LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: Auditor-General's report No 4 of 2005: *Courts administration)*

Members:

DR D FOSKEY (The Chair)
MS K MacDONALD (The Deputy Chair)
MR B SMYTH

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 12 MARCH 2008

Secretary to the committee:
Mr H Finlay (Ph: 6205 0136)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

The committee met at 2.04 pm.

CAHILL, MR RON, Chief Magistrate, ACT Magistrates Court

THE CHAIR: Thank you very much for appearing before us, Magistrate Cahill. Before we start, I will read to you a somewhat abbreviated procedural card. There is a copy in front of you.

Mr Cahill: Yes, I have read it before.

THE CHAIR: Have you read the privilege card?

Mr Cahill: Yes, I have.

THE CHAIR: Do you understand the privilege implications?

Mr Cahill: Yes, I do.

THE CHAIR: I move:

> That the statement on the privilege card be incorporated in *Hansard*.

That is accepted.

The statement read as follows—

Privilege statement

To be read at the commencement of a hearing and reiterated as necessary for new witnesses

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 also have a few housekeeping matters which I need everyone in the room to observe:

- all mobile phones are to be switched off or put in silent mode;
- witnesses need to speak directly into the microphones for Hansard to be able to hear and transcribe them accurately;
- only one person is to speak at a time; and
- when witnesses come to the table they each need to state their name and the capacity in which they appear.

Amended 14 March 2008

THE CHAIR: Thank you very much for coming back. This will complete the hearings that we are conducting into Auditor-General's report No 4 on courts administration. It has been a while—

Mr Cahill: It has been a useful process, though.

THE CHAIR: Yes. It just seemed that we could not complete it. We have had JACS back, and the minister, and it is important that we have you back.

Mr Cahill: The secretary was kind enough to send me a copy of that, and a copy of what I said last time, which I had misplaced.

THE CHAIR: We have all been studying it, Ron, and it will be put in front of you.

Mr Cahill: Now you can cross-examine me!

THE CHAIR: You will be asked about the veracity of your statements that day. I certainly have quite a large number of questions. You might be able to short-circuit the process by making a statement.

Mr Cahill: I stick by what I said last time. Of course, a lot of water has flowed under the bridge. The process by the Auditor-General was a very good one. I was very happy. They came out with 24 recommendations, all of which I had no difficulty with, and we have moved towards resolving them.

Starting at the top, with respect to the question of court governance, I should not speak for the Chief Justice, but whilst we might not have achieved what I think is the appropriate balance, nevertheless considerable steps have been taken. We now have a memorandum of understanding which formally sets out the relationship. The devil is going to be in the detail, because that memorandum of understanding states matters of principle. I do not know whether JACS mentioned it to you; I think it may be something you should have a look at.

THE CHAIR: We have a copy of that.

Mr Cahill: The devil in the detail will be the service-level agreements—they are still working on them—and some of the allocation of responsibilities there. But that is the sort of framework that we needed. Of course, I would still argue that a court's authority is the appropriate way, but that is a very positive improvement. We still

struggle a little bit on the basis of resource allocation. I can assure you that the attorney, the department and I have had long conversations about that.

Since I last appeared before you, we have lost Magistrate Somes, and Phil Thompson, who was a long-serving registrar and had done a lot of our coronial work, retired. At the moment, there has been no replacement. That is in negotiation.

When you go through the process of trying to work out a good test regarding how many replacements you should have, it would be very useful to have a formula. You might remember that previously I traced the history very briefly of what you might call ad hockery—where the court started off and with things added over the last decade or two. That has now become a bit more complicated. I am not at liberty to say—and, frankly, I do not know—precisely what proposal the government will put forward for the tribunalisation process that has been mentioned. There have been rumours around this place, and I have certainly had discussions about it. Should that go ahead, that has been put forward legitimately as a reason for delaying any replacement. Michael Somes retired on 31 July last year. We are labouring with that, and we still have the tribunal work. Until that goes, it cannot be done.

I suggest going back to my original proposal—that, to defeat the ad hockery, we really needed to have a genuine, nuts and bolts examination of the resources required. In other words, we need to see what services the government and the community would wish us to perform, and then marry that up with a proper and detailed analysis of what resources, staff et cetera are required. That would include magisterial resources as well.

Assuming that the tribunalisation process goes forward—and that is a matter for government to make a decision about and introduce to the Assembly—it might still be timely, in my view, to look at what remains as a responsibility of the court, whether it be coroners, small claims or whatever remains and however it is done, and have a genuine resource examination independently, rather than trying to look at adjustments for policies and changes. That position has not changed, but perhaps the situation has changed.

One of the useful things we could do—and I am not saying that JACS and other people are not in favour of it—is to work out a reasonable formula for judicial and other resources. How do we measure it? We have the Productivity Commission figures. I have always been very concerned about those, because they talk about quantitative figures. I have always said that we need to have a qualitative analysis. When it comes down to that, computerisation, which is one of the issues that the Auditor-General raised, has been fraught with difficulty—not through anyone's fault.

As a matter of history, some years ago, the government moved to join in with New South Wales in a very sophisticated computerisation project that New South Wales had spent tens of millions on. It involved a company called Coram, who were from Western Australia, I believe. That company went belly-up. As a result, we know that New South Wales lost a lot of money, and I know that we lost a bit. Fortunately, we had not gone very far with our investment.

Since then, in my view, we have been pinch-hitting, trying to build up our MAX

system, but MAX is 15 to 20 years old. I would hope that a resource allocation in that area, and a plan to have appropriate IT for case management and performance measurement, would be a very big advantage. Then, when we come to these arguments about what staff you need, how many magistrates you should have and how you should make changes, you would have the answer.

Unfortunately, we have had another change. Our Courts Administrator, Michael Johnson, who I think appeared before you previously, has now gone back to Western Australia. He is a Western Australian through and through. I do not know whether it was the West Coast Eagles that attracted him back. He had an offer to go back to the department where he had worked, in a higher position, and we lost him. Helen Child, a local person who you might remember as a senior officer in Corrections, has taken over. Helen is doing a sterling job. We meet regularly. In fact, I will be meeting with her this afternoon. We meet regularly, and I meet regularly with Renee Leon.

One of the issues I have been trying to get across with the department is not to govern what their policy is—that is not the court's role—but at least to know where they are moving and making sure that they are fully informed. I do not think I am breaching any confidences by saying there has been mention of looking at the coronial system. I know that is something you have been interested in, Madam Chair; we have had talks about that. This is to make sure that, when they are looking at the coronial system, the people preparing discussion papers are quite aware of what is happening at the moment. The coronial system is very complex and it transverses police, medicos, courts—all that sort of thing. That is an example of how, if we can have discussions and be informed about what the policy is, without governing it, and make informed comment at an early stage, it is a help.

I am pleased to say we have now started to meet regularly with policy people in the department and we are having discussions in a fairly open way about what might be proposed and what our views are, before you even get to the options or a discussion paper. I think that is a very pleasing situation. I think things are on the up-and-up, but, like everyone, we all struggle for resources. A lot of initiatives, unfortunately, require resource application. The court, like everyone else, is competing for scarce resources in lots of areas.

That is my opening statement. I am quite happy that things are happening. They are probably not happening fast enough. I disagree with the structure and the separation of powers argument, but I appreciate that my view does not necessarily prevail. I would certainly still like to see a High Court, Federal Court, Family Court or South Australian model. I think that is probably the best way to run it, but people have different views about that. That is all I wanted to say now. If you have a number of questions, that will probably resurrect some of the things I perhaps should have said.

