



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**STANDING COMMITTEE ON PUBLIC ACCOUNTS**

**(Reference: 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, 21 MARCH 2007**

**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).

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**The committee met at 2.02 pm.**

**CORBELL, MR SIMON**, Attorney-General

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**THE CHAIR:** I am required to read you this statement. 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.

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 welcome committee members, the minister and officials to our inquiry concerning the Auditor-General's report No 4 of 2005 into courts administration. Minister, before we begin questions from the committee, is there any additional material or information you would like to present to the committee at this stage?

**Mr Corbell:** No, thank you, chair. I am quite happy just to answer any questions that the committee may have.

**THE CHAIR:** Okay. I might take you, first, minister, to a matter that came up in the recommendations from Coroner Doogan in relation to the appropriation of funds to the courts, and the contention of the coroner in that regard. The South Australian model, I think, was cited in her recommendation. Given that governance of the courts is a crucial contributor to the quality of justice in our society—and obviously, by extension, to the health of democracy—for the benefit of the committee could you give us the government's response to Coroner Doogan's recommendation in relation to the funding proposal?

**Mr Corbell:** I do not see how that is directly relevant to the Auditor-General's

inquiry. The Auditor-General did not make any recommendations specifically in that regard.

**THE CHAIR:** But it does relate to the efficiency of the courts and that is what this committee has been looking at, and we have in fact taken evidence in South Australia. So is there a government position on any of that matter of the funding or not?

**Mr Corbell:** Yes, there is, and I am happy to elaborate on that. I just need to stress that it is not a matter that was dealt with explicitly in the Auditor-General's report and, as I understand it, that is your terms of reference. But for the committee's benefit I am happy to elaborate on the government's position on this.

**THE CHAIR:** It is not so much Coroner Doogan's position as the point that has been put forward as a solution to dealing with better—

**Mr Corbell:** In relation to Coroner Doogan's recommendation, the government have said quite clearly in their formal response that we do not see how governance of the courts is in any way relevant to her role in terms of investigating the cause and circumstances surrounding the fires and the deaths involved in those fires. So we have rejected any link between those two matters, and indeed it is not substantiated by any of the evidence put to her during her inquiry.

In terms of the matter of governance generally, all other jurisdictions, with the exception of South Australia and the federal jurisdiction, have funding for the courts managed through their justice departments, and, as the Auditor-General recognises in her own recommendations, the challenge is to ensure that there is accountability for the expenditure of funds while ensuring that the judicial function is not compromised and the independence of the judicial function is not compromised.

The Auditor-General recommended in her report that there were mechanisms to achieve this, particularly through the establishment of a more formal governance model for the courts that provided for greater administrative independence but also ensured ongoing responsibility in terms of public accountability for the expenditure of funds.

The government's response to that has been to establish what we call a courts governance committee; that is, a formal forum convened by me which meets quarterly and which has as its membership the Chief Justice, the Chief Magistrate, the President of the Court of Appeal, the courts administrator, the chief executive of the department and, obviously, me. We meet regularly to discuss issues around the courts' budget and other administrative matters affecting the courts, as well as any policy matters such as law reform and other issues that are of interest to both the executive and the judiciary.

That forum has been established for about 12 months. Since I have been attorney it has met on two or three occasions. I have found it to be a very effective forum and it is a forum whose role is evolving. Our preference is that this is an appropriate way to ensure that the judiciary has input into the administration of the budget and the administration of the courts without impacting on their absolute responsibility and exclusive responsibility in terms of judicial matters and the hearing of matters in their courts.

I think this approach is a sensible one and one that allows for executive oversight of what are essentially financial matters whilst allowing the courts to perform their judicial function in an independent way. That is our preferred policy approach, it is the one we have adopted in response to the Auditor-General's report, and I would only reiterate that it is the model that also operates in every other jurisdiction except South Australia and the federal jurisdiction. So I think it is a model that is well proven and which is working well and effectively.

In relation to the South Australian model, anecdotally my own experience of that and my own impression of that is that, whilst it is the court through the courts authority that has management of its budget, in practice whenever there are any issues around the administration of the courts, it is not the Chief Justice or the head of the courts authority that is answering for that; it is the Attorney-General.

I would argue in terms of political accountability that it weakens it, in that the Attorney-General is still the person who has to answer to the public on the administration of the justice system because judges will not enter into those debates day to day. But the Attorney-General in South Australia has less control over the proper and effective administration of taxpayers' funds in the courts because of the system they have in place in South Australia. I think it confuses the areas of political accountability and responsibility in a way that is quite undesirable. I think that that matter should also be borne in mind when people look at the South Australian model.

**THE CHAIR:** So you don't favour the idea of independent authorities and ministers sort of wearing responsibility but not having control as a general principle?

**Mr Corbell:** You have to look at each on its merits. In this particular case, I have looked at the South Australian experience and read about it. Interestingly, when I was in South Australia last year, at one point I opened up the paper and the paper was having a go at the condition of the court buildings. I actually tore it out and brought it home because I thought it was quite an interesting debate. The court buildings were in a terrible condition. Those court buildings are run by the courts authority but I can tell you who was answering the questions from the media: the Attorney-General. So, on issues around accountability, if you are asking someone to be accountable for the administration of justice they also need to be responsible for and have the ability to ensure that funds allocated for the administration of justice are being spent in the most effective and appropriate way.

**THE CHAIR:** Just taking you up on the courts governance committee, attorney, I think it got under way in December 2005, according to my notes, and you said there have been two meetings since you have been the Attorney-General—

**Mr Corbell:** Two or three; I cannot recall exactly.

**THE CHAIR:** I do not know if any were held before that time. Possibly one of your officials can inform us.

**Mr Corbell:** Yes. Certainly there were meetings held when Mr Stanhope was the Attorney-General.

**THE CHAIR:** Okay. Can you give the committee an idea of progress to date on the development of a governance model for the courts in terms of providing greater administrative independence and better alignment of courts responsibility with public accountability as per the Auditor-General's recommendation?

**Mr Corbell:** Yes. A significant body of work has occurred. I will ask Ms Leon if she can elaborate on that for you.

**Ms Leon:** The key task that the courts governance committee has been undertaking in this respect is the development of a memorandum of understanding between the executive and the judicial heads of jurisdiction to outline in detail where responsibility lies for the various matters of administration that the courts need to be able to deal with effectively. That memorandum of understanding has now been discussed at at least two meetings of the courts governance committee and I think it is safe to say that it is fairly close to conclusion.

It was a matter that has been very supported by both the Chief Justice and the Chief Magistrate in order to bring greater clarity to the areas of administration where there is shared responsibility, and there has been free acknowledgment between me and the heads of jurisdiction that, while there are matters that are clearly my responsibility or clearly the responsibility of the judicial officers, there are a range of matters where it is desirable that we don't proceed in isolation from each other but work collaboratively to ensure that the joint aims of the judiciary and of the executive are met and that there are proper processes in place to establish what each other's views are on these issues.

It is the intention of the courts governance committee that that MOU, when it is finalised, should be made publicly available, and I will be happy to provide it to the committee when that occurs.

**THE CHAIR:** Can you give us a better idea, because when you appeared before you talked then about the project being under way and said that lines of accountability of positions within the administrative and quasi-judicial parts of the court had been better identified. You spoke of rewriting duty statements as to who was accountable for what and to whom and that that project was under way. Can you give us a little better clarification of what your time line is?

