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# **2001 Annual Review of Western Australian Courts**

by

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Chief Justice of Western Australia**



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# INTRODUCTION

This Review contains detailed information and statistics concerning the work of the Magistrates' Courts, the Children's Court, the District Court, the Family Court and the Supreme Court. It also provides information concerning the work of different committees chaired by Judges who are endeavouring to contribute to the process of reform with a view to the reduction of delay, the increase in efficiency and general improvement in the standard of the administration of justice and the services which are associated with it.

Each year I highlight aspects of the Annual Review in my address at the Closing of the Legal Year. I am most grateful for the cooperation of the various heads of jurisdiction and members of the judiciary and others in providing the necessary information for the purposes of this Review.



## OVERVIEW

### Review of Jurisdiction

The time is ripe for a review of the jurisdictional limits of the District Court and Magistrates' Courts both in their civil and criminal jurisdictions. This is particularly the case in the civil jurisdiction of the District Court and Local Court. The same is true in relation to the criminal jurisdiction of the District Court and Magistrates' Courts of Petty Sessions. In 1996 when the jurisdiction in respect of sexual offence cases was delegated from the Supreme Court to the District Court, it was also proposed to delegate to Magistrates' Courts jurisdiction in burglary and aggravated burglary cases. It is thought that Magistrates should deal with such cases unless it is concluded that the appropriate sentence would be in excess of imprisonment for three years. In this case, the Magistrate would direct that the case be transferred from the Magistrates' Court to the District Court, and/or the Director of Public Prosecutions could authorise the matter to be proceeded with on the police complaint in the Magistrates' Court rather than present an indictment in the District Court. There may be other ways of dealing with these matters.

### Accommodation

The Hon Justice Murray chairs the Courts' Accommodation Planning Committee, the umbrella organisation designed to oversee the efforts of the Department of Justice in respect of court accommodation statewide as it affects all levels of jurisdiction. In addition, he also chairs the Supreme Court Accommodation Committee which, as its name implies, has particular responsibility for the quality and sufficiency of accommodation for the Supreme Court.

This has been a long year. The speed of government decision making on the subject of court accommodation has been slowed yet again by a change of government. Some progress has been made, albeit not in respect of the accommodation of the courts in the central business district of Perth. The extreme accommodation pressure under which the courts in the city labour has been brought home to government with clarity. A paper will be presented to the Hon Attorney General shortly. It will set out the need for greater expedition in providing a solution for our court accommodation problems than the successive governments have thus far evinced a readiness to undertake. In June 1992 the Government of which the present Premier and Attorney General were members approved a project for extensions of the Supreme Court which were then seen as urgently required because the Supreme Court had outgrown its present accommodation and was taking space in the building at 111 St George's Terrace. It was originally thought we would be there for some three years. We have now been split between two locations for more than 10 years. It is a continuing nightmare of inefficiency. We have since taken over more space in that building on a temporary basis. While modifications are planned to that space, it is apparent that we will have outgrown it within the next year or so.

The Government has responded to our entreaties for a solution to our problems by committing itself to start construction in the 2004 financial year of a new courthouse and central lockup facility on the site on the corner of Hay and Irwin Streets adjacent to, and linked across Hay Street to, the Central Law Courts building. The total cost of that project is estimated at \$177 million with completion in 2007.



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In that year, the lease of the present accommodation of the Supreme Court in the building at 111 St George's Terrace, Perth, will terminate without provision for further renewal. It is planned that the Supreme Court will be removed lock, stock and barrel from the leased accommodation and from the Supreme Court buildings in Stirling Gardens and take up temporary accommodation in the new Hay-Irwin Court complex.

Limited additions to, and substantial refurbishment of, our present home will then commence. The cost will be substantial, and a final solution to enable this Court to again take up residence entirely in premises on this site would be some further years into the future. The return to the Supreme Court site would not be until 2011 at the earliest. Some Department of Justice estimates put the final achievement of a solution for the problems of the courts in the CBD of Perth as late as 2016. The courts have made clear to the Department that this exhibits entirely too casual an approach to providing a solution to the urgent court accommodation problems which past government inactivity has allowed to worsen to crisis point. There is already an existing need for expansion of the Supreme Court facilities which raises the spectre of the Court being forced to operate from more than two locations.

Whilst the acceptance by government of the need to solve the problems of the courts' accommodation represents a major advance, the glaring deficiency of the proposal is that it provides no solution, even of a temporary kind, to the problems of this Court until at least 2007, and none for the District Court until at least 2011. At that time, the accommodation occupied by the District Court under lease in the May Holman Centre will finally terminate without option of further renewal. Because of the failure to address those problems, the Magistracy will continue under increasing pressure in respect of the availability of court accommodation because the ultimate solution for the Magistrates' Courts depends upon providing a solution to the accommodation problems of the Supreme Court and the District Court.

The Government has offered to consider the results of a review currently being conducted by the Supreme Court and the Department of Justice of the accommodation provided at 111 St George's Terrace, not with a view to increasing the amount of such accommodation, but only with a view to refurbishing that which is currently leased and modifying it in an attempt to improve its functioning. Nothing is proposed or can be done, however, to overcome the security and functionality problems necessarily inherent in occupying that office building for court purposes. Nothing can be done to alleviate the extra cost involved in the occupation of such premises and the substantial inefficiencies necessarily inherent in splitting the functions and personnel of the Supreme Court between two locations. There are no plans currently being developed for any further interim accommodation.

In the context of the administration of a Department of Justice which is concerned with corrections and correctional facilities as well as with courts and associated services, the courts will always have to compete for capital works funding against the demands for prison accommodation. That has been the case this year no less than in past years. The current forward estimates of the Government continue to reflect this problem for the courts by reference, for example, to such commitments as the upgrading of facilities at Nyandi Prison and in regional areas. In the view of the courts, however, our case for priority is unanswerable.

Some progress has been made in the area of regional courthouses this year. The major project has been the opening of the Busselton Courthouse and Police Station in linked buildings. The



courthouse accommodates the full range of court associated correctional services and is fully equipped for jury trials. The hope is that, particularly for the District Court, this will alleviate the demands upon the Bunbury Courthouse.

In the metropolitan area we have seen the opening of new court accommodation in Rockingham and Fremantle. Both facilities are capable of use for jury trials. Both the Supreme and the District Courts have gratefully accepted the opportunity to hold trials at Fremantle where the accommodation is of a high standard.

This Government has placed back on the agenda the proposals put originally to the previous Government by the Courts Accommodation Committee for urgently needed courthouse and police accommodation in Albany. The project involves the renovation and additions to the historic courthouse at an estimated cost of more than \$11 million. Construction should start in the 2003 financial year and the project should be completed by 2005.

Both the Department and the Government are to be commended for the progress to date and the commitments made for the future. The hope of the courts is that in 2002 the Government will complete its commitment by injecting a suitable degree of urgency into the provision of a solution for the very pressing short-term problems confronting the courts at all levels, particularly in the metropolitan area.

I thank the Hon Justice Murray and his Committees for their continued work on these issues.

### Court of Appeal

The final report of the Court of Appeal Committee on the desirability and feasibility of the establishment of a Court of Appeal Division was submitted to the Attorney General in March 2001 and publicly released in December 2001. The report makes a strong case for the establishment of such a division of the Supreme Court based on the Victorian model. It is acknowledged that this is not a priority issue for the present Government, but it is not an issue which can be deferred indefinitely.

### Judicial Workload

In 2001, the Supreme Court delivered a total of 795 judgments, an increase of 49 over the full year in 2000. There were 363 decisions by a single judicial officer and 432 appeal judgments. Of these 15 were more than 100 pages compared to two in 2000. A number of cases of significant complexity have come before the Court in 2001.

The Supreme Court is currently constituted by a Chief Justice, 16 Judges and two Masters, a total of 19 judicial officers. In addition, there are nine Registrars who exercise jurisdiction with respect to civil case management and mediation, interlocutory applications, examinations in the corporations jurisdiction, the taxation of costs and the waiver or reduction of court fees in cases of hardship. There are currently many signs that the current body of judicial officers is not sufficient to cope with the increasing workload. No additional Judge has been appointed to the Supreme Court since 1996. There is currently a need to appoint an additional Judge and two additional Registrars.



### Court Dress

The Court Dress Committee chaired by the Hon Justice Anderson has continued its review of the matter of court dress and produced a report and recommendations which are currently under consideration. This is an issue which the Supreme Court will consider early in 2002 in consultation with the Judges and Magistrates of other courts.

The recommendations include the simplification of robes and the abolition of wigs, although there is still a degree of support for the wearing of wigs by Judges in criminal trials. There will no doubt be a healthy debate about this topic in the months ahead.

### Law Reform

#### Aboriginal Customary Law

The reference on Aboriginal Customary Laws to the Western Australian Law Reform Commission in December 2000 aims to canvas issues relating to the recognition of traditional Aboriginal laws and customs within the Western Australian justice system. The reference resulted from the Commission's Review of the Criminal and Civil Justice System. Concerns were expressed in relation to the treatment received by indigenous Australians in the current justice system. The Commission believed that these concerns would be best dealt with as a separate reference in its own right.

The tenders for experts to work on the reference closed on 31 January 2001 and the Commission formed a reference group, facilitated by Dr Mick Dodson, with representatives from the Aboriginal Affairs Department, the Aboriginal Justice Council, the Kimberley Aboriginal Law and Culture Centre and ATSIC. The reference group recently presented its recommendations to the Commission. Taking into account those recommendations, the Commission expects to appoint a project team shortly with research to commence in earnest some time thereafter.

The Commission envisages the reference will be conducted in the same manner as the Review of the Criminal and Civil Justice System, with numerous public meetings, extensive culturally-appropriate consultations with Aboriginal peoples and visits to all parts of WA. Although the Commission has not been given a deadline to complete the reference, it is hoped that by the end of 2002, an issues paper and at least one discussion paper will be published.

#### Writs and Warrants

The Commission's Final Report on Writs and Warrants was tabled in Parliament on 31 July 2001. The Commission distributed hard copies of the report to various interested parties and loaded the electronic version on to its web site. This report is the culmination of a number of reviews, analyses and commentaries, all of which concluded that the state of the law in this field is archaic and unsatisfactory. This report identified trouble spots and recommended various reforms, including a unified civil debt recovery system for the Local, District and Supreme Courts; simple common rules, forms and procedures in plain English for the recovery of civil judgment debts in all Western Australian state courts; and the amendment of section 133 of the *Transfer of Land Act 1893 (WA)*. The Commission is confident that these recommendations, if implemented, will refine and clarify practice in this highly technical area.



### **Contempt**

The Commission is currently undertaking a reference on the law of contempt. The Commission has commissioned discussion papers on the three topics that form the terms of reference. The first discussion paper on Contempt in the Face of the Court has been published and distributed widely for comments and submissions. The Commission proposed to distribute the second discussion paper by the end of 2001, with a third discussion paper to follow in 2002 and a final report to be prepared once all comments and submissions are received.

### **The 30<sup>th</sup> Anniversary Project**

In the May 2001 edition of *Brief* magazine, the Attorney General, Mr Jim McGinty, said that in the Commission's 30<sup>th</sup> Anniversary year in 2002, he proposed to legislate to implement the recommendations in the vast bulk of the Law Reform Commission's previous reports. As a result, the Law Reform Commission is carrying out an audit of its previous reports to identify those reports that require legislative change. The delivery of a final report setting out the necessary findings will be presented to the Attorney General for his consideration early in 2002.

### **Past Reports**

The Commission is currently working on the conversion of all previous reports and discussion papers into an electronic format, to be republished on CD-ROM. Earlier in the year, the Commission sent hard copies of all its publications to be republished on microfiche. These projects complement one another and will help to increase accessibility and protect the integrity of the publications for historic purposes.



# SUPREME COURT

## Jurisdiction and Work of the Court

The Supreme Court of Western Australia is the highest court of the State. The Court deals with civil and criminal matters, both at trial and on appeal, in exercise of both state and federal jurisdiction. The Court deals with criminal charges of a most serious nature, such as wilful murder, murder, manslaughter, armed robbery and serious Commonwealth drug offences.

