"What model of court governance would optimize the expeditious delivery of justice, judicial independence and the accountability of Queensland's court system?"

by

Judge Michael Forde

A paper delivered to the conference

"Governance and Justice, 2001"

Griffith University, Brisbane

9-11th July, 2001.

SYNOPSIS

Recent criticism of the court system must be seen as part of a global trend requiring greater accountability of the public sector. The new managerialism which has been part of the Australian public sector reforms has seen a distinct trend towards greater efficiency and effectiveness in the manner in which business is now conducted in the public sector.

The court system is part of that public sector. The community has become more consumer orientated, and the expectations of users of the court system have changed in the past few years. The Parker Report (1998) has been a catalyst for this change. There were earlier trends which touched upon such issues as performance indicators and the accountability of the judiciary for the efficient and effective administration of the courts. These expectations have to be placed in context. The judiciary is not directly responsible to the government. One of the basic tenets of the democratic system of government is that the judiciary is and should be seen to be independent of executive government and Parliament. The judiciary interpret the laws of the Parliament. The executive government enforce those laws. The judiciary must be free to make impartial decisions without interference from the executive, Parliament or any particular interest group.

The ability of the judiciary to respond to public criticism is limited by the traditional view that the judiciary should not become embroiled in policy matters. Also, the judiciary does not have control of the funds needed to provide additional resources for the court system. Those funds come directly from Parliamentary appropriation or through the executive which is usually represented by the responsible minister. Relevantly, that minister is the Minister for Justice and/or the Attorney-General. The latter in recent times has become less willing to defend the judiciary against criticism. It has become necessary for the judiciary to respond to public criticism. This has been facilitated by a media liaison officer in some jurisdictions and who can deal with the media directly. The heads of court have spoken out on occasions. Much of the criticism has been due to delays in the hearing and disposition of cases. Modern systems of court management, particularly case flow management, have assisted in dealing with the increasing workload.

If the judiciary is to be held responsible, it has become necessary for some judges to become more involved in the day to day management of the court. More time is being spent on the non-judicial or administrative matters. This means that less judicial time is spent on the core activities of hearing cases and providing timely decisions or judgments. The discussion in relation to court governance has been concerned with the type of model of court organisation and its relationship with the executive or its internal decision-making process.

Recently, Glanfield (2000) correctly pointed out that questions such as accountability, responsiveness, accessibility and improved performance and efficiency are the issues by which the community measures the performance of the courts whatever the administrative structure happens to be. The same commentator was critical of the lack of statistical available by which the efficiency of the particular models can be measured.

The alternative to changing the type of model may be to concentrate efforts on what issues the community regard as important in relation to the court system. It may include the physical nature of the court facilities or the service provided by staff. The general “user friendliness” of the court system is on trial. The delays in having cases heard is also an important part of this assessment by the community and particularly the users or stakeholders in the court system.

The independence of the judiciary is not merely there for the benefit of the judges but also the community. The judiciary must be accountable but the independence of the individual judges and the institution of the judiciary cannot be undermined by the media or well intentioned interest groups. It may not matter what the nature of the court model is if the judiciary are more responsive to the needs of the community and the executive government in partnership through the court administrators are willing to work together to meet those demands. That partnership may be more likely to produce a more efficient and effective court system whilst recognising the delicate equilibrium between judicial independence and judicial accountability.

Table of Contents

Introduction

Nature of the Problem

> …the problem is how to reconcile the divergent and to some extent inconsistent requirements of public accountability, judicial independence and efficiency in the administration of justice (Shetreet, 1987:7).

In Australia, reform within the court system relating to the manner in which the courts were administered gained momentum in the late 1980s. Executive government and the legislature have always been involved in court reform. However, increasing community expectations on issues such as accountability and efficiency have been the catalyst for change in the last few years (Parker,1998; Glanfield, 2000:5). These changes in community expectations may be seen as part of the consumerism and activism in society. It may also be part of the movement toward greater accountability of public institutions. The courts are not immune from such scrutiny.

Confidence in the judiciary and moreover its legitimacy may be diminished if the costs of litigation are not limited and access to the courts is restricted (Kenny, 2000:220-224). It may be a matter for the community to accept that the cost of maintaining the rule of law is justified. On the other hand, whilst accepting that the media has a right to criticise the judiciary when necessary, it may be the responsibility of the media to present a more balanced view of the work of the judiciary. Public confidence may depend in part, at least, upon the public perception that the courts are doing their tasks as best as they can.

Issues

The type of administrative structure has been the central topic of discussion in the debate. On a continuum, it includes at one end the traditional hierarchical model used in Queensland to the judicially governed model to be found in South Australia. However, questions such as accountability, responsiveness, accessibility and improved performance and efficiency are the issues by which the community

measures the performance of the courts, whatever the court administrative structure happens to be (Glanfield, 2000:6). Glanfield commented:

> Surely it would not be unreasonable to expect that some researchers might have approached the issue of how the courts should be governed, including appropriate court administration structures, from the perspective of which model best serves the community. Unfortunately, it would appear that such an analysis has not been undertaken (Glanfield,2000:3).

Mr. Glanfield is the permanent head of the New South Wales Attorney-General's Department. What he says is correct. The Parker Report (1998) provided some specific criticism of the courts. The criticism, which was based upon a consumer perspective, concentrated on how user-friendly the court system is. The lack of access to the courts has been a repetitive theme which has led to various attacks on the judiciary for failure to respond publicly to such criticism. This criticism of the judiciary must be analysed in the light of the failure by various Attorney-Generals to defend the judiciary in both the Commonwealth and State spheres. This approach, taken by the Commonwealth Attorney-General, has been the subject of much criticism (Mason, 1997:51; Brennan,1998:33). Traditionally, the Attorney-General would speak on behalf of the judiciary and defend the judiciary from unwarranted attack. The office of the Attorney-General has assumed more of a political character in modern times. There has been a reluctance by the various Attorney-Generals throughout Australia to become embroiled in defending the courts when the judiciary is criticised. The Mabo case was a good example of this. The decision in that case which recognised the ownership rights of traditional landowners, was not received very well by some sections of the community and government. That type of controversy emphasises the problem for the courts being controlled or administered by a government department which has as its political head the Attorney-General (Gallop, 2000:33).

The Commonwealth Attorney-General had attempted to refute any criticism of his more modern role when he stated that if there were public attacks on the judiciary and such attacks were capable of undermining the public confidence in the judiciary

then he might intervene. He went on to say that in his view recent attacks on the High Court relating to some decisions did not undermine public confidence and that the judiciary is able to continue to carry out their duties and deal with cases impartially (Williams, 1998:50-51). The ability to make decisions impartially is one aspect of judicial independence. Another aspect is that the court system should have sufficient funds to allow the judiciary to manage the courts efficiently and effectively.

If the judiciary does not have the control of "power of the purse", then it becomes difficult to hold the judiciary accountable for a failure to rectify problems which may require financial resources to solve. Whether it follows that responsibility for such problems falls to the executive government which controls the spending may depend on the issues involved. It has become clear that if the courts are not adequately funded, then public confidence in the judiciary will be adversely affected.

It is suggested that if the courts are to meet consumer expectations powers, responsible government, the independence of the judiciary and its accountability, then the following matters should be considered in addition to merely looking after the core business of hearing cases:

> The physical nature of court facilities including access to buildings, car parking, cafeterias, child minding facilities, help desks, directional signs and so on. The nature and quality of services provided by registry staff and others including their communications with members of the legal profession and the public. The general "user-friendliness" of the whole court system (Sallman and Wright, 2000:187).

The general trend in the literature has been to suggest that a self-managed or autonomous court is more desirable given the greater emphasis on the new managerialism or 'let the managers manage'. If the judiciary are to be more responsible, then the autonomous model seems to be preferable. The reason behind this assumption is that the courts would be run more efficiently by those who are directly involved in its operation on a daily basis.

Court governance involves the basic structural and operational relationships between the executive and the judicial branches of government in the provision of judicial services (Sallmann and Wright, 2000:44). The type of court governance which would be consistent with judicial independence and accountability may depend upon:

1. whether the judiciary is more responsive to the community's needs when the judges control the administration; or
2. whether the executive government who is responsible to the electorate should make the decisions which affect the ability of the courts to meet the increasing demands for easier access to the courts; or
3. a more consultative approach where there is a spirit of co-operation which is dependent upon the personalities involved from time to time.

