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, 29 AUGUST 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).

WITNESSES

HOLDER, MS ROBYN, Coordinator, Victims of Crime **99**

NICHOLAS, MR ROD, Director, Performance Audits and Corporate Services ACT Auditor-General's Office **107**

PHAM, MS TU, Auditor-General **107**

SMITH, MR GRAHAM, Senior Manager, Performance Audits, ACT Auditor-General's Office **107**

The committee met at 2.06 pm.

HOLDER, MS ROBYN, Coordinator, Victims of Crime

THE CHAIR: We will commence proceedings. Before we resume the public hearing for the inquiry into Auditor-General's report No 4 of 2005, I welcome Ms Robyn Holder, Victims of Crime Coordinator. I will read this information for your benefit.

The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings. Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege in respect of submissions made to the committee in evidence given before it. Parliamentary privilege means special rights and immunities attached to parliament, its members and others, necessary to the discharge of functions of the Assembly without obstruction and without fear of prosecution.

While the committee prefers to hear all evidence in public, if the committee accedes to such a request, the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly. I should add that any decision regarding publication of in camera evidence or confidential submissions will not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing. I hope that is all as clear as daylight to you. It is important that you understand your rights and obligations.

As you know, we are conducting an inquiry into courts administration. We appreciate your attendance here today. We have apologies from Ms MacDonald, another committee member, but I am joined by my deputy chair, Dr Foskey. As is customary in these proceedings, if you would like to make a short statement outlining matters that you feel are appropriate for the committee, we invite you to do so now. We will look to possibly raising some questions at the end of that. If you would like to proceed and say a few words, we would be pleased to hear your thoughts on this inquiry.

Ms Holder: Thank you very much, Mr Mulcahy. Thank you for the opportunity to appear before the committee. By way of introductory remarks, I would reflect that the auditor was rightly focusing on issues relating to the efficiency of the courts administration. It touched on how aspects of courts administration affected key stakeholders. In my submission following the auditor's report I highlighted that victims of crime were a key constituency of courts and, through them, the ACT community.

The efficiency of the system in relation to timeliness and outcomes has a material impact on people who are victims of crime. Some of the more substantive issues I raised in my submission related to the quality of justice as it is dispensed, and the fact that these are issues the committee might like to consider, and in particular that the whole notion of delivering justice is not just a matter of how quickly matters are processed but the manner in which they are processed, the manner in which people are treated and so forth.

When the auditor's staff came to my office to interview us for their report, one of the questions I put to them—presuming that they were also residents of the ACT—was that, if they were the victim of a burglary or an assault in the ACT, what expectations they might have as victims of crime in the way in which the system might respond to them. Their comments were certainly along the lines that they would expect to be informed about the progress of investigations in the case, to receive information, to receive support to participate, and to receive the opportunity to be involved in the particular case at court. I had to say, upon their reflections as residents of the ACT, that all those expectations would be largely unlikely to be met.

The introductory comments in my submission and to you today are primarily about that issue—that we get the justice system we pay for. If your main focus is about efficiency and timeliness, then you have a reasonable system that processes sausages pretty well in the ACT. However, if you step back from that and think about how that is embedded in how people think about justice per se, then you would have to look very hard at what is happening.

Our experience is that citizens have a reasonable expectation that justice will provide them with information and opportunities to participate. That is not routinely provided. As a consequence, again most of the surveys and research available show that whilst, in general terms, people would have a reasonable level of confidence and satisfaction in the justice system, following their participation in the justice system, that satisfaction plummets.

THE CHAIR: Could you elaborate on that a little?

Ms Holder: Basically it means that if you, as a citizen, consider in an objective sense the justice system we have, you might say, "It's pretty good. When you call the police they come. When you want to lodge something at court you can. It is open." But once you are involved in the process, you become less confident because your experience is much more personal, and it is more realistic. You have an actual experience, as opposed to a perceived expectation. Does that make sense?

THE CHAIR: Not really. Well, it makes sense but you have not identified why that changes.

Ms Holder: Because you do not get service. As a victim of crime you do not get information routinely in a timely manner. You do not get information and support about how you can participate and what your rights and responsibilities are as a victim in the process. You do not get support to enable you to participate.