The Court usually deals with civil matters of a complex nature or where the amount involved in a dispute is more than \$250,000, as well as applications for injunctions, damages and other forms of relief.

Appeals are heard by the Full Court, the Court of Criminal Appeal and the Industrial Appeal Court. A single Judge can hear appeals from certain decisions of Magistrates.

## Judges of the Supreme Court

As at 31 December 2001, the Supreme Court was composed of the Chief Justice, 16 Judges and two Masters. The Judges are:-

### Chief Justice

The Hon Chief Justice David Kingsley Malcolm AC CitWA

### The Judges of the Court

The Hon Justice David Andrew Ipp  
The Hon Justice Henry Albert Wallwork  
The Hon Justice Michael John Murray  
The Hon Justice Robert John McArthur Anderson  
The Hon Justice Neville John Owen  
The Hon Justice Graeme Frederick Scott  
The Hon Justice Christopher David Steytler  
The Hon Justice Kevin Horace Parker AO RFD  
The Hon Justice Anthony John Templeman  
The Hon Justice Christine Ann Wheeler  
The Hon Justice Geoffrey Miller  
The Hon Justice John Roderick McKechnie  
The Hon Justice Nicholas Paul Hasluck AM  
The Hon Justice Leonard William Roberts-Smith RFD  
The Hon Justice Carmel Joy McLure  
The Hon Justice Christopher James Lonsdale Pullin

The Hon Justice McLure joined the Supreme Court bench on 23 April 2001 following the retirement of the Hon Justice William Pidgeon, and the Hon Justice Pullin joined the bench on 7 September following the retirement of the Hon Justice Geoffrey Kennedy.



### **The Masters**

The Masters deal with interlocutory or preliminary matters prior to trial and hear company matters and any short matters assigned to them from the Judges' list. As at 31 December 2001, the following Masters were in office:-

Master Theodore Reginald Bredmeyer CBE  
Master Craig William Sanderson

### **Principal Registrar**

Mr Keith Frederick Chapman RFD

### **The Registrars**

As well as the Principal Registrar, who often acts as a Master, there are eight Registrars of the Court who are also engaged in case management (pre-trial) work. Some designated Registrars are qualified as mediators and mediate matters when so ordered by the Court. As at 31 December 2001, the following Registrars held office:-

Mr Paul Lyon Johnston  
Ms Janet Juliet Martin  
Mr David Lewis Powell  
Mr Simon Christopher Stedman Dixon  
Ms Pamela Porter Eldred  
Ms Sandra Mary Boyle  
Mr Gilbert Paul Rimmer  
Mr Christopher John Boyle

## **CIVIL JURISDICTION**

### **Full Court Civil Appeals**

The appellate work of the Full Court in civil appeals as well as its original jurisdiction tends to fluctuate from year to year. In 2001, the Court dealt with 120 appeals and prerogative writ matters compared with 158 in 1996, which was a peak year, and a trough of 59 in 1998. In the last six years, the average number of matters dealt with was 122. This does not mean that the workload is significantly less, as much depends on the length of the hearings. In 2001, the Court heard a number of lengthy appeals. There was also a degree of fluctuation in criminal appeals which are given priority. In 2001 the number of civil appeals from both the Supreme Court and the District Court was less than average.

There are 12 civil appeals listed for hearing in February 2002 and 28 other civil appeals pending which will require 25 days in March 2002 and beyond. This is a significant buildup with a total of 187 appeals having been entered for hearing but not able to be heard. In 2001 the average listing interval between entry for hearing and the appeal being heard was four to five months.

### **Civil List**

I thank the Hon Justice Steytler for taking on the task of Judge in Charge of the Civil List in 2001. In the five years ending 31 December 2001, total civil proceedings commenced in the



Supreme Court have increased from 1665 in 1996 to 2468 in 2001, an increase of 49 per cent. The civil proceedings included 939 civil actions in 1996 and 1352 in 2001, an increase of almost 44 per cent. Corporations proceedings which are additional to civil actions have increased from 346 to 457 in the same period, an increase of almost 32 per cent.

In terms of civil trials actually listed for trial, the number has fluctuated, but is only a small proportion of cases commenced. In the year 1995, being the year before the introduction of case management, 128 actions were listed for trial of which 40 were settled. From 1996 – 2001 the average number of civil trials listed annually was 90. Of these, the average number actually heard was 58 and the remaining an average of 32 that were settled after a date for trial had been fixed.

### Judges' Chambers

The number of matters dealt with in Judges' Chambers has increased from 1360 in 1996 to 1750 in 2001.

### Masters' Chambers

The number of matters dealt with in Masters' Chambers has decreased from 4053 in 1996 when there were three Masters, to 3213 in 2001 when there are two Masters. The Masters, of course, also exercise a substantial jurisdiction in other matters, such as corporations and *Inheritance Act* matters. The main reason for the reduction is the delegation of jurisdiction to Registrars.

A Master sits in general chambers on Monday, Wednesday and Friday. He conducts the Corporations List on Thursday. About 15 matters are listed on each day. In addition, the two Masters hear approximately 46 special appointments per month which can last from one hour to one day and occasionally two days.

There has been an increase this year in the corporations work, with a 36 per cent increase in the number of corporations applications. The most difficult of these are heard by Judges, but the vast majority are heard by the Masters.

The most common application heard in the general list is a summary judgment application by a bank or other financial institution. The most common application in the Corporations List is an application to wind up a company, usually in insolvency. The second most common application is one to set aside a statutory demand.

The Masters have for some years now been hearing *Inheritance Act* applications which take a day to argue. As an experiment the Masters have offered to hear any two or three day matters. Three of these were listed for hearing in December and another four will be heard in the early part of 2002.

Appeals from a Master are normally heard under Order 63A of the Rules. They are heard by two Judges rather than three and the appellant prepares the appeal papers. Two sets of appeal papers are required rather than five copies of the appeal book for a normal appeal. Also, in the case of an Order 63A appeal, the Registrar is not required to settle the appeal book index. Appeals under Order 63A need the leave of the Master concerned, but the Rules permit the



Master to refer the question of leave to the appeal court to be determined at the same time as the appeal. That is normally done and seems to be appreciated by the profession.

The simpler and speedier method of appeal allowed by Order 63A appears to be well appreciated by the profession. The two Judges who hear the appeal nearly always agree on its disposition thus obviating the need to have it reheard before a court of three Judges.

### Registrars

While the number of mediation conferences fluctuates with demand from year to year, the average in the last six years is 351. The preparation for and conduct of mediations by Registrars is time consuming and often stressful. The success rate at mediations continues to be above 70 per cent. I commend the excellent work of the Registrars in this area. In addition the Registrars deal with thousands of status and case evaluation conferences, papers-only orders and other applications which have increased by 228 per cent from 1975 in 1996 to 4498 in 2001.

The statistics demonstrate a dramatic increase overall in the workload of Registrars including their functions in relation to the settling of appeal books, taxing costs and other matters. The workload level is a cause for concern. There is an urgent need to increase the number of Registrars.

The civil case management system is predicated on cases in the standard track being ready for trial within 12 months of commencement, being heard within six months of being ready, with a judgment within three months after trial. The listing interval has fluctuated but it has been between eight to nine months this year, which is quite unsatisfactory. Experience in the last year has shown that there is no prospect of improvement without the appointment of an additional Judge.

Taking account of the increasing workload on the Registrars and the implications for applications for reduction or waiver of the new court fees introduced from 1 January 2002, there is a demonstrated need for two additional Registrars to be appointed.

This has been a difficult year for the Registrars of the Supreme Court. For much of the year, at least two of the Registrars have been on leave, or acting in various capacities. The Principal Registrar's obligations as President of the Guardianship and Administration Board, and as an Acting Master mean that the Registrars' numbers are constantly depleted, and their ability to carry out their tasks in a timely manner is markedly reduced. In the past, there has been some relief provided from time to time with the appointment of Acting Registrars, who have helped keep listings manageable. But this year, apart from a short crisis in the middle of the year when a senior Registrar was seriously ill, funds for acting appointments have not been available.

The Department of Justice has contributed to these difficulties by delaying the advertising and appointment of a much needed Associate for the Principal Registrar. Without a proper level of judicial support, the Registrars have been further stretched, and have been obliged to undertake their own clerical and secretarial tasks. The proposed restructure of the Court's administrative support will not improve their situation. During 2001, the Registrars have been forced to share Associates, at times drawing from a pool of inexperienced and untrained staff. In the past they have been able to manage with occasional ad hoc arrangements, but as full case management has



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gathered momentum, this is no longer feasible. The efficiencies which were so assiduously developed during the previous year, whereby the Registrars were able to reduce the number of hearings, despite increases in case-managed actions, cannot be sustained without proper support. The quality of case management will deteriorate and delays and costs will blow out.

The lack of judicial support is now critical. For the first time, there has been comment from the profession about difficulties in determining the identity and the whereabouts of Registrars' Associates. A huge burden is also falling on those few remaining loyal and experienced Associates who have been doing their utmost to keep the wheels of justice turning. Morale is low. The overall deterioration in service levels is slowly but surely affecting all involved.

This year's high profile examinations of company directors has highlighted the critical shortage of judicial support for Registrars. For the first time, they have been placed in the position where they have been unable to give dates for these examinations (which typically last for many days) without first securing an Associate for the required days. Even then, there have been occasions where there has been a last minute substitution, forcing a Registrar to conduct an examination with inexperienced and untrained staff in court.

Operating from two locations also continues to cause delay and confusion. As 50 per cent of the Registrars work from a remote location (at 111 St George's Terrace), there is a huge amount of file movement between buildings which is exacting its toll on records management. Files are often unable to be located in time for hearings, actions cannot be updated while they are in transit, and some files seem to be irretrievably lost. These events cause daily frustrations for the court, the profession and the litigants.

Accommodating mediations continues to throw up serious logistical problems. The only available location for mediations is at 111 St George's Terrace. Thus, every day, up to three Registrars squander valuable time moving between their chambers and the mediation rooms. The time wasted by this is incalculable. The most optimistic count would be a loss of 5 Registrar hours per week, which is 250 Registrar hours per year. It is time that cannot be afforded when demand for mediations is unabated. It is no longer possible to guarantee that a Registrar will be available for last minute, or urgent mediations. The net effect is yet another area where the capacity to deliver a service is now lower than it has been in previous years. This is regrettable, because, generally, the results of mediations are positive. The Registrars have recently detected a disappointing change in the attitude of some practitioners who appear to be treating mediation more as a process to be endured rather than an opportunity to finally compromise a dispute. Fortunately, these practitioners are in the minority. It is to be hoped that in the coming years, the whole of the profession will come to fully appreciate the enormous logistical difficulties involved in providing mediation services as part of the dispute resolution process, and act properly in all cases.

The paucity of judicial support for Registrars has also affected the collection of accurate statistics. The raw data available through the court's IT support software is unreliable, and often meaningless. Court Services continue to refuse requests for a proper manager of statistical information. Data is inserted by a number of different officers of the Court and is not checked and tested for accuracy. For this reason, the attached statistical table is incomplete and the figures cannot be vouched as accurate. In many respects, the table is also misleading. For example, it does not show that it has become necessary to share the case management load



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between all Registrars. Nor does it show the amount of time spent in any of the hearings. It therefore fails to reflect the increase in the length and level of difficulty of much of the work of Registrars. Three day mediations, or five day taxations are treated as one event by the raw report. The probate figures fail to take into account the huge amount of extra work caused by the need to requisition poorly prepared applications from members of the public. The figures ought to be increased by at least 20 per cent to reflect the double handling caused by in person probate applicants. Further, the figures showing the staggering increase in 2001 of 50 per cent of applications by mortgagees for leave to obtain orders for possession against defaulting mortgagors do not show the corresponding increase in time needed to process and prepare for these hearings.