   It is intended to demonstrate that qualitative assessment of court governance is just as important as quantitative assessment in determining whether any particular model is providing a just yet efficient and effective court system which meets community expectations.

The core business of the judiciary is to hear cases expeditiously and to provide timely judgments or decisions. It has not been established that the more time spent by judges in administrative matters does contribute in any positive way to a more efficient and effective outcome.

Statistical evidence as to which type of court is the most efficient and effective may be of some assistance in determining which model would be in the interests of the community. Unfortunately, Australia's court administration statistics have been described as "totally woeful" (Murphy, 2000: 37). The efficiency and effectiveness of courts can be measured to some extent by quantitative indicators.

Qualitative assessment is more difficult. The ability of parties to appeal decisions of the judges provided some qualitative assessment. It is not intended to explore this aspect of the court system.

Glanfield has expressed the view that the effectiveness of a court cannot be determined by merely looking at the nature of the court governance or structure

(Glanfield, 2000:4). He opines that the judicial and administrative qualities of the heads of court would be more likely to set the tone of the court and moreover how efficient, effective and accountable the court may be.

In addition, the problem of accountability of judges seems to be accentuated in those models of governance where the court officials owe a duty to the department and not to the judiciary. The self administered courts, where the court has control over its own budget and staff, allow the judiciary to be more independent and accountable (Sallmann and Wright, 2000:200). In recent times, administrative powers have devolved to the judiciary. The High Court was given such power in 1979, the Family Court of Australia in 1989 and in South Australia, in 1993.

It may make more sense for the judiciary to be more involved in the administration of the courts. This is particularly so if the judges are to be held accountable to the community for addressing growing expectations as to how the court system is meeting community demands. On a day to day basis, the court officers, and through them the judiciary, are more likely to be aware of the needs of the users or stakeholders in the court system including legal aid agencies, prosecutions, corrective services, family welfare agencies and victims of crime.

In addition to the nature of court governance, it is the extent of the accountability of the judges which requires close attention in light of the basic requirement in a democratic society that the judiciary be independent. It is necessary to discuss the nature of the individual independence of judges and the institutional independence of the court before one can appreciate the changing nature of accountability.

Once it is accepted that the judiciary have traditionally been independent of outside interference, it becomes relevant to look at the changing role of the judiciary in the administration of the courts. Once that role is defined within the particular court model, the extent of accountability and to whom that accountability is owed are more easily determined. The role of the judiciary has been affected by both legislation and a greater demand for accountability in the public sector. To that extent, the role of those judges who are involved in the more autonomous models has become more politicised.

It is recognised and accepted that the judiciary should be accountable. The court system exists for the benefit of the community. The objective is to determine the optimum model consistent with maintaining the equilibrium between judicial accountability and judicial independence (Kenny, 1999:210). An essential feature of this is to also maintain public confidence. This will require an analysis not only of performance indicators and moreover efficiency but whether the courts are being effective in providing justice expeditiously.

Unacceptable delays in the delivery of judgments or the disposal of criminal matters may cause such an outcry that the executive government is forced to intervene, whatever the nature of the court governance.

Identification and expression of the key problem

It is necessary to place the discussion in its historical context and to elaborate on the political background of the concepts involved.

Separation of Powers

The independence of the judiciary is based upon the concept that the judiciary should be free of any influence by the Parliament and the Executive government in making decisions in court. Montesquieu (1982:79-83) in the eighteenth century described it as the separation of powers. Under the doctrine of the separation of powers, power is exercised by three main organs or institutions of government: the legislature, the executive and the judiciary. Theoretically, each acts as a check and balance on the other. The doctrine is particularly important in its recognition of the independence of the judiciary (Denham, 2000:11). A recent commentator has suggested that the whole of the English legal system be taken away from the control of the executive and entrusted to the judiciary (Fraser, 2000: 437). The present position in England is that the Lord Chancellor's Department administers a large budget with responsibilities for all aspects of the legal system. To allow the judiciary complete control would be to remove an important aspect of public administration from ordinary Parliamentary control. As Denham (2000:12) has pointed out, at this time of great change and development including greater expectations from the community, perhaps there will be increased tensions between the three institutions. It may mean that the judiciary has to be more accountable to the community if it is to retain its legitimate authority.

It may be that greater judicial self-governance brings with it a greater degree of accountability by the judiciary for the courts. Financial and administrative autonomy may mean greater responsibility for the judiciary for any delays and any inefficiencies in the manner in which the courts are run (Sallmann and Wright, 2000:201).

The Changing Nature of Accountability

The judiciary should be seen as independent of the government, yet it is financed by it. Where the autonomous model is adopted, the judiciary is responsible for the preparation of the budget, the appointment and control of staff, expenditure of funds and the overall administration of the courts. If there is a significant budget overrun, that is, a deficit, who is to provide the necessary funds? Recent events in the Family Court of Australia show that such a crisis can lead to a conflict between the head of the court and the executive represented by the Attorney-General (Lane, 2000:3). Lane reported that the Chief Justice of the Family Court of Australia had received legal advice that he did not have to answer questions about how many days each judge spends in court and which judges had judgments outstanding for over six months and other matters. The view of a member of the Senate Legal and Constitutional Committee was that "it's in the public interest that everyone's accountable for public expenditure" (Lane, 2000:3). The fact that the cost of running the Family Court in 1999-2000 was $116.9 million provides some basis for scrutiny by the Parliament. The Family Court, as does the Federal Court, controls its own individual administration. It is referred to as the "chief justice autonomous" model (Sallmann and Wright, 2000:47). What has not been determined in this dispute between the executive and the Chief Justice of the Family Court is whether the disagreement is about funding and more judges or about the suitability of the type of management approach used in the Family Court is not suitable (Smith, 1998).

The failure by the Attorney and moreover Parliament to recommend the necessary appropriation to meet shortfalls in funding the Family Court in previous years raises a serious question about the desirability of the semi-autonomous model. It certainly reflected adversely upon the judiciary (Parliament of the Commonwealth of Australia Joint Select Committee on Certain Family Law Issues, 1995:4.82).

This more inquiring approach by the Senate is consistent with the new managerialism in the public sector (Sallmann and Wright, 2000:198-9). This concept of management raises issues such as performance indicators, program budgeting and evaluation, assessments of individuals' performance, 'user pay', and placing a commercial cost on government services and corporate planning (Corbett, 1996:247).

Judicial Independence and Accountability but to whom?

It is necessary to define these concepts before discussing their dynamic role in the judicial system. The concepts have evolved in the last few centuries and must "not be frozen in 1701 A.D. (Denham, 2000:9).

Individual Independence

A judge must be independent to decide cases before the court without interference from the executive government. Since the Act of Settlement in 1701, tenure for life protected a judge from executive government dismissal. A judge must be free to decide questions before the court and to carry out his or her duty freely. This is called individual independence (Green, 1985:135;Denham, 2000:23). It allows the judge to decide questions impartially. The principle exists to protect the judge from interference including removal without just cause and to prevent the executive government from decreasing the judge's salary because it is not content with the manner in which the judge is performing his or her duty. This paper is more concerned with what recourse is open to members of the public who wish to pursue a complaint about delays or inefficiencies in the court system. A history of long delays in writing judgments has caused Parliament to act to remove a judge (Lagan, 2000:5).

The independence of the judiciary is not something for the judges to hide behind or to protect the security of the judges. The principle is broader and extends to the interests of the whole community. The increasing volume and complexity of cases, new technology, the information revolution and a greater emphasis on human rights have added to the developing concept of independence. The information revolution has developed hand in hand with technology particularly the Internet. The text of most decisions of the courts is available on the respective web site within a day or so of the delivery of same. The daily newspapers and magazines continue to play a role in reporting, and where necessary, criticising the judges and the courts. Talk back radio and current affair television shows also contribute to this dissemination of information. In other words, the media and the Internet inform the society of the work done by the courts on a daily basis in much more detail than ten (10) years ago.

There is a responsibility on the part of the judiciary to allow the media access to accurate information and to provide readily understood summaries of cases which come before the courts. The judiciary need to be responsive to the expectations of the community in this respect (Denham, 2000:21-22).

Judicial review of administrative decisions also has placed the judiciary in a more active role in reviewing the output of government and its instrumentalities (Judicial Review Act 1991 Qld). It means that the courts' review activities of government may attract close attention by the executive. The judiciary can be placed under pressure to perform efficiently and effectively. Unless the pressures, whether they be direct or subtle, are removed, then the duty to make independent decisions is restricted. Powerful influences which may include the executive government or the media may attempt to infringe upon that independence.