THE CHAIR: Yes; we will see. In fact, my questions are based on having heard the evidence given by the Attorney-General, the JACS people, you and Mr Jorgensen.

Mr Cahill: And John Burns, I think.

THE CHAIR: Yes.

Mr Cahill: That is another thing that is happening. We have a specific designation of Children's Court magistrate, and that has just been renewed for Peter Dingwall for another year. There are a lot of changes going on in the children and young persons area, and I also want to see mental health—

MS MacDONALD: Yes, we have seen the bill.

Mr Cahill: That was one area where we had trouble with some of the time limits they were originally looking at, but I think that has all been worked out now. We particularly want to look at investigating the possibility—and everything involves resources, as you know—of bringing in the circle court for Aboriginal youth, because it could be even more useful there than it is for adults. John Burns is also designated as the listing magistrate, so he is dealing on a day-to-day basis with listing. I might say something a bit later about the problems of a small court. Everyone says: "Let's have a specialist family violence court. Let's have a specialist this, let's have a specialist that." If you have only a limited number of magistrates, you always have the issue of who does the rest of the work. That is a challenge that we have been struggling with for a long time.

THE CHAIR: You talked a bit about resource provision, and it is fairly clear that you still feel it is needed. What about your comment last time that budgeting is ad hoc? Has there been an improvement in the transparency of the budget process?

Mr Cahill: I believe there has. The budget is still predominantly determined by the department, under the system we have. I get regular budget updates. I think that comment probably hit pay dirt. You are not always happy with the budget results you get, and I know as well as you do that the budget process involves priorities. I am much happier with that now. I do get regular reports. One of the issues is that, whilst we have a joint court administration, both the Chief Justice and I are careful to make sure that moneys allocated for our distinct purposes as magistrates courts and tribunals are kept separate. I think we are getting much more line-by-line accountability now.

THE CHAIR: Are you consulted in the pre-budget phase?

Mr Cahill: Yes. I meet with the Courts Administrator once a week and she does keep me informed. She also keeps me informed about the budget bids. For example, there has been publicity about a sexual assault court approach. That is in the present budget bids. Yes, I am consulted. I think that was a very good development from the public accounts inquiry.

THE CHAIR: You talked about the Courts Administrator position last time, and you have mentioned it again. I got the sense last time that you were not certain of the value of the position. Have you got any updated thoughts on that?

Mr Cahill: Government have decided that there is going to be one courts administration for two courts. They are two different entities. The Supreme Court is a far different entity from what my court is. The Supreme Court has a very distinct jurisdiction, large cases, fewer numbers, fewer staff et cetera. It is a difficult position,

but whilst you have a departmental-structured model, that is fine. If you had the model that I suggest, that person would be CEO of the authority but responsible to the Assembly. It is something that, under the present model, cannot be rejected.

I am very happy with our present Courts Administrator. She has qualified in law; she has not had the time to practise yet. She comes from the very difficult area of Corrections, which is good, because she has a great knowledge of the public service and is very much a person who consults stakeholders. We have moved along that path.

If you are going to change the concept of the courts administrator, the Courts Administrator represents the transition between the judiciary, the court staff, the court administration and the department. You would have a different structure and a different entity if you were to have the court authority or the court commission model. I think it is a very difficult job. On the one hand, that person has to satisfy their own staff and they have to satisfy two judicial officers and their colleagues. On the other hand they have to be satisfactory to the heavies in JACS. Often there will be conflicting views about lots of things and it is a very difficult tightrope that they walk.

THE CHAIR: There was talk of concern about duty statements or lack of clarity in the roles of different players. I guess that was right from JACS through to positions in the court. I think we were told by Ms Leon that duty statements were being presented. Have you seen those?

Mr Cahill: I think that is a work in progress. We had a review at about the time we are looking at, and we have gone to very generic statements. I still have a problem about how you have generic duty statements, if you have worked in the public service, for very complex and difficult specialties. That is particularly in relation to, say, the tribunals that we may or may not lose.

For example, if you are dealing with mental health, there are very specific requirements—very specific skills and very specific qualities required to deal with the clientele. If you are in a general counter position, you must have a more general role. If you are in accounts, you have a more general role. I think that is a moving feast. It is a conflict between specialisation and multiskilling. In a small operation, that is difficult.

The roles that I was concerned about involved where it fits in, the relationship between the Chief Magistrate, Chief Justice, Courts Administrator, Attorney-General and department. The MOU to some extent has resolved that, although it is a work in progress. A lot of these service-level agreements that are mentioned have not yet been worked on and it is a long-term project. I think that need has probably decreased a little bit, although we still have the problem that I mentioned of trying to cover a lot of bases and a lot of specialisations.

THE CHAIR: One of the things that Ms Leon said was that there was a process of what she called "pooling" taking place. I can find the reference for you.

Mr Cahill: Yes; I know what you mean. I know that reference. Of course, that is all right—

THE CHAIR: Has that improved? It sounded as though that was really to overcome the idea of not being able to find people for temporarily vacant positions.

Mr Cahill: I think pooling works well lower down. For those of us that work in the public service, pooling works fairly well at a lower level. As you get to middle management and higher management, you need much more refined and specialised skills. In a small place, career development, along with specialisation and expertise, is a constant challenge. Pooling works better at a lower level than a higher level.

The real problem is that, for example, for a person to get a great knowledge of how they would run a coronial system, it would take them a while to get used to it. As with every organisation, it is a living organism and we have to keep operating in the meantime. With the small numbers that we have, it is difficult. So pooling is one idea but multiskilling takes time. It is a challenge. I do not profess to know what the answer is but it is something that we have to be aware of.

MS MacDONALD: I was going to ask whether you had ideas about other ways of doing it. It is a challenge within the ACT generally as a jurisdiction. We all know the challenges faced within the ACT.

Mr Cahill: Yes. For example, at the senior level, we have a whole stack of tribunals or other things. We might have a civil section, a criminal section et cetera. With tribunals, we do not know what is going to happen there, but let us take those as an example. It would probably take someone 12 months to settle down in that position, and you do lose people.

One problem with the ACT public service is that they can be lost to the commonwealth. They say, "Gee, I went to the commonwealth department, doing a similar job at a higher level and getting more money." We lose a lot of people. We cannot beat that, but we can try and get people in a position, give them 12 months and give them fixed appointments and rotations. That is what we are trying to do. That is not easy to get.

MS MacDONALD: But there are surely advantages, though. I am trying to frame this as a question rather than making a statement. Surely, there are advantages with a small jurisdiction. I have heard people within ACT government departments say they like working within an ACT government department as opposed—

Mr Cahill: I am not knocking that.

MS MacDONALD: to the commonwealth because you get to—

Mr Cahill: With the people we have lost, it is not necessarily that they do not like working here; it is just that other economic issues take place. We lost a good staff member last week. She was sad to go but she wanted to advance herself. I agree with you, and I am not criticising the ACT. That is a problem with a small jurisdiction. Probably a lot of our problems are with respect to that. But I guess it takes a while to get people across the jobs. Whilst we have a structure of managers at the micro level doing the actual work, they have to know what they are doing. They have to know the stakeholders. They have to know the clients. They have to know the details. It takes

time to get that, and I think people become entrenched.

