



**HOUSE OF REPRESENTATIVES
STANDING COMMITTEE
ON
LEGAL AND CONSTITUTIONAL AFFAIRS**

REPORT ON

**A REVIEW OF
AUDIT REPORT NO. 33 1996-97**

**THE ADMINISTRATION OF THE
FAMILY COURT OF AUSTRALIA**

NOVEMBER 1997

The Parliament of the Commonwealth of Australia

**Review of Auditor-General's
Audit Report No. 33 1996–97**

The Administration of the Family Court of Australia

**House of Representatives Standing Committee
on
Legal and Constitutional Affairs**

**November 1997
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Foreword

The committee is pleased to present its report on its review of the Australian National Audit Office's Audit Report No. 33 of 1996–97 on the Administration of the Family Court of Australia.

The committee decided to review this audit report because the audit arose out of a recommendation from the former Joint Select Committee on Certain Family Law Issues. As no equivalent select committee was established in the present parliament, the subject area of the Legal and Constitutional Affairs Committee now includes family law matters.

Efficiency audits conducted by the Australian National Audit Office, and the resulting reports, can provide important information and guidance to the agency which is the subject of the audit. The ANAO has considerable experience in relation to quality standards and practices in the public sector. Agencies can improve their efficiency by following the advice of audit reports.

Audit report No. 33 should prove valuable to the Court in a variety of ways, most relating to measuring and reporting on the Court's administration. However, the committee notes that important areas of the Court's administration were not the subject of detailed scrutiny in the audit report.

The administration of the Family Court of Australia has a very wide ambit encompassing areas of responsibility such as the counselling and other primary dispute resolution services offered by the Court. The location of these services (in relation to the Court and the community) has been a subject of lively debate for some time. The importance of these issues is not evident in the audit report.

The committee conducted a limited review of the audit report. Accordingly we have chosen to comment on issues, but not to make recommendations in this report. The committee's report on aspects of family services will be tabled in 1998 and some of these issues will be re-visited in that report.

We hope our comments are useful to both the Family Court of Australia and the Australian National Audit Office.

Kevin Andrews MP
Chairman
November 1997

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Abbreviations

ANAO	Australian National Audit Office
CEO	Chief Executive Officer
FDH	First Directions Hearing
ICS	Integrated Client Services
OCE	Office of the Chief Executive
PDR	Primary Dispute Resolution
the Court	Family Court of Australia

Chapter 1

Introduction

The chapter covers the reference of Audit Report No. 33 1996–97 to the committee, gives an overview of the committee’s approach to reviewing the audit report and comments on the pressure on the Court caused by the large number of reviews to which it has been subjected. The committee concludes that the Court should be permitted a period of consolidation in which to consider and implement recommendations arising out of recent reviews.

Reference of the audit report

1.1 *Audit Report No. 33 1996–97, The Administration of the Family Court of Australia*, (the audit report) was tabled on 14 May 1997. It was referred to the House of Representatives Standing Committee on Legal and Constitutional Affairs on 15 May 1997 by agreement with the Joint Committee of Public Accounts (to which all audit reports are referred in the first instance).

Why the committee is reviewing the audit report

This is the first time the committee has reported on an inquiry in the general area of family law and the family court.¹ Such subjects were previously addressed by a series of select committees on various family law matters. The last select committee report *Funding and Administration of the Family Court of Australia*, tabled in

1 The committee is conducting another inquiry in this general area, on preventative relationship education and counselling funded through the Family Services Branch of the Attorney-General’s Department. The committee will table its report on this inquiry in 1998.

November 1995, recommended that the Auditor-General conduct an efficiency audit of the Family Court of Australia (the Court).²

1.2 While the Government has not yet responded formally to the select committee's report, the recommendation regarding an efficiency audit has been implemented in two parts. The first efficiency audit focussed on the Court's administration of financial matters.³ The audit report which is the subject of this current review addresses non-financial administrative aspects of the Court's operations.

1.3 Following the 1996 election and establishment of the 38th parliament, no select committee focussing on family law matters was established. Therefore family law matters have become the responsibility of the Standing Committee on Legal and Constitutional Affairs (in the parliamentary committee context). In assuming responsibility for the additional subject matter the committee also acknowledges a duty to keep abreast of the results of the former select committee's work.

1.4 Accordingly, the committee decided to follow up the former select committee's work by reviewing the performance audit which arose from its work.

The committee's approach to reviewing the audit report

1.5 In tracking the results of the former select committee's work, the committee has no wish to duplicate that work, or indeed, the work of the audit team itself, or the various internal or external evaluations of the Court's operations. In order to avoid duplication, the committee decided to conduct a limited inquiry on the audit report and to seek comments only from the Australian National Audit Office (the ANAO) the Court and the Family Law Council. The Attorney-General's Department was invited to participate in the committee's review but in view of the fact that the Court has total responsibility for all aspects of its own administration, the

2 Joint Select Committee on Certain Family Law Issues, *Funding and Administration of the Family Court of Australia*, November 1995, p. 47.

3 *Audit Report No. 4 1996–97: Use of Justice Statement Funds and Financial Position – Family Court of Australia*.

department did not consider it appropriate for it to participate directly in the committee's inquiry.⁴

1.6 The committee conducted three public hearings, one each with the Court, the Family Law Council and the ANAO, in order to complete the taking of evidence for this report.⁵

1.7 Because of the abbreviated nature of the inquiry, the committee has chosen not to make any recommendations in this report. Instead it offers comments on a number of issues relating to the audit report itself and on aspects of the Court's administration. The committee hopes its comments will be of practical use to both the ANAO and the Court. The comments on primary dispute resolution (PDR) services (see chapter 4) will be of use to the inquiry on the delivery of PDR services being conducted by the Courts, Tribunals and Administrative Law Branch of the Attorney-General's Department.⁶

1.8 This report encompasses a brief overview of the Court itself, an outline of the audit process used in the performance audit of the Court, a survey of the audit findings and, finally, some comments on particular aspects of the Court's administration. The comments relate to the organisation of the Court including the use of regions, the provision of counselling services by the Court and the integrated client services (ICS) project on trial at the Parramatta registry.