It is a bit like going into the hospital system for an emergency operation and you do not get anaesthetics, you do not get somebody coming around to you—a nurse, for example—with information and so forth. You are just processed in. Indeed you might not even receive any information. Our office receives a reasonably high number of referrals where people say, "We called police to"—say—"a household burglary 12 months ago. We don't know what is happening." Upon inquiry from us, we find that the whole thing has been processed and finalised and is over and done.

THE CHAIR: So you are not just dealing with matters that end up in the court, you are

actually dealing with victims of crime in the broader sense, even if there are no proceedings instituted.

Ms Holder: Our business is primarily about victims in the administration of justice. That is my statutory role. But the proportion of people who report incidents formally to the police is variable. It depends on the nature of the offence. For example, 50, 60 or 70 per cent of property offence matters might be reported; interpersonal violence and sexual assaults, 10 to 15 per cent. About 20 per cent of family violence gets reported.

There is a great variation in the reporting rates, but generally the process is what we call attrition. You might have this proportion of incidents that occur in the community. About 50 per cent less get reported, then about another 50 per cent get into the justice system and so on, filtering right down to around one or two per cent that might finalise in an actual conviction at court.

THE CHAIR: My question is that you are dealing with the broader range, not just those that end in court proceedings.

Ms Holder: Primarily we deal with people where matters have been reported to police. They may or may not enter the court system. As you know, that is a similar process. But certainly we provide information and assistance. My role primarily has a complaints management function, in that we receive complaints from victims about their treatment in the administration of justice. Secondly, one of my functions is to provide information and assistance to enable victims to participate. That is our core function.

To move on, the two key points I wanted to emphasise in my submission were about the nature of client service within the court system, and that for victims of crime it can mean a range of different things like information, signage, security and areas where they might sit privately and comfortably while waiting for their business. That is reasonably normal, to a degree. But then there are additional things—which, again, you would not necessarily think of as luxuries in a system—about the provision of information, primarily, and the means whereby people can participate in their case at court.

The second aspect I wanted to focus on was the nature of case management within the court system. Why this is important for victims is that people experience that system as being a very confusing one. To the normal citizen's mind, there are a lot of adjournments and changes. They can experience the system as being very unpredictable. The idea of due process and natural justice also has meaning for victims, as it does for defendants, in being able to anticipate that the process they are engaging with is consistent, predictable and reliable, and they know what is going to happen.

There are cases we are engaged with where this is, unfortunately, not the case. There may be very good legal reasons why matters are adjourned, but victims experience it very much as if the whole system basically runs for the benefit of the defendant—for the defendant to get their evidence, for the defendant to be able to get counselling or this, that or the other thing. There is very little to nothing by way of expectation about how victims' interests are incorporated. Victims also experience significant delays in processes. We are involved in a matter, for example, that first entered the Magistrate's Court in December 2003 and it is still before the Supreme Court, with no prospect of even a trial date.

THE CHAIR: Could you characterise the type of offence without getting—

Ms Holder: Sexual offences. That is still before the court, so I cannot comment on it. That gives you an example that, for that victim and for the defendant, their life is on hold and has been on hold for three years. Certainly for the person we have contact with, every time the matter is listed before the court she has to prepare herself. It has negative impacts for her when the preparation is there but the operation, as it were, is not going to proceed yet again.

DR FOSKEY: How many times has it been listed?

Ms Holder: I will refer to my notes. It was committed before the Supreme Court in July 2004, with 10 listings so far.

DR FOSKEY: Ten listings?

Ms Holder: My list stops in March this year. There have been further directions since then. The victim is not always involved in each of those specific instances. Nonetheless, particularly in terms of such a serious matter, a person is rightly informed and gets themselves prepared.

THE CHAIR: A lot of stress, I would imagine.

Ms Holder: A huge amount of stress. I mention the issues around case management because my submission suggested to this committee that, whilst there have been a number of benefits accrued to the court system through the case management processes that have been employed in an administrative sense, in my view those benefits are starting to drift away. We need to secure that requirement for predictability and transparency of process so citizens know what they are getting into. And there is a degree of accountability for the process that the case management system be legislated.