The people at the court, surprisingly enough, never want to leave, but for their career they probably should. Within the court, it is the same thing. Helen and I have had this discussion. We have to have succession plans. In other words, we have to say, "Well, X is now head of Mental Health or X is head of Coroner's but we want to revolve." I think that is what the Auditor-General was getting at.

We had a suggestion that we were too silo-ed, which means that we had all of these separate silos. That is fine, but in a public service position, if you are working in finance in the one public service, it might be much the same in other places. If you are working in a particular specialist area it is not, and that is the challenge I was talking about.

I do not know if there is a universal answer, but ideally I would like to see people say, "You've got an appointment, say, for 12 months in that area but you're going to move after that 12 months." But it is very hard to do that when you get people leaving, people going on leave et cetera. That is probably the way I would deal with it. I agree with you: the ACT public service and the courts do provide a unique opportunity, but it all costs money.

MS MacDONALD: Yes, it does.

Mr Cahill: Sometimes some of the things you would like to do are not practicable because you find it hard to resource them.

MS MacDONALD: I would suggest as well that it is similar in a large jurisdiction such as New South Wales. They would have people stagnating in positions and not actually getting that transition, but those people do not have the same opportunities to go to the commonwealth.

Mr Cahill: No. I have been a magistrate for 31 years and I still like it because this is a unique opportunity. You can do every bit of work around here that you want to do, whereas lots of other courts have separate operations. We have to adjust and I think we have to be open and flexible about how we do it. Some of those issues are in the process of being addressed. Both of you have raised it. I am not sure that we have the perfect answer yet, but we will just keep working at it.

THE CHAIR: When you spoke last you said the government's consultative committee did not go far enough. The Attorney-General and Renee Leon thought it was very promising. Does it meet quarterly or more often or less often?

Mr Cahill: We usually meet quarterly.

THE CHAIR: It had not been meeting quarterly when we had the Attorney-General in front of us but it was supposed to.

Mr Cahill: We met last in February; the aim is quarterly.

THE CHAIR: Okay, and how robust are those meetings?

Mr Cahill: It is a unique opportunity to get all the stakeholders involved in governance together. An agenda is prepared and we are asked to contribute to it. The meeting usually goes for a couple of hours and a lot of work has to be done before and after. I think it is a developing feast but I am more confident now. I am assuming that I am stuck with the process and the governance we have. Obviously, ministers, chief justices, chief magistrates and chief executives are all busy, but it will depend on the work that goes in. We are looking at some key issues. For example, one thing that has been well resolved is security and that has been a very big ticket item. We have been terribly lucky that we have not had any great security breaches—

THE CHAIR: You mean physical security?

Mr Cahill: Danger, threats, bomb threats—the lot. The point is that we do not have any perimeter security. It is much harder to get in here than it is to get into the court.

MS MacDONALD: It is not that hard to get in here.

Mr Cahill: And hopefully the people we have coming here—

THE CHAIR: It is too hard to get in here.

Mr Cahill: Yes, but the people that come in here are less dangerous than some of our clients. Except for an incident—

THE CHAIR: I think we might share some clients at times.

Mr Cahill: I am sure you do; we will not mention names. That has been something that has been progressed through the department and with the court administrator and there is a big security solution being arrived at. So that was positive through that. The MOU was negotiated, so things are happening. Ideally, we should meet once a month but I suppose that is a bit much. We would all have trouble meeting that, of course, and the work that has to go into it.

THE CHAIR: When did you last meet, Mr Cahill?

Mr Cahill: 20 February. I was just looking at the outcomes.

THE CHAIR: So it is fresh in your mind.

Mr Cahill: Yes. If we need to have an urgent meeting, we can. I was in hospital but we had a meeting on security. We have meetings like that that come up, where there needs to be a general decision. The other thing is that you have got to keep it at a governance level because there are individual matters that might be discussed that would be of great concern to me but not of great concern to the Chief Justice and vice versa.

The rules committee is working pretty well. We have got a new system of rules of court now; I think that has been in for a couple of years and that is working quite well. In fact, I was just talking to someone today about adding some coronial rules, but the

idea is that you have got to get the practice fixed before you start writing the rules. I am happy with that.

THE CHAIR: Any other questions about governance?

MR SMYTH: Yes, I have quite a few. The computer systems: what was the name of the Western Australian firm?

Mr Cahill: Coram, I think, Brendan. They were quite a well-known firm in New South Wales—Laurie Glanfield, the permanent head there, and I think it was Tim Keady and maybe Elizabeth Kelly. It was going quite well and I do not know what went wrong but they ran into deep financial difficulties.

MR SMYTH: Is there a jurisdiction in the country that has an effective up-to-date computer system that you would recommend as the—

Mr Cahill: A lot of them have various ones and they are developing—probably Victoria, Queensland and South Australia—but computer systems for courts have had a history of a few disasters. I think South Australia got sued in a big way. I put my hand up as computer illiterate. The one thing I am going to do before I retire is make sure I am not one of the new illiterate; I am going to get myself on top of it.

With the development of security systems there is a need to make sure that you marry up the actual users' uses, what they want out of it, with the computer gurus. A mate of mine in South Australia is a magistrate and a bit of a computer buff and I know that they work with a particular contract. For reasons that were appealing at the time, obviously going with New South Wales was quite attractive because we could pay very little money and get all the benefit, and New South Wales were very cooperative, but I think we need to redo it. What they are trying to do is to revamp the old system called MAX; I think it was mentioned. I am not convinced that is the way to go, but it is a resource issue as well.

THE CHAIR: The Auditor-General's report, as Hamish just pointed out, suggests the Queensland model might have a bit to offer. Are you familiar with that?

Mr Cahill: Yes, I am. Well, I am not that familiar, but I know Queensland. But it could be a moving feast too.

MR SMYTH: But the computer system, whatever happens, needs to be not only just what happens in the court but links through to the department and to the police as well.

Mr Cahill: Yes. I was just talking to the chairman of the Sentence Administration Board about having good computer links. You have got to look at privacy, but they are going to get the material in written form anyway, for them and for Corrections, yes. The AFP, of course, have very strict security and they are very—I probably should not use the word, but I will—precious about it, about access to it. But all of that could happen—and not only for case management; it is also for getting the statistics you want.

If you have the computer system, you can then make sure you can get the information

you want and the sort of information for resources and numbers of judicial officers et cetera is not just numbers of cases; it is what they have to do and also measuring out-of-court stuff. I mean, you may have a system of case management—by spending time out of court, you save a lot of time in court. You have got to work all that out, and that is what John was talking about last time and that is being developed further.

MR SMYTH: Sure, but in terms of links to the police I have recently had a case brought to my attention where a young fellow, an Aboriginal boy, was brought to the court, the matter was resolved, but the police had not been notified of the warrant having been discharged and he was picked up a week later, much to his distress. Is that sort of interoperability something that is desirable?

Mr Cahill: The thing is that, if we had those linkages, before a police officer went anywhere to do anything about issuing a warrant they would do a last-minute check. But at the moment with warrants what normally happens is that if someone does not appear, a warrant could be issued in the first instance—that is where someone cannot be found, they decide not to summons and they issue the warrant—or it could be issued because they failed to appear on bail, come before myself and issue a warrant, bail forfeited and the warrant is issued. That warrant is then processed and usually signed the same day by me as the magistrate. It goes over to the police and that has to go into a pool with a hell of a lot of process that they are issuing, and of course it may take some weeks.