**Ms Leon:** I think that aspect on which I gave evidence last time was dealing with a matter that is now complete, which was not the MOU; that was the restructuring of the registry and—

**THE CHAIR:** The administrative and quasi-judicial parts, yes.

**Ms Leon:** That is right, and there is now a completed and agreed map of those accountabilities, which has been agreed to by both the department and the heads of jurisdiction, which clarifies that in relation to certain matters, such as the statutory functions of registrars and the people who perform statutory duties under the registrars, what they are and who they are accountable to for those duties, and the administrative functions being accountable up through the courts administrator.

Aligned with that work, there has been a restructure of the registry, which is the work I referred to about rewriting duty statements and reclassifying positions and so on. That work is now complete and positions in the new structure have either been filled or are in the process of being filled.

**THE CHAIR:** In terms of the development of the governance model, dealing with the earlier question, can you give us an idea of where that MOU is at? Is it about to be signed off or is it still subject to a series of meetings or—

**Ms Leon:** Given the nature of the comments that have so far been raised on both sides, I think I could say that it is likely to be signed off within the next few months. Of course I cannot commit to the views of the judiciary on that at present, but my impression, based on our most recent discussion, which was only a few weeks ago, is that we are all fairly close to agreeing the content of the memorandum of understanding.

**THE CHAIR:** Okay. On a couple of other areas, I will go back to earlier evidence. The committee was told the development of a risk management plan to assist in the identification and amelioration of significant risk was in progress but not in a detailed form. I am just wondering if, for the benefit of the committee, you can provide us with an update on the status of the development of the plan, implementation framework and the number of times the designated vehicle—presumably it is a risk management committee—tasked with overseeing its implementation has got together since March 2006.

**Ms Leon:** I would have to take on notice how many times the various people have met, but the risk management plan for the courts is being progressed as part of the risk management plan for all areas of the department. There is an almost final draft of that plan, which I think is due for sign-off and implementation within the next month. So once it is—

**THE CHAIR:** Close to finalisation?

**Ms Leon:** Very close to finalisation. I think it has been out to business unit heads for final agreement quite recently and will be formally adopted by the department very shortly.

**THE CHAIR:** Okay. You might recall I also raised issues about the courts' computer system being part of the department's network, and I think you said as recently as November 2006 that the "departments notify the courts that delivery of court mail, including mail addressed to judicial officials, will in future be delayed because it will be opened by departmental staff". Is this state of play somewhat contrary to what we might consider as essential for institutional independence?

**Mr Corbell:** It is a reasonable question, Mr Mulcahy. In relation to the mail issue, the arrangements that have been put in place are a temporary arrangement in that the courts themselves do not have the physical facilities to be able to screen mail for security purposes prior to it being distributed to judges, associates and so on. In order to provide that level of physical security and of mail screening, that is being conducted currently in the justice department itself and then arrangements made for

delivery to the court on a regular and frequent basis.

I understand that work is under way to address the physical requirements that the courts need to provide for screening in-house, and as soon as that is done the mailing arrangements will be able to be resumed by the court. The judicial officers have indicated to me at one of our governance committee meetings that they understand the need for this but would like to see it resolved as quickly as possible, and we are in agreement on that matter. I will ask Mr Johnson in a moment if he can give you a bit more of an update about the physical issues there.

In relation to the ICT, the matters there pertain particularly to access to judges' and associates' PCs, and the information they store on their PCs, by officials of InTACT. We have resolved that with a technological fix in terms of being able to put significant limitations on the ability of people outside of the courts to access that information, but again that can be elaborated on by Mr Johnson or Ms Leon, so I might just ask both of them to do that.

**THE CHAIR:** Before you respond, can I add to the matters you might address the celebrated instance of a technician accessing equipment that caused alarm in the mind of one of the members of the judiciary?

**Mr Corbell:** Yes.

**Mr Johnson:** In relation to what we call the encryption project, we have received funding for the specific project of providing security for all information for the judicial officers. Funding was received approximately a month ago. We signed off on that. InTACT is at present working up the project to ensure that the judicial officers can be satisfied with the security in relation to the use of their computer system. That is particular now, because I know some judges use the system from home, so it makes it even more important that they have the proper encryption and security relating to draft judgments and things like that. In relation to the security of personnel, I will be meeting with InTACT on a regular basis and that is one of the issues about the proper criminal screening of all employees through InTACT. I will be ensuring that no person comes into the courts unless they have the appropriate screening.

**THE CHAIR:** Is there not a process now of screening people who are in these roles in the territory?

**Ms Leon:** I can't speak for InTACT's processes in detail, but I think the issues that have arisen with the courts are where InTACT has engaged contractors who are not necessarily subject to the screening checks that apply to permanent employees of the public service.

**THE CHAIR:** Minister, are you able to give us any information on that? Obviously, it is a very serious issue for the courts if you have people for whom it may not be appropriate for them to have access to the computers of the judiciary, but there are many other areas of ACT government where the same issues would arise or similar issues would arise. Has anyone made any inquiries as to what is being done in relation to that across the sector?



**Mr Corbell:** There are already requirements in place for all permanent employees of the ACT government service, so I think it would be fair to anticipate that any issues of previous criminal history or involvement would be identified as part of the normal recruitment process for permanent employees. As Ms Leon says in relation to contractors, that is a somewhat different matter, but as far as the courts are concerned we are taking a series of steps to ensure that the type of incident, which was a one-off, does not occur again and taking those steps in an expeditious way.

**THE CHAIR:** In the 2006-07 budget papers the strategic and operational issues to be pursued include modernising the case management system of ACT courts and tribunals and there were a number of recommendations of the Auditor-General relating to case flow management. In earlier evidence we were told that responses to these were at a fairly developed stage. Can you, attorney, or one of your officials please provide detail of what is planned for modernising the case management system of ACT courts and tribunals?

**Mr Johnson:** The budget allocation was for upgrading what we call the MAX system. I am not sure whether “MAX” is an acronym because I haven’t been able to determine why it was called that. It might have been after somebody’s dog. Previously there had been criticism of the system because it was a very old system, but when it was investigated it was found to be a very robust and sound system and that the information and data that was being put into the system could be used very well in terms of management reporting, statistical reporting and what have you. It was determined that to upgrade MAX was basically to bring it up to modern standards in terms of web enablement and what have you.

The money that we have is for two officers who are undergoing a plan that will go through to June 2008 that will upgrade MAX to be fully web-enabled, to enable the next phase of the IT to enable e-filing, and to allow people to interact with the courts electronically. But the first phase, which goes through to June 2008, is to bring it up to a more modern standard. It is as basic as bringing it to a stage where on your screen you can use the mouse to be able to click down instead of its all being figure-based, I think I would call it. I am not too au fait with the terminology.

**THE CHAIR:** Do you feel that you have made great progress in terms of that exercise?

**Mr Johnson:** I do. I have been in the ACT since the end of November and I have taken this on and they report directly to me on this project on a fortnightly basis. We are at the stage now where the software is being purchased to be able to bring the system to be web-enabled and I was told as late as yesterday that that should occur by the end of May.

**DR FOSKEY:** Greetings, everybody. Just before I start my line of questioning, Mr Corbell, I am interested in your comment that you saw an article in a paper in South Australia and cut it out because there was criticism of the state of the courts in South Australia and the Attorney-General was the one who was being grilled by the media. Was that the content?

**Mr Corbell:** Yes.

**DR FOSKEY:** Would the budget that the courts administration is given be expected to cover replacement and considerable repairs to buildings? Wouldn't there have to be some sort of allowance or a special grant made for that by the government?

**THE CHAIR:** Capital works funding.

**DR FOSKEY:** We visited the courts in South Australia and heard that, like our own magistrates and judges, they saw deficiencies but never got to understand that they were expected to do major works out of that budget.

