



2002 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

I have been informed by the Attorney General that Cabinet has approved proposals for a new *Magistrates' Courts Bill* to enlarge the civil jurisdiction of the Local Court and the further review the criminal jurisdiction of Magistrates. These are important changes. Some important changes can be made to reduce the District Court's workload by increasing the range of matters that can be dealt with by Magistrates both in the civil and criminal jurisdiction. At the same time, it is appropriate to increase the jurisdiction of the District Court. These changes are most welcome. It will be important to ensure that all of the Courts are properly resourced to meet the demands of them.

Accommodation

The Hon Justice Murray until recently chaired the Courts' Accommodation Planning Committee, the umbrella organisation designed to oversee the Department's efforts in respect of court accommodation statewide. 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.

The Court's Accommodation Planning Committee has been allowed to effectively lapse and has been replaced by two committees. One has been recently formed to liaise with the Department of Justice's project working group which has the brief to design and build a new courthouse on the corner of Hay and Irwin Streets, linked across Hay Street to the Central Law Courts. That committee is chaired by her Honour Judge Kennedy of the District Court. The task is to determine the new building's size and design and the best use of that building and the Central Law Courts building to house the District Court, Magistrates' Courts and, possibly, the State Administrative Tribunal which is planned to be established by the end of 2003. This Court's interest in that project is limited to our use of the building for the purpose of Supreme Court criminal jury trials.

Much progress has been made this year, largely as a result of the development of a good working relationship with the Attorney General and responsible departmental officers. There is now sympathy for this Court's position and an understanding of the parlous court accommodation situation in which we are placed. The solutions are clear. Hopefully, we are on the verge of government endorsement in a form which will enable a program for funding to be set. If this comes to fruition, we shall have even greater cause to celebrate in 2003 the centenary of the completion of this magnificent 1903 Supreme Court building and its opening on 8 June 2003.

Supreme Court

The Supreme Court Accommodation Committee has, as its principal task, the work required to properly accommodate this Court. It is also the liaison point for Departmental proposals to renovate, refurbish and add to regional courthouses, both in the metropolitan area and country towns. It is also the liaison point for new courthouse construction such as, most recently, the new courthouses at Rockingham and Busselton. The Supreme Court has twice used the Busselton courthouse for jury trials, successfully on both occasions. The Committee expects soon to be



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involved in consultation regarding the planning of additional courthouse accommodation integrated with the historic courthouse in Albany.

Current projects

So far as the Supreme Court in Perth is concerned, the Department has agreed to fund only the most limited refurbishment work of the premises at 111 St George's Terrace. It is hoped, however, that the premises will not be required for our purposes for much longer.

During the year, the Court has been able to involve the Hon Attorney General in such a way as to give him a good appreciation of the needs and present situation of this Court. We have put to the Attorney that work needs to be urgently commenced on the construction of a new court building to the east of the present buildings on the site. That building would be designed to entirely locate it on the Supreme Court reserve and not intrude upon or substantially overlook Government House. It is hoped that the building could be designed and constructed soon enough to enable the premises at 111 St George's Terrace to be vacated and to bring together all elements of the Court for the first time since 1992. The present indicative building cost is \$20 million.

The Attorney has said that "the proposal is being actively pursued". He recently advised that work is under way to ensure that this and other court proposals are included within the budget process and available for the Government Expenditure Review Committee in February and March 2003. Needless to say, the Court has made it clear to the Government that it stands ready to provide any assistance which may be desired.

The Court is also itself forcefully advocating necessary improvements to court security generally and, in particular, to its custodial facilities following the report of Professor Harding, the Inspector of Custodial Services, dated 26 March 2002, on Metropolitan Court Custody Centres. That work would involve "internalising" the sally-port and other improvements to our custodial facilities. The total cost should not exceed \$1 million. Even more limited in cost is the Court's proposal that immediate work should be done to effectively damp-proof the 1903 courthouse against water penetration from the Barrack stream, work which can be done without substantial disruption to the Court's functioning.

In the meantime, the Court is proceeding with various minor works. Some works are concerned with improvements to the security system, but others involve a program of both external and internal refurbishment. Those attending the Court will have seen the excellent work done in the main entrance foyer. Further refurbishment is proposed for Court No. 1 and Court No. 2. A number of Judges' chambers in the 1903 building are badly dilapidated and require refurbishment.

To further enhance the Court's public presentation, it is proposed that as soon as budgetary considerations allow, a modest fund be established for the acquisition of artworks to be used to decorate courtrooms and other public spaces in the courthouse. It is proposed to concentrate on eminent West Australian artists producing works suitable to enhance the Court's presentation to the public.

I thank the Hon Justice Murray and his committee for their continued work on these ongoing, but extremely important issues.



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Court of Appeal

While the Attorney General has not been prepared to act on the proposal to establish a Court of Appeal Division, it will be necessary to revisit this topic in 2003 in the context of the urgent need for additional resources.

Judicial Workload

The Supreme Court is currently constituted by a Chief Justice, 16 Judges and two Masters, a total of 19 judicial officers. In addition, nine Registrars 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. As I reported last year, there are many signs that the current body of judicial officers is not sufficient to cope with the increasing workload. The warning signs of stress and overwork cannot be ignored. No additional Judge or Registrar has been appointed to the Supreme Court since 1996. There is currently an urgent need to appoint an additional Judge and two additional Registrars with appropriate support staff. The need is compounded by the forthcoming trial of the Bell Group litigation which is scheduled to commence in 2003 with an estimated length of hearing of 18 months, which will have a major impact on the Court's time and resources.

Court Dress

The Court Dress Committee chaired by the Hon Justice Anderson has continued its review of court dress. At their meeting on 20 November 2002, the members of the Court unanimously agreed to adopt the wearing of a simple black gown over contemporary attire for civil proceedings. Assuming there is no delay in the manufacture of the gowns, the change to the new gowns will be made in March 2003. At this stage, it has been decided to retain the existing robes for ceremonial sittings and criminal trials. Bar jackets will cease to be worn in chambers and members of the Court will adopt normal day dress instead.

Law Reform

New Members

In December 2001, the Attorney General appointed Ms Ilse Petersen from the Crown Solicitor's Office to replace Ms Lindy Jenkins who had earlier been appointed to the bench of the District Court. Mr Wayne Martin QC's appointment to the Commission expired upon reaching the statutory maximum appointment term of six years in October 2002. He was replaced by Ms Gillian Braddock SC as the Commission's member from private practice.

Law Reform Commission's 30th Anniversary

In 2002 the Law Reform Commission of Western Australia celebrated its 30th year of operation with the launch of the *30th Anniversary Reform Implementation Report*. The report commemorates the Commission's history and features interviews with former chairpersons of the Commission and its predecessor, the Law Reform Committee. It also provides a convenient summary of each reference undertaken by the Commission from 1972–2002. The report confirms the high implementation rate of recommendations made by the Commission and prioritises relevant outstanding recommendations that would enhance the quality of the legal system in Western Australia. The Attorney General has announced the Government's commitment to implement all relevant outstanding recommendations.



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Aboriginal Customary Law

The Commission's current reference on Aboriginal Customary Laws aims to canvass issues relating to the recognition of traditional Aboriginal laws and customs within the Western Australian legal system. Early in 2002, on the advice of a Reference Evaluation Group chaired by Dr Mick Dodson, the Commission appointed a Project Team. It also appointed an indigenous male and female Special Commissioner and a 13-member Research Reference Council to advise on culturally-appropriate processes and protocols. The Commission has now completed its pre-consultation phase in which project team members visited all parts of Western Australia to enhance awareness of the project and to seek permission to conduct research consultations on Aboriginal land.

In November and December, the Commission conducted successful community research consultations in the Perth metropolitan area. The Commission will travel to regional and remote areas within Western Australia to conduct similar consultations during 2003. A series of background papers are expected to be published mid next year with a discussion paper to follow.

Contempt

During 2002, the Commission published its final two discussion papers on the contempt reference dealing with contempt by publication and contempt by disobedience to the orders of the Court. All submissions have now been received and the Commission is formulating its recommendations with a view to publishing its final report in early January 2003.

Judicial Review of Administrative Decisions

In June 2002, the Commission published its discussion paper on the Judicial Review of Administrative Decisions. The paper was well received and prompted a number of informative submissions from the legal profession and the public. The final report detailing the Commission's recommendations to government is currently in production and was due to be published in late December 2002.

Past Reports

In September this year, the Commission completed the conversion of all of its past reports, working papers and discussion papers to electronic format. It has now released a three CD-Rom boxed set featuring all of its publications between 1972 and 2002. The CD set is a rich resource of research and historical value.

Legal Aid

Electronic Lodgment

Legal Aid WA will soon be implementing electronic lodgment of applications for legal assistance. This will include the introduction of a certification process through the use of checklists that will simplify both application and assessment process and make it easier and quicker for practitioners and clients to do business with Legal Aid WA. The first stage of the project commences in early 2003 and will involve a small group of practitioners in criminal and family law.

Changes to Criminal Law Guidelines

In early 2003, Legal Aid WA hopes to simplify and reframe some of its criminal law guidelines so that they properly target the people most in need of legal representation. The proposed changes



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will introduce a new threshold test under which the representation required to obtain a grant of aid in Petty Sessions or on general Children's Court matters must be outside the normal level that could be provided by the Duty Lawyer Service. The proposed changes will also give higher priority to people with mental illness or impairments, intellectual disabilities, physical disabilities, who are disadvantaged by their location or who are about to be imprisoned for the first time.

ADR Family Conferencing Program

In 2002, as part of an expansion of its family law Alternative Dispute Resolution (ADR) Program, Legal Aid WA built a new Dispute Resolution Centre. While not totally replacing traditional family law grants of aid, emphasising ADR has resulted in more people being assisted by Legal Aid in family law matters with 294 mediation conferences convened between 1 January and 30 September 2002. Since expanding the ADR program, Legal Aid has developed closer partnerships with the Family Court, Relationships Australia and many community legal centres.

Self Help Initiatives

In 2002, Legal Aid WA's website was expanded to maximise public access with over 160 pages of legal information, assistance and referrals. A number of self-help kits can now also be downloaded from the site. Since September 2001, the web site has attracted over 50,000 visits. A number of Legal Aid databases and resource systems were made available at no cost to community-based agencies, including the Family Court, Gosnells Community Legal Centre, SCALES, Welfare Rights and CLAC. All community-based agencies also have access to Legal Aid WA's Priority Telephone Line that provides immediate access to trained paralegals or legal aid lawyers to assist with "on-the-spot" advice where the agency has a client requiring emergency assistance.



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 2002, 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

Judges of the Court

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 Eric Michael Heenan
The Hon Justice Michael Laurence Barker

The Hon Justice Heenan joined the Supreme Court bench on the 4 April, 2002, following the retirement of the Hon Justice Ipp. The Hon Justice Barker joined the bench on 9 August in advance of the retirement of the Hon Justice Henry Wallwork who retired on 31 October.