Review and the Family Court

1.9 In reaching a decision to conduct a limited review of the audit report, the committee took account of the fact that the Court has attracted an unusual intensity of scrutiny in the 21 years of its

4 The Court falls within the Attorney-General's portfolio in sub-program 4.2 but the department does not contribute to the administration of the Court.

5 Information on submissions and public hearings is in Appendix 1.

6 A discussion paper *The Delivery of Primary Dispute Resolution Services in Family Law*, August 1997 has been recently circulated by the Attorney-General's Department.

existence.⁷ Two of these reviews, the Buckley and Coaldrake reports, are referred to in chapter 4 of this report. The Court's *Annual Report 1996 – 97* lists eighteen internal and external reviews for the year including academic theses but excluding property reviews, OH&S reviews and the audit reviews.⁸ In addition the current review on primary dispute resolution services (PDR) focuses on a central aspect of the Court's work.

1.10 While scrutiny and evaluation are aimed at improving efficiency (as well as accountability), there is no doubt that they also incur financial and human costs which may themselves threaten efficiency. It is always necessary to achieve a balance.

1.11 In the case of the Court, there is a view that the balance is moving away from enhanced efficiency and towards threatening the focus on clients, which should be the proper concern of the Court. The Family Law Council believes it is time to let the Court have a period of time to consider and implement recommendations, free from the need to devote resources to external scrutiny:

... the costs to the Court and to the general public of repeated reviews such as those which have taken place over the last few years cannot be ignored. Regardless of the outcomes, the uncertainty created by having a review and the necessary diversion of resources to prepare material to satisfy review requirements inevitably impact on an organisation's ability to carry out its primary function effectively. The diversion of resources may also lead to a diminution of client services available and to case

7 Major reviews include *Report of the Joint Select Committee on Family Law*, 1980; *Family Law Act 1975: Aspects of its operation and interpretation*, Joint Select Committee on Family Law, 1992; Working Party on the Review of the Family Court (Buckley Report), September 1990; *Certain Aspects of the Operation and Interpretation of the Family Law Act*, Joint Select Committee on Family Law, November 1992; *Funding and Administration of the Family Court of Australia*, Joint Select Committee on Certain Family Law Issues, November 1995; Evaluation of the Implementation of the (Buckley Report) by Professor Coaldrake, January 1996; *Audit Report No. 4 1996–97: Use of Justice Statement Funds and Financial Position: Family Court of Australia*; and the *Review of the Top Structure of the Family Court of Australia* by Professor Coaldrake, June 1997.

8 *Family Court Annual Report 1996–97*, pp. 57–58.

delays, and consequently may create further public discontent. Such problems need to be avoided at all costs.⁹

1.12 The consequences for the Court of various reviews was also addressed by Mr Len Glare, the Chief Executive Officer (CEO) of the Court:

We have been under the microscope for something like seven or eight years, and it has been an enormous investment for the senior staff. It has distracted us heavily from doing the things that we would otherwise have done in the way of management. In part, it is the reason that we are not further advanced on many things. ... While I am quite happy about open government ... I think it helps us – there is a point at which it becomes a bit counterproductive ...¹⁰

1.13 The committee agrees that external reviews, while contributing to the Court's greater efficiency, have also exacted a large cost on the Court's resources.

1.14 The committee considers that a period of consolidation is needed to allow the Court to focus on its basic functions of dealing with the judicial and administrative tasks for which it was established. In commenting on this matter the committee does not intend that normal financial audits and routine parliamentary scrutiny such as Senate Estimates Committees hearings and scrutiny of Annual Reports, should be considered to be within the field of "major external reviews".

9 Family Law Council, *Submissions*, p. S20.

10 Mr Len Glare, CEO of the Court, *Transcript*, p. 21.

Chapter 2

Overview of the Court

The chapter covers the role and functions of the Court with particular reference to the matters covered in the audit report.

History of the Court

2.1 The Court is a superior court of record exercising jurisdiction in all states and territories in Australia except Western Australia.¹¹ It commenced operations on 5 January 1976 having been established under the *Family Court of Australia Act 1975* (the Act).

Organisation

2.2 The Chief Justice is responsible for the administration of the Court (s. 38A of the Act). The Chief Executive Officer (CEO) is a statutory office established to assist the Chief Justice in the administration of the Court. He or she is the equivalent to the secretary of a department (s. 38Q) including having the delegated financial powers of a secretary.

2.3 Management of the Court is based on a three level structure –

- national
- regional and
- registry.

2.4 The organisation of the Court's administration will be considered further in chapter 4, but a brief overview is included here.

11 The Family Court of Western Australia exercises, within Western Australia, the same jurisdiction as the Family Court of Australia.

The Court at the national level

2.5 The Chief Justice of the Court is located in Melbourne. Under amendments to the *Family Law Act* in 1990 the Chief Justice has responsibility for the management of the Court. The amendments also created a new position of Chief Executive Officer to assist the Chief Justice in managing the Court.¹²

2.6 The Office of the Chief Executive (OCE), the central office of the Court, is located mainly in Sydney with elements in Canberra and Melbourne. The Chief Executive Officer (CEO) is assisted by two Principal Directors with responsibilities for Administration and Court Counselling and a Principal Registrar.¹³ The top structure of the Court is the subject of a recently published review by Professor Coaldrake.

The Court at the regional level

2.7 Following a change to the administrative structure introduced in May 1996, the number of regions decreased from three to two. The change, which was in response to budgetary restrictions, resulted in merging the former Eastern (based on Sydney) and Northern (based on Brisbane) registries, excluding Canberra which was to be administered from the Southern region.¹⁴ The current structure consists of a Northern region based on Sydney and a Southern region based on Melbourne. Each regional office has responsibility for a number of registries and sub-registries.¹⁵

Registries

2.8 From the perspective of clients, the operations of the Court commence at registries. These are the major offices of the Court, where proceedings commence with the filing of an application. Registries

12 *Family Court Annual Report 1995–96*, p. 21.

13 *Audit Report*, p. 10.

14 *Family Court Annual Report 1995–96*, p. 3.