Institutional Independence

There is also the institutional independence of the court. This includes issues of adequate finance, acting without directions from the executive government and generally controlling what occurs in the courts. The issue of independence is used to justify the nature of court governance or the type of model under which the judiciary operate.

The courts were able to function under the traditional system for centuries and have generally adhered to the principle of independence for centuries. The recent changes to court governance has been part of a response by the legislature and the judiciary to a greater devolution of power to the judiciary.

McGarvie (1992:239), although attempting to limit the application of the principle of independence to matters heard in court, remarked that "the dilution of judicial independence is greater if the executive controls not only the staff, but also the court buildings, premises and facilities, and the court's funds." This has been described as the "crux of the modern relationship between judicial independence and judicial administration (Sallmann and Wright, 2000:46). The type of court governance or administration may play a role in protecting the judiciary from executive interference,

but it may not necessarily be in the interests of the community or the public (Glanfield,2000:2). In Ireland in 1998, the Courts Services Act gave the judiciary and others power to run the courts. The other persons include members of the legal profession, the staff and the community. It is suggested that a broader based administration with greater outside participation from non-judges strengthens the independence of the judiciary (Shetreet, 1985: 516; Denham, 2000:25). Denham maintains that this new structure for court administration is more appropriate to the twenty-first century and so more responsive to the needs of the community. None of the changes to the administrative arrangements in the High Court in 1979, the Family Court of Australia in 1989 or the South Australian Courts in 1993 made provision for community involvement. Certainly, there is no provision in Queensland for such involvement in court governance.

There may be other ways of making the judiciary more responsive. Reference has been made to the various complaints' procedures in Australia. Studies of how effective these have been are yet to be published. In the meantime, educating the court administrators and the judiciary may provide a long-term solution of which the complaints procedure will be an integral part. The establishment of a Judicial Studies Institute or its equivalent may assist. In Ireland, the Institute assists judges to keep abreast of modern issues such as legislation, new court management procedures, modern scientific development such as DNA, judge craft such as judgment writing and the media. The Institute also will make available publications in relation to such work (Denham, 2000:30). The Australian Institute of Judicial Administration (AIJA) has performed this role in Australia. Recently, at an AIJA conference, there was proposed the establishment of an Australian Judicial College (Roper, 2000). It would perform a similar role to the Irish Institute.

It should be stressed that this proposal, to educate the judiciary to cope with its changing role in society, should not erode the individual independence of the judiciary or the institutional independence of the courts. It is a positive response to meeting the growing community expectations and the scrutiny of the ever vigilant media.

Types of Models

Background

The autonomous model may allow the judiciary to be more involved but it may not be in the best interests of the community according to Glanfield (2000:2-3). It is necessary to discuss the various models particularly in the context of budgetary issues, in order to better understand the needs of both the judiciary and the community. As discussed, the 'power of the purse' is essential when attempting to plan or deal with certain problems.

Millar and Baar (1981:56), who were looking at the Canadian court structure, provided a diagram of the types of model which may be adopted. The diagram represented a continuum of the types of models which may be adopted. Various commentators have discussed these models as applicable in Australia (Byron,1999; Williams,1997; Sallmann, 1998). Byron states that the traditional model exists in most states of Australia. Under that model, the Attorney-General or Justice Department is the relevant entity which oversees public servants employed by the government.

Legislative Change in Australia

In Queensland, which has a traditional model, both the Chief Justice and the Chief Judge were given statutory authority in 1997 under the Courts Reform Amendment Act to control administrative matters affecting their respective jurisdictions. This strengthened the hierarchical system, with the executive still in control of the budget. The Legislative Scrutiny Committee (LSC) recommended to Parliament that it delay the passage of this proposal and referred to the statement by the Federal Attorney-General that such legislation seemed to be inconsistent with the independence of the judiciary (LSC Report, 1997:26; Williams,1997). Despite this, the amendments became law.

Towards the other end of the continuum to the traditional model is the separate department model which was established in South Australia in 1981. Byron

(1999:151) discusses the reasons for the success of this type of model. One of the most important aspects was that the separate department, known as the Court Services Department, was not responsible for the formulation of government policy but was allowed to function to assist the judiciary in developing and pursuing policies decided by others. There was also outstanding co-operation between the judiciary and departmental management and staff (Church and Sallmann, 1991:38; Byron,1999:151).

It is of some interest to note that the separate department model was adopted in New South Wales for a time in 1991. This was an attempt to deal with the long delays in having cases heard in that state. The changes followed the adoption of aspects of a report by Coopers & Lybrand W.D. Scott (1989). The Coopers & Lybrand report recommended a separate Court Services Department, similar to the original South Australian model but which was still a unit of the executive government (Sallmann, 1989:103). Sallmann was highly critical of the report. His main criticism was that the report failed to provide sufficient detail of the main principles and the structure which was required under the separate department model.

Those other criticisms included:

a) Applying the case flow management principles relevant to civil cases to criminal cases without considering the different needs of the criminal jurisdiction. The requirement in the criminal system was a procedural one rather than a managerial one (Sallmann, 1989:106-107).
b) There was a piece meal approach to the civil jurisdiction without considering how individual reforms would be accommodated into the civil justice system as a whole. The report lacked a strategy plan in this regard. In other words an overall management plan was needed including suggestions about how actions in the civil jurisdiction were being conducted. This again was a related more to procedural matters rather than the type of management in the department (Sallmann, 1989:108-109).
c) The failure to look at other jurisdictions in Australia where measures to minimize delays have been successful (Sallmann, 1989:111). Queensland, for example, has an efficient system under the traditional model.

It seems that the needs and circumstances may differ from state to state (Sallman, 1998:2). Otherwise, why would the separate department model work in South Australia and not in New South Wales? Why would the traditional model work in Queensland and not in New South Wales. Sallmann touched upon the different culture which exists amongst the legal profession in New South Wales (1989:91). It is not intended to look into those historical and cultural factors in this paper. Certainly, the experience in the Federal Court would also point to the leadership question as being crucial for a collegiate approach to court governance. Without decisive leadership, such processes would not succeed. It is not intended in this paper to analyse the types of leaders or the processes which occurred in those courts in order to develop that theory as it relates to different jurisdictions. It is mentioned as one of the variables in implementing policies. To that extent, the issue of leadership is no different to any other large institution in the private or public sector.

South Australia took another step towards the more autonomous model in 1992. That trend had started in the High Court, the Federal Court and the Family Court (Debelle, 1993:246; Sallmann, 1998:2). In those courts, the traditional executive-based system of court administration was replaced by a system which gave control of the administration to the judiciary. The South Australian model in 1992 had two objectives:

a) the establishment of a judicial council independent of control by the executive;
b) conferring on the judicial council the power to provide courts with the administrative facilities and services necessary to function.

One of the features of this model is that the Court Administrator is responsible to the Judicial Council which consists of the Chief Justice of the Supreme Court, the Chief Judge of the District Court, and the Chief Magistrate of the Magistrates' Court and associate members. The judges continue to have committees which contribute to policy issues consistent with the collegiate system of internal court governance (Worthington, 2000). The Court Administrator is responsible, subject to the directions of the judiciary through the Council, for the preparation of the court budget for submission to the Attorney-General. The Attorney-General continues to be

responsible to Parliament for the operation of the Court system. This aspect removed the problem of the judiciary being responsible to Parliament directly (King, 1994; Sallmann, 1998:7).

Politicisation of the Judiciary

It may be inevitable that there will be some politicisation of the role of the judiciary with greater involvement in court administration (Cain, 1994). If there are funding shortages, it may be necessary for the judiciary to "go public". Judges may become more involved in policy matters in a more public way. This approach was recently promoted by the retiring president of the New South Wales Court of Appeal (Mason, 2000:18). It has to be accepted that the movement from the traditional model to the more autonomous model will result in a greater potential for conflict between the judiciary and the executive. This potential for conflict can be found upon an examination of the relations between the Family Court of Australia and the executive represented by the Attorney-General (Chapter 7).

