HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Reference: Administration of the Family Court of Australia

MELBOURNE

Thursday, 18 September 1997

OFFICIAL HANSARD REPORT

CANBERRA

HOUSE OF REPRESENTATIVES

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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Thursday, 18 September 1997

Present

Mr Andrews (Chair)

Mr Mutch Mr Kelvin Thomson

The subcommittee met at 9.09 a.m.

Mr Andrews took the chair.

CHAIR—I open this public hearing of the committee's inquiry into audit report No. 33 of 1996-97 on the administration of the Family Court of Australia. I welcome representatives of the Family Court, in particular the chief justice. The subject of this inquiry is the contents of the audit report and the matters which are relevant to that report. We have taken evidence so far in Sydney earlier this week from the Family Law Council and look forward to further comments on the audit report today.

[9.09 a.m.]

FRANKLAND, Mr Bruce, Principal Director of Administration, Family Court of Australia, GPO Box 9991, Sydney, New South Wales

GLARE, Mr Leonard George, Chief Executive Officer, Family Court of Australia, 97-99 Goulburn Street, Sydney

NICHOLSON, Chief Justice Alastair Bothwick, Chief Justice, Family Court of Australia, 570 Bourke Street, Melbourne, Victoria

CHAIR—Welcome. I will dispense with the usual warning about the oath in the circumstances. Would you like to make some opening comments about the audit report?

Chief Justice Nicholson—Yes, perhaps without going into too much detail. I know you, Mr Chairman, are familiar with much of the background and history of the court's administration, so I shall just briefly recap it. The court commenced as a separate administration in 1990. One of the first things done after that administration commenced was that a working party was commissioned, chaired by Justice Buckley, to examine the structure and administration of the court. That working party reported in 1990. Subsequently, most of the recommendations of that working party were put into effect.

One of its key recommendations was that there should be a review of the administration of the court after some time. That review was commissioned by Professor Coaldrake from the Queensland University of Technology. The first Coaldrake report was received on 2 January 1996. I think you have that.

CHAIR—We have a copy of that.

Chief Justice Nicholson—That came shortly after the report of one of the joint select committees dealing with the Family Court which made a number of criticisms of the administration. Professor Coaldrake had a somewhat different approach. In any event, without going into the details of any of that, the court had previously indicated that it would welcome an efficiency audit as well as what we had done because we were trying, obviously, to get the best structure that we could. As a result of that, the audit which is the subject of this inquiry was conducted.

Just to put the matter into final context, there is a further report from Professor Coaldrake, dated 5 June 1997, which has not been released. I would like to be able to table it on a confidential basis at this stage, the reason being that it has been released to some court staff but it has not been publicly released. We are currently meeting in Melbourne to finalise a response to it. It will only be a matter of days. If it is acceptable to the committee, I had in mind to table it on the confidential basis and on the understanding that we will send our response to the committee probably within a week. Then there is no difficulty about it being public.

CHAIR—We can accept that as a confidential exhibit and treat it accordingly.

Chief Justice Nicholson—As I say, it is only a temporary thing. I will make it available afterwards. I have it here. I am speaking very broadly because the details of any of these matters can be dealt with by these gentlemen. We have accepted most of the recommendations contained in the Auditor-General's report, subject to the comments made by Professor Coaldrake concerning them. We have accepted most of Professor Coaldrake's recommendations also, but the final result will be slightly different from the precise recommendations of the Auditor-General or Professor Coaldrake.

In particular, I think the only significant area where we would differ from the Auditor-General's report is that the Auditor-General wanted us to dispense with the regional structure of the court, as had been suggested by the select committee. Professor Coaldrake does not agree with that view, but has suggested a different structure which will go some of the way towards dealing with the criticisms that might have been made of the earlier regional structure. That is really the proposition that we are accepting, which I will ask Mr Glare to outline in more detail.

