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# 2003 Annual Review of Western Australian Courts



by  
The Hon David K. Malcolm AC  
Chief Justice of Western Australia



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## 2003 Annual Review of Western Australian Courts

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# INTRODUCTION

The 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. It also includes information on the work of the Law Reform Commission of Western Australia and Legal Aid Western Australia.

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.

*The Hon David K. Malcolm AC  
Chief Justice of Western Australia*



# OVERVIEW

At this time, on the occasion of my 16th Annual Review, I only wish to highlight a number of issues of particular importance.

## Centenary

The year 2003 was a year of centenaries. We marked the Centenary of the 1903 Supreme Court Building with a Special Sitting of the Court, a dinner, reception and an Open Day at the Supreme Court, when a large number of members of the public took advantage of the opportunity to visit the Court. It was also the year which marked the Centenary of the High Court of Australia, with a conference in Canberra in October followed by a Special Sitting of the High Court in Melbourne 100 years to the day from the first sitting on 6 October 2003.

## Accommodation

It is now more than 11 years since the Government of the day in 1992 recognised the need to rectify the position, which saw a number of Judges of the Supreme Court located in a high rise office building at 111 St Georges Terrace Perth. We had high hopes following a Cabinet decision in April 1992, which approved major extensions to the Supreme Court on the present site, that our accommodation problems would be solved. There was a change of Government in 1993 and while it recognised the need to find a solution and formulated proposals, the project has not been brought to fruition. The Court remains split between two locations, which is wholly unsatisfactory from every point of view. I know that the Attorney General understands the problem. It is important that we work together to find a solution as the current situation is gravely prejudicial to the efficiency of the Court and the sense of collegiate co-operation and communication so essential for the work of any court.

It is a priority that we put an end to stop-gap measures and provide the Supreme Court with the kind of accommodation and facilities in the one place so that it can fulfil the expectations of the people of the State in terms of efficiency and effectiveness. This can only be achieved if all of the Judges, Masters and Court officials are located in the one place.



## 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 2003, the Supreme Court was composed of the Chief Justice, 17 Judges, and two Masters. The Judges at this time were:-

#### Chief Justice

The Hon Chief Justice David Kingsley Malcolm AC

#### Judges of the Court

The Hon Justice Michael John Murray

The Hon Justice Neville John Owen

The Hon Justice Christopher David Steytler

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 Narelle Johnson

The Hon Justice Kevin Parker AO RFD resigned from the Supreme Court of Western Australia to take up an appointment to the International Criminal Tribunal for the former Yugoslavia, in The Hague on December 1. The Hon Justice Robert Anderson retired on November 28 and Hon Justice Graeme Scott retired on December 19.



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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.

Master Craig William Sanderson  
Master David Wallace Newnes

Master Newnes was appointed on 24 February 2003.

### 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. The Principal Registrar now has the delegated control and superintendence of the Central office, previously the responsibility of the Masters. As at 31 December 2003, the following Registrars held office:

Mr Paul Lyon Johnston  
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

Registrar Janet Martin resigned after almost 12 years' service. Acting Registrar Corryn Rayney continues in her role at the Court.

## CIVIL JURISDICTION

### Full Court Civil Appeals

The civil appellate work of the Court continues at a very high level. In 2003, the Full Court heard 105 civil appeals and related matters, such as prerogative writs, compared to 114 last year. Because of priority given to the substantial criminal appeals, the number of civil appeals waiting for hearing dates has increased from 19 in December 2002, requiring 14 days of hearing, to 69 (requiring 27 days of hearing). The following table shows the number of appeals to the Full Court from each jurisdiction during the past eight years.

Full Court	2003	2002	2001	2000	1999	1998	1997	1996
Appeals from Supreme Court (Judges/Masters)								
Allowed	17	16	18	20	15	6	12	15
Dismissed	20	28	36	44	31	12	28	35
Allowed In Part	3	5	4	4	1	0	0	2



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<b>Sub Total</b>	<b>40</b>	<b>49</b>	<b>58</b>	<b>68</b>	<b>47</b>	<b>18</b>	<b>40</b>	<b>52</b>
Appeals from District Court								
Allowed	14	23	22	16	17	9	27	22
Dismissed	20	18	22	24	21	16	32	47
Allowed In Part	2	1	2	3	2	0	6	7
<b>Sub Total</b>	<b>36</b>	<b>42</b>	<b>46</b>	<b>43</b>	<b>40</b>	<b>25</b>	<b>65</b>	<b>76</b>
Appeals from Workers Compensation Board								
Allowed	3	2	3	4	2	2	0	2
Dismissed	5	4	0	1	0	0	1	10
Allowed In Part	0	1	0	0	0	0	0	0
<b>Sub Total</b>	<b>8</b>	<b>7</b>	<b>3</b>	<b>5</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>12</b>
Appeals from Liquor Licensing Court								
Allowed	1	0	0	3	0	0	0	0
Dismissed	1	1	1	1	3	0	0	2
Allowed In Part	0	0	0	0	0	0	0	0
<b>Sub Total</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>2</b>
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
<b>Sub Total</b>		<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>
Appeals from Other Courts								
Allowed	1	9	1	4	4	5	0	2
Dismissed	4	3	2	2	4	5	1	5
Allowed In Part	0	0	0	0	0	0	0	0
<b>Sub Total</b>	<b>5</b>	<b>12</b>	<b>3</b>	<b>6</b>	<b>8</b>	<b>10</b>	<b>1</b>	<b>7</b>
Cases Stated Heard by Full Court	1	1	0	0	1	0	0	0
<b>Sub Total</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>
Prerogative writs								
Granted	9	1	3	3	7	3	0	2
Refused	4	0	6	0	2	1	9	4
<b>Sub Total</b>	<b>13</b>	<b>1</b>	<b>9</b>	<b>3</b>	<b>9</b>	<b>4</b>	<b>9</b>	<b>6</b>
<b>TOTAL</b>	<b>105</b>	<b>114</b>	<b>120</b>	<b>129</b>	<b>110</b>	<b>59</b>	<b>116</b>	<b>158</b>



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### Civil List

The average length of a civil trial over the past seven years is five days. The Bell trial commenced on 21 July 2003 and is expected to last for some 12 – 18 months.

In 2003, the median and mean times between entry for trial and trial has been 30 weeks, which compared favourably with the 36 weeks' figure in 2001. However, the average delay between entry for trial and trial for matters dealt with at callover is 17.2 months which is totally unacceptable, given that the target fixed by the Court is six months. This simply reflects the lack of sufficient Judges to undertake the work required. Without additional resources, this unacceptable state of affairs is not capable of being corrected.

In 2003, six new groups of actions were admitted to the Long Causes list, increasing the total to seven cases with an estimated hearing time in the range of 60 to 100 days. Three groups of actions requiring some 70 to 115 days of hearing were settled. In addition to the Bell litigation, one other long cause listed for 20 days commencing in November 2003 was settled on the fifth day of the trial. One long cause is currently entered for trial. There are currently 60 groups of actions in the Long Causes List with estimates of hearing time in the range of 833 to 1016 days.

In 2003, 1550 civil actions were commenced in the Supreme Court, together with 409 corporation matters, a total of 1961. These figures compare with 1697 actions in 2002, and 401 corporation matters, a total of 2098.

### Expedited List

The Expedited List proved an important service to litigants. January 2003 began with 26 matters in the list and the last report prepared, showed that there were 35 matters in the list as at 31 December 2003. The list is still dominated by asbestos-related personal injuries claims, but there is constant demand for entry into the Expedited List by litigants involved in commercial disputes. The time between entry into the list and finalisation fluctuates considerably, but some idea of the prompt service which is provided is shown in the figures for July, August and September, in which the average time between entry onto the list and final determination or exit from the list was less than eight weeks.

### Judges' Chambers

In 2003, 406 special appointments and 1681 other matters were dealt with in Judges' Chambers, a total of 2087, which represents an increase since 1996 of 53.5 per cent.

### Masters' Chambers

The number of matters dealt with in Masters' chambers in 2003 was 3098, a slight increase from 2002 which totalled 2955.

### Registrars

This has been a year of challenges and changes for the Registrars and they have met the challenges successfully. Registrar Janet Martin resigned after nearly 12 years. She was the first woman to be appointed a Registrar of the Supreme Court of Western Australia and served as Acting Principal Registrar and an Acting Master of the Court on many occasions. Registrar Martin made a significant contribution to the work of this Court, particularly as a long serving member of the Rules Committee.



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She was active for many years in the Continuing Legal Education program of the Law Society particularly in areas dealing with Procedure. We wish her well in retirement.

This year was another busy year for Central Office. The Principal Registrar has the delegated control and superintendence of Central Office, which resulted in a greater involvement in all aspects of proceedings and appeals coming within the jurisdiction of the Court.

The single major challenge for Registrars and their support staff has been the development and introduction of ICMS, which is a fundamental change to the working environment of the Court. It has impacted on every aspect of the registry and the work of the Registrars. I am encouraged by the commitment and support of staff to this initiative, particularly when asked to work long hours to ensure the integrity of the court record.

This year the workload of Registrars continued to increase, particularly in the areas of mediations and probate applications. The available statistics demonstrate the increased number of hearings conducted by Registrars.

### Hearings for Registrars

Hearing Type	1 Nov 98 to 31 Oct 99	1 Nov 99 to 31 Oct 00	1 Nov 00 to 31 Oct 01	1 Nov 01 to 31 Oct 02	1 Nov 02 to 31 Oct 03
Application Extend Time (Taxation)	9	24	20	16	12
Case Management	3454	3236	3301	3353	3139
Examination (Corporations Law)	24	56	65	40	64
For Directions (Taxations)	38	40	25	33	40
Mediation Conference	349	380	365	383	389
Passing of Accounts	6	1	11	12	1
Preliminary Conference (Mediation)	3	7	8	19	24
Registrars' Chambers (O.62A)	283	310	463	380	308
Section 129C Application	0	2	1	1	0
Settle Appeal Book Index	143	161	161	162	143
Taking of Accounts	4	10	5	14	3
Taxation (LPA)	80	103	61	74	70
Taxation (Other)	350	328	327	274	255
Probate Applications	4707	4834	4621	4875	5063
Waiver of Fee Applications From 26/3/02	-	-	-	75	86
<b>TOTAL</b>	<b>9450</b>	<b>9492</b>	<b>9434</b>	<b>9711</b>	<b>9597</b>

In the face of the changes and challenges of the year just gone, the Registrars of this Court continue to serve the justice system in a most professional and responsible way.