In fact, sometimes, if someone does not appear for a relatively minor offence, I will say, "Send them a note and tell them to come in," because you are more likely to get them quicker doing that than if you are waiting, because the police have an enormous amount of work to do in that respect. Mistakes will always happen; they can happen. There was a case called Morrow; I will not go into it because it is sub judice, but that is the sort of thing we were talking about with the Sentence Administration Board.

MR SMYTH: But with any upgrade of the system it would be desirable to have that link to the AFP, so that when you make a decision—

Mr Cahill: Yes, subject to privacy and control of the information, but it is obviously in everyone's interest that the relevant stakeholders have access to—

MR SMYTH: To immediate updates. In terms of—

Mr Cahill: There will still be the argument about who controls it, but when it happens I will argue about that. But it is not a control issue; it is who has access.

MR SMYTH: I thought the police would be grateful to have updated information on their computer because they went from the station to this lad's house, they picked this lad up, they took him to the court and they processed him. Eventually the mistake was found, but they have wasted all that time.

Mr Cahill: Of course in that case there should have been a notification that he had been located and dealt with. Hopefully, with a computer system, properly run, you would introduce a step before you went out to collect someone: "Gee whiz, we had better not go out; he has already been dealt with."

MR SMYTH: They did check, but, as I understand it, it is manually sent from the courts to the police—

Mr Cahill: The warrants are, yes.

MR SMYTH: and so it is a matter of when it is updated rather than—

Mr Cahill: I think I gave you this bit before. I would have to get myself trained, but what happens at the moment if I am charged with an offence is the only way you can get that before the court is through a computer link. The police do the charge and it is automatically printed out. It goes before the court. I nearly fell down a hole today. There is a hole on the desk in one of the courts where we used to have a computer; that was taken away. I am not complaining about that, because I would have to learn to use it, but you have got to be careful you do not drop your papers down the hole; that is a practical issue.

What happens is that it comes before me in the court. Say I have got 30 to 40 charges, I have to physically deal with all those charges by hand. In other places, you would have codes and you would have someone there.

MR SMYTH: They tap it in.

Mr Cahill: In Victoria they tap it in. Maybe you do not need that; you have an assistant that taps it in. My late associate, who was a bit of a whiz on computers, did a postgraduate degree at the University of Wollongong on computerisation. She had done all the codes. But that sort of thing could happen and it is the failsafe aspect of it. I am not saying computers are failsafe either. We do not have a lot of errors, but when we do have one it costs people, usually the government, a lot of money. I am not suggesting you give any advice but it is a lay-down misere, isn't it?

MR SMYTH: The other issue: if you had a preference, is it the High Court, the Family Court or the South Australian model for your authority or commission?

Mr Cahill: For my court, I think local magistrates court level, because they would have a different sort of system.

MR SMYTH: So the South Australian model.

Mr Cahill: Yes, South Australian, Queensland—they are all in the middle of development at the moment. But it could be a project. The thing is that all of this would have to be developed in the form of a cabinet submission, and that needs to go through that process, as you all know.

THE CHAIR: One of the other issues that was raised was the listing process and the amount of time that got lost if someone did not turn up—all those issues. Ms Leon seemed to be concerned that this might result in magistrates just sitting around doing nothing.

Mr Cahill: They do not do nothing; I can assure you of that.

THE CHAIR: I know.

Mr Cahill: But, yes, I know what you mean.

THE CHAIR: Yes, you can certainly comment.

Mr Cahill: That is quite correct. The real problem is that we are case managing fairly extensively. John Burns is doing that on our behalf. We have case management hearings. We have the police releasing the brief. There is overwhelming information provided to everyone and then you say, "Is it still a plea of not guilty?" You go through it, what can be shortened, and lo and behold you still get a fairly high percentage of dropouts, because the reality of it—it is called court-door psychology—is you get the punter to the barrier and they have got to make a decision and they say, "All right, I will plead guilty."

Of course, if there are delays, one of the issues is that that can be a mechanism of defence in itself—you keep delaying as long as you can in the hope that a witness will go away or something will go wrong, and it sometimes does. I suppose that is where actual sitting times are misleading. I could get you the figures for listings, but a court day is five hours. We are still familiar with listing seven, eight, even nine or 10 in some jurisdictions and even then we do not have as many fade-outs as we used to, but we still have them.

THE CHAIR: So is that what the new listing does; it sort of —

Mr Cahill: If we set something down for hearing, it is used; but there is still a dropout rate. We have just got to see that percentage and some computer analysis would help us there. We can do that manually—that is a big job—but if you had it all computerised it would probably be a hell of a lot easier, and that is something you would look at in the future. But certainly our strategy is that we list more than the hours that are available.

It is a question of culture, of prosecution culture in the criminal area, prosecution, defence culture—trying to get them to focus at an early point of time. The earlier you can get resolution of the matter, the quicker it is, the better your turnover is, and that is a challenge. I have been involved as a magistrate now for 31 years, chief for 23. If there was a perfect system I would have gone out and got it. It is a cultural thing and it is a resource thing.

I am concerned too from the police point of view. We have got scarce police resources—everyone accepts that—and, if they go out and prepare a case and then it does not go on, there is a lot of police time being wasted. So the earlier you can get resolution that it is not going to be heard, that it is going to be a plea of guilty, or the only issue is X amongst X, Y and Z, the more value you can get. That is what case management in criminal is all about; in civil it is a question of people seeing rationality. My view generally is that, if you analyse them properly, there are not too many civil cases that should not be settled with the right sort of mediation. But people will still want their day in court and you cannot stop them.

MS MacDONALD: Yes, subject to the vagaries of human beings.

Mr Cahill: Yes, human frailties or human determination. Small claims is the perfect example of that. We have always had a 75 per cent rate of settlement in small claims. If we did not, it would blow us out of the water. It is important to realise that the conferencing unit that we have spoken about is a very important asset and it is a very difficult job. They do domestic violence, civil, care proceedings. That is an area we have to look after very well and we are making sure they are supported and trying to restructure that, because the court, very much at our level, is involved with the number of cases you can resolve without full hearing.

THE CHAIR: When Mr Jorgensen appeared, and that was only November last year, he was asked about the Auditor-General's report regarding the proportion of cases finalised within the benchmark of six weeks, with an average of 44 per cent—

Mr Cahill: Which jurisdiction are we talking—generally or a particular jurisdiction? I remember reading that. You sent that over to me a couple of weeks ago.

THE CHAIR: This is from the Auditor-General's report. I am quoting from Mr Mulcahy's question last time:

> The report found that the ACT Magistrates Court finalised only 16.8 per cent of cases within six weeks compared to 44 per cent of cases nationally. The report concluded that the ACT Magistrates Court finalised only 76 per cent of cases within 26 weeks compared to 90 per cent of cases nationally.

I guess that tracking that indicates the success, to some extent, of some of the measures that have been introduced. Would you be able to comment on those figures?

Mr Cahill: It is a difficult one because it depends on the case you are talking about. You have to look at our jurisdiction and we have got the widest jurisdiction and the widest variety. I take it that Richard in that particular document was talking about cases generally?