In substance, we are quite happy with the results of the Auditor-General's investigation and report. There are areas that do create some difficulties for courts. There was a considerable amount of emphasis on the strategic planning in the Auditor-General's report. I would like to add the qualification that it is somewhat more difficult for courts to engage in strategic planning in many areas than it is for other organisations.

We are very much demand driven organisations. If one perceives a shortage of funds one cannot, as in a commercial organisation, go out and get some more, which is often one of the values of strategic planning. There are other core values of a court which do not necessarily coincide with a strategic plan. But, subject to that, we have a strategic plan, we are proceeding with it and, within those limitations, I think it is still valuable. We are proceeding along those lines in accordance with the Auditor-General's comments. That is really all I would like to say at this stage. Mr Glare will give you some more detail.

Mr Glare—Turning to the structural question first, the latest exercise was directed at the top structure of the court and the regional arrangements particularly. Professor Coaldrake concluded that the people in the top of the court's administrative hierarchy were overworked and that the span of control of the chief executive officer was already too wide. He proposed a structure which narrows the reporting lines to the chief executive officer. He proposed a top structure consisting of a principal director of client services, which is fundamentally sitting over the top of the whole of the national registry arrangements through two area managers. He proposed a principal director of what I would describe as strategic planning and corporate services and a principal registrar.

The court has decided that there should be a further person, not at that same level but at a level below, reporting to the chief executive officer as well. That is a principal adviser on dispute resolution, bringing together the counselling and conciliation focus of the court and giving that some emphasis from the top. Apart from that, we have accepted his structure. He says three areas would be preferable, because of the growth in the south-east part of Queensland particularly. At this stage we are only going to two areas for cost reasons, but we recognise that in the future it might be necessary to create a third one. We just frankly cannot afford it at the present time.

In relation to the central office of the court, the office of the chief executive, Professor Coaldrake

agreed with the joint select committee that it should be in Canberra. That recommendation has been accepted. The relocation will have to occur not all in one swoop, for cost reasons and also for reasons of dislocation of staff. Essentially, in about 18 months time it should be largely complete; there will be some elements remaining in Sydney, but not much. Those were the major issues on the strategic planning side, which was the subject of probably the largest part of the audit report.

At the time the audit report was being prepared, we were of course proceeding on the lines that were recommended. That process has been completed now to the point where a corporate plan is finished and strategies have been evolved. All this was done through a consultative process, as recommended by audit—an iterative and reiterative process engaging all the staff and the judges of the court. We are now at the stage of the business plans right down at the bottom end, for each registry and each office. Those are again being done in consultation with staff. We are very well advanced in the process. In general term, that is probably all I need to say at the moment. I will see where your interest lies a little later, I guess.

CHAIR—Thank you, Mr Glare. Judge, I thought I would just go through the report and pick out a few things that struck me that we could seek some further elaboration on. There was one curiosity, which was raised by the Family Law Council. That was in the summary where it said that more than 150,000 children are directly affected by proceedings in the court. That seemed to me to be out by about 100,000. My recollection is that there are about 50,000 children affected each year. Your annual reports say it is in the order of 47,000 or 48,000, but there were no figures available for, I think, 1994 and 1995.

Chief Justice Nicholson—That sounds more like it, but I would like to just confirm that.

CHAIR—The other question which that raised—and this is slightly off the point—was what the problem was with collecting figures on the number of children affected by divorce. For the last two years the figures do not appear in the annual report.

Chief Justice Nicholson—Frankly, I do not know. We will certainly look at that. I do not think there is any great problem about that.

Mr Glare—It is because the forms which are lodged to commence a dissolution of marriage do not have any requirement for any indication other than that there are children. It goes back a bit in history, but I think the reason for that was largely that there were cost issues in collecting that data. It is something that ABS has raised with us a few times. I think that is the reason for it.

Chief Justice Nicholson—Yes, but I still think it is not difficult to estimate.

Mr Glare—We do that.