15 *ibid.*

provide counselling as well as filing services. Smaller offices – sub-registries – generally offer counselling services only, although Dandenong sub-registry¹⁶ offers full filing services and Lismore offers limited filing services.¹⁷

2.9 The Northern Region has registries at

- Brisbane
- Darwin
- Parramatta
- Newcastle
- Sydney and
- Townsville.¹⁸

2.10 Northern Region sub-registries are located at

- Alice Springs
- Cairns
- Coffs Harbour
- Dubbo
- Gold Coast
- Lismore
- Rockhampton and
- Wollongong¹⁹

2.11 Southern Region registries include

- Adelaide
- Canberra
- Hobart and
- Melbourne.

16 Dandenong was a full registry until its down-grading to sub-registry status in 1996. This was achieved by abolishing the Dandenong Registry Manager's position and reorganising the administrative functions of the former registry with a rationalisation of staff. The Audit Report is highly critical of the decision-making process leading to this down-grading, which resulted in the saving of only \$33,000 per year. See *Audit Report*, p. 77.

17 *Family Court of Australia Annual Report 1996–97*, p. 4.

18 *ibid.*

19 *ibid.*

2.12 Southern Region sub-registries are located at

- Albury
- Dandenong and
- Launceston.

Functional organisation of the Court

2.13 Within each of the three levels there are four functional groups:

- judiciary
- management/operations
- registrars and
- counsellors.²⁰

Jurisdiction of the Court

2.14 The Court's jurisdiction covers

- divorce
- nullity
- division and settlement of property
- injunctions
- maintenance
- residence (formerly called custody) and
- contact.

Court services (non-judicial)

2.15 In addition to its traditional judicial role the Court offers

- counselling (both voluntary and court ordered – conducted by a counsellor and aimed mainly at resolving disputes regarding children),
- conciliation conferences (conducted by a registrar and dealing mostly with property matters or joint conciliation conferences dealing with children and financial issues and conducted by a deputy registrar and a counsellor) and
- mediation (usually conducted by a registrar and a counsellor and aimed at achieving consensual agreement concerning children, property and financial issues).²¹

²⁰ *ibid.*, p. 3.

2.16 Services are provided through 21 registries and sub-registries located in all states and territories (except, of course, Western Australia). Each year about 100,000 adults and 150,000 children are affected directly by the operations of the Court.²²

2.17 The audit report includes (in Appendix 3) an analysis of the eight stages in the Court process.²³ This is a very useful outline detailing the action taken, how the action affects clients and the ANAO's comments on the administration of the process. Where relevant, performance standards and fees payable are included in the table. It would have been useful if the information in the table had been part of the body of the report and relevant recommendations made.²⁴ The same might be said of the analysis of decision making processes in Appendix 4 of the audit report.²⁵

2.18 Appendix 3 of the audit report shows the process that people wanting to dissolve a marriage must follow. They must first obtain the relevant forms and brochures (either by post or by attending a registry or sub-registry). The client/s must then take or mail the completed form to a filing registry. After the form has been checked and accepted, the client is given a 'return date' (date of the first appearance in Court) and is given copies of the application and service information and forms. The filing fee must then be paid to the cashier (not necessarily in the same place as the area where forms are deposited).

2.19 The client must then serve documents on the other party (or apply to a deputy registrar to dispense with this step if necessary). The client then attends an information session relating to property and children's matters and family breakdown in general (conducted by a deputy registrar and a counsellor). The client must then provide registry

21 *Audit Report*, p. 7, Figure 1 and p. 9.

22 *ibid.*, p. 3, Mr Len Glare, *Submissions*, p. S40, provides a breakdown of the 158,058 children affected by divorce in 1996.

23 *ibid.*, pp. 71–76.

24 *ibid.* Various recommendations are implied in the ANAO's comments in this table, but the comments do not have the same importance as recommendations, and the Court's response (if any) to the comments is not recorded.

25 *ibid.*, pp. 77–79.

staff with certain basic information on an intake form before making an appointment for counselling. (The intake form is used to identify issues such as domestic violence. The procedure varies in different registries – some require copies of orders and one registry approaches agencies for more information.)

2.20 Next, the client (if there are children of the marriage) attends counselling (either jointly or in an individual session) for about 1.5 to 2 hours. There may be other dispute resolution processes depending on the number of outstanding issues between the parties. Clients are directed to the most appropriate course of action (conciliation conference, mediation ...) by a procedural order determined by the Judicial Officer and the matter is adjourned to the next hearing date.

2.21 In cases where agreement has been reached there will then be a first directions hearing (FDH) conducted by a registrar, where clients will be told if the divorce will be granted. The clients receive the *decree nisi* at that stage, with the *decree absolute* being made one month later.

2.22 All the administrative processes outlined above apply to dissolutions which do not go to litigation. One might have expected the processes to be a rich field for the performance audit to analyse and make appropriate recommendations for increasing efficiency. The report is notable for its omission in this regard. The report also fails to test the administrative performance of the Court against the principles laid down in the *Family Law Act 1975* (the Act).²⁶

The integrated client services (ICS) trial

2.23 The ICS trial, being conducted at the Parramatta Registry, is aimed at providing a 'one stop shop' where the various needs of clients can be assessed and met as efficiently as possible. The client can have his/her case appraised (by a Court counsellor or deputy registrar who discusses specific issues and advises on the best options for managing the case through the Court). The recommendations made by the officer appraising the case are then fed into the client's FDH for a formal decision on the future conduct of the case. During the same visit the

26 Section 43 of the Act sets out five principles that the Court shall have regard to in exercising its jurisdiction. They relate to the role of marriage, the protection of the rights of children and the need to ensure safety from family violence.

client can have the information session and the FDH scheduled, thus saving multiple visits to the Court.²⁷

Costs associated with Court administrative processes

2.24 In addition to any fees payable to lawyers for their services, there are various administrative charges levied for the processes outlined above. The filing fee for dissolutions is \$500 and the filing fee for ancillary applications (children and/or property) is \$150. The fees may be waived in cases of proven hardship.²⁸ There are additional fees if the divorce is contested, including a hearing fee of \$300. There are also fees for counselling sessions and for extra copies of a *decree*.

27 *ibid.*, p. 9.

28 *ibid.*, p. 72.

Chapter 3

Audit process and findings

The chapter covers the process followed by the performance audit and provides an overview of its findings.