**Mr Corbell:** I don't know what the details are of their arrangements in terms of capital versus recurrent costs. That is something you would need to ask South Australia. I was simply making the point that it is highly unlikely with a courts administration authority that you would have judicial officers participating in public debate about those sorts of matters, and it will end up being the political voice, the Attorney-General, who will be asked to comment on and address those matters when they are raised in the public arena. Given that that is the case, it is difficult, I think, to ask the Attorney-General to do so when the Attorney-General has no control over the management of taxpayers' funds in terms of the administration of justice.

**DR FOSKEY:** But if those funds aren't actually meant to maintain the building—

**Mr Corbell:** Leaving aside the matter of whether or not they are meant to maintain the building, I think you would be hard-pressed in the South Australian instance and, indeed, in the federal jurisdiction to see heads of jurisdiction engaging in public debate in response to questions about funding from the media. If there have been any questions about the administration of taxpayers' funds in the courts, I cannot think of an instance where the heads of jurisdiction have engaged in that public debate. It is the Attorney-General that is left to engage in that public debate and to answer questions, regardless of whether it is about capital or recurrent costs. That is the point I am seeking to make to you: it is a confusion of the lines of responsibilities to have the Attorney-General politically accountable and responsible for the administration of those funds but not actually able to administer those funds.

**THE CHAIR:** Are you aware that the Chief Justice in South Australia has been very accessible to the media, talkback shows and so on about the way the courts have operated? It has not been a case of simply standing behind the Attorney-General and leaving it to him to do it all. They have had the practice in South Australia of a very open approach to dealing with the courts. It has been what they describe as one of their successes.

**Mr Corbell:** They may do that, but I don't think that is a view commonly held.

**DR FOSKEY:** Obviously, you are privy to information that we are not, but I would still quibble with you that you are going to get less criticism if the courts do their own administration than if a government department specifically does it and I would not see that as a sufficiently valid reason.

**Mr Corbell:** I think the challenge here is for those who advocate a separate courts

administration to detail where the independence of the judiciary is being compromised, because that is essentially what this argument is about. If there is a belief that the judicial arm's independence is being compromised, demonstrate that it is being compromised.

**DR FOSKEY:** I think there have been a number of attempts to do that.

**Mr Corbell:** I have put this question to the judicial officers. They have not said to me that there has been any compromising of their judicial function.

**Ms MacDONALD:** I am not disputing that, attorney, but I would suggest that it is more than just the suggestion of compromising judicial functions, which I do not agree with, and I do not necessarily support the notion that the courts should have their own budget. For a start, I don't think the ACT has the capacity to do it with the size that it has, but I would suggest that there is also an element of desire to have control themselves—accounts figures in many organisations do not like to have to explain themselves to another authority or another line—and that that is part of the reasoning behind why they are arguing for it. Would you agree?

**Mr Corbell:** Sorry, I don't quite follow what you are saying, Ms MacDonald.

**Ms MacDONALD:** It is the desire to have autonomy.

**Ms Leon:** I suppose I can't speak for the heads of jurisdiction as to what particularly motivates them in seeking control of their own budget. I should say in relation to the budget that, of course there is a separate line identified in the budget papers and that budget is administered on behalf of the courts by the department, but it isn't as though the courts have to come to the department every day and ask for money. The courts have a line in the budget. It is allocated to them. It is for their expenses.

The Courts Administrator, while employed by the department, works in the court and meets regularly with the Chief Justice and the Chief Magistrate about any matters of administration that concern the heads of jurisdiction. Were you to ask the Chief Magistrate and the Chief Justice, I believe that they would say that they have extremely good access to the Courts Administrator about any matters of administration where they want to seek information or express a view. So the idea that the budget of the courts is in some way held by the department and meted out at the whim of the department is, I think, an inaccurate portrayal, if it is sometimes put that way.

I should also put some context around this by noting that the qualities that a government seeks when it appoints someone as the head of jurisdiction relate primarily to their judicial abilities and that is, I think, what all members of the Assembly and the community would think ought to be the qualities that we seek for a judge or a magistrate, particularly for the Chief Justice or the Chief Magistrate. Those qualities of legal capacity and judicial approach to the management of cases before them are ones that ought to be the priority and they aren't necessarily the same qualities as one looks for in a manager or an administrator, and that were we to start selecting our judges on the basis of their management ability we would risk diluting what ought to be the priority, which is their judicial capacity. So, for that range of

reasons, I think it is useful to have some context about this issue of administrative independence. I think there is also in the minds of some who argue for this some belief that, were they to have administrative independence, they wouldn't be subject to the unfortunate constraints of having a budget to have to live to.

**DR FOSKEY:** I don't agree with that at all.

**THE CHAIR:** I don't agree either. I haven't heard that view put.

**DR FOSKEY:** If you do think that, it makes me wonder about the depth and extent of conversations you have with the people. That is actually one of my questions, the next one really, in regard to recommendation 1A, establishing a more collaborative relationship between the judiciary and the department. Have efforts been made to do that, what were those efforts and what improvements or changes have been made?

**Mr Corbell:** Extensive efforts have been made in that regard. I refer you again, Dr Foskey, to the establishment of the courts governance committee, which is the peak forum for managing and discussing these matters between the executive, the judiciary and the department as part of the executive. As Ms Leon has indicated, extensive discussion and collaboration occur day to day between the Courts Administrator and the heads of jurisdiction and the other judges and magistrates. So, in terms of day-to-day administration as well as in terms of broader strategic oversight, significant collaboration is already occurring.

Can I just bring you back to your comments in relation to budgets and statutory authorities? The territory's experience with statutory authorities, and one of the issues that we have dealt with in another debate about a previous statutory authority, the ESA, is that there we had a statutory authority that, for each year of its existence, was unable to work within its budget. I think there can be a tendency, certainly my experience as a minister is that there can be a tendency, that, when you are a statutory authority, it is very easy to go to your minister and say, "Minister, if you don't give me the money that I need I can't do my job. I am a statutory authority and I need to do certain things and if you don't give me the money I'll just say that I don't have the money to do the things I want to do." In many respects, the establishment of a statutory authority can be a get out clause from the requirement to otherwise manage your budget responsibly. That is the key issue we are addressing now with the ESA.

**Ms Leon:** I am informed that the Courts Administration Authority in South Australia regularly overruns its budget to the tune of several million and that each year the government simply has to wear that. I understand that at the end of last financial year it was \$2.2 million over.

**DR FOSKEY:** What happens when that happens here?

**Ms Leon:** You might recall that one of the issues that we discussed, I think, when we last dealt with this was the fact that the court had been overrunning its budget. There were some extraordinary expenses that accounted for some of that in relation to matters concerning the coronial and matters concerning David Eastman which were somewhat outside the government's control. But, in relation to the ordinary running of the court, at the time that I came into this position there had been a series of budget

overruns by the court which had had to be covered by the Department of Justice and Community Safety from elsewhere within its budget.

One of my tasks has been to bring down that overspend. In relation to that, of course, I am accountable to the minister and part of my responsibilities is to manage the budget of the department. Therefore, since I took up this position, there has been a concerted effort to identify the causes of budget overspend in the court and bring it down. Last year I think we reduced what was over \$1 million of overspend the previous year to something like \$600,000 and I am anticipating that this year the overspend will come down to very close to budget.

That has been achieved by exercising some careful observation of the operations of the court, restructuring the registry, putting budgets in for discretionary expenditure. I think there is still a way to go and it is a way that we are travelling in negotiation with the heads of jurisdiction in relation to more efficient practices within the court and, in particular, some of the recommendations made by the Auditor-General that go to case management and more effective listing practices, I think, have the capacity to bring down the court budget further. But they are matters that are being worked on collaboratively with the judges. They are matters that are uniquely within the control of the judicial officers as to how they manage cases, and the role of the department is very much to provide support and access to information to assist the judges in developing those more effective uses of judicial time.

