end of the courts. Because of the need for the separation of powers, that blurring, I suppose, is inevitable. What it has led to, at the moment at least, is what appears to be a fairly demoralised court staff, particularly in the Magistrates Court, and inefficiency; that is, problems with meeting budgets and problems with service delivery. We have—

DR FOSKEY: But how can that lead to that? I am interested to explore why there is that blurring. Why, because it is administered within the department, does that lead to demoralised officers within the administration?

Mr Crowe: There is no empirical basis on which we can answer that. I suppose ours is at best an educated guess. Part of the problem might be that departmental officers do not feel as if they are able to force decisions close to actual case administration or case flow management on the one hand—

DR FOSKEY: Because they are being careful of the separation of powers.

Mr Crowe: Because they are being careful of the separation of powers. On the other hand, you may have judicial officers who are not willing to go public and make complaints about lack of funding or lack of decision making in particular areas for precisely the same reason.

It is not to say that the South Australian model is going to solve everything. At the end of the day, for even that model to work it has to be set up on a proper funding base. It is interesting reading to look at the last annual report of the South Australian body of which the Chief Justice of the Supreme Court is the chair. It starts off with a long and loud complaint about lack of funding.

At the end of the day if that body is being given a budgetary allocation and it has the

requirement to deliver the service and provide by way of annual report, as it does, an explanation of what it has done and where the money has gone, it seems to us that has to be an improvement on the system now where there are no annual reports for the courts and where there does seem to be a problem with decision making in the administration of the court budget.

DR FOSKEY: We have heard about the demoralisation of staff from a number of witnesses. That is something that can exist beyond funding, I believe. If an adequately funded administration were set up that people felt they were part of and more in control of their employment conditions and the way the court operates, because they are closer, they could see efficiencies and inefficiencies. Those are factors, too. Do you think that that would actually be the case—?

Mr Crowe: I think that is an argument in support of the proposal that we are advocating in the sense that at the moment they are more or less in an outpost from the department—

DR FOSKEY: That is right.

Mr Crowe: an outpost with really quite a different culture and sense of what it is trying to do from that which the mainstream department is likely to have.

DR FOSKEY: Different objectives, perhaps?

Mr Crowe: Different objectives. It is very much a different culture. If it is within its own body, whether it be a separate body as in South Australia, that is, with legislative separation, or an administratively separate body as occurs in the commonwealth arena, it is likely to operate far more as a—

DR FOSKEY: It is sort of a compromise position, the commonwealth model.

Mr Crowe: It is. At the end of the day, obviously these are policy issues, and the funding is the bottom line. But the other side of it, of course, is whether we are big enough to go down this South Australian model as opposed to perhaps the mid-way commonwealth model.

THE CHAIR: Ms MacDonald has a question.

MS MacDONALD: You will have to forgive me. I have misplaced your submission and I am going to have to chase it up. You have made a suggestion—and you have said this is a key suggestion—about following the model that they have in South Australia where the courts are given a budget and then they have to give an annual report back. I understand your reasoning for that, but would you care to comment on this particular statement? If that were to occur, given the size of the ACT jurisdiction—and I think Mr Mulcahy made reference to this earlier—would not that place an undue burden and a lot of pressure on to the courts within the ACT?

Mr Crowe: I think the pressure is already there. What we are looking at is a means of obtaining a better result. The overall court budget, as far as we can work it out, appears to be about $24 million in the territory. The South Australian body administers about an $80 million budget within that state. In terms of relativities, obviously we are smaller,

but we are not that much smaller, to indicate that it is not achievable.

As far as the conduct of the court administration body is concerned, the body that is appointed in South Australia certainly does have representatives. The chief justice is the chair and it has representatives of the other two courts, the Magistrates Court and the middle tier court system, but it also has appointed to it other community representatives. We would see that body as operating and not necessarily being identified solely with the courts themselves, and particularly judicial officers themselves, but rather that the advantage of it being an independent body with perhaps some other community representation on it is that it can have that distance from the actual judicial function, which, as I understand it, might be the concern that underlies your question.

THE CHAIR: But does that solve the problem of people not living within the budget or exceeding even a planned deficit. At page 66 of the Auditor-General's report, she has put the view:

> There has been a continuing pattern in recent years of planned deficits, and actual deficits exceeding those planned. There appears to be a lack of effective action to resolve these deficits.
>
> …
>
> There appears to be a lack of ownership and clarity of accountability for the Budget outcomes …

I am just wondering whether creating this new entity would resolve that issue or are we talking about something else that is causing the problem there?