A Comparison with Other Models of Court Governance

The experience in South Australia and New South Wales are examples of two systems which have adopted contrasting models as discussed by Millar & Baar (1981). The delays in the hearing of criminal matters in New South Wales make the autonomous model in South Australia seem efficient (New South Bureau of Crime Statistics and Research, 1999:53). The median delay from committal to outcome in the Supreme Court (NSW), for example, was 507.5 days in 1998-99 according to the New South Wales Bureau. In South Australia, it was 262 days (ABS, 1998-99:24). Queensland (255 days) seems to be marginally more efficient then South Australia and yet it has the same traditional model as New South Wales. In fact, the delays in the processing of trial cases in the District Court of New South Wales are longer than in any other comparable Australian trial court (Weatherburn and Baker, 3000:5). Therefore, it raises the question, is there a need for change in Queensland?

Framework of Performance Indicators

The primary functions of those involved in court administration or non-judicial activities are:

- manage court facilities and staff, including buildings, court security and ancillary services such as registry, libraries and transcription services;
- provide case management services, including client information, scheduling and case flow management; and
- enforce court orders through the Sheriff's Department or a similar mechanism (Steering Committee for the Review of Commmonwealth/State Service Provision (SCRCSSP) Report on Government Services, 1999:467)

Not all of these functions are relevant for present purposes. The same report provided the following objectives for court administration which is convenient to adopt for the purposes of discussion:

- to be open and accessible;
- to process matters in an expeditious and timely manner;
- to provide due process and equal protection before the law; and

- to be independent yet publicly accountable for performance (SCRCSSP, 1999:478).

The Report (1999:479) provided a diagram which made reference to various indicators including client satisfaction, average court fees per lodgment, case completion times, adjournments and costs per case. It must be remembered that many of these issues were in the public arena well before the Parker Report in 1998 (Sallmann, 1991). Sallmann quoted from a United States Commission report (1989:1):

> Court reform has focused on the structures and machinery of the courts, not their performance, and on the needs of judges and court personnel, instead of directly on the needs of those served by the courts.

Measuring the Satisfaction of Stakeholders

In early 1999, the District Court of Queensland was asked to respond to the "Guidelines – Preparing the Ministerial Portfolio Statement". This was a Treasury document which set certain output goals for the courts. In effect the Guidelines set a 80% satisfaction requirement for clients, judges and others using the courts. The response by the Court was critical of choosing a desirable level without any basis. The response by the Court also attempted to provide some input into the nature of performance indicators upon which the efficiency and effectiveness of the Court could be measured. In a more recent report of SCRCSSP (2000:707), there is a reference for the first time to 'Effectiveness' and 'Overall satisfaction with court administration'. The state courts which provided figures were Western Australia and New South Wales. In the Federal Jurisdiction, the Family Court provided similar figures. Unfortunately, the figures in New South Wales related to the lower courts. The level of satisfaction was 74% in relation to 'waiting time for service'. The satisfaction levels in Western Australia and the Family Court were as follows:

	Satisfied	*Neither satisfied nor dissatisfied*	*Dissatisfied*
Western Australia			
Practitioners:	62.4	23.1	14.5
Litigants:	68.9	10.1	21

Family Court	*Agree*
"The waiting areas in the court feel safe"	81.2
"There are adequate facilities for people who have a disability"	74.8
"The information you got was easy to understand"	73.9

Although these figures are the first attempt to measure the satisfaction of some users or stakeholders of the court system, they reveal very little and of course highlight the nature of the non-standard reviews undertaken in different jurisdictions. The Family Court figures make no mention about delay in having one's case heard or delays in judgment writing. The latter issues would be relevant to the general question about satisfaction as asked in Western Australia. A more standardised system of keeping statistics across all jurisdictions would seem to be necessary before the figures could be regarded as helpful for future planning.

A more disciplined approach was adopted in Queensland in relation to juries. A survey of Queensland jurors took place in December 1999 (Wilson, 2000) at the instigation of the Justice Department. This survey included the views of 491 jurors in 14 different court locations in the state including Brisbane. Given that some 8428 jurors were summoned in Brisbane alone in the last twelve (12) months (Hansen, 2000), obviously the survey covers a small numerical sample but the geographical spread is significant. They were selected at random and so the small number may be considered as representative. It is a starting point particularly given the paucity of statistics in this area. The rating used was 1 (poor) to 5 (excellent) in relation to views:

General Information provided	4.3-4.5
Quality of Facilities and Services	3.2-3.6
Service from Court Staff	4.5-4.6
Empanelment on Jury	4.1-4.2
Trial Information	3.8-4.2
Overall satisfaction as a juror	89.6

When one considers that the members of jury panels represent the community, then it is fair to say that there is a high level of satisfaction in relation to the jury process and moreover their contact with the Queensland courts. The survey also noted

comments from jurors on suggested improvements. Some 60.6% were interested in some form of counselling or discussion as serving on the jury did cause some stress for 45.2%. It was clear from the summary of findings that the areas of concern related to facilities and arrangements rather then the process (Wilson, 2000:1-8).

The Parker Report (1998:162) made the following finding:

> "24. Australian courts generally fail to satisfy an elementary requirement of a consumer-conscious organisation: to have and make known that they have a clear and responsible system for dealing with complaints".

It may be that if litigants were interviewed the response may be dependent upon the result achieved rather than the efficiency or effectiveness of the court process. In recent times, procedures for dealing with complaints and surveys have been put in place. It is of some significance to observe the different approaches of the New South Wales system and the Queensland system which operate under the traditional model of court governance. In New South Wales, complaints against judges may be made either through the Judicial Commission or the Independent Commission Against Corruption. The Judicial Officers Act 1986 (NSW) contains the provisions relating to the Judicial Commission. If the matter is serious enough, it can be referred to Parliament. There were no serious complaints disposed of in 1996-7. There were some 116 other complaints.

The type of complaint which seems to cause some problems for the judiciary is the delay in delivering judgments. A reserved judgments protocol was adopted by the Supreme Court of Queensland in April, 1998. It is a requirement of that protocol that judgments be delivered within three months after the conclusion of the hearing. The list of outstanding judgments is circulated and so there is at least some peer pressure to complete any outstanding judgments. A similar period was adopted in the District Court by the Strategic Plan.

In 1998, Justice Vince Bruce, who was then a member of the New South Wales Supreme Court bench, resisted attempts by Parliament to remove him for delay in delivering judgments (Lagan, 2000: 5). It was reported by Lagan also that another Supreme Court Judge, Justice John Dowd, was referred to the Judicial Commission

this year for a delay of 15 months between hearing the case and judgment. It was a complaint lodged by the plaintiff. It should be noted that three (3) members "with high standing in the community" can be nominated by the minister after consultation with the Chief Justice to sit on the Commission. It seems that this aspect has appealed to the Irish legislature (Denham, 2000:56). In addition to dealing with complaints, one of the other major functions of the Judicial Commission is to organise and supervise an appropriate scheme for the continuing education and training of judicial officers.

In Queensland, the position is less formal. There is no formalised complaints procedure but a Charter which is in the registry advising persons wishing to lodge complaints to write to the Court Administrator. When appropriate, the Court Administrator refers complaints to the Chief Justice or the Chief Judge. A "complaints box" is made available in each registry. There is also provision in the Criminal Justice Act !989 for allegations of misconduct by judges to be investigated (ss.32,33). That may include criminal offences or being dishonest or impartial in the discharge of judicial duties.

In South Australia there is a more detailed set of instructions given to persons who wish to complain. There is also a form entitled 'Tell us what you think". Otherwise, it has a similar approach to the Queensland system.

It is not known whether such complaints procedure or surveys will produce any tangible results. One of the stakeholders in the court system is the jury. Dozens of jurors attend the courts each day. The survey which was taken of jurors in Queensland in order to determine the level of satisfaction of jurors who serve on trials is a good indicator. The overall satisfaction of jurors who have been exposed to the system in Queensland is high. There has been a recognition in recent years that for the courts to operate effectively, the support of the community is necessary.

Both in Queensland and South Australia, special recognition has been given to the needs of the Aboriginal and Torres Strait Islanders. Queensland has trialed two remote community magistrates' courts which are constituted by two indigenous persons being Justices of the Peace. At the Port Adelaide Magistrates' Court, the

magistrate sits in the body of the court with a respected elder of the Aboriginal community (SCRCSSP, 2000:8.2). In Queensland and New South Wales, drug courts have been set up to deal with non-violent offenders who are drug dependent. These changes are recognised as necessary whatever the model of court governance. They are in response to changing community needs. Other examples are the availability of videoconferencing facilities in courts in Queensland and South Australia. The latter allows evidence to be given by witnesses who could not otherwise attend due to time factors or expense. It has facilitated easier access to justice for those involved in the court process and other members of the community.