Chief Justice Nicholson—Because you have X number of people seeking a divorce, and we know roughly what percentage of them will have children and the average number of children. So, without being entirely accurate about it, one can get a pretty good ballpark figure.

CHAIR—Obviously an estimate had been taken up until three years ago.

Mr Glare—My recollection is that it is running at 1.8 children per marriage.

CHAIR—Before looking at some detail, can I ask you about the process of the audit report. We do not need to go through the history of this, but there has been a history, as you have said. There has been the Buckley report, the Coaldrake reports, the Joint Select Committee on the Family Law Act. In a sense, we are here today because of recommendations from the last report which said that there ought to be some sort of annual review of it. I am interested in your reaction to the process of the Auditor-General coming in like this and, perhaps more importantly, what you would see as being reasonable and realistic in the future.

Chief Justice Nicholson—Again, I will ask Mr Glare to deal with the detail of it. In terms of the Auditor-General coming in, the process started with a meeting between myself and senior officers and representatives of the department in which I made it clear that we were fully at their disposal, we would give them any assistance they needed and we would welcome any constructive recommendations that they made. That was certainly the spirit in which the audit was conducted thereafter.

I know that one of the problems that is associated with any review process is that it is a very time consuming one for the senior officers of the court. If this sort of exercise is conducted with too great frequency, obviously you can have people spending far too much time on it and not enough on their ordinary duties. Having said that, I think it was a useful and quite valuable exercise which I am more than happy to have had conducted. Mr Glare could probably develop that a bit further as to the process and also as to future review situations.

Mr Glare—We had two audits close together. One was a fairly narrow subject of the funding side particularly. The process in the second one learnt from what happened in the first one. With the second review, we were consulted, as the chief justice said, about the parameters of the investigation. Of course, with the judiciary involved, there were some limits to how far the Auditor-General could properly go—and those limits are not easily defined. They were worked out amicably; then the review commenced. It took several months. There was, as the chief justice said, quite a heavy investment on our part to provide information. There was never any difficulty in providing information if it existed. The auditors came to me on a number of occasions for checkpoint interviews and to say they were looking for particular things and to ask where they could be found. That all went quite well.

At the end of the process, they produced a number of discussion points, which they gave me. That was extremely helpful because then I met with the whole team and we went through those discussion points. It was only after those had been exposed and explored quite well that they produced a draft report. We then had the opportunity to comment on the draft report and I think they took a good deal of account of what we said in relation to the draft report. Some of it was factual but some of it was more than that and they modified the final report taking account of our comments. Of course, they did not accept everything we said. We still had some areas of disagreement, but the process was excellent. I had no trouble at all with it. I have since been surveyed by consultants who were actually surveying the audit process and I was able to say to them that I was well satisfied with the process.

CHAIR—But the Family Law Council said in their submission—and they elaborated on this earlier in the week—that ‘the council therefore suggests that a moratorium on further reviews for a period of no less

than two years might be appropriate', and they talked about allowing time for the various reforms and changes to settle down. Do you have a comment on that?

Mr Glare—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. The hours worked by the senior staff have been incredible for a long time and part of it is due to this review process. While I am quite happy about open government and people looking at what we do—I think it helps us—there is a point at which it becomes a bit counterproductive, and you get very tired.

CHAIR—I should not be asking leading questions with the chief justice sitting here but would a period of perhaps three years, or something like that, to allow things to settle down, be more to your liking?

Mr Glare—I think about a three-year breathing space would be reasonable. Bear in mind that we are regularly audited anyway and I have the Auditor-General's latest audit result which actually is unqualified and a very healthy endorsement of our financial processes, which I can table if you wish.

CHAIR—In terms of the reform which is happening now, in terms of development of the court plan in putting Professor Coaldrake's recommendations so far as they are accepted into operation, what sort of time frame are you looking at?

Chief Justice Nicholson—Actually yesterday we were examining this and there are some aspects of it that we can implement virtually immediately. There are others that will take some little time such as the move to Canberra and some of the staff relocations and so on. Beyond that, I think it is pretty well an instantaneous commencement of the process which should be finished—having regard to the usual difficulties about employment and advertising and all the rest of it—probably early next year. Do you agree with that?