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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 2002, the following Master was in office:-

Master Craig William Sanderson

Master Theodore Bredmeyer CBE retired on 28 June 2002. As at 31 December, his replacement had not been announced.

Principal Registrar

Mr Keith Frederick Chapman RFD

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 2002, 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

In the year ending 31 December, 2002, the Full Court heard 114 civil appeals and related matters such as prerogative writs, compared to 120 last year. These do not include matters dealt with on motion days. The average over the past seven years is 115. At the same time, however, there have been some major cases before the Full Court some of which have occupied days of hearings and required substantial judgment writing time. There have been a number of lengthy proceedings in the Full Court, most notably *Marquet v State of Western Australia* [2002] WASCA 277 heard by five Judges in April 2002.

The following table shows the number of appeals to the Full Court from each jurisdiction during the past seven years.



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Full Court Appeals	2002	2001	2000	1999	1998	1997	1996
Appeals from Supreme Court (Judges/Masters)							
Allowed	16	18	20	15	6	12	15
Dismissed	28	36	44	31	12	28	35
Allowed In Part	5	4	4	1	0	0	2
Sub Total	49	58	68	47	18	40	52
Appeals from District Court							
Allowed	23	22	16	17	9	27	22
Dismissed	18	22	24	21	16	32	47
Allowed In Part	1	2	3	2	0	6	7
Sub Total	42	46	43	40	25	65	76
Appeals from Workers Compensation Board							
Allowed	2	3	4	2	2	0	2
Dismissed	4	0	1	0	0	1	10
Allowed In Part	1	0	0	0	0	0	0
Sub Total	7	3	5	2	2	1	12
Appeals from Liquor Licensing Court							
Allowed	0	0	3	0	0	0	0
Dismissed	1	1	1	3	0	0	2
Allowed In Part	0	0	0	0	0	0	0
Sub Total	1	1	4	3	0	0	2
Appeals from Children's Court							
Allowed	0	0	0	0	0	0	0
Dismissed	1	0	0	0	0	0	3
Allowed In Part	0	0	0	0	0	0	0
Sub Total	1	0	0	0	0	0	3
Appeals from Other Courts							
Allowed	9	1	4	4	5	0	2
Dismissed	3	2	2	4	5	1	5
Allowed In Part	0	0	0	0	0	0	0
Sub Total	12	3	6	8	10	1	7



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Cases Stated Heard by Full Court	1	0	0	1	0	0	0
Sub Total	1	0	0	1	0	0	0
Prerogative writs							
Granted	1	3	3	7	3	0	2
Refused	0	6	0	2	1	9	4
Sub Total	1	9	3	9	4	9	6
TOTAL	114	120	129	110	59	116	158

Civil List

I thank the Hon Justice Steytler for taking on the task of Judge in Charge of the Civil List again in 2002. In 2002, 1697 civil actions were commenced in the Supreme Court together with 401 corporation matters, a total of 2098. This represents an increase in more than 25 per cent since 1996, though down from a peak of 2468 in 2001, but still more than the previous record of 2048 in 2000. There has been a noticeable increase in the complexity of many of the cases coming before the Court. But for the introduction of case management from 1 March 1996 and the impact of mediation by Registrars, the position would be much worse than it is today.

Judges' Chambers

In 2002, 411 special appointments and 1488 other matters were dealt with in Judges' Chambers, a total of 1899 and an increase of almost 40 per cent since 1996.

Masters' Chambers

The number of matters dealt with in Masters' chambers in 2002 was 2955, a slight reduction from 2001 which totalled 3213. The nature of the applications has remained constant. There have been very few appeals from the decisions of Registrars.

Since June 2001 there has been a change in the conduct of general chambers. Masters' Chambers are now held four days a week, commencing at 9.15am. There is no separate corporations list. Corporations matters are now being heard in the general chambers list. This year Masters heard 1173 special appointments, up significantly from last year. The number of corporations matters has shown a decline of about 5 per cent as against an increase of 36 per cent in 2001.

The general chambers list includes virtually all interlocutory work undertaken by the Court. Most corporations matters are dealt with by the Masters. The most common application in the corporations list is an application to wind up usually in insolvency. Applications to set aside a statutory demand are the next most common type of application.

It is intended in the New Year to undertake a detailed review of the way in which business is conducted in Masters' chambers. There is considerable scope for streamlining the process of



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special appointments, with a view to reducing the time between the application being filed and eventually determined. Furthermore, the introduction of the ICMS should enable greater use of technology to avoid unnecessary appearances in chambers. Any adjustments to the procedure in Masters' chambers will only be undertaken after full consultation with the profession.

Registrars

Overview

Case Management by Registrars and the exercise of delegated jurisdiction in a range of pre-trial matters, in conjunction with mediation conferences and case management, has proved to have been extremely successful since 1 November 1996, following the completion of a pilot programme. In each year since then, the average number of mediations is 360. In 2002, 411 mediations were conducted.

Status and case evaluation conferences and paper only orders by Registrars have increased from 1650 in the first full year of 1997 to 3445 in 2002, a record number.

If a greater volume of work performed by fewer people is a measure of increased efficiency then the Registrars have performed their duties more efficiently than in previous years. That is an inaccurate criterion of efficiency. It merely indicates costs have been saved. There are, however, an insufficient number of Registrars to cope with the work they are required to complete.

Annual leave is a recurring problem. For one month of the year each year a Registrar ought to be on annual leave and there should be sufficient capacity to cover for that absence, together with accrued long service leave. The Court does not have that capacity. In previous years, the work has been performed by Registrars not taking up their full annual leave and long service leave entitlements. That is unsatisfactory from both the position of the Court and the individual.

There has been an increase in the number of tasks performed by Registrars. What cannot be seen is the increase in the complexity of those tasks, the time expended in performing them, and the time spent in preparation.

Hearings for Registrars

Hearing Type	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	1 Nov 01 to 31 Oct 02
Application Extend Time (Taxation)	15	9	24	20	16
Case Management	2704	3454	3236	3301	3353
Examination (Corporations Law)	46	24	56	65	40
For Directions (Taxations)	25	38	40	25	33
Mediation Conference	371	349	380	365	383
Passing of Accounts	11	6	1	11	12
Preliminary Conference (Mediation)	30	3	7	8	19
Registrars' Chambers (O.62A)	210	283	310	463	380
Section 129C Application	5	0	2	1	1
Settle Appeal Book Index	139	143	161	161	162
Taking of Accounts	8	4	10	5	14



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Taxation (LPA)	73	80	103	61	74
Taxation (Other)	304	350	328	327	274
Probate Applications	4122	4707	4834	4621	4875
Waiver of Fee Applications commencing 26 March 2002	-	-	-	-	75
TOTAL	8290	9679	9623	9466	9711

Acting Registrars

We are grateful for the assistance of Acting Registrars Watt and Rayney for various periods throughout the year and for the co-operation of the Federal Court in releasing Deputy District Registrar Rayney to assist us in this way.

Jurisdiction

The jurisdiction of Registrars increased from 27 June 2002, when the Senior Master delegated control and superintendence of the Central Office to the Principal Registrar. This has resulted in a greater day to day involvement of the Principal Registrar and other Registrars in that area.

Since the beginning of the year, the *Supreme Court (Fees) Regulations 2002* have applied with a greater involvement of Registrars in the waiving of fees. The Registrars are not in a position to deal with applications for the waiver of fees. It is proposed that the Regulations be amended to specify the criteria for waiver and that the authority to waive fees be exercised by administrative officers either within the Court or the Department of Justice.

On 27 September 2002, powers of Registrars under Order 60A rule 1 were expanded to conduct examinations ordered by the Court under section 58 of the *Criminal Property Confiscation Act 2000*. There has not as yet been an examination conducted by a Registrar.

Mediations

There has been a continuation of unreasonable pressure on Mediation Registrars in setting appointments, particularly in expedited list mediations, where the short period within which parties require mediations is made impossible by the number of days on which the parties state they are unavailable. The pressure on the Registrars is such that it is extremely difficult to respond to any urgent requests for urgent mediation appointments. Practice Direction 5 of 2002 taking effect from 5 December 2002 will at least concentrate the mind on the problem. One of the benefits of mediations occurring at 111 St George's Terrace is that the problem of access for any party with a physical disability is overcome.

Probate

Whilst the performance in this area is satisfactory there are two limitations. One is geography. Only Registrars at 111 St George's Terrace have computer access to attend to applications for a grant, and the support staff and the probate files are located in that building. It is fortunate that there are several staff in the probate area who have acquired a great deal of knowledge over the years and who are of great assistance to the Registrars involved.

The second limitation is the declining participation of legal practitioners in making applications for a grant of probate coupled with an increase in testators preparing their own wills. Although procedures have been simplified, the number of applicants in person for a grant, now about one



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third of all applications, leads inevitably to an increase in requisitions and the multiple handling of files from application to a grant of probate.

There is of course a greater demand by telephone on the time of clerks and inevitably a tendency towards giving advice rather than information. The public do not accept that Court staff are not permitted to give legal advice.

Central Office

Central Office staff, as with the Probate Office, also find they are dealing with members of the public who demand legal advice and will not accept that it cannot be given. This takes up the time of the counter staff and their immediate supervisor. The line between legal advice and information on procedure is not always clear.

With the number of in-person participants both in litigation and probate increasing, the Central and Probate offices go beyond being Registries and extend into being information providers. This adversely affects the performance of the counter staff's core tasks. The Central Office continues to be a busy area. The implementation of the ICMS Project will increase the scope of the duties of counter staff when dealing with solicitors and litigants. Tasks that were previously performed by others after documents were filed will now be performed at the time of filing at the counter.

Special Cases

Next year is likely to see the hearing of what is likely to be one of this State's longest cases. At this stage, the hearing is estimated to last for some 18 months. This case will have a significant impact on judicial time and resources. Unquestionably, it will have an impact on the work of the registry and the Registrars. To what extent it will impact on our already stretched resources only time will tell.

Status of Registrars

For a number of years, Registrars have been vested with increased jurisdiction from time to time. Registrars have been required to undertake more and more work of a judicial nature. They do this while remaining public servants. There are longstanding proposals to recognise the judicial role and status of Registrars. It is now time that these proposals should be implemented.



CRIMINAL JURISDICTION

Court of Criminal Appeal

In the year to 31 December 2002, 143 appeals and applications for leave to appeal were heard by the Court of Criminal Appeal. This year the Court heard a number of lengthy and complex appeals. The number of appeals against conviction and applications for leave to appeal against sentence from trials in the Supreme Court are the lowest for some years.

In 2002, the Court heard 71 appeals against sentence from the District Court, with 51 dismissed, and 35 appeals against conviction, with 22 dismissed. The average number of appeals against sentence from the District Court in the last six years is 80, varying between a high of 100 and a low of 62. The average number of appeals against conviction in the same period was 44 each year.

