HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Reference: Administration of the Family Court of Australia

CANBERRA

Thursday, 30 October 1997

OFFICIAL HANSARD REPORT

CANBERRA

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STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Members

Mr Andrews (Chair)

Mr Andrew	Mr Mutch
Mr Barresi	Mr Randall
Mrs Elizabeth Grace	Mr Sinclair
Mr Hatton	Dr Southcott
Mr Kerr	Mr Tony Smith
Mr McClelland	Mr Kelvin Thomson
Mr Melham	

Matter referred to the committee for inquiry into and report on:

Administration of the Family Court of Australia.

WITNESSES

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Administration of the Family Court of Australia

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Present

Mr Andrews (Chair)

Mrs Elizabeth Grace	Mr Mutch
Mr Kerr	Mr Randall
Mr McClelland	Mr Sinclair

The committee met at 9.48 a.m.

Mr Andrews took the chair.

LEWIS, Mr Michael Kenneth, Executive Director, Performance Audit, Australian National Audit Office, 19 National Circuit, Barton, Australian Capital Territory

McGUINNESS, Ms Janine, Senior Auditor, Performance Audit, Australian National Audit Office, 19 National Circuit, Barton, Australian Capital Territory

McPHEE, Mr Ian, National Business Director, Performance Audit Business Unit, Australian National Audit Office, 19 National Circuit, Barton, Australian Capital Territory

CHAIR—I declare open the hearing into audit report No. 33 of 1996-97 on the administration of the Family Court of Australia. I welcome the witnesses from the Australian National Audit Office and any members of the public who may be present. The subject of the inquiry is the audit report itself as well as the issue of administration of the Family Court. This is the third hearing of the inquiry.

Although the committee does not require you to give evidence under oath, I should advise you that the hearing is a legal proceeding of the parliament and warrants the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. We are in receipt of the submission of 4 August 1997. Are there some general opening comments that you would care to make to the committee?

Mr McPhee—Thank you, Mr Chairman. I would like to take a few minutes to provide some background for the committee's benefit. The report of the Joint Select Committee on Certain Family Law Matters entitled *Funding and Administration of the Family Court of Australia*, tabled in November 1995, recommended that the Auditor-General undertake an efficiency audit of the Family Court. I understand the government is still considering its response to the majority of the committee's recommendations. In the interim, however, the Attorney-General asked the Auditor-General to conduct an efficiency audit of the operations of the court.

In an initial response to the Attorney-General's request, the ANAO prepared a report on the Family Court's use of justice statement funds and financial position. That report was tabled in August 1996 and found that the court had not fully expended the funds provided by the previous government under its justice statement initiatives for the purpose for which they were provided. The report also noted that workload was increasing by two per cent to four per cent per year and that the court may face budgetary shortfalls unless it could identify efficiencies to reduce costs.

The objectives of this second audit, the report which is the subject of this committee's inquiry, were to review the court's administrative functions. Our report and submission outlines the findings of the audit. In brief, however, they were that overall the court is focused on moving towards best practice, is meeting a number of its performance

targets and, on the basis of the available information, compares well with the Family Court of Western Australia and other Australian superior courts.

In terms of corporate planning, we felt there was a need for the court to review the various plans and to better link the court plan and the various business plans as well as to involve staff more in the development of such plans. In terms of performance indicators, many of the court's functions did not have performance indicators and there was a lack of adequate quality control mechanisms to ensure the accuracy and completeness of performance information and court statistics. More could have been done to improve the analysis of what data did exist. The court also recognised this problem and was in the process of reviewing its performance information and statistics.

In terms of project planning, the court had not always approached its project planning processes in a business like way. This was also a concern raised by the joint select 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 is set out in one of the appendices to our report, 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.