Mr Glare—I think there will be substantial completion by the middle of next year. Some bits of it will go on. Of course, some of it is ongoing anyway. I think it will be pretty well over by the middle of next year.

CHAIR—I presume the progress of the change will be reflected in your annual report, the detail of what has happened and why it has happened and where you are at and where you have reached at a certain point would be reflected in the court's annual report.

Chief Justice Nicholson—Yes. Of course, this coming annual report will only be as of 30 June, so it probably will not reflect some of the matters that we have been discussing.

CHAIR—I am really thinking in an ongoing sense, Judge. My personal inclination is that I agree with you. You have been subject to considerable scrutiny for a long period of time and I think there is some case for asking: what is reasonable time to allow things to settle down?

Chief Justice Nicholson—I think that the real point is that we are making changes as a result of

suggestions that have been made and you really do need a target to consider whether they are working. Of course, we would be interested ourselves in examining the situation continuously. We would also be interested in having some external examination done in three years or so and, if it was not done, we would get someone like Professor Coaldrake to do it.

Mr Glare—Right at the end of this latest audit, another part of the Auditor-General's office is conducting an audit of security in the public sector and it expressed an intention to do an audit of security in the court. I groaned a bit and replied, 'We are very happy to cooperate but could you give us a bit of a break', and then they left us off the list, so that was useful.

CHAIR—On page 22 of the report in paragraph 3.16, where the ANO referred to aspects of the current court plan in making some criticism, in the seventh dot point, the last dot point, there is a reference to specific performance indicators. It goes on:

> The Court's objective that 'Justice is provided in an environment which safeguards the independent exercise of judicial power' has, as its first strategy, 'ensure independence of the Court and judges, and others exercising judicial power from influences upon their impartiality'.

They then go on to say that ideally the objectives should be able to be measured. My query about that is: are there some objectives of the Family Court, and perhaps courts in general, which are not necessarily subject to strict economic managerial measurement, and is it appropriate for there to be some such objectives?

Chief Justice Nicholson—I think there are and I think that reflects the comment that I made in my opening statement, that there are some difficulties about using the typical approach for a strategic planning exercise. I well recall, when this objective was developed, that it was felt that we were developing objectives that we should be trying to achieve. We thought that this was a core objective that any court should be trying to achieve and we put it in for that reason. But I accept that it is almost impossible to measure. In fact, I do not know how you could.

CHAIR—Is there room there for perhaps dividing the objectives almost into those which are measurable in a managerial accounting, economic sense, et cetera and those which are more objectives of justice in a philosophical framework?

Chief Justice Nicholson—I think that is probably right. I think I would agree with that, wouldn't you?

Mr Glare—Yes.

Chief Justice Nicholson—I am not altogether sure that there may not be able to be developed some measures of things which might adversely affect judicial independence but, as an absolute, it is probably not easy to measure.

CHAIR—Paragraph 3.32 relates to recommendation No. 2, that the court develops a strategy for involving and communicating its corporate direction to managers at all levels. The court response was:

The Court accepts this recommendation. The Court advised that its current consultative process is stressing the use of plans as a management tool.

Could you elaborate on that?

Mr Glare—Yes. This process was actually going on at the time of the audit. We began with the top level corporate plan—very much the overall objectives and goals of the court. They were done in consultation with the staff and the judges. We produced various drafts. We actually had a planning meeting which the chief justice called. Collectively, with a cross-section of the court, we explored what ought to be in the corporate plan.

Once that was settled, we then moved to various strategies and staff and judges were asked to contribute strategies towards the achievement of those goals. After quite a lengthy process of consultation and iteration, we have settled the strategic level.