The Court heard two appeals against sentence from the Children's Court, with both allowed, and two appeals against conviction, with one allowed and one dismissed. Since 1996, there have been only two successful appeals against conviction.

The following table provides a breakdown of matters before the Court of Criminal Appeal since 1996.

<i>Court of Criminal Appeal</i>	2002	2001	2000	1999	1998	1997	1996
(Appeal & applications for leave to appeal)							
Supreme Court – Against Sentence							
Allowed	10	10	8	4	2	6	11
Dismissed	14	18	26	21	21	22	30
Varied	0	0	0	0	0	2	0
Sub Total	24	28	34	25	23	30	41
Supreme Court – Against Conviction							
Allowed	5	3	1	2	2	4	3
Dismissed	3	16	12	13	5	26	32
Varied	0	0	0	0	0	2	0
Sub Total	8	19	13	15	7	32	35
District Court – Against Sentence							
Allowed	20	35	43	38	22	20	27
Dismissed	51	27	57	53	38	68	57
Varied	0	0	0	1	5	2	5
Sub Total	71	62	100	92	65	90	89



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District Court – Against Conviction							
Allowed	13	14	18	13	17	11	12
Dismissed	22	21	30	27	26	46	34
Varied	0	0	0	1	0	2	2
Sub Total	35	35	48	41	43	59	48
Children’s Court – Against Sentence							
Allowed	2	0	0	4	0	3	4
Dismissed	0	0	0	0	2	0	2
Varied	0	0	0	0	0	0	0
Sub Total	2	0	0	4	2	3	6
Children’s Ct – Against Conviction							
Allowed	1	0	0	0	0	1	0
Dismissed	1	0	0	0	0	0	0
Varied	0	0	0	0	0	0	0
Sub Total	2	0	0	0	0	1	0
References	1	4	0	1	1	0	0
Sub Total	1	4	0	1	1	0	0
TOTAL	143	148	195	178	141	215	219

Criminal List

In the seven years to 31 December 2002, the average number of indictments presented in the Supreme Court has been 222, fluctuating between a low of 156 in 1997 and a high of 344 in 1996. In 2002, 256 indictments were presented – the most since 1996. The number of jury trials listed in Perth in 2002 was 75 and the trials on circuit was 19. The average over the last seven years has been 73 in Perth and 15 on circuit.

As at December 31, there were 66 cases pending of which 39 had been given trial dates between 1 January and August 2003. Some 27 cases were yet to be listed. Currently they cannot expect to be tried before August to October 2003. The delay is not acceptable, but it will not be possible to list a third Judge in crime to deal with those particular cases unless the Court is provided with additional resources, having regard to the state of the civil lists.

Supreme Court: Appeals to a Single Judge

In 2002 there were 85 appeals to a single Judge under the *Justices Act 1902* (WA). In the preceding six years, there were an average of 90 appeals each year. There were two appeals under other statutes in 2002. Of the 85 appeals under the *Justices Act* in 2002, 40 were allowed, 40 dismissed and 5 allowed in part.



GUARDIANSHIP AND ADMINISTRATION BOARD

The Guardianship and Administration Board maintains a close association with the Supreme Court. The Board appoints guardians and administrators for persons with a 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. There are currently 14 Board members, one being a Registrar of the Court, namely Registrar Powell. 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 a disability and safeguard their fundamental human rights.

Workload

The number of applications received has remained constant, but there has been a significant number of difficult and complex matters to be dealt with. From those difficult and complex matters, several incidents arose where the safety of Board members and staff was at risk. As a result, a full-time security officer is now situated at the Board premises.

The following are significant events for the year 2002:

Significant Decisions

The Board has made a number of significant decisions this year including the appropriate use of chemical and physical restraints. Further, the Full Court of the Supreme Court in the case of *Johnson v Staniforth* [2002] WASCA 97 has given a decision in relation to the application of section 77 of the *Guardianship and Administration Act*. In a period of two months, eight applications have been made in an area where no applications had previously been made. The issues are likely to be complex.

New Board Members

During the year we welcomed two additional Board members, namely Ms Roby Carroll and Dr Jane Barratt.

Country Circuits

Country Circuits continue to be held in major regional centres throughout the State. In the last financial year, hearings were held in Bunbury, Geraldton, Albany, Kalgoorlie, Northam, Meekatharra, Narrogin, Karratha, Esperance and Mandurah. Teleconference facilities are used regularly to facilitate the attendance of various parties at hearings and on several occasions videoconference facilities have been used.

Board Member fees

Board members fees increased from 14 November to \$325 full day and \$163 half day.



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Estate Management

The workload of the Estates Management section continues to increase both in number and in complexity. Fortunately, the majority of administrators file their accounts on time and in an acceptable manner. Some do not and as a result were removed from office and three certificates of loss were issued.

State Administrative Tribunal

From the information received by the Executive Officer, it appears the present intent is to include the Guardianship and Administration Board into the State Administrative Tribunal. It would appear the Guardianship and Administration Board is to be housed on 4th Floor, 12 St Georges Terrace from 1 September 2003.

Executive Officer

In January 2002, Anthea Chambers commenced working at the Guardianship and Administration Board after several years of working at Department of Justices Victim Support Service. Ms Chambers has qualifications in teaching, anthropology and social work.

Statistics

Application Type	01/1/2002 to 31/12/2002
Guardianship	263
Administration	763
Directions	14
Enduring Powers of Attorney Intervention	26
Declaration of Legal Capacity	23
Sterilisation	3
Review – Party Instigated	150
Review – Board Instigated	274
Inspection of Documents	46
Section 77 – Application	9
Total	1571

Board Type	01/1/2002 to 31/12/2002
Single Member	1295
Three Member	293
Full	38
Total	1626



GOALS

Eight years ago I set six major goals. They were:

- (1) The completion and the inclusion in the capital works programme of the State of the project for the co-location of the Supreme and District Courts which will provide for a modern criminal court complex and all other facilities, including facilities necessary for the public.
- (2) The full implementation of the civil case management system including adequate provision for mediation.
- (3) Publication of a reprint of the *Rules of the Supreme Court 1971* and commencement of a comprehensive review of the Rules to continue the simplification of court procedures.
- (4) The establishment of the long-awaited Criminal Registry and the appointment of a Registrar of the Court of Criminal Appeal.
- (5) Adoption and publication of an entirely new set of *Criminal Practice Rules* to replace those last comprehensively reviewed 80 years ago.
- (6) Implementation of a delay reduction project in relation to civil appeals, including the introduction of mediation of appeals and the appointment of an additional Judge.

The concept of a combined Supreme and District Court complex utilising the Supreme Court Gardens South of the 1903 building received wide professional endorsement, particularly from the architectural and town planning experts who were members of the group known as City Vision. In my opinion, from a City planning point of view that was the best option. From an historical, cultural and practical standpoint, however, the present Supreme Court location must remain the home of the State's highest court. There is room for expansion on the Supreme Court to the East before consideration needs to be given to other options. The project being developed for that site is an exciting possibility, approval of which would be a cause for celebration in 2003 when we mark the centenary of the completion of the Supreme Court building on this site.

The full implementation of the case management system since November 1996 has transformed the business of the Court, but the increased workload on Registrars by the expansion of their jurisdiction as judicial officers, coupled with mediation and other judicial duties, requires an urgent review of their status and conditions of service.

The *Rules of the Supreme Court 1971* have been reprinted and have been comprehensively revised and updated. The Criminal Registry has been established and a Registrar has been appointed as Registrar of Court of Criminal Appeal. The *Criminal Procedure Rules 2000* came into force just under two years on 5 February 2001.

The sixth goal, namely, a delay reduction project in relation to appeals, the introduction of mediation in relation to appeals and the appointment of an additional Judge has, regrettably, not been achieved. Without the appointment of two additional Registrars, there is no prospect of introducing mediation of appeals or having a Registrar of the Court of the Civil Appeal functioning properly. In the period since 1996 those appointments now represent a bare minimum. The present complement of Judges cannot reasonably be expected to continue to work under the pressure experienced in recent years.



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 2002, 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

Judges of the Court

The Hon Justice Nicholas Tolcon

The Hon Justice Carolyn Elvina Martin

The Hon Justice John Gerard Barlow

The Hon Justice Julienne 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.)

Ms R A Andrews SM commenced working part-time (three days per week) as from February 2002. The intention was that another part-time Magistrate would be appointed to cover the other two days. However, there was a delay in the appointment process and the appointee did not commence duties until July 2002.

OVERVIEW

In the report of the Chief Judge of the Family Court for the year ended 30 June 2001, he indicated the difficulties that the Court was facing in delivering the service that the people of Western Australia are entitled to expect.



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The situation continues to deteriorate due to a number of factors, which include the:

- ever-increasing workload of the Court with regard to applications filed;
- continuing increase in self-represented litigants;
- diminishing number of Judge sitting days available by reason of matters referred to in last year's report;
- fact that there has been no increase in the number of Judges appointed to the Court since 1977;
- fact that there has been no increase in the number of Magistrates appointed since 1990.

When the Chief Judge first asked for an additional Judge to be appointed in April 2000, 374 cases were awaiting hearing in Perth and a further 53 in circuit towns, totalling 426 cases. At 30 June 2002, 539 cases were awaiting hearing in Perth, with a further 50 awaiting hearing in circuit towns - a total of 589 cases. Parties faced a delay of about 12 months between the time that they attended a conciliation conference and the date of trial. Given the nature of the issues that the Family Court deals with and, in particular, those involving children, such a delay is unacceptable.

The Family Court's work has increased in almost all significant areas. Divorce applications increased by nine per cent over the previous year – up from 5282 to 5766. As the Court has come to expect each year, applications seeking final orders increased. Some 2822 applications were filed, up from 2710 in the previous year. Although this only represents a four per cent increase, the number of such applications filed by self-represented litigants increased by 10 per cent. Self-represented litigants now file over 40 per cent of applications for final orders.

The number of Form 8 applications filed (seeking interlocutory or interim relief) increased from 3267 to 3535, an increase of eight per cent. The Chief Judge has no doubt that the continuing increase in such applications is a direct result of the unacceptable delay in trials, which necessitates parties approaching the Court to seek a resolution of interim issues that cannot await a final hearing. In order to deal with the increased workload, the Principal Registrar has had to roster two Magistrates to sit in the general list on as many days as possible per week. The general lists continue to have too many matters listed to allow all cases to be dealt with in the time available.

As predicted in the last report, Form 12 applications (summary maintenance determination) decreased -- 221 applications were filed compared with 247 in the previous year. There was, however, a 15 per cent increase in the number of applications filed under the Child Support legislation (up from 302 to 346). This increase is significant as these cases represent some of the most complex matters that come before Magistrates. Form 49 order contravention applications increased slightly (315 applications compared with 310 in the previous year). This represents an 85 per cent increase in the number of these applications over the last six years.