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### Registry

All Supreme Court staff deserve to be congratulated on their contribution to the celebration of the Centenary of the Supreme Court Building in 2003, as well as:

- The implementation of Phase 2 of the new Integrated Case Management System (ICMS).
- The provision of state-of-the-art technology for the Bell Group trial which commenced in July 2003 and is estimated to last 18 months.
- Provision of an enhanced video conferencing system for taking evidence from witnesses interstate and overseas.
- The introduction of digital recording of evidence.
- Upgrading and refurbishing the Supreme Court Building both inside and out.
- Commencing the drainage and installation of a water membrane project to overcome rising damp in the Court's basement storage areas.
- General repainting and maintenance at 111 St George's Terrace.
- Commencement of an investigation into records management and storage with the assistance of State Records Office.
- Introduced new training and staff development plans.
- Completing a staff induction manual.

## CRIMINAL JURISDICTION

### Court of Criminal Appeal

In the year to 31 December 2003, some 212 appeals and applications for leave to appeal were lodged with the Court of Criminal Appeal compared to an average of 241 per year for the five years to 31 December 2002. A matter of grave concern has been the increase in the number of unrepresented appellants or applicants as a consequence of the cessation of the Unrepresented Criminal Appellants' Scheme (UCAS) at the end of 2002.

In the five years to 30 December 2002, the average number of unrepresented appellants or applicants was 89 or 37 per cent of all appeals. In 2003, the first year following cancellation of the scheme, the number of unrepresented appellants or applicants was 86 or 48 per cent. This does not take account of potential appellants or applicants who may have sought to appeal had the scheme been operating. While arrangements have been made with the Director of Legal Aid for assistance in this area, the position is quite unsatisfactory compared to the UCAS scheme. Without the assistance being provided by the Director, however, the position would be wholly unsatisfactory.

The following table provides a breakdown of matters finalised by hearing before the Court of Criminal Appeal since 1996 (appeal and applications for leave to appeal):

Court of Criminal Appeal	2003	2002	2001	2000	1999	1998	1997	1996
Supreme Court – Against Sentence								
Allowed	5	10	10	8	4	2	6	11



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Dismissed	16	14	18	26	21	21	22	30
Varied	0	0	0	0	0	0	2	0
<b>Sub Total</b>	<b>21</b>	<b>24</b>	<b>28</b>	<b>34</b>	<b>25</b>	<b>23</b>	<b>30</b>	<b>41</b>
Supreme Court – Against Conviction								
Allowed	2	5	3	1	2	2	4	3
Dismissed	10	3	16	12	13	5	26	32
Varied	0	0	0	0	0	0	2	0
<b>Sub Total</b>	<b>12</b>	<b>8</b>	<b>19</b>	<b>13</b>	<b>15</b>	<b>7</b>	<b>32</b>	<b>35</b>
District Court – Against Sentence								
Allowed	19	20	35	43	38	22	20	27
Dismissed	56	51	27	57	53	38	68	57
Varied	0	0	0	0	1	5	2	5
<b>Sub Total</b>	<b>75</b>	<b>71</b>	<b>62</b>	<b>100</b>	<b>92</b>	<b>65</b>	<b>90</b>	<b>89</b>
District Court – Against Conviction								
Allowed	9	13	14	18	13	17	11	12
Dismissed	29	22	21	30	27	26	46	34
Varied	0	0	0	0	1	0	2	2
<b>Sub Total</b>	<b>38</b>	<b>35</b>	<b>35</b>	<b>48</b>	<b>41</b>	<b>43</b>	<b>59</b>	<b>48</b>
Children’s Court – Against Sentence								
Allowed	3	2	0	0	4	0	3	4
Dismissed	3	0	0	0	0	2	0	2
Varied	0	0	0	0	0	0	0	0
<b>Sub Total</b>	<b>6</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>2</b>	<b>3</b>	<b>6</b>
Children’s Court – Against Conviction								
Allowed	0	1	0	0	0	0	1	0
Dismissed	0	1	0	0	0	0	0	0
Varied	0	0	0	0	0	0	0	0
<b>Sub Total</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>
References	2	1	4	0	1	1	0	0
<b>Sub Total</b>	<b>2</b>	<b>1</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL</b>	<b>154</b>	<b>143</b>	<b>148</b>	<b>195</b>	<b>177</b>	<b>140</b>	<b>215</b>	<b>219</b>



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### Criminal List

In 2003, 261 indictments were presented in the Supreme Court compared to 223 in 2002. This figure compared with the average of 222 in the seven years to 31 December 2002.

As at 31 December 2003, 87 criminal trials had been listed for the Perth sittings. The list is already full to the end of August 2004 on the basis that three Judges will be rostered in crime in Perth each month. Previously it was the exception rather than the rule that three Judges be rostered in crime. Given the number of cases pending, it will be necessary to roster three Judges to sit in the criminal court for the whole of 2004. This is unprecedented. Four listed cases in 2004 each have an estimated trial time of more than 20 days. The total number of trials already listed is 50, with 23 exceeding five days of hearing. The total estimated hearing time of these cases is 352 days, leaving only 71 available hearing days for the remainder of 2004.

The Court gives priority to the disposition of criminal business, within the capacity of its resources and without unduly sacrificing its other areas of its jurisdiction. Many of those who appear before the Court are held in custody, pending the final disposition of their cases.

This principle of promptly disposing of cases extends to matters at first instance and on appeal. The Court is often frustrated in its capacity to deal with matters promptly by the increasing numbers of applicants and appellants in person and the difficulties they encounter in ensuring their cases are ready to be heard by the Court of Criminal Appeal. The Court will give such assistance as is within its power and has determined that the case management process in criminal appeals would be assisted if one Judge of the Court was primarily responsible for it. That procedure has commenced, with the Hon Justice Miller as the nominated Judge. It is anticipated this will assist in preventing cases being listed for hearing before the CCA and being adjourned because they are not ready.

A similar approach is to be followed by the Court in relation to status conferences, as well as managing the listing and interlocutory processes for criminal cases at first instance. The Hon Justice Murray will generally deal with those conferences, as the Judge in charge of the criminal list. Again, the Court has determined that it is inappropriate that cases be listed for trial or directions hearings too far in advance of available dates. The Court has suffered, to an increasing extent, the loss of judicial time by reason of matters being listed well in advance and then necessarily having to be adjourned or not proceeding as a trial, either upon the entry of a *nolle prosequi* or by a late plea of guilty.

The Court is endeavouring to increase the efficiency of the listing processes. Solicitors and counsel will need to be prepared and ready to identify and deal with particular issues at directions hearings or status conferences, which will be listed and held within a relatively short period of cases coming before the Court. The co-operation of both prosecution and defence will be necessary if improvements are to be made.

### Supreme Court: Appeals to a Single Judge

In 2003, there were 56 appeals to a single Judge under the *Justices Act 1902 (WA)*. This compares with 85 appeals in 2002, and an average of 90 appeals in the preceding six years. Of the 56 appeals in 2003, 29 were allowed, 23 dismissed and 4 were allowed in part.



## **GUARDIANSHIP AND ADMINISTRATION BOARD**

The Guardianship and Administration Board maintains a close association with the Supreme Court by virtue of the fact that its President is a judicial officer appointed on the recommendation of the Chief Justice. The current president is the Principal Registrar of the Supreme Court, Mr Keith Chapman. The President is assisted by Registrar Pamela Eldred who is the full time Deputy President of the Board. There are currently 13 other Board members.

The Board appoints guardians and administrators for people with mental disability who are unable to make decisions for themselves. Mental disability is broadly defined to include dementia, psychiatric conditions, intellectual disability and acquired brain injury (brain damage) from causes such as accident or stroke. The Board's jurisdiction to appoint guardians and administrators is concurrent with 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 and Deputy President have worked with Board members and staff to maintain a very high standard of assistance to those involved in its process. In doing so, the Board emphasises the importance of the participation of people with disability in the determination of issues affecting their rights and protection.

### **Workload**

The number of applications in this jurisdiction has again increased. The increase this year was about 11 per cent, which continues the longer-term pattern for this jurisdiction. The number of applications has risen from 960 in 1997 to 1678 for the year 2003, an increase of about 75 per cent.

The most notable trends are increases in the areas of guardianship and enduring powers of attorney. In the last two years, guardianship applications have risen from 191 in 2001 to 264 this year. Many of these applications involve serious issues relating to the accommodation and health care of people with dementia or other mental disability where family members are in conflict. Applications to intervene in relation to enduring powers of attorney have risen from 23 to 32 in the same period. While still relatively few in number, these applications are amongst the most complex received by the Board, often involving serious allegations of misappropriation and financial abuse.

### **State Administrative Tribunal**

Legislation is currently before Parliament that will transfer the Board's functions to the new State Administrative Tribunal.

### **Relocation**

In September 2003, the Board was moved from its premises at the Hyatt Centre in East Perth to the proposed home of the new State Administrative Tribunal at 12 St Georges Terrace in anticipation of its amalgamation into the new tribunal.



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### Administrators Guide

The Board in conjunction with the Public Advocate produced an *Administrators Guide* which explains the duties and functions of administrators appointed to manage the financial affairs of a represented person. The guide is provided to each administrator appointed by the Board.