The court's management information systems do not always assist it to manage resources effectively by providing adequate, relevant, timely and complete information on which to make strategic and operational decisions. Our review also found that the court does not make the best use of its existing systems. In terms of human resource management, we noted that in a recent survey conducted for the Public Service and Merit Protection Commission the court's performance in the area of personnel practices when measured against APS norms was found to be generally as good as or better than the majority of APS organisations.

I was pleased to see in its submission and evidence to this committee that the Family Court found the audit report, for the most part, a considered and fair analysis. The Family Law Council, on the basis of the information available to it, agreed with the audit findings and it had no difficulty with the recommendations. I do, however, note the comments of the Family Law Council in its submission and evidence to this committee that the council was not convinced that the aims of the audit report had been fully met. The council felt that a better balanced study would have included more of the positive achievements of the court and compared those with the costs incurred in running the court. The council was concerned that the lack of detailed analysis of the efficiency and economy of the court's administrative processes, in the absence of a clear endorsement that the court's processes were efficient and economical, may leave the court vulnerable to calls for further resource reductions which the demands for its services may not be able to support.

The scope of the audit was the subject of considerable discussion before the audit commenced both to avoid impinging on the judicial functions of the court and not to duplicate the work of previous reviews of the Family Court. The Family Court, the Attorney-General's Department and the chair of the joint select committee were all consulted and agreed with the scope of the audit which we conducted. An important part of the scope was the operational performance of the court in terms of both the time taken to deliver services and the cost of those services. Unfortunately, as the report indicates, the court does not have an activity cost accounting or similar system that allows it to capture the cost of its various activities.

Furthermore, as we noted, there are few performance measures for operational procedures and those that do exist are, in the majority of cases, registry specific measures. Nevertheless, we did conduct what analysis was possible with the limited data. We reviewed the court's performance against the target set in the case management guidelines and noted that on average the court meets its targets but there is a wide variation between registries. We also compared the operating costs and productivity of the various registries and benchmarked the time taken by the court for various activities against the Family Court of Western Australia.

Finally, we examined the results of the working party conducting a benchmarking study of the timeliness and costs associated with court administration of a number of superior courts in Australia. While recognising the limitations of the data available, we concluded that the Family Court compared favourably with other Australian superior courts.

Finally, Mr Chairman, another aim of the audit was to identify better practice to improve administrative procedures that could be promulgated throughout the court. We have drawn attention to a number of these in the report at paragraphs 627 to 629. The variations in practice between registries were of some concern because they were reflected in different standards of client service at the different registries. Although consultative mechanisms exist within the court to identify and promulgate best practice, we consider that the court had not used these mechanisms to full advantage. The report therefore pointed to a mechanism to help the court identify, evaluate and promulgate best practice for itself.

In response to the audit report, the court accepted all of the audit office's recommendations. Mike Lewis and Janine McGuinness, on my right, were key members of the audit team and we would be happy to respond to the committee's questions.

CHAIR—Thank you, Mr McPhee. You made mention in your opening remarks of the court's performance benchmarked, if I can put it that way, against the performance of the Family Court of Western Australia and other superior courts in Australia. Is there any benchmarking beyond that on an international level?

Mr McPhee—Certainly not that we were aware, and I think we felt quite fortunate that we were able to get the benchmarkings that were available at the time. I might get Mike to speak a bit more about them.

Mr Lewis—Yes, as Ian says, we were quite fortunate to actually have those studies available to us and also fortunate that we had the cooperation of the Family Court of Western Australia, which, we felt, was the most comparable organisation to compare the operations of the Family Court against. But we certainly were not aware of any other work that was done.

CHAIR—Both in your submission and in your comments today you are critical of the court's measurement of performance. Can you indicate to the committee how the court could better measure performance than it does at the present time?

Mr Lewis—Perhaps I can respond to that, Mr Chairman. Certainly we were disappointed with the extent of performance information that was available from the court. However, this was a problem that the court itself recognised, and it had in fact tasked its statistical research unit with improving that performance information.