The next point is the business plans. That process is going on at the present time. It is to convert down, at each registry and office level, the goals and strategies into operating plans in more detail. To each of those will be attached performance targets, indicators and funds allocation as well. All of that has been done at each stage in consultation with all of the people in the court, but particularly with the managers. The managers are now much better informed about what the corporate plan and the strategies are about and how they can be used as a management tool. In the end, their allocations of funds will be attached to them on performance standards to be achieved, and their performance will be judged more closely in relation to the plan that it has been able to be in the past.

CHAIR—On page 28, at the conclusion of paragraph 4.7 there is the sentence:

The Court claims its performance is measured not by the speed with which it can carry out a task but by its ability to provide the service at the time required.

And then midway through paragraph 4.8 it says:

The ANAO considers that at present the case management performance standards emphasise the time taken by clients to the exclusion of the time taken by the Court to complete its tasks.

Do you have any comment on that?

Mr Glare—We have a disagreement about this point. The court processes are not dependent primarily upon the time the court takes to perform its action. The case management system is a continuum, with a series of points at which the court intervenes. In between there is time for certain things to happen. The application is filed, and there is a first return date. In between, people have some work to do to prepare their material for the first return date. Then they are generally ordered off into conciliation and/or counselling or voluntary mediation, and that needs time to happen. The next event, when it comes back to court again, if the case is still alive, is going to be a pre-hearing conference. A pre-hearing conference is set 14 weeks before the trial date.

That is not for the court's convenience. The court could actually schedule all these events on consecutive days; but the people have things to do, as you well understand, in that interim period. They have to prepare their cases; the family report, if it is ordered, has to be produced and the parties have to take account of it; they lodge their affidavits, and they do their discovery in that period.

What the ANAO seemed to be concerned with was how long it took the court to do all that. The court takes minimal time about any of those steps. The important thing in those delays is not really what the court does; it is what the parties do.

The problem for us comes when the judicial resources are too few for the cases which eventually are going to trial. Anything which is outside the standards and the case management guidelines then is a delay which is attributable to us, in the main, though there are some times when the parties cause delays.

Chief Justice Nicholson—I would add to that that we do measure that delay. We have got standards which we seek to achieve in terms of dealing with matters. The difficulty we have been finding is that we have got an increasing workload at the moment, and there are other factors such as legal aid restrictions and matters of that sort that are having an effect on us. There is also the fact that we simply have not got the number of judges to deal with the workload that we are now faced with. I suppose courts always say that, in a sense, but we are finding that is a very real thing.

I think I said in the last annual report, or in the one before, that at that time we had had something like a 90 per cent increase in our workload since 1988, but we had only one more judge and seven judicial registrars. So I do not think it is an exaggeration to say that there is an increasing pressure, and you do get to a point where you cannot maintain the levels that you would like to. But having said that, we still measure them.

The other thing I would add is that we are conscious of measuring in the administrative sense. For example, at the meeting of my consultative council that has been in progress for the last day, I have had reports indicating how long, on average, it takes to deal with a telephone inquiry and with issues of that sort. We do have an internal examination of those matters.

CHAIR—There is a recommendation about benchmarking across registries, recommendation No. 7, which the court accepted. Can you elaborate on the developments there, Mr Glare?

Mr Glare—I should think you know from my submission to the joint select committee that benchmarking is a particular thing of mine. We are participating in the Council of Australian Governments review of service provision, which is benchmarking across all courts. The audit report refers to that. That is one of the issues. As we get further down our development of business plans, we are simultaneously redeveloping performance standards and performance indicators, and those will then become benchmarks for measuring one registry against another.

We do already measure one registry against another in various ways: for example, the average number of counselling interviews per counsellor day and so forth. We have lots of measures of that kind. We need to become a little more systematic, and I think that is what the audit report was mainly about. Partly, that was a

problem of resources and distractions, but we are well focused and we have got a section that does strategic planning and coordination.