### Reference from the Full Board to the Full Court re: section 77, Guardianship and Administration Act 1990

As noted in last year's Annual Review, the case of *Johnson v Staniforth* [2002] WASCA 97 held that section 77 of the Act required that the Board's consent be obtained before a represented person could make a will. Following that decision, a number of applications were made to the Board for its consent. In considering these applications, significant questions emerged which would affect not only the applications before the Board but also future applications. As a result, the Full Board referred to the Full Court 11 questions of law arising out of the applications and the Chief Justice convened a five-judge panel to hear the reference. This is the first occasion that the Board has used its power to refer questions of law to the Court. In *Re the Full Board of the Guardianship and Administration Board* [2003] WASCA 268, the Full Court decided that section 77 has no application to a will or other testamentary instrument made by a testator who is the subject of an administration order. The decision has proved very helpful in delineating the Board's jurisdiction in relation to testamentary matters and in clarifying the distinctions between testamentary capacity and other capacity issues determined by the Board.

### Statistics

Application Type	1 January – 31 December 2003
Guardianship	264
Administration	754
Directions	9
Enduring Powers of Attorney Intervention	32
Declaration of Legal Capacity	24
Sterilisation	0
Review – Party Instigated	173
Review – Board Instigated	356
Inspection of Documents	35
Section 77 applications	3
<b>Total</b>	<b>1650</b>

Board Type	1 January – 31 December 2003
Single Member	1368
Three Member	286
Full Board	24
<b>Total</b>	<b>1678</b>



## FAMILY COURT

### Jurisdiction and Work of the Court

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

### Judges of the Family Court of WA

As at 31 December 2003, 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 Julianne Penny

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

#### **Principal Registrar**

Mr Stephen E. Thackray

#### **Registrars**

Mr Christopher John Judges

Mr Ronald Graham Fleming

Ms Roberta Annette Andrews

Mr Alan Moroni

Mr Peter David Monaghan

Ms Lisa Ilarda

Mrs Jill Vander Wal

Mrs Susan Duncanson

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

Mr Stephen Thackray has been appointed as an Acting Judge of the Family Court of Western Australia. Mr Monaghan is currently Acting Principal Registrar.



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### OVERVIEW

In the last two Annual Reviews, the Chief Judge indicated the difficulties that the Family Court was facing in delivering the service that the people of Western Australia are entitled to expect.

As at 30 June 2002, there were 539 cases awaiting a trial date in Perth and a further 50 awaiting a trial date in circuit towns, or a total of 589 cases. By 30 June 2003, there were 609 cases awaiting a trial date in Perth and 42 in circuit towns, or a total of 654 cases, which represents an increase of 17.6 per cent. On the positive side, however, and as a result of new and improved listing procedures, the waiting time between a conciliation conference and trial was reduced from in excess of one year to about nine months. The Chief Judge still regards the delay as unacceptable. The Family Court remains significantly under-resourced in terms of its judicial appointments.

The reasons for the delays remain as set out in previous reports and need not be restated. There is, however, some prospect of the situation improving during the next financial year as a Commonwealth/State review of the Family Court of Western Australia's workload was undertaken. The then Attorney-General announced after the May budget that the Commonwealth would provide an additional \$4.1 million to this Court over four years to enable the appointment of additional judicial resources to hear federal family law matters in Western Australia and to make provision for cost increases in the existing operations of the Court and the Court of Petty Sessions, 150 Terrace Road, Perth. Whilst the Chief Judge expresses his gratitude to the Commonwealth for the additional funds, he feels he must draw attention to the fact that Western Australia is still being considerably disadvantaged in terms of total spending on family law on a per capita basis, compared with the rest of Australia.

The increased federal funding had no impact in the year under review but hopefully leaves the court with a number of options for the next year, subject to one serious complication. The complication arises because during the year under review, the Parliament of Western Australia passed legislation enabling the Family Court of Western Australia to resolve disputes with respect to property and maintenance between parties to de facto marriages, including same-sex relationships.

The *Family Court Amendment Act* conferring this jurisdiction upon the Court came into effect on 1 December 2002. The law applies only to cases where the parties to the de facto marriage separated after the commencement date of the legislation.

Although some early data is available, it is difficult to predict accurately the likely increase in the Court's workload. However, in the first seven months, the Court opened 128 new files involving financial issues between de facto partners. There could be considerable impact in terms of funding because of an agreement entered into between the Commonwealth of Australia and the State of Western Australia on 26 May 1976. That agreement provides *inter alia*:

"10. The Commonwealth and the State shall from time to time agree as to the matters in respect of which the Commonwealth shall provide the necessary funds for the establishment and administration of the State Court and the amount of the funds which may be expended on those matters. The Commonwealth shall not be required to make funds available for any other purpose or to a greater extent than so agreed.



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11. The Commonwealth shall provide funds only in respect of items of expenditure which the Commonwealth has previously approved but it may, in its discretion, and upon such terms as it thinks fit, reimburse to the State moneys expended by the State for purposes which the Commonwealth had not previously approved.

...

13. Each advance shall be expended only for the purpose for which it is made and any part of an advance which has not been so expended during the period for which it has been made should at the option of the Commonwealth be repaid by the State Government or set off against subsequent advances made by the Commonwealth."

The Commonwealth has declined to provide additional funding to cater for the increased workload from the granting of the new jurisdiction to the Court. In the year under review, the State Government provided \$183,000 to cover increased costs associated with it, which was most welcome. To date, however, no further funding has been made available by the State. If it is not forthcoming, there will be two possible consequences, namely:

- (a) moneys intended for additional judicial resources may not be available to be used for that purpose; and,
- (b) the Court will be placed in the position of carrying on its business, contrary to the Commonwealth/State agreement, a fact of which the Attorney-General has been made aware.

### Court Workload

For the first time in many years, the Chief Judge is able to report that overall there has not been a significant increase in the Court's work in the year under review. There were 5535 applications for divorce filed as compared with 5766 in the previous year.

Contrary to expectation, and the trend in recent years, there was a slight decrease in the number of applications filed seeking final orders - 2762 applications, down from 2822 in the previous year. The number of those applications filed by self-represented litigants is no longer captured as a statistic. There is no doubt, however, that a significant percentage of applications seeking final orders are filed by self-represented litigants.

The number of Form 8 applications filed (seeking interlocutory or interim relief) continued to increase but the increase was not as significant as in previous years - 3622 compared with 3535 in the previous year. These applications are primarily heard by Magistrates. In the Chief Judge's last report, he observed that the Principal Registrar had been required to roster two Magistrates to sit in the General List on as many days as possible per week. That situation continues. The General Lists also continue to have too many matters in them to allow all cases to be dealt with adequately in the time available.

The number of Form 12 applications seeking summary maintenance determination has continued to fall -- 132 applications were filed compared with 221 in the previous year. The continuing decline in such applications relates in part to rule changes, but also reflects the fact that a great majority of children now come within the Child Support system.

There was a decrease in the number of applications filed under the Child Support legislation (306 applications compared with 346 in the previous year).



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Form 49 order contravention applications increased significantly (429 up from 315). Form 48 applications filed for contravention of orders, other than parenting orders, doubled (up from 30 to 60). There was also a notable increase in contempt applications (Form 47) up from 6 to 17.

Form 12A applications seeking that orders be made by consent decreased slightly (2019 compared with 2053 in the previous year). Notwithstanding the decrease, it has not resulted in a decrease in the Registrars' work. If anything, the workload increased significantly this year as practitioners and self-represented litigants were required to come to grips with the complexity of the new superannuation and the new de facto jurisdiction. This has resulted in even more requisitions and correspondence in dealing with what might otherwise appear to be straightforward matters.

Parties have an automatic right of appeal from decisions of Magistrates to a Judge in all matters, other than child support proceedings. The number of appeals filed increased significantly (82 appeals compared with 57 in the previous year). It remains a remarkably low number of appeals, given the many thousands of decisions made by the Magistrates in the course of a year. It is a continuing credit to them that there are so few appeals, given the large number of decisions made in highly-contentious matters.

In the year under review, the Registrars conducted 1904 conciliation conferences and 524 pre-hearing conferences, a small reduction in the total conducted by them. They also conducted 522 directions conferences and 20 taxations of costs. The settlement rate achieved for conciliation and pre trial conferences was very similar to the previous year.

The transfer of the Family Court Counselling Service from the Department for Community Development to the Department of Justice, which began with the release of a review of the service in February 2000, officially took place on 1 February 2003. The service continues to operate as an integral part of the Family Court of Western Australia with the Director of Court Counselling, Manager, 13 counsellors and three administrative staff.

In August 2002, the then Director of Court Counselling, Dawson Ruhl, resigned to take up a position with the Family Court of Australia. Kay Benham was appointed to the newly created position of Director, Court Counselling in June 2003.

## JUDICIAL PERFORMANCE

### Defended List

In the year under review, 274 cases which were expected to last more than one day were allocated hearing dates. The total hearing time for those cases was estimated at 586 days. This is, once again, a reduction on the previous year when 287 cases were given a hearing date with a total of 652 days. The reduction again does not come as a surprise for the reasons outlined in last year's report.

Once again, the need for additional judicial resources is illustrated. In last year's report, the Chief Judge indicated the need for the appointment of an additional Judge. It is now hoped that the additional funds allocated to the Court by the Commonwealth will permit the appointment of two extra Magistrates and that all the Magistrates will be invested with the same jurisdiction as is presently exercised by the Federal Magistrates. This would allow Magistrates to hear the small/medium property cases and make final orders with respect to children, freeing the Judges to hear the more difficult and/or complex cases.



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It is anticipated that significant inroads could be made into the defended list when and if this plan is implemented.

Of the 274 cases allocated a hearing date, 212 had not settled by the day allocated for hearing. Of these, 14 were settled without the trial commencing and 60 were settled or withdrawn during the running of the case. Some 113 cases proceeded to judgment.

Of cases expected to last one day or less, 146 were given a hearing date. On the day allocated for hearing, 136 remained to be decided -- 31 settled at the trial's commencement or during the case. Some 68 judgments were required. The remainder were adjourned or stood over. The average length of time for the long defended matters was 2.4 days. One case ran for 29 days, one for nine days and two for seven days. The hearing time for the remainder ranged between one and six days.