### Hearings for Registrars

Hearing Type	1 Nov 96 to 31 Oct 97	1 Nov 97 to 31 Oct 98	1 Nov 98 to 31 Oct 99	1 Nov 99 to 31 Oct 00	1 Nov 00 to 30 Oct 01
Application Extend Time (Taxation)	13	15	9	24	20
Case Management	1213	2704	3454	3236	3301
Examination (Corporations Law)	38	46	24	56	65
For Directions (Taxations)	51	25	38	40	25
Mediation Conference	364	371	349	380	365
Passing of Accounts	11	11	6	1	11
Preliminary Conference (Mediation)	7	30	3	7	8
Registrars' Chambers (O.62A)	221	210	283	310	463
Section 129C Application	4	5	0	2	1
Settle Appeal Book Index	170	139	143	161	161
Taking of Accounts	5	8	4	10	5
Taxation (LPA)	138	73	80	103	61
Taxation (Other)	342	304	350	328	327
Probate Applications	4818	4122	4707	4834	4621
<b>TOTAL</b>	<b>7620</b>	<b>8290</b>	<b>9679</b>	<b>9623</b>	<b>9466</b>

In addition, Registrars assisted the Full Court with 529 admissions compared to 643 for the same period last year. Overall, more work has been processed by fewer Registrars. Hearings this year have been longer and more difficult than ever before. Judicial support has been scarce. Frustration levels have been high, and morale has been low.

In previous years the Registrars have willingly accepted increases in their jurisdiction and in sundry delegation of judicial authority, as needed. This year, they have tried hard to maintain their enthusiasm, but many have become utterly exhausted by the unremitting deterioration in their working conditions. It is hoped that there will be an overall improvement in resources in the coming year.



## CRIMINAL JURISDICTION

### Court of Criminal Appeal

The Court of Criminal Appeal heard 148 appeals in 2001. In 2001, there were 28 applications for leave to appeal against sentence imposed in the Supreme Court, of which 10 were allowed and 18 dismissed. There were 19 appeals or applications for leave to appeal against conviction of which 3 were allowed and 16 were dismissed. There were 62 applications for leave to appeal against sentence from the District Court, of which 35 were allowed and 27 were dismissed. There were 35 appeals against conviction from the District Court, of which 14 were allowed and 21 were dismissed. In addition, there were four references from the Attorney General.

The number of unrepresented or "in person" criminal appellants and applicants continues to be a matter of concern. The Court has been greatly assisted by the work done for otherwise unrepresented appellants and applicants by the Unrepresented Criminal Appellants Scheme. I was bitterly disappointed to learn that the work of the scheme may have to be discontinued for lack of funding in 2002. The scheme has been highly successful. The work done by the supervising solicitor, the law students at UWA with the applicants and the *pro bono* contribution from the lawyers involved has been of great assistance to the Court of Criminal Appeal in the saving of court time, speeding of the process of hearings and the delivery of judgments while cultivating a culture of service to those many people who would fail to receive legal aid. I am heartened by the news that a financial contribution has been made by the Department of Justice which will enable the continuation of the scheme at least until toward the middle of 2002.

### Criminal List

In 2001, 189 indictments were presented in the Supreme Court of which 168 were in Perth and 21 on circuit. There were 68 trials by jury in Perth and five on circuit including one wilful murder trial in Geraldton by a Judge sitting alone. This was the first such trial for that offence in Western Australia.

### Appeals to a Single Judge

In 2001, there were 82 criminal appeals to a single Judge from Magistrates' Courts of Petty Sessions of which 55 were allowed, two were allowed in part and 25 were dismissed. The number of such appeals has fluctuated since 1996 when there were 131 appeals. The lowest number was 45 in 1998.



## **GUARDIANSHIP AND ADMINISTRATION BOARD**

### **Jurisdiction of the Board**

The Guardianship and Administration Board maintains a close association with the Supreme Court. The Board appoints guardians and administrators for persons with mental disability who are unable to make decisions for themselves. In doing so, it exercises powers that also fall within the inherent jurisdiction of the Supreme Court. While the Court retains its inherent jurisdiction, most of the work is now done by way of application to the Board.

The President of the Board is the Principal Registrar of the Supreme Court, Mr Keith Chapman. The President is assisted by Registrar Pamela Eldred who is the full time Deputy President of the Board. There are currently 14 Board members. The President and Deputy President have worked with Board members and staff to ensure that the Board's processes are not only efficient but also respect the dignity of people with disability and safeguard their fundamental human rights.

### **Workload**

The number of applications in this jurisdiction has continued to increase. In the past four years the number of applications has risen from 960 in 1997 to 1583 in 2001, an increase of about 65 per cent. In the last year, there was a significant increase in the number of guardianship applications, rising from 191 in the year 2000 to 235 this year. This increase confirms anecdotal evidence that the Board is now seen by the public and by service providers in the health and aged-care sectors as an effective means for resolving issues relating to the accommodation and care of persons with mental disability where family members are in conflict.

The following are significant events for the year 2001:

### **Organisational and Resource Review**

As reported last year, a review of the Board's resources and organisational structure was initiated by the Executive Director Court Services, Mr Gary Thompson, in response to concerns expressed by the President and Deputy President of the Board about the inadequacy of the Board's resources and unrealistic workload demands placed on staff.

The Committee concluded its report in May of this year. It found that the workload of the Board has dramatically increased since its establishment in 1992, that the increase has reached critical levels over the last four years and that additional resources are required. The findings were supported by a consultant from the Australian Bureau of Statistics who concluded that projections based on available demographic information "paint a clear picture of a rapid and steady increase in the core functions of the Board." The Committee recommended that four of the five temporary positions which were created last year be made permanent. It also recommended the creation of an additional 4.5 positions to meet service demands.

At the end of the year, approval was given to fill the temporary positions on a permanent basis. However, to date no decision has been made to create the additional positions recommended in



the report. While the Board is acutely aware of the need to achieve economies in these times of serious fiscal restraint, the report makes clear that these positions are essential if the Board is to continue to be able to deliver services in accordance with its statutory mandate.

The Board is grateful for the responsiveness of Mr Thompson through this difficult period and for his assistance in resolving issues of concern.

### **Board member fees**

The Board is pleased that a decision was made in December to make funds available to increase the fees paid to its members. The inadequacy of fees has been of concern to the President for some time. The members have not had any increase in their sitting fees since the inception of the Board in 1992. The approved increase is based on an assessment made in 1998. The proper remuneration of Board members is thus an issue of continuing concern having regard to the significant responsibility and powers vested in Board members under the legislation and the extraordinary commitment they have shown to carrying out those duties.

### **Estate Management**

The Board saw the benefit of major improvements begun last year in the practices and procedures for reviewing the annual accounts of administrators. The Board has revised all of its forms and standard correspondence in relation to accounts, implemented a new statistics package, created new information sheets and initiated new systems for managing and monitoring the processing of the accounts. In May 2001, the Internal Audit Branch of the Department of Justice commenced an audit that involved a review of the administrative processes that support the Board's examination of the annual accounts. The auditors reported significant improvement in the documentation, monitoring and follow-up procedures.

### **Needs of Indigenous People**

In October, the Public Advocate released to the public a report by independent consultants on the needs of indigenous people in the guardianship and administration process. The Board has been concerned for some time about difficulties that are experienced in obtaining information and conducting hearings appropriately having regard to the cultural sensitivities of local communities and in identifying possible appropriate substitute decision-makers.

The report made a number of recommendations for improvement, while acknowledging the efforts already made by the Board as a whole and by its individual members "to accommodate cultural norms, values and obligations within hearings and decision-making." The report also acknowledged the assistance provided by the Chief Justice's Aboriginal Liaison Officer, although noting the limitations imposed by the significant demands on that officer from courts generally.

### **Public Seminars**

Feedback from the Board's bi-monthly public information seminars continues to be excellent. While the seminars are aimed primarily at assisting members of the public who are involved in applications to the Board, they are also attended by service providers and lawyers wishing to familiarise themselves with the process.



## 2001 Annual Review of Western Australian Courts

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### **Executive Officer**

In May, the Executive Officer of the Board Mr Rohan Quinn took up a position in the District Court. During his two year tenure at the Board, Mr Quinn worked closely with the President and Deputy President to develop and implement numerous initiatives and significant improvements to the Board's processes. His commitment and valuable contribution to the Board in very demanding circumstances are gratefully acknowledged.

### **Statistics**

<b>Application Type</b>	<b>01/01/2001 to 31/12/2001</b>
Guardianship	235
Administration	713
Directions	15
Enduring Powers of Attorney Intervention	25
Declaration of Legal Capacity	18
Sterilisation	0
Review – Party Instigated	150
Review – Board Instigated	403
Inspection of Documents	24
<b>Total</b>	<b>1583</b>

<b>Board Type</b>	<b>01/01/2001 to 31/12/2001</b>
Single Member	1340
Three Member	231
Full Board	18
<b>Total</b>	<b>1589</b>



# FAMILY COURT

## Jurisdiction and Work of the Court

The Family Court of Western Australia exercises both federal and state jurisdiction. In its federal jurisdiction, it can determine matters relating to dissolution or nullity of marriage, parenting orders in relation to children of a marriage, maintenance and child support, and settlement of property. In its non-federal jurisdiction, it can determine matters relating to ex-nuptial children and adoption matters.

## Judges of the Family Court of WA

As at 31 December 2001, the Family Court of Western Australia was composed of the Chief Judge and four other Judges as follows:-

### Chief Judge

The Hon Justice Michael Henry Holden

### The Judges of the Court

The Hon Justice Nicholas Tolcon

The Hon Justice Carolyn Elvina Martin

The Hon Justice John Gerard Barlow

The Hon Justice Julianne Penny

*(All Judges hold dual commissions with the Family Court of Australia.)*

### Principal Registrar

Mr Stephen E. Thackray

### Registrars

Mr Christopher John Judges

Mr Ronald Graham Fleming

Ms Roberta Annette Andrews

Mr Alan Moroni

Mr Peter David Monaghan

Ms Lisa Ilarda

*(All Registrars are also appointed as Magistrates.)*

## OVERVIEW

During the year ending 30 June 2001, the Family Court continued to operate under considerable pressure brought about by the sheer weight of the number of people seeking a resolution of their affairs after the breakdown of a relationship. The pressure is exacerbated by the ever increasing number of litigants who, for one reason or another, represented themselves without the benefit of legal advice.



## 2001 Annual Review of Western Australian Courts

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There was a slight decrease in the number of divorce applications filed. There were 5282 such applications compared with 5527 in the previous year. Of that total, 83.7 per cent (4424) of the applications were filed by applicants in person.

The total number of initiating ancillary applications filed, seeking final orders, increased. Some 2710 such applications were filed as compared with 2655 in the previous year. It is noteworthy that there was an increase of nearly eight per cent in the proportion of such applications that were filed by self-represented litigants. There were a total of 140 matters transferred from other courts. The Form 12A procedure by which litigants seek consent orders, remains a popular method of resolution of matters. There was an increase in the filing of such applications from 1409 to 1463.

The number of Form 8 applications filed (seeking interlocutory or interim relief) remained high, there being 3267 such applications as compared with 3263 in the previous year. The fact that the numbers of Form 8 applications remained virtually static is somewhat misleading. Previously a party filing an application for final orders could not seek interim orders on the same application. Following a change in the Rules, which came into effect in July 2000, interim applications had to be made in the same form by which the final orders were sought. Hence, if the caseload remained static, it would be expected that there would be a significant reduction in the number of interim applications filed. The fact that the number has remained static is an indication that workloads have increased significantly.

As expected, there was a decrease in the filing of Form 12 applications for summary maintenance determinations. For reasons noted in previous annual reports, as a result of a Rule change and particularly after the end of the year under review, many applicants who previously would have been required to file a Form 12 will now include their maintenance application in the same application by which they seek property settlement orders. It is expected, therefore, that the number of Form 12 applications filed will be further reduced.

There was a decline in the number of applications filed pursuant to the *Child Support (Assessment) Act 1989*, there being 302 such applications filed, compared with 334 in the previous year.

There was again an increase in the filing of F49 applications (summary access/contact enforcements) with the number increasing to 310 from 294.

There is an automatic right of appeal from the decisions of Magistrates to a Judge of the Family Court of Western Australia in all matters other than child support proceedings where leave is first required. The number of appeals again decreased from 76 to 62. The number of appeals remains surprisingly low and is a credit to the Magistrates, given the large number of decisions made in highly contentious matters.