Objectives and aims

3.1 The objectives of the audit were “to assess the economy, efficiency, effectiveness and accountability of the Court’s administrative functions”.²⁹ A major aim was “to identify better practices to improve administrative procedures”.³⁰

3.2 The aim was expanded by the Family Law Council as follows:

In other words, the audit was intended to:

- assess whether the Court’s administrative processes met the Court’s aims and objectives and, second, whether they met these aims and objectives in a cost-effective manner and provided good value for the money expended;
- assess whether the Court’s administrative processes were economical, and met the Court’s aims and objectives with as little expense as was reasonably achievable; and
- identify areas of the Court’s administration which were operating at less than maximum efficiency, suggest ways in which these areas could be improved, and suggest processes and procedures which could be disseminated more widely.³¹

²⁹ *Audit Report*, p. 4.

³⁰ *ibid.*

³¹ Family Law Council, *Submissions*, p. S19.

The audit process

3.3 As noted in Chapter 1, the audit's genesis lay in a recommendation by the Joint Select Committee on Certain Family Law Issues.³² *Report No. 33* is the second part of the audit and follows the tabling in August 1996 of *Audit Report No. 4 1996–97, Use of Justice Statement Funds and the Financial Position of the Family Court of Australia*.

3.4 The field work for the audit was completed between September and December 1996. The audit team visited registries and sub-registries in Sydney, Melbourne, Canberra, Brisbane, Newcastle and Parramatta.³³ A list of discussion points was then prepared by the ANAO as a basis for consultation with the Court about the results of the field work. A draft report was then prepared. The Court had the opportunity to comment on the draft, and it was successful in having some aspects of the draft changed.³⁴

3.5 The final report contains the comments, conclusions and recommendations of the audit together with comments on each recommendation, by the Court. The cost of the audit was \$261,000.³⁵

Limitations of the audit

3.6 The *Audit Act 1901* acknowledges the constitutional separation of powers by precluding the ANAO from reviewing judicial functions. The scope of the audit was therefore limited to non-judicial functions of the Court. Thus the audit could review primary dispute resolution (PDR) functions (including counselling, conciliation conferences and mediation) because these are fundamentally administrative processes, but it could not review the litigation stream of dispute resolution (a judicial function).³⁶

32 *Audit Report*, p. 3.

33 *ibid.*, p. 5.

34 *Transcript*, p. 21.

35 *Audit Report*, p. 3.

36 See also comments by Mr Len Glare, CEO of the Court, *Transcript*, p. 21.

Structure of audit report

3.7 The report is organised as follows:

- Summary and Recommendations
 - summary
 - findings
 - recommendations
- The Administration of the Family Court of Australia
 - introduction
 - the Family Court of Australia – an overview
 - corporate planning (recommendations 1 and 2)
 - corporate management (recommendations 3 to 5)
 - regional organisational structure (recommendation 6)
 - operational performance and procedures (recommendations 7 and 8)
 - other issues (recommendations 9 and 10)
- Appendices
 1. Audit criteria
 2. ANAO analysis of the 1995-98 Court Plan of the FCA
 3. ANAO analysis of stages in the court process
 4. ANAO analysis of decision making for selected administrative changes
 5. Proposed organisational chart
 6. Comparison with the Western Australian Family Court.

3.8 The appendices to the audit report contain much useful detail about the administration of the Court as well as useful suggestions for improved efficiency. It would have been helpful if some of this detail were included in the body of the report and made the subject of recommendations.

Audit findings and conclusions

3.9 The ANAO acknowledged that “the Court is well focussed on moving towards best practice” and noted that the Court had a number of projects on hand to improve areas including strategic planning,

information technology, performance measurement and human resource management.³⁷

3.10 The audit identified areas in which improvements could be made. These areas are

- corporate planning
- performance measurement
- administrative decision-making processes
- organisational structures
- internal administrative procedures and
- other areas including information technology and human resource management.³⁸

3.11 The audit report makes ten recommendations arising from its comments on these areas of Court operations. The recommendations are reproduced in Appendix 2 of this report.

Comments on audit report

The Court's comments

3.12 The Court commented that the audit was “considered and fair” but that the Court did not agree with all the report’s conclusions.³⁹ It is the Court’s view that the ANAO’s problems were “primarily with the formalities and particularly the documentation of corporate and strategic planning”.⁴⁰ The Court noted that other recent performance audit reports had also criticised reporting and documentation and suggested that the ANAO’s judgement of what is an appropriate level of corporate and strategic planning may be set at a higher level “than is reasonable or practicable”.⁴¹

37 ANAO, *Submissions*, p. S7.

38 *ibid.*, pp. S7–10.

39 Family Court of Australia, (Mr Len Glare), *Submissions*, p. S1.

40 *ibid.*, p. S2; See also C J Nicholson, *Transcript*, p. 18.

41 Family Court of Australia, *Submissions*, p. S1.

3.13 The Court cited extracts from the Hon. Peter Reith's Second Reading speech on the Public Service Bill 1997 to criticise the focus of the report:

... a bygone era in which ... there was a preoccupation with process rather than results; in which every management action was prescribed and regulated...⁴²

Family Law Council's comments

3.14 The council noted that the audit report

takes a broad managerialist approach with little detailed attention to, and few firm conclusions concerning the initial aims of the exercise.⁴³

3.15 The council continued by observing that this broad approach had two unfortunate consequences. First, the audit report ignored many of the difficult questions concerning the Court's performance. Second, the report failed to include the positive achievements of the Court.⁴⁴ The council further observed that

the failure of the report to provide a comprehensive analysis of the efficiency of the Court's administrative processes, and to assess whether its processes operated economically, meant that a proper evaluation of the Court's many achievements by comparison with its expenditures has not been done and is not possible from the audit data.⁴⁵

Committee's comments

3.16 The committee is inclined to have some sympathy with the Court's view of the audit. Most recommendations *do* focus on process while only a minority relate to outcomes which directly affect client needs and services.

42 *ibid.*, p. S3.