**THE CHAIR:** I have a supplementary question on that. If what you say is the case, then I will quote to you the evidence Chief Magistrate Cahill gave to us, which I think was of concern to all members of this committee. I quote:

Our first question would be, as I have put in my submission: what is the budget? We don't know, because it has never been transparent, it has never been identified, it is full of adhocery and, in fact, for a period in the 2000 years, the court was budgeted to run at a deficit of \$1.3 million.

Would you be advising this committee that Chief Magistrate Cahill was now, along with the other head of jurisdiction, a lot happier with the way you are approaching the budget? Can we look with some confidence from what you are reporting to this committee?

**Mr Corbell:** We can confirm that there is a very clear budget for the courts and tribunals.

**THE CHAIR:** That wasn't quite my question, minister.

**Mr Corbell:** The suggestion that there isn't is not correct.

**THE CHAIR:** Is it known clearly to the heads of jurisdiction?

**Ms Leon:** Absolutely.

**THE CHAIR:** Are they comfortable with those arrangements?

**Ms Leon:** The budget for the courts is in the budget papers, so there isn't any secret about it.

**THE CHAIR:** I am not suggesting that the appropriate level of consultation is as they read it in the budget. The impression being created for this committee is that there is now some new found level of dialogue and we are close to an MOU. I think the committee members would like to satisfy themselves that we have moved on some distance from when that evidence was given, which spoke, to me, of some frustration in dealing with your department. Can you give us that level of assurance now?

**Ms Leon:** I can. As I started to say, the budget of the court isn't a secret; so, of course, it is published every year in the budget papers. In addition to that there are monthly reports done of expenditure against the budget, which are provided to the heads of jurisdiction and are the subject of detailed discussion with the Courts Administrator on any issues where the budget seems to be overspending or underspending. In addition to that, and in relation to your more general question about collaboration, I meet every month with both the Chief Justice and the Chief Magistrate, separately, to discuss any issues that are of concern to either of us, and to put in place a follow-up for any of those matters. I suppose I can't put myself in the position of my predecessor and say, "Would the judges now be more satisfied than they were then?" because I would be speculating about whether they were satisfied with the arrangements that were previously in place.

**THE CHAIR:** It is a matter of record what they thought about the previous arrangements.

**Ms Leon:** I would hope that Chief Magistrate Cahill would not now feel he could say that he doesn't know what the budget is. I would think it would be unlikely that he would say that now.

**THE CHAIR:** You talked about going back to them with queries and giving them reports. Do they now have input to the development of the budget that impacts on the courts? Mr Johnson, I assume, works with them on it.

**Mr Johnson:** I discuss the matters of budget with both the Chief Justice and the Chief Magistrate. It is now time that we will start discussions in terms of our 2007-08 budget.

**THE CHAIR:** Will they have input to the framing of that?

**Mr Johnson:** They will definitely. My job is to ensure that both heads of jurisdiction are aware of what is put up as a budget bid, and I will be asking them and we'll be working together to determine what they want in the budget as well. There will be then further discussions as to what the final figure will be, because once we have determined—I say "we" from the court's point of view—what we see the position will be, I will then take it to the department and have discussions with the department in terms of what the overall budget for JACS is, and what we can see to either improve our budget position or whether I and the court are able to influence the department in increasing the budget for any particular reason.

**Mr Corbell:** Of course, parallel to that is the opportunity for the Chief Justice and the Chief Magistrate to raise matters directly with me, which they do do through the courts governance committee, and that provides them with the opportunity to raise directly with me any resourcing issues which they feel are of particular concern and which they feel I need to be aware of directly.

**DR FOSKEY:** Turning to recommendation 17, for which the government's response is on page 14, has a decision been made on baseline funding for the court budget?

**Ms Leon:** The budget of the court is as it is in the budget papers. When I gave evidence last time I probably would have said—if I didn't, I will say it now—that the question of what base funding is needed for an organisation very much depends on how that organisation is structured and how efficiently it manages its work, and that there is a certain fallacy in taking an existing organisation with existing practices, whether they are examined as to whether they are efficient practices or not, and calculating from a zero base what it would cost to continue to run the organisation in that way. That assumes that the organisation is already running in the best possible way and therefore that is what we ought to fund.

As I have discussed with the heads of jurisdiction and as I alluded to here a little earlier, there is, I think, room for improvement in the way the courts here run and we can see that in some matters. If we simply look—although they are only a crude measure, they are nevertheless informative—at the cost per case of matters in the ACT compared to other jurisdictions, we see that at least in the Magistrates Court we are running at a relatively high cost per case. That would suggest, and my own observation of the case management practices in the court would suggest, that there is room for improvement about how effectively we use the resources of the court, and so that work, I think, needs to be allowed to go a little further along before we are in a position to assess whether the court's funding is at the appropriate level for the discharge of its functions.

I should say in that respect that the Magistrates Court has been particularly active recently in this regard. Magistrate Burns has been designated as the listing magistrate. He is developing a proposal and discussing it with stakeholders for more effective listing practices. These are practices that both the court and the department expect will conduce to greater efficiency in the use of the court's time by having cases ready to be heard when they are listed to be heard, so that we do not have the unfortunate occurrence of many cases coming up for hearing and then falling over on the day, and the time of the court being wasted. These will also, I think, be more conducive to effective use of the users of the court's time, none of whom want to turn up and then find that the other side isn't ready and they have wasted their time off work getting there. I think it is in the interests of the justice system generally that these kinds of reforms be pursued, and I think that they will conduce to more effective use of the time of the court and therefore put us in a better position to assess whether the courts are appropriately funded for the exercise of their functions.

**DR FOSKEY:** I am sure that you will understand that we are really pleased to hear that attention is being given to the listing, because that was something that took up a lot of the time on some of the other witnesses. I just want to complete that question about the baseline funding. You have talked about internal issues that will define what

it might be, but you also mentioned higher cost in the ACT per case than in other jurisdictions. I am just wondering what you are going to index against, whether it will be CPI, comparable jurisdictions, other ACT agencies or whatever.

**Ms Leon:** Do you mean if we were to undertake a review of base funding?

**DR FOSKEY:** Here you do say that it is agreed in part. The last budget kept referring us to the fact that we were benchmarking ourselves against other more low jurisdictions. I just wondered how this one—

**Ms Leon:** Well, the ROGS data is a good starting point each year by which we assess how we are going on various measures against other states, and of course we tend to look primarily at the smaller jurisdictions because we recognise that larger jurisdictions have the benefit of economies of scale that a small jurisdiction does not necessarily have. So that is certainly one index—

**DR FOSKEY:** What did you call it—ROGS data?

**Ms Leon:** ROGS, the report on government services, that the Productivity Commission undertakes every year. I do not have that report with me but I am happy to provide you with a link to it if you would like to look at it. The benchmarking data in that report is very useful to states and territories to assess how our performance is on a range of factors, and so that is one of the matters we take into account. I think also that we look at just internal benchmarking. We can look each year at how many cases we have handled, what the time is between initiation and finalisation and how many appearances people have to make before a case is resolved. These are all matters that we would look to be seeing continuous improvement in because then we would know that we are using the time efficiently and not wasting it.