In the year under review, the Registrars conducted 2598 conciliation and pre-hearing conferences, compared with 2497 in the previous year. Registrars also conducted 250 directions conferences and taxations of costs. All issues were resolved in about 28 per cent of the conciliation conferences and in about 22 per cent of the pre-hearing conferences, an improvement over settlement rates achieved in the previous year.



## 2001 Annual Review of Western Australian Courts

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During the year under review the Family Court Counselling Service instituted two important initiatives. The first of these was the change in the content of Family Reports. The service now provides a whole-of-family report whereas previously the reports were largely limited to ascertaining the wishes of children.

The second important initiative was the development of the Columbus pilot project, an early intervention, multi-disciplinary program designed for cases where allegations of child abuse and family violence have been made.

For the first time in four years the total number of referrals to the Counselling Service increased. There were 3297 referrals as compared with 3163 in the previous year. The Counselling Service continues to offer a telephone duty system. During the year under review, 4887 calls were handled, compared with 4701 in the previous year. The Counselling Service continues to provide valuable assistance to people in conflict and to the judicial officers of the Court.

The trend of the previous year continued in that the number of applications for adoption filed increased from 73 to 81. There were 69 orders for adoption made.

The number of long defended cases listed to be heard by Judges was less than the previous year. A total of 380 cases were allocated dates as compared with 403 cases in the previous year. Some 93 of these proceeded to judgment compared with 112 in the previous year. The total estimated aggregated duration of the cases listed was 1036 days as compared with 1186 in the previous year. There was a slight decrease in the number of short defended matters listed for hearing. Some 344 such cases were given a hearing date compared with 358 in the previous year. The number of judgments delivered decreased from 121 to 106.

The 1st June 2001 was the 25th anniversary of the opening of the Family Court of Western Australia. With the assistance of the Department of Justice, for which the Chief Judge is grateful, a function was held at Frasers Restaurant in Kings Park. In attendance were all of the surviving retired Judges of the Court, members of the judiciary of other courts, the State Attorney-General, various other dignitaries including many who had been closely involved with the creation of the Court. Mr Robert Larcombe and Mr Peter Francis who have been members of the staff of the Court since the day it opened for business also attended the function.

In the Chief Judge's last annual report, he foreshadowed a review of the defended list in March 2001. A total of about 312 cases were assigned to the review. A total of 154 cases were removed from the Active Pending Case List (about 49 per cent of the list) by the conclusion of the review. Based on solicitors' estimates of time, between 289 and 373 Judge days were saved.

As he indicated last year, such a review has been shown to be only a temporary solution to delay. Unfortunately, by 30 June 2001 the position was that there were still 395 long defended cases awaiting the allocation of a hearing date in Perth and a further 59 in circuit towns.

Although performance indicators were being met with respect to short defended hearings, in that they were being heard within six months of the filing of an application, the performance indicators were not being met with respect to long defended hearings. The performance indicator is that these matters ought to be heard within 10 months from the date of filing of an application, whereas the elapsed time was 13 months.



The Chief Judge is pessimistic about the ability of the Court and the Court of Petty Sessions, 150 Terrace Road, Perth to dispose of cases in a timely manner in the future. The Court has not had an increase in the number of Judges since 1976. The workload of the Judges has increased enormously. As a result of the Chief Judge's administrative responsibilities, his responsibilities as a member of the permanent Appeal Division of the Family Court of Australia and the amount of annual and long service leave which must be taken by the Judges, it is likely that for the foreseeable future, the Court will have to endeavour to function with an effective judicial strength of approximately three Judges, in real terms, at any one time.

As long ago as 27 April 2000, the Chief Judge foreshadowed the difficulty that the Court was likely to face and asked for the appointment of an additional Judge. To date, no such appointment has been made. The Chief Judge regarded such an appointment as being essential irrespective of whether or not the jurisdiction of the Court was extended by the *Family Court Act Amendment Bill 2001*. When the Bill comes into operation, the Chief Judge has serious doubt that the Court will be able to deliver the service that the people of Western Australia are entitled to expect.

A similar problem exists with respect to the Registrar/Magistrates. There has been no increase in the numbers appointed to those positions since 1990. In that period of time the number of files opened has increased by 29 per cent, the number of divorce applications has increased by 35 per cent and the number of ancillary applications seeking final orders has increased by 31 per cent. There has been a 71 per cent increase in the number of conferences conducted by Registrars in the same period.

It is a tribute to the dedication of the Registrar/Magistrates and their staff that they have been able to continue to handle this increase in workload without any increase in numbers. The Principal Registrar has made a formal request that the Chief Judge seek the appointment of an additional Magistrate or Registrar. He points out that to date the Court has been fortunate in that there has been almost no sick leave taken by the Registrar/Magistrates but he is not confident that that will continue to be the case if they are required to work at the current pace. Even if it were not for the imminent extension of the jurisdiction of the Court as a result of the *Family Court Amendment Bill 2001*, it would be imperative that consideration be given to the appointment of a Registrar or Magistrate. Should the legislation come into effect without any increase in resources, the burden upon Registrar/Magistrates would become intolerable.



## JUDICIAL PERFORMANCE

### Defended List

Contested cases that do not settle during the conciliatory procedures of the Court are classified as either direct, standard or complex track cases. Standard track cases are estimated to have a hearing time of more than one day, whereas direct track cases are estimated to have a hearing time of one day or less and are listed directly by the Listing Co-ordinator. Complex track cases are expected to run for six days or more.

In 2000/2001, 380 long defended cases were allocated hearing dates. The total aggregated hearing time for all of those cases was estimated at 1036 days. By the day allocated for hearing, 171 cases had not settled. Of these, 24 were settled without the trial commencing and 37 were settled or withdrawn during the running of the case. Some 93 cases required a decision to be given by a Judge. The remaining cases were adjourned or stood over.

Last year, the Chief Judge foreshadowed the possibility that it may prove difficult to maintain the number of Judge sitting days allocated. That prediction has proved to be correct for the reasons given in the last Review and repeated in this year's overview. The Chief Judge expects the situation to continue to deteriorate.

There were 344 short defended cases given a hearing date. On the day allocated for hearing, 225 remained to be decided and only 39 of these settled at the commencement of the trial or during the running of the case. Some 106 judgments were required to be given. The remainder were adjourned or stood over.

The average length of time for the long defended matters was 2.8 days. One case ran for 28 days, one for 10 days, one for nine days, and two cases ran for seven days. The hearing time for the remainder of the cases ranged between one and five days.

There were a considerable number of other judgments handed down which did not conveniently fit into either of the above categories, involving determinations of matters argued in the Duty Judge list or at special appointments.

In addition, the Judges of this Court also determined applications made under the *Telecommunications (Interception) Act 1979*. In the year under review, there were 88 such applications. There was a significant increase over the previous year. A number of such applications have been determined at night or on the weekend. These are time consuming and result in a significant increase in the workload of the Judges.

### Case Management

This year saw the culmination of the important work of the Case Management Committee chaired by the Honourable Justice Martin. After extensive consultation with the legal profession and others, the new guidelines came into effect in April 2001. A major focus of the changes has been to ensure that the precious judicial resources of the Court are utilised to the greatest advantage.



The Registrars were consulted regularly during the discussions leading to the changes and made important contributions to the development of a consensus. Two of the Registrars played a particularly significant role in driving the changes and the Chief Judge wishes to acknowledge the substantial contribution of Registrars Andrews and Monaghan to the work of this Committee and their continuing interest in the implementation and fine tuning of the changes. The Chief Judge also would like to pay tribute to the way in which all Registrars have enthusiastically adopted the changes, notwithstanding the increase in their work brought about by the changes.

### Appeals

The Chief Judge is pleased to report that there will be three, rather than two, sittings of the Full Court in Perth each year, subject to there being sufficient work to occupy the time of the Court.

The Full Court of the Family Court of Australia sat in Perth on two occasions during the year to hear appeals under the *Family Law Act 1975* and the *Child Support (Assessment) Act 1989*. During the year, 34 appeals were filed and four applications for leave to appeal.

The Appeal Court handed down judgment in 15 appeals, the outcome of which were seven appeals dismissed and eight appeals allowed. During the year, 15 appeals were withdrawn and 12 abandoned. As at 30 June 2001, there were 17 appeals outstanding and one application for leave to appeal outstanding.

During the year, there were two appeals to the Supreme Court of Western Australia in relation to decrees made by the Court in the exercise of its non-federal jurisdiction.

### Maintenance Collection

The office of the Collector of Maintenance has been amalgamated into the Court Registry and the remaining maintenance collection will be taken over by the Child Support Agency.

### Country Courts of Summary Jurisdiction

In the year 2000/2001, applications were filed in the country Magistrates' Courts in the family law jurisdiction seeking orders as follows:

Property	Residence Contact	Enforcement/Contempt	Child Support	Summary Maintenance
424	424	51	29	53

In addition, 57 agreements were registered.

The Registrar/Magistrates of this Court continued to give support to the country Magistrates on family law issues. They are available to advise the country Magistrates. They conduct conciliation conferences ordered by country Magistrates and the Court Counsellors conduct counselling conferences ordered by the country Magistrates. In this way, both the Registrars and Court Counsellors of the Family Court liaise closely with the Magistrates in the circuit towns visited by the Court and provide assistance and support to the State Magistrates based in those towns.



### Court Circuits

A Judge sits on circuit to hear defended cases only. The present system is that a Registrar/Magistrate visits the circuit town about two weeks before the Judge and hears undefended dissolution applications, directions hearings, interim applications and some summary maintenance and child support applications. The Registrar/Magistrate then conducts conciliation and pre-hearing conferences. If there are defended cases to be heard, the Judge will then visit the circuit town to hear these matters. Details of the Judge's circuits were as follows:

<b>Circuits</b>	<b>Required</b>	<b>Gazetted</b>
Bunbury	5	5
Albany	3	2
Geraldton	3	3
Kalgoorlie	3	2
Pt Hedland/Karratha/Broome	3	3



# DISTRICT COURT

## Jurisdiction and Work of the Court

The District Court of Western Australia is the intermediate court in this State. The District Court deals with serious criminal trials in Western Australia, except where the charge is very grave such as murder or armed robbery.

The civil jurisdiction is limited to claims to recover sums of not more than \$250,000, except in personal injury actions where it has unlimited jurisdiction to hear claims for damages.

The Judges of the Court hear appeals from civil judgments of Stipendiary Magistrates and also appeals from various tribunals, such as the Commercial Tribunal Rent Review Board, Strata Titles Referee and Veterinary Tribunal. The Judges also sit in civil public chambers to deal with matters that need to be attended to before a case goes to trial. The Registrars of the Court do the bulk of this pre-trial work.

## Judges of the District Court

As at 31 December 2001, the District Court was composed of the Chief Judge and 20 other Judges as follows:-

### Chief Judge

His Honour Kevin James Hammond

### Judges of the Court

Her Hon Judge Antoinette Kennedy  
His Hon Judge Paul James Healy  
His Hon Judge Henry Hall Jackson  
His Hon Judge Robert John Viol  
His Hon Judge Peter John Williams  
His Hon Judge Peter Donald Blaxell  
His Hon Judge Lawrence Alton Jackson QC  
His Hon Judge Michael Gerald Muller  
Her Hon Judge Mary Ann Yeats  
His Hon Judge Michael Denis Finbar O'Sullivan QC  
His Hon Judge Roger Macknay QC  
Her Hon Judge Valerie Jean French  
His Hon Judge Allan David Fenbury  
His Hon Judge Henry John Wisbey  
Her Hon Judge Shauna Marie Deane QC  
His Hon Judge Peter Maurice Nisbet QC  
His Hon Judge William George Groves  
Her Hon Judge Catherine Joan (Kate) O'Brien  
His Hon Judge Peter Dominic Martino  
Her Hon Judge Carolyn Frances (Lindy) Jenkins



### **Commissioner**

Commissioner Denis Reynolds

### **Principal Registrar**

Mr Michael John Harding

### **Registrars**

Mr George Augustus Kingsley

Ms Lyn Dorothy Wallace

### **Deputy Registrars**

Mr Simon Peter Harman

Mr Richard John Hewitt

During the year, his Honour Judge D D Charters retired from the bench as he approached his 70<sup>th</sup> birthday and her Honour Judge Carolyn Frances (Lindy) Jenkins was appointed to replace him. She was sworn in on 3 September 2001.