The new top level SES position will have a focus on strategic planning, so we have got better structures for it than we have ever had before. At the same time, we are getting better tools through the implementation of the corporate information technology plan. The audit report observed that we still have to collect a number of our pieces of management information manually. Under the new integrated computer systems that requirement will almost disappear. All of that will become automated, so we will have better means of getting information and better means of manipulating it.

CHAIR—Is it possible to benchmark internationally in this area—for example, with New Zealand or other comparable countries?

Chief Justice Nicholson—It is extraordinarily difficult. I will ask Mr Glare to comment further, because he gave a paper on this subject in Montreal at one stage which has been widely accepted elsewhere. Nevertheless, it is difficult to make the comparison. Take, for example, the family court of New Zealand, which might be the closest. It has a quite different counselling structure, so you cannot compare that. Its judicial structure is different, because judges do some work other than family court work, and there are differences in the property law there which mean that property cases are much simpler than they are here. Arguably, the outcome is not as just, but I give that as an example of the difficulty of making those comparisons. Once you get to English or American courts you really get into quite different areas.

Again, having said that, we do look at what is going on in those courts. For example, we are introducing pro forma affidavits in urgent contact and children's matters to enable people to put the relevant information in. We got that technique from Canada, and that is working quite well. I do not think you can make benchmark comparisons, but you can certainly get quite useful processes from other courts.

Mr Glare—I would like to add something on the benchmarking across courts in Australia which is being done through the Council of Australian Governments. There have been two reports produced so far: the first one was purely criminal, and the one tabled in February this year was civil as well. It is extraordinarily difficult. The outcome so far as the Family Court of Australia was concerned was excellent, because of the superior courts of record we showed as the lowest cost and most effective. But it would be less than honest if I were to claim that that was an absolute, because there are many things, such as those the chief justice has mentioned, which make that harder. The differences in law from one jurisdiction to another are a beginning. Differences in practice and procedure may emerge once you compare your benchmarks, and then you look at why the benchmarks are different.

I know that some of the state governments have become quite agitated about the fact that on those benchmarks their systems do not look to be terribly efficient, and there are hundreds of reasons why the figures come out the way they are. For example, the Northern Territory shows as a very high cost operation, and the biggest part of that is because they have a very new and very splendid supreme court building which has got a high capital cost, and that is reflected in the depreciation charges which are factored in. They show as very high cost because they are a small jurisdiction with an expensive court house which is new. Other places operating in old court houses which have virtually no residual value other than to the National Trust

come up quite well as a result of that.

So it is not an easy thing, and it is going to take some years before the benchmarks are really productive of useful information. The purpose of it all is to find best practice, and the benchmark is an indicator of where the best practice might lie.

Chief Justice Nicholson—Could I perhaps add one thing? There is a comparison court in Australia, in a sense, which is the Family Court of Western Australia. We do look at ourselves against it. There is a problem. It is probably best compared to the Adelaide registry, rather than to the court as a whole, because the judges are all in one place and the counsellors are all in one place and so on. We tend to make that comparison rather than trying to compare it across the whole court.

Mr Glare—You will have noticed that the audit report compared the Family Court of Australia with the Family Court of Western Australia, and judged the comparison to be favourable to the Family Court of Australia. But there were some factors involved even in that comparison which make it difficult to draw broad conclusions.

CHAIR—Recommendation 4 on page 32 was about the court adopting a systematic evaluation of management framework in its administrative decision making processes, to which the court responded that they accepted the thrust of the recommendation subject to considerations of proportionality and materiality. Could you elaborate on what you meant by proportionality and materiality in this concept?

Mr Glare—If I could put it in colloquial terms, sometimes it is not worth the candle to have all that superstructure that they have recommended. For example, we made a decision to amalgamate some parts of Dandenong's operation with Melbourne. The saving involved was about $33,000 a year. The audit gave that as an example where we had not followed a proper project structure. But that is such a minor issue. If we had set up a project structure, with all the attendant trappings, it would have cost us several times the amount of money we saved. I do not think a response that says you have to apply a strict project methodology to something like that is either material or proportional.