Form 12A applications seeking that orders be made by consent increased by 40 per cent (up from 1463 to 2053). This increase is a matter of concern due to its impact upon the workload of the Registrars. The applications are dealt with in chambers and are often time consuming, particularly those filed by self-represented litigants. The Registrars requisition many of the applications, which involves an exchange of correspondence until the document is in order.



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Parties have an automatic right of appeal to a Judge from decisions of Magistrates in all matters other than in child support proceedings. The number of such appeals continues to decrease (57 appeals, compared with 62 in the previous year). This continuing reduction, at a time when there has been a significant increase in the workload, is a credit to the Magistrates, particularly with the large number of decisions made in highly contentious matters.

In the year under review, the Registrars conducted 2106 conciliation conferences and 528 pre-hearing conferences. This represents a small (3 per cent) reduction in conciliation conferences and a significant (22 per cent) increase in pre-hearing conferences. The Registrars also conducted 522 directions conferences and eight taxations of costs. This represents an increase of over 110 per cent in the number of directions conferences. All issues were resolved in about 31 per cent of conciliation conferences, up from 28 per cent in the previous year. Only about 19 per cent of pre-hearing conferences resulted in settlement, down from 22 per cent last year.

As a result of increases in salary-related costs and no additional funding, there was a reduction in counselling staff of about 13.5 per cent averaged over the year. Despite operating with fewer professional and support staff, the Family Court Counselling Service maintained similar levels of productivity to the previous year and in some cases, exceeded it.

The Counsellors continue to provide a valuable service to litigants and judicial officers. The Counsellors bring dedication and professionalism to their work. As is the case with all other areas of the Court, they have to discharge their duties in the face of increasing demands.

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 Coordinator. Complex track cases are expected to run for six days or more.

In 2001/2002, 287 long defended cases were allocated hearing dates. The total aggregated hearing time for all of those cases was estimated at 652 days. This is a significant reduction on the previous year when the aggregated hearing time for 380 cases was 1036 days. The reduction does not come as a surprise for reasons outlined earlier in this report and previous reports. In my view, it graphically illustrates the need for the appointment of an additional Judge.

By the day allocated for hearing, 235 cases had not settled. Of these, 33 were settled without the trial commencing and 64 were settled or withdrawn during the running of the case, while 147 cases proceeded to judgment.

Some 225 short defended cases were given a hearing date. On the day allocated for hearing, 178 remained to be decided and only 37 of these settled at the commencement of the trial or during the case. Some 69 judgments were given, with the remainder adjourned or stood over.



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The average length of time for the long defended matters was 2.6 days. One case ran for 11 days, another 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.

The above figures do not accurately reflect the work of the Judges of this Court. Many other judgments were handed down which do not fit into either of the above categories. These involve a determination of matters argued in the Duty Judge list or at special appointments. It is hoped that commencing with the next Annual Review the appropriate statistical information capturing this work will be available.

During the year under review, the Chief Judge participated in 14 sittings of the Full Court which resulted in the publication of 47 reserved judgments.

In addition, the Judges of this Court also determined applications made under the *Telecommunications (Interception) Act 1979*. In the year under review, there were 131 such applications - 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 Judges' workload.

Appeals

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 there were 15 appeals filed and five applications for leave to appeal. The Appeal Court handed down 20 judgments -- 10 appeals were dismissed and 10 allowed. During the year, nine appeals were withdrawn and three abandoned.

Country Courts of Summary Jurisdiction

In the year 2001/2002, 773 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
175	436	31	44	47

In addition, 25 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.



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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:

Circuits	Gazetted	Required
Bunbury	6	7
Albany	3	2
Geraldton	3	2
Kalgoorlie	3	2
Port Hedland/Karratha/Broome	3	1



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 2002, the District Court was composed of the Chief Judge, 20 Judges, and one Commissioner 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



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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 this year, there were no appointments to or resignations from the District Court bench. In addition, the Court also has the part-time assistance in the civil jurisdiction 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. After three years in that position, her Honour Judge Valerie French returned to the District Court at the end of 2001. Her Honour Judge Kate O'Brien assumed the Presidency of the Children's Court from 1 January 2002.

The District Court is grateful to the Hon Attorney General for the assistance given in 2002 by the provision of two additional temporary Commissioners in Mr Philip Eaton of Sir Francis Burt Chambers and Ms Penelope Giles of Wickham Chambers.

CIVIL JURISDICTION

There has been a significant increase in the cases proceeding to trial in the year under review and also a significant rise in civil lodgments.

The District Court's pre-trial conference procedures are rigorously applied by the Principal Registrar, Registrars and Deputy Registrars of the Court. This has long been the case and is a significant factor in containing the delays within the civil jurisdiction. The improvement in the listing interval for civil trials in the past 12 months and listing intervals for trials are well within acceptable parameters.

With respect to the *District Court Rules*, this has been a busy year. Intense work to review and update the rules has been undertaken by District Court Judges and members of the administration of the Court. The rules require amendment to accommodate the new caseflow process which will commence in the second quarter of 2003. In this respect, the District Court acknowledges the assistance given by Mr Patrick Tremlett of the Parliamentary Counsel's Office. The Chief Judge also acknowledges with gratitude the work of the Judges and others who are prepared to put in extra time on this valuable task.



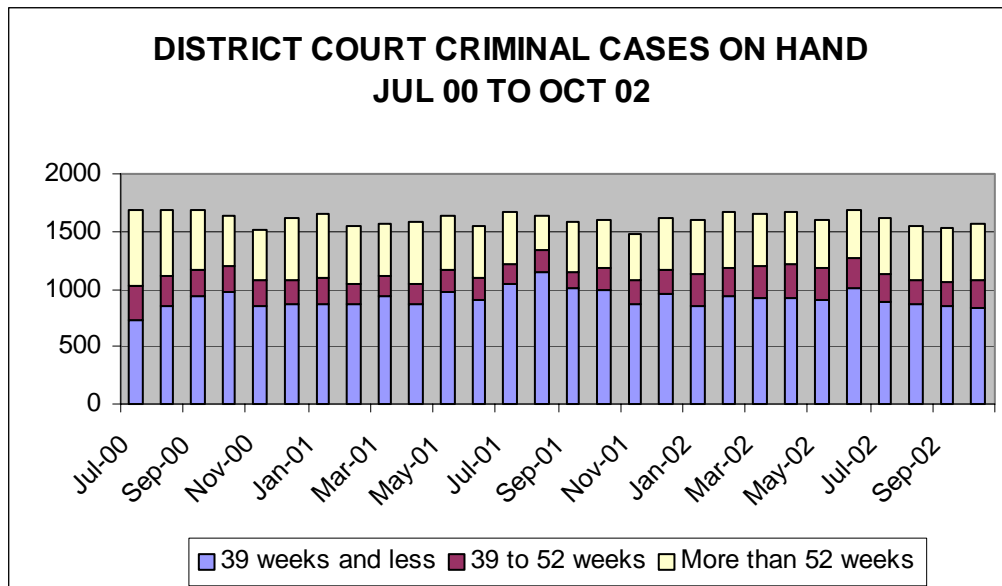
CRIMINAL JURISDICTION

There have been variations and fluctuations in the criminal jurisdiction during the last three years. The number of trials that proceeded in Perth has slightly decreased whilst the number of metropolitan indictments being filed has increased. The District Court continues to maintain intense statistical records as an aid to efficient case management in all its jurisdictions. The figures for the last three years show that performance is being maintained, but improvement is difficult to achieve with existing resources.

Criminal Delay

The lack of improvement can be explained by an increase in the average trial length in the District Court from 2.5 days in 2000/01 to 3 days in 2001/02. This last year has seen a number of lengthy "people smuggling" trials and a number of lengthy "white collar" fraud trials. Other factors include the loss of almost one 'judge year' due to illness and a small increase in criminal lodgments. The proportion of matters proceeding to trial is relatively unchanged (21.5 per cent this year against 20.7 per cent last year). At the same time, accused pleading guilty reduced from 67.9 per cent in 2000/01 to 64.3 per cent this year. It is noteworthy that the average trial length in the District Court is still the lowest in Australia.

The District Court is only marginally making inroads into its criminal case backlog as shown in the following chart:



Over-listing in the criminal jurisdiction is an essential part of case management. The Chief Judge is grateful to the Registry staff of the Court for the way in which they handle this sometimes difficult issue. His Honour is also grateful to all of the Judges for their ready acceptance of constantly changing lists.



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The Fast Track system continues to be well used and to operate efficiently to the apparent satisfaction of both the Crown and the profession.

In the course of this past year, the Court has continued its regional expansion. The sittings at *Joondalup*, *Fremantle* and *Rockingham* are now proceeding efficiently to the benefit of those regional areas.

GENERAL

Expedited Trial List

Applications for expedited criminal trials are dealt with on Monday mornings by the General Duties Judge at 9.30am and are processed with a minimum of formality. Virtually every application for an expedited trial to date has been granted. The Chief Judge is delighted that the procedure is working well. It is being accessed mainly by the defence, but also to an extent by the Director of Public Prosecutions. The availability of expedition ensures that wherever possible, any exceptional hardship caused by trial delays is alleviated so far as is possible.

Other developments

Items of interest arising in the Year 2002 include the following:

- (a) The use of *video links* to establish links to remote areas for bail and sentencing hearings is developing. It is extremely productive, providing great savings in time and money.
- (b) A most successful in-house *District Court Conference* for the Judges was held in September when a number of speakers were on hand to assist in the Court's continuing legal education initiatives.
- (c) The members of the District Court are excited at the prospect of the new court construction. A *District Court Building Committee*, chaired by her Honour Senior Judge Antoinette Kennedy, has been established to provide input into the planning process. This committee has as its brief the objective of ensuring that the identity and integrity, status and standing of the District Court of Western Australia is maintained no matter what architectural result is achieved.
- (d) It has long been an ambition of the Chief Judge's to establish a low security bail facility in the Central Law Courts building. This facility has now been opened and will relieve pressure upon the detention facilities in this building. The officers in charge of the Detention Centre will have the option of housing low security risk persons awaiting verdicts or appearances and the like in this *Bail Holding Facility* rather than in the cells. The Chief Judge is grateful for the support the Attorney General has given to this proposal following our joint inspection of the Detention Centre earlier this year.
- (e) *Customer Relations*. The District Court Customer Council continues to provide valuable feedback regarding the Court's services.



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In addition, the Chief Judge and the District Court Executive Officer met with practitioners at both Busselton and Bunbury. This was a particularly useful exercise where local issues were raised.

Circuit Listings

The listing of trials in circuit towns is an exercise that presents unique problems as it is not possible for logistical reasons to overlist in those towns to any degree. The Chief Judge is enormously grateful to Judge Michael Muller who has for some years superintended the country listings of this Court in conjunction with the Registry, the Director of Public Prosecutions and the profession.