The court had reasonably good performance indicators in terms of its throughput, the time taken to conduct various processes. I guess where it could improve would be to focus more attention on the costs of some of its operations. We made some suggestions to the court on how they could do this; and one of our tables, as you can see in the report, looks at the costs per registry and that sort of thing. So I think it is in the area of costs and cost effectiveness that the court can perhaps improve the most.

CHAIR—Did those discussions include the costs of alternatives? For example, in the litigation stream, if I can put it that way, from step one through to step whatever it might be, there are alternative arrangements which can be made and alterative courses which can be taken and, with fairness to the Family Court, some of that is being explored in terms of mediation and the like. In terms of your discussions with them, did you look at the cost of alternatives, how they might measure that?

Mr Lewis—No, not really. When we conduct performance audits, we generally take existing government policy as given. I am aware that there are a number of alternative proposals—Commonwealth magistrates and this sort of thing. But to make those sorts of changes, I suspect, would require a change in government policy. It is an area that as an audit office we do not really focus on.

CHAIR—In the submission you say that the court should also allocate available resources according to the court's priorities and client demands as determined through a more rigorous analysis of trends and projections and likely future resource levels than currently occurs. Are there difficulties in doing that if the actual overall resource level for the court is a determination of the budget process at government level over which the

court itself does not have final control?

Mr Lewis—There are some difficulties, yes. But I guess what we were trying to do is encourage the court to be more proactive and look towards the medium and longer term as to where they might consider having registries, depending on the demand for their services and the type of services that are required in certain areas. I guess that, even if the budget is fixed, there is still some room for action within that budget in the sense that you might like to relocate registries, for example, rather than just open new registries or close registries. So, even within that fixed budget, there is still room for action for the court.

CHAIR—In your discussions with the court, was there any canvassing of the degree to which the court makes use of demographic information—the census returns, the other more regular returns from the Australian Bureau of Statistics in terms of demographic trends—and therefore the likelihood that that is going to have an effect in some particular way or other in terms of the court's work in the future? Take a few obvious trends, like people are marrying at an older age, they are having fewer children, there have been slight changes in the median length of time between a wedding and a separation and divorce—all those sorts of things.

Mr Lewis—Yes, the court does make use of some statistics, but it seemed to us that they were being used more on an ad hoc basis rather than on a more systemic basis as part of an overall strategy. I think that was the basic problem we had. For particular issues, they certainly looked at demographics and they certainly know the existing demand for their services. I guess what we were hoping to do was encourage them to be more proactive, think more in the medium to long term and look at such things as you mentioned.

Mr McPhee—The challenges facing the court, I guess, are not unique to the court. You would be aware that the reform agenda of the government is to make agencies adopt a much more businesslike approach to their operations, and I think many agencies are working with the challenges of marrying performance information with accounting information and what the future looks like and better ordering its priorities to meet the client needs, et cetera. While we think the court can certainly do better in these areas, it is an issue that, I guess, has general applicability by and large as well.

CHAIR—One subject which has been the subject of considerable attention over time and in your report as well is the regional structure of the court. The court has indicated some changes in that. I ask you this question in general terms. What do you think is the ideal?

Mr Lewis—It is a tall order.

CHAIR—What I am getting at is that, if you could design the system so that it would be most efficient, what would you do?

Mr Lewis—I guess we thought that the model we proposed in the report was the way to go; however, we recognise that there are alternatives. Whilst we had not had the opportunity to study Professor Coaldrake's latest report in any detail, he has picked up a number of elements of our recommendation, which is encouraging. In an ideal world you would look for as few layers of management as possible or, if there are going to be layers of management, that they maximise the value-adding because obviously there is a cost involved. At the end of the day it is a balance.

CHAIR—It is obviously a judgment, but is there a need for a regional structure?

Mr Lewis—In our view, we did not think so, but we recognise there are issues of spans of control and things like that. At the end of the day it is a matter of judgment for the court.