To give you a small example, a matter comes up that is listed for several days of hearing in a court and then on the day the parties are not ready and one party seeks a further adjournment because a certain matter has arisen and they have not dealt with it. The magistrate who was listed to hear that then is not doing anything for the next couple of days. They might be able to assist with some of the running lists, but by and large another magistrate will already be rostered to sit on those lists, and so that time of the magistrate is not being as well utilised as it could be. In addition, the courtroom will have been booked for that matter, the transcript time will have been booked for that matter—all those fixed costs are being paid for, and yet the space isn't being used and the hearing time isn't being used.

While one can never entirely avoid matters not being ready to proceed or folding at the door of the court, because there are often tactical advantages for defendants or for parties to take that course, one can reduce those to a significant extent by active case management. The experience in other jurisdictions that have undertaken a more active approach to case management is that they produce much more effective use of the court time and of judicial time, that they reduce the number of reappearances for litigants and reduce the time taken from initiation to finalisation, which I think is in the interests of all the parties. So that is the kind of work that we are undertaking here and that I hope will bear considerable fruit for the courts.



**DR FOSKEY:** That is one on which I am sure you can all collaborate with the same ends. I really am interested in how you can be developing a collaborative relationship with parties, having that as a main objective, while your aim is to reduce court expenditure. One of the parties has more ability to determine what the budget will be than the other. How do you then work within what is a fairly unequal power balance, given that money is power in these situations, and still manage to have a collaborative relationship?

**Mr Corbell:** I do not think your critique is entirely right, and the reason I say that, Dr Foskey, is that it will always be the executive that agrees to the budget. Unless the judiciary create some form of being able to appropriate money for themselves, money has got to come from the executive and be approved by the Assembly.

**DR FOSKEY:** They could get sponsorship—

**Mr Corbell:** Okay, aside from more radical solutions such as those. That is where public moneys come from; there is no other forum for that to be done. So it will always be the case that it is the executive, through the Assembly, determining the level of appropriation for the courts. So the issues are not so much about who divvies up the money but about how collaborative is the relationship in determining what is the amount of resources needed and in terms of ensuring that that money is spent in the most effective and the most efficient manner. So it is not the power relationship that is of primary concern here, certainly from my perspective.

**THE CHAIR:** Just taking you to a budget matter, minister, recommendation 16 proposed that JACS should establish the LC and T unit as a separate output class, which has happened for the current fiscal year. The committee is interested in whether the establishment of the separate output class has given rise to any improvements in the blurring of resource allocation that has occurred between JACS and the courts.

**Ms Leon:** I do not think there is any blurring of resource allocation between JACS and the courts. There is not any secret about the courts budget, there is not any practice by which I vanish money out of the courts and spend it on something else. There is not any blurring about what the courts budget is. There is not a secret about it. It does not change from week to week during the year. The courts have their budget allocated at the beginning of the year in a process that the courts administrator has discussed, which is that budget initiatives are developed by the court and are put up to the department and then to the minister for consideration and considered through the budget process. To the extent that those bids are successful the money is then appropriated to the court. So it does not pass through some mechanism whereby the department takes it away and spends it on something else. If the courts are successful in a budget initiative, the money goes to the court for the purpose for which it was appropriated.

**THE CHAIR:** So you are contending there are no shared resources for the courts?

**Ms Leon:** There are shared resources.

**THE CHAIR:** So that's where the blurring, I guess, is always an issue.

**Ms Leon:** I am not aware that it is at all blurry. The department provides the normal corporate support of human resources, financial reporting and so on to the court, but there is not anything blurry about that. There is a specific amount of resource that supports the services that the department provides.

**DR FOSKEY:** Just in relation to blurring, I am interested in the position of courts administrator. Mr Johnson, welcome to the position and to the territory. One of the key findings that the Auditor-General made, on page 18, is the lack of clarity around the accountability of that position. In what way has Mr Johnson's position, job description or whatever overcome those issues? Does the administrator still have accountabilities to the Attorney-General, to JACS and to the Chief Justice, and to the Chief Magistrate and perhaps others?

**Mr Johnson:** I am an employee of the Department of Justice and Community Safety but my role is a dual role. I have that responsibility, but I also have a responsibility to the Chief Justice and to the Chief Magistrate to provide the infrastructure and the support for them to be able to carry out their function. I am the liaison, if you like, between the department and the judiciary in that role.

As I see it, I have to be employed by somebody and I am employed by the Department of Justice and Community Safety. But my main role is to provide the support and infrastructure to the courts or to the heads of jurisdiction to be able to carry out their function. If that means my developing initiatives with the judiciary, I then have to, as I said earlier on and as Ms Leon said earlier on, go through the normal budgetary process to see whether we are successful. I see my role as having to be able to express what is required by the court but also to provide the evidence that backs up that initiative. I think that goes back to some of the matters that we have been talking about on how we fund the courts. We have to come up with the model, if you like, on how we fund the courts, and it is a very difficult proposition.

I come from Western Australia and the same problems exist there in determining this. I know that Western Australia are doing quite a bit of work about how you model courts and how you base funding around that model. So I am very interested to see what the outcome of that modelling exercise is. That has taken some 18 months to two years. It is a very difficult exercise; in relation to administration it is not so much, because it is all activity based, but then you have to take into account the judicial time and how you model judicial time and what the judiciary do, and that is not an easy exercise because there are so many variables.

**Ms Leon:** You might recall a little earlier in my evidence today also that I indicated that there was an organisational chart that had been developed which clarified all of the lines of accountability and responsibility. That matter of clarifying the responsibility of the courts administrator was covered in that exercise so that it is clear on what matters the courts administrator is accountable to me, and up through me to the attorney, and on what matters there is a liaison and partnership role in relation to the heads of jurisdiction.

**THE CHAIR:** When was that completed?

**DR FOSKEY:** Do we have a copy of that?

**Ms Leon:** Yes. I am happy to provide a copy of that to the committee.

**DR FOSKEY:** It would be very good.

**Ms Leon:** That was completed at least six months ago. I could not give you the date off the top of my head but I am happy to provide you with a copy of that.

**DR FOSKEY:** And do you find, Mr Johnson, that you have insights that you can offer us from your experience in Western Australia and that those are listened to with interest?

**Mr Johnson:** The issues that I am finding here are really no different from what the issues are in Western Australia. Courts are courts are courts, basically, and—

**DR FOSKEY:** They've all got lawyers in them.

**Mr Johnson:** But the issues are the same. I held the position of director of magistrates courts in Western Australia and the same issues arose there on how we can better provide the service to the public in a more efficient and effective way that gets matters disposed of as quickly as you possibly can. There are various methods to do that. The methods that we used in Western Australia are no different from here.

We have a very good stakeholder forum in Western Australia. You use collaborative efforts. I had a very good working relationship with the Chief Magistrate—the same as I have here with the Chief Magistrate and the Chief Justice. To try and find the answers to all the problems we just have to work on them in terms of what the problems are in the particular area. Ms Leon picked up on a matter that Magistrate Burns is working on, and that is the one area that I can see here where most gains can be made.

**THE CHAIR:** I will just take you to the human resource side. The Auditor-General's report identified poor human resource management, including insufficient staff, a high level of temporary and acting positions, and duty statements that do not correspond to actual duties. JACS agreed to implement the Auditor-General's recommendations on human resources, including hiring permanent staff for areas of genuine need and not hiring staff for positions not justified.

When we previously asked if there had been any improvement in the number of people acting in higher positions beyond their level of experience, the then acting courts administrator said:

We haven't achieved it yet, but certainly for the last two months there has been significant attention to that area. There has been some improvement, but we're not where we need to be yet. I would say it's going to be another six months for that to be in place.

Now, some 12 months later, is it reasonable to conclude that there has been measurable improvement? If so, could you elaborate on it?