This maintained the total number of Judges of this Court at 22, which includes Commissioner Denis Reynolds. In addition, this Court has in its civil jurisdiction the part-time assistance of his Honour Judge Rodney Greaves of the Liquor Licensing Court.

The District Court provides a Judge to act as President to the Children's Court and this role has been filled over the past three years by her Honour Valerie French. Her Honour ceased in that role at the end of 2001, and her Honour Judge Kate O'Brien assumed the Presidency of the Children's Court from 1 January 2002.

## **CIVIL JURISDICTION**

The level of activity in the District Court varies from time to time due mainly to legislative changes to the *Workers' Compensation Act* and employer's liability legislation.

The Court's pre-trial conference procedures are rigorously applied by the Principal Registrar, Registrars and Deputy Registrars of the Court which can be seen from the figures of pre-trial settlements. They are a very significant factor in containing delays within the civil jurisdiction. It is to be noted, however, that current time standards are outside desirable limits and this is of concern.



### **Civil Jurisdiction - Comparative Statistics**

	<u>1999</u> (Nov 98-Oct 99)	<u>2000</u> (Nov 99-Oct 00)	<u>2001</u> (Nov 00-Oct 01)
<b><u>Listings</u></b>			
Cases proceeding to actual trial	146	104	124
Cases settled after listing/before trial	127	135	196
<b><u>Listing Intervals for Trials</u></b>			
For a 1-3 day trial	2.5 mths	3 mths	5 mths
For a 4-6 day trial	2.5 mths	7 mths	6 mths
For a trial in excess of 7 days	3.5 mths	7.5 mths	6 mths
<b><u>Lodgements</u></b>			
Writs (Perth)	4805	3468	3371
Appeals	122	157	139
Originating Summonses	314	242	209
Originating Summonses (Workers' Comp)	1817	0	0
Criminal Property Confiscation			28
Aust Register of Judgments/Misc Lodgements			26

The Civil Administration Committee which is chaired by his Honour Judge Michael O'Sullivan QC has had a busy year. This Committee undertook further refinement of the proposed changes to the Court's caseflow management system. Parliamentary Counsel have been briefed to prepare and update the rules. The new caseflow management system will commence in the first quarter of 2002. It will involve the introduction of mandatory pre-writ conferencing for personal injury matters. It also involves the shortening of the standard caseflow track and it will deal more efficiently with milestone breaches. These matters are under constant review by the Civil Administration Committee whose work in this connection is invaluable.

Two modules (listings and file management) of the first phase of the new Integrated Courts Management System ("ICMS") were implemented in the civil jurisdiction. The new system has already demonstrated improved functionality and efficiencies resulting in improved service delivery for clients. The balance of phase one, namely the production of court orders and exhibit management, was due to commence on a pilot basis in December.



## CRIMINAL JURISDICTION

The following table below indicates the high level of activity in the criminal jurisdiction of this Court and its progress over the past three years. Over the past two years there has been a dramatic increase in not only the number of trials listed in the District Court at Perth but also those which proceeded to completion in Perth.

### Criminal Jurisdiction - Comparative Statistics

	1999 (Nov 98 - Oct 99)	2000 (Nov 99 - Oct 00)	2001 (Nov 00 - Oct 01)
<b>Trials Listed - Perth</b>	<b>662</b>	<b>880</b>	<b>859</b>
<b>Trials Proceeded - Perth</b>	<b>364</b>	<b>474</b>	<b>502</b>
<b>Trials Listed - Circuits</b>	<b>186</b>	<b>198</b>	<b>174</b>
<b>Trials Proceeded - Circuits</b>	<b>124</b>	<b>137</b>	<b>129</b>
<b>Indictments Filed - Perth</b>	<b>1907</b>	<b>1912</b>	<b>1929</b>
<b>Indictments Filed - Circuits</b>	<b>696</b>	<b>678</b>	<b>693</b>
<b>Fast Track Pleas in Perth</b>	<b>802</b>	<b>917</b>	<b>839</b>
<b>Misc. Applications (files created)</b>	<b>189</b>	<b>191</b>	<b>237</b>

### Listing intervals for trials in weeks

<b>November 2000</b>	<b>- 50</b>	<b>May 2001</b>	<b>- 52</b>
<b>December 2000</b>	<b>- 52</b>	<b>June 2001</b>	<b>- 47</b>
<b>January 2001</b>	<b>- 52</b>	<b>July 2001</b>	<b>- 52</b>
<b>February 2001</b>	<b>- 52</b>	<b>August 2001</b>	<b>- 52</b>
<b>March 2001</b>	<b>- 47</b>	<b>September 2001</b>	<b>- 56</b>
<b>April 2001</b>	<b>- 47</b>	<b>October 2001</b>	<b>- 52</b>



### Cases pending - end of month figures

November 2000	- 791	May 2001	- 826
December 2000	- 809	June 2001	- 799
January 2001	- 837	July 2001	- 803
February 2001	- 820	August 2001	- 791
March 2001	- 798	September 2001	- 784
April 2001	- 844	October 2001	- 776

The Fast Track system continued to be well used as it has since its inception. The rate of utilisation of the system implies its acceptance by those involved.

The end of the month cases pending figures tend to remain reasonably constant but are essentially under control. There is a consistency in the listing intervals and the cases pending figures but a more relevant figure is that in excess of 70 per cent of indictments are finalised within 52 weeks of presentation in the Court.

The whole secret of the management of the criminal list is in the process of overlisting which is a concept thought to be unachievable in past years, but now is an essential part of the administrative procedures of this Court. This system could not operate without the dedication and application and adaptability of the Judges of the District Court and also the staff of the Criminal Registry who deal with complex and demanding situations on a daily basis.

The overarching necessity is for the proper utilisation of the Court's resources as well as the provision of fair and just administration of justice as far as all parties in the criminal process are concerned.

In the course of this past year, the monthly pleas hearings at *Joondalup* have become a regular and increasingly used feature and this service provides valuable assistance to the public and the practitioners in the northern suburbs.

The Court is now sitting, on a gazetted basis, in the new courthouses at *Fremantle* and *Rockingham* and these hearings are proceeding efficiently.

A new District Court circuit commenced at *Busselton* in August 2001. This new circuit will enhance services to this fast-growing region of the State and will help relieve the enormous pressure on the Bunbury trial list.

The first pleas sitting was held at *Meekatharra* on 12 June 2001 and this will continue as an adjunct to the Geraldton circuit on an "as needed basis".



As foreshadowed in last year's report, this Court has vigorously promoted its *Expedited Trial* application procedure. The Court has done its best to publicise the *Expedited Trial* application procedure and those applicants (Crown or defence) that have come in and requested consideration for an *Expedited Trial* have by and large been accommodated. Every indication is that this new procedure is working well and 15 applications have so far been heard. The problem will come if the demand upon it becomes unsustainable. That is a bridge the Court will cross when the time comes.

The Judges of this Court accept the heavy demands of the criminal list and they readily hold themselves available to accept changes in the roster or changes in scheduled hearings at any time. The Chief Judge is deeply grateful to them for their cooperation.

## GENERAL

### Circuits

The circuit work of the Court continues to represent a very important segment of the work of the Court and the demand varies constantly. The circuit commitments of the Court are continually overseen by his Honour Judge Michael Muller for whose involvement the Chief Judge is most grateful. The following are the present listings for different circuit towns for the calendar year 2002:

<b>Albany</b>	12 weeks
<b>Bunbury (Criminal)</b>	24 weeks
<b>Bunbury (Civil)</b>	8 weeks
<b>Busselton</b>	8 weeks
<b>Carnarvon</b>	3 weeks
<b>Esperance</b>	4 weeks
<b>Geraldton</b>	10 weeks
<b>Kalgoorlie</b>	18 weeks
<b>Kimberley</b>	12 weeks
<b>Pilbara</b>	12 weeks
<b>Meekatharra</b>	3 days

### Customer Council

The Customer Council has continued to sit. It is chaired by the Chief Judge and it continues to be a very valuable forum for those involved, in a multitude of capacities, with the work of the Court.



### Accommodation

Although the District Court has 12 criminal courts available in the Central Law Courts Building at 30 St George's Terrace, Perth and the adjoining May Holman building, they are now in a position to call upon the courtrooms in Rockingham and Fremantle if there is any overflow demand.

### Integrated Courts Management System (ICMS)

Next year will see full implementation of the Integrated Courts Management System (ICMS) which includes electronic document lodgement and other exciting features. Further, the introduction of ICMS will flow into the criminal jurisdiction which will also benefit from the improved system support.

### Other developments

Other items of interest arising in 2001 include:

- (a) The use of *video links*, particularly to remote areas of the State, has increased markedly and this is now a standard element of the Court's operations.
- (b) *Status conferences* are conducted by video link to the major provincial areas and this has proved to be of benefit to the Court, accused persons and practitioners generally.
- (c) The use of *international video link ups* both in the civil and criminal jurisdictions are increasing and again this provides significant savings and efficiencies. (In a recent criminal trial, a link up was established with a paediatrician who gave evidence from Sweden).
- (d) *Law Week*. The District Court participated enthusiastically in Law Week celebrations, which activities included demonstrations of the "high tech" courts, opportunities to meet Judges and a well-attended "open day" at the Central Law Courts.
- (e) *Digital Recording System*. The Court has successfully introduced a digital recording system for the May Holman Centre courts and also the Fremantle and Rockingham courts which has proven to be very efficient and effective and has already been used to produce running transcript in metropolitan courts in a more cost-effective manner.
- (f) *Registry Restructure*. A new administrative structure has been implemented into the District Court Registry following an exhaustive analysis of the needs and requirements of the Court and the new structure is designed to improve service delivery, enhance judicial support and the provision of court infrastructure. Allied to the Registry restructure will be a refurbishment of the Registry counter facilities with the intention of enhancing customer service and providing improved interview facilities and document viewing facilities, together with improved access to legal resources for unrepresented litigants.
- (g) There is no doubt that there have been difficulties with the provision of services to the Court following the privatisation of *Custodial Services*. Whilst there has been improvement in some areas, there are still ongoing difficulties which hopefully will eventually be resolved.
- (h) During the year, the *Drug Court Protocol* to govern the relations between this Court and the Drug Court under her Worship Ms Wager was finalised. The interaction between the two Courts has been carried out smoothly and the protocol is subject to ongoing review. A clear protocol was necessary to govern the situation where the pre-sentence management of offenders appearing before the District Court is supervised by the Drug Court.
- (i) A number of Judges attended the *Sixteenth Biennial Conference of District and County Court Judges* held in Adelaide in July. This conference is a major educational event for District and County Court Judges and as usual it proved to be of great benefit to those who attended.



### LEGISLATIVE CHANGES

It is time for a comprehensive review of the *Supreme Court Act* and the *District Court Act* and to proceed with the enactment of the *Magistrates' Court Bill*.

It is the belief of all members of the District Court that legislative change is desirable to contain the number of matters which currently have to be brought before the Court. The Honourable the Attorney General Mr Jim McGinty has expressed great interest and support for this proposition but it is realised that there are a number of stakeholders who have an interest in this issue and that change and reform is never easy.

It has also been the Chief Judge's firmly held view that the time is ripe for an overall analysis of the jurisdictional limits of the three tiers of jurisdiction in this State. There is a demand within the Court for an increased civil jurisdiction to be vested in this Court. Whilst it is appreciated that for so long as the criminal jurisdiction is in a way struggling with the demands upon it, then it is difficult to argue for an increased civil jurisdiction. It is believed that if the jurisdictional limits of the three tiers are looked at in a comprehensive way, then a number of difficulties could be addressed.

### CONCLUSION

In recent years the District Court's backlog has been well documented, culminating in the appointment of an additional Judge (Judge Martino) to the Court in November 2000. Since then, the Court, together with the Department of Justice, has developed a package of reforms aimed at delivering structural and process improvements which will hopefully further reduce current backlogs. The Court and the Judges have co-operated with the general thrust of efficiency and reform which is at this time required of a court system.