CHAIR—In terms of making that judgment, are there considerations? I am trying to draw a distinction between the type of performance issues that you were looking at and judicial considerations in terms of things like appeal structures and that aspect of the court's work. If you are looking purely on a performance basis in making a judgment, does that sway you more one way or the other towards having a regional structure?

Mr Lewis—When the court was first established as a separate identity—if I could use that term—from the Attorney-General's Department, the regional layer of management provided a very useful role in ensuring a more consistent approach to operations within particular registries. I think in the early days it provided quite a useful mechanism for adopting a more consistent approach. Things have perhaps moved on from there, and a lot of the functions that were previously performed by the regional layer of management are now performed by the office of the chief executive. To some extent, we wonder what the rationale for the regional layer of management is these days.

From a purely cost effectiveness point of view, it is hard to justify. We did identify in the report that there could be net savings of some $600,000 a year by abolishing the regional layer of management. There are savings to be gained there, but there could be some other costs such as the propensity for different practices between regions. Those things have got to be balanced.

CHAIR—Can that be achieved without adding to the problem which Professor Coaldrake referred to? He said that there were far too many positions reporting to the CEO and that it had become unwieldy at that level.

Mr Lewis—Yes. That is why I mentioned the issue of the span of control. I think it is a real issue, although, under the model we have proposed, there would have only been something like four people reporting to the chief executive. From our point of view we thought that, whilst the span of control was an issue, it was not insurmountable.

Mr McPhee—The model is on page 80 of our report, if any committee members would like to look at it.

Mr McCLELLAND—I know that you were looking at the non-judicial aspects, but is that entirely possible in the sense that they are a bit like an aircraft carrier—they are troops on board the aircraft carrier but the judges are the planes taking off and landing? So, in a sense, they are dependent upon what those planes or the judges do, and they of course are independent judicial officers. To what extent are normal Public Service performance indicators applicable when you have that uncontrolled variable in the equation, I suppose uncontrolled because of our system of government with the separation of powers?

Mr Lewis—We were very careful to avoid impinging on judicial independence. But you are quite right. The judiciary is a relatively expensive part of the operations of the court and the cost of the judiciary does impinge on the overall operating costs of the court.

Mr McCLELLAND—But also the time they take to hand down decisions would, I imagine, throw out a system saying that this particular applicant should be entitled to receive a decision within six weeks if the judge is sitting on it for six months or even a year.

Mr Lewis—The court does include, as part of its case management guidelines, various targets for judicial hearings. We analyse those as part of our report and there are various tables in the report that look at that.

Mr McCLELLAND—Did the judges make an attempt to comply with those sorts of guidelines?

Mr Lewis—I could only assume so. We looked at the statistics that the court produced. We were able to look at the average time for a short hearing and a long hearing. So we have various statistics in the report that address those issues.

Mr McCLELLAND—To be fair to the staff, I suppose, like the chairman, I started off my career as a Federal Court judge's associate. They are the greatest judges by their nature and the greatest group of eccentric uncontrollable people. It would not be as easy as it would otherwise be in a normal Public Service department to control or even influence a necessarily uncontrollable and significant sector.

Mr Lewis—Certainly our primary focus was on the administration by the non-judicial areas of the court. Issues of the time it takes for a judge to hear a case and whatever are really within the bailiwick, I suspect, of the chief justice. Our primary focus was more on the office of the chief executive and the areas of responsibility that he could control.

Mr RANDALL—The last sentence of your submission states that the court responded positively to the report and agreed with all of the recommendations. This is not the impression that we gained at the hearing on 18 September. Would you care to comment on this inconsistency?