THE CHAIR: He was, and it leads me to the next question of whether in the new legislation, in terms of changes regarding workers compensation, they need to be finalised in a certain amount of time. Excuse me, I am not too full-on with the details—

Mr Cahill: Yes, I know the ones you mean.

THE CHAIR: Whether that will improve matters, because it did look as though workers compensation cases were one of the areas that were pushing time out.

Mr Cahill: Workers compensation cases, if they are defended, would probably average three or four hours at least each. We tend to have sittings every one or two months, where we develop two weeks and a single magistrate. It is a specialist jurisdiction, so the lawyers involved all gather together and we usually get through them, so we get through 34 cases, usually a day each.

I guess it is an area where there is settlement, but it is very much an area where the court-door psychology takes place. I do not know that we are that inefficient; maybe it is only the lawyers' view, but they find that our most effective jurisdiction, because a lot of cases are settled; that is inevitable. We do not have a lot of our own pre-trial conferencing, but the lawyers themselves have a lot of that as part of their systems.

There are certificates of readiness and the thing about workers comp is that sometimes you have got to have your medicals done and you will find that someone will have to wait for a specialist appointment, usually at the instance of the insurer, and lo and behold it will turn out that it will settle because the insurer's doctor will say, "Yes, he's got a legitimate claim," or "She's got a legitimate claim," or "No, they haven't," which will cause it to go on.

That is what I was saying about a Productivity Commission approach: looking at general numbers, rather than looking qualitatively at the numbers and what you are dealing with, is a bit difficult. We have not introduced great changes in the workers comp system, but the workers comp system works on a running list model, which in some ways could work well in other areas, but of course that causes all sorts of dislocation for parties and witnesses and all that, because they never know when they are going to get on.

We list, say, 35 cases in 10 working days, and you multiply that by the average time of hearing, by three or four hours, and we usually get through them. So you could fiddle with that and you could easily argue, as a lot of people would, and I have tested it, that if you could knock their heads together earlier you might get through them earlier. But it is the court-door philosophy.

Barristers have even said to me that it depends how the money market is going, because insurers have money invested and it may suit them to settle. That is an economic explanation, not a legal one. It is a difficult one to answer and I think we would need to study that jurisdiction specifically.

THE CHAIR: Time will tell on that one.

Mr Cahill: Yes. But I do not think our case management will help us much there, because we are sticking with what we have had. There was a large amendment five years ago which has not made great changes. It is a matter of getting them ready to run. I think the court deals with them quite quickly. We do not have backlogs. Once a certificate of readiness is lodged, it goes into a call-over and is then listed.

The issue is whether you judge the court on what happens before it gets to the court. Once it gets to the court, I think we deal with it fairly efficiently. There may be fairly big delays but that could be occasioned by a whole lot of reasons, including medical reports. I am happy to have a look at that but it is something that is pretty hard to answer.

THE CHAIR: The Auditor-General said there is still scope for further improvement—for example, by scheduling more cases per day in the workers compensation list. That is just one of the case studies that they looked at closely.

Mr Cahill: We could schedule 50, but what happens if 20 of them go on? That is the issue. I had given this consideration too. Workers compensation law is a fairly specific area. So when you are dealing with that, if someone is going to do a pre-trial conference, you need someone that the parties will respect. I had even considered getting someone who was a retired litigator. My wife is a conveyancer. It is no good getting a conveyancing solicitor; you have to get someone who, in all civil matters, will say, "Look, I can tell you, this is what is likely to happen," and the parties will respect that opinion and listen. I had considered doing that, but again, and I hate to keep saying this, there is a question of resources. I would be quite happy if someone were to run a pilot and say, "Let's get a pre-trial conferencer for workers comps." We would just have to be careful that we picked someone whose opinion the parties would respect.

You can apply that to all civil cases. Our conferencing cell are doing very well at domestic violence or family violence. People do respect their views about what is likely to happen, and we do get a lot of settlement in the sense that we have undertakings without admission of liability. I first spoke about that in 1986 at the very first violence conference that the Institute of Criminology held. Of course, I was howled down a bit and was told, "That's the easy way out." But when you analyse it, what is the process?

I do not think we can expect the process to cause sociological miracles; what it can do is to introduce a system of safety for the parties. That is just a philosophical issue. Now, if we were to pull out that conferencing in family violence matters, the biggest protests would come from the Domestic Violence Crisis Service, who see it as getting results for their clients. Initially, everyone was against it.

It is not so much about mediation, as there is no such thing as mediation that is perfect. Alternative dispute resolution could work. Again, we would need to get the right people doing it. It is no good getting someone who was not expert and that the parties would not respect, particularly when lawyers are involved.

THE CHAIR: Last time you appeared, you were looking forward to a new sentencing package.

Mr Cahill: We have got that.

THE CHAIR: Can you comment on how that has improved or not improved matters?

Mr Cahill: It is a very complex package. I have been heard to say in court sometimes that, whoever writes sentencing packages, it is very complex. But it has given us a lot more options. I am very happy that we have a conjoint sentencing power under section 29. In the case of someone on a relatively significant offence, we used to have to say, "You've got to pick a sentencing option." Now you can mix and match, and I think that has been a big plus. It is complex, but it has to be an advantage.

I have some issues, not so much about the Sentencing Administration Board's jurisdiction, because that is the way government wanted it and that is what happens in other places. I think periodic detention is a brilliant sentencing option. It punishes but it still enables family relationships and employment relationships to continue. But if

you use it, it has to be respected.

The worst possible thing you can have is a periodic detention option that is not immediately brought to boot if someone breaches it. I know there are civil rights and human rights implications. At present, you have to issue notices, they go before the Sentencing Administration Board and maybe they can be found and maybe they cannot.

I agree that you have to look at human rights considerations; we are all bound by that. But if Ron Cahill had a periodic detention sentence for his fifth driving whilst cancelled and he got 12 months to be served every weekend, it sounds easy but it is not. Every weekend you go in on Friday night and come out on Sunday, which does not give you much time for recreation. If I get that sentence and, on one weekend, without notice, without any warning, I just do not turn up, why don't we just go to the court and get the court to issue a warrant? To me, that would make it a much more effective situation. I know that it is protecting people's rights, but you could leave it at the discretion of Corrections to do that. That is one issue that we have not resolved.

With respect to periodic detention and the acceptance that punishments can be other than a jail term, I know we all get emotive and we would all say that, if it were my daughter, it should be 20 years. But when it is not your daughter, you might not feel the same way. Sentencing is a very difficult exercise. Perhaps the advent of the new jail gives us even more options for looking at it.

The other thing I am concerned about is that a lot of our sentenced clients have alcohol, drug and mental health issues. I had a jail visit organised for a lot of us and I could not go—they would not let me on the site with my sandals on and I could not afford to get infected. I will go out there. I think we need to be imaginative in our sentencing and those that need to be punished, particularly for the protection of society, need certainly to be kept safe, but we have to be inventive. That is my view. Not everyone takes that view on sentencing. I know Bill doesn't, Brendan.

MR SMYTH: Not in all cases.

Mr Cahill: I should not be personal about that. We have had this debate a few times.

THE CHAIR: Another issue that you identified that delayed cases, wasted time and put the listing out of synch was that sometimes the alleged offender would turn up and seek an adjournment to apply for legal aid. I think you said you were having discussions with Legal Aid about whether there was some way of reducing that because in a sense that was a waste.