The District Court looks forward to all aspects of the District Court Realignment Strategy, in particular legislative change to reduce the number of criminal charges coming before the Court. The District Court looks forward to an enhanced civil jurisdiction; it looks forward to the implementation of the Law Reform Commission's Report; it looks forward to the new caseflow process in the civil jurisdiction and to the benefits of ICMS in both jurisdictions.

While there has been some improvement overall, civil trial delay is currently outside the District Court's standard and further, in excess of 20 per cent of criminal matters take longer than 12 months to finalise. Although this is not, on an Australia-wide basis, a bad situation, the Chief Judge would like to see it improved.

It is imperative the Realignment Strategy continues to be pursued and bears the promised results if inroads are to be made into the current backlog. At the end of the day, however, all this having been met and welcomed, there is only so far we can go before further resources, both at a judicial and administrative level, are a necessity.



# MAGISTRATES' COURTS

## Jurisdiction and Work of the Court

The Magistrates' Courts deal in both civil and criminal jurisdictions. The criminal jurisdiction of the Magistrates' Court is administered in the Court of Petty Sessions. All criminal proceedings against adults begin in this jurisdiction. Magistrates deal with the majority of matters summarily.

The civil jurisdiction of Magistrates' Courts is administered in the Local Court. It contains two divisions, the Small Disputes Division, which can deal with claims of up to \$3000, and the General Division, which has jurisdiction up to \$25,000.

The Stipendiary Magistrates in all country locations are also appointed as Coroners and may sit as a Court of Summary Jurisdiction to hear matters relating to family law. A number of magistrates in country locations undertake the duties of Mining Wardens. Two specialist courts have been introduced which allow expanded case management opportunities in their respective fields. The Domestic Violence Court in Joondalup was launched in December 1999 and the Drug Court began operation on 4 December 2000.

## Magistrates

As at 1 December 2001, the following held office as Stipendiary Magistrates:

### Chief Stipendiary Magistrate

Mr Steven Alex Heath

### Deputy Chief Stipendiary Magistrate

Ms Elizabeth Adele Woods

### Stipendiary Magistrates at Central Law Courts

Mr Robert Huck Burton

Mr Norman Lennard Roberts

Mr Robert Brian Lawrence

Mr Graeme Neil Calder

Mr Richard Hamilton Bromfield

Mr Paul Michael Heaney

Mr Denis John Reynolds (currently a Commissioner of the District Court)

Ms Deborah Bennett-Borlase

Mr Wayne Gordon Tarr

Mr Steven Ross Malley

Mr Giuseppe Cicchini

Mr Robert Keith Black

Mr Phillip Gregory Cockram

Mr Peter Graeme Malone

Mr Frank Cullen

Mr Jeremy Raymond Packington



Ms Jacqueline Gay Musk

### **Stipendiary Magistrates at May Holman Centre**

Mr Malcolm Thomas Whitely  
Mr Ivan Gregory Brown  
Ms Barbara Anne Lane  
Mr Douglas Noel Jones  
Ms Julie Ann Wager  
Ms Pamela Margaret Hogan

### **Stipendiary Magistrates based at Metropolitan Courts**

Armadale: Mr Terence John McIntyre  
Fremantle: Mr Peter Spiro Michelides  
Mr Michael David Wheeler  
Joondalup: Mr Peter George Thobaven  
Mr Kieran Boothman  
Midland: Mr Colin Douglas Roberts

### **Stipendiary Magistrates based at Country Courts**

Albany: Mr Robert Maurice McMahon Glynn  
Broome: Mr Antoine Bloemen  
Bunbury: Mr Kelvin Trease Fisher  
Carnarvon: Mr Stephen McKenzie Wilson  
Geraldton: Mr Michael Sanford King  
Kalgoorlie: Mr David Michael Imlah  
Northam: Mr Paul Allen Nicholls  
South Hedland: Mr Stephen Paul Sharratt

### **Stipendiary Magistrates based at Coroner's Court**

Ms Evelyn Felicia Vicker SM - Deputy State Coroner

### **Stipendiary Magistrates based at Children's Court**

Mr Timothy Graham Schwass  
Mr Stephen Noel Vose

### **Stipendiary Magistrates holding concurrent appointments in the Family Court of Western Australia**

Mr Stephen Ernest Thackray  
Mr Christopher John Judges  
Mr Ronald Graham Fleming  
Ms Roberta Annette Andrews  
Mr Alan Moroni  
Mr Peter David Monaghan  
Ms Lisa Ilarda

Since last year, two Magistrates have retired and three new Magistrates have been appointed. Mr Ronald John Gething retired upon reaching the age of 65 on 25 December 2000. Mrs Alison



Robins retired also by reason of age, on 10 May 2001, having been appointed a Magistrate on 22 January 1991.

Ms Pamela Margaret Hogan was appointed on 18 June 2001 and is based at Central Law Courts and at the Compensation Magistrates Court.

Mr David Michael Imlah was appointed on 25 June 2001 and is now the resident Magistrate at Kalgoorlie. Mr Imlah is the first indigenous person appointed as a Stipendiary Magistrate in this state.

Mr Stephen Paul Sharratt was appointed on 2 October 2001 and is now the resident Magistrate at South Hedland. There is now a full complement of Magistrates in Western Australia for the first time in several years.

## COURTS OF PETTY SESSIONS

The following figures represent the matters that were dealt with in the court of Petty Sessions throughout the state in the year to 30 June 2001:

	2000/2001	1999/2000	Variance from previous year
<b>Total number of criminal charges</b>	122,531	115,537	+ 6.05%
<b>Restraining Order Applications</b>	11,567	10,241	+12.94%
<b>Hand up Briefs</b>	2,618	2,727	- 3.99%
<b>Fast Track Committals</b>	897	806	+11.29%
<b>Preliminary Hearings</b>	485	636	- 23.74%
<b>Extraordinary Drivers Licence</b>	2,631	2,773	- 5.12%
	2000/2001	1999/2000	Variance from previous year
<b>Time to Pay Applications</b>	10,437	10,807	-3.42%
<b>Listing Intervals – Perth:-</b>	<b>As at end of October 2001</b>		
<b>Half Day Hearing</b>	8 weeks	14 weeks	-6 weeks
<b>Full Day Hearing</b>	10 weeks	14 weeks	-4 weeks
<b>Multi Day Hearing</b>	14 weeks	16 weeks	-2 weeks

The increase in the number of criminal charges is the first for many years and sees the number of charges return to above the level set out in the 1999 Annual Review of Western Australian Courts. The Chief Stipendiary Magistrate is unable to identify a cause for this increase or



express any view as to whether this trend may continue. Some of the previous decreases have been occasioned by the removal of minor charges by the use of infringement notices but the increase is in charges which cannot be dealt with in this manner and will have a significant impact on this court.

The further significant increase in the number of applications for restraining orders also presents a growing problem for the Courts of Petty Sessions. Many of these applications must be dealt with urgently, requiring other work to be postponed. Contested applications require priority in listing but are often lengthy. The Court continues to examine initiatives to address these problems.

Notwithstanding the increase in workload, the listing intervals in the Perth Court of Petty Sessions have been reduced to those contained in the 1999 Annual Review of Western Australian Courts. Factors which have contributed to the reduction of delays are:

- Greater availability of Magistrates for court duty and more timely replacement of retiring Magistrates; and
- Increases in the efficient use of court time by the use of direction hearings and status conferences.

There are unacceptable listing delays in the major regional centres of Bunbury and Kalgoorlie. It will be necessary to employ resources from Perth to reduce these delays which will impact on the Perth listing intervals.

### New Initiatives

The Perth Court of Petty Sessions has adopted a new procedure to assist defendants who have been arrested and granted bail for their first appearance. Those defendants who are seeking a remand for legal advice are given a remand for six weeks together with a statement of material facts in relation to the charge and an information sheet on how to obtain advice and what is required on their next appearance. Defendants wishing to plead guilty on the first appearance may still do so. To date the procedures have proved successful not only in processing considerable numbers of defendants quickly but in providing them with information to assist them. The co-operation of the Police, the Legal Aid Commission and the Aboriginal Legal Service has been greatly appreciated.

### Family Violence Training

During the year, all Magistrates participated in a one day Family Violence Workshop conducted in conjunction with the Domestic Violence Prevention Unit. The workshop enabled Magistrates to increase their understanding in this important area. There were presentations from a range of speakers and an opportunity to discuss issues with a range of service providers.



## LOCAL COURTS

The overall figures for the last financial year reflect significant variations in the workload both statewide and in the Perth Local Court. The following tables indicate the variation of workload between the 1999/2000 and 2000/2001 financial years.

### Actions Commenced

The Statewide figures (including Perth) are:-

	12 months to 30 June 2001	12 months to 30 June 2000	% Variation
Plaints			
General Division	28,606	29,007	-1.5%
Small Debts	<u>4,792</u>	<u>5,828</u>	-18%
TOTAL	<u>33,398</u>	<u>34,835</u>	-4%
Residential Tenancy Applications	9667	9153	+5.5%

The Perth Local Court figures are:-

	12 months to 30 June 2001	12 months to 30 June 2000	% Variation
Plaints			
General Division	19,672	19,454	+1.0%
Small Debts	<u>1,122</u>	<u>1,302</u>	-14%
TOTAL	<u>20,794</u>	<u>20,756</u>	-
Residential Tenancy Applications	4179	3847	+8.5%

### Perth Local Court Listing Intervals

Listing intervals for the 2000/2001 year fluctuated considerably from month to month. For a multi-day trial, the period ranged from 11 to 16 weeks and for a one-day trial from seven to 14 weeks. Although the range between the high and the low listing intervals was significant, the average intervals reflect a more accurate picture. The average interval for the 12 months ending June 2001 was 14 weeks for a multi-day trial and 10.25 weeks for a one-day trial. This compared with 13.5 weeks for a multi-day trial and 10.00 weeks for a one-day trial for the previous year.

### Pre Trial Conferences

Statewide (including Perth):

	12 months to 30 June 2001	12 months to 30 June 2000	% Variation
Total	3606	3718	-3%



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Perth Local Court:

	12 months to 30 June 2001	12 months to 30 June 2000	% Variation
Total	2276	2362	-3.5%

Pre-trial conferences continue to be effective. In the Perth Local Court the number of actions which proceeded no further than the pre-trial conference stage for 2000/2001 was about 85 per cent. This was the same result as reflected in the previous year.

### Late Settlements (Perth Local Court)

Although there was an increase in the number of actions reaching settlement or being discontinued just prior to trial as compared with the previous year, this was not significant compared with the gains made in 1999/2000 where there was a reduction of 538 hours lost through late settlements. Comparative details of the loss of court sitting time for the last two financial years are:-

	12 months to 30 June 2001	12 months to 30 June 2000	% Variation
Settlements	666 hours	611 hours	+9%
Discontinuance	147 hours	100 hours	+47%

### Electronic Lodgement

Electronic lodgement of Local Court summonses commenced in May 2000. This process required the installation of special software onto a PC in the user's office which then enabled them to electronically lodge summonses with the metropolitan local courts.

It is proposed to enhance this system to enable users to access e-lodgement through the Internet, requiring no special software from the Department of Justice. One of the benefits of this is that firms will be able to give as many of their staff as they require, the ability to lodge summonses without the need to install additional software.

## JOONDALUP FAMILY VIOLENCE COURT

The Joondalup Family Violence Court pilot project commenced in December 1999, with the aim of providing an effective and holistic inter-agency response to family violence with a criminal justice focus.

The Court recently received a Certificate of Merit and prize as part of the 2001 Australian Violence Prevention Awards. The pilot, which was to conclude in December 2001, has recently been extended for a further three months. It is currently undergoing evaluation.



## **CAPITAL WORKS PROGRAM**

### **Completed Capital Works**

The new courthouse at Fremantle was opened for business in April 2001. It was awarded the George Temple Poole Award by the WA Royal Australian Institute of Architects in June 2001. The new courthouse at Busselton opened in May 2001.

### **Proposed Albany Justice Complex**

Work has commenced on the design of a new courthouse for Albany. Concept planning for the project has commenced as has consultation with the heritage architect, Heritage Council and the community. This is to determine the suitability of the existing and adjacent sites and the impact on the heritage buildings at that location. It is anticipated that the project will be completed in 2005.