Mr Crowe: It seems to us that it does resolve it. Part of the problem now is a lack of ownership and accountability in the system. It is fragmented and there is the separation of powers problem I referred to earlier. If you have a single body that owns the budget as a single line allocation for which it is accountable and responsible and for which it must provide stewardship and explanation in its annual report, it seems to me you solve those problems.

THE CHAIR: That does have the underlying assumption that the funds will meet the expectations of the spenders of the funds. The problem here seems to be that there is a feeling that the budgets just are not adequate. Spend on regardless is the message that I am picking up out of the Auditor-General's report. If the funding is not adequate for the new body or not perceived to be adequate, and we are in a period of fair restraint in this territory, it still could be an issue, could it not?

Mr Meagher: Can I just put something in there? I am just reading from where you are reading about the planned deficits. The further point the Auditor-General makes, which we support, is:

> There has not been a fundamental review of the cost basis for Court services to support a decision for appropriate base funding. This has led to on-going concerns …

As I understand it the proposition is that, in order to make this separate administration

work, you have to have that as well.

THE CHAIR: You have to have a cost basis and have that accepted as reasonable and then the bar association's feeling is that it will likely lead to a—

Mr Meagher: Well, it ought to. If it does not, you can see why and you can point to how to fix it rather than its being mixed up within departmental budgets.

THE CHAIR: Could I just ask a couple more questions, gentlemen? In terms of the 24 recommendations of the Auditor-General, have you a collective view as to the ones you support or disagree with or are you happy with all of those recommendations from the Auditor-General? Is this a question you would like time to think about?

Mr Meagher: We went through each of them and agreed to the ones we supported and commented upon the ones we thought needed a bit of refinement. I think it is fair to say that in general a lot of what the Auditor-General says we agree with.

THE CHAIR: In terms of the issue of hearing delays and rescheduling that has come up through this report as being one of the matters that had an airing in the media, can you indicate to this committee what your experience is? I know you have both got different experience, and each of your members will have another tale to tell, I guess. But can you assist us in getting a better feeling as to how you have found the process of delays? I understand the on the court settlement, particularly with workers comp matters. I assume sometimes you appear in other jurisdictions as well on matters. Do you find there are undue delays here in the ACT or do you think the processes work reasonably well from your experience? It is a very general question, I know.

Mr Crowe: It is, and again it really is a matter of experience and perhaps the professional scuttlebutt. My personal practice is largely civil, so I can't really speak with any authority about the criminal area. In the civil area overall it seems to me that the system works reasonably well. There's a tension in the civil area because often it will suit one party to a case to find a reason for the case not to be heard and decided. So, in any complex case particularly, there's a risk that it will suit one party to manufacture reasons for an adjournment. Part of the judicial discretion that has to be exercised is to make decisions about when it's proper for a matter to be adjourned for those reasons.

THE CHAIR: It's very hard to prescribe how to deal with it, I guess, too, because of the independence of the judiciary.

Mr Crowe: It can't be prescribed because it is a judicial decision.

THE CHAIR: Do you think we are a little more liberal in this territory, from your experience, about granting—

Mr Crowe: I don't think so.

Mr Meagher: I do.

THE CHAIR: You think they are a bit—

Mr Meagher: Minds differ about that. I suppose that every judge or magistrate is different. There's an expression in the law of "as long as the chancellor's foot", which I think is meant to describe the nature of the discretion that each individual judicial officer may exercise. When you're talking about adjournments and matters of that kind, essentially not everyone reacts the same way.

But the real issue to worry about is whether, however it works, there's an unacceptable delay between commencement and resolution. My experience, which is based upon a practice very similar to Robert's, is that there isn't. It works fairly well in the area that I practise in, but I haven't done any criminal trials for many years and at the time when I did it was a source of great pride to the Supreme Court that they were able to have a very short time between the time of indictment, or the time that the matter first came before them, and the time it was dealt with. They used to publish figures on a regular basis as to how they went with that, and I think that dates back to pre self-government as well. But certainly at that point I think they were going pretty well. What it's like in the Magistrates Court in the criminal area I don't know.

Mr Archer, I think, has dealt with that in part, and if there's any specific question you have about that we can take that on notice. I understand that in the civil area in the Magistrates Court, possibly as a result of the investigation by the auditor, steps have already been taken to have more proactive case management techniques in getting the thing sorted, which I think work reasonably well.

THE CHAIR: I know this is more Mr Archer's area, but there's reference here to the collection of statistics on criminal case management conferencing apparently being stopped as a cost-saving measure. However, data for 2003 shows that, as a result of conferencing, 53 per cent of defendants were finalised at case management hearings, with an estimated saving of 1,635 hours, which I'm told is 327 days in court time, and 3,806 witnesses not having to attend court. Does the bar association hold the view that case flow management could be significantly improved if the Magistrates Court started collecting data again and using it for scheduling court time and allocating staff?