Circuit lists continue to grow. At the start of the year, the Bunbury trial list was experiencing unacceptable delay. Additional resources, together with the establishment of the Busselton circuit, have reduced the number of cases on hand at Bunbury by 30 per cent and resulted in a more manageable trial list. In 2003, the Kalgoorlie list will need similar attention.

The Meekatharra circuit established in 2001 has continued on an "as needs" basis. A Judge, depending upon demand, deals with matters either by way of video link or personal attendance. The Chief Judge is convinced of the worth of this particular circuit, which was established following a request from the Aboriginal Legal Service.

In October, the District Court expanded its video link callover system to Albany. This procedure is designed to ensure that circuit trial listings proceed efficiently and that the Court's resources are utilised effectively.

Conclusion

In the Chief Judge's report delivered in the last Annual Review, he noted that the members of the Court were looking forward to all aspects of the District Court Realignment Strategy and, in particular, legislative change to reduce the number of criminal charges coming before the Court. The Court also looked forward to its enhanced civil jurisdiction, the implementation of the Law Reform Commission's Report, the new caseflow management process in the civil jurisdiction and the benefits of ICMS in both jurisdictions. While some of the Chief Judge's ambitions have been achieved, others are still waiting for the legislative changes to reduce the number of criminal charges coming before the Court. The recent comments of the Attorney General suggest that further progress will be made this year.

All Judges of the District Court are delighted with the recent announcement by the Attorney General that legislation will be introduced to increase the civil jurisdiction of the Court.

The introduction of the caseflow process in the civil jurisdiction and the benefits of ICMS in all jurisdictions will be completed soon.

The Chief Judge fully understands the financial pressures which beset all governments these days. However, he believes that the District Court and its administration has gone about as far as it can go in controlling and disposing of in proper time the amount of work that comes into the Court. It is now the time when the provision of additional judicial resources must be given due consideration.



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 31 December 2002, the following held office as Stipendiary Magistrates:

Chief Stipendiary Magistrate

Mr Steven Alex Heath

Deputy Chief Stipendiary Magistrate

Ms Elizabeth Adele Woods

Stipendiary Magistrates in Perth

Mr Robert Huck Burton

Mr Malcolm Thomas Whitely

Mr Norman Lennard Roberts

Mr Graeme Neil Calder

Mr Richard Hamilton Bromfield

Mr Terence John McIntyre

Mr Paul Michael Heaney

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

Mr Ivan Gregory Brown

Mr Wayne Gordon Tarr

Mr Giuseppe Cicchini

Mr Robert Keith Black

Mr Phillip Gregory Cockram

Ms Barbara Anne Lane

Mr Peter Graeme Malone

Mr Frank Cullen

Mr Kieran Boothman



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Mr Jeremy Raymond Packington
Mr Douglas Noel Jones
Ms Julie Ann Wager
Ms Pamela Margaret Hogan

Stipendiary Magistrates based at Metropolitan Courts

Armadale:	Mr Steven Ross Malley
Fremantle:	Mr Peter Spiro Michelides Mr Michael David Wheeler
Joondalup:	Mr Peter George Thobaven Ms Jacqueline Gay Musk
Midland:	Mr Colin Douglas Roberts
Rockingham/Mandurah:	Mr Robert Brian Lawrence

Stipendiary Magistrates based at Country Courts

Albany:	Mr Robert Maurice McMahon Glynn
Broome:	Mr Antoine Bloemen
Bunbury:	Mr Kelvin Trease Fisher/ Mr Stephen McKenzie Wilson
Carnarvon:	Ms Susan Richardson
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

The only new appointment to the Magistrates' Courts this year was Susan Peta Richardson who was appointed on 7 October 2002.



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 2002:

	2001/2002	2000/2001	Variance from previous year
Total number of criminal charges	126,493	122,531	+3.1%
Restraining Order Applications	11,164	11,567	-3.5%
Hand up Briefs	2,668	2,618	+1.9%
Fast Track Committals	914	897	+1.9%
Preliminary Hearings	469	485	-3.3%
Extraordinary Drivers Licence	2,824	2,631	+6.8%
Time to Pay Applications	9,916	10,437	-5.0%

Listing Intervals – Perth	As at end of October 2002	As at end of October 2001	
Half Day Hearing	12 weeks	8 weeks	+4 weeks
Full Day Hearing	13 weeks	10 weeks	+3 weeks
Multi Day Hearing	15 weeks	14 weeks	+1 week

These figures from the Courts of Petty Sessions show an increase in the number of criminal charges for a second successive year from 122,531 to 126,457. It does not appear that there is any particular cause for this increase. There has been a fall in the number of restraining order applications by 3.5 per cent for the first time in many years. No reason for the reduction in applications has been identified.

The statistics for preliminary hearings appear for the last time. The *Criminal Law (Procedure) Amendment Act 2002*, which came into effect on 27 September 2002, abolished these hearings.

Listing intervals have an increased, significantly reducing the gains recorded last year. Listing intervals may have been greater had it not been for the abolition of preliminary hearings. The increase in the listing interval has been contributed to by the delay in the appointment of Ms Richardson, the absence of a Magistrate on sick leave from May and by the decision to provide a second Magistrate to the Bunbury circuit. This Magistrate was provided from Perth but no



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additional Magistrate has been appointed for Perth. Although there has been an increase in the listing interval at Central Law Courts, there been a significant improvement in the Bunbury circuit.

New Initiatives

Restorative Justice Pilot

A co-operative agreement between Murdoch University and the Department of Justice allowed a pilot to be conducted in one court at Central Law Courts. This enabled defendants to participate in a restorative and transformative justice program. Defendants who pleaded guilty and who agreed to involvement in the pilot participated in conferences with family, friends and victims. The conferences attempted to broker an agreement between offender and victim as to some form of reparation. The offender's circumstances were examined and rehabilitative steps identified. A report was provided to the Court prior to sentence outlining the conference's outcome. The pilot program has now been concluded and the results are being assessed.

Geraldton Alternative Sentencing Regime (GASR)

Geraldton has introduced a court applying principles of therapeutic jurisprudence. The Court aims to provide a team-based and judicially-supervised approach to offender rehabilitation. Unlike specialist courts, GASR is not limited in the type of offenders it accepts. GASR is a Geraldton initiative and is largely reliant on existing resources and the commitment and goodwill of the local Magistrate and local agencies. A unique feature of the Court is the use of transcendental meditation as an aid to offenders in changing entrenched offending patterns. Unfortunately, the project does not have the resources for an independent assessment, but the results to date have been very promising. The program is attracting international attention.

Aboriginal Courts

Although there are no designated Aboriginal Courts as in other states, similar principles are being applied in a number of locations. The Broome magisterial circuit has included a number of Aboriginal communities for many years. Community elders and respected persons often sit with the Magistrate.

The town of Wiluna is part of the large circuit area covered by the Carnarvon Magistrate. Although there is a conventional court building, the Magistrate has rearranged the court furniture to allow everyone to be on the one level. Everyone sits throughout the proceedings. Elders sit with the Magistrate, advise the Magistrate about cultural matters and address the defendant in their own language. There are hopes that the Aboriginal community can develop programs re-enforcing traditional cultural values which can be utilised as sentencing options.

The Aboriginal community of Yandeyarra is in the circuit of the Port Hedland Magistrate. The Magistrate will now sit at the community. Not only will he sit and consult with community elders, but defendants who plead guilty will be monitored by the Magistrate where they participate in rehabilitation programs. Given the community's isolation some monitoring will be by video-link. Community members will also play an essential role in the monitoring.



LOCAL COURTS

The following tables indicate the variation of workload between the 2000/2001 and 2001/2002 financial years.

Actions Commenced

The Statewide figures (including Perth) are:-

	12 months to June 2002	12 months to June 2001	% Variation
Plaints			
General Division	28,007	28,606	-2.1%
Small Debts	4,950	4,792	+3.2%
TOTAL	32,957	33,398	-1.3%
Residential Tenancy Applications	9,962	9,667	+3.0

The Perth Local Court figures are:-

	12 months to June 2002	12 months to June 2001	% Variation
Plaints			
General Division	18,444	19,672	-6.2%
Small Debts	978	1,122	-12.8%
TOTAL	19,422	20,794	-6.6%
Residential Tenancy Applications	4,304	4,179	+2.9%

Perth Local Court Listing Intervals

Listing intervals for the 2001/2002 financial year fluctuated considerably from month to month. For a multi-day trial, the period ranged from six to 19 weeks and for a one-day trial from four to eight 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 2002 was 10.66 weeks for a multi-day trial and 5.8 weeks for a one-day trial. This compared with 14 weeks for a multi-day trial and 10.25 weeks for a one-day trial for the previous year.

Pre-Trial Conferences

State-wide (including Perth):

	12 months to 30 June 2002	12 months to 30 June 2001	% Variation
Total	3,666	3,606	+1.6%



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Perth Local Court:

	12 months to 30 June 2002	12 months to 30 June 2001	% Variation
Total	2,373	2,276	+4.1%

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 remained fairly constant with the previous year at 86 per cent.

Late Settlements (Perth Local Court)

Although there was an increase in the number of court sitting hours potentially lost as a result of late settlements, the cumulative effect of late settlements and discontinuances does not represent a significant increase over the previous year.

Comparative details of the loss of court sitting time for the last two financial years are:-

	12 months to 30 June 2002	12 months to 30 June 2001	% Variation
Settlements	725 hour	666 hours	+8.85%
Discontinuance	119 hours	147 hours	-19.0%

Electronic Lodgment

	12 months to 30 June 2002	12 months to 30 June 2001	% Variation
Plaints General Division	4663	5457	-14.5%

The current e-lodgment via e-mail will be phased out and replaced by a WEB-based application at the end of the year. WEB-based electronic lodgment is currently being piloted.

DRUG COURT

(Note: Statistics provided relate to 4 December 2000 to 13 June 2002)

The WA Drug Court has completed 18 months of its two-year pilot program which finished on 4 December 2002 and will now be subject to evaluation. The pilot project operated in the Perth Children's Court, Perth Court of Petty Sessions and the Perth District Court.

During the year, the Court of Petty Sessions Drug Court developed the roles of the Drug Court Team and the case management of participants. The Court has not had the ability to fully operate in a holistic manner, because it is bound by existing legislation and has adapted therapeutic processes to accommodate this. The evaluation is likely to identify the need for a team approach



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focusing on health and providing for a longer period of judicial case management rather than the current format, which has a limit of six months.

In the Children's Court, the Drug Court structure was recently modified following a change of President. The new President accepts referrals, grants placement on a treatment program and ultimately sentences the juvenile participant. The Children's Court Magistrate thereafter case manages the participants' treatment program during the Drug Court Regime.