Secondly, the auditor made mention of there being—I think these were her words—too many lists in the court system. I wanted to particularly draw your attention to where there were very great efficiency and effectiveness reasons for a degree of specialisation in the list. I gave the example of the family violence specialised list. That provides efficiency, in that over two-thirds of matters are finalised in the Magistrate's Court in under 24 weeks.

THE CHAIR: So you are not so critical of the way in which they progress their work.

Ms Holder: What I wanted to outline for the committee in relation to this issue about what is the quality of justice is that there are ways of managing both quality and efficiency in the way in which the auditor is after, and that this partially relates to the nature of the matters and an understanding that the court is part of a system, so that each bit of the production line, as it were, connects—in the family violence list—around this offence category.

We then have better prepared witnesses, far and away from any of the other offence areas. We have a specialised prosecution team that is expert in prosecuting this type of

offence. It was really to draw to your attention that it is not just a simple matter of consolidating lists. Indeed, I would urge the committee not to consider that a simple solution in its findings. But there are huge amounts of benefit to specialisation, where you can combine quality outcomes as well as efficiency outcomes.

THE CHAIR: I would like you to wrap up soon as we are running out of time and we would like to get some questions in. We have a detailed submission from you.

Ms Holder: Those were the key things that I wanted to say verbally.

THE CHAIR: I will start with a few questions. I am sure that Dr Foskey will have some. In section 3.3 of your submission you list several issues that were identified as part of a client service strategy and were considered to be in the interests of crime victims. Some of these issues related to security, the transparency of processes and court support. Which of these issues do you believe would be the easiest to remedy from an administration and cost perspective and which ones would be the most difficult?

Ms Holder: As you will note, that client service strategy and the surveys that were done were of quite a few years ago now. At a minimum level, the committee might want to access the web-based information from the court. It is not user friendly at all. Certainly, there is absolutely minimal information and minimal practical information for people who are victims and the various processes that might flow from there. As a cost-efficient and simple way of improving public access to information about court processes and what supports are not there and what the processes mean, that would be a reasonably simple step.

THE CHAIR: Maybe I can make it easier. If you had to rank things in order of importance, could you give me the ones that you would rank the highest and why you think that?

Ms Holder: Rather than that one, my comments starting from paragraph 3.1.1 relating to my statutory function, which is to provide the means whereby victims can engage with the justice system. We have worked over the years with all the agencies in the administration of justice to enable them, through policies, procedures and a range of different means, to improve their responses to victims of crime; that is, to improve the kind of decentralisation, if you like, of service responses. That is the primary strategy that I have employed since the Victims of Crime Act came into play in 1994, but I would say now that the ACT is well behind advances in this area and that a greater degree of efficiency and certainly consistency in the delivery of service and information to enable victims to participate would improve our capacity as a centralised service within the administration of justice to do our job.

THE CHAIR: I take you to your recommendations 3.9 and 3.13. You seem to be emphasising there the significance of providing clear and simple processes and information to victims of crime. Could you provide the committee with more detail on how the improvement of such information and processes that you are suggesting would actually improve the administration of courts as a whole in the ACT, which is our central objective?

Ms Holder: The victim is absolutely central to the prosecution case. If you do not have a

victim, you have a case that collapses at court. If you do not have a victim who knows that their case is appearing or you have one who might be fearful of appearing or who has not been prepared by the prosecution or our office in order to enable them to participate, the case will discontinue. You will have vacated court time. You will have witnesses who will have been scheduled to appear and who do not appear simply because the central player in the case has not received information, has not received support and is not present.

THE CHAIR: Do you see that level of knowledge and preparedness as critical to ensuring the smooth conduct of cases and the efficient administration of courts?

Ms Holder: Absolutely. I draw your attention to a reference in the report about the United Kingdom initiative—no witness, no justice.

THE CHAIR: Can you take me to that reference?

Ms Holder: The footnote on page 6. The Home Office has invested a significant amount in examining core problems about the administration of justice in the UK, in particular of trials not proceeding, and it analysed the core reasons why trials were not proceeding. You have your magistrate or judge in situ and you might even have a jury empanelled, everybody there, and one of the most significant reasons was the absence of the victim/witness, so the trial collapsed.

THE CHAIR: That makes sense. I will hand over to Dr Foskey.