Mr Meagher: Absolutely.

THE CHAIR: From your earlier remarks I suspect I know the answer to this, but I just want to put it to you anyway: in your view is it feasible for the Magistrates Court to sit more than five hours per day?

Mr Crowe: Can I offer my opinion on that?

THE CHAIR: Yes, sure. I know it's a how long's a piece of string type question, but anyway.

Mr Crowe: It's often underestimated just how much time is required for preparation for each hour in court. An example might be in the teaching area where you hear criticism of teachers only doing so many hours a day, but we all know that if the job's being done properly there are as many hours spent in preparation and in marking and assessment and the like. It's similar with court and it has become fashionable in some jurisdictions, particularly the family law jurisdiction, to try and sit long hours.

The problem that this causes is one, in my view, of quality and of managing to properly prepare cases. If you're calling a witness and that witness is going to be giving evidence for two or three hours, you need to spend something approaching that time in talking to the witness, understanding what their evidence is going to be and the best way to elicit it. Once you start saying that instead of starting at 10 and finishing at, say, 4.15 with an hour off in the middle you will start at nine and sit on until five or six, the time for that preparation is just not there and it is likely to lead to inefficiencies in terms of applications for adjournment or even calling unprepared witnesses and the like.

THE CHAIR: Would it be accurate or inaccurate to form the view that a predominant amount of your members' time would be spent in the Supreme Court, or is there a substantial amount of their time in the magistrates as well—for the criminal ones, perhaps?

Mr Crowe: There is a substantial amount, particularly in the criminal jurisdiction, in the Magistrates Court.

THE CHAIR: Commercial matters are more likely in the Supreme Court?

Mr Crowe: The Magistrates Court does have a commercial tenancy jurisdiction, in which our members would be involved reasonably heavily. Our members also are involved in the workers compensation jurisdiction, but to a lesser extent in the civil jurisdiction, where the Magistrates Court limit, of course, is $50,000.

Mr Meagher: I suppose the other aspect of that is that in the Supreme Court most appearance work would be done by members of our association, whereas in the Magistrates Court quite a lot of it is done by members of the law society.

THE CHAIR: Yes.

Mr Meagher: The other thing I wanted to say about the question you asked about court hours is, apart from preparation, it depends on the type of case. Some cases don't require the same degree of intense concentration as others, but there's a limit, I've found—maybe other people have got a different limit—to how long you can concentrate and be at peak performance. If you're in an appeal court, more than about five hours of submissions and being questioned by the bench might be a bit more than you can usefully, efficiently, do, whereas other types of cases may not be quite so demanding. Nonetheless, there is an element that you shouldn't go past the point of being efficient in terms of the capacity for everyone to pay attention.

I don't know how judges do it, to be honest, to have to sit and listen to other people for great lengths of time as opposed to being the talker. Nonetheless, they do and they follow it all and they have to do that. The longer they're required to do that, I suppose, the less easy it becomes.

THE CHAIR: There are perhaps some parallels there. Dr Foskey, do you have any questions?

DR FOSKEY: I'm interested in a couple of things, and I really do thank you for your submission, except for the fact that it's got grey areas that I can't read.

Mr Crowe: I'm sorry.

DR FOSKEY: That's all right; it was probably yellow in the original.

THE CHAIR: Someone must have used colour in the original.

DR FOSKEY: You identified that there are at least four other issues and challenges that create delays in the system, and one of these is in relation to the AFP purchase agreement. I'd like you to expand a little bit on this, if you wouldn't mind. You give a range of statistics on page 7 of your submission—or it was probably the person who's not here, but it doesn't matter.

Mr Crowe: He's in court today.

DR FOSKEY: Is he? Okay. The indication is that the number of people actually sentenced, or found guilty, I guess, for particular offences is often around or below 50 per cent and that this one is way below the targets in the AFP purchase agreement but it contributes significantly to court delays. To what do you attribute these low rates of finding of guilt? Can you have a go, even though you're not the people who wrote this part of the submission?

Mr Crowe: It would be pure guesswork on our part. If it's useful for you, Dr Foskey, we could take that on notice and provide a further specific written response once we've had a chance to talk to Mr Archer.

DR FOSKEY: That would be good, because I don't want to speculate on it myself. Also in your submission you suggest that a number of matters are the role of the rule-making committee.

Mr Crowe: Under the Court Procedures Act, which now governs that area, there is a rule-making committee, which consists of a judge, the chief justice, the chief magistrate and, I think, one other judge, which is responsible for making the court rules that will, from 1 July if it all goes according to plan, be harmonised and uniform for both courts insofar as it's possible.