The above figures do not accurately reflect the Judges' work. Many other judgments were handed down which do not fit into either of the above categories. These typically involve a determination of matters argued in the Duty Judge list or at special appointments.

During the year under review, the Chief Judge participated in nine sittings of the Full Court which resulted in the publication of 33 reserved judgments. In addition, the Judges of the Family Court of Western Australia continue to determine applications made under the Telecommunications (Interception) Act 1979. In the year under review, there were 152 such applications.

### 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, 24 appeals were filed and 10 applications for leave to appeal.

The Appeal Court handed down eight judgments - four appeals were dismissed and four were allowed. Some 13 appeals and applications for leave to appeal were withdrawn and one was abandoned.

### Country Courts of Summary Jurisdiction

In the year 2002/2003, 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
169	605	30	27	42

In addition, 41 were agreements registered. The Registrar/Magistrates of this Court continued to give support and advice to the country Magistrates on family law issues. They conduct conciliation conferences ordered by country Magistrates and the Court Counsellors conduct counselling conferences ordered by the country Magistrates.



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### Court Circuits

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

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

In addition, two special circuits were held, to Carnarvon and Kununurra.



## 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 complete the bulk of this pre-trial work.

### Judges of the District Court

As at 31 December 2003, 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 Honour Judge Carolyn Frances (Lindy) Jenkins



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### **Principal Registrar**

Commissioner Denis Reynolds

### **Principal Registrar**

Mr Michael John Harding

### **Registrars**

Mr George Augustus Kingsley

Ms Lyn Dorothy Wallace

### **Deputy Registrars**

Mr Simon Peter Harman

Mr Richard John Hewitt

During the year ending 31 December 2003, there were no appointments to or resignations from the District Court Bench. However, his Honour Chief Judge Hammond indicated he would resign on January 1, 2004, to take up an appointment as Commissioner for the new Corruption and Crime Commission. It was announced on December 30 that her Honour Judge Antionette Kennedy would be appointed Chief Judge from January 1. Judge Kennedy will be the first woman to be appointed Chief Judge in Western Australian.

In addition, their Honours Judge R J Viol and Judge L A Jackson QC have each indicated formally their intention to retire in early 2004. Judge Viol has been a member of the District Court since January 1988 and Judge L A Jackson QC has been a member of the Court since July 1992. Both Judges have rendered sterling service to the Court and each will be missed.

The Chief Judge is grateful for the part-time assistance of his Honour Judge Rodney Greaves of the Liquor Licensing Court who assists the District Court in its civil jurisdiction when his Liquor Licensing Court commitments permit.

Her Honour Judge Kate O'Brien has continued to hold the Presidency of the Children's Court during the year under review.

## **CIVIL JURISDICTION**

The activity within this Court's civil jurisdiction is very susceptible to and sensitive to changes in overall jurisdiction which have come about due to amendments to the Employers' Liability and Workers' Compensation legislation and which may well continue in the future. It is also yet to be seen how the pending increase in the monetary extent of the Court's civil jurisdiction will affect the Court's civil workload.

The listing interval for trials in this jurisdiction is down to record low levels. A civil trial of virtually any size (ready for hearing) can be accommodated within a month.



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It is again clear that the District Court's pre-trial conference procedures are being rigorously applied by the Principal Registrar, Registrars and Deputy Registrars and, as always, are a very significant factor in keeping delays in this jurisdiction well under control.

The Principal Registrar has commented as follows:

"2003 was a year noticeable for a reduction in new Writs of Summons but, comparatively speaking, an increase in the numbers of actions which proceeded to trial. Some 40 more trials were heard by Judges than in 2000, 20 more than 2001, but 19 fewer than 2002. However, the trend was clearly for a greater proportion of all matters listed for trial proceeding on, rather than settling between the listing conferences and the trial dates. There have been, too, a greater number of five-day trials or more, maintaining a trend which developed about 18 months ago.

It is not surprising that these trends are apparent, in my view of the full effect of the 90-day rule applying in MVA cases being experienced in the year in question. This policy has meant that a large body of matters heard in this Court, matters which would have settled prior to the introduction of this procedural change, are no longer before the Court. Put another way, the simple and straightforward matters are now settled informally and never feature in the Court's statistics."

With respect to the *District Court Rules* (as at the end of October 2003), they were in the final stages of settling and the Chief Judge wishes to thank the work by their Honours Williams, Blaxell, Macknay and Martino, Registrar George Kingsley, Executive Officer, Mr Robert Christie, Customer Services Manager Mr Rohan Quinn, and Mr Patrick Tremlett of Parliamentary Counsel who have worked on this very important task.

### Civil Jurisdiction - Comparative Statistics

	2000	2001	2002	2003
<b>Listings</b>				
Cases proceeding to actual trial	104	124	163	144
Cases settled after listing/before trial	135	196	186	103
<b>Listing Intervals for Trials</b>				
For a 1-3 day trial	3mths	5mths	2.5mths	1mth
For a 4-6 day trial	7mths	6mths	3.5mths	1mth
For a trial in excess of 7 days	7.5mths	6mths	4mths	1mth
<b>Lodgments</b>				
Writs (Perth)	3468	3371	3611	2867
Appeals	157	139	125	120
Originating Summonses	242	209	305	227
Criminal Property Confiscation	n/a	28	19	3
Aust Register of Judgments/Misc Lodgments (remitted from Supreme Court & Local Court)	n/a	n/a	37	31

Note: Year figures run from 1 November - 31 October

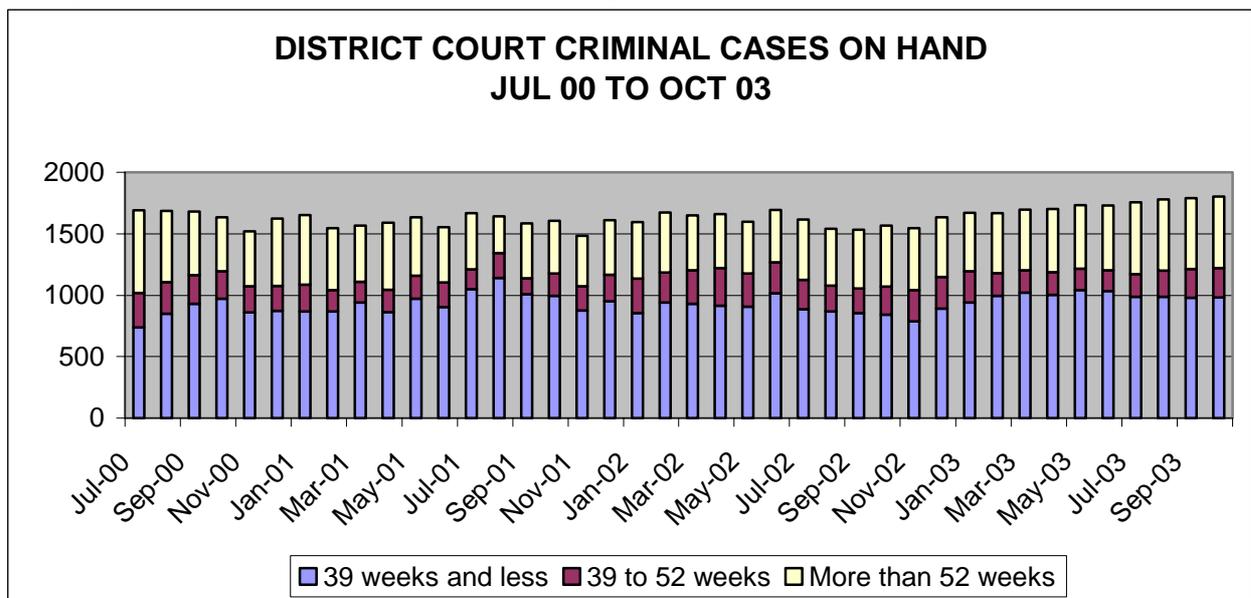


## CRIMINAL JURISDICTION

The number of metropolitan indictments has declined slightly, as has the number of trials completed in Perth. Among the reasons for this decline is the necessity to handle a number of longer trials and trials of significant length involving "white collar crime" and "illegal immigration offences". Another factor that impacts on the District Court's statistics is the increasing use of pre-recording in sexual matters. This process lengthens a trial's duration as time is taken for the pre-recording and then the play back at the original trial itself, so there is a doubling up of judicial time. In an ideal world, such trials should be held as soon as possible after indictment to avoid the necessity of pre-recording. This is a matter currently under review.

It is the Chief Judge's impression that there is a slight increase in the average trial length within the criminal jurisdiction and also, as will be explained later, there has been a great increase in circuit activity.

The inroads being made into criminal case backlog are only marginal. Performance is being maintained but improvement is difficult to achieve with existing resources.



The proper exercise and working of the criminal jurisdiction is almost entirely dependent upon over-listing and again the Chief Judge is grateful to the Registry staff for the efficient way in which this is handled and grateful to the Judges for their ready acceptance of constantly changing lists. He thanks the profession and the staff of the Office of the Director of Public Prosecutions again for their co-operation in handling and coping with a constantly changing criminal list.

Clearly the *Fast Track system* is still working well - about one-third of metropolitan committals are Fast Track.



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The following table indicates the level of activity in the criminal jurisdiction.

### Criminal Jurisdiction - Comparative Statistics

	2000	2001	2002	2003
Trials listed – Perth	880	859	744	658
Trials proceeded – Perth	474	502	439	380
Trials listed – Circuits	198	174	164	181
Trials proceeded – Circuits	137	129	126	110
Indictments filed – Perth	1912	1929	2015	1914
Indictments filed – Circuits	678	693	645	719
Fast track pleas – Perth	917	839	768	693
Misc Applications	191	237	296	175

Note: Year figures run from 1 November – 31 October

### Listing Intervals for trials in weeks

November 2002	52	May 2003	56
December 2002	56	June 2003	56
January 2003	52	July 2003	60
February 2003	60	August 2003	60
March 2003	56	September 2003	60
April 2003	52	October 2003	60

### Cases pending 2002 - 2003

November 2002	801	May 2003	791
December 2002	783	June 2003	848
January 2003	793	July 2003	848
February 2003	792	August 2003	875
March 2003	826	September 2003	837
April 2003	806	October 2003	857



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### **Expedited Trial List**

The expedited trial list is again working well and in 2003 virtually every application for an expedited trial was granted. This process gives to the person in custody, or other person seeking an early trial, the opportunity to obtain such a trial and wherever possible any exceptional hardship caused by trial delays is alleviated. This procedure is designed to be informal and both the Director of Public Prosecutions and accused persons take advantage of it.