DR FOSKEY: Am I to take it that you have been the Victims of Crime Coordinator since 1994?

Ms Holder: Since 1996.

DR FOSKEY: So you have had a pretty good overview. Have you seen the new procedures, the new court rules?

Ms Holder: I am aware of them but I have not looked at them in any detail.

DR FOSKEY: I was going to ask you whether you were involved in or consulted on the creation of those rules?

Ms Holder: No, I was not involved or consulted.

DR FOSKEY: I am very interested in the processes for you to get your point of view across; that is, how, as an advocate for victims of crime, you manage to get those considered in matters related to court administration.

Ms Holder: One of my statutory functions is to advise the Attorney-General of the day. I use those means to draw issues to his attention. I also have an investigative power and if I receive individual complaints or become aware of a class of complaints I can make investigations and report those findings to the attorney. Those are two key ways, but also through processes like this and also administrative reviews of varying descriptions.

THE CHAIR: You may say that it is not appropriate, but is there any mechanism whereby you can periodically express a view to the magistracy or the judiciary collectively, not in terms of the specifics of cases but on processes in these issues, or is that not available to you? Is the appropriate channel through the Attorney-General?

Ms Holder: Both the Chief Magistrate and the Chief Justice have been very gracious in hearing me out on certain matters.

THE CHAIR: So that does happen. Good.

DR FOSKEY: You say that they have been very gracious. I would have thought that your point of view would have been sought and I would have hoped that there would be a process by which you could participate.

Ms Holder: I think that the example that you gave about the new court rules is symptomatic of how the administration of justice sees the victims of crime, that they are an irrelevance at best and a problem at worst.

DR FOSKEY: A complication.

Ms Holder: Exactly, a complication, and that their main business is, as I used the analogy before, processing the sausages, not about the quality of justice.

DR FOSKEY: That is a strong one.

THE CHAIR: Do you feel that JACS should get a better handle on those issues? Is that what you are suggesting? I do not want to put words into your mouth.

Ms Holder: In terms of community expectation, it is broader than just administration and government. It is what expectation the community has of its justice system. I would imagine that if you asked any neighbour who had been a victim of a household burglary or if you had teenage children who had been the victim of an assault in Civic, they would tell you of their experience with the justice system and it would not be happy—as victims, that is.

THE CHAIR: I am trying to work out where you identify the problem as occurring primarily.

Ms Holder: First of all, conceptual in that the victim is a key client of the justice system. For the last 200 years, I guess, in the changes that have been made to the Westminster system of justice, you have the prosecution representing the community at large and traditionally they have not seen that role as necessarily representing, in addition, the interests of the victim. So there is that very significant conceptual and legal framework around that person. Secondly, as I said, there is another idea that if you involve victims in a dignified, respectful manner, that necessarily has process efficiencies because people will feel that it is right to cooperate with the justice system. They will choose to report incidents to the police as citizens. They will want to perform as prosecution witnesses because they know that they will be supported in the execution of that duty. But they are not.

THE CHAIR: In section 4.6 on page 7 of your submission you list a series of innovations in participatory justice that you feel should be considered for adoption in the ACT. Such innovations include conferencing, centralised victim advocacy and extending specialised jurisdictions. Where and to what degree have these innovations been applied in other jurisdictions? Have they all been applied in concert or have they been selectively introduced according to the specific needs of each jurisdiction?

Ms Holder: Just go on to point (e) on page 8. Some jurisdictions—for example, New South Wales and, I think, Victoria—have legislated for their case management systems. The ACT, rightly I guess, attempted to implement its case management in an administrative manner. That has worked fine for a number of years but, as I said, I think that the benefits are starting to disappear and that we could benefit from legislation.

THE CHAIR: Would you be able to hold up a model in another jurisdiction that you say would be the best—not perfect, I realise—example we should aim for?

Ms Holder: No, I could not say with any degree of certainty what is the best system. The practice directions that we have are reasonable. The question is about the degree to which they are consistently applied. They could benefit from the security of legislation around those practice directions.

THE CHAIR: Thank you very much for your attendance today. I know that you are busy and I appreciate your taking the time out. I feel sure that my colleagues and I will find value in your evidence.

Ms Holder: Thank you for your time.