The response in different states using different models of court governance by court administrators seems to make the nature of the court model irrelevant. The ability of the courts and moreover of the judiciary to respond to needed changes revolves around the accountability issue and who decides how the resources can be distributed. The ability to be flexible is greater in an autonomous model where the judiciary are in control of expenditure.

Costs per lodgment or affordability of the court process

These fees are relevant only to civil cases. It seems that South Australia charges less than Queensland or New South Wales for filing documents. What is significant is the level of court fees as a proportion of total civil expenditure. The estimated average total court fees is the total court income from fees charged in the civil jurisdiction divided by the number of lodgments handled by the court. It includes filing, sitting hearing and deposition fees but excludes transcript fees. The average expenditure per civil case is the total costs of the administration services provided to civil matters divided by the total number of civil files handled. Total costs include salaries, sheriff expenses, juror costs, accommodation costs, library services, information technology, departmental overheads, and court operating expenses (SCRCSSP, 2000: Table 8A.26). In 1997-8, the percentage of court fees as a proportion of total civil expenditure in Queensland is 58%. In New South Wales it is 54%. In South Australia, it is 18%. In 1998-90, the figures increased respectively to 71%, 55% and 28% (SCRCSSP, 2000:Table 8.10). When it comes to looking at the unit costs in 1997-1998, that is per case, the South Australian District Court had the

highest at $5805 for criminal cases and $3010 for civil cases (SCRCSSP, 1999:491 Figure 7.13). This figure does not include professional fees. Another comparison is the expenditure less in-house revenue per lodgment for 1998-99 was (SCRCSSP, 2000: Table 8A.19):

District Court	*NSW*	*QLD*	*SA*
Criminal	$3522	$1772	$7835
Civil	1604	1097	2698
Supreme Court			
Criminal	14180	5540	8772
Civil	4290	1452	5224

The qualifications to the comparisons are in the footnotes. The average expenditure per criminal case is the total costs of the administration services divided by the total number of primary criminal matters handled. Total costs include salaries, sheriff expenses, juror costs, net court reporting costs, accommodation costs, net cost of library services, information technology, departmental overheads and court operating expenses (SCRCSSP, 2000: Table 8A.2).

If one applies the “user pay” principle, then South Australia is lagging behind quite considerably. That principle is one of the features of the new managerialism previously mentioned. Also, it is the most expensive District Court in which to litigate. The Courts Authority in South Australia may not see its role as a revenue collecting agency. Parliament has the ultimate responsibility to provide adequate funding. The difference between the models is that under the autonomous model the judiciary or the Courts Authority which is controlled by the judiciary has to be accountable for the expenditure. If the Department or the minister has more overall responsibility for income and expenditure, as is the position in Queensland, then court charges may be of greater significance as part as administering an efficient department. Under both systems, the minister has ultimate responsibility.

Although there are some differences in the method of calculation, for example, whether payroll tax is included, the figures do provide a broad basis for comparison. One other area which is of interest is the average annual growth in real court

administration expenditure less in house revenue between 1994 and 1999. South Australia leads Queensland by 1% and once again New South Wales is in between (SCRCSSP, 2000: Figure 8.5).

Timeliness

This concept is defined as follows (SCRCSSP, 2000: Table 7A.20):

> The percentage of total criminal cases completed that were completed within 6; 6-12; 12-18; and greater than 18 months of lodgment. Cases were sorted according to the time taken to finalise after lodgment.the percentage of total civil cases completed that were completed within 6; 6-12; 12-18; and greater than 18 months of lodgment. Cases were sorted according to the time taken to finalise after lodgment.

A similar methodology is adopted for defended civil cases. In the District Courts of Queensland and South Australia, some 70% and 72% respectively of criminal cases are finalised within six months. Over twelve months the percentages are 93% and 95% respectively. In the Supreme Court of Queensland some 93% of cases are finalised within 12 months and in South Australia it is 89% (SCRCSSP, 2000: Table 8.9). The real problem is in New South Wales where the figures over twelve months for the District and Supreme Courts are 67% and 22% respectively. The position in New South Wales was the subject of adverse comment recently (Murphy, 2000:37). The median delay was reported at 72.7 weeks per case for the period 1998-99 for criminal matters.

In civil matters, no statistics have been provided for South Australia for the 1998-99 period. However, if one looks back at the 1997-98 period (SCRCSSP, 1999: Table 7.7) the following comparisons can be made of non-appeal matters finalised at least in respect of the Supreme Court:

	NSW	*QLD*	*SA*
<6 months	34%	35%	10%
6-12 months	9%	7%	20%

Figure 8.12 is graph of criminal matters duration, District/County and Supreme Courts, 1997-1998 (SCRCSSP, 2000).

In both New South Wales and Queensland, the finalisation of civil matters within 12 months is 43% and 42% respectively. This figure in relation to Queensland seems to conflict with internal figures (District Court Statistics, June 2000). The internal figure is a disposal rate of 97% of civil cases within six months of the case being ready. The difference may be explained by the definition of 'timeliness' by the SCRCSSP which refers to the lodgment as the relevant date. This would mean the date that originating proceedings are commenced. A civil case is 'ready' in Queensland when the certificate of readiness is filed and the matter is entered for trial. The file may have been opened for many months or even years prior to the certificate being filed. This example does show a need for standardisation of the manner in which figures are kept. It is not explained in the SCRCSSP publication why South Australia did not provide figures for the 1998-99 period. The reason for this is that the figures which had been provided in the previous year were not standardised with the data provided by other jurisdictions and rectification took longer than the time frame allowed by the Productivity Commission for supply of the figures (Worthington, 2000). Recently, in New South Wales, there has been an attempt to standardise the collection of statistical data (Glanfield and Wright, 2000).

There are some comments which need to be made in comparing New South Wales and Queensland on one hand and Queensland and South Australia on the other. Queensland is a large area. Circuit courts by the District Court take up some 330 weeks per year (Queensland Law Calender, 2000). The cost of providing judicial services to rural communities can be a significant part of the budget for court administration (SCRCSSP, 2000: 8.13). In South Australia, the number is about 50 weeks per annum and on average, judges can expect a circuit every 18 months or so (Worthington, 2000). Also, in absolute numbers, Queensland deals with a larger number of civil cases than South Australia but less than New South Wales. The following figures reveal for 1998-99 (SCRCSSP, 2000: Table 8A.12):

	NSW	*QLD*	*SA*
District Court (1998-99)			
Criminal	3385 (52)	8564 (244)	1147 (60)
Civil	12783 (196)	2712 (77)	na
The figures for 1997-98 were:			
Criminal	3703 (56)	6725 (192)	1150 (60)
Civil	12211 (187)	1400 (40)	3010 (143)
Supreme Court (1998-99)			
Criminal	117 (2.7)	813 (42)	167 (11)
Civil	5561 (123)	994 (52)	na
The figures for 1997-98 were:			
Criminal	92 (2)	811 (42)	239 (17)
Civil	10610 (235)	1015 (53)	104 (6)

These figures relate to the non-appeal matters finalised in each period. The figures in brackets are the average output per judicial officer and have been calculated by the writer. It reveals that there are major difference in the numbers of matters dealt with in the different jurisdictions in each state. However, these absolute numbers must be considered in relation to other performance indicators already discussed. In fact, in South Australia there are 19 judges and two masters in the District Court and 14 justices and three masters in the Supreme Court. In Queensland, the number of judges is 35 and the number of justices is 19 excluding Court of Appeal. In New South Wales, the number of judges in the District Court is 65 and in the Supreme Court there are 39 justices and 2 masters (Bar Association of Queensland, 2000). The figures are approximate as there were changes to personnel including acting appointments. Not all judges may sit in each jurisdiction but it is an attempt to look at the average output of judges wherever they may be sitting. As a matter of simple arithmetic, and taking into account the reservations about the statistics referred to previously, it is clear that the output of the judiciary in Queensland is clearly greater at least in the criminal jurisdiction to that in South Australia. The average output per judge has been calculated on the basis of the total number of matters divided by the number of judicial officers in each jurisdiction. The masters have not been included in the division of criminal work. The work of the masters is usually limited to the civil jurisdiction Quantitative assessment by itself is not necessarily the only indicator for

effectiveness or output.. Other factors have to be looked at. The attempt to look at average output can be misleading as not all judges sit in each jurisdiction throughout the year. It highlights the dangers of relying on non-standardised statistics. It also highlights the inherent problems of relying on performance indicators to measure the efficiency of a court when the length of cases or the number of judges available in a particular jurisdiction can distort the output.