### **Circuit Listings**

It is not possible for logistical reasons to over-list trials in circuit towns to any appreciable degree. However under the guidance of Judge Michael Muller who superintends the country listings of the District Court in conjunction with the Registry and the Director of Public Prosecutions, an experiment is underway regarding some over-listing in all major centres.

Circuit lists continued to grow across the State. In the year ending October 2002, 117 "judge weeks" were allocated to non-metropolitan circuits while in 2003, 123 "judge weeks" were allocated to non-metropolitan circuits. It was necessary in this past year to institute special circuits in Albany, Geraldton and Kalgoorlie due to strong demand in those towns. In 2004, 144 "judge weeks" have been listed for non-metropolitan circuits and, in addition, 24 "judge weeks" are allocated to Fremantle and 12 "judge weeks" to Rockingham. The Court will sit one day each month at Joondalup.

In 2004, there are two major (in excess of six weeks) trials listed in circuit towns – one in Albany and one in Kalgoorlie. Trials such as these make great demands on the District Court's resources, both personnel and financial.

Again, however, there has at times been concern caused by the incidence of late pleas and of matters falling out of the circuit lists for one reason or another. This is unfortunately simply an incident of the criminal jurisdiction and it is almost impossible to avoid this problem altogether.

The Meekatharra circuit continues to be effective and operates to the benefit of accused persons in that remote area. That circuit was instituted by the District Court at the request of the Aboriginal Legal Service as there was obvious hardship when people from the central areas were remanded to the coastal venues of Carnarvon and Geraldton.

In the past year, the Court has expanded its video callover systems and there are now video-link callovers and status conferences with Albany, Bunbury, Geraldton and Kalgoorlie where accused and counsel have the option of appearing either in Perth or in the circuit town.

## **GENERAL**

### **Other developments**

Items of interest arising from the Year 2003 include:

#### **(a) Integrated Courts Management System (ICMS)**

In June, the District Court was the first Western Australian jurisdiction to implement the new Integrated Courts Management System (ICMS) into its civil jurisdiction. ICMS, which replaces an ageing civil case management system, facilitates real-time recording of case events and will enable the Court to develop



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E-Lodgment facilities and other electronic services. The new system will eventually support all Western Australian courts and tribunals.

Given the system's importance not only to the District Court but also other WA jurisdictions, the Court devoted significant resources to its development. The Chief Judge thanks those closely involved in the project and more generally all within the District Court who have readily adopted the new system. The development and implementation of a system of this size and complexity has not been without its challenges and the District Court now looks forward to progressing the system in the criminal jurisdiction.

### **(b) E-Lodgment**

Early in the year, the District Court established a working party to examine how the Court might utilise electronic document lodgement in its civil jurisdiction.

The working party, chaired by Registrar Kingsley, prepared a report setting out E-Lodgment proposals which the District Court Civil Administration Committee has now endorsed and which will become reality in 2004.

### **(c) New Civil Case-Flow Process**

The District Court has for some time been developing new rules that will reform its civil case-flow process. The new process is designed to:

- Dispose of cases more quickly by reducing the length of the standard case track from 470 days to 365;
- Reduce the cost of litigation to parties via the introduction of an inactive list;
- Achieve earlier identification of complex matters and subject these to judicial supervision; and
- Divert matters from the court system via compulsory pre-writ exchange of information and negotiation for personal injury cases.

While this project has not progressed as quickly as planned, draft six is now completed and it is intended the new procedures will be in place early in 2004.

### **(d) Video-Links**

The use of video-links for establishing links to remote areas of the State for all manner of purposes in the criminal jurisdiction has developed and improved and is generally producing of great savings.

### **(e) District Court Building Committee**

The District Court Building Committee with her Honour Senior Judge Antoinette Kennedy as chair has met regularly during the year in conjunction with planning authorities involved in the initial work in planning the District Court building to be erected on the Hay/Irwin site.

The committee's prime focus and the universally-accepted focus of the members of this Court is that the new building must be the home of the District Court of Western Australia and to be seen and accepted as the District Court building. The District Court is an important segment of the WA court system and it is the firm belief of this Court that such status and presence should be reflected in the accommodation of the Court in its dedicated building.



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### (f) Statistics

The District Court engaged the services of the Australian Bureau of Statistics to provide, on a temporary basis, an experienced officer located within the Registry and whose task is to review and refine the Court's statistical and management information.

### Conclusion

The members of the District Court look forward to legislative change that will reduce the number of criminal charges coming before the Court and the implementation of a new statutory regime for "either way" offences.

The District Court is delighted to see the enhanced civil jurisdiction awarded to the Court but at the same time the Chief Judge has a long held view that there ought to be an "across the board" analysis of the jurisdictional levels applicable to the levels of Courts in this State.

Further work has been done in the course of the year on the development of the District Court Website.

The Chief Judge is still of the view that whilst he accepts that all Governments are beset by financial pressures these days, the District Court and its administration has gone about as far as it can go in attempting to control and dispose of, in proper time, the amount of work that comes into the District Court and the Chief Judge believes the time is appropriate for the provision of additional judicial resources to 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 2003, 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 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

Mr Jeremy Raymond Packington



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Mr Douglas Noel Jones  
Ms Julie Ann Wager  
Ms Pamela Margaret Hogan  
Ms Vicki Laura Stewart

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

Armadale: Mr Steven Ross Malley  
Fremantle: Mr Peter Spiro Michelides  
Mr Michael David Wheeler  
Joondalup: Mr Paul Allen Nicholls  
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 Stephen Paul Sharratt  
Northam: Ms Vivien Christine Edwards  
South Hedland: Mr Denis Ronald Vincent Temby

### **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 WA**

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

Mr David Imlah who was appointed on 25 June 2001 resigned on 20 January 2003; Norman Lennard Roberts who was appointed on 22 June 1981 resigned on 28 February 2003 and Peter George Thobaven who was appointed on 28 January 1975 resigned on 31 July 2003. Three new magistrates were appointed to replace them, Denis Ronald Vincent Temby (11 June 2003) who is now resident in South Hedland, Vivien Christine Edwards (7 July 2003) who is now resident in Northam and Vicki Laura Stewart (18 August 2003) who presides in Perth.



## COURTS OF PETTY SESSIONS

The following figures represent the number of cases dealt in the Court of Petty Sessions throughout the State in the year to 30 June 2003. A case is defined as an offender processed through this jurisdiction with one or more charges, appeals or applications heard (listed) on any one occasion.

<b>CRIMINAL (Petty Sessions)</b>	<b>2001/02</b>	<b>2002/03</b>	<b>Variance</b>
Case finalisation ratio:			
Finalised before trial	78%	79%	1%
Finalised by trial	22%	21%	-1%
Average length of trials (days)	0.18	0.18	0 %
Percentage of cases finalised within time standard (52 weeks)	92.6%	92.5%	-0.1%
Annual Backlog	6,968	6696	-3.9%
<b>Additional case analysis information</b>			
Cases received during year	83,164	83,697	0.64%
Cases finalised during year	83,158	84,093	1.12%
Cases still to be dealt with (at end of year)	38,507	42,263	9.75%

There has been a significant variation in the listing intervals with the average listing interval increasing from 10 weeks to 16 weeks for a half-day trial. It is hoped that a new listing initiative (see below) will help reduce this listing interval. A review of the new listings regime introduced into the Perth Court of Petty Sessions will be conducted midway through 2004 to ascertain its effectiveness.

### New Initiatives

#### Mediation

Victim-Offender mediation commenced earlier this year in the Perth Court of Petty Sessions using the services of the Department of Justice Mediation Unit. A mediator takes immediate referrals from the Magistrate in court, screens offenders and reports to the Magistrate on the suitability of mediation the same day. Where mediation is recommended, it involves a neutral person helping offenders and victims reach an agreement for compensation or other agreed solutions. By targeting offenders at an early stage, there is a considerable time saving. Following mediation, a report is provided to the sentencing Magistrate. It is planned to expand this program to Bunbury.

#### Drug Referrals

In addition to the referrals made to the Drug Court, a new program named the Pre-Sentence Opportunity Program (POP) has commenced in the Perth Court of Petty Sessions. This program is designed to introduce an early drug intervention program to complement the restricted number of referrals to the Drug Court for those requiring more intensive intervention. It places offenders in contact with suitable treatment agencies whilst remanded on bail, with a report provided to the Court at the end of that period. Young offenders or offenders with no criminal record are being encouraged to consider referral.



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The POP program is being extended to a trial in Bunbury and once established the service will be expanded to Kalgoorlie and Geraldton. It is also planned to introduce the more intensive Supervised Treatment Intervention Regime (STIR) that is available in the Drug Court in Perth to those regional centres.

### **Intellectual Disabilities Coordinator**

A joint funding agreement between the Department of Justice and the Disabilities Services Commission (DSD) has enabled the appointment of an Intellectual Disabilities Coordinator for the Perth Court of Petty Sessions. This enables a Magistrate faced with a defendant who is not suffering from a mental illness but who has an intellectual disability to be interviewed by the coordinator and, where appropriate, placed in contact with the DSD or other service providers.