**Mr Johnson:** Yes, there has been measurable improvement in that area, even in the time that I have been here; the work started before I got here. We now have one registry, if you like, and we have a registry manager. All the reorganisation of the registry has taken place. All the advertisements and recruitment have taken place for the unit managers, the supervisors and the ASO3 officers. At present we are interviewing or ready to finalise the ASO2 recruitment, and that will bring us to a stage where all positions have been advertised and filled. I am confident that by the end of April or to the middle of May all vacant positions should be filled.

**Ms Leon:** I might also add that in the context of restructuring the registry we identified that the reason for many of these acting, vacancies and so on was that the registry was structured in too rigid a way, so that if a position was vacant in one area there was no multitasking across the registry that would enable people to move across the silos, as it were, to simply fill the position at an equivalent level. We have restructured the registry so that that is now much more streamlined. All the positions have been assessed against the standard competencies of the ACT public sector so that they are all now scaled at the right level. There are positions that are treated as pool positions that can move across different aspects of the courts' work so that, if a position is vacant because someone is on maternity leave or on higher duties in another agency or so on, there is an internal process that enables us to share the work amongst people of similar levels.

**THE CHAIR:** From my memory I think they had something very similar in place in the South Australian registry in terms of silos and movement of people, which had been working successfully. Do you know how many are in acting positions these days or could you ballpark guess that figure?

**Mr Johnson:** I would have to take that on notice, Mr Mulcahy. You're always going to have acting on higher duties when you have a large number of people, because you've got leave, you've got sickness and things like that. But we are hoping—and I was talking to the registry manager about this yesterday—that in July we will have everyone in their substantive position, because we have had no leave applications for July and we are not going to approve any more. So we can finally see all substantive positions filled, which will give us the base to work from in the new financial year.

**THE CHAIR:** We will look forward to hearing just what those figures are, but if you could give us that compared to 12 months ago that would be helpful.

**Mr Johnson:** I will certainly try. One comment I would like to make is that one of the pleasing things that I have seen since I have been here is the vim, if you like, with which the unit managers and managers have taken on the reorganisation of the registry. We have now formed what we call a leadership team and we make all decisions through that leadership team. You can see that the morale, even in the five months that I have been here, is gradually improving. I think that in another 12 months you will see a very different organisation.

**THE CHAIR:** Better morale, you feel?

**Mr Johnson:** Yes.

**THE CHAIR:** One of the things the Auditor-General highlighted was the lack of training and qualifications. Can you give us an idea of how you're tackling that issue?

**Mr Johnson:** I understood that prior to this financial year there was very little or no budget allocation as such for training and development of the administration staff. One of the major gains in the 2006-07 budget is that \$100,000 has been allocated to training for administrative staff, and that has really gone down very well. We have a very good program in place to determine what is required. Because of the new reorganisation we have spent a lot of time in the supervision area so that people have got the appropriate training in the supervision area, the teambuilding areas. In terms of the day-to-day operations, we have used internal resources to train, particularly for the new court rules that were implemented on 1 January, and there will be a refresher of that in April.

One of my main aims is to make sure that we spend every cent of that \$100,000, because one of the aims that we have got in the department and one that I very much agree with is to invest time and money in our people. That is one of the major aims that we have and we will achieve within the court. There has been some criticism—I have heard it from stakeholders when talking to them—about the experience that we have lost through the people that have left. We have now got the structure in place that I think will be able to cater for the proper succession planning that is required. We now have unit managers. We have supervisors. We do not have that large gap between an officer and their supervisor. There is a proper structure in place so—

**THE CHAIR:** How are you going to achieve these reduced outlays or get rid of these deficits that Ms Leon has told us today will be achieved? What has got to go? What are you going to chop as part of this process?

**Mr Johnson:** It is a matter of looking at our processes—one of the things we have explained and I do not think I need to go over that. There is one area within the courts where we have a number of bad debts, and I will be following those up. That is in the transcripts area where transcripts have been ordered. There is a process where people pay only a small deposit for a transcript when they order it. Transcripts are very expensive and I am looking at the process at the moment. This has not been decided yet but I am looking at if someone orders a transcript they pay a far larger deposit so that we do not have then the problem of following up the bad debt at a later stage. That is just one small area. My job is to—

**THE CHAIR:** That is a revenue issue. But what are you going to cut?

**Ms Leon:** There are no plans to cut the staff of the courts, if that is where your line of questioning is leading.

**THE CHAIR:** I am just curious to know how you are going to get this deficit down.

**Ms Leon:** For example, one of the areas where we are overspent is in the area of transcripts, so there is the issue about recovering payment for them. One's budget is constructed on the assumption that when parties order a transcript they will pay for it. So, if they don't, we end up paying for it, so then our expenditure goes over.

**THE CHAIR:** What are you out of pocket there, typically?

**Ms Leon:** The other aspect of transcripts is the one that I alluded to before, which is that the contract for transcript provides for certain amounts of block time, which we pay for whether we use it or not. So, if a matter does not proceed, the transcribers are sitting there being paid for the time and not being used. We then have to pay for their time again to actually hear the matter, to actually transcribe the matter that ought to have been being transcribed on the day that it did not go ahead. Better management of listing will enable us to bring down our costs.

I should say that at the moment we are not over budget for this year. In a budget of something like \$18 million it is not possible to predict with certainty this many months out from the end of the financial year exactly where it will come in, but I am not anticipating that it will be far off the mark. If it is, it is not impossible within a budget of that size to trim one's sails a little to adjust for matters of a few hundred thousand dollars. They do come down to pretty small administrative decisions.

For example, we are in negotiation with the law society about the ways in which the profession ought to contribute to its usage of the library. At the moment we maintain a significant number of subscriptions and holdings in the library which are not used at all by the court, only by the profession. The profession agree in principle that they ought to therefore contribute to those, because it would be very undesirable for the profession if every firm had to maintain its own extensive library of subscriptions to the matters that we hold in the court library. The amounts that we are talking about are in the scale of a few hundred thousand dollars and they do not require substantial changes to administration to achieve them.

**THE CHAIR:** Right. How much is your shortfall on transcription through the non-collection of debt? Do you know that?

**Mr Johnson:** For non-payment, about \$100,000.

**DR FOSKEY:** Could you outline the nature of the performance review process that you are proposing for the Supreme Court registrar?

**Ms Leon:** The Supreme Court registrar has a dual set of roles. The same, of course, applies to the Magistrates Court registrar. But the Supreme Court registrar has a series of statutory functions and functions conferred under the rules that are quasi-judicial functions—matters like default hearings and directions hearings and so on. In relation to those matters, the registrar is entirely accountable to the Chief Justice.

The registrar also is employed as a public servant and is responsible in that capacity for fulfilling what are known as the executive capabilities, and they are matters of demonstrating management acumen, strategic vision, building and maintaining relationships with stakeholders and such matters. In relation to those issues, the registrar is accountable to me, as all the executives in the department are. So the nature of the performance review that would have occurred would have been that, in relation to those matters that are accountable to me, there would have been a performance review about how the registrar was performing on those issues. I made it clear to the former registrar, both orally and in writing, that no aspect of the

performance review would go to the hearing of or the outcomes in any of the matters which she conducted in the course of her quasi-judicial and statutory functions.

**DR FOSKEY:** I understand then that you are suggesting that, while the Chief Justice may have been happy with her performance, that was not the area that the review was conducted on?