The Court of Petty Sessions model caters for all adult referrals. Currently participants are assessed, placed on a treatment program and case managed for four to six months. The Court of Petty Sessions follows the same process when dealing with participants who go before the District Court, but the District Court determines the length of the participants' program and sentence.

The capacity of the Drug Court program is dependent on the number of Court Assessment and Treatment Service (CATS) officers who are available. The program in its current form is able to deal with 60 participants at any one time. Given the intensity of case management, the recognised manageable caseload for each CATS officer is capped at 15. The Drug Court Management Committee is currently negotiating an increase in staffing levels at CATS to ensure that the pilot offers a more productive service to the community.

A total of 659 adults were in contact with CATS from 4 December 2000 to 13 June 2002. This figure is further broken down as per the following:

Program	Current	Terminated	Completed
Assessment	17		
- Not Suitable	196		
- No Regime	66		
Brief intervention Regime (BIR)	7	59	16
Supervised Treatment Intervention Regime (STIR)	0	6	18
Drug Court Regime (DCR)	27	84	77
Court Diversion Service (CDS)	5	14	64

The majority of these people have been assessed for the Drug Court Regime or as not suitable for a program. Included in the total figure, 38 indigenous people have been referred for assessment of which the majority were assessed as not suitable for the DCR and only two clients completed the requirements of the DCR program.

A total of 45 juveniles have been in contact with CATS from 4 December 2000 to 13 June 2002. Most clients were suitable for the DCR program, however, 22 were terminated from this program. There are currently two juvenile participants on the DCR program and two clients being assessed for suitability.



CHILDREN'S COURT

Jurisdiction and Work of the Court

The Children's Court deals with young people between the ages of 10 and 17 years (inclusive) who have been charged with criminal offences. If a young person has turned 18 years after the date of the alleged offence, then the person still appears before the Children's Court.

The criminal jurisdiction of the Children's Court takes up most judicial time. The Court also has an important jurisdiction under the *Child Welfare Act 1947*. This is to hear and determine applications that a child be declared in need of care and protection. These applications are usually made by an officer of the Department for Community Development. If the Court makes such a declaration, the child becomes a ward of the State.

The Children's Court also hears applications for violence and misconduct restraining orders.

The President of the Children's Court is a Judge of the District Court of Western Australia. A Judge of the Children's Court has the same sentencing powers as a Judge of the Supreme Court. There is no restriction on the length of a custodial sentence that a Judge can impose. The President presides over the trials of young people charged with the most serious offending.

A Magistrate of the Children's Court can only sentence a child or a young person to imprisonment for a maximum of three months or to a maximum period in detention of six months. The President of the Children's Court may extend the powers of Magistrates so that they can deal with a particular matter. Magistrates then have the same sentencing powers as the Judge, but only in relation to the matter for which those powers are extended.

Judicial Officers

The current judicial officers in the Children's Court include:

President:

Her Honour Judge Kate O'Brien

Full Time Magistrates:

Mrs Susan Gordon, AM

Mr Timothy Schwass

Mr Stephen Vose

Part Time Magistrates:

Mr Duncan McGrath

Ms Vicky Stewart

Mr Naveen Pillay

Mr Patrick Hogan



OVERVIEW

This year her Worship Mrs Gordon chaired *"The Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities"* from January 2002 to August 2002. The part-time Magistrates were rostered to fulfill Mrs Gordon's judicial duties whilst she was on secondment. The part-time Magistrates are experienced legal practitioners who run busy legal practices either at the Bar, the private legal profession or in Government. The President is most appreciative of their commitment and dedication to their duties particularly as they are often called upon at short notice to sit in the Children's Court.

The resident Magistrates in country areas also sit in the Children's Court within their circuit area. Again, without their hard work and commitment, it would be impossible for Children's Court judicial officers to cover all matters throughout the State.

CRIMINAL JURISDICTION

The number of criminal charges heard and determined in the Children's Court at Perth continues to fall. However, a high level of activity remains in the Court's criminal jurisdiction. Complaints heard and determined in the year to 30 June 2002 amount to 4438 compared to 4695 in the previous year. Trials can be listed within an acceptable time frame and most are usually completed within three months of the first appearance. Status conferences are listed before the President on Monday of each week to ensure that issues in dispute are identified and that the matter is ready for listing for trial. It is pleasing that there appears to be a high level of cooperation between the prosecution and defence lawyers.

Perth Children's Court		
Complaints heard and determined	01/07/2000-30/06/2001	01/07/2001-30/06/2002
	4695	4438

DRUG COURT

The pilot Drug Court program ("DCP") has continued this year. Only young offenders who have a significant drug problem and who have been convicted of serious offences that would usually result in an immediate custodial term are eligible for the Drug Court program. The principal reason for this is the lack of resources to provide treatment and monitoring of the offender.

In the past, the President has presided over the DCP. Constraints of time prevent this continuing. The President now determines if a young offender is suitable for the DCP and ultimately sentences the offender. Since 1 July 2002, monitoring of the person's progress on bail has been done by his Worship Mr Vose ("the Drug Court Magistrate").



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Pursuant to conditions of bail, the young person reports fortnightly to the Drug Court Magistrate. The Drug Court team, which includes the prosecutor, the Courts Assessment and Treatment Service ("CATS") officer, defence counsel and the Drug Court Magistrate, assess the young person's progress on the program. This is not done in open court but on an informal basis in a private room where full and frank discussions can be held with all members of the Drug Court team, the offender and the offender's family. If the conditions of bail have been breached, the Drug Court Magistrate will deal with that matter in open court and refer the offender back to the President for sentencing.

There is no coordinated approach or integration of resources for tackling drug use by young people. These offenders often find it difficult to comply with the strict conditions attached to Drug Court bail. This is because young people have to travel to various locations within the metropolitan area to attend appointments for counselling and urinalysis. As well, most young offenders on the program have to confront welfare needs issues such as no housing, little, if any, family support, and lack of transport and income. These issues exacerbate the difficulties of complying with the Drug Court program's strict conditions. To date there is no place in Western Australia where a young person can detoxify in a safe, medically-supervised and appropriate place. There is a critical shortage of accommodation for young people, many of whom have burnt their bridges with the limited accommodation available for homeless youth. This issue confronts judicial officers in the Children's Court on a daily basis. Placements can usually be arranged on an emergency basis, but often these are totally inappropriate for a young person in crisis.

The success of the DCP in the Children's Court will be optimised if there is a "one-stop shop" where young offenders can access the full range of treatment and social services.

A total of 45 (8 females and 37 males) distinct juvenile offenders have been in contact with CATS since December 2000. The average age of juvenile offenders is 17.2 years.

Drug Court individuals from December 2000 to December 2002:

Regime Type	No
Assessment pending	2
DCP – Current	2
DCP – Completed	8
DCP – Terminated due to breach	22
No Regime	4
Not Suitable	7
Total	45

A comprehensive evaluation of the DCP is presently being conducted. At this stage, it would not be realistic to draw any conclusions from the above figures as to the "success" of the DCP.

GENERAL

Court Conferencing



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In October 2001, a pilot program called "Court Conferencing" expanded the use of Juvenile Justice Teams (JJT). This program allows a judicial officer to refer some persistent offenders charged with "serious" (scheduled) offences to a JJT. The teams aim to divert young offenders who do not have an entrenched pattern of offending away from the judicial system.

The pilot follows a recommendation in the 1998 evaluation of the *Young Offenders Act 1994* that "*consideration be given to amending s 25(1) of the Act to reduce or remove the restriction on cases that can be referred to the Juvenile Justice Teams particularly by the Children's Court ... That the joint management committee develop a policy on managing more serious and persistent offending using the JJT's. The policy should be backed by appropriate processes and training*".

If young offenders complete the JJT program (which involves victim mediation as a core aim) they return to court and no further punishment is imposed pursuant to s 67 of the Act. There have been 66 referrals during the 12-month period, 15 October 2001 to 14 October 2002. Two of these were for persistent offenders and the remaining 64 were for offenders charged with "serious" offences. In summary:

- 43 offenders have completed the program and been dealt with by way of section 67 YOA;
- six matters were returned to court;
- 17 are still current;
- 42 were for male and 24 for female offenders; and
- 25 referrals were for Aboriginal and 41 for non-Aboriginal young people.

The age range of the young people referred:

Age	Total
12	1
13	6
14	12
15	19
16	13
17	14
18	1

Types of offences:

Offence	No of offences
Assault – bodily harm	22
Assault – public officer	18
Robbery	8
Drug offences	5
Criminal damage	5
Wounding	2
Explosive charges	2
Aggravated burglary	2



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Criminal damage (fire)	1
Reckless driving	1

The expansion of the use of JJTs is a positive way of making young offenders more accountable and responsible for their actions, and gives the victims a positive role in the sentencing process. For the period from 15 October 2001 to 14 October 2002, 50 court conferences have been held where there has been an identifiable victim. Victims have attended 26 of these conferences (i.e. a 52 per cent victim participation rate).

Director of Public Prosecutions

Since 1 July 2002, lawyers from the Office of the Director of Public Prosecutions have prosecuted defended trials before the President. I welcome this long over-due involvement by the DPP in serious Children's Court matters. The DPP involvement in the most serious matters going to trial in the Children's Court will increase community confidence in the criminal justice system and ensure that trials are conducted by qualified and experienced counsel. The preference of successive Presidents in the Children's Court has been for the DPP to appear in all matters before the President, including sentencing matters. The DPP informs me that representation in sentencing matters before the President will be "phased in" over time.

DPP counsel appeared in several matters involving the interpretation of mandatory sentencing legislation, illustrating the worth of legally qualified representation.

Police prosecutors have continued to appear in the President's Court on sentencing matters and they always prosecute before Magistrates. They provide a very valuable service. However, it is preferable for prosecutors to have the appropriate legal training and experience.

Indigenous Issues

About 31 per cent of all defendants appearing in the Children's Court are Aboriginal. This figure is a conservative estimate as the collection of such statistics is relatively unreliable due to the voluntary "self-identification" method of collection. I am informed that approximately 65 per cent of young offenders sentenced to detention are Aboriginal. Unfortunately, despite the fact that such a high proportion of indigenous youth appear in this jurisdiction, the Children's Court at Perth is ill equipped to relate to indigenous people in a culturally-appropriate manner. There are no indigenous employees amongst the administrative staff at the Perth Children's Court.

A critical need exists for indigenous justice officers to have a presence in the Children's Court to provide an interface between the Aboriginal community and the Children's Court justice system. Such officers would also ensure that the court process is explained to Aboriginal people, including defendants, their families and witnesses; and liaise with Aboriginal people to ensure that their special needs are met within the court system.

There is also a lack of trained interpreters, especially when young people from remote areas appear in the Perth court for sentence. A videolink, even when logistically feasible, is no substitute for the in-court services of a qualified interpreter who speaks the particular dialect of the defendant or witness.