Although the minister is directly responsible for the court system, both in New South Wales and Queensland, the output of each differs considerably. In South Australia, where the budget is administered by the judiciary, the level of output appears to be less productive than Queensland. The Courts' Authority has more direct responsibility for the running of the courts, but the results do not reflect a more efficient system.

It is acknowledged that there are aspects of benchmarking and productivity which may impinge on the principle of judicial independence. For example, it was suggested by the Commonwealth Judges Remuneration Tribunal that it would consider productivity and performance when it considered judicial salaries in 2001. The Secretary of the Attorney-General's Department reminded the Tribunal that it would be unconstitutional to do so at least in respect of Federal judges (O'Ryan and Lansdsell, 2000:43). It would also offend the general principle relevant to state courts that the judiciary should have secure tenure and that salaries be determined without regard to executive favour or displeasure.

The balancing of the two aspects of judicial independence and judicial accountability has been put differently by Chief Justice Spigelman of the New South Wales Supreme Court:

> I do not wish in any way to be understood to doubt the importance of courts accepting accountability for the use to which they put public funds of which they are the custodian. Nevertheless, there is a tendency to equate courts with bureaucracies in both the approach taken and the terminology employed with respect to these matters. This is a fundamentally pernicious development which ought to be

> resisted. The courts perform a core function of government: the administration of justice according to law… (O'Ryan and Lansdell, 2000:45).

The remarks of the Chief Justice seem to be apposite, but perhaps somewhat defensive. That view is not shared by others including Chief Justice Nicholson (1993:424; Murphy: 2000). Certainly the statistics referred to previously paint a somewhat poor picture not only of the delays in the New South Wales court system, but demonstrate the high costs of litigating there. Murphy (2000:37) certainly touched upon the problems in the criminal courts in New South Wales in an article entitled "Lies, lies and damned statistics on performance"! Murphy also commented that Chief Justice Spigelman might be embarrassed by those figures. The Family Court has suffered similar problems in hearing defended cases. There are delays of up to two years in Brisbane. Federal Magistrates have been appointed to deal with this backlog. This could be seen as weakening the administrative structure and standing of the Family Court. It will certainly impact on its budget allocation. The earlier statement of Chief Justice Nicholson (1993:424) could be seen as somewhat prophetic:

Efficiency

> The quality of independence given to the judicial branch is unique in the political spectrum and in turn requires of the branch that it be accountable in the sense that it perform its functions efficiently. A judicial branch which is (for example) years behind in disposal of its caseload may be independent but it has no political relevance…The principle of judicial independence requires of the judicial branch that it be efficient in the dispatch of its business for without efficiency the preservation of public confidence necessary to the existence of the principle will not occur. Public confidence is diminished by delay in the administration of justice.

And so, even though the Family Court continues to be self managed, it cannot be said that it is necessarily efficient and effective in so far as its core business is concerned when compared with other jurisdictions in other states. Expenditure per

lodgment among family courts was $662.00 for the Family Court of Western Australia and $965.00 for the Family Court of Australia (SCRCSSP, 2000: Table 8.8). The Family Court of Australia has a history of lengthy delays in getting cases heard (Lane, 2000:3). The perceived benefits of having a self-managed autonomous court seem to be outweighed by the severe criticism which it has attracted and moreover the effect it will have on public confidence.

Other Jurisdictions

In Singapore, the Chief Justice appoints judicial officers and court administrators who have the necessary knowledge and technological skills to keep abreast of changes. These persons are responsible to the Chief Justice and the judges (The Singapore Judiciary Annual Report, 1997:14-15,102). The Court claims that the emphasis on technology allows the court "to exploit the benefits of modern technology to increase productivity, improve efficiency and enhance the quality of services offered" (Annual Report, 1997:7).

A similar approach has been adopted in Hong Kong (Tai, 1997:82-3). The philosophy there is to use management information to provide a yardstick to measure budgets and performance. The judiciary are expected to work in partnership with court administrators to achieve the common goal. Serving the community requires identification of the public interest and to act accordingly. The view was expressed that "the Judiciary and those involved in the judicial process are there simply and only to serve the community" (Tai, 1997:84). The four principles which Tai refers to as a means of accomplishing the task are being accountable, living within the budget, managing for performance and developing a culture of service. Living within the budget has not been a problem in Australia for the courts (Kellam, 2000; Blanch, 2000; Worthington, 2000). The Family Court has been the exception.

A culture of service will go hand in hand with a proper response to the complaints made. The requirement that the judiciary manage for performance is more urgent in the self managed model as performance is related to budget allocation. The accountability of the judiciary is heightened where the power to spend available monies vests in the judiciary. The one-line budget of the self-managed or

autonomous places a higher onus on the judiciary to meet the community demands from available funds. This may require court administrators to provide more expert advice to the judiciary so that the judges can be more proactive in managing the courts, particularly the financial aspects as is the case in Singapore and Hong Kong.

Other Methods of Determining Efficiency and Effectiveness

Judiciary Administrator

In Hong Kong, a judiciary administrator was appointed to assist the Chief Justice in the overall administration of the judiciary and to be responsible for the proper administration of the courts. The position also requires the judiciary administrator to be responsible for "planning, securing and managing the judiciary's human resources and for planning and developing systems and other measures which will help the judiciary to enhance its performance" (Lai, 1997:82).

Presently, in both Queensland and New South Wales, the court administrator is appointed by the Department and responsible to the Department head. In South Australia, the court administrator is responsible to the Courts Authority which is controlled by the judiciary. In order to effect changes which involve the expenditure of money, the court administrator appointed by the Department has to consider the budget restraints imposed by the Department. If the judiciary has control of the purse strings, rather than operate through the court administrator who passes on their requests, there may be more flexibility in the way monies are spent. For example, facilities were made available for babies and their mothers in the Supreme and District Courts in Brisbane after representations by the Strategic Planning and Budget Committee of the District Court. There was an urgent need for this as well as for voice amplifiers for witnesses. It has been only recently that voice amplifiers have been made available in most courts in the state. This was somewhat surprising as judges had been asking for them for some years. Under a more flexible system, a decision could have been made by the judges to provide necessary funding. In seeking these changes, the judiciary in Queensland were only being responsive to the perceived needs of the court users. The unavailability of funds prevented an earlier solution to the problem. The flexibility for managing funds in a self managed system may have avoided this delay.

Media Officer

The appointment of such an officer would help to develop a culture of service and better communications with the community. The recent advertisement for a media officer to the courts in Queensland is an example of confused thinking on this issue. The media officer would be responsible to the Director-General of the Department of Justice and Attorney-General, the Chief Justice, the Chief Judge and the Director of Prosecutions. Media officers throughout Australia have been appointed to assist the judiciary in dealing with community issues and to provide timely information in relation to cases or related matters. A media officer responsible to the judiciary may allow the media to report more accurately on matters involving the courts. The judiciary would present their views directly to the public and so encourage the perception would be that they are being more responsive or accountable.

It remains to be seen what type of press release would be made by the appointee if there is an allegation of delays in the Queensland courts due to a lack of resources for the prosecution or the judiciary. Would the Director-General of the Justice Department allow a press release critical of her Department? The idea of an appointment of a media officer for the courts was to assist the judiciary to make information available and to explain its position to the public particularly on controversial cases (Nicholson, 1993:424; Gleeson, 1999:71-2).). In some courts, a summary of the judgment in the case is issued by the media officer to the press. A decision may criticise the Director of Prosecutions. The usefulness of such an appointment to the judiciary is questionable if the press officer is responsible to the head of the Department of Justice. The position of the Attorney-Generals and their unwillingness to defend the judiciary has been discussed. This recent advertisement is a clear example of how the traditional system has failed to adapt to the changing expectations of the community for an open and transparent justice system whereby the community can be provided in a direct way with information concerning how the courts operate. The nature of this proposed appointment was the subject of adverse criticism at a recent conference of the Australian Institute of Judicial Administration at Darwin (Sallmann, 2000; Glanfield, 2000).