PHAM, MS TU, Auditor-General
NICHOLAS, MR ROD, Director, Performance Audits and Corporate Services ACT Auditor-General's Office
SMITH, MR GRAHAM, Senior Manager, Performance Audits, ACT Auditor-General's Office

THE CHAIR: The committee has a new form of advice for witnesses, which I will now read to you. The committee has authorised the recording, broadcasting and rebroadcasting of these proceedings in accordance with the rules contained in the resolution agreed by the Assembly on 7 March 2002 concerning the broadcasting of Assembly and committee proceedings.

Before the committee commences taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee in evidence given before it. Parliamentary privilege means special rights and immunities attach to parliament, its members and others, necessary to the discharge of functions of the Assembly without obstruction and without fear of prosecution.

Whilst the committee prefers to hear all evidence in public, if the committee accedes to such a request, the committee will take evidence in camera and record that evidence. Should the committee take evidence in this manner, I remind the committee and those present that it is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly. I should add that any decision regarding publication of in camera evidence or confidential submissions will not be taken by the committee without prior reference to the person whose evidence the committee may consider publishing.

I note that this afternoon we have before us Ms Tu Pham, the Auditor-General, Mr Rod Nicholas, director of performance audits and corporate services, and Mr Graham Smith, senior manager of performance audits. The nature of this public hearing is an inquiry into Auditor-General's report No 4 of 2005, relating to court administration. Auditor-General, as is customary, I invite you and your colleagues to present oral evidence in relation to this inquiry and progress to date. We will probably ask a few questions of you at the end of what you say to us. Please follow the usual process of giving your name and title for the *Hansard* record.

Ms Pham: My name is Tu Pham. I am the Auditor-General. First of all, I would like to put on record my appreciation of the assistance of the Chief Magistrate and the Chief Justice in helping us with the audit. It was a very complex audit and certainly a difficult one for us, given that we were not familiar with the particular issues. Great assistance from the Chief Magistrate and court officials made the audit very smooth indeed. So we thank him and them for their assistance.

THE CHAIR: I was under the impression that you would be providing a bit more commentary on where we are to date.

Ms Pham: Certainly. I have been following the public hearings and reading the submissions from various parties. I am very pleased that there has been strong support for most of the recommendations. Even though the people who have appeared before the committee offered their views from different perspectives, many agreed that there are a

number of areas that need to be improved for a more effective and efficient court system. We have certainly followed the action which has been taken so far by the courts and also by the department and we are pleased that there have been many positive steps to address a number of the recommendations in the report. We understand that the department has set up a governance committee to improve the level of cooperation and communication between the courts, the department and the Attorney-General.

There is greater transparency in the budget process, because there is a separate output now for court administration, with separate reporting on the number of performance indicators in the budget for this year. We know that the Chief Magistrate has been very active in working on the case management report and the listing review. The department has also started the restructure of the registry to combine and streamline the administrative process for the registry of both the Magistrates Court and the Supreme Court. Overall, I believe that a number of actions have been taken. There has been a very serious and concerted effort from all the parties to move forward with very positive action at the moment.

THE CHAIR: I draw your attention particularly to recommendation 17, which keeps raising its head as an issue. It is one in which I am becoming increasingly interested and I imagine other committee members would be interested as well. I remind those interested in these proceedings today that the recommendation reads:

> … JACS, in conjunction with the Courts, should conduct a fundamental review of the cost basis for Court services to support a decision for appropriate base funding.

The JACS response was:

> Agree in part. The department has commenced a process to review and reengineer the work practices of the courts' registries to achieve greater efficiency and economies of scale. In these circumstances, a baseline funding review for the 2006-07 Budget cycle would be premature. However, such a review would be appropriate once that exercise has been completed. The efficiency of the courts' operations will also be addressed in the proposed inquiry into JACS by the Expenditure Review Committee.

The Chief Magistrate, for his part, supported the recommendation. The tone I get out of that recommendation is that they are sort of saying yes but really saying no, that they are saying, "Let's make it more efficient and worry about this fundamental issue later." The distinct impression, certainly from evidence presented so far, is that there seems to be a quite compelling case for ownership of the budget by the magistracy and the judiciary so that, if they are going to be asked to live within a certain framework, they ought to have some control over the fundamental costings that they are expected to adhere to, rather than just being told that this is the budget. Could you share further thoughts in relation to the evidence that has been presented to date and/or your original discussions that would be of assistance to the committee, because I think that this is one of the most crucial issues that we need to consider?