43 Family Law Council, *Submissions*, p. S19.

44 *ibid.*

45 *ibid.*

3.17 The ANAO made ten recommendations.⁴⁶ Six of the recommendations focus mainly on measuring, documenting and/or reporting. Only recommendations 6, 8, 9 and 10 make practical recommendations aimed at making the Court's core business more efficient. Of these, only recommendation 6 (dealing with reviewing the need for regional management) is included in the group of five recommendations accorded priority by the ANAO. That is, the ANAO itself appears to consider the measuring, documenting and/or reporting recommendations the most important.

3.18 In relation to the stated objectives of the audit (see para 3.1 above) there seems to be an over-emphasis on assessing the accountability of the Court's administrative functions in relation to the assessment of economy, efficiency and effectiveness.

3.19 This is not to say that developing a strategic plan, measuring and evaluating performance in a meaningful way and otherwise implementing sound management practices, is not important. These things are very important. However, in allocating resources to these functions it is important to take account of the extent to which they can add value to the Court's activities. In addition, emphasis placed on managerial issues may divert attention from administrative issues that are more closely linked to the core business and client experience of an agency.

3.20 That said, the recommendations and the analysis on which they are based should prove useful to the Court as it seeks to improve its efficiency and effectiveness. They address some major administration issues on which the Court should reach decisions sooner rather than later.

3.21 In particular the analysis of operating procedures in registries, and recommendation 8 which follows, can help with the problem of different levels of service being offered at different registries and assist all registries to attain the best level of service.⁴⁷

3.22 Also, recommendation 6 (dealing with regional management and the Court's top organisational structure) addresses an urgent

46 The recommendations are set out in full in appendix 2 of this report.

47 See *Audit Report*, pp. 48–52. The first two points of recommendation 3, together with recommendation 10 should also help all registries implement better practice.

organisational issue within the Court's administration. The committee touches on this aspect of the audit report in the next chapter.

3.23 Unfortunately, the audit report does not make any recommendation regarding one of the other urgent (non-judicial) issues facing the Court – that of the administration of primary dispute resolution (PDR) procedures.⁴⁸ The audit report describes the processes involved in PDR⁴⁹ and comments briefly on them in Appendix 3.⁵⁰ However, the report fails to scrutinise the Court's administration of PDR against the criteria of "economy, efficiency, effectiveness or accountability".⁵¹ It makes no recommendations regarding the future role of PDR within the Court.

3.24 This omission is disappointing as PDR constitutes a major part of the Court's operations. An overwhelming number of clients have their disputes settled through PDR processes while only a small percentage proceeds to litigation.⁵² In addition, there is considerable speculation on whether PDR should stay with the Court or move to the community sector – a proposal of great significance for the Court's administration. While some of this debate has been published since the audit was completed⁵³, the debate has been around for a considerable period. It was also discussed in the report by the Joint Select Committee on Certain Family Law Issues, *Funding and Administration of the Family Court of Australia* in November 1995.⁵⁴ Presumably the auditors were

48 Including counselling, conciliation conferences and mediation.

49 *ibid.*, pp. 8–10.

50 *ibid.*, pp. 73–74.

51 See audit's objectives in 3.1 above.

52 The Family Law Council notes that around 95% of all matters are settled through a range of dispute resolution processes (instead of by judicial determination). It also notes that an unknown proportion of these matters are settled, not by any action by the Court, but as a result of decisions by the parties based on the costs of proceedings and a reluctance to wait for a hearing. *Submissions*, p. S14.

53 See transcript of the Attorney-General's speech to the National Press Club in October 1996, the Attorney-General's news release of 26 October 1997 "National Family Day Highlights Government Initiatives" and the Discussion Paper *The Delivery of Primary Dispute Resolution Services in Family Law*.

well aware that the provision of PDR services is a major administrative issue for the Court.

3.25 The committee considers the question of the location of PDR services in the next chapter.

3.26 The audit report is also notable for its failure to analyse and make recommendations on the integrated client services (ICS) model being conducted at the Parramatta Registry. The trial is touched on in Chapter 2 above.

54 The Joint Committee's report included two recommendations aimed at increasing community based dispute resolution and counselling services – para 7.26, p. 93 para 7.49, p. 98.

Chapter 4

Aspects of Court administration

This chapter addresses two aspects of the administration of the Court which were outlined briefly in chapter 2. The subjects selected for further comment are the organisation of the Court's administration (including the issue of regions) and the counselling services offered by the Court.

Regional organisation of the Court's administration

4.1 Chapter 2 above provides an overview of the administrative structure of the Court at the national, regional and registry/sub-registry levels.⁵⁵

4.2 The structure is important because the efficient delivery of client services depends on the efficiency of each registry and sub-registry. The current regional structure has been under review for some time.

4.3 The Court does not support abolishing the regional structure⁵⁶ and has argued that the organisation without the regional management level is an excessively flat structure. In response to this the ANAO has pointed out that because of recent administrative changes (in which some positions and functions have been moved from the regions and centralised in the OCE)⁵⁷, the need for a regional organisational structure has been weakened.⁵⁸

55 See pp. 6–12 above.

56 C J Nicholson, *Transcript*, p. 18

57 In response to the Coaldrake review on the implementation of the recommendations of the Buckley report, January 1996, the Court centralised the positions of the Regional Directors of Court Counselling and Regional Registrars. These positions became Deputy Principal Directors of Court Counselling and Deputy Principal Registrars respectively in OCE. *Audit Report*, p. 37.

58 *ibid.*

4.4 The ANAO believes there is no compelling rationale for the regional structure employed by the Court.⁵⁹ In evidence the ANAO told the committee

We also considered that the regional management layout of the court's administration no longer reflected the rationale for which it was set up and it was hard to see the value it added. We proposed an alternative solution ... which we considered would achieve the same ends but at a lower cost and recommended the regional management issue be considered in the context of Professor Coaldrake's review of the court's top management structure.⁶⁰

4.5 The ANAO's alternative structure proposes the abolition of the regional structure and replacing it with a system of clustered registries, with registries in Sydney, Parramatta, Melbourne, Adelaide and Brisbane exercising some control over a number of other registries. Registry managers at the major registries would report directly to the Director of Client Services in the Office of the Chief Executive.⁶¹

4.6 The Coaldrake review of the Court's top structure was finalised in June 1997 (while the audit report was presented in May 1997). In the event, the Coaldrake review did not support the ANAO's approach to the organisation of the Court's administration. The report takes the view that while the regional management model is in some disarray, it is for the Court itself to determine the most appropriate course of action.