Case Management

When one looks at the various discussions about making the courts more efficient and providing easier access, the topic of case management looms large (Sallmann, 1991:197; Tai, 1997:89; Gleeson, 1999:71; Denham, 2000:13; Zander, 2000; Weatherburn and Baker, 2000). Chief Justice Gleeson stated that there were three factors which determine how long a court takes to dispose of its cases. First, the volume of cases which come before it. Second, the resources which are available to the court. And third, the method by which the court goes about handling and deciding cases. It is the last matter which involves case management. Chief Justice Gleeson correctly pointed out that the first and second matters are outside the control of the court. Even in the autonomous, self-managed model Parliament appropriates court funding. They are matters for the executive including the appointment of additional judges. In relation to the third aspect, the practices and procedures involved are determined by the judges usually after consulting the public servants who staff the registry. More recently, funding for computer technology has assumed greater importance as part of efficient case management (Gleeson, 1999:71-2).

Of course, not all case management systems work to produce greater efficiency and effectiveness. The Commercial Causes jurisdiction of the Supreme Court of Queensland seemed to fall into disuse some years ago even though it was seen originally as a means of fast tracking the more important and complex commercial cases. An involved practice direction and the apparent non-availability of judges to hear matters caused a re-thinking in relation to that jurisdiction. There still exists a list for more complex matters. It is a supervised case list. The procedure is dealt with by the use of spreadsheets and cases are manually tracked. There has been a fall off in the number of cases seeking trial dates in the Supreme Court in recent years. Therefore, there has been less urgency in introducing case management where cases are controlled from the date of commencement (Toogood, 2000). In the District Court, cases of four days or more are case managed only after a trial date has been allotted. The system seems to work efficiently when one looks at the statistics on finalisation of cases. The delay can only occur if the parties fail to comply with time limits as provided for in the rules. Once the matter is ready for trial, a date can be obtained within a few months or earlier if it is urgent.

In England empirical evidence suggests that many of the case management systems proposed will not deliver the benefits hoped for (Zander, 2000:419). A study of case management in the civil jurisdiction of the Supreme Court of New South Wales arrived at some very guarded conclusions as to its effectiveness and cost benefit (Guest and Murphy, 1995:34-37). The experience in New South Wales in more recent times will be the subject of a report by the Justice Research Centre later this year (Eyland, 2000).

South Australia presently operates a similar system of case management in both the District and Supreme Court. Their system is computerised and involves interlocutory hearings before a master. There is status hearing and a settlement conference before full discovery. In the Supreme Court, those conferences are usually before a master, and in the District Court before a judge, or a registrar if it is a personal injuries matter. The Chief Justice or Chief Judge, as relevant, may assign complex actions for management by a judge (Worthington, 2000).

Judicial Benchmarking and Productivity

Limited and generally non-standardised statistical data on the operation of the courts is available in Australia. In New South Wales, there have been recent attempts to remedy the situation but an Australian wide approach is needed (Glanfield and Wright, 2000). Criticism has been made of the proposals to measure the work of the judges. Judicial benchmarking and productivity is one aspect of what is seen as the growing need to make the courts responsible and accountable. Ironically, it was the Family Court of Australia which promoted greater use of statistics and yet when asked to produce certain figures refused to do so. The Family Court is a completely self-managed court. It is said that it has embraced "all of the management, accountability, financial and employment framework changed introduced by successive governments" (O'Ryan and Lansdell, 2000:4).

The philosophical difference between Chief Justice Spigelman's views and those of the authors seem to be that the former does not see the courts as delivering a 'service'. The courts, he says, "perform a core function of government: the

administration of justice according to law" (O'Ryan and Lansdell, 2000:29). What O'Ryan and Lansdell contend is that once benchmarks are in place, often inefficiencies in the court process are revealed. Benchmarking considers the two factors: time and effort. Further, benchmarking and productivity are one aspect of judicial accountability. There has been a reluctance both in the Family Court and elsewhere for this measurement process to occur (O'Ryan and Lansdell, 2000:32). It may be more easily resisted in those courts whose budget allocation is not dependent upon performance as in the traditional model. Where the autonomous courts are competing with other departments for a share of the budget, benchmarking and productivity seem to be an objective way to measure output and thus the need for a certain level of resources.

Discussion and Conclusions

The desire for change can be seen in the context of giving those persons who are to be responsible for the system more power in relation to how the system operates and more particularly, how the money is spent. That not only seems to be fair but is in accord with principles of accountability. It is convenient to look at various aspects of judicial activity in order to discuss the question of accountability.

Judicial Education

It has been said, for example, in relation to judicial education, that the judicial branch must be accountable for its competence (Nicholson, 1993:425). The need for judicial education has been recognized recently both overseas (Denham, 2000:55) and in Australia (Roper, 2000). The skilled application of the law is seen as a basic tenet of judicial independence. Reference has been made to new technology and the electronic communication systems available to the public and the media. There are frequent amendments to legislation and new legislation at all levels. It is necessary to keep the judiciary up to date in order to enhance their ability to understand issues. Their abililty to handle cases efficiently and effectively goes hand in hand with their standing in the community, their impartiality and their independence.

The judiciary cannot be held accountable if the resources are not available for funding judicial education. The judiciary is not empowered to raise monies for those purposes. Under the autonomous system, the proper presentation of budget estimates should provide the necessary basis for funding. In Queensland, it is left to the discretion of the minister who is advised by his department as to how much of the budget is allocated to the courts. In 1999, no funding was available to judges to attend the bi-annual conference for District and County Court judges in Sydney. There is presently an application before the Department for funding for next year's conference in Adelaide. It seems that part of the expenses for attending the conference will be met by the department. In South Australia, funds are provided to meet all reasonable requests to allow judges to attend conferences. If the judiciary are to be accountable then the judges must be educated to keep up to date with current trends and demands.

Internal Court Governance

In Queensland, the heads of the courts have power under legislation to make administrative decisions which are consistent with the efficient and expeditious running of the courts. The extent to which that power is shared with the other judges is another question. A true collegiate system allows decisions to be made by consensus with the head of the court having residual power under the legislation. There is a difference between having power and exercising authority. The head of court was always regarded as being 'the first amongst equals'. Even in South Australia, there is still a strong committee system with a collegiate approach to making administrative decisions. The Council exercises its power to make the final decisions after the members of the various courts have been part of that process. A consultative process allows decisions to be made which have the authority of the members of the court. If the judges are part of that process then they should be accountable for the results of their decisions. Unless the judges are involved in that process, then the result will be a demoralized and inefficient court (Sallmann, 1989:109).

The experience in overseas jurisdictions reveals that if the judges appoint the senior managers of the court and those managers are responsible to the judges then it is more likely that a true partnership will develop. The spirit of co-operation which has permeated the South Australian history of governance can be traced back to the partnership between the judiciary under leadership of Chief Justice King and Chief Justice Doyle, the present Chief Justice. Queensland is beginning to see the benefits of such a process under the present Chief Justice de Jersey. He has reinforced the need for a collegiate approach to court governance. It is difficult to see how the judiciary can be held accountable unless the judges' views are able to be expressed and effect given to their recommendations in a formal way. Under the traditional system the ultimate decision, after consultation with the judiciary, is made by the Minister for Justice and Attorney-General or the Director General of the Department of Justice. Therefore, they should be accountable.

Unfortunately, this is not the public perception. If the public regard the court system as failing then some criticism is made of the judges (Murphy:2000). The judges are

part of that system. In the traditional system, although the judiciary may express their views to the Department, the reality is that there has been a reluctance to 'go public' on the issues of resourcing or adequate personnel when the views of the judiciary have been ignored. At least under the autonomous system, the judiciary are better equipped to deal with that criticism.

The attitude of the government of the day may also influence the path of reform. It may suit the executive government to be able to deal with one person who, under legislation, is responsible for the non-judicial or administrative functions of the court. If the head of the court has consulted with other court stakeholders and the judges in a truly collegiate manner, then that person is more likely to have greater authority and understanding in representing the court. The needs of the community would be more likely to be met if there is a more broadly based decision making process in place. The experience in Ireland is illustrative of an inclusive approach with the community represented in the administration of the courts. Such representation by the community is a recognition by the legislature and the judiciary that community views are important. It is part of the accountability process. The autonomous model in South Australia includes such representation.