CHAIR—On the next page, paragraph 4.30 states:

The Court does not routinely collect and analyse demographic data to determine the demand for its services.

What use of demographic data do you make?

Mr Glare—The audit people meant simply population in the main—where the people are. By finding out where people are, we then project the demand for our services. A few things can be said about that. We already get customers from all parts of the country. We do a postcode analysis through our Blackstone system. We already know where the work is coming from.

The other thing is that we are not in an expansion mode; we are in a contraction mode. We have had to close registries, not open them. If there is a need somewhere else in a population centre that is smaller than the ones we currently serve, even if we knew or wanted to know the people out there who need a

service, there is not too much we can do about it except through what we already do, which is circuits.

The other thing is that a comparison of our resource allocation with the population demographics indicates that we are pretty well allocating resources in accordance with the demographics. There are a few pockets of history like Tasmania, where we have been overservicing in those terms. We have moved to reduce that, at some political cost, I might add. There have been many questions in the parliament and in the committees about it.

I think the theory of the thing is all right: we need to study where the people are. We do that. We have population projections for the next 15 to 20 years. We know, for example, that Cairns is not going to outstrip Townsville in the short reasonable planning time frame as has been suggested. We know that the south-east part of Queensland is growing and six statistical divisions there are growing faster than anywhere else in the country. We have taken some steps towards that. We have a Gold Coast registry.

CHAIR—Changes have occurred, broadly speaking, in family structure. For example, people are marrying later now than they were a decade ago, the number of single-parent families—by choice or otherwise—is continuing to grow. More children are being born out of wedlock. There is a combination of factors. Are those sorts of statistics ones whereby you can look at trends and therefore try and project court workload, or do they not have an impact on a court?

Mr Glare—We do track all those things very closely. In the end, we have a reasonably infallible measure of what is happening in terms of what applications are filed. That tells us where we are at. The big developments for us have been the growth in the ex-nuptial population, particularly in states like Queensland, and the added jurisdiction that came to us with the reference of power from the states. Those sorts of things can happen quickly and ruin all your projections. There is no doubt that we study all of the trends and report on them in our annual report. It is more than theoretical; it has a potential to affect what we do.

Chief Justice Nicholson—I must say I was a bit puzzled by that comment about demography because of the only registries that we have been able to open. We opened a registry in Coffs Harbour as a result of a Buckley report recommendation which was very much based on demographic studies. When the former government made moneys available, under the access to justice program, we considered demography in considering where we might opening counselling registries.

But you cannot just consider demography because remoteness comes into that as well. For example, Alice Springs was one place where we opened a counselling registry even though, if you just counted the people, you would say that was not necessary. I am still puzzled about that criticism.

Mr MUTCH—I did notice in your letter—and you might have covered this anyway—you said that naturally enough not all of the court's requests for change were accommodated. That is in relation to the draft that was provided to you. Are there any matters that you would like to raise with us now about those requests for change?

Chief Justice Nicholson—I am sorry.

Mr MUTCH—In your letter, you say at the bottom that, when you had received the copy of the draft audit, you made comments on it, but not all your requests for change were accommodated. I just wondered whether you would like to deal with those matters.

Mr Glare—In effect you are asking what changes they took into account and what was suggested.

Mr MUTCH—Yes, those that they did not take up and whether you would like to make that submission to us now.

Mr Glare—I have some difficulty recalling much of it because so many points were involved. There were issues such as modifying what they said about the project planning process to take account of the issues that I have raised here this morning. The response needs to be in proportion. They balance some of their comments about risk management by at least conceding that risk management was part of the problem of managing in the public sector. It was not just a matter of documentation and accountability, which was where their report first started. It essentially said that everything had to be documented and reasons given. In the final report, they do balance that with some comments about conceding that it is appropriate to exercise some judgment about risks and that is where those issues come in of what is sufficiently important to warrant the full process.