Ms Pham: Certainly. I believe that it is desirable for certain studies to be done to ensure that the funding is correct for the services provided. A lot of conflict arose in the past because the judiciary did not believe that they had the right budget whereas the department, on the other hand, felt that they had the right budget but overspent it and

hence the courts did not manage the budget properly. The issue is important and, if it is not resolved, the goodwill and cooperation between the department and the judiciary could be compromised and any reform may not progress as well as it should.

If the courts have to be accountable for meeting a budget and delivering the outcomes required of the system, the courts should be assured that the budget given to them is a correct one. I do not think that work has been done by the department or by Treasury in consultation with the courts. I think that that is an important process that they need to go through to put the matter at rest once and for all, and then they can put more effort and attention into reform without having to argue about a budget on a yearly basis.

THE CHAIR: I am not simplifying it unduly, but it seems to me that if you impose a budget on people you can hardly be shocked if they exceed that budget if you have not had a very thorough understanding at the baseline of what it costs to run a particular administration. This committee works with your office on the budget of the Auditor-General. We discuss it with you and we have a detailed understanding. It would be, I would have thought, quite foolish of this committee to be making recommendations to the government in complete isolation of or without too much regard for what the management, effectively, know it costs. I would have thought, similarly with the courts, that it is quite essential that those who at the end of the day have to run the court system have a sense of the accuracy of that budget and can then deal with extraordinary circumstances. Is my thinking reasonable, do you believe, in the circumstances?

Ms Pham: Yes, I would agree with that. I can understand that Treasury and the department would like to ensure that they have some control over the budget. I think that is understandable. But the starting point is subject to debate and question at the moment. Once the base budget has been decided, basically there is an expectation that the courts will live within that budget and deliver the outcomes, like every other agency is required to live within the budget allocated.

Mr Smith: I think there is the potential for misunderstanding here, because some parties might interpret rebaselining the budget as an increase. We do not pretend to say the exact level of funding that is appropriate. That is for government. Our point is more about clarity and keeping within a defined budget and having that budget put fairly and squarely. In the audit report there are a few pages leading up to those recommendations, all the way through chapter 6 really, which point out that it has been messy and that there have been projects come on and projects come off at an estimated cost that has not been the real cost. There have been catch-ups later and adjustments further on and things of that nature which have meant that the whole process has gotten very muddy. From my point of view it is not necessarily more and it is not necessarily less, but, if there is a clarity and a baseline as to what it would cost to run the courts for a particular year, that would be of assistance in forward planning and budgeting.

THE CHAIR: Is one of the problems that the department, and it might even go back to Treasury, struggles with the concept of the separation of powers and, at the same time, having to deal with the reality of living within a defined budget? Do you gain a sense that they are not quite sure how to manage the relationship, given that we need to respect the independence of our courts but at the same time, obviously, you cannot have a blank chequebook? Is that something that you do not think that they have managed to fully get a handle on? What came through in your line of inquiry?

Ms Pham: The evidence available to us during the audit indicated that there was very little communication or consultation between the department and the judiciary. Because of the lack of communication, there are issues which could have been resolved by sitting down and discussing the direction and the shared outcome. They become bigger and bigger issues. I think Treasury or the department worked with a number of other bodies with some independence in their operations, whether it was the DPP, the police or the independent commissions. It is not that they do not know how to handle the difference between budget control and the independence of the body. It is more, I think, the lack of communication and willingness, up to date, to sit down and resolve issues in a more collaborative manner.

Mr Smith: I think that is right. The problems observed at the time of the audit were things like this: the judicial officer might request a line of expenditure. That has to be formally authorised by someone at the official level, such as a courts administrator. They might feel obliged to do so, unless they have actually run out of money. That causes problems. If they accede to all such requests, then of course the budget will be in trouble.

I have been informed more recently that there is better communication. That is where the administrator is caught between the spending requests of the judiciary and the budget constraints of a department. I am now informed—we have no evidence because we are not auditing—that that is now better handled through better communication.