Financial Matters

It is a basic requirement in a democratic society that the judiciary is able to make decisions without being influenced by the executive government or interest groups. It is implicit in that statement that adequate resources be provided to the judiciary to meet that standard. Whether it be the traditional or autonomous system funds are provided by either the relevant department or Parliament. The ability of the head of the court to make the necessary submissions and to do so with the authority of his or her office are therefore crucial to the process of obtaining adequate funding. Under the autonomous model, there is legislative provision for the process with the involvement of the Courts Authority which is controlled by the judges and who have professional staff to assist in the budget preparation. Under the traditional system, the Court Administrator may consult with the heads of court. For the financial year ended 30 June, 1999, no submissions were made by the District Court to the Court Administrator. This did not affect the process which the Department of Justice had in

place in any event. Because the Department is ultimately responsible for the court system's operation, it has the ultimate power to determine what resources will be allocated. It also has the flexibility to transfer funds within the Departmental budget which covers other areas apart from the courts.

An example of this was the Courts Modernization Project. Some $5.1 million was redirected from that project to Police Services in the financial year 1999-2000. The discretion to redirect funds under the autonomous model rests with the judges. In Queensland, it rests with the Department and Treasury. Therefore, any delays in the modernization project could not be said to be the fault of the judiciary. Would the public really understand this if their cases are not being processed efficiently in the court registries throughout the state? It is suggested that because the judiciary are an integral part of the court system that some responsibility would be apportioned to them.

Community Interests and the Media

There is no doubt that the media does influence public opinion. Community views can be the result of media coverage or events within particular communities such as a gruesome murder or corruption at the highest levels. There is a recognition in Australia that the community expectations of the courts have not been met in the past (Parker, 1998). Australian courts are endeavouring to come to grips with new information technology changes, the greater awareness of the community to and the need to meet its changing expectations.

In an autonomous system of court governance, the judiciary is responsible for the distribution of the available funds. It allows for more flexibility in meeting community expectations particularly where it is a simple matter of providing the means of better communication. The power to appoint additional judges vests in the executive government. The practice and procedure of the courts including case management is the responsibility of the judiciary. Therefore, there can be different issues which may attract public criticism but in respect of which there is a broad accountability not necessarily involving in a practical sense the judiciary.

Apart from questions of delay in the finalization of cases, “the most important measure of the performance of the court system is the extent to which the public have confidence in its independence, integrity and impartiality” (Gleeson,1999:71). This may be the most important but it is only one set of criteria. There is also the need for an effective and efficient court system that operates in an accountable and transparent manner (Tai, 1997:86). There is a need to identify the public interest or community expectations. The responsibility for planning for the future and implementing changes within the courts rests with not only the judiciary, but the other participants or stakeholders. In recent times, the victims of crime associations have become more effective contributors to the justice process. The rights of children have also been promoted by both governments and concerned interest groups. The way in which children can present their evidence has been the subject of extensive research (Schultz, 2000) resulting in amendments to the relevant laws. These are all matters which the judiciary in Queensland and other participants have contributed in attempting to meet community expectations. The contribution by individual judges was of prime importance in the survey by Schultz. It mattered not what the model of court governance was in this regard.

It may be more relevant that the courts have an adequate complaints procedure which is acted upon and which may be part of the assessment of the courts’ performance. This may be facilitated by community representation on the body which is responsible for administering the court. The new Irish court structure has made provision for wide ranging representation on the Court Council which includes members of the profession and the community.

Judging the Judges

An essential premise of this paper is that the core business of the court system is “to deliver justice according to law to the people of Queensland as expeditiously and economically as it is reasonably practicable to do so” (District Court of Queensland Annual Report 1997-1998:29). In determining which is the most efficient and effective court model, one can have regard to the statistical data, the experience of those involved in administering the various intermediate courts throughout the state and the results of surveys which are available. It is recognised that there is little

agreement on the appropriate measure of court performance (Sallmann, 1991; O'Ryan and Lansdell, 2000, 32). Having regard to those matters, the writer shall attempt to judge the relative strengths and weaknesses of the following courts with a grade of A to C, the latter being the poorest result:

Intermediate Courts	*QLD*	*STH AUST*	*NSW*
Timeliness in Disposition of Cases			
Criminal	A	A	C
Civil	A	C	A
Level of Court fees as a proportion of total civil expenditure	A	C	B
Costs of Administration per unit	A	C	B
Productivity (Cases per judge)			
Criminal	A	C	C
Civil	B	C	A
Expenditure less in house revenue per lodgment			
District Court			
Criminal	A	C	B
Civil	A	C	B
Supreme Court			
Criminal	A	B	C
Civil	A	C	B
Media Officer	C	A	A
Judiciary Officer	C	A	C
Case Management	B	A	C
Complaints Procedure	C	B	A

It can be seen on this assessment that the traditional model seems to be more efficient in relation to the quantitative indicators. The calculation of the average number of cases per judge can be subject to many variables. There is also the need to standardise the statistical data available throughout Australia. There is some subjective assessment in relation to the last four indicators which are of a qualitative nature. If the judiciary is to held accountable for meeting community expectations

then it must able to appoint the necessary staff, to introduce systems of management and to have readily available the necessary resources to do so.

The traditional model has its limitations in that regard. If the judiciary working in those models are to be held acccountable, the principle of accountability needs to be refined to recognise that the judiciary need professional assistance to run the court, persons who are accountable primarily to the judiciary. The judiciary must have the means to communicate its message to the public without being reliant upon the executive or its agents. This will involve more extensive judicial education and particularly an appreciation of the electronic media. These are practical considerations but essential if the equilibrium between judicial independence and judicial accountability is to be kept with the ultimate goal of providing an efficient but just court system.

It cannot be said that the autonomous, self-managed courts have produced a more efficient and effective model of court governance. The output as evidenced by the statistics from South Australia would not support that proposition. This is quite a different proposition to what the outcomes are from a qualitative point of view. The increasing pressure to complete more cases with fewer resource may have a detrimental effect on outcomes (O'Ryan and Lansdell, 2000:31).

The attempt by the Commonwealth Remuneration Tribunal to tie the judicial productivity to judicial salaries shows a complete lack of understanding of the history of the judiciary since the Act of Settlement in 1701. It does, however, cause one to re-appraise whether judicial output is meeting the basic aim of the court process and that is to provide a just, efficient and expeditious court system.

Benchmarking and productivity are useful tools for more effective planning of court resources. They also provide a basis for seeking additional resources when necessary "without compromising the independence and accountability of the judiciary" (O'Ryan and Lansdell, 2000:31). They may also be a firm basis for providing common ground between court administrators and the judiciary, particularly in the traditional system for proper planning of resources. The judiciary may become more accountable. It might also reveal that overworked judges who make mistakes

and take longer to write judgments do not promote a just legal system. Judges should be accountable for incompetence in carrying out their duties. There must be proper processes put in place which allow an assessment of their performance without interfering with their traditional independence. To date no such processes have been readily determined. Future studies may reveal whether it is practicable to do so.

The next step would be then to devise a system to make the judiciary meet the necessary benchmarks. What pressure will be necessary to make the individual judge comply? The limits of accountability of the judiciary have not been determined. The move to more economic rationalism may have serious consequences for the independence of the judiciary unless such measures are adopted by the executive government in partnership with the judiciary. The self-managed or autonomous models are more likely to face the challenge in the first instance. The challenge for courts operating in the traditional manner of court governance is to be accountable within practical limits whilst appreciating that the final decisions are made by the relevant department. Given that background, the quantitative indicators and the available qualitative data would indicate that the Queensland courts are performing better than other jurisdictions in relation to available performance indicators. It is suggested that the figures confirm that the judiciary in Queensland are providing an expeditious and effective justice system in comparison to other jurisdictions. To that extent, the judiciary are being accountable to the community by utilising the available resources in a most efficient manner. In a qualitative sense, there is room for improvement.

These observations are based upon the existing legal system which exists in Queensland. The Queensland system does not provide the informality which is to be found in the Victorian Civil and Administrative Tribunal. The purpose of that Tribunal is “to deliver a modern, accessible, informal, efficient and cost-effective tribunal justice service to all Victorians, while making quality decisions” (Annual Report, 1999-2000:1). Further research in this area may establish that this type of Tribunal could provide more efficient and effective justice for the stakeholders in the Queensland court system, at least in non-criminal areas.

References

Andrews, Hon. Sir Dormer, 2000, interview with writer, Brisbane, June.

Australian Bureau of Statistics 1998-99, *Higher Criminal Courts Australia 4513*.0 (released 24.07.00)

Australian Institute of Judicial Administration 2000*, Public Feedback Mechanisms in Australian Courts* ', Australian Institute of Judicial Administration Inc., Melbourne, June.

Australian newspaper editorial 2000, 'The Family Court must accept more scrutiny', *Australian*, 28th August, p.12.

Bar Association of