Mr McPhee—I might get Mike to speak to the detail. We take at face value, when an agency say they agree with the recommendation, that they actually agree with the recommendation. If they have any concerns, the due process that we follow as auditors in settling our final report is intended to flush out any particular concerns. Apart from discussing issues on the way through with the audit report, we do provide the Family Court and any other agency where we do audits with a draft copy of the report and allow them at least 28 days to respond to that particular draft with any concerns. We have regard to their comments and settle our position in the light of those comments. As I say, where agencies say they agree with the recommendations, we understandably accept that.

Mr RANDALL—Mr Chairman, you would have been at that meeting. Do you have any further comment to make on the inconsistency?

CHAIR—I will reserve any comments I might have for a private meeting.

Mr RANDALL—He has not been sworn as a witness.

CHAIR—Does anybody else wish to comment on that?

Mr Lewis—As the audit office, we do not have any power to compel agencies to implement our recommendations. We would certainly be disappointed if an agency had agreed to a recommendation as part of our consultative process and then did not implement that recommendation without a particularly good reason. Circumstances do change, so there might be very good reasons why our recommendation is no longer appropriate; certainly, we would be disappointed if there was no good reason.

Mr McPhee—The government has a follow-up process for recommendations that the Auditor-General makes and ministers, on a half-yearly basis, are required to provide the Minister for Finance with reports on how they are going with the implementation. If the court had any particular concerns they would need to raise them in that context. I am not aware at this stage that they have. It would be a matter of concern for us because it means the process is not working that well. If agencies do not really believe that they agree with the recommendations, we would much rather hear about it directly than indirectly.

CHAIR—Do you have any ongoing part to play in terms of direct contact with the Family Court or is it now indirectly through the Department of Finance?

Mr McPhee—It is largely indirectly, but we do have a policy of following up our

reports every two to three years. So in two to three years time we would probably plan an audit in the court to see how they have progressed against what they said they would do.

Mr RANDALL—On that point, the Family Court believe that, because they are reviewed every couple of years, the review makes them somewhat dysfunctional because they feel as though they are being overly scrutinised.

Mr McPhee—As I indicated previously, there have been a number of reviews in the court. We accept that they have had their fair share of reviews. Our audit was designed to not duplicate the previous reviews but to complement the other reviews.

Mr RANDALL—Do you agree with them, though, that you impede their ability to do their business more effectively because they are being more than well watched?

Mr McPhee—I do not really agree with that. I take the more constructive approach, as you would expect, and that is that the recommendations we make are designed to assist the court in the long run. Secondly, the Auditor-General's role is an important part of the accountability process for all agencies. It is important for the parliament to be informed objectively about the administration of not only the Family Court but other agencies as well. It is something that all organisations accept and generally view constructively. While I appreciate it does take a little bit of time on the part of individual officers, it is an important part of public administration in this country.

CHAIR—To pick up that, I understood the Chief Justice's plea was that they have had a few years of reviews, evaluations and audits and that they ought to have a moratorium for a while. As I recall, you said that there was still an outstanding question about an efficiency audit being undertaken arising from the recommendations to the joint select committee. Do you have any views about what scrutiny ought to be in place in the future?

Mr McPhee—That really is a matter more for the government and the minister than for me or the audit office to comment on. I would just hasten to add to my previous response that our audits were done in response to a request by the Attorney himself. So it was a government request and the Auditor-General generally has due regard to requests from ministers. It is really up to the government and the parliament as to what reviews will occur into the future, except that, as I said before, we would generally follow up significant audits after two or three years with a short audit—it would not be the same length or even scope—just to see that the recommendations that the court had indicated would be agreed and adopted had, in fact, been adopted.

CHAIR—Can I rephrase the matter so that I am not asking you to make a comment in a policy sense, Mr McPhee, but in terms of the desirability of some regular audits. From the point of view of an auditing agency such as yours, is there a benchmark, if I can put it that way, about how often or how frequently there ought to be some review?