## **DRUG COURT**

The Drug Court has completed the first year of its two-year pilot program. Between December 2000 and October 31, 2001, 363 persons were referred to the Court Assessment & Treatment Service for inclusion in the Drug Court.

The majority of individuals who have been referred to the Drug Court have been placed on a Drug Court Regime (46 per cent). Of the remainder, 10 per cent were not suitable for the Drug Court, 16 per cent were subject to a Brief Intervention Regime, six per cent were subject to Supervised Treatment Regime whilst 22 per cent are still being assessed as to their suitability.

The Drug Court recognises that offenders who use illicit drugs usually have a range of health, family and accommodation problems and that unless holistic assistance is provided the offender is likely to remain in crisis.

The enthusiasm and commitment of the specialist drug rehabilitation services, the Legal Aid Commission and the Drug Court Team has enabled the pilot project to develop. The Court has also welcomed the involvement of voluntary and community groups including the Notre Dame Law students, parent volunteers, Edith Cowan University Post-Graduate psychology students and the Murdoch University Transformative Justice Program.



## CORONER'S COURT

### Jurisdiction of the Coroner's Court of Western Australia

The Coroner's Court has exclusive jurisdiction to hold all inquests under the *Coroners Act 1996* and the functions of the State Coroner include ensuring that the system is administrated and operates efficiently; that Coronial Services are overseen; that all reportable deaths are investigated; that an inquest is held whenever there is a duty to do so under the Act or when it is desirable that one be held and that guidelines be issued.

There are two full-time Coroners in Western Australia, the State Coroner, Alastair Neil Hope, and the Deputy State Coroner, Evelyn Felicia Vicker. In country areas Stipendiary Magistrates perform day-to-day duties as Coroners and on rare occasions may hold short inquest hearings.

### Work of the Coroner's Court

In the year up until 30 June, 2001, 1782 deaths were reported. Of these a total of 268 cases ultimately resulted in a death certificate being issued, leaving a total of 1514 cases to be fully investigated. In relation to those 1514 deaths, a finding is required from a Coroner.

In the great majority of cases where an inquest is not held, a Record of Investigation into Death form is used to complete the matter and to record the findings. In many of these cases, however, significant investigations have taken place and in many instances communication takes place with families of the deceased as a result of which further investigation is carried out.

During the year, the first lengthy inquest of recent years was held, the inquest into the circumstances of the death of Langley George Hancock, which required 30 sittings during the financial year and has subsequently required a further 20 sitting days to complete. In addition to these sitting days, a number of additional days were used for directions hearings etc.

During the financial year, 12 inquests were conducted at country courts by the State Coroner and Deputy State Coroner.

In the Perth area, inquests were conducted at the Coroner's Court at the Grain Pool Building, the Central Law Courts, the AXA Building and at the new Fremantle Court complex.

In order for both Coroners to sit at the same time, it has been necessary on occasions to list matters in other courts in the metropolitan area in addition to the court in the Grain Pool Building.

In all deaths in custody cases and cases where witnesses are in custody, it is not practicable to conduct inquest hearings at the Grain Pool Building location for security reasons. In all of these cases, therefore, it is necessary to obtain a listing in a secure court.

The fact that the Coroner's Court has been able to sit as often as it has in the various courts in Perth reflects considerable co-operation on the part of all courts. All heads of jurisdiction and listing clerks have been most helpful in assisting with the listing of these inquest hearings.



The above situation does, however, highlight the fact that in future planning for courts in Western Australia, consideration needs to be given to planning for a secure Coroner's Court, purpose built for the function and in a suitable location.

### Counsel Assisting

In May, 2001, Ms Zoe Windsor replaced Ms Felicity Zempilas as counsel assisting pursuant to a secondment arrangement with the Office of the Director of Public Prosecutions.

In addition the Police Service has provided assistance to the Coroner's Court in the form of two police officers who act as officers assisting, namely Sergeant Peter Harbison and Sergeant Dominic Licastro.

### Deaths in Custody

Although during the year 11 inquests into deaths in custody were held, there is a significant backlog in these cases. Counsel assisting is finding it particularly difficult to monitor the conduct of the investigations into these deaths while at the same time being responsible for the preparation and presentation of complex inquest hearings. This is leading to problems in implementing recommendations 26, 27 and 28 of the National Report of the Royal Commission into Aboriginal Deaths in Custody that relate to the involvement of a solicitor or barrister in such cases.

A proposal has been put forward to the Department of Justice seeking provision for the appointment of a second counsel assisting who would oversee preparation of all matters by counsel assisting and police officers assisting and ensuring that these recommendations are complied with. It is expected that a proposal will be put forward to government to secure adequate funding for such a position for the next financial year.

## DEPARTMENT OF JUSTICE

Magistrates' Courts and Tribunals have now completed the restructure which has been ongoing since 1999. This has resulted in nine major regions being identified throughout WA, those being Pilbara, Kimberley, Murchison, Goldfields, Great Southern, South West, Fremantle/Peel, Joondalup and Midland. Each of those regions has a regional manager who is responsible for the administrative operations of the courts within the region.

These regional managers, together with the Director, Magistrates' Courts and Tribunals, Regional Manager Country Courts, Regional Manager Metropolitan Courts, Manager Customer Service and Manager Business Services ensure that management of the Magistrates' Courts throughout the state is more efficient and effective.

The Director Magistrates Courts and Tribunals Ms Pauline Phillips retired from the Public Service on 28 December to enable her to focus on personal interests. It is unfortunate that she will be unable to continue within the restructure which she has overseen since her appointment.



# CHILDREN'S COURT

## Jurisdiction and Work of the Court

The Children's Court deals with all complaints of offences alleged to have been committed by children who are 10 years or older, but younger than 18 years. If the person charged has turned 18 after the date of the alleged offence, then the person still appears before the Children's Court.

The Children's Court does not only hear criminal matters. If a child has been seriously abused or neglected, an application can be made by a police officer, or an officer from the Department of Family and Children's Services, for the Court to make a declaration that the child is in need of care and protection, and order that he or she be committed to the Department of Family and Children's Services for a period. If such an order is made, the child is described as a ward of the State.

The President of the Children's Court is a Judge of the same status as a Judge of the District Court of Western Australia. A Judge of the Children's Court has the same powers in sentencing as a Supreme Court Judge, and can also hear appeals against the decisions of Children's Court Magistrates or members.

In addition to the President, who only deals with the most serious charges brought before the court, there are Magistrates and Children's Court members. A member's role is like that of a Justice of the Peace in the Court of Petty Sessions. Generally speaking, the maximum sentence a Magistrate can impose is six months' detention. A member is not empowered to impose any detention at all. Therefore, a Judge must deal with any matter requiring a greater sentence of detention or imprisonment.

## Judicial Officers

As at 31 December 2001, the Children's Court was composed of the following judicial officers:-

### **President**

Her Hon Judge Valerie Jean French

### **Full-time Magistrates**

Mrs Susan Gordon AM

Mr Timothy Graham Schwass

Mr Stephen Noel Vose

### **Casual Magistrates**

Mr Duncan McGrath

Ms Vickie Laura Stewart

Mr Naveen Chandra Pillay

Mr Patrick Hogan



### OVERVIEW

There have been no significant changes in the workload of the Children's Court in 2001. Although the number of criminal charges lodged throughout Western Australia has decreased by about five per cent, the number of juvenile defendants appearing before the Court has remained relatively stable. As a result, the hours sat in Court by judicial officers has remained unchanged. In addition, the President of the Children's Court and the Children's Court Magistrates based in Perth also service Children's Courts throughout the State when required and provide weekly circuits to metropolitan courts in Fremantle, Midland, Joondalup, Armadale and Rockingham.

A pilot Drug Court Programme has been operating in the Perth Children's Court throughout the year. The Drug Court Programme is presided over by the President and generally targets young offenders with a significant drug problem who have been convicted of serious offences that would normally result in an immediate custodial term. About 20 young offenders have participated in the Drug Court Programme but only two have successfully completed the programme to the extent that they have "graduated" and been sentenced to a community-based order. The regime has proved to be difficult as the young participants have difficulty in meeting the appointments for counselling and urinalysis in various locations in addition to reporting regularly to the Court. Pressing welfare issues such as lack of accommodation and income have also hampered their ability to participate fully with the demands of the programme. The lack of suitable accommodation for the young people who have come through the Children's Court is a critical factor in their ability to be able to access and benefit from community rehabilitation programmes, including the Drug Court regime.

There has been no increase in the number of care and protection applications lodged (214 in year ending June 2001). However the length of hearings in this jurisdiction has increased to an average of about four days.

Overall, the Court continues to run efficiently. There is virtually no delay in obtaining an early trial date for criminal trials or care and protection hearings. The fact that the period between first appearance and hearing date continues to remain at an average of four months reflects the difficulties that the parties face in having matters ready for hearing at an earlier date. The number of prosecutions undertaken by the Office of the Director of Public Prosecutions continues to reduce, as there is no budget allocation in that office to provide for prosecutions before the President of the Children's Court. The Director continues to provide prosecutors from his office to prosecute the most serious matters but has been forced to leave many serious indictable offences to be prosecuted by Police Prosecutions.

Her Honour Judge French's term as President of the Children's Court concluded at the end of 2001 and her Honour returned to the District Court. Judge Kate O'Brien commenced as President of the Children's Court as from January 2002.



## COMMITTEES

### Supreme Court Rules Committee

The Rules Committee has met on only three occasions this year and also dealt with various matters by circulating memoranda. The Hon Justice Templeman has also undertaken some specific tasks with the authority of the Committee.

A sub-committee consisting of Owen J, Templeman J, Master Sanderson and Registrar C Boyle (co-opted for the purpose) reviewed the latest redraft of the *Supreme Court Rules* in the light of the recommendations made by the Law Reform Commission. That sub-committee came to the view that the question on whether the present Rules about pleadings should be abandoned was fundamental to its deliberations. The sub-committee referred the matter to the Rules Committee which came to the conclusion that we should maintain the present regime. That view was endorsed by a recent meeting of Judges and Masters.

The principal matters considered by the committee itself have been:

**Lodging documents by facsimile** -- A draft practice direction was sent to the Chief Justice under cover of a memorandum dated 21 September 2001. The relevant telephone number was provided in a memorandum of 27 September 2001.

**Rules relating to the *Criminal Property Confiscation Act 2000*** -- The Hon Justice Templeman has had discussions and correspondence with representatives of the DPP and Parliamentary Counsel and has recently received the sixth draft of the Rules, which the Hon Justice Templeman has yet to review. However, his Honour expects that this draft will be very close to the final version.

**Prerogative writs in relation to *Workers' Compensation Act* matters** -- Following the plethora of applications which resulted from the decision of the Full Court in *Re Monger; Ex Parte Dutch & Ors* [2001] WASCA 220, the Hon Justice Templeman prepared a draft practice direction for the purpose of enabling these matters to be progressed in an orderly manner. Roberts-Smith J has subsequently refined the procedures by preparing common form orders.

**Taking evidence by videolink** -- The Committee considered it was premature to attempt to formulate either rules or a practice direction relating to this matter. The Committee was of the view that technical problems and the inadequacy of the equipment currently available result in the videolink being generally unsuitable for taking evidence. The matter was referred to the Videolink Committee with a view to preparing some general recommendations.



### Criminal Practice and Procedure Review Committee

This committee meets on alternate months during the year. This year it has made the following recommendations:

**1. The Dock in Criminal Courts --** The Committee recommended that the present situation where an accused person is normally in the dock be continued. However, it recommended that those considering the designs of new courtrooms could consider the following matters:

- (a) Making the dock less obtrusive so that it does not isolate the accused person anymore than is necessary;
- (b) Making the dock more secure, but in a discrete way so as not to cause prejudice to the accused;
- (c) Providing for adequate continuous and confidential access to the accused by counsel;
- (d) Providing a means for an accused person to make written notes and view any exhibit including close circuit television or other electronic equipment; and,
- (e) Providing for an accused person who is unrepresented to adequately conduct and take part in the trial process.