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Care and Protection Applications

There was a slight increase in the numbers of applications to have a child declared in need of care and protection in 2001/2002.

Perth Children's Court		
Care and protection applications filed	01/07/00-30/06/01	01/07/01-30/06/02
	214	242

Trials in Perth 01/07/2001 – 31/06/2002	
C&P Trials Listed	44
C&P Trials Proceeded	16
C&P Trials Vacated	28

Trials last on average three days.

Due to the heavy demands of the criminal jurisdiction, successive Presidents of the Children's Court have not been involved to any great extent in the "care and protection" jurisdiction. It is rare for the President to have a day out of the criminal court. This is unacceptable given the importance of the jurisdiction and the consequences for families if a child is declared in need of care and protection.

In 2003, the President intends to conduct some call-over lists and preside in some of the more complex trials. A comprehensive review of listing procedures will be undertaken in early 2003 so that the Court's business can operate more efficiently, and hopefully free up the President to take a more active role in the care and protection jurisdiction.

The Children's Court expects its workload will substantially increase once the *Family and Children's Services Bill* is enacted. It is therefore even more important for the President of the Court to have adequate time to be involved in this jurisdiction.

Judicial officers in the Children's Court continue to be most concerned at the numbers of parents and other family members responding to applications to have children declared in need of care and protection who are not legally represented. The respondents are usually people in distressed and deprived circumstances. Some suffer intellectual disabilities and/or mental illness. The intervention of the State in a family's life, resulting in the removal of children from the care of parents, is an extremely grave step to take. Judicial officers have been concerned that the unrepresented respondents do not understand the nature of the proceedings and the possible consequences. As a result, trials are longer and more distressing for all concerned. Legal representation would minimise the number of trials, reduce their length and give a voice to those parents who otherwise can be alienated and traumatised by the system.



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Circuits

Perth Magistrates spent 194 days servicing metropolitan courts. Perth Magistrates have also travelled to Albany, Bunbury, Esperance, Mandurah, Narrogin and Northam on an “as needs” basis. They are available, if required, to assist country Magistrates, especially to preside in care and protection trials.

Since her Honour Judge O’Brien’s appointment of the President of the Children’s Court in January 2002, she has presided in trials in Geraldton, Kalgoorlie, Derby, Tom Price and South Hedland. As head of jurisdiction, she considers it vital to establish links with country Magistrates, juvenile justice officers, and community groups outside the metropolitan area.

Videolinks

The Court strives to make use of videolink where feasible. They are particularly useful when sentencing young people from remote communities as their families and juvenile justice officers can have a say in the proceedings. Videolinks are an efficient and cost-effective way of taking evidence from witnesses in country locations (or in Perth where the court is sitting in the country). The President hopes to expand the use of videolinks especially in sentencing Aboriginal offenders where otherwise there may not be an indigenous presence in the Court.

Videolink use 1 July 2001 – 30 June 2002							
Sentencing	C&P Respondent Parents (mentions)	Witness for C&P trials	Civilian Witness for criminal trials	Police Witness for criminal trials	CCTV	<u>General</u> Remands Mentions Bail Apps Status Conf.	Other agencies
11	6	2	17	2	5	20	4



COMMITTEES

Supreme Court Rules Committee

The Supreme Court Rules Committee comprises the Hon Justice Templeman as Chairman and seven active members. The other active judicial members are: Steytler J, Wheeler J and McKechnie J.

Registrar C Boyle has replaced Registrar Martin who resigned after many years of valuable service. The other Registrar members are the Principal Registrar and Registrars Powell and Eldred.

The Committee has met approximately monthly during the year. Recommendations have included the rules required for the implementation of the *Criminal Property Confiscation Act 2000* and implementing a procedure for lodging documents by post. Despite great pressure by the profession for the introduction of such a facility, Central Office reports that, on average, only about three postal lodgments are received per week.

The Committee is very conscious of the need to reform some procedures so as to improve efficiency. This is likely to become more pressing next year when it will be necessary to deal with some very substantial litigation in a period when some Judges are away on long service leave. One problem faced by the Committee is assembling a sufficient number of suitably qualified committee members to enable proper consideration to be given these matters.

Criminal Practice and Procedure Review Committee

The Committee has met regularly throughout the year considering and making recommendations on a wide range of matters.

A subject which occupied a great deal of time concerned the possible reform of the procedures by which police agencies obtain photo identification evidence - witness evidence identifying a person suspected of committing an offence. After a thorough review of State and Federal laws on this subject, it was decided that although identification by the photoboard method was less satisfactory than identification obtained by means of an identification parade, it would be impractical to prohibit the photoboard method. There were many situations in which it would be simply impossible to hold an identification parade, especially in remote towns with small populations. However, the Committee drew up a set of guidelines to be followed by police officers using the photoboard identification method. The Committee has been informed that the police service has accepted the guidelines and will implement them. These include the video taping of identification procedures, wherever possible, and the keeping of proper records of the identification procedure by the police officers concerned in a form which can be made available for perusal by counsel for the accused.

The Committee also recommended that the practice concerning the swearing in of reserve jurors should be changed to provide for the whole jury panel (the first 12 and each of the reserves) to be sworn in as the jury, with a ballot to be conducted at the end of the trial to determine which jurors



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should be dismissed. This recommendation has been accepted and is incorporated as a proposed amendment to the *Juries Act*.

A matter of considerable importance, which is presently before the Committee, concerns the development of guidelines by which young offenders who appear in the superior courts, and who have pleaded guilty under the fast track system, may obtain referral to the Drug Court. The Committee recognises that the work being done by the Drug Court is extremely valuable and highly effective and is anxious to devise means by which offenders may be diverted to the Drug Court for assessment and placement on therapeutic programs before final sentence.

Education Committee

The Supreme Court Education Committee has had a busy year organising seminars for the members of the Court.

On 28 February 2002, Judges, Masters and Registrars of the Court met at Wollaston College for a full-day education seminar. The first session was *Appellate Court Judging* presented by the Hon Justice David Ipp, with commentary from Justice Steytler and from Chief Judge Kevin Hammond of the District Court. The second session was *The Direction of the Court - The Big Picture* presented by Ms Trudi Lang of Curtin University of Technology, with commentary by Mr Alan Piper, Director General of the Department of Justice. The third session was *A Psychiatrist's Perspective on the Judicial Role* presented by Professor G Allen German, consultant psychiatrist.

A second full-day seminar was held on 1 July 2002 and the following topics were discussed:

- Managing the Workload of the Judges, Masters and Registrars
- Listing Procedures - How they might be reformed
- Reforms in the Criminal Jurisdiction
- Reforms in the Full Court and Court of Criminal Appeal

During the year the Education Committee also held a number of afternoon seminars:

- 20 May - *Journeying through our Criminal Justice System* by Ms Ann O'Neill, tutor in the School of Social Work at Curtin University and a personal victim of violent crime
- 13 June - *The Prison Regime* presented by Mr Robert Jennings, Superintendent Hakea Prison
- 14 August - *Diversion Programs/Alternatives for Defendants with a Mental Impairment* presented by Ms Julie Wager, Drug Court Magistrate, and Mr Neil Morgan of the UWA Crime Research Centre.

This year saw the formation of the National Judicial College of Australia ("NJCA") under the chairmanship of the Hon John Doyle AC, Chief Justice of South Australia. The College is based at the Faculty of Law at the Australian National University and its first director is Ms Marlene Le Brun. Its aim is to coordinate judicial education and to implement a number of judicial education programs for Judges throughout Australia. This initiative is likely to lead to a vastly improved nationally coordinated education program for judicial officers.



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The Hon Justice Miller of this Court is the Regional Convenor for Western Australia for the NJCA and he has been actively engaged in discussions with the Council of the NJCA on future developments for judicial education of Judges and Magistrates in this State.

Aboriginal Community Liaison Committee

The Aboriginal Community Liaison Committee has had a very productive year. It has benefited from the input of the new Aboriginal Community Liaison Officer, Ms Sharon Bedford, welcomed the new *Aboriginal Benchbook for the Judiciary*, and hosted an innovative seminar for members of the judiciary and magistracy, among other things.

Aboriginal Community Liaison Officer

Ms Sharon Bedford joined the Court on 14 January and was soon attending meetings with members of the judiciary and Aboriginal community groups. She has represented Aboriginal interests within the Court at numerous functions.

Ms Bedford has been involved in organising and attending meetings between local Aboriginal community and Judges who travel on circuit, specifically for Judge Yeats in Kalgoorlie on 19 & 20 March, and Justice Roberts-Smith in South Hedland on 14 May. She has also been contributing to the Law Reform Commission's Aboriginal Customary Law Project, specifically relating to a proposal to develop an Aboriginal Reference Council to the Chief Justice.

New Members

The Committee welcomed a number of new members including Mr Dennis Eggington (Chairman of the Aboriginal Legal Service), Mr Eric Wynne JP (ATSIC), Mr Glen Colbung (of Aboriginal Justice Council, his membership ceased when the Council became defunct), her Honour Judge Kate O'Brien (President, Children's Court), and Ms Kate George (Director, Aboriginal Policy and Services, DOJ).

Aboriginal Benchbook

On 30 May, the *Model Aboriginal Benchbook* by Ms Stephanie Fryer-Smith, an initiative of the AIJA, was launched. It was an important milestone for Aboriginal interests within the court system.

Judicial Seminar on Indigenous Linguistic and Cultural Issues

This day-long seminar was held on 10 July 2002, with presentations from Dr Michael Cooke, Professor Ian Malcolm, Ms Glenys Collard, Dr Quentin Beresford and Ms Dagmar Dixon. The participants included members of the Supreme, District, and Magistrates' Court judiciary, Aboriginal Legal Service, Guardianship and Administration Board, Law Reform Commission of WA, and some members of other organisations and departments. The presentations concerned the capacity for linguistic and cultural traits of Aboriginal people to be misinterpreted within the court system, and were particularly worthwhile.

Aboriginal Cultural Awareness Program

This is the next major project on the Committee's agenda. It is expected that three programs will take place in the New Year – one for the Judges of the Supreme and District Courts, one for the Magistrates, and another for Justices of the Peace.



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Unrepresented Criminal Appellants Committee

The Unrepresented Criminal Appellants' Scheme ("UCAS"), conducted through the Law School at UWA, was wound up on 30 June 2002.

Of the 31 UCAS appeal decisions delivered as at April 2002, nine were granted and 22 dismissed. This amounted to a success rate of 29 per cent, which is significant given that each of these matters had been assessed in the past as having virtually no prospect of success. The absence of UCAS will have a profound effect on the court system in that:

- CCA motions days will be longer and more frequent, amounting to more judicial time and resources being spent on them;
- The extra motions days are likely to translate into added costs in the transporting of prisoners; and
- The cost of preparing appeal books and arranging electronic transcript will have to be subsumed by the Court.