Mr McPhee—We generally do not benchmark it in terms of time. When we set our own audit program, we tend to do it on the basis of materiality, significant new government programs, sensitivity and risk. If the indications are, for instance, that the Family Court had acted on the outcome of various reviews and were progressing satisfactorily in terms of their administration, it is unlikely that they would feature highly in our normal audit selection process other than our follow-up process, which is a subsidiary issue. But it is unlikely that we would go back to them. We are likely to pick on some of the new organisations, the new government initiatives, to review those.

Mr KERR—I am sorry, I may be crossing over ground that you have already covered, but one of the issues that I became aware of when I was a minister and we were seeking to have the Justice Statement implemented was a resistance to the idea of accountability, often clothed under the rhetoric of judicial independence, which went beyond the decision making role of the court into the manner in which it organised its functions and the way in which it sought to deal with government. In part, we were extraordinarily frustrated because when we were providing funding there was no guarantee that in fact the court would expend that program money in the way which had been designed. Have you any solutions to that dilemma, for my own part, if I might say, just to test whether you would find it an appropriate way? I have never found there to be an inconsistency between a requirement of accountability in the way in which a performance is carried out in aggregate and judicial independence, but I wonder whether you have any comments in relation to the specific matter that I raised.

Mr McPhee—I think the issue you raised was pretty much the subject of our prior report on use of Justice Statement funds and financial position. I think we made the point broadly that if the government decided funds should be allocated for particular purposes then the court had an obligation to expend the money in that way or else raise with the Attorney a different set of priorities and get the Attorney's agreement. We did make the point that, while the government decisions were to allocate funds in particular ways, once the money is included in the appropriation for the court itself it is very much up to the court in the legal sense to determine how to spend that money. This report was saying there was not a legal problem with the court spending the money in other ways but we felt there was an obligation, if you like, not a legal obligation—

Mr KERR—Perhaps I can take you further. We know as a fact that under existing legislation the administration of the court is for the court and that there is no legal way which government, whether it be coalition or Labor, can enter into effectively legally binding arrangements because of that to compel the expenditure of funds in particular areas, notwithstanding the efficiency gains that may be had, or whatever. Have you a system that you suggest that we use to deal with this? Does it require amendment of legislation? Do you believe that it could be dealt with by protocol? If so, what should those mechanisms be?

Mr McPhee—It is longstanding convention, I guess, that agencies have regard to

government decisions in terms of spending on new areas and new initiatives. And I think it is pretty longstanding convention that if agencies or ministers have different view about that then they should engage with, in the first place, the portfolio minister. Generally, if the portfolio minister is on-side, he or she would then contact the Minister for Finance and perhaps the Prime Minister to get agreement on a revised decision, if you like, to reflect that agency.

So I think I would favour the normal convention and/or protocol, and I think that is what we really suggested in here, that there should be an arrangement between the Attorney and the court that, where there is a difference, there should be a process of resolution. But I hesitate to suggest a legislative solution.

Mr KERR—Perhaps I can take this further. These things obviously can best be resolved by the creative tension that exists being cooperatively worked through. That has not been the experience of successive governments and the administration of the Family Court. Consistently through the process of developing new policy proposals, it was plain that, if the court was to be provided with additional funding or be asked to make efficiencies, it would not necessarily operate in the manner in which those policy suggestions were put forward.

The rhetoric that was used was one of the independence of the court. It is a principle which I have no disagreement with when it comes to the judicial function of the court. There is no place for government in seeking to or even proposing to have any role whatsoever in the manner in which an adjudicative determination is made. But, in terms of expecting benchmarking of outcomes, a charter of performance for the public so that the public knows what time delays and expense and processes that will be available to them, in terms of issues such as the spread of the registries of the court, a whole range of questions of that kind, there is a legitimate public interest which goes beyond the independence of judicial decision making. Now, I am not certain that in those circumstances, where the creative tension has not been resolved over the historic past, it is satisfactory to say, 'Well, just keep bumbling on expecting that things might get better.'