### **Court Diversion for Offenders with Mental Illness and Intellectual Disability**

A special listing occurs in Court 37 in the Perth Court of Petty Sessions each week. A defendant identified as potentially having a mental illness or intellectual disability is remanded to this list. Legal Aid and the Mental Health Law Centre support this initiative by providing legal assistance for defendants. Matters relevant to the *Criminal Law (Mentally Impaired Defendants) Act* and defences relating to mental illness are considered, but where an offender is charged with minor offences and those matters do not apply, diversion is considered. The Intellectual Disabilities Coordinator assists the Court in identifying suitable treatment and programs that may enable offenders to be diverted from the criminal justice system or to be sentenced in a manner that takes into account their disability. The police prosecuting branch have also given their support to the initiative.

### **New listing arrangements for the Perth Court of Petty Sessions**

With effect from 1 September 2003, a new listing regime commenced a phased introduction into the Perth Court of Petty Sessions. This initiative strives to provide an effective and efficient listing regime for the early determination of cases. One objective is the early identification of prosecutions where the initial indication is that the matter will proceed as a trial but which:

- Will not ultimately proceed as a result of either the prosecution being abandoned or a change of plea;
- Will not occupy the time set aside for the hearing of the matter;
- Are defended solely as a result of an unjustified fear of the consequences of conviction.

The components of the proposed new regime are:

- The introduction of a more thorough exploration of issues at directions hearings and more matters going to directions hearing before a trial date is allocated. With the cooperation of prosecuting agencies, the current disclosure policy provided by police will be extended.
- A case management aspect, particularly in relation to long trials.

### **E-Brief**

The introduction of E-Brief (Electronic lodgment of initiating court complaints), which provides for the electronic transfer of information from police to Courts of Petty Sessions, was introduced into Central Law Courts and has subsequently been expanded to all courts. It is planned that in the future court results will be sent electronically to police records.



### DRUG COURT

An evaluation of the Drug Court was conducted by the Crime Research Centre of the University of Western Australia in collaboration with the Department of Justice. The evaluation assessed the effectiveness of the Drug Court in the following four areas:

*Reducing Imprisonment* – The evaluation found that the Drug Court reduces the number of offenders with substance-use problems and addictions who are being imprisoned, at least in the short term.

*Recidivism* – The results of recidivism were inconclusive. The evaluation found that there were no significant differences observed in recidivism rates between the Drug Court offenders and the comparison groups. This may be due to the small sample sizes and the short periods of time available for recidivism analysis.

*Reduction in Substance Abuse* – There was evidence to suggest reduced drug abuse by those subject to the Drug Court regime.

*Cost Effectiveness* – Whilst the cost of dealing with these offenders through the Drug Court was considerably more expensive than conventional courts, the ‘new cost’ associated with the Drug Court were largely offset by the reduction in prison and detention costs for offenders through traditional sentencing.

In 2002/03, 205 offenders were referred to the Drug Court. This figure is further explained in the following table:-

Statistic Type	Offenders
Referrals (Individuals) to Drug Court in 2002/03	205
Individuals successfully completing Drug Court program	49
Programs terminated due to disciplinary reasons	21
Programs terminated through individual’s own choice	26
After assessment, defendants deemed “unsuitable” for a Drug Court program	57
Defendants stayed in the Drug Court voluntarily, after termination of program	8

**NB: The above data covers the 2002/03 period. Of the 205 offenders, not all would have been completed in 2002/03, as they would still be continuing into 2003/04.**



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### LOCAL COURT

The following table indicates the workload for Local Court during the year to 30 June 2003.

<b>CIVIL (Local Court)</b>	<b>2001/02</b>	<b>2002/03</b>	<b>Variance</b>
Case finalisation ratio:			
Finalised before trial	93.3%	95%	1.7%
Finalised by trial	6.7%	5%	-1.7%
Average length of trials (days)	0.34	0.27	-20.59%
Percentage of cases finalised within time standard (52 weeks)	93.5%	86.9%	-6.6%
Annual Backlog	8,460	8742	3.33%
<b>Additional case analysis information</b>			
Cases received during year	42,899	43,711	1.89%
Cases finalised during year	17,960	20,499	14.14%
Cases still to be dealt with (at end of year)	43,958	44,703	1.69%

A case is defined as a single cause of action giving rise to the issue of a plaint or appeal summons against one or more defendants or respondent in the General Division, Small Disputes Division, Residential Tenancy Division and Appeal Division of the Local Court.

#### Perth Local Court Listing Intervals

Listing intervals for 2002/2003 fluctuated considerably from month to month. For a multi-day trial the period ranged from nine to 21 weeks and for a one-day trial from five to 15 weeks. The average interval for the 12 months ending June 2003 was 17 weeks for a multi-day trial and 10.5 weeks for a one-day trial. This compared with 10.5 weeks for a multi day trial and six weeks for a one-day trial for the previous year.



## 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.

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 are:

#### **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

Mr Patrick Hogan

This year saw the resignations of part-time magistrates Naveen Pillay and Vicki Stewart. The President and staff at the Children's Court would like to thank Mr Pillay and Ms Stewart for their long-standing and dedicated contribution to the work of the Children's Court.



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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 has risen over the past 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. The table below provides a detailed statewide summary on types of sentences imposed from 1 December 2002 – 30 November 2003.

SENTENCE	Judge	Children's Court Magistrate	Stipendiary Magistrate	Total
Child Good Behaviour Bond	1	236	137	374
Community Based Order under s.62 Sent Act	2	32	52	86
Community Work in Lieu of Unpaid Fine s.65B YOA			1	1
Conditional Release Order	90	110	59	259
Conditional Release Order s.47 Sent Act		68	20	88
Detention	116	71	32	219
Discharged (Indictable Matter)	1		6	7
Dismissed CRO Order Expired s.113 YOA		1		1
Dismissed YCBO s.85 YOA			1	1
Dismissed, No Further Order s.65A YOA		3	5	8
Finalised in higher jurisdiction	1		4	5
Imprisonment	21	27	5	53
Intensive Supervision Order s.69 Sent Act	18	22	9	49
Intensive Youth Supervision Order	47	72	114	233
Matter Withdrawn	4	137	57	198
Monetary penalty	8	656	567	1231
No Punishment imposed - s.66 YOA	1	7	27	35
No punishment imposed - s.67 YOA	88	431	167	686
No Punishment s.46 Sentencing Act		2	6	8
Parental Good Behaviour Bond		7	7	14
Referred to a Juvenile Justice Team	2	734	385	1121
Struck Out		7	8	15
Suspended Imprisonment Order s.76 Sent Act	4		5	9
Withdrawn/substituted by other charge		2	2	4
Work and Development Order		2	9	11
Youth Community Based Order	18	404	406	828
<b>TOTAL</b>	<b>422</b>	<b>3031</b>	<b>2091</b>	<b>5544</b>



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### Number of Trials Listed in Children's Court 2002-2003

Trial	Judge	Children's Court Magistrate	Stipendiary Magistrate	Total
Arrest	59	304	203	566
Care & Protection	-	113	11	124
Other	1	1	2	4
Restraining Orders		239	140	379
Summons	14	164	66	244
<b>TOTAL</b>	<b>74</b>	<b>821</b>	<b>422</b>	<b>1317</b>

## DRUG COURT

The Drug Court Program ("DCP") has continued this year. The President approves an offender for the DCP and defers sentence pending participation in an individualised case management plan. This is monitored by the Drug Court Magistrate (currently Mr Vose). On completion or termination of the DCP, the offender is sentenced by the President.

During this year, the independent evaluation of the Perth Drug Court undertaken by the Crime Research Centre at UWA was completed. The evaluation found that the Perth Drug Court's pilot phase was a positive and innovative step forward in dealing with drug-dependent offenders. The DCP is under-resourced as there is only one Courts Assessment and Treatment Services officer allocated. The intensity of the program and its holistic nature are key features to keeping young people out of trouble. However, without additional resources, the numbers of participants on the program will always remain low.

### Drug Court individuals from 1 July 2002 to 30 June 2003:

Regime Type	No.
Assessment pending	1
DCP – Current	4
DCP – Completed	3
DCP – Terminated due to breach	10
No Regime	1
Not Suitable	5
<b>Total</b>	<b>24</b>



# GENERAL

## Court Conferencing

The Court Conferencing Pilot Project commenced in the Perth metropolitan area on 15 October 2001 following the evaluation Western Australia's Young Offender Act 1994. This evaluation concluded that the Juvenile Justice Teams established under the Act had been highly successful. Consequently a recommendation was made that the Juvenile Justice Teams be expanded. This expansion was to provide the courts with an additional option for dealing with more serious offences and more persistent offenders in the juvenile jurisdiction.

A summary of court conference referrals from when it commenced on 15 October 2001 to when it was incorporated into the every day tasks of the Juvenile Justice Teams on 1 July 2003 (a 20-month period) is outlined below.

<b><u>Total Referrals</u></b>	<b>123</b>
Completed by way of s.67	87
Still Current	18
Returned (12 failed to engage & 6 didn't complete action plans)	18

### **Types of offences referred**

AOBH	40
Ass PO	26
C/Damage	16
Steal w/violence	11
Sell & Supply	4
U/Wounding	4
Agg Burg	2
Common Assault	2
Set explosives	6
Lit fire or criminal damage by fire	6
Reckless Driving	1
Indecent Assault/ Dep. Liberty	1

### **Type of Offender referred**

Serious	120
Persistent	3

### **Ethnicity**

Aboriginal	45
Non Aboriginal	78



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### Age Range

12 years	4
13 years	11
14 years	22
15 years	27
16 years	23
17 years	33
18 years	3

### **Victims**

- 92 conferences have been held for offences where there was a victim.
- 51 of these conferences had a victim in attendance.
- The current victim attendance rate is 55 per cent.
- Victims are provided with an evaluation sheet after a conference. Some 41 victims (80 per cent) who attended a conference have provided feedback.
- 92 per cent of victims surveyed stated that they were satisfied or very satisfied with the outcome and 100 per cent of the feedback has related that these victims felt they had benefited from attending a conference by having the opportunity to speak directly to the young person who offended against them in a safe and supported environment.
- 25 per cent also stated that there was some trauma in revisiting the event.
- Informally many victims have commented that they felt better able to move on and put an incident behind them after attending a conference.