That act also sets up a rules advisory committee to advise the rule-making committee, and the rules advisory committee has representatives from the profession, from JACS and from the court, so it effectively represents all of the stakeholders in the day-to-day business of the court. Where suggestions are made, for example, about bodies that might be responsible for looking at case flow management, it seemed to us that the rules advisory committee would be the best body, which already exists under its own legislation, to exercise those functions in the short term.

The point we make is that it would be better in the longer term if there is an independent court administration body for it to have its own specialist section dealing with case flow management, but in the interim the body that might best carry out that function is the rules advisory committee.

THE CHAIR: There is a Supreme Court reference on page 6 that I've been intrigued

about:

> Of the matters that were resolved by way of a plea of guilty to a charge a significant proportion of those matters involved pleas to other than all counts of the indictment. These outcomes suggest that cases may not be sufficiently analysed beforehand by the DPP due to lack of resources and consequent lack of time and experienced staff. It also suggests that discussion between the defence and the DPP is not happening at an early enough stage. This may reflect the late involvement of counsel in trial preparation.

That's written in very polite speak, but are you basically saying that the DPP is hurtling through charges here, obviously, based on the work of the investigators and not giving adequate consideration to the quality of the charge or the accuracy of the charge? Is that the message?

Mr Meagher: Well, they are Mr Archer's words, but I understand—

THE CHAIR: Yes, I understand that.

Mr Meagher: I think he is saying that there's a lack of analysis or decision making about whether or not to proceed with particular charges. Part of the job of the prosecutor is to consider—I think the jargon is to nolle something, which I think comes from a Latin expression, which I won't bore you with. It means that you no-bill something; you don't proceed with it. So you may have a complaint, a police decision to prosecute, which gets to the DPP and they have to look at what the evidence is available to do it. You often see reports of Nick Cowdery defending why they didn't proceed with some particular matter, for example, and he gets into trouble about that. Quite often the inclination of a prosecutor might be: "Well, there's a complainant here and I have to explain why I'm not going to proceed with this matter. I know that they're particularly aggrieved, and I'd rather let the court decide than me decide."

THE CHAIR: Is it possible that the converse applies, Mr Meagher?

Mr Meagher: Sorry?

THE CHAIR: Is it possible that the opposite might be applying, where a matter is a bit involved and they're analysing it enough to proceed, or do you think they're erring on the side of safety from the experience of Mr Archer?

Mr Meagher: What I'm saying is that that's a possibility. I'm not saying that's in fact what is happening, other than that, if at the end of the day we have unsuccessful prosecutions higher than you'd expect, one has to go back and ask why, and one of the reasons is that prosecutions that perhaps shouldn't have proceeded did proceed.

DR FOSKEY: I've just got two more questions. You refer to a lack of statistical collection in many aspects that could inform the government in terms of how to finetune the system.

Mr Meagher: Yes.

DR FOSKEY: And, secondly, that there's a lack of a complaints mechanism—this is

from page 11:

> The Bar Association believes that in the main the ACT is well served by a conscientious and hard working Judiciary but from time to time complaints are received which if made out may warrant some censure. At present there is no formal way of dealing with this.

What we seem to get is the odd article in the paper and people seem to be frustrated in terms of how to affect the system, and people who work in it must be fairly good advisers on it. So what would you suggest as an adequate complaints mechanism?

Mr Meagher: There are two parts to that. I think I have to take responsibility for that paragraph because it's something that interests me. At the moment at the federal sphere they are considering introducing a judicial commission, similar to the one in New South Wales. I don't think our jurisdiction is big enough to warrant the expense of having a permanent judicial commission like that in New South Wales.

Our current act, which is the Judicial Commission Act, provides for an ad hoc commission to be set up when a complaint is received, but its only power is to recommend the removal of the judicial officer concerned, so it's a hanging offence only, not the sort of in-between things that would normally irk or cause concern. All judicial officers are human, so there must be, from time to time, situations where people rightly or wrongly perceive that something didn't happen the way it ought to have.

I'm concerned that, where those complaints come to us, there isn't any formal way we can deal with them. We can raise it informally with the head of the particular jurisdiction and ask them to have a look at it, and if there's something they can do they will. But that's as far as we can take it. With the judicial commission, the model that they have in New South Wales, or that they're considering federally, is broader than that; it goes to matters less than a hanging offence. It goes to all sorts of complaints, some of which just might be matters of bad behaviour—being intemperate or matters that aren't—

THE CHAIR: What remedies have they got, Mr Meagher?