Mr McPhee—One option that might be worth exploring is the use of what are termed resource agreements with particular agencies, where the Department of Finance, ahead of the funds being made available in the budget, actually reaches agreement on what the funds will be and the purpose and any repayments required if it is a borrowing. It may be, if there is an ongoing difficulty, that in advance there could be some resource agreement as to what is expected. It clearly is the government's responsibility to introduce the budget and so it should have a degree of leverage over what the funds are being used for. So I think that would be the avenue that I would pursue if I was not reaching success on the other more conventional approach.

Mr KERR—But what about some of the individual issues of internal accountability, for example, even on a superficial level, something like the chief executive

officer's present arrangements? The chief executive officer lives in Canberra. Unless arrangements have changed very substantially, he commutes every week to Sydney. This arrangement has been going on for a very long time. He is paid a very substantial allowance in respect of that. It is not an arrangement that would be common in any other parts of the Public Service. Certainly for an initial period, a bridging period, it is always acceptable to have something of that kind, but it is quite unique, I think, to have a head of an agency for such a long time operating with what is essentially a quite different form of support. I do not know the figures, but it is reputed that the cost, simply, from that arrangement exceeds the salary component for the position. If that is the speed of internal administration from the top, there does seem to be a bit of a funny message being sent down about accountability of public funds.

Mr McPhee—That is an extremely difficult area. The way the system is expected to work is that whomever the CEO is accountable for should properly have regard to those sorts of conditions and should, in turn, be accountable to the minister.

Mr KERR—But there is no accountability to the minister in this instance, and that is the point I am making. There is this junction between the rhetoric of judicial independence and the problem of accountability, because on the administrative side there is no political accountability.

Mr McCLELLAND—Sorry, on the judicial side there is no political accountability?

Mr KERR—No, on the administrative side. In any other environment, in these lean tough times—as I might put it—those arrangements would be the subject of public scandal. Because they are occurring within a court and because of this framework with which we properly would have a delicacy of relationship, they are not exposed and they are not the subject of political accountability.

Then you can address these right down through the administration of the court, the way in which business is done. You can look at the way in which the agency resists broad efficiency objectives; the way the court has not moved to adopt some of the justice statement initiatives regarding accountability, regarding commitment to public performance standards through a charter—all those sorts of things which I think are in the public interest domain. I just wonder whether we have reached a point where we ought to stop pussyfooting around.

I know that, were we in government, our advisers would be saying, 'Minister, that would be a courageous decision.' But we are not in government, I am no longer the minister, and I am prepared to say some things a little more courageously perhaps and put the burden on my colleague, the Attorney-General, who now has responsibility for dealing with this issue, which has not changed since our term in government.

Mr McPhee—I have no solutions to that. In some ways there is some price you have to pay for the independence of particular organisations.

Mr RANDALL—But are you aware of these particular excesses?

Mr McPhee—I would not suggest from our perspective that we would call them excesses. We have not looked at it closely. The only comment I could add is: clearly the voice of parliament and parliamentary committees has quite a sway with the bureaucracy and, generally, the government as well. It is clearly in the committee's hands, if it feels strongly about the position.

Mr KERR—But you are aware of the facts that I am referring to.

Mr McPhee—Yes, I am aware of the facts that you are referring to.

Mr McCLELLAND—On the other hand, is it not that all these reports demonstrate that there has been at least the openness to scrutiny. If they were totally independent, they would thumb their nose and say, 'Look, you're not even allowed into this joint'—where a part of the judiciary and servicing of the judiciary, the other arms of public service conduct, should stay out of this. So, in a sense, all these inquiries are part of an accountability process.

Mr McPhee—Certainly, I would agree with that. Even our office, the Audit Office, has a measure of independence and reports directly to the parliament. Auditors-General in years gone by have voiced concerns about resources and other ways in which the government has handled the Audit Office.