The success of court conferencing in terms of whether a young person reoffends after attending a court conference needs to be measured after a reasonable interval has passed. An examination of the records of 41 young people, 12 - 18 months after they had attended a court conference, revealed that 31 had not returned to the courts and 11 had returned. In terms of not re-offending for a period of at least 12-18 months, the success rate for this sample was 74 per cent.

### **Director of Public Prosecutions (DPP)**

From 1 July 2003 the DPP has prosecuted all matters, including sentencing, 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 and sentencing matters are conducted by qualified and experienced counsel.

### **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 of the information. I am informed that about 65 per cent of young offenders sentenced to detention are Aboriginal, with levels reaching as high as 80 per cent on occasions.

Approval has been given for the appointment of an Aboriginal Court Liaison Officer ("ACLO") at the Perth Children's Court. This officer will greatly enhance the communication between the Court and the Aboriginal community. Duties of the ACLO will include assisting Aboriginal people to complete court documents and to explain the court process to defendants, their families and witnesses. The ACLO will



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also have a community education role and will provide for a greater level of cultural awareness amongst the judiciary. An appointment will be made early in 2004.

### 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 2002/03.

Perth Children's Court		
Care and protection applications filed	01/07/2001 - 30/06/2002	01/07/2002 - 30/06/2003
	242	258

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. This situation is unlikely to change unless an extra judge is allocated to assist the President in the work of the court.

In 2003, the President conducted some call-over lists but due to workload pressures was unable to preside as intended in some of the more complex trials.

The Children's Court expects its workload will substantially increase once the *Family and Children's Development Bill 2003* is enacted. The Bill contains provisions for independent mediation of disputes, court initiated reports, ex-parte warrants, extension of care orders and supervision orders.

These initiatives will require an additional 1.8 magistrates for the first year of operation, increasing to two magistrates in year four.

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.

The Children's Court with the collaboration of representatives from the Department for Community Development, and lawyers involved in the care and protection jurisdiction, has published a booklet that will provide information to parents in care and protection matters. This booklet has now been printed and distributed, and will assist to "demystify" the court process for those involved in this emotionally charged jurisdiction.



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### Geraldton Family Care Program

The Family Care Program was launched in the Geraldton Children's Court in November. It is an interagency, collaborative, care-based and team-based approach to assist parents involved in care and protection applications to address the various factors bearing on their parenting abilities. It involves the Court, Department of Community Development, parents and their lawyers working together to strengthen the family unit.

Parents are encouraged to participate in a holistic rehabilitation regime under the guidance of a court management team, aiming to increase parents' skills in caring for their children and strengthening their capacity to provide a safe and nurturing environment. It is hoped that the numbers of potentially destructive adversarial trials will reduce.

### Circuits

Perth Magistrates spent 201 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. In 2002/03 Perth Children's Court, Magistrates spent 21 days in regional courts.

In 2003, the President has presided in hearings at Kalgoorlie, Esperance, Geraldton and Busselton.

### Video-links

The Court strives to make use of video-links 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. Video-links are an efficient and cost effective way of taking evidence from witnesses in country locations (or from witnesses in Perth where the court is sitting in the country). The President hopes to expand the use of video-links especially in sentencing Aboriginal offenders where otherwise there may not be an indigenous presence in the court.

Video-link use 1 July 2002 – 30 June 2003							
Sentencing	C&P Respondent Parents (mentions)	Witness for C&P trials	Civilian Witness for criminal trials	Police Witness for criminal trials	CCTV	General Remands Mentions Bail Apps Status Conf.	Other agencies
18	3	2	14	8	16	38	29

### Community Relations

"*Kids, Cops, Courts and Chalkies*" seminars are conducted by the Children's Court to educate teachers, pastoral care workers and school psychologists about their rights and obligations within the education system, and the rights of children. An overview of the juvenile court system and diversionary schemes for juveniles is also provided. Three of these seminars were conducted this year and, because of its popularity, another three have been booked for 2004.



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All judicial officers willingly gave of their spare time to speak to various community groups throughout the year.

### School tours

The Children's Court provides an education service to students for the promotion, enhancement, awareness, knowledge and understanding of the history, role and functions of the Children's Court in accordance with legislation, policies and directions determined and issued by the President from time to time. The educational tours meets the Education Department's curriculum *Society and Environment – Natural and Social Systems*. The tours are booked out a semester in advance.

### Exhibitions

Banksia Hill Detention Centre promoted the importance of education to juveniles through an art exhibition, titled *School is Cool* at the Children's Court. The exhibition included artwork, metal and woodwork, school projects and poetry. The exhibition helped the detainees learn the importance of education and motivated them to send this message to other young people through their art and also encouraged a sense of self-esteem in young people in detention.

### Voluntary Court Welfare Workers

A seminar and luncheon was held for the Court's VCW people to thank them for their invaluable assistance throughout the year. The seminar involves speakers from various agencies explaining their services and providing contacts for the volunteers to refer parents/juveniles to their agency. The Court is extremely grateful for the ongoing professional work carried out by our volunteers.



## COMMITTEES

### Aboriginal Community Liaison Committee

This year, the Chief Justice's Aboriginal Liaison Committee has taken the opportunity to review its aims and to develop a timeline within which to implement specific aims. Key aims such as education of judicial officers on Aboriginal cultural issues remain, but the Committee hopes to identify other ways of addressing the specific needs of Aboriginal people involved in the judicial system.

The Committee is endeavouring to organise an Aboriginal Cultural Awareness Program involving judicial officers from each Court and also members of the profession. It is intended to hold a two-day program which will address general cultural issues and specific issues affecting Aboriginal people and their families when they come in contact with the judicial system.

The Committee is also working on a Conflict Identification and Prevention Protocol which will facilitate early identification of cases with the potential for conflicts to arise involving Aboriginal people. The protocol will identify the appropriate contact person at all stages of proceedings so that information can be swiftly passed to all relevant agencies and court officers. The aim is to create a situation where problems are identified at an early stage so that intervention can take place and appropriate security procedures implemented.

### Criminal Practice and Procedure Committee

The Criminal Practice and Procedure Review Committee met on nine occasions this year to consider and make recommendations on a wide range of matters including:

- Adopting guidelines for referring suitable cases to the Drug Court;
- The feasibility of establishing tribal courts for the administration of Aboriginal customary law;
- Procedures to be followed for objections against property confiscations under the *Criminal Property Confiscations Act*;
- The adequacy of the jurors' handbook;
- The adequacy of legislative amendments and procedural changes providing for the anonymity of jurors in sensitive cases;
- The adequacy of the information included in defendants' police record of convictions;
- Whether the list of persons who are able to be excused from jury duty or who are ineligible to serve as jurors is too extensive leading to unrepresentative juries;
- The effect of the abolition of the system of preliminary hearings on the Crown's duty of disclosure in criminal cases.

The Committee's work has led to reforms in several areas. In particular, the Committee's work with respect to the jury system has seen amendments to the *Juries Act* enabling courts to protect the anonymity of jurors in appropriate cases.



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### Joint Information Technology Committee

The Hon Justice McKechnie is the Convenor of the Joint Courts' Technology Committee. The JCTC meets monthly and provides policy direction for judicial and courts' information systems.

The major development this year has been the introduction of the Integrated Case Management System (ICMS) into the District and Supreme Courts' civil jurisdictions, and its foreshadowed introduction into the State Administrative Tribunals and Courts of Petty Sessions early in the new year.

In addition, the Hon Justice McKechnie chairs the Supreme Court's Information Technology Committee and the Supreme Court Home Page Committee. A major project, also conducted jointly with the District Court, is the publication of sentencing remarks. Justice McKechnie has convened a Committee consisting of Judges of the Supreme Court, the District Court and representatives of judicial support and the Department of Justice with the aim of publishing sentencing transcript in each court.

### Achievements in Courts Applications 2003:

#### *Integrated Courts Management System (ICMS)*

- ICMS Phase 2 (Civil case management) was implemented in the District Court in June 2003 and the Supreme Court in September 2003.
- Completed ICMS Phase 3 Initiate Stage and Project Charter. The business case to review Phase 3 implementation was developed.
- Completed the business analysis to document business processes in the State Administrative Tribunal. Target implementation in January 2004.

### Other Courts Applications:

#### *Local Courts E-Lodgments*

E-Lodgments went to production early in 2003 with a total of 3794 matters being lodged electronically up to the end of October 2003. Ten registered customers, including a major bank, lodge matters from Melbourne. Major customers are continually being encouraged to register and use this application.

#### *Superior Court E-Lodgments*

The application is in system testing and will use functionality within ICMS. A pilot is planned in the District Court and a select number of court clients to cater for lodging writs of summons via a web-based application direct to ICMS with on-line payment of fees. The pilot will be extended to include other commonly-lodged forms.

#### *Fines Enforcement Registry (FER)*

- TRELIS (Dept of Planning & Infrastructure core system) testing continued for processing licence suspensions and infringement data from prosecuting authorities.
- Interactive voice recognition and Internet payment options in FER have been progressed to use the Justice Payment Gateway to the Department of Treasury and Finance (DTF) electronic payment facility.

#### *Criminal Injuries Compensation*

Direct debit facility for Criminal Injuries Compensation commenced. This application is scheduled to use the Justice Payment Gateway (to DTF).



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### *TOMS and Courts Systems Interface*

Warrant of commitment interface between lower courts criminal case management (CHIPS), Fines Enforcement Registry (FER) and the Total Offender Management System (TOMS) was initiated.

### *Electronic-Briefs (E-Briefs) for CHIPS*

The WA Police Service commenced transmitting electronic briefs to Magistrates' Courts and to the Perth Court of Petty Sessions in February 2003 and to all Magistrates' Courts statewide in July 2003. Between 1500 and 2000 electronic briefs per week are transmitted, with a success rate ranging from 85 to 100 per cent. Enhancements planned by end of 2003 should further improve this figure. The transmission of court results to WA Police Service is planned for August 2004.