4.7 The Coaldrake report was critical of the way the Court has handled the issue of regional organisation. A previous report by Professor Coaldrake (January 1996) reviewed the implementation of the recommendations of the Buckley report of 1990, which was instrumental in the current organisation of the Court's administration. Professor Coaldrake's 1996 report pointed to the need to clarify the relationships between the OCE, the regions and registries. In his 1997 report Professor Coaldrake criticised the Court:

Although the Court indicated an acceptance of the need to clarify these relationships and ensure appropriate delegations to the Regions, actions taken over the last eighteen months have been

59 *Audit Report*, p. 37.

60 Mr Ian McPhee, ANAO, *Transcript*, p. 35.

61 *Audit Report*, p. 80.

starkly inconsistent with the spirit of the recommendations contained in the January 1996 evaluation.⁶²

4.8 The report continues that the failure of the Court to implement the earlier recommendations, together with the reduction in the number of regions from three to two, means that the regional managers have larger regions to administer, but less authority and capacity to do so. The report also points out that there seems to be a lack of commitment to the regional model by the Court's judicial leadership.⁶³ The report concludes that there may be a need to reconsider the regional model:

In view of these circumstances, the Court may consider that the most appropriate course of action is to reconsider the issue in a cost-effective manner which integrates the considerations of geographical areas and the imperative of integrated service delivery. Such a course of action also would take into account the uneven demographics of the two current Regions.⁶⁴

4.9 The committee notes that the Coaldrake report does not recommend abandoning a geographically based organisational model and is to this extent inconsistent with the views expressed by the ANAO.

4.10 The committee commends the Court for seeking to improve its organisational structure by commissioning another evaluation by Professor Coaldrake. The committee agrees with the approach of the Coaldrake report – that it is for the Court itself to determine the most appropriate administrative structure in the light of its responsibilities. The committee further considers that the Court should take account of the evaluations provided by outside agencies (including Professor Coaldrake's report and the ANAO report) in determining the most appropriate administrative structure.

The provision of counselling services by the Court

4.11 The audit report gives only a brief overview of the primary dispute resolution (PDR – combinations of counselling, conciliation and mediation) services provided by the Court.⁶⁵ Considering the size of this

62 Coaldrake report, June 1997, p. 12.

63 *ibid.*, pp. 12–13.

64 *ibid.* p. 13.

65 See *Audit Report*, pp. 8–9.

service⁶⁶, including the fact that all clients who attend the Court experience some form of counselling, the audit might have been expected to consider the efficiency, effectiveness and accountability (see paragraph 3.1 above) of this aspect of court administration.

4.12 Such an expectation is all the more reasonable given current questions about where counselling services should be located and the desirability of contracting out the services.⁶⁷ The audit report makes no more than a couple of oblique references to this central aspect of the Court's operations.⁶⁸

4.13 The committee considers that the question of counselling services and the Court is crucial and the sooner the question of the location of these services is settled, the better for all concerned. In commenting on the issue the committee notes that there are three distinct areas to which the term "counselling" is sometimes applied.

4.14 These are:

- counselling including pre-marriage counselling which is educational rather than targeting problems after they have arisen (more properly termed marriage or relationship education)
- reconciliation counselling which aims to help couples overcome difficulties (mostly provided by community agencies, many of which receive some funding through the Family Services Branch of the Attorney-General's Department)⁶⁹
- conciliation counselling (included in primary dispute resolution or PDR services) aims to help couples to reach decisions about

66 Figures for the number of staff involved in PDR are not provided in either the audit report or the annual report, though the latter shows that there are 197 staff at the SO C-A equivalent and this group probably includes counselling staff. *Annual Report 1996-97*, p. 89.

67 See paragraphs 3.23 and 3.24 above.

68 *Audit Report*, p. 17 notes that a threshold issue is the resolution of what constitutes 'core business' for the Court. On p. 19 the report suggests that before the Court can develop effective corporate plans it needs to clarify what the 'core' functions of the Court are. These references presumably relate to whether primary dispute resolution services are 'core'.

69 Reconciliation counselling is within the jurisdiction of the Family Court because of the breadth of the principles enunciated in s43 of the Family Law Act. In fact there is no focus on reconciliation counselling in the Court, although it is open to counsellors to suggest that couples seek this form of counselling elsewhere if there is some doubt about whether the parties wish to end the marriage.

issues ancillary to divorce, which are in the best interests of the children and the individuals involved.

4.15 Conciliation counselling is provided largely by the Court, although sometimes the Court contracts other agencies to provide the service on its behalf. In addition, some programs funded through the Family Services Branch of the Attorney-General's Department provide PDR services. Most of these services come under the Family Mediation sub-program. Others are provided because there is sometimes no clear demarcation between reconciliation and conciliation counselling.

4.16 The current debate about the location of PDR services is about whether the Court should continue to provide the bulk of these services or whether more of them should be provided by community-based agencies.

4.17 While the details of how this would be administered have not been spelt out, the implication is that if the latter alternative is adopted, the services would be funded and administered by the area of the Attorney-General's Department which already (part) funds and administers marriage education and reconciliation programs and some conciliation programs (family mediation services).⁷⁰

4.18 The Attorney-General's Discussion paper on PDR services suggests:

A new administrative structure is suggested as one possible option. At present, the Court is the provider of its own in-house services. Many community-sector PDR services are also funded by the Commonwealth through the Family Services Branch of the Attorney-General's Department. A structure along the lines discussed in the Paper would involve combining the current administrative responsibilities and budgets of the Family Court and the Family Services Branch.⁷¹

4.19 There would be a major change to the function of the Court if PDR services were to be moved away from its control. In the meantime,

70 A list of the agencies funded by the Family Services Branch for the provision of services under the Family Mediation Program is in *Legal Aid and Family Services, Directory, 1996*.