THE CHAIR: I take it from that comment that you have not had any real detailed follow-up since you wrote your report that would colour your thinking.

Mr Smith: Correct—just informal discussions.

THE CHAIR: We were initially given information about lists not being terribly efficient, but we have heard evidence today that the family violence is handled very well. It has become clearer to me, and I am sure to my colleague, that in fact the Magistrates Court in Canberra cannot necessarily be likened to those in other jurisdictions, because there are so many other areas that are managed. So things are not quite as simple as they are sometimes described. Sometimes the delays are not matters of efficiency. There is the reality of dealing with workers compensation matters that are often settled on the steps of the court and so forth.

Ms Pham: We acknowledge that there are variations between jurisdictions. It is not a simple process. You cannot rely on one or two sources of statistics to be able to say that our courts are less or more efficient than others. That is why we do not want people to selectively pick one piece of the report and say, "This is an indication of the lack of efficiency of the court." The report looks at many areas including human resources, IT issues, processes and coordination of services.

There is enough evidence to indicate that there are areas where efficiency can be improved. I think the Chief Magistrate has acknowledged that there are areas where the courts can do better. So there is no question that there are areas of inefficiency, and that is not always the fault of the court. There are ways and means of putting processes in place to improve them. That is the direction of our audit report. It starts at a conversation, so that everyone who plays a part in the system can come forward with suggestions for

improvement. I think that is the good thing about the audit report. We can see that happening throughout the audit process.

We have many parties who play a part in the justice system who come back and say that this is the way to improve it and give better services to victims of crime. The DPP has views and the law society has views. That is good. That is what we should have been doing, but that has not happened at all in the past 20 years.

THE CHAIR: Have your inquiries since your original report given you any confidence that progress has been achieved with some of the human resource issues in the courts? There did not appear to be an enormous amount of progress when the secretary of the department appeared. Have you any updated information in that respect that is identified in your report?

Mr Smith: We have been told about new positions and some restructuring, which seems to be in the right direction. This includes in particular the position, we are told, of registry manager. That would be separating out that administrative task from the quasi-judicial task. That sounds like a good move.

THE CHAIR: That is still to be filled, is it?

Mr Smith: I am sorry. I am working off memory and second-hand knowledge. I believe that one is filled. Then the level below that is to be filled.

DR FOSKEY: Did you observe the allocation to the courts in the budget? Did you have a look at that? Do you feel that that was a step forward, towards providing the resources to implement some of the recommendations made?

Ms Pham: We try not to comment on the budget without knowing whether the budget that is currently allocated is sufficient or not. That is why we think that, without a proper study to assess the level of funding required by the courts, we have no idea whether or not the current budget is sufficient.

What happened with this budget is that there is now a separate output class relating to the courts administration, as compared to it being incorporated within the department's broader output class in the past. So at least there is some degree of transparency in the budget of how much money was provided for court administration, and revenue, expenses and what performance indicators are now included and to be reported against in the budget for following up in the future. That was a positive move that we can identify in the budget for 2006-07, but we cannot tell whether or not the amount of money allocated is sufficient.

DR FOSKEY: In past years, how have you been able to discern what the budget allegation was, if it was not a separate item?

Mr Smith: When it is an output, which is less than an output class, you have a sum of money but it is not broken down in any detail—publicly, that is.

DR FOSKEY: The budget failed to provide much detail anyway.

Ms Pham: For internal reporting we always know how much money is spent on court administration, but it is not at a sufficient level to be reported at the budget level. It did not have a separate output class.

DR FOSKEY: One of the things we have been told is that the new court rules will go, to some extent, to solve some of the problems you have pointed out. Do you have any thoughts on that?

Mr Smith: No. In this whole audit there was a bit of a grey area between administration and judicial responsibilities. I think the court rules are on the other side of that divide, because they really go to what happens in court. We have only looked at them for reference and said, "You have set these rules. What steps have you taken to actually enforce them?" We wanted to stay away from the rules themselves, which are really the business of the courts.

THE CHAIR: Thank you once again for your informative appearance and the benefit of your knowledge. We appreciate that very much. It will all be of considerable assistance in the committee's deliberations.

The committee adjourned at 3.04 pm.