Mr Cahill: Yes. John Burns meets fairly regularly, on my behalf and on my colleagues' behalf, with the various stakeholders. I know John's belief and mine would be that, if you had a true duty solicitor scheme, there may be options sometimes for getting pleas dealt with much earlier. If Legal Aid had the ability, they would be there and perhaps do some pleas for minor matters on the day. That does depend on their resources and, of course, it does depend on their saying, "Well, can I do a decent defence on that basis?"

MS MacDONALD: I had a meeting with Legal Aid a couple of months back. I probably should not pre-empt what they have got coming out, but there was some discussion about awareness of the legal aid service—that they suspected there were a number of people who were not aware they were actually eligible to utilise legal aid.

Mr Cahill: I think that is a very good thing. Legal Aid, like all of us, have got finite resources and generally do a fantastic job. The one thing about Legal Aid lawyers is that they cannot pick their clients. They will represent you and do their best, and they work very hard. Awareness is important, as well as getting the punter—and that is what we call them—to act before they come to court.

Most people are summonsed, even for fairly significant offences. They are aware they can get legal aid but they never do anything about it. If they went and saw Legal Aid and Legal Aid had the facility to be ready to deal with it—if you need a pre-sentence report, that is another issue—if there was awareness plus an engagement with Legal Aid and they were able to have the facilities to do that, you could get it dealt with earlier.

MS MacDONALD: And thus hopefully reducing the—

Mr Cahill: The delays, yes. What happens at the moment is that, strictly speaking, we have a no-adjournment policy. Because of the way things are organised, and in fairness to human rights and a proper defence, we will give you three weeks to get your legal advice, whether it is from Legal Aid or anyone else. Legal Aid have an issue because they have a number of clients in that category. It sounds like a long time but it is not if they are seeing a number of clients. We would be hoping that we could engage them earlier, Legal Aid and other people, to get people to go and see their lawyer before that first appearance. What happens now is that they go and see the lawyer and the lawyer probably says, "Get a three-week adjournment and then come and make an appointment." That is a cultural thing, though. So we are trying to change that. I agree: awareness is a very important thing.

MS MacDONALD: The sorts of cases they were citing with respect to representation involved things like issues of domestic violence and women not necessarily being aware that they could actually approach Legal Aid to seek assistance.

Mr Cahill: I think awareness of all of that is very important. The perpetrators, though, can't usually because often Legal Aid will have acted on the other side of the problem. That creates a problem but they have some duty arrangements about that. A lot of work goes on in the domestic violence area. Largely, Legal Aid are just not able to represent. We operate on an interim order basis thus far.

It might have human rights implications but I believe the sooner you can get a protective mechanism in place, you should do so, and then we have the compulsory conference after 10 days. A lot of those are resolved at that stage, and it enables the whole thing to cool down. It enables consent orders and undertakings to be put in place. That is largely done without Legal Aid intervention. The Domestic Violence Crisis Service helps, and my conference unit staff help.

I think duty lawyers in those areas are important. By "duty lawyer", I mean someone

who is there and who will take a number on the spot. Naturally, that is going to increase your throughput. But awareness is part of that too—if they knew they were coming to court and that it was advisable to go and see Legal Aid first. But Legal Aid might not be able to meet that because they may have trouble servicing the clients they have got on the normal three-week basis. So that is a challenge as well.

THE CHAIR: One of the issues that was brought up by JACS and Minister Corbell was that there has been a reinstatement of the Corrective Services officer position.

Mr Cahill: Hooray!

THE CHAIR: Tell us what difference that makes.

Mr Cahill: A huge difference. It has been re-instituted. I think they are there until lunchtime, which is maybe when the peak work takes place, when you are doing your list stuff. We would make a probation condition requiring them to report to Corrections, make a recognisance requiring them to report to Corrections, and order a pre-sentence report. They are over here in Eclipse House. Half of them would not get there, and it was difficult. I just felt it could save them a lot of work.

The other interesting point is that having the liaison officer in place means that sometimes you can do things without a report. You might just need a little inquiry done: "I had young Brendan last week; how's he going on his probation?" "He's going fine, everything's okay." It is just the service that makes it so much more efficient. I will not argue about the logic of taking it away; I have been through that battle.

THE CHAIR: For how long were you without that position?

Mr Cahill: About 12 months, I think. But I must say that Renee was very instrumental in getting it back soon after she came. It was very wasteful. We are very fortunate in having, and are well served by, the key agencies. We have forensic liaison for Mental Health, which works extremely well. We have alcohol and drugs in CADAS, which works extremely well.

While we were missing Corrections, the third card in the deck was missing. They work together. I think we can do that even better, because they need to triage—if you want to use a nursing term—on these issues. Clients do not conveniently come with a little sign saying, "I'm a Corrections patient," or "I'm a Mental Health patient". They usually have all three. The services do liaise pretty well. We have some difficult cases on which they have been really tremendous.

One of the things I have mentioned to our Courts Administrator, Helen, is that we can probably get a specialist registrar to massage that triaging. If you can get a result, that is particularly helpful for sentencing. We would be giving someone that responsibility. We would not be so bold as to think we could get an extra registrar. That is something I am very proud of. To some extent that can obviate the need, at our level, for specialist drug courts, specialist mental health courts, specialist whatever you want to have. We just cannot afford to have too many more specialities.

If the services are readily available to the magistrate, it does not require specialisation. If you start specialising too much, we are going to have more specialities than we do magistrates. And who is going to do the rest of the work? We are doing that, but we are doing it in a limited fashion.

Shane Madden has done a magnificent job on the Aboriginal circle court. I think it is one of the most successful of its type in Australia. In fact, we have done more cases in one year than Nowra did in two years. But it is very heavily dependent upon the local Indigenous community, and they are to be congratulated too. It has to be emphasised that it is not a separate Aboriginal justice system; it is just a simple way within the court, and it is court based, to assist in getting better results. One of the things I look forward to, which will have resource implications, is its introduction into the Children's Court, which I think really would be most advantageous.

THE CHAIR: Specifically for Aboriginal young people, or across—

Mr Cahill: It is Indigenous. The idea is that you get the Indigenous community to help to get a resolution. In fact, in some ways they have been tougher than the magistrate. The magistrate still sentences but you do have that input. Shane is taking some time off and will be away for a while, and I am getting Peter Dingwall to take it on in his absence. If we are going to move into the Children's Court, with that new bill and the new arrangements, particularly in care, it is timely, and he has agreed to take it on.

MS MacDONALD: How long is Shane off for?

Mr Cahill: Shane will be off for 10 months. He is taking some long service leave. That is another issue. I am not here to publicise it too much but I am now less than two years from retirement, Shane is less than two years from retirement, two of my other colleagues are in their 60s. Like everything else, you have got to have succession. That is why it is so important that you do not have a year gap. It is putting pressure on people wanting to take leave. You do have sick leave and things that are unavoidable. That is why I am looking for a formula, not only a replacement. We were one of the first jurisdictions to have acting special magistrates. We survived on that for a long, long time. The last one was Phil Thompson, who did a lot of that work, particularly in coronial law. He retired in 2006.

If you are trying to run at capacity, which we always try to do, and you have a long-term sickness—and we have had that; I have had a few months off over the last little while—having a special reserve magistrate, as occurs in every other jurisdiction, and in every other supreme or district court, will ensure that you keep your resources up. That is why a formula for allocation of magisterial resources and quarantining is very important. I had to put that one in, because it is an argument we are having. No doubt they will read that.

MS MacDONALD: They are probably listening at the moment.

Mr Cahill: It won't change; I have put all these arguments before. When you get the chance, you have a go!

THE CHAIR: We are producing a report here. One of the cost-saving measures being looked at was either increasing or adding a cost to the production of transcripts. Did that occur? Who makes the most use of transcripts and how would they be affected?

Mr Cahill: The Supreme Court does and they pay for it; it is budgeted for. With respect to the cost of producing transcript—I think the previous government did it, and it has been continued—we outsourced it. We had the service but we used to do our own recording. In our court it is now recorded, and transcribed if you need it, by the same service that is doing this today. They are very good. That was a decision made—

MS MacDONALD: Is it still Auscript or has it changed?

Mr Cahill: No, it is Court Reporting Services. Dennis is the boss; I was talking to him this morning. It is contracted, and there are some moves afoot there to—

MS MacDONALD: It is just that Auscript used to be the court reporting service.

Mr Cahill: No, it is not Auscript anymore. I think they are called CRS; I am not sure. They are a reputable company and they do the Assembly as well as ourselves. They produce very good transcripts, but of course there is a unit cost. Recording is one thing; transcribing is the expensive part. If we recorded this, it would cost you so much, as you would probably realise, but if you transcribe it, it becomes very expensive—so much a page. I am not saying they are excessive; that is an industry-accepted level. I do not know how we can save money. I think there is an initiative whereby the company will take over the billing—in other words on our behalf, and will do the billing on our behalf. At one stage we were owed a lot of money on transcripts from a whole lot of sources. I am sure if it became a much more commercial billing enterprise, they would produce it, do the billing and that sort of thing. That is one initiative.

As for cutting down, I do not know how we can cut down any more because I do not use it most of the time. I take notes or listen to it. The real problem is where you get a case that, for a variety of reasons, is adjourned for a long time. I have a view that if you are judging someone you should not judge them on what you heard yesterday as against what you heard six months ago. There is a certain fairness in that. Basically, I do not see how we can do much more. That is one initiative that has been floated. I am not, I think, betraying secrets by saying that is under consideration now.

THE CHAIR: So it has not been resolved yet. The use of the library was another.

Mr Cahill: Yes, that is a very expensive process. I would have hoped that, as part of our computerisation, access online to legal materials could be an answer, but it is not easy to sit and read text on a monitor.

THE CHAIR: It is easy to find things.

Mr Cahill: Yes, it is. The other thing is that the librarians struggle and the costs are becoming astronomical. If you spend a lot of time and write a book, you write these

loose leafs and it is a hundred bucks every three months to get the updates. We just cannot do that, or the library and resources cannot afford that. There is a courts library. We have a very limited library now and they have even had to cut back on the statutes because they are just too expensive to reproduce. Nearly all of the ACT legislation is now online, and I think that is the way we have to go.

MS MacDONALD: The answer about the transcription is that it is done by Merrill Legal Services. They took over from CRS.

Mr Cahill: I am behind. I just know the people; I do not know who the company is.

MS MacDONALD: Fair enough too.

Mr Cahill: You went and asked them, did you?

MS MacDONALD: Yes, I did.

THE CHAIR: A risk management plan was in process. How is that going and how important is it?

Mr Cahill: That is the security issue?

THE CHAIR: Yes.

Mr Cahill: Very important. I think we have been extremely fortunate. We had one incident about 12 months ago where a mental health patient leapt forward with a knife and one of my colleagues and one of the doctors were sort of knocked over in the whole thing, but fortunately the people there acted very quickly. That is in the court. We have got regional surveillance on that, but it is perimeter security that I think is lacking and that is what is being looked at—that risk assessment. That is what I am saying. That was a very good product of the court governance committee. I think it is in the budget—I hope it is in the budget—and it is going to be implemented but plans have gone a long way. I missed the briefing but I think there are very big plans with consultants underway and I think that will work out quite well.

The level of security is an issue. I know that when my colleagues in Victoria put their new airport type security in they still found a lot of people got through anyway. But at the moment you can walk into the court and walk into any courtroom with gay abandon, without any restriction whatsoever. There is the old bobby argument in the UK: you give them guns and it encourages guns. I do not know; you have just got to be able to duck quickly. I would like to see it put in operation before it is bounded by a tragedy; we have had plenty of those in the country. So I am happy with that. It all takes time and I believe that the budget is being made available for it.

MR SMYTH: On the issue of security, the holding cells are now appropriate and—

Mr Cahill: Yes, I think they will have been upgraded.

MR SMYTH: All that has been successful?

Mr Cahill: Yes, I think that is pretty good now. I have not been down there lately but I think it is pretty good. The thing is that we got them TVs to keep the prisoners occupied but we had to put covers over the TVs so they would not break them. I think they say, "You play up and we will turn the TV off and you will not be able to watch *Days of Our Lives*." I should not joke about that.

THE CHAIR: I always wondered about that program.

MS MacDONALD: Yes, maybe that is why they are trying to destroy the televisions!

THE CHAIR: Yes, I reckon. One of the issues that came up when JACS was before us was that at that time there was a temporary need for JACS officers to screen email for security reasons and that was seen as a bit intrusive, I would have thought, and—

Mr Cahill: It is intrusive and when it was introduced it was about the time that the anthrax scare was on and all of that. It still is a problem. In fact, just yesterday one of my colleagues was telling me that they had received some urgent stuff, on a case they had, that had taken three days to get there. God knows why, but I wondered why. To me it would be more advisable to do that screening within the court.

THE CHAIR: You cannot send anthrax by email, can you?

Mr Cahill: Emails? I thought you meant—

THE CHAIR: Well, no, I am talking—

Mr Cahill: We had a mail delay.

THE CHAIR: Okay, so there was a mail delay; that is another issue. This was screening email.

Mr Cahill: That is a difficult one because we have got two aspects on that. You can have staff doing all sorts of things on the internet that they should not be; I do not mean criminal only either. I suppose I do not have a real problem with it because if it is that secure you perhaps should not be using email, if it is a security issue. Privacy is another issue, but then again I am tough; I would say to my staff, "Go and use your own email at home if you want to put some—

THE CHAIR: No, this is mail; sorry. I just put an "e" in front of that.

MR SMYTH: Yes, snail mail.

Mr Cahill: Yes, it is the mail one; that is the one.

THE CHAIR: So that is an anthrax issue.

Mr Cahill: Yes, that is the reason we have an anthrax—

THE CHAIR: But three days is long, yes.

Mr Cahill: It is taking too long—not always taking three days. The other issue that was raised was privacy. Someone might send me something quite private and they say, "Our people would not say anything," but I guess—

MR SMYTH: A lot like a football club tie, for instance.

Mr Cahill: Yes, from the AFL—my AFL passes for the next game—things like that. They might get knocked off.

THE CHAIR: So what is the volume of mail that might have to be scrutinised in a day then? How many hours of work are we talking here?

Mr Cahill: I would not know, but I get a lot. I get a lot as Chief Magistrate because everyone tends to write to you; the others not as much. I would not think it is a huge task. I think it is a question of locating—I have never seen how they screen it. Do you have it here or not?

THE CHAIR: Yes.

MS MacDONALD: We have got a minimal screening system here.

Mr Cahill: The same thing, but I guess it was a question of locating it somewhere where it was safe to do it. You could blow up the poor screeners. But they X-ray it first. I would have thought that the mail should come to us. That was my view but—

THE CHAIR: Okay, so that is still as is. The 2006-07 budget included funds to upgrade MAX, as you so affectionately call it.

Mr Cahill: Well, that is what it is called—superMAX now.

THE CHAIR: Yes. Someone suggested it was probably named after someone's dog but I do not know why. Phase one was due to be completed by June 30 this year. I think that was web enabling.

Mr Cahill: Yes, we have done some. Our website facilities are not good and we have got a new legal officer, Michael Edwards, who is doing a lot of work on that. Michael has worked in the department here and he is doing a lot of good work there because I think our website is pretty poor. That is probably well underway, but of course there is the computerisation. But, as you would all know, putting material on the web per se takes a lot of work, just the content. That seems to be the way to go. If you look interstate now you can find a heck of a lot of things on the website that give you the awareness you need. We have got some of it, so it is definitely a work in progress.

The other thing I meant to mention was that we could make a lot better use—and it is part of IT; it is not just computerisation—of is audiovisual material. We sometimes have to call witnesses interstate or overseas; frequently doctors in workers comp, for example. It would be useful if we had that facility. Some time ago we did have some basic material and I understand there may be allocations in this year's budget for some audiovisual equipment for distance—taking evidence from vulnerable witnesses in sexual cases, and that is part of the sexual assault package, I think—one room for

us, one room for the Supreme Court that Simon Corbell announced. But that has wider applications. I am not saying, "Get it tomorrow," but it would be something useful that we should be thinking about.

THE CHAIR: There was a discussion with Mr Jorgensen about the fact that there was a complaints process, but the part of it where the court reported back to the complainer—

Mr Cahill: Yes, I think that is something we could work on. There is an issue about the type of complaints. The big-time complaints that give rise to corruption allegations are one thing, but then you have got the informal complaints: "Someone was rude to me," or "I did not like the decision." The "did not like the decision" ones are pretty easy: you have got 21 days to appeal or I will raise it with the magistrate concerned. But I think we could do some work on that. I am convinced we have—

MS MacDONALD: "I did not like the way they looked at me."

Mr Cahill: Well, that is obviously another one we get: "I did not like the way he" or she "looked at me." It is often the way that "she" looked at me, particularly if it is in a domestic violence case where the bloke has lost. Peter Sallmann, who is an old friend of mine, did some very good work on complaints in Victoria and I know that the Judicial Conference of Australia has done some work. But I think that is something we have not given enough priority to.

The PR aspect, of course, is pretty important. If it is a complaint of seriousness—and, touch wood, as Chief Magistrate I have not had to deal with that—we have a Judicial Commission Act. But that is not the problem. If someone has done something or is alleged to have done something really bad, you go through that process. It is reported to me or the attorney and the attorney consults with me to set up a judicial commission and they come to the Assembly to be sacked or otherwise.

But they are not the ones that cause the problem; it is the lower level ones and the rudeness ones or whatever. But as a PR issue they should be dealt with, and we deal with them. I deal with them. If one comes in I will discuss it with the registrar and have the registrar usually reply on my behalf. Sometimes I will reply personally.

THE CHAIR: I had a constituent yesterday asking how one went about the process of making a complaint.

Mr Cahill: Probably the easiest, if it is about the court—

THE CHAIR: He did not have access to the internet, which of course we were able to look up. There is a bit of an assumption—

Mr Cahill: That is a web thing too, isn't it? We should have a complaints policy and it should go on our website. It may be there; I have not looked.

THE CHAIR: But that was of no use to this person, so the point I am making is that, while it was very clear on the web page, to this person—

Mr Cahill: They did not have internet?

THE CHAIR: No. I do not know whether a little bit of paper or something you can pick up—

Mr Cahill: Honestly, they can write to me as Chief Magistrate. A lot of them come to me in writing, often handwritten, if you can understand what they are talking about. I am not saying all of them are, but you get a fair few.

MS MacDONALD: It is a difficulty, providing that information via the internet, remembering that there are still a number of people in our community who do not have access to it.

Mr Cahill: Yes. I have got access—my wife has got one—but I am one of the illiterate. It is a new illiterate; there is no doubt about that.

MS MacDONALD: But it is not even just the illiterate—

Mr Cahill: They just do not have access, even if they did.

MS MacDONALD: There are financial issues as well for some people. They just cannot afford it.

Mr Cahill: Sure. I was in Canada many years ago when we were building the court. I did not go there to have a look, but I was there and had a look. In Montreal they had a fantastic internet-type cafe set up for people, for free, to deal with the court system. As always, it has resource implications, but why couldn't we set that up? They would still need to use it, but that would solve the financial issue. You would have restricted usage—you would not want them emailing their kids overseas and all that—but we could do that.

We do have stakeholder forums now, too; we have been having those fairly regularly. We have been doing that for a long time, but it is really only the stakeholders; it is not a public forum. Perhaps we should have more public accountability. I would not mind. For example, every year we have a viewing, if you want to go, of the forensic centre and I think that is a good thing. We should have a forum and a view of the court. It is a good public building. Terry would not agree with that, but he has not got his building yet.

THE CHAIR: Just finally from me, at that time there were issues about the court's administration. Is it just one line in the JACS annual report?

Mr Cahill: Yes, we get the breakdown.

THE CHAIR: We probably could if we asked for it.

Mr Cahill: I certainly get a breakdown under subject now and that is an improvement.

THE CHAIR: So now you have a breakdown. I do not think that was the case.

Mr Cahill: That was one of the issues; I was not sure about it. But now we have that, but it is never enough. The other issue, of course, on the other side of the coin would be that should you have a court administration or a court authority, you would have a one-line budget allocation that you would be responsible for accounting for as an authority, as distinct from the department being responsible. They still have that responsibility and that is the issue about which we disagree. You will find that judges and bureaucrats at the senior legal level will always disagree.

THE CHAIR: Okay, so is that a characteristic of the separation of powers?

Mr Cahill: It is, yes, definitely.

THE CHAIR: I have concluded my questions.

MS MacDONALD: You have run out of questions.

THE CHAIR: There are more, but I felt they were of a lesser priority.

Mr Cahill: Well, just tell me what they are—

THE CHAIR: No, truly. One was: what is a typical week for a magistrate in 2008? But that could be quite a long—

Mr Cahill: It depends on whether you are on call for 24 hours or not. But, no, it is interesting. You get a bit of variety. The longer we go on, the more out-of-court work is becoming important. With all the savings we make about case management, for example, in mental health we do the in-hospital cases on a Thursday morning and a Monday afternoon and we do the people that are in the community on a Thursday, which would be tomorrow. One of my unpaid colleagues and my underpaid psychiatrist will be working with me. We might do 17 cases for review. That is a lot of reading and it is pretty heavy reading.

Anyway, there is a lot more; a day in the life of a magistrate now is a lot more than just sitting on the bench. When I first came, 31 years ago, there was a lot less complexity. Most of your time would be sitting on the bench. Now you have to spend a lot more time doing other things, and that is another argument we get into about sitting times. Maybe that is the sort of measure that I am talking about—trying to get an agreeable measure of what really is work input.

THE CHAIR: As there are no more questions from my colleagues, I thank you very much, Mr Cahill.

Committee adjourned at 3.26 pm.