Mr Meagher: It's usually a reprimand or, if the worst comes to the worst, they might terminate them, if it's repeated. Frankly, I think the possibility that it's there is often a—

THE CHAIR: Deterrent.

Mr Crowe: A public reprimand.

Mr Meagher: It often helps to prevent it occurring. I'm not suggesting that that's something that we have particular worries about in Canberra, but the fact that there isn't a process for it is probably not terrific.

DR FOSKEY: Thank you.

THE CHAIR: I'd like to thank you both. I know your time is valuable—I guess all our time is valuable—but I appreciate the quite considered contribution made by the bar association, and thank you for expanding on that by way of questioning. We'll now

adjourn these proceedings.

Meeting adjourned from 2.48 to 4.05 pm.

MARIENOELLE CURE,

KURT GRUBER and

SIMON JACKSON were called.

THE CHAIR: I welcome our witnesses to the resumption of the public accounts committee's inquiry into report No 4 of the Auditor-General on courts administration. I need to remind you of a couple of procedural matters so you are clear on this. 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.

I thank you for making time available this afternoon. The inquiry that we have got under way is of considerable import and is creating a high level of interest. We have received your submission, which has been circulated and reviewed by Dr Foskey, who is the deputy chair, Ms MacDonald, and Ms Cullen, who is the secretary of the committee.

I am not sure who is likely to be speaking on behalf of the group primarily; is that you, Ms Cure?

Ms Cure: On some issues, yes.

THE CHAIR: Let me put it this way: if you would like to say something in relation to your submission before we go to questions, we'd be delighted to hear from you.

Ms Cure: I'm not too sure which point to address except the ones that we originally wrote to you about. We would be happy to address other issues if you'd like to.

THE CHAIR: Maybe you could just give a little bit of an overview on that. That would be well appreciated.

Ms Cure: I found it surprising in your report that there was no mention of our organisation, given that we have—

DR FOSKEY: You mean this report?

Ms Cure: Yes, the one that was sent to us.

THE CHAIR: Can I just explain. The report is the report of the Auditor-General. This is the public accounts committee, which is inquiring into that report and reviewing its recommendations; this is not a report that was written by this committee. This committee will write its report at the conclusion of hearing evidence. We will then probably make recommendations to the Assembly for the government to consider. We've contacted quite a range of organisations. If your issue is that they haven't referred to you, that's something of interest to us.

Ms Cure: We are talking about this particular one posted to me dated September 2005 on court administration?

THE CHAIR: Yes, that's the online copy; that's the same document.

Ms Cure: I saw no mention at all of our organisation, yet we have been funded for the last five years under the Department of Justice and Community Safety to provide court support to victims of crime in the ACT in any court, not just the Magistrates Court. CARS, the referral service for offenders, was mentioned and we commented on that. Our comment was that we also have a room on the second floor—we have had that room for quite a number of years—providing support to victims of crime.

In early 2001 or 2002 there was an attempt to better coordinate that service under the Victims of Crime Coordinator, Robyn Holder, and at the time there were badges made for the proposed new scheme, which I think Ms Holder was looking to head. However, that was outside of her brief and she was not able to do it. But since then we sought to have those reproduced so that we could provide some kind of identification to our workers. We also sought support from the court to have formal identification badges for our workers. We had no cooperation at all from anyone from the court—nor anyone for that matter. Despite the fact that these were in existence, I was told that I could not have them reproduced.

Why were they made in the first place if we couldn't have them, given that we are the only organisation that is funded under DJACS to do this work here? We understand that other services such as domestic violence and rape crisis service come with their clients, but we are the ones that are funded under the victim services scheme to do that work. During those last five years of funding we have received no support or recognition for the work that we do here. If we were to have such support and recognition, I think we could provide a greater service and support—in response to your comments—to people who speak another language or people who are impaired in some way. But how are we to know they are here if we don't get the referrals? Sometimes we have a referral from legal aid if a person is sitting in the room at legal aid, but that doesn't happen very often. I think it should happen at another level perhaps.

THE CHAIR: Mr Jackson or Mr Gruber, do you want to expand on the comments by Ms Cure?

Mr Jackson: No, not at this stage.

THE CHAIR: I will ask a couple of questions. You spoke in reasonably strong terms about an absence of cooperation from JACS, or is it the courts that you are saying are not cooperating?

Ms Cure: JACS provided the funding but took no active interest.

THE CHAIR: In your activities?

Ms Cure: Yes. We are working through ACT Health; we have a working arrangement with ACT Health, a service-level agreement.

THE CHAIR: What is the extent of your funding at present? I have seen this at another hearing we had.

Ms Cure: We receive $150,000 or so a year.

THE CHAIR: A $150,000 grant?

Ms Cure: Yes.

THE CHAIR: In your submission you talked about the need for improved on-line access and the need for a liaison officer. Are you seeking additional funding? Is that what you are saying? It was not spelt out quite that clearly to me.

Ms Cure: ACT Health and VOCAL, the victim services scheme, are being reviewed at the moment. What we were saying was that perhaps there should be a better distribution of funds to allow us to do the work that we have to do at the moment under very difficult circumstances, not necessarily greater funding to the whole of the victim services scheme but a redistribution.

THE CHAIR: I won't say it is not within the scope of our inquiry into courts administration but it is very much on the periphery of the main issues raised. I notice that you have raised some concerns about the customer complaint area, if you like, and the information there. Do you have anything further you wish to add on that? You commented on recommendations 12, 13 and 14, wanting brochures and various things produced. Are there specific concerns you have got that give rise to your feelings there?

Ms Cure: We accompany clients. Simon works with clients there as a lawyer. Simon, you might want to comment there. We have difficulties with clients arriving at the court, sometimes having no idea at all of the process. Some of them won't even turn up because of their fear of what may happen. If we were able to assist them, if somehow there were a liaison person who was there to let us know that such persons needed assistance, we could explain the court process to them and support them during that process.

THE CHAIR: When you say "liaison", you mean somebody between you and the victim?

MS MacDONALD: Or are you suggesting that there should be somebody who works within the courts to liase with you, to meet with you on a regular basis, so that you can provide feedback on ways things could be improved?

Ms Cure: We already have an office here. We could easily man that office on a daily basis, with a bit more support. There could be our volunteers here on a daily basis, functioning as I have asked them to, floating around, approaching people and talking to people. But there needs to be someone here, though, who can ring them up and say, "We are having difficulty with this person at the desk. Would you please come?"

THE CHAIR: Have you put to the ACT government authorities that request for that support for such a position?

Ms Cure: Yes, we put in extensive writings at the review. That was a long time ago, three years ago. We reminded them again of it last year.

THE CHAIR: And was there a response to that?

Ms Cure: They are still reviewing. The review has been two years in the doing.

MS MacDONALD: Which review is that?

Ms Cure: The victim services scheme.

THE CHAIR: How many people would you deal with annually? Could you estimate that?

Ms Cure: Approximately 700 to 800 people coming to court perhaps. These are face to face, including counselling and other services.

THE CHAIR: These primary people would be witnesses in relation to crimes of which they are the victims. Does that mirror what you would deal with, Mr Jackson?

Mr Jackson: I have got to clarify that. Basically, my experience is limited to the Magistrates Court and to the Family Court. Outside those jurisdictions, I cannot really comment. I agree with my colleague in the sense that one of the biggest problems is that when I do meet with clients or when I do talk with people—I am in court virtually every day—their biggest concern is that there is a lack of access to the right services that can assist a client within the court.

I use the definition of "client" as anyone who is an advocate within the court for a domestic violence or protection order or anyone that is also a victim of a crime who is there to know what is happening in relation to that charge. The latter one is more towards a Department of Public Prosecutions issue rather than the court system itself.

In my experience, one of the biggest concerns is that there is a lack of interface between a client who might be an applicant in a personal protection order or a victim of domestic violence outside of DJCS who comes to court and does not know what is going on. Other than the registry desk, they do not have access or do not know where to go to get the proper support.

I have raised the issue about the Family Court. In my experience of the Family Court, they have what they call the duty solicitor. They set up in an office a solicitor from one of the various law firms who volunteers his time to give advice. Often in a lot of these situations, when it comes to client interfaces in the court system, it can be solved by simply talking to a solicitor. But a lot of people are intimidated by that. There is always a presumption that a solicitor is going to be an expensive proposition and that they are pretty much inaccessible unless you are wealthy. In some way, having someone within the court system to link with—someone that they can get legal advice from—or with various organisations like VOCAL, I believe that would speed up and at least help court clients deal with their matters and not be intimidated and not give up at the first turn.

THE CHAIR: My question was about the people that you are representing. I am trying

to get a picture of that. Are they mainly people who are victims of domestic violence, or are they people who—

Mr Jackson: I represent a wide range, as I said, because of the scope of my firm's practice.

THE CHAIR: I am thinking more of the organisation's interest. What is your constituency, if you like?

Mr Jackson: In relation to that, it would be victims of domestic violence. It can range from anyone who has a dispute with their neighbour and is afraid because the neighbour has made threats or has done something violent, to basically children who are victims of various violence that involves family services, without getting into the gory detail.

Ms Cure: VOCAL represents victims of all types, not just one or two categories but every category of victim.

THE CHAIR: Is there a predominance of people who are seeking domestic violence orders or who should be possibly?

Ms Cure: Not for VOCAL; we have a wide range.

THE CHAIR: Do you have a good relationship with the police? Has that worked well?

Ms Cure: No, there is not, as occurs in other states. In other states, as I understand it, the police work very, very closely with the volunteer service or the service which assists victims in court. But not so in Canberra.

DR FOSKEY: I am interested in exploring further the relationship between VOCAL, your organisation, and the Victims of Crime Coordinator who, I am assuming, is employed by justice and community safety.

Ms Cure: She is. Originally it was, I think, the Attorney-General's Department, but I understand that it is now justice and community safety. I understand the privacy and confidentiality of this place, so I will say here that I have—

THE CHAIR: Before you say anything, this is not a private hearing; this is public and is being televised throughout the public sector. It is on the record. What you are saying here will be on the public record.

Ms Cure: Yes. I will word it carefully. Originally, the Victims of Crime Coordinator was appointed to coordinate all the services, because that was the very first appointment by the government for victim services. And that role was to bring together all services who were offering help to victims of crime. Eventually in 1999, with the government changing legislation with regard to compensation and the victim services scheme being founded, the coordinator's role changed somewhat because there was also a victims assistance board set up at the time.

That position really should have weaned itself out over time until such time as all these other positions took place, but it continued. It has, I believe, become a position which is

more or less doing some of the things we do ourselves. We are funded to assist victims of crime, to give practical assistance to help them to do the application for financial assistance or to do their victim impact statement, or to assist them throughout the court.

I have found that the Victims of Crime Coordinator has very much assumed that role, with her assistant. It is, therefore, a duplication and it causes a lot of problems with victims who do not understand whether there are two offices or one. Sometimes they ring me up thinking it is the other. Sometimes, because the Victims of Crime Coordinator also has other roles in policy making and various other projects, she does not have the time to take care of victims that she has undertaken to help.

DR FOSKEY: It is only one position; it is not an office?

Ms Cure: With an assistant, yes.

DR FOSKEY: You have got some really practical suggestions here, such as the brochure to explain to someone what they can expect and a video. With the video in particular, how would you like that to be available to people? Would it be something that you had as a resource that you could work with people, or is it something that people could be routinely offered when they were being called as witnesses to the court?

Ms Cure: Both. We are responsible for recruiting and training volunteers. It would be used to train our volunteers to work with clients. If some people do not want to have volunteers—they may want to be very independent—if we had one in our library we could then provide the venue, because we have a room where they can come and sit down in safety and look at it, with explanations and emotional support. It may bring very frightening responses from clients, and they can then have support at the time.

Mr Jackson: If I can mention, from a solicitor's perspective, you will be amazed how many potential witnesses are completely ignorant of what an affirmation is or even what an oath is, from my experience. So having something like that for—

MS MacDONALD: What makes you think that we would be amazed by that? Most of us in this room do not necessarily know the fine distinctions between an oath and an affirmation. Why would we be expecting the public to know the differences with that?

Mr Jackson: That just reinforces the practical importance of something like a video. It would be useful for a potential witness.

THE CHAIR: Have you any comments on the way in which the court processes proceed in relation to people that you represent? We are keen to look at whether there is scope for improvements in the administration of the courts. We hear all these areas that you have mentioned. But in terms of the actual conduct of cases and the people that you represent, is there any particular feedback you would like to give the committee, from your experience there, either as VOCAL or even in your practice?

Mr Jackson: In respect of the clients that I represent, a lot of these problems are alleviated because they have a solicitor that helps them and tells them about the procedure and what to expect and explains the difference between an affirmation and an oath.

THE CHAIR: I am talking more in terms of the way the process works. We have just had barristers in here who have countered some of the views that we have heard previously about the rate of progress in matters, the delays and so forth. They offered a different perspective. Do you have a view in relation to clients' experience with delays, adjournment of hearings or frustrations at matters not coming up?

Mr Jackson: In criminal matters, it is probably a question you need to ask a prosecutor about.

THE CHAIR: We will ask the prosecutor, of course. We are interested in the other side, too.

Ms Cure: Could I respond?

THE CHAIR: Sure.

Ms Cure: At VOCAL, a very common thing that we do all the time is hear complaints from victims of crime. I got a phone call last night telling me that I have to be in court tomorrow. I have to have this victim impact statement prepared. Nobody told me. The matter was last heard—the last thing I heard yesterday—in December. We were to go to court with her. It was cancelled, for some reason or another. She was never told what was happening, despite our attempts to ring the victim liaison officer to find out. She has to go to court on Wednesday. She says, "What am I to do?"

THE CHAIR: Is she represented by a solicitor?

Ms Cure: No. Sometimes they do not have lawyers.

THE CHAIR: So she is appearing for herself?

Ms Cure: Yes.

DR FOSKEY: But in this case, she is a witness.

Ms Cure: She is a witness, yes.

DR FOSKEY: She is a victim, rather than the person who has been appearing before the court.

Ms Cure: Of course. We work with victims.

DR FOSKEY: Why would she have with her a solicitor?

THE CHAIR: I see. She is only a witness there. Is this a prosecution by the DPP?

Ms Cure: Of course, she is only a witness for the court purposes. But the way we see it is that the crime was perpetrated on this person and they resent being seen just as a witness who does not need to have much information. It is because of them that the matter is appearing in front of a court. The crime was against them. In fact, the judgment

of the court is on the crime that was committed, and that impact is on the person who was not told anything about it.

THE CHAIR: I understand all that. I am just trying to understand why the person would not know. Are they appearing as a prosecution witness for the DPP? Is the DPP prosecuting this matter?

Ms Cure: Yes, some of them have to go to the DPP.

THE CHAIR: No, this particular one.

Ms Cure: The morning before, yes.

THE CHAIR: Let us just deal with this case. I am trying to get some thoughts about the process. You have talked about this person who has suddenly found out they have got to appear the next day. If this is a DPP matter, are you saying that the DPP are not liasing properly with their witnesses?

Ms Cure: No. Sometimes. Quite often. Quite often victims ring us complaining that they have not been given sufficient time for information and they have just been given a phone call that said, "Tomorrow, at 9 o'clock—

THE CHAIR: Turn up.

Ms Cure: Then we have to find that volunteer to go with them and prepare them, or sit with them at the DPP and listen. Sometimes it is not even the DPP. For some matters we go to the DPP. But for some matters they just turn up at the court here. Something is not happening there. Either the victim liaison officers, who have a role in advising victims of progress, or the DPP, somebody somewhere, are messing up, yes.

DR FOSKEY: It is often the police who hand out the paperwork about the victim's statement. It is really a matter of—

Ms Cure: Finetuning.

DR FOSKEY: Yes. And it is a voluntary thing of course.

Ms Cure: We see it as not beyond the possible. The way I see it is: the resources are there. VOCAL is there, always saying, "We are here; we are funded; we want to do this work; help us to do this work." There needs to be a bit more communication, recognition and respect, most of all. We are volunteers, with two paid staff to create this volunteer support. We need to be recognised as professionals instead of just volunteers. "It does not matter; they are probably unprofessional." That is not the case.

DR FOSKEY: Do you understand that this inquiry is about the administration of the courts? Your issue has a relationship to concerns about the administration. It could be that there is nobody to take that role of ensuring that there is information given—for instance, an education role or a support role, or so on. Under the terms of reference of our inquiry—we are trying to look at and set up a framework—we are seeing how your concerns fit with the concerns the Auditor-General expressed about the administration of

the courts.

Ms Cure: A lot of the problem is about privacy legislation. Sometimes you cannot talk to someone about a client, even if it is to seek help. You cannot give phone numbers, names and details. There should be a system like we have at VOCAL. As the people come for their first contact, we get them to sign a permission to release information whereby I can give a person a call on your behalf to get help for you. That is a simple thing. If that exists, then you can get someone to come in. Then you can talk. Somebody from the court can tell me what is happening. If Mrs Jones rang up and complained, "This is not happening; I do not know anything. Can you tell me?", I have to say, "No, sorry, we cannot tell you; privacy legislation."

MS MacDONALD: We are trying to ascertain whether or not you believe that the suggestions that you are making, in terms of VOCAL and its relationship with court officers and the Department of Justice and Community Safety, will make any difference to the efficient and smooth running of the court system.

Ms Cure: I cannot say, because my knowledge of the efficient running of the court system is limited. But I can see that, if you have permission from the client to seek help for them and then someone is able to tell me—

MS MacDONALD: The fact is that we are looking at the courts administration. That is what we are here to look at.

Ms Cure: Yes. Administration consists of obtaining information from the client to be able to tell someone so that that work will be then off their shoulders. It will be then our responsibility to keep the clients informed or sharing at least in the load. We can then share in the load of keeping clients informed and supporting them when they attend. If there were someone to keep us informed, a liaison person.

THE CHAIR: Thank you for that view. We have got that message loud and clear. We have reached our time. I thank you for writing the submission. Mr Gruber, you are the author, are you, of that?

Mr Gruber: Yes.

THE CHAIR: Thank you very much for that and for the time you have given up today to share your views with the committee. I now adjourn these hearings.

The committee adjourned at 4.31 pm.