Quite apart from the effect on the Court, UCAS' absence will be felt by the large number of unrepresented appellants who come before the Court if Criminal Appeal without any form of legal assistance.

The Committee has taken alternative measures in relation to unrepresented criminal appellants:

- The implementation of a draft protocol for use by the CCA motions day judges, intended to minimise the need for hard-copy appeal books. Wherever possible, the application or appeal will be heard on the trial transcript and exhibits in electronic form, supplemented where necessary by a hard copy appeal book prepared by the Court Registry.
- The letter sent out by the Court Registry to unrepresented applicants has been re-drafted into language that is easier to comprehend.
- The Crime Research Centre has been approached to present a proposal for a review of UCAS to see what lessons can be learned from the experience, which might lead to further practical effective measures to deal with criminal appeals by unrepresented appellants.
- The law schools at Notre Dame and Murdoch Universities, and the University of Western Australia have been approached about the possibility of coordinating a list of student volunteers to work with private lawyers acting pro bono for unrepresented criminal appellants.
- Implementation by Judges' Associates of a scheme whereby hard copy cases handed up as authorities in the Court of Criminal Appeal are retained by the Associates and sent to the prisons for use by prisoners preparing appeals.

The Committee is actively considering further possible measures and will take into account the review report on lessons learned from the operation of UCAS.



Unrepresented Civil Litigants Committee

This Committee met once this year on 18 March 2002. It discussed the Court's current inability to quantify the number of unrepresented appearances before the courts, because such data is not being collected. The Committee agreed that it was appropriate to recommend a cross-jurisdictional research project to examine past and current experience and provide information on the extent to which litigants are unrepresented, the reasons for them being unrepresented, the problems associated with unrepresented litigants, data collection and analysis and other issues.

It was also agreed that the Committee develop the terms of reference for such a project, in consultation with other relevant Court committees, heads of jurisdiction and the Department of Justice. Enquiries have also been made of the Law Society's Access to Justice Committee in relation to measures taken by that Committee to assist unrepresented litigants.

Supreme Court Centenary Committee

The Hon Justice Murray is the chair of this Committee which will bring together elements of the Court, the profession and the Department of Justice to make recommendations for a suitable commemorative ceremony marking the centenary of the opening of the Supreme Court on 8 June 2003. It is hoped that, by then, appropriate government decisions will have been made to enable the Court to look forward with confidence to the capacity to perform its constitutional function on this site for another 100 years.

Law Admission Consultative Committee

The Hon Justice Parker continues to be the joint representative of the Court and the Legal Practice Board on the national Law Admissions Consultative Committee ("LACC"). This Committee functions under the auspices of the Council of Chief Justices, and includes a representative of each of the admitting authorities of the Australian states and territories, as well as a representative of each of the Australian Practical Legal Education Council ("APLEC"), the Law Council of Australia and the Australian Law Deans.

LACC's recommendations with respect to the standard and content of academic training to qualify for admission to practice law have now been accepted as the national standard. It is expected that LACC's recommendations with respect to practical legal training to qualify for admission, developed in association with APLEC, will be endorsed as the national standard in 2003. A proposal to this end is now before the Standing Committee of Attorneys General for adoption.

Should this eventuate there will be, for the very first time, a national standard governing legal education and training in Australia. This is a very significant development, especially at a time when legislative changes are proposed to bring WA into the national practising certificate regime.

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.



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The library collection is the property of the Legal Practice Board which provides most of the funds, supplemented by a \$250,000 grant from the Government in the current financial year.

The major focus this year has been on the development of a collection policy which achieves a suitable balance between electronic and hard copy resources, having regard to the convenience of users and initial and long term costs. This has also required an equipment purchasing program to enable the library to adequately handle electronic resources.

There is also a trend towards change in the needs of library users, with a growing emphasis on Australian sources, both reports and texts, and a diminishing demand for UK, USA and Canadian materials. UK reports from the 19th century are an exception to this trend. This change will affect the collection policy, especially as the cost of overseas publications has risen dramatically.

A major survey of users was undertaken to assist the Committee with the challenge of accommodating these factors. This has provided valuable guidance.

PLEAS Committee

The Practitioners Legal Electronic Access Service ("PLEAS") was developed by the Legal Practice Board, in conjunction with the Court, to provide a means of electronic access to unreported decisions of this Court. The service has been progressively expanded to include the unreported decisions of the Family, District and Licensing Courts. Mining Wardens' decisions are now being added as a further service. The service is in popular demand with over 100 firms subscribing for in-house electronic access, as well as the major national law publishers. As soon as necessary technological changes can be completed, the service will be available by means of the internet, rather than dedicated equipment, which will facilitate access by many smaller firms.

Justice Parker is the Court's representative on the PLEAS Management Committee.

Practical Legal Training Committee

An ad hoc Committee was formed late this year to review the future means of providing practical legal training for law graduates seeking to be admitted to practise law. The Committee was formed because of the adoption of new national standards for practical legal training and because of new approaches elsewhere in Australia to the provision of practical legal training.

The Committee includes representatives of the Legal Practice Board, the Law Society of WA and the WA Bar Association, as well as a representative of the Law Deans in this State and of the Articles Training Programme. Justices Parker and McKechnie represent the Court on this Committee, because of their respective roles in the national Law Admissions Consultative Committee and the Articles Training Programme.

It is planned that the Committee will consult widely and hoped that it may be able to conclude its work by the end of 2003.

Video Technology in Courts Steering Committee

The Hon Justice Scott, Chair of this Committee, had hoped to be able make a positive report this year but unfortunately no funding was forthcoming. Consequently there has been no further



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expansion of facilities. It is hoped to be able to make a more positive report at the end of next year.

Information Technology Committee

Western Australia now has a coordinated approach to court information systems and technology. The Hon Justice McKechnie chairs the Joint Courts Technology Committee ("JCTC") as my appointee. All courts are represented on the Committee together with the Executive Director, Courts Services, and other Department of Justice officials.

The JCTC's role is to ensure the integration of systems across the Courts. It also provides quality assurance oversight of the projects, particularly those that relate directly to improving the service to the judiciary, or which have an impact on the judicial officers in their work.

In respect of Departmental business and systems, the role of JCTC is advisory, not executive. The role is exercised in the spirit of partnership. The judicial representatives scrutinise and review information on all aspects of the technology program, with particular focus on those matters which may have an impact on judicial officers.

The Joint Committee has worked productively and harmoniously during the past year. Justice McKechnie would particularly like to acknowledge the strong contribution made by all the judicial members and the helpful and professional attitude of the Court Services Directorate. While the main focus has been the development of an integrated courts management system, other programs have not been overlooked.

Integrated Courts Management System (ICMS)

The development of phase 2 of ICMS has made steady progress 2002. The full civil case management system is scheduled for implementation in the District Court in February 2003, followed by the Supreme Court in March and Magistrates' Courts in May.

Jurisdictional process teams have been working tirelessly with the ICMS development team throughout the year. A comprehensive implementation plan has been developed which will see testing and training commencing early in the New Year. Jurisdictional representatives have been able to provide valuable feedback on the application as it is being developed.

Initial work has also commenced on the next phase of ICMS (Phase 3), which will extend the system's capacity into the criminal jurisdictions and all remaining civil jurisdictions. This will also include consideration of the proposed State Administrative Tribunal's requirements.

A pilot e-lodgment project with two law firms commenced in a number of Local Court locations during the year. The pilot has now been extended to a further 10 participants and feedback has been very positive. Further analysis work has now commenced on extending e-lodgment of documents to the District and Supreme Courts with a number of law firms being invited to participate in the analysis.

A further interesting development was the commencement of a joint project with the WA Police Department to exchange data electronically. Phase 1 of the project will see the lodgment of



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electronic complaint information by police with the Magistrates' Courts. Phase 2 will see Magistrates' Courts provide police with electronic outcome results. Phase 1 of the project is scheduled for pilot run in the Perth Court of Petty Sessions in February 2003.

ICMS has an approved budget of \$10.9 million. It is now into Phase 2 implementation and will progress into Year 2003 for Phase 3.

Other Applications

Other courts applications to be updated or introduced include:

Fines Enforcement Registry (FER) & Warrant Management System (WMS)

FER Time to Pay was implemented in February. This allowed defendants to 'group' their outstanding debts and arrange a 'time to pay' schedule. Primarily this gave the defendants some grace in payment due dates and prevented certain licence suspensions, providing they met their new payment schedule. The system met its objectives, but a large number of defendants still breached their payment schedule and required 'second chances'.

FER Direct Debit was introduced in May and this provided an additional method of payment. The system has proved very successful by providing an 'easy' method of payment to defendants.

Warrant Management System (WMS) enhancements will provide significant improvements in management reporting to the business and interfaces to external agencies. The information held within the system is linked to FER for payments of fines and issue of warrants.

Jury Information Management System (JIMS)

Significant enhancements were made to JIMS to improve functionality and provide more comprehensive management reporting. The enhancements were urgent and were successfully implemented in July with positive reaction from those involved.

Victim Notification Register (VNR)

The Victim Notification Register is a new application that provides information to victims of crime in relation to criminal parole requests and potential release dates. It has been providing an important service to victims.

Redevelopment of Child Witness System (CWS) and Victim Support System (VSS)

The information held in these two systems is closely linked. The functionality, look and feel for both systems was redeveloped early in the year to make the graphical user interface consistent and easier to use, ultimately providing better customer and management information.

Judicial Application Support

Judgment Processing System (JPS)

The JPS was upgraded to the current version supported by the Judicial Workbench, and was deployed to the Family Court of Western Australia. A number of enhancements were implemented during the year, including the recording of when judgments are reported, when judgments are appealed and the results of the appeals.



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Judicial Workbench

The Judicial 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.

During the year, a number of systems linked to the Workbench were upgraded to provide a consistent interface across all courts. Changes were also made to the statutes database to facilitate easier access to legal resources.

The electronic transcript delivery system has been developed and is due for implementation in early 2003. This enhancement to the Workbench automates the delivery of transcript from the Court Reporter directly to the judge's transcript database or email.

Electronic Trials (e-trials) and Appeals (e-appeals)

The Supreme Court and District Courts have eight electronic courtrooms. These facilitate the conduct of the hearing using electronic display of evidence, transcript and court documents. During the year, the e-trials and e-appeals system was further enhanced in the area of interface and exhibit management.

Institute of Restorative Justice and Penal Reform

The Hon Justice Murray is the Court's representative on the recently formed WA Institute of Restorative Justice and Penal Reform. The institute brings together relevant government agencies, non-governmental organisations working in the field of criminal and juvenile justice together with academics. Its purpose is to foster research and assist in the development of policies directed towards restorative justice, not only in respect of children, but also penal reform. The Hon Justice Murray is a member of the governing committee of the Institute which is very much at the commencement of its work.