**2. Commissions for Judges of District Court --** The Committee recommended that all District Court Judges have a standing commission to enable them to deal with bail applications by accused persons charged with wilful murder and murder outside the metropolitan area. Great expense was being incurred in bringing accused persons to Perth in order to comply with the provisions of the *Bail Act*. That recommendation was put into effect.

The Committee also recommended the continuation of the practice of District Court Judges being given special commissions where required to deal with Supreme Court matters.

**3. Formal Hearings on Video --** The Committee recommended that an accused person should always have the choice of being present at any formal hearing in the Supreme Court. However, it had no objection to formal remands being conducted by video with the consent of the accused person to save the cost and inconvenience of transporting persons to the Supreme Court.

**4. Increase of Sentences by Court of Criminal Appeal --** The Committee recommended that a person whose sentence is to be increased by a Court of Criminal Appeal should be present at the Court so that the increased sentence can be satisfactorily explained in that person's presence.

**5. Opening Statements by Judges at Criminal Trials --** The Committee recommended that Judges at criminal trials make an opening statement to the jury after the jury has been empanelled but before the foreperson is elected. That statement could inform the jury on the following matters:

- (a) The function of the jury as sole judges of the facts;
- (b) The presumption of innocence;
- (c) The benefit of a reasonable doubt;



- (d) The danger of outside influences on the jury or any disclosure of the jury's deliberations prior to verdict;
- (e) The need for the jury to be out of court while matters relating to the admissibility of evidence are considered by the Judge;
- (f) The manner of communication from the jury to the Judge;
- (g) Normal court sitting times; and,
- (h) Note taking.

It was recommended that the Judge's opening statement should not contain a discussion of the elements of the offence charged or the importance of cross-examination, matters concerning credibility, or s 611A matters.

**6. Opening Statements by Defence --** The Committee reported that it was in favour of defence counsel making an opening statement if counsel wishes to do so, providing:

- (a) The matter is first discussed in the absence of the jury;
- (b) The consent of the prosecutor is first obtained - due to the lack of authority for this opening statement in the *Criminal Code*; and
- (c) The opening statement be not taken as precluding the raising of further defences during the course of the trial after the opening statement has been made.

**7. New Jury Districts --** The Committee suggested that there was no present need for the Supreme Court to sit at Meekatharra but recommended that sittings at Rockingham and Busselton be held if the Court considers that is advisable.

**8. Accrediting Practitioners in Criminal Jurisdiction --** This matter was considered on a number of occasions but the Committee agreed that due to the provision of seminars by the Criminal Lawyers Association, the matter need not be discussed further at this stage.

**9. Anonymous Juries --** The Committee discussed this matter in the light of the practice in New South Wales where an identification number only is used for jurors. The situation in New South Wales is said to work well. The Committee was informed that jurors in that State "are not afraid any more" whereas in Western Australia there are many complaints from jurors concerning their names being read out in open court.

Arising from such concerns, in 1997 it was recommended by an independent consultant in Western Australia that the identity of jurors in this state be kept confidential and that they be referred to only by numbers throughout the jury process. It was recommended that such a process would improve jurors' safety and result in increased confidence in the jurors with no disadvantages.

It was resolved by a majority of the Committee that the Chief Justice be informed that the committee favours the introduction of a similar system of anonymous juries to that in operation in New South Wales. However a minority of the Committee was of the view that the occupation and suburb of residence of prospective jurors should be revealed to counsel.

**10. Evidence Concerning Identification of Alleged Offenders --** This matter was discussed in the light of the reasons for judgment in *Roser v The Queen* [2001] WASCA 190 and s 3ZM -



s 3ZQ of the *Crimes Act (Cwth)*. The Committee has suggested that the expert in the subject of photoboard identification at the WA Police Service be invited to address Judges and practitioners concerning the latest techniques used by police officers in this state in compiling photo identification boards for use by police officers.

**11. Section 49 Aboriginal Affairs Planning Authority Act 1972** -- The decision in *Green v The Queen* [2001] WASCA 162 was discussed by the Committee. It was thought that at present there were no current problems arising from s 49 of the Act.

### Conclusion

It is the view of the Hon Justice Wallwork that due to the wide ranging representation of judicial officers, legal practitioners and police officers on this committee, it provides an ideal way of discussing matters of concern arising in the criminal jurisdiction and the making any necessary recommendations to the Chief Justice.

### Education Committee

The Education Committee has been active this year. A Judicial Education Seminar was held on 27 February and attended by all Judges and Masters of the Supreme Court. The venue was the Edith Cowan University Campus and the programme occupied the entire day. The feature presentation was that of the Hon Chief Justice John Doyle, Chief Justice of South Australia, who (accompanied by the Hon Justice Owen) presented a session on Judicial Ethics. The session involved much discussion on the ethical problems facing Judges today in relation to both professional and personal conduct. The second session involved a presentation by Ms Jill Rundle, Director of WANADA. She was accompanied by three other speakers and between them they delivered an informed and extremely useful presentation on the problems of drug abuse and rehabilitation of drug offenders. The final session was presented by Dr Peter Thompson, a cardiologist. It was "Judicial Health and the Heart" and involved a wide ranging discussion on the need for Judges to watch carefully their physical health.

The second programme of legal education was by way of a seminar "Suspended Sentences: The First Five Years" conducted by Mr Neil Morgan of the Crime Research Centre of the University of Western Australia. This was attended by all Judges of the Court and was enthusiastically received. It focussed on the use of the suspended sentence as a sentencing option and the effectiveness of suspended sentences in the administration of the criminal law.

The third programme was again a seminar conducted by Mr Morgan. This was "A Suitable Case for Treatment? The *Criminal Law (Mentally Impaired Defendants) Act 1996*". It was attended by Judges of the Court and involved detailed discussion in relation to the provisions of this important legislation.

As part of the education programme, a function was organised for Supreme and District Court Judges to meet and discuss, informally, matters of common concern in both courts.



### Law Admission Consultative Committee

This Committee meets under the auspices of the Council of Chief Justices and comprises a representative of each Australian jurisdiction as well as of the Law Deans, APLEC and the Law Council of Australia. The Hon Justice Parker represents both this Court and the Legal Practice Board on the Committee.

At the request of the Standing Committee of Attorneys General, the Committee has been particularly concerned this year to continue to develop and secure national acceptance of uniform minimum standards of academic and practical legal training to qualify to practice law in Australia without restriction.

The emergence of the scheme for the Mutual Recognition of Qualifications throughout Australia and the progressive evolution of the scheme for a National Practising Certificate has made the achievement of uniform minimum national standards critical, if clients are to receive adequate legal services.

Despite the difficulties in the way of achieving uniformity in the face of the unbroken history of state and territorial regulation of the legal profession, uniform academic standards are now in place throughout Australia and a national standard for practical legal training has been formulated. Much work remains for the Committee, however, to achieve the national acceptance and implementation of this new standard for practical legal training.

### Law Library Committee

The Hon Justice Parker chairs this Committee which comprises representatives of the legal profession and the Department of Justice. It is responsible, on behalf of the Court and the Legal Practice Board, for the conduct of the Law Library, which includes its branch at the Central Law Courts.

As the primary legal reference library in the state, the Committee is constantly concerned to maintain and improve the scope of texts, journals, other reference materials and reports available in the library, despite the strong budgetary restraints which prevail. To this end there is an ongoing process of assessment and review of the relevance and quality of the collection and, where possible, use is made of electronic means to limit costs and improve service.

A survey of users undertaken this year has not only confirmed the growing range and level of demand on library services by city, suburb and country users, but has helped to identify areas where new or modified services are required.

The PLEAS electronic reference service has been considerably expanded during the year.

### Video Technology in Courts Steering Committee

During the course of this year the installation of new equipment was completed in the Children's Court. The Hon Justice Scott, Chair of this Committee, has recently been told by the Presiding Judge that the equipment is operating satisfactorily and is used extensively in that Court.



Unfortunately further funding has not been available to the Committee in the current financial year so that the extension of the technology in the next proposed phase has had to be deferred. The next court on the priority list is the Broome Court which will be equipped as soon as funding is available.

The cost benefits continue to accrue and there is no doubt that this technology is paying its way. The savings greatly exceed the out-of-pocket costs of installation. Because of the lack of funding, the Committee has met infrequently this year primarily to deal with complaints and the maintenance of existing facilities.

It is hoped that the Committee will make more progress in the forthcoming year if funding is available. It is understood that in each new courthouse video technology will be included in the construction as a matter of course. That means that the Albany Justice Complex will contain the equipment once it is completed.

### Information Technology Committee

After some years of frustration, 2001 has seen very considerable advances in the development of information technology within the courts of Western Australia. In the Year 2000, a Joint Courts' Technology Committee was established. Convened by the Hon Justice McKechnie, it ensures strategic directions of the introduction and development of information technology into all West Australian courts.

This year has seen a far closer co-operation between courts and Court Services due, in particular, to the efforts of the Executive Director Court Services, Mr Gary Thompson. As a result, there have been significant achievements, the highlights of which were as follows:

- 1. Introduction of the Integrated Case Management System Phase 1 into the District Court** -- All West Australian courts are moving to an Integrated Case Management System (ICMS) which is being introduced in three phases. Phase 1 has been completed and phase 2 has been initiated and will be completed during 2002 for all courts. When fully operational, ICMS will provide a best practice case management system for all West Australian courts including listing functions, case tracking facilities, enhanced statistical collection and the ability to introduce electronic lodgement of court process. Courts will work closely with the legal profession so that all the benefits are passed on to those engaged in litigation.
- 2. Judicial Workbench** -- Another highlight of the year has been the introduction of a common Electronic Judicial Workbench for all judicial officers in Western Australia. The workbench enables judicial officers to have instant links to a variety of databases including all relevant statutes and decisions databases of the High Court, West Australian Supreme and District Courts, and Warden's Court, with links to all other state courts. Each judicial officer has access through the workbench to all e-trials and e-appeals on which he or she is engaged, including transcript in electronic form. The workbench has sophisticated messaging and calendar functions.
- 3. Re-cabling** -- In advance of ICMS, a comprehensive cabling project for all courts in Western Australia has been undertaken, with the result that judicial officers are now linked to a judicial network while on the bench or in chambers. A number of courts have been cabled to



allow electronic trials and there are provisions for further cabling to increase the number of courts capable of being used for the conduct of electronic trials in the future.

**4. Judicial Standard Operating Environment (SOE)** -- A judicial SOE has been introduced for all jurisdictions. This has standardised many applications to the latest technology and software. The SOE has enabled aging equipment to be replaced throughout the judicial and administrative areas.

**5. Digital Recording** -- During the year, a pilot digital recording project has been undergoing trials. The use of digital recording will advance the delivery of transcripts to regional areas where trials have been conducted. Already a number of courts are routinely monitored at another location and transcript subsequently delivered or e-mailed back to court.

**6. Videoconferencing** -- Improvements continue to be made to videoconferencing technology as more courts are equipped to enable conferencing. The use of the technology to link courts with prison, Perth courts with regional courts and witnesses at other locations in and out of the state is now routine.

**7. Judgment Processing System** -- During the year further changes and enhancements were made to the Judgment Processing System. West Australian judgments are now delivered in electronic form which enables easy searching across cases and clear recognition of the issues raised in judgments.

**8. Failed projects** -- It is appropriate to record two projects which have failed. A project in Masters' Chambers to pilot online submissions and exchange of information did not proceed after the contractor collapsed. This project would also have allowed the Masters' Calendar to be made available on the Internet for parties to peruse and agree dates. Although the project has failed, the ideas will be further investigated upon the completion of the ICMS.

It is a matter of great regret that a Sentence Information System is not available to judicial officers in Western Australia, despite considerable efforts to create such a system. Investigations are under way to use the concept of data mining within the justice data warehouse to extract statistical information that may be relevant and useful for judicial officers and will enable proper reporting.

### **Conclusion**

In summary, Western Australian courts continue to be innovative in the use of technology to make the judicial system more accessible and to improve its efficiency. In order to make sure that the law keeps pace with advances in technology I have written to the Hon Attorney General requesting a project be commenced to review the laws, regulations and rules and to recommend changes.