Having said that, we operate internally. We very much seek to abide by government agreements when it comes to resources. We operate the same way as other agencies. When a parliamentary committee voices a concern perhaps even about the operation of the Audit Office, we do not treat that lightly at all; we take it very seriously. I guess I am saying that we do not underestimate the importance of the parliament's view, and I am sure other agencies do not either. It is very much in your hands, if you feel strongly about this.

Mr McCLELLAND—This question perhaps is unrelated or only remotely related: is it an appropriate role for the audit office to have some ongoing consultancy role—for instance, someone implementing your recommendations in the Family Court structure? It may be easier for them if they were able to come to some designated officer periodically and say, 'This is what we're doing; is this consistent with what you had in mind in your report?' Is that an appropriate role, do you think?

Mr McPhee—Generally, because of resource reasons, we do not get heavily involved in the implementation side, and we certainly do not see our role as being that of

implementation. But having said that, we have from time to time been on steering committees that have oversighted the implementation, not as a decision maker so much but as an observer and bringing to the table the benefit of our experience. We have done that in various ways. In fact, we probably are getting asked to do that more often. We would be happy to give the court the benefit of our perspective if they, indeed, wanted our perspective.

Mr McCLELLAND—From my point of view, however, fundamentally you are saying that, if the family court structure or hierarchy have problems with your recommendations, they should not simply be voicing them to our committee; they should be responding either to you or to the Attorney-General so that some plan consistent with that can be worked out.

Mr McPhee—Absolutely. We have been known to revise our recommendations in the light of responses back from agencies where they say, 'But you have not thought of this' or 'What about that?' and we will talk to them and get the best outcome. That is what our due process is designed to do. I have to say that I am a bit surprised there is some suggestion that they might not necessarily have fully agreed, even though they have said in black and white that they have.

Mr KERR—The court has a history, does it not, of saying that it will do things and then not doing them. That was its experience with us in government. No doubt it is going to be the experience in relation to other processes. It is more convenient to agree to do something. It avoids a conflict. Time passes, and you do not do it. That seems to be the practice. Is that your experience?

Mr McPhee—There are some agencies who do say that, or who agree in principle, which is an even less definitive response. But, as I have said previously—and, Mr Kerr, I think this was before you came in—we do have a follow-up system where in two or three years time we would go and look at what the court has done in response to our report and their agreed recommendations. If they have not implemented it, we would report again to parliament.

Mr RANDALL—Two or three years to check that they have got on with the job seems to be an extraordinarily gracious amount of time.

Mr KERR—They have a history of being able to be patient and see you off.

CHAIR—I think this hearing is now developing into a discussion between committee members, which I have no objection to, but not now.

Mr RANDALL—I want to ask one parochial question. Being a Western Australian member, I know that the Western Australian Family Court is outside the administration of the Family Court of Australia. You make some comparisons in your appendices, but

would you care to comment at all on any comparative knowledge you have between the courts? I have had a little bit to do with the Western Australian Family Court, and I would be interested in your comments on the relative efficiencies or otherwise.

Mr Lewis—I guess we cannot comment in any detail. We basically took the raw numbers that were provided to us by the Family Court of WA and compared them against those of the Family Court of Australia. In some areas, the Family Court of WA was doing better than the Family Court of Australia; in other areas, not quite so well. The Family Court of WA has some advantage in the sense—and Janine may correct me if I am wrong—that they are, I guess, just one court. They do not have a regional structure?

Ms McGuinness—They do have outlying areas. I think the main difference between the two courts—and this is why the figures we have used need to be taken in that context—is that the magistrates in Western Australia do take on some of the workload there. In some respects, the figures are not directly comparable. But they were the nearest benchmark we could find, and the best available data we could find, to show some comparison there.

Mr RANDALL—So the relative merits of what they are doing are pretty comparable.

Ms McGuinness—Yes.

CHAIR—I thank you very much for your submission and also for coming along and discussing it with us today. We appreciate it.

Committee adjourned at 10.40 a.m.