### *Bell Resources Civil Trial Technology Infrastructure:*

Developed and implemented the technology infrastructure to support the Bell Resources civil trial at the AXA 14.1 Supreme Court Courtroom. The infrastructure consisted of audio-visual, electronic litigation support application (e-Trial/Appeals Book), IT equipment and digital transcription support.

### *Law Almanac on the Web*

The electronic version of the Law Almanac 2003 was published on the Justice Website under Reports and Publications, early in 2003. A new version with better and richer functions has been developed and is planned for implementation in 2004. The hard copy version will be made available through State Law Publishing.

### *Family Court Website*

The website for Family Court of Western Australia went live on 17 July 2003 and includes downloadable court forms and information pamphlets, the daily court list, links to other family law-related sites and information about the Court.

## **Judicial Application Support**

### *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 other state courts. Judicial officers have access through the workbench to all e-Trials, e-Appeals or e-Transcript databases.

Judicial Officers now get notification on outcomes of appeals through the Judicial Workbench. The Law Almanac is deployed to the workbench. An interface between the Judicial Workbench and ICMS was deployed as part of ICMS Phase 2. This interface displays court listings in judicial officers' electronic diaries and retrieves daily Cause List information.

### *Electronic Trials (e-Trials) and Appeals (e-Appeals)*

The Supreme Court and District Courts have eight electronic courtrooms. These use electronic display of evidence, transcript and court documents. The e-Trial Book System was enhanced for the Bell Resources civil trial, adopting extended data protocols, allowing parties access using a Web browser securely over the Internet and providing users and judiciary with additional tools to search, reference and work with a vast amount of information.



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### *Audio Visual Services*

- Enhanced sound reinforcement and increased video distribution systems in Supreme Courts 1, 2, 3 and 6, in conjunction with the centenary restoration works.
- Designed and implemented an Integrated Audio Visual system for the Broome Courthouse, in conjunction with the court's restoration and refurbishment.
- Completed regional upgrade to provide increased audiovisual technology to key centres including South Hedland, Geraldton, Bunbury and Busselton.
- Designed and installed the audiovisual infrastructure at the new State Administrative Tribunal. It consists of multiple videoconferencing facilities and an electronic hearing room with 'paperless' hearing capabilities.

### **Law Admissions Consultative Committee**

This committee is established under the auspices of the Council of Chief Justices. Justice Parker represented both this Court and the Legal Practice Board.

Last year, the Committee finalised recommendations which set uniform practical legal training standards for Australia and complement the Committee's existing training standards. A number of jurisdictions are working towards amendments to legislation to enable these recommendations for practical legal training to be implemented.

### **Law Library Committee**

Justice Parker chaired this Committee until his departure from the Court on 2 December 2003. He has been succeeded by the Hon Justice Hasluck. Work is now in progress to provide direct Internet access and to extend the range of electronic services available to users.

The Committee is also undertaking an extensive review of the present collection to ensure that acquisition funds are effectively used to provide authoritative current works in the important areas of legal practice and are coordinated with electronic services.

### **Practical Legal Training Committee**

An extensive review of articles training and of the articles training program is underway. In part this is in response to the new practical legal training requirements recommended by the national Law Admissions Consultative Committee.

Justice Parker and Justice McKechnie represented the Court on this Committee, which includes the Law Deans. It is hoped to develop recommendations during 2004. The objective is to ensure that practical legal training in this State keeps pace with new developments in content and manner of delivery, and achieves the standard required in a cost efficient manner.

### **Supreme Court Accommodation Committee**

The Accommodation Committee, chaired by Murray J, is the body which has the responsibility to advise the Chief Justice and liaise with government and responsible departmental officers in respect of all matters of court accommodation affecting the Supreme Court and the role of the Chief Justice as head of jurisdiction.



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2003 has been as momentous year. It has seen the approval by government to build a new courthouse on the corner of Hay and Irwin Streets, adjacent to and linked to the Central Law Courts. This new building will become the home of the District Court in the Perth CBD. The Central Law Courts will be the Perth home of the Magistracy and will ultimately accommodate the State Administrative Tribunal and other agencies. It is hoped that this project will be completed by about 2008.

The new courthouse will have space dedicated to provide courtrooms and related facilities to conduct criminal trials by jury in the exercise of the Supreme Court's criminal jurisdiction.

Sadly, government did not see fit to approve a similar project for extensions on the current Supreme Court site to enable the Court to be again housed in its entirety on one site. Final approval of that project has been deferred. Government has agreed to provide \$3.5 million for substantial capital works urgently necessary for both the buildings on the current site and to improve the rented accommodation at 111 St Georges Terrace. Priority is now being given to such works as damp proofing the 1903 building, work on the custody centre, necessary renovation and refurbishment of the interior of the 1903 building, improving disabled access and security upgrades.

In addition, the Committee oversees the minor works program. A major project this year has been refurbishing and renovating the foyer, Courtroom 2 and four judicial chambers.

The unsatisfactory accommodation situation which has plagued us for far too long increases the pressures on and the difficulties confronting the Judges and Masters of the Court. In addition, of course, the accommodation inadequacies impact upon the work of the Registrars and all those involved in the administration of the Court.

### Supreme Court Centenary Committee

This committee, chaired by the Hon Justice Murray, oversaw celebrations to mark the Centenary of the 1903 courthouse. The Court was grateful to receive a special allocation of funds from the Department of Justice, with the approval of the Hon Attorney General. The celebrations comprised a formal dinner held in the Government House ballroom and a ceremonial Court sitting.

On the actual anniversary date, Sunday 8 June 2003, the Court held an open day, attended by at least 3000 members of the public.



# GENERAL

## LAW REFORM COMMISSION

### **Aboriginal Customary Law**

Work on the Law Reform Commission's complex and historical reference on Aboriginal Customary Laws has continued throughout 2002/2003. The project aims to canvass issues relating to the recognition of traditional Aboriginal laws and customs within the Western Australian legal system. It provides the Commission with the opportunity to revisit the work of the Australian Law Reform Commission in light of subsequent developments in law, research and policy as they relate to Western Australia.

In 2002, the Commission completed its pre-consultation phase with team members visiting all parts of the State to enhance awareness of the project and to seek permission to conduct further research consultations on Aboriginal land. In November and December 2002, the Commission conducted successful Community Research Consultations in the Perth metropolitan area.

Since February 2003, the Commission has carried out extensive community consultation, travelling to various remote and regional areas. To date, the Commission has visited the Kalgoorlie/Warburton region, the Pilbara region, Geraldton, Carnarvon, Broome, Wiluna, Meekatharra, Kununurra, the Kimberley and the Great Southern region. The purpose of these visits is to consult and receive submissions on the matters set out in the terms of reference. The information will be used in drafting background papers to be published in 2003 and into 2004, with the final report to be published in 2005.

### **Contempt**

The LRCWA's reference on the Law of Contempt has now concluded, with discussion papers published on the three topics forming the terms of reference. The submissions received from major stakeholders and interested parties helped the Commission to finalise its recommendations and to complete the final report, which was published in September 2003. The Commission has also republished all three discussion papers and the final report on CD-Rom for electronic access and ease of distribution.

### **Judicial Review of Administrative Decisions**

On 6 September 2001, the Commission received new terms of reference from the Attorney General to inquire into and report on the inadequacies and deficiencies of the current law and procedures pertaining to the Judicial Review of Administrative Decisions, and to make recommendations for reform. In June 2002, the Commission published its *Discussion Paper on the Judicial Review of Administrative Decisions*. The paper prompted a number of informative submissions from the legal profession and the public. The final report was submitted to the Attorney General for his consideration and was tabled in Parliament on 25 February, 2003. A formal launch of the report took place on 27 March, 2003. The final report has since been published and distributed and is available on the Commission's web-site.



## LEGAL AID WESTERN AUSTRALIA

### Grants Online

Legal Aid Western Australia has a new electronic process for lodging applications for legal aid, requests for extensions and tax invoices, known as Grants Online.

Grants Online will enable practitioners to deal with Legal Aid via a web-based application over the Internet. The benefits of using Grants Online are:

- faster application turnaround (usually within 48 hours);
- easier communication with Legal Aid (electronic versus standard postal methods);
- dedicated assessor (firms will deal with same assessor for all applications);
- ease of submitted tax invoices electronically and timely payment;
- updated progress of applications available on line;
- easy-to-use forms and checklists;
- simplified means test (if your client is receiving a Centrelink Benefit they do not have to complete all the information about their income).

By December 2003, 30 private practitioner firms will be using the Grants Online system, representing over 30 per cent of all applications dealt with by private practitioners. All private practitioner firms in Geraldton have been connected to the system and can lodge applications for civil, criminal and family law matters.

### Unrepresented Appellants before the Court of Criminal Appeal

Legal Aid WA has recommenced providing in-person assistance on motions day. An articulated clerk now attends to assist the Court with information regarding the status of legal aid applications made by appellants. This is in addition to the written status report provided by Legal Aid each motions day.

Legal Aid WA volunteer, retired District Court Judge Mr Ivan Gunning, has also commenced reviewing cases where a grant of legal aid is sought for an appeal in the Court of Criminal Appeal. Mr Gunning assists Legal Aid with their assessment process by providing advice on the legal merit of matters and the prospects of success. This is in addition to the application of the existing assessment guidelines for appeals.

Legal Aid WA has also joined the Supreme Court's Unrepresented Criminal Appellants Committee. Legal Aid is currently liaising with the Hon Justice Roberts-Smith regarding the new Unrepresented Criminal Appellants Program.

### New Commonwealth Agreement

The current four-year agreement with the Commonwealth for the funding of Legal Aid, that has operated since July 2000, expires in six months and a new funding offer is expected before the end of the year.

Western Australia is the lowest funded State in per capita terms and the case has been made in a number of forums and most recently in submissions to the Senate Enquiry into Legal Aid and Access to Justice, that a fairer share of resources be provided to Western Australia, to assist people with family law disputes.