There were issues of that kind particularly. There were a few issues where they had concluded that we had not done something. We were able to show that we had and they then changed their report. Those factual matters were readily conceded. We ended up with some areas like the comments about demographics where they did not modify. We do not all agree that they are right, but the end result is a matter of what we do, so it is not all that important to us. The whole range of discussion points went to something like seven pages, from memory. I gave them written notes in reply that ran to something like 20 pages, so quite a lot of material went backwards and forwards.

Mr MUTCH—If you want to make a submission on any of that, we would be happy to take it on board if you send it to us.

Chief Justice Nicholson—We have been concentrating today on the second report and not on the first report, and there were some matters there that I disagreed with. That was on the issue of funding.

Mr MUTCH—We are only dealing with the second one at the moment.

Chief Justice Nicholson—That is all right. I just want to make that clear, because I do not want to make concessions about the other one.

Mr KELVIN THOMSON—The chairman asked you about benchmarking and comparisons with New Zealand. You mentioned differences in the property law aspects, for example. Just as a matter of curiosity on my part, what is the New Zealand arrangement, or how does it differ from what applies here?

Chief Justice Nicholson—There are two issues, really. Here, the whole of the matrimonial property is taken into account, and we have a broad discretion. In New Zealand, in relation to certain property like the

matrimonial home there is a presumption of equality of ownership, which takes that dispute out of the ring. Perhaps more importantly, we have a discretion in Australia to adjust matrimonial property orders to take into account things like age, state of health, needs, the obligation to bring up children and whether one party, by forgoing opportunities for education to assist the other, has contributed in that way. In New Zealand, property law is much simpler than that. It does not take that into account—in fact, that is one of the criticisms that is made of it—but it does tend to produce a more certain result, which means you get less court time spent in arguing about it. That is as best as I can do to explain it briefly.

CHAIR—Just on that, is that a rebuttable presumption in New Zealand or is it fairly much a fixed formula?

Chief Justice Nicholson—There are two sorts of property. I think it is a fixed formula in relation to the home and that sort of thing, but it is not in relation to other property, such as shares.

CHAIR—So if you have business interests they would be treated differently?

Chief Justice Nicholson—Yes; broadly like ours, but based more strictly on contribution and not taking into account those sorts of need factors that we do. In fact there is a move in New Zealand, as a result of some recent decisions over there, to change the law and move more in our direction. I am not saying they will do so but I know that that is under consideration.

CHAIR—The other thing which we are not touching on in this inquiry is the latest discussion paper from the Attorney-General's Department. Mr Justice Mushin is quite interested in that in particular and no doubt there will be aspects of that, which we will pick up in the other inquiry into family services, that we will touch on. I only mention that now because obviously there are some resource and administration implications from that as well.

Chief Justice Nicholson—Yes, that is so, and it does provide us with some difficulty, because when you have a state of uncertainty as to what services you are going to continue to provide it is very difficult to plan them. That is one of the problems that we are now facing. We will be responding to those questions—I think the end of November is the time frame. Justice Mushin is a member of a committee which I am chairing which will be responding to that.

CHAIR—Thank you for your submission and also for coming along this morning and discussing it with us. We have appreciated that.

Mr Glare—Before you close, could I ask that these letters from the Audit Office be taken into account?

CHAIR—Yes, thank you.

Resolved (on motion by Mr Mutch):

That the document *Review of the top structure of the Family Court of Australia* by Peter Coaldrake, dated 5 June

1997, be accepted as a confidential exhibit to the inquiry.

Resolved (on motion by Mr Mutch):

That the letter from the Australian National Audit Office to the Chief Executive Officer of the Family Court, dated 14 May 1997, and the letter from the Australian National Audit Office to the Chief Justice of the Family Court, dated 16 September 1997, be accepted as exhibits to the inquiry.

Resolved (on motion by Mr Mutch):

That this committee authorises publication of the evidence given before it at public hearing this day.

Committee adjourned at 10.00 a.m.