**Mr Corbell:** Well, there was no review conducted, Dr Foskey, because—

**DR FOSKEY:** No, but there was a review—

**Mr Corbell:** the registrar declined the offer of employment.

**DR FOSKEY:** being prepared.

**Ms Leon:** No, the registrar was offered a contract of employment, subject to performance review, and the registrar declined that offer, so no review occurred. I should say that matters between the former registrar and the department have a certain staff-in-confidence nature to them, so I don't really want to go down the track of exploring whether the Chief Justice or the department were or weren't happy with the performance of the former registrar. I think those matters are matters that ought to have a certain privacy attached to them, given that they deal with a particular person's employment.

**DR FOSKEY:** Nonetheless, we have been talking up till now about the reorganisation of the registry and how that reorganisation would impact on the position that existed. Was that seen as though it was going to radically alter it?

**Ms Leon:** No. The issue that the Auditor-General referred to in the report is that in relation to some senior positions, including those of the courts administrator and of the two registrars, there was a lack of clarity about who they were accountable to for what responsibilities, and so what we did when we restructured the registry and clarified the accountabilities was to make it clear that on matters of judicial or quasi-judicial supervision the sole responsibility and accountability of the registrars is to the head of jurisdiction, and that on matters of administration the accountability is to the chief executive. That was clarified in that process of delineating the accountabilities and responsibilities of the various positions.

That, I think, clarified what probably ought always to have been the position but which had, I gather from the Auditor-General's report, suffered a deal of blurriness in the past, and so the role of registrar is clarified as being one that, in respect of the quasi-judicial and statutory functions, the department has no role to review performance or direct performance in any way because in those matters the registrar is performing a quasi-judicial role and the registrar's independence in the performance of that role must be, and is, fully respected by the department.

**DR FOSKEY:** Is it the registrar himself that makes that judgment?

**Ms Leon:** No, the matters in relation to which the registrar is performing quasi-judicial or statutory functions are those that are set out in the rules of the court.

**DR FOSKEY:** Is the new registrar subject to quarterly reviews?

**Ms Leon:** There isn't a new registrar yet. There is a recruitment process on foot.

**DR FOSKEY:** Will they be?

**Ms Leon:** That will depend on the person who is appointed, I would think.

**THE CHAIR:** Will the person being appointed decide whether they are subject to performance review?

**Ms Leon:** No, I mean it would depend on whether there were any performance issues that needed to be addressed. There is a recruitment process in place but it has not proceeded to the point where there is a successful candidate yet, so I can't even speculate about who that might be.

**DR FOSKEY:** But that would be in the job description.

**THE CHAIR:** Are you are saying that whether there is a performance review will depend on who is appointed? Is that what you are saying?

**Ms Leon:** Every executive is subject to performance review. The question of whether a person was in need of more regular performance reviews in any executive position would depend on whether there were issues about performance that the person needed an opportunity to address.

**DR FOSKEY:** Are you able to provide the committee with the performance agreement documents?

**Ms Leon:** There never was a performance arrangement put in place of the sort that I proposed to the former registrar, because the former registrar did not take up the offer of employment. I am happy to provide you with a standard executive performance agreement, which will give you an indication of the executive capabilities and what is expected, and they are the executive capabilities that any person in a senior position is expected to demonstrate.

**DR FOSKEY:** Given that here we have a case where there was an officer that had two reporting roles, do you think, if you could look at it objectively, rather than putting on the blinkers which go with the idea that courts administration will always be part of JACS, that it might be better if the court administered its own judicial officers, looking at arguments both ways instead of just the arguments against that?

**Mr Corbell:** I can assure you, Dr Foskey, that these matters were dealt with in close consultation with the Chief Justice. Ms Leon has indicated to me that the Chief Justice participated in the selection process, all information was made available to the Chief Justice and he participated in the interview process. That is a strong indication of the collaborative approach that is adopted in relation to these matters. Where I have a concern about where this debate goes is that it would appear that there is a view that a senior management position—and that, in part, is what the registrar's job is—should



not be subject to the same level of scrutiny and oversight in terms of performance as any other senior executive position in the ACT public service.

**THE CHAIR:** That wasn't a view I heard you expound, was it?

**DR FOSKEY:** No. I would like to see more than that, too.

**Mr Corbell:** I am not suggesting that you are saying that, but that has been the tenor of some of the comments that have been made around the situation with the previous registrar declining the offer of further employment, and I just reject those. This is a senior management position that has significant administrative and management responsibilities, aside from the quasi-judicial functions that are also exercised by the role, and it is entirely reasonable for the government, through the department, to require officers in those positions to be accountable for their performance around key competencies, and that is what is being said. It is in no way an attempt to constrain the quasi-judicial decision-making functions of the registrar in that role. That has been made clear from day one. Nor has there been any suggestion that such a process has inhibited the registrar's functions to date.

**Ms Leon:** I might add, Dr Foskey, since you referred to this dual responsibility and the desirability of ensuring that is reflected in the arrangements, that I made it clear in relation to any performance review of the registrar that I would, of course, consult with the Chief Justice in undertaking such a review, because the Chief Justice works closely with the registrar every day and is in a very good position to comment upon the registrar's performance of the whole range of duties. So it certainly isn't an activity that would be undertaken in isolation from the judicial side of the court.

**DR FOSKEY:** I turn to recommendation 21 and your response on page 15. Has the judiciary been consulted on this issue of simplifying forms and reducing their number? Has that proceeded and what has been the outcome? How is it progressing?

**Ms Leon:** In large part, this was dealt with by the process of harmonising the court procedure rules, a project that was undertaken very much under the control of the judiciary, with the involvement of the department. So it was really more a question of the court running that process, with the support of administrative resources both within the court and within the policy area of the department.

The rules were introduced in the Supreme Court on 1 July last year and in the Magistrates Court on 1 January. There will be a process of internal review of how those rules are going and whether there is room for further simplification, but that largely dealt with that issue of the rules and the associated forms. There is some follow-up work to do on that which is referred to in the Auditor-General's report, which is now to flow that through into procedures and manuals for staff, and that is work that is in progress and will be developed, I would think, over probably the next six to 12 months.

**DR FOSKEY:** In each case, your response on those matters says, "Subject to resources." Does that mean that the resources are available?

**Ms Leon:** This is one of the issues that I wanted to return to about your line of

questioning a little earlier that queried whether there really was a commonality of interest between the judicial side and the administrative side if one side was seeking to reduce the expenditure of the other. I did want the opportunity to clarify that I don't think there is any desire to reduce the court's budget in this exercise. It is about ensuring that the budget is able to be deployed to the places where it is most needed.

If, for instance, we are able to find ways of eliminating inefficiencies in one area, it frees up resources to be spent on matters that either the department or the court, or both, are very keen to increase expenditure on. We are always engaged in a process of looking at how we can best utilise the resources within the court, and that issue about resources is one that we will look at in developing the budget for the court for next year within its overall envelope about whether, if we spend less on some activities, we can put more effort into procedures and manuals, which I think we would all agree are very much needed.

I can simply make that, or the Courts Administrator can simply make that, a higher priority duty for some of the existing staff of the court than their duties currently have it as. So when we say "subject to resources" it doesn't mean subject to getting new resources from somewhere else; it means subject to identifying which resource within the existing budget can be applied to that project.

**DR FOSKEY:** Do the magistrates, the judges and other officers place the same importance on the development of these manuals?

**Ms Leon:** I think I can confidently say that the magistrates are very keen to see that process improved, because whenever it is not working well—and there probably have been a few instances where the wrong form has been used or the wrong procedure has been followed—it ends up in court one day with the magistrates, to the great inconvenience of them and whoever is before them. So the magistrates are very much on board with the desirability of improving the training of staff and the manuals that back up what goes on in the court. After all, the whole purpose and function of the staff of the court is to support the judicial activities of the judges and magistrates, so it is very much in the interests of the judges and magistrates that they are appropriately skilled and appropriately supported.