71 The Attorney-General's Department's discussion paper *The Delivery of Primary Dispute Resolution Services in Family Law*, p. 2.

uncertainty regarding the issue is a problem for the Court's administration.⁷²

4.20 The Coaldrake report *Review of the Top Structure of the Family Court of Australia*, (June 1997) notes:

If there were to be a move away from the Court for non-judicial services, the organisational ramifications would be very considerable, the more so given that the Judges of the Family Court are professionally involved in only a tiny proportion of the matters dealt with by the organisation.⁷³

4.21 The Court's most recent annual report notes:

The impacts of various inquiries into areas such as this [counselling services] have the capacity to increase uncertainty and to impact negatively on the morale of staff who may be affected by their outcomes.⁷⁴

4.22 In relation to this inquiry, no external evidence has been taken on this subject. However, the committee has taken evidence on the Court's counselling service in relation to another inquiry, on which it has not yet reported.⁷⁵ Given that a decision on the future of PDR services and the Court may be reached before the report on the family services inquiry is presented, the committee has decided to make some comments on the issue in this report on the audit.

Court's views on the location of PDR services

4.23 These have been put most succinctly in the current annual report, in the section 'Year in review by the Chief Justice':

I have strongly opposed the suggestion that counselling and mediation services should be removed from the Court or reduced in scope. This has nothing to do with any misgivings about the effectiveness of community-based organisations or because of

72 See for example Family Court of Australia, *Submissions*, p. S43.

73 Coaldrake report, June 1997, p. 6.

74 *Family Court of Australia – Annual Report 1996-97*, p. 17.

75 The inquiry into aspects of family services is considering the provision of services by community agencies being funded by the Family Services Branch of the Attorney-General's Department. While these services are aimed at preventing marriage and relationship breakdown (rather than crisis counselling) the subject of counselling services has been raised. The committee's report on this inquiry is now expected to be tabled early in 1998.

any 'territorial' concerns. Rather, it has everything to do with the success of the existing Court services, the apparently high esteem in which they are held by clients and the legal profession and because to dismantle them appears to fly in the face of progress made by family courts not only in this country, but also around the world. Indeed it is inconsistent with the developments taking place in all other Australian courts in the promotion of mediated resolutions of disputes. There is room for such services in the community but clients should have maximum choice and, in any event, **the development of services external to the Court is not inconsistent with the retention of those provided within it.**⁷⁶

Other views on the provision of PDR services by the Family Court

4.24 The Attorney-General's Department's discussion paper *The Delivery of Primary Dispute Resolution Services in Family Law*, August 1997 outlines the issues relevant to the location of the services.⁷⁷ The paper is a substantial one (25 pages long) which calls for submissions by 28 November 1997. In the first section of the paper (entitled 'Why consider reform?') recommendations of the Joint Select Committee on Certain Family Law Issues were cited.

4.25 The Joint Select Committee on Certain Family Law Issues supported the idea of locating at least some of the counselling services currently provided by the Court, in the community sector. The relevant recommendation is:

7.49 The Joint Committee recommends that:

while recognising that the Family Court of Australia will always require direct access to counselling services, in the long term, there are benefits in having counselling based in the community through structures such as the Noble Park centre in Melbourne, community legal centres and organisations like Relationships Australia on a flexible and competitive basis.⁷⁸

76 *Family Court of Australia - annual report 1996-97*, p. 17. The emphasis given to the last section of the extract has been added.

77 The paper is available on the internet at <http://law.gov.au/publications/familypdrs.htm>.

78 Joint Select Committee on Certain Family Law Issues, *Funding and Administration of the Family Court of Australia*, November 1995, p. 98.

4.26 The Family Law Council wrote a letter of advice to the Attorney-General on the Joint Committee report, in June 1996.⁷⁹ The letter criticised the recommendation reproduced above in the following terms:

The Council also found that in several areas the JSC's report lacked any reasoning for its proposals (see, for example, the recommendation at paragraph 7.50) and in other areas inadequate reasoning was given. The lack of justification for, or explanation of, many of its recommendations makes it difficult constructively to comment on its recommendations. Also, Council considers that some proposals are ambiguously stated (for example, the recommendation at paragraph 7.49 was understood by Council members in a variety of ways.⁸⁰

4.27 The Joint Committee's reference to making federally-funded PDR services available to a greater extent in a community setting is cited in the discussion paper (see 4.18 above) as one of the reasons for considering reform. However, the discussion paper does not give sufficient weight to the fact that the Joint Committee stated that the Family Court will always need direct access to counselling services. The need for careful consideration of all aspects of the debate cannot be stressed enough.

4.28 The committee commends the community consultation the Attorney-General's Department is undertaking to improve services in this area. As noted above (para 4.17 – 4.18), the PDR paper proposes a central body (to be part of the Commonwealth) which would have responsibility for all counselling services currently provided through the Court (PDR services) and the Family Services Branch of the Attorney-General's Department (relationship education and reconciliation counselling).

4.29 While a superficially attractive administrative response to the location of PDR services, the suggestion involves complexities that require a more detailed analysis and consideration.

4.30 These complexities include the fact that counselling and mediation services provided by community-based agencies are a different type of service, focusing as they do on more on preventing marriage breakdowns than in facilitating the more harmonious severing

79 Family Law Council, *Submissions*, p. S23. The letter was published originally in the Family Law Council *Annual Report 1995-96*.

80 Family Law Council, *Submissions*, p. S25.

of relationships. On the basis of the evidence taken by the committee for its family services inquiry, they do this very well.

4.31 Many community-based services are provided by churches which have a deep philosophical commitment to the support of marriages through bad times. The PDR services provided through the Court are crisis counselling to help couples who have already determined to separate, to solve the problems involved in doing so. The focus is different.

4.32 The discussion paper seeks input on the following issue

- whether more people may be encouraged to avoid litigation altogether if one of the largest sources of voluntary PDR was not situated within a court.

4.33 This could be misleading. The Court's PDR services are focussed on helping couples resolve their differences without resorting to litigation. With 95% of matters being settled without judicial determination, they have been most successful in doing so.⁸¹

4.34 The discussion paper deals fairly briefly with the subject of family violence and its relevance to the location of PDR services. This is one of the key arguments for providing people with the opportunity to experience PDR in the environs of the Court. The sophisticated intake screening procedures offered by registries⁸² would be difficult to duplicate in all community based agencies. Not all community based agencies would be able to meet the requirement suggested in a position paper on mediation prepared for the National Committee on Violence Against Women:

Intake interviews must **always** be conducted with the disputants separately whatever the circumstances and whatever the desires of the parties. It is unlikely that any interview with both parties present will identify violence.⁸³

4.35 The question posed in the discussion paper on this issue might be seen as a leading question:

81 *ibid.* p. S14.

