**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**

**TUESDAY, 16 MAY 2006**

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

**By authority of the Legislative Assembly for the Australian Capital Territory**

**The committee met at 2.00 pm.**

**JONATHAN HUNT-SHARMAN,**

**DENNIS GELLATLY** and

**GARY WAYNE SHUTE**

were called.

**THE CHAIR**: I will formally open this session of the public accounts committee. For the benefit of the 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.

When you first give evidence, would you please state your name and the capacity in which you appear. That will be of assistance to the Hansard reporters. We have a written submission from you which has been circulated to members of the committee. I have some questions and my colleagues probably also have some questions. Do you wish to make a short statement before we get to that point?

**Mr Hunt-Sharman**: My name is Jon Hunt-Sharman. I am the National President of the Australian Federal Police Association. We don't wish to make a formal statement. I thank the Standing Committee on Public Accounts for providing the AFPA the opportunity to comment on Auditor-General's report No 4 of 2005. I would like to introduce you to the Australian Federal Police Association Vice-President, Community Policing, Sergeant Dennis Gellatly, to my right. To my left is the Australian Federal Police Association Zone Coordinator, ACT Policing, Detective Sergeant Gary Shute. Dennis has 20 years operational experience and Gary has almost 25 years operational experience—both in the ACT.

I have brought these colleagues along with me to give the committee the opportunity to speak to two gentlemen who have a great deal of operational experience and practical and technical experience with regard to policing and the court system in the ACT. We did not want to make a further statement because we thought it would be best just to go into questions and answers. In that way, we can address any concerns or questions you might have.

**THE CHAIR**: Thank you for that short introduction. We appreciate your taking the trouble to write to the committee and to make your people available today to take questions. I would like to draw your attention to the area of improving case flow management. In your submission you comment on recommendation 11 on page 59 of the Auditor-General's report, which refers to streamlining the listing process for the improved efficiency of case flow management. Of particular concern is the use of limited ACT Policing resources as part of the listing process, impacting on general operational capacity. In what instances do you believe the current case flow management process

unduly utilises ACT Policing resources?

**Det Sgt Shute**: My name is Gary Shute—AFPA Zone Coordinator. We would firstly like to raise the issue of the way ACT members of the Australian Federal Police are required to bring people before the court. It is the AFPA's view that this system is now somewhat dated in the form of summons. It impacts severely on the resources of ACT Policing. When we consider the process we have to go through it is, in our opinion, antiquated.

If a person is suitable to be summonsed before the court, as opposed to arrested—arrest is very efficient in the sense of time taken to get them before the court because there is one process—a summons process would be required to be considered under the Crimes Act. If they meet the criteria for summons, a police officer must prepare the court documents. They are sent to our prosecution and judicial support area and are then taken across to the court by another police officer, who swears them on behalf of the informant. The papers are then taken back to the police station, where they are given to our warrants and service section. They then have to drive around Canberra and serve the summonses. That officer then has to come back and swear an affidavit of service, which is taken back to the court.

We would like to see the process streamlined. New South Wales have adopted a process. The ACT had the VATAC process in the past—voluntary agreements to attend court. However, it had no backing before the courts should the person not attend court. We would suggest that with most PCA offences there are usually—

**THE CHAIR**: What are PCA offences?

**Det Sgt Shute**: Prescribed concentration of alcohol offences, where a member of the community exceeds the prescribed concentration of alcohol, whether it be the 0.02 or 0.05 limit. Most of these people attend court. They would be what we would class as not from the core criminal element within society. Between approximately 1,100 and 1,200 of these go before the court each year. We would like to see a process based along the lines that, at the time of the offence, if the informant or police officer believes they will attend, we would have some form of agreement that they could sign there and then, and get them before the court without going through all the stages I mentioned before.

We had the voluntary agreement to attend court, which worked reasonably successfully; however, it had no backing before the courts. So if anybody did not turn up, they were unable to issue a warrant from the bench. On that example alone of PCA offences I believe there would be huge savings in time, not only for the courts—because the court staff are involved in this—but also with the implementation of the courts accepting that, once somebody has signed an agreement and they don't turn up for court, a warrant could be issued straightaway.

There are advantages in this. The summons process at the moment takes about two months. The summons return dates are now around mid-July. That was last week—and they are extended all the time. We are looking at a two-month gap between when we speak to the offender or defendant when they are served and when they go before the court. If they don't appear at court there is a two-month gap, shall we say, in which we have to go and find them. The law does not require anyone to tell us of their intention to

move addresses, jurisdictions or anything like that. It is then again up to the ACT police officer to go and find that person, if they can, so we can do what is classed as an "again summons" and arrest that person or take a warrant out for their arrest.

**THE CHAIR**: You are essentially proposing the reintroduction of what you call a voluntary system but with penalties attached if people do not comply.

**Det Sgt Shute**: I believe that "penalties" is the wrong word to use.

**THE CHAIR**: The capacity for you to issue a warrant if they fail to turn up.

**Det Sgt Shute**: The capacity for the court to issue a warrant if they fail to attend. That is done now on a summons if they fail to attend. I can break down all the steps. In the New South Wales system I believe it is called a court attendance notice. I must advise the committee that this is only anecdotal; I have not done any studies on this because the New South Wales system has only been in for a reasonably short time. It is something that I believe would improve efficiency in the listing process.

**THE CHAIR**: So there is no risk of people not being served and then suddenly finding that a warrant has been issued because they did not know about it?

**Det Sgt Shute**: No.

**THE CHAIR**: They would have to acknowledge that they know they are required to appear in court.

**Det Sgt Shute**: Under the New South Wales proposal as it has been in the past, they get a copy of the attendance notice saying that they have to attend. Under the old system with the voluntary agreement, there were notification processes on the back of their copy in case there was any problem in attending court. I believe the court registrar's number was there so that, if for any reason they couldn't attend, they would be able to phone the court and advise them, to prevent the issue of a warrant.

**MS MacDONALD**: Is the court attendance notice, if that is what it is called, in New South Wales a formalised system?

**Det Sgt Shute**: Yes.

**MS MacDONALD**: Would you be able to get more information and provide the committee with that information? It would be interesting for the committee to have a look at that.

**Det Sgt Shute**: I apologise to the committee for not bringing that. I was under the impression that this was just a presentation of what we would like to see to streamline the process.

**THE CHAIR**: That is correct. It would be handy, though, to see how they do it.

**MS MacDONALD**: That is all right. It is an interesting suggestion. It might be worth while for us to look at that.

**Mr Hunt-Sharman**: It is certainly better to not reinvent the wheel if someone else has gone through the process and found an official and effective way.

**Det Sgt Shute**: Whereas I have only used a PCA matter, there are a number of other minor matters we deal with on a day-to-day basis. I am talking about shop stealing charges and some assault charges. In other words, they are instances where we have the alleged offender in some sort of custody and we will be able to make a decision there and then. Of course, we are not indicating that we would like summonses disposed of. There are numerous prolonged inquiries in which it takes some time for police to complete their investigations. The summonses are still very effective in those cases.

**THE CHAIR**: Say you had a shoplifter who was apprehended under this system, instead of having to issue a further summons later, at the point of arrest they would be told that they have to agree to turn up on such and such a date. If they defaulted at that point there would be an opportunity for the court to issue a warrant and save you having to go through a whole lot of summonses, for instance.

**Sgt Gellatly**: Could I make a further comment? From the perspective of the alleged offenders in these matters, they are not then waiting for weeks or months on end not knowing what is going on, wondering when and if they are going to get a summons served. They know what is happening straightaway and they know that that process is going to be completed fairly quickly, rather than over a period of months.

**Det Sgt Shute**: I did not actually say this, but when the person leaves the station, we tell them that a summons will be applied for. They do leave the station with no knowledge of when that summons date will be, because we do not know until we have done our paperwork. In the example of a driver who goes through breath analysis, we would then make the decision: yes, they have got ties to the territory; they have worked here for 20 years, et cetera. We would just tell them, "The summons will be applied for and you will have to attend court at a later date." Then they leave the police station.

**MS MacDONALD**: So you are only talking about doing this for cases where there is a low prospect of failure to appear in court?

**Det Sgt Shute**: If there is a high prospect of them failing to appear in court, then the summons will not be effective—

**MS MacDONALD**: No.

**Det Sgt Shute**: and they will be arrested. They will be taken before the watch house and either bailed or held in custody until the next day.

**Mr Hunt-Sharman**: It gives certainty to the individual as well, which does not exist at the moment because of these delays.

**THE CHAIR**: I have a couple of questions on this improving pace slow management element of the report. Do you believe that the suggested approaches outlined by the Auditor-General, for instance, that modified running lists of case management by exception will assist in making the use of ACT Policing resources more efficient? If so,

how do you think they will do this?

**Sgt Gellatly**: That is one of the things that we ourselves had a question mark over. There was some suggestion a while ago, coming, I believe, from the courts where a modified case management system had been suggested in which every Monday the informants, the police witnesses and the civilian witnesses were all required to attend court to basically wait for the case management process to occur and find out what is going on in terms of it going to hearing at a later date or not.

We have not heard anything further on that suggestion, and it was certainly a suggestion that sounded alarm bells amongst our members in terms of having an enormous amount of workload applied in having witnesses turn up, police witnesses turn up with police off the road every Monday for the purpose of case management hearings. That was probably the most significant question that we had in relation to utilising police resources in the restructure of the case management system.

**THE CHAIR**: So you have some concerns, basically?

**Sgt Gellatly**: Yes, and in relation to not unduly utilising ACT Policing resources, it is with that question in mind that that statement was framed.

**DR FOSKEY**: Supplementary to that, is the problem, then, with the Monday aspect of that proposal? Case management obviously has benefits in other respects. Is there any way you could see it working for the police, as well as for the offenders in court?

**Sgt Gellatly**: We certainly believe that the case management system has helped enormously in trimming down the hearing process and, indeed, arriving at pleas or resolutions of matters earlier and refining the numbers of witnesses needing to turn up. How to actually improve the process from here is something that we would certainly need to look into further in conjunction with ACT Policing, the DPP and the courts. That is a process that is occurring at the moment.

**DR FOSKEY**: It is occurring?

**Sgt Gellatly**: Yes.

**Det Sgt Shute**: I think you will find that that process is happening all the time. It is a reasonably dynamic process. If you understand anything in relation to a defended matter, until it gets to case management hearing, there is no obligation on the defence at all to say anything. So sometimes in a lot of these serious matters, the prosecutor would tend to err on the side of "I think I need everyone there because I don't know exactly where this is going to go".

In some ways the case management hearing is viewed as a mini hearing, where the evidence is available to both parties and they are given the opportunity to say how many witnesses they would like to attend and what is being contested. The fact of the matter is that the defence do not actually have to say what is being contested. They can just say, "We want strict proof." I personally think that the case management hearing, as it has been running, has been a big improvement on the arrangement where police and everyone had to attend court. But I think that, due to the nature of the beast, we will

never get a perfect case management system. I might be wrong, but the accused person does not have to say anything. That is a fundamental right within our legal system and I do not think that will ever change.

**THE CHAIR**: Can I take you also to recommendation 19 on page 73, dealing with the redevelopment of a case management system with minimum risk? Among the number of risk issues associated with this recommendation, you believe that the attendance of police officers at court should be incorporated. I guess my first question is: where do you see the relationship between developing a more efficient and user-friendly case management system and the attendance of police officers at court? Where do you see that?

**Sgt Gellatly**: In relation to recommendation 19, the primary concern there for us and our members has been a situation that has been occurring since I can remember. When an arrest is made and bail is to be opposed for any matter, police are required to attend court to give evidence in relation to the reasons why bail is opposed, and the court has expected the informant or the corroborator to attend court to give that evidence. We do not believe there is actually any legislated necessity for that to happen.

**THE CHAIR**: Could the prosecutor be briefed and say, "Well, we are opposing because this particular offender is at high risk or absconding," or something?

**Sgt Gellatly**: Exactly.

**THE CHAIR**: I am not a lawyer, but it seems to me to be a bit of an overkill.

**Sgt Gellatly**: What we would be proposing is that a more exhaustive or more detailed bail opposition form would be put together at the time of arrest that would fully brief the prosecutor in the court as to the reasons why. That would form the basis of the evidence that police would give in relation to it, thereby, other than for serious matters or complex matters, taking out the police officer's requirement to attend to give that evidence.

That is particularly the case after long night shift hours where they might have worked for 12 or more hours and then they are required to stay around for a significant number of hours after that to give that evidence. There is actually a responsibility on us as team leaders to ensure the safety and welfare of our members. Studies show that after 18 hours of wakefulness the human body is at a similar kind of status as 0.05 in terms of its responses. The court has criticised when we have sent members in briefed on day shift to give that evidence and sent the night shift members home, or afternoon shift members from the previous day, to keep them within that range of getting overtired.

**THE CHAIR**: Are they critical because it is not the arresting officer?

**Sgt Gellatly**: Yes. That is a concern to us. We have a liability under OH&S legislation for, in the worst-case scenario, industrial manslaughter to ensure those safety mechanisms for our members. But coming back to the more precise or more detailed bail application form, there are other jurisdictions that we are looking at in relation to how they go about that and—

**THE CHAIR**: I will stop you there. Are there any you know of?

**Sgt Gellatly**: The Northern Territory. I can give the committee a copy of the Northern Territory's form.

**THE CHAIR**: That would be great, actually, if we could receive that.

**Sgt Gellatly**: I think it is in my other diary. I could have it back shortly.

**THE CHAIR**: Would you send it to the secretary? Can I just get an idea of the magnitude of the problem? How often does this occur when you have got officers working these crazy hours?

**Sgt Gellatly**: Quite regularly.

**THE CHAIR**: It is not an isolated situation?

**Sgt Gellatly**: No, no.

**Det Sgt Shute**: There are lots of people that oppose bail in the watch house, but we just want them to report. We want conditional bail. The informant then is not required to attend as a rule. But if you want to keep a person in custody—and the association can understand why the magistrate would like the person that is basing this—we are saying that there is a double-edged sword here in the sense that you have got OH&S concerns, because we are working 12-hour shifts, and then the court does not start until 9.30, and members finish at six and seven. So you are getting up around the 16 hours before they give their evidence. Then, if they are unrepresented, there is another hour waiting for them to brief their legal representative. Then, sometimes it will be stood over until after the morning break, so you are getting up around 12 o'clock.

There are issues in relation to OH&S, and we all know that once you have been awake that long, you do not function that well in any case. So the point of your evidence may suffer. But primarily, if you want to keep somebody in custody, a lot of the time the court records will show why the police are saying that this person is a flight risk. They have 15 failed-to-appears, they have been arrested for breach of bail, they are in for another offence and they have been arrested for breach of bail because they have committed another offence.

Realistically, the matters are quite self-explanatory. A lot of why we want to keep people in custody is that it is a revolving door in some circumstances.

**Mr Hunt-Sharman**: Certainly the form is obviously a legal document that has been signed off by the investigating officer anyway, so they are bound by what they have put in there.

**Sgt Gellatly**: What that form is intended to cover are the questions that might be asked by the defence in relation to the defendant's circumstances to try and prove that—

**THE CHAIR**: That is the Northern Territory form that you mean?

**Det Sgt Shute**: We must answer the Bail Act in our bail opposition forms.

**THE CHAIR**: Okay. Would any of you, given you are dealing operationally, have any idea of what percentage of applications you succeed in or fail in when you oppose bail? Are you generally successful? Are the courts responsive to the points of view you are putting? Just in rough terms, is it normal that the courts give pretty heavy weight to the police perspective on bail applications?

**Sgt Gellatly**: It is very hard to predict. That can come down to the quality of the police officer's evidence. It can come down to the particular magistrate on a day, or surety. There is a range of factors there, but for an overall percentage I would have to go away and get some further information.

**THE CHAIR**: Those are all the questions I have. I will hand over to Dr Foskey.

**DR FOSKEY**: To follow up on this issue, is it being addressed through the processes that have been set in train—as you said, the Monday list is—

**Sgt Gellatly**: We believe the Monday list is something that is being worked on.

**DR FOSKEY**: Yes. What about this issue, though?

**Sgt Gellatly**: The issue of summonses we do not believe is, and the issue of attending court to oppose bail we don't believe is being worked on, no.

**DR FOSKEY**: Have you got any suggestions about how it could be addressed? Is it just not seen as a problem by those who administer the courts?

**Det Sgt Shute**: I have put paperwork though in relation to implementing what I have just discussed. I am not aware of what evidence was given by our AFP executive or prosecution judicial support as to whether it has been addressed.

**DR FOSKEY**: That is what I really wondered, because in preparing this report the Auditor-General did consult ACT Policing. I was just wondering whether you feel that ACT Policing represented the views of the AFPA or whether you are aware of what input they had and you felt the need to put in a separate submission.

**Mr Hunt-Sharman**: Certainly, these issues have been around for a long time and certainly haven't been resolved and certainly haven't been presented by the AFP to the decision makers who could change these structures. That's why we're raising them with you now.

**DR FOSKEY**: It is the level at which they are experienced so that the people who talk from the AFP are not the people who are hanging around the courts, basically.

**Mr Hunt-Sharman**: That's right. And the other side of this is that we obviously are mindful—the gentlemen here have already raised it—of the health and safety issues of our members being tied up for 18 hours straight and then, of course, after giving the evidence, having to drive home, with the risk to everyone of that. The other side of it is that just from a funding side these people are on double-time overtime, so for the government and the federal police one questions why you wouldn't at least be looking at

that as an efficiency—not paying that additional overtime for those people to attend court.

**THE CHAIR**: Do you think your success rate of opposing bail would fall dramatically if the prosecutors were briefed and had responsibilities?

**Mr Hunt-Sharman**: Again, the information from the Northern Territory—and a couple of other jurisdictions have done this—is that, because these forms are so detailed, it is pre-empting the questions you are going to be asked anyway. That's pretty well covered. So you're probably getting, to some extent, a far more consistent model because the same questions are being asked each time, rather than the magistrate asking the questions or the defence raising the issues. You're getting a wider scope, if you like, of the questions and answers that the defence want to know, the courts want to know, and of course the prosecution.

**Sgt Gellatly**: It's a form that some of the prosecutors in the DPP are aware of and look upon very favourably in terms of—

**DR FOSKEY**: Could you give us a copy of that, please?

**THE CHAIR**: He has already agreed to send that.

**DR FOSKEY**: Is that the Northern Territory form you're talking about?

**Det Sgt Shute**: Yes. We came here to raise the issues, not in any way critical of ACT Policing. It is just that these are issues that we are bringing up from the membership, from the people who are doing it. You asked that question before, but we're not aware of what evidence has been given by the ACT management. They may well have raised the same issues for all we know. But this is from the ground level, what the troops are saying: "We could do this job better—

**Mr Hunt-Sharman**: More efficiently.

**Det Sgt Shute**: and more efficiently by just these simple things at the ground level."

**THE CHAIR**: That's what we came to hear and we can compare ways of doing things more efficiently.

**Sgt Gellatly**: Those court attendance notices Gary mentioned earlier are also in place in other states for a range of other minor offences where there is no risk of the offence being continued and therefore an arrest being required—a range of minor street offences and other sorts of things that can be dealt with there and then rather than having to go through this process of summons et cetera.

**Mr Hunt-Sharman**: There's one last point I'd like to make, going back to the efficiency side. The other part of this is that, if they are on overtime, they still have to have their nine-hour break plus reasonable travel time after the point where they finish. So that crosses over into the next operational shift. So you're ending up with fewer police on the street through this process. Really it looks like a simple but complex form can solve the problem.

**DR FOSKEY**: That's useful. I have a couple more questions not so much related to your submission but to the more general administration of the court. Magistrate Cahill mentioned that there used to be an office at the court that provided a health report. It has been removed, and that means that the court has to adjourn until something is set up for that report to be done. Do you think that the withdrawal of that service would slow down the progress of matters? Is it something that you've observed, or is it not an area of your jurisdiction or concern?

**Sgt Gellatly**: I'm just trying to remember. When was that in place?

**Det Sgt Shute**: The middle of last year, wasn't it?

**DR FOSKEY**: I don't know.

**Det Sgt Shute**: I haven't fielded any issues raised by members from Woden in relation to that point, so I feel I wouldn't be able to comment on that.

**Sgt Gellatly**: Is that general health assessment or psychological health assessment?

**DR FOSKEY**: I think it's probably general health but in relation to the offenders. I'm sorry but I don't have any more detail on this stuff.

**Det Sgt Shute**: They used to have a drug rehab person there who was regularly called upon to find places. If that's the role you're talking about, I'm aware of it, but I can't comment on the effect on ACT Policing members.

**DR FOSKEY**: I suppose that if services are removed from the court as cost-cutting measures they would just extend the process because people would have to be brought in from outside or delays, adjournments, until the information was available. Don't worry.

One final question: have you observed any cost shifting occurring, between agencies or between agencies and the court, that slow progress of matters? For instance, in this case an office was closed. Is there anything else that you have observed occurring, or other suggestions for increased efficiencies, that you think are worth mentioning?

**Sgt Gellatly**: It would be hard to comment on cost shifting. Certainly in terms of increased efficiencies the subject of electronic briefs of evidence has been on the drawing board for quite some considerable time. We're not aware of where that may or may not have progressed to at this stage, but it is certainly something that, if it were done well, would certainly decrease the amount of paper from an environmental aspect.

**THE CHAIR**: So at the moment everything has to be in hard paper form, does it?

**Sgt Gellatly**: Everything has to be in hard paper form, with four copies.

**Det Sgt Shute**: The Evidence Act is pretty prescriptive there in relation to signatures and stuff as well, so we've got to comply with that.

**Sgt Gellatly**: We know the DPP and I think the courts may have come online to some

extent in terms of the AFP PROMIS computer system, the police real-time online management information system, I think. But it's our case management system that everything runs through, and a fair bit of work has been done in the past on the electronic brief management system. If that were the case now, that brief would pop up in front of the magistrate, in front of the defence and the prosecution, and everything would sort of shoot off in an electronic form rather than volumes and volumes of paper. It would save an enormous amount of time and effort, one would imagine.

**THE CHAIR**: That's interesting. We will look forward to receiving that document that you indicated you would be good enough to provide to us. On behalf of the committee I would like to thank you—

**Det Sgt Shute**: How do you want this case management/other court attendance notice presented?

**THE CHAIR**: If you could post a sample to the secretary of the committee, we can consider it as an exhibit. That's quite appropriate. I thank the three of you for making your time available. It has been most helpful and useful in terms of the progress of our inquiry.

**The committee adjourned at 2.33 pm.**