**THE CHAIR:** Certainly, from the evidence we have heard, there will be great pleasure in hearing that your plans aren't to reduce the budget, but to make it work better. You have identified a \$100,000 shortfall in transcription, but you said you were about \$600,00 in deficit last year. So one can assume that you are expecting people to live better within the budgets, but there won't be an approach of cutbacks, by the sound of it, anyway.

**Ms Leon:** At the moment we are tracking pretty close to budget for this year.

**DR FOSKEY:** It is no secret that there has been some argy-bargy between JACS and the DPP—I mean separately but with more shared concerns—and court administration and the judiciary.

**MS MacDONALD:** Dr Foskey, I think the argy-bargy was actually between the DPP and the courts, not with justice and community safety.

**DR FOSKEY:** Publicly, there has been open disagreement between the DPP and court administration, but, less publicly, court administration's desire perhaps for more independence. It is different, I think, to JACS, representing, as a department, the government's approach. Have I said that more satisfactorily?

**MS MacDONALD:** The DPP had an issue with the courts.

**THE CHAIR:** There are two different levels with the DPP. They raised the issue of the courts, but they also raised the issue of the poor level of funding for the positions of people in that office compared to other jurisdictions, and they had people operating in some instances, I think they indicated, at about—

**Mr Corbell:** That was a matter which the government addressed in the last budget, where we provided a significant level of funding, an additional half a million dollars per annum.

**THE CHAIR:** Has that solved the classification issue?

**Mr Corbell:** That money was provided to the DPP to deploy as he saw fit to improve his capacity to attract and retain staff. As to the exact details of his decision, I think he focused on improving remuneration at the higher levels of staff, prosecutorial staff, to retain those staff.

**THE CHAIR:** That was the problem, I think. There were people on \$70,000, and equivalents were earning twice as much in Sydney, apparently.

**Ms Leon:** I am afraid there are issues in the prosecution field, as there are in a number of other fields across the country, where there are just shortages of people, and where there are demand-side issues you get supply-side issues.

**MS MacDONALD:** Ms Leon, are you suggesting that there are not enough lawyers in the country?

**Mr Corbell:** Not enough lawyers prepared to be prosecutors.

**Ms Leon:** There are not enough lawyers who have either the desire or the skills to do prosecution work. It may well be that the public sector work will never be able to compete with the level of remuneration that the private sector offers, but we in the public sector hope that the satisfaction of the nature of the work that we do will be adequate compensation for the remuneration.

**MS MacDONALD:** I'm sorry; that was a cheap shot on my part.

**THE CHAIR:** If your equivalent position in the public sector is double the price then you have got no hope, I suggest.

**DR FOSKEY:** Thank you for correcting whatever it was I was saying, but there is still a point which I think is valid and which I will go on to try to make.

**Mr Corbell:** What is your question, Dr Foskey?

**DR FOSKEY:** As you can see, Mr Corbell, I have difficulty framing questions around legal issues; it's not my language.

**Mr Corbell:** Don't worry; so do I.

**DR FOSKEY:** Which doesn't mean that I don't have all respect for lawyers and their work, but there is an issue out there. For instance, the DPP complained publicly of perceived bias against his officers. Have there been attempts to identify, either by JACS or the DPP, which you probably can't speak for, what it is or what it has been that has generated the bias and that ill-feeling amongst court officials?

**THE CHAIR:** Perception of bias?

**DR FOSKEY:** Yes, perception of bias—well, an ill-feeling, anyway.

**Mr Corbell:** I don't think it's appropriate for me to comment on the views of other parties. They can express those views as they see fit.

**DR FOSKEY:** They do, but not in a helpful way, perhaps.

**Mr Corbell:** The DPP is an independent statutory officer. He operates at arms length from government and the views he has are his views. He has expressed some views and he has justified his position and explained his position when he has been asked to do so. My view is that our courts operate in a professional and impartial manner, and I have no reason to believe that there is any bias in that regard. If there are allegations of bias, they can be dealt with through the judicial process.

**DR FOSKEY:** But isn't there some sort of conflict resolution role for the government?

**Mr Corbell:** No, there isn't. The very nature of the justice system is that it is adversarial. Therefore, there will be competing interests that have to be mediated and arbitrated by a judicial officer. There will be circumstances in which one party or another is unhappy with an outcome, but that is the nature of the justice system. It has not been raised with me by the DPP or anybody else that steps need to be taken to address issues of concern to them in this regard.

My position is that our courts do a professional and impartial job in upholding justice in the community and in determining the outcome of disputes within our community, as well as determining where offences have occurred against the laws of the community and what sanctions should be imposed in that regard. But it is, I think, quite normal for there to be a bit of argy-bargy between the different players in the process. That doesn't mean, though, that there is something fundamentally wrong with the justice system. In fact, it probably suggests that it is a pretty healthy and robust system.

**DR FOSKEY:** Recommendation 24 is that the unit should implement measures to address staff concerns, including performance management and staff training and

development. You have talked about training, Mr Johnson. What other measures have been implemented to address staff concerns?

**Mr Johnson:** In particular in relation to performance management, the department has a plan in place to implement what I prefer to call a performance development system for staff, and that, I think, is due to be completed in September. We are part of JACS in that regard. That will only complement the structure that we now have in place. Because we have the proper management and supervision in place, the performance management will only complement the money that we receive for training because we will be able to identify individual needs and, more importantly, be able to analyse what the collective needs are in terms of our training and development.

**DR FOSKEY:** Is that in the case of your discussions with staff or asking staff to fill in questionnaires, or how are you gathering this information?

**Ms Leon:** The process of developing the performance management system is one that is being developed within the human resources area of the department, but it will be undertaken in consultation with line managers to make sure that certain objectives are met. Those objectives, in the broad, are that the process be fairly simple, not unduly complex and bureaucratic; that the process be one that enables staff and their managers to have a clear, shared understanding of what is expected of both of them in the relationship; and that the process be one that enables a full and frank exchange of views about whether the person is performing well or otherwise and what training or development the person might need to enable them to perform as effectively as possible in the role. That is the overall objective of the scheme.

I should say that there is a range of performance management arrangements already in place in different parts of the department, so it is not as though we are starting from a blank sheet. It is just that there hasn't been a recent review of those arrangements and a consistent approach taken to ensuring that the processes meet the criteria I have outlined.

**DR FOSKEY:** The final question from me is about the location of the corrective services liaison staff. Has a decision been made about that?

**Ms Leon:** Yes. That position was reinstated in the court.

**Ms Child:** The corrective services officer position was re-established by corrective services at least six months ago, maybe longer. However, the court liaison officer within corrective services is a position that is funded and owned by corrective services. It is part of their establishment.

**THE CHAIR:** Has that reappointment been well received?

**Ms Child:** It has been well received. The corrective services officer is certainly utilised. However, the return of an officer to the courts is between the hours of nine and one, which is when the courts are most busy and when the officer will be required, for example, to do assessments or assist with bail and that sort of thing. In the afternoons, it didn't appear that there was such a need for the liaison officer to be

located at the court because it was mainly in the morning when the courts were running that the officer was dealing with offenders. From my understanding of the position, the corrective services officer now goes back to the corrective services head office and does all the data entry and allocation of offenders to officers from their office.

**Ms Leon:** And in relation to how well that has been received, I think I can convey fairly accurately that the Chief Magistrate was very happy.

**THE CHAIR:** That certainly came up in evidence we took previously. Thank you, attorney and officers, for your attendance today. We will now adjourn for a five-minute break and go into a private hearing after that.

**The committee adjourned at 3.40 pm.**