82 Note: The audit report criticises the fact that the intake forms used to identify issues such as domestic violence varies from registry to registry. *Audit Report*, p. 74.

83 Dr H Astor, *Position Paper on Mediation*, December 1991, p. 41.

Q. 7 Does the fact that the Family Court already has in place significant security measures to respond to a violent incident require the current model to be retained?⁸⁴

4.36 It is clear that the issue of the location of PDR services is a highly complex one. The committee considers that there is a prima facie case for retaining control of PDR services in the Court. Any proposal to re-locate PDR services away from the Court should be based on solid evidence that the provision of the services could be improved by different administrative arrangements.

4.37 Any such decision should be approached with a great deal of caution. Attention must be paid to the different types of counselling services and the suitability of particular bodies for delivering different services. On the basis of visits to the Court as part of the Family Services inquiry, the committee considers that PDR services are an integral part of the Court's operations. Future administrative arrangements will have to take this central fact into account.

Kevin Andrews MP
Chairman
November 1997

84 Attorney-General's Department, *The Delivery of Primary Dispute Resolution Services in Family Law*, August 1997, p. 10.

Appendix 1

Submissions, exhibits and public hearings

Submission

Submission	Organisation
1	Family Court of Australia
2	Australian National Audit Office
3	Family Law Council
4	Family Court of Australia (supplementary)
5	Family Court of Australia (supplementary)

Exhibits

1	P. Coaldrake, <i>Review of the Top Structure of the Family Court of Australia</i> , June 1997
2	Correspondence, ANAO to the Chief Justice of the Family Court of Australia
3	Correspondence, ANAO to the Chief Justice of the Family Court of Australia

Public hearings

15 September 1997

Sydney

Family Law Council
 Mrs Jennifer Boland (Chairperson)
 Mr Richard Morgan (member)

18 September 1997

Melbourne

Family Court of Australia
 Chief Justice Alastair Nicholson
 Mr Leonard Glare (Chief Executive Officer)
 Mr Bruce Frankland (Principal Director of Administration)

30 October 1997

Canberra

Australian National Audit Office
 Mr Michael Lewis (Executive Director, Performance Audit)
 Mr Ian McPhee (National Business Director, Performance Audit Business Unit)
 Ms Janine McGuinness (Senior Auditor, Performance Audit)

Appendix 2

Recommendations in Audit Report No. 33 1996–97

The Administration of the Family Court of Australia

Recommendation No. 1* (Para. 3.21)

The ANAO *recommends* that as part of the current review of the Court Plan, the Court also:

- continues to consult the Attorney-General to ensure a common understanding of the Court's priorities, resources and any emerging pressures;
- articulates clearly the role of business plans in the context of overall Court strategic planning;
- formalises the links between corporate, business and operational plans, performance measurement, monitoring and reporting;
- establishes effective mechanisms for reviewing corporate plans; and
- ensures that the new Court Plan:
 - contains an introductory statement of its purpose and planning framework;
 - clearly sets out the Court's objectives, preferably measurable;
 - provides a means whereby the Court's priorities can be determined in line with the Court's objectives;
 - articulates the outcome expected from each objective;
 - includes the specific strategies for achieving each of the Court's objectives; and
 - specifies performance measures and reporting timeframes for each strategy.

Recommendation No. 2 (Para. 3.31)

The ANAO *recommends* that the Court develops a strategy for involving and communicating its corporate direction to managers at all levels; with particular emphasis on promoting all Court plans as management tools.

Recommendation No. 3* (Para. 4.17)

The ANAO *recommends* that the Court, as part of the current review of performance information and statistics, ensures that:

- performance measures, targets and reporting timeframes are set for all key objectives of the Court;
- targets are set for each functional area of the Court, particularly in relation to timeliness, cost, workload and services standards;
- effective quality control of its data collection mechanisms is established; and
- the Court undertakes more systematic analysis of performance information and provides users with more information on trends (and their cause) in Court operations and activities.

Recommendation No. 4 (Para. 4.27)

The ANAO *recommends* that the Court adopts a systematic evaluation and management framework in its administrative decision-making process. This could include:

- identifying and considering reasonable alternative options;
- documenting reasons for decisions;
- assessing resource implications; and
- analysing and reporting the means whereby changes are to be implemented.

Recommendation No. 5* (Para. 4.39)

The ANAO *recommends* that the Court collects and analyses data to:

- examine the level and type of service delivery to accommodate that demand;
- determine registry workload forecasts on the basis of the services delivery needs; and
- allocate available resources according to the Court's priorities and client demands.

Recommendation No. 6* (Para. 5.20)

The ANAO *recommends* that the Court reviews the need for the regional management, in conjunction with Professor Coaldrake's review of the Court's top structure.

Recommendation No.7* (Para. 6.20)

The ANAO *recommends* that the Court commences benchmarking across registries using existing data. Comparisons with the Family Court of Western Australia and material arising from the Council of Australian Governments' working party should be part of this exercise.

Recommendation No. 8 (Para. 6.36)

The ANAO *recommends* the Court adopts procedures to develop and implement continuous improvement across the Court that includes the following:

- confirmation that the responsibility for developing administrative policies and procedures for all functional areas rests with OCE;
- improved input from registries and other functional areas of the Court in investigating issues and developing draft policies and procedures; and
- improved capability to benchmark administrative processes.

Recommendation No. 9 (Para 7.17)

The ANAO *recommends* that all relevant stakeholders, including the Information Technology Group, be involved in the process of defining the capabilities needed for replacement for all Court systems, particularly FINEST and NOMAD.

Recommendation No. 10 (Para 7.21)

The ANAO *recommends* that the Court provides cost-effective training of relevant registry staff in the capabilities and effective use of existing management information systems.

- * The ANAO considers that recommendations 1,3,5,6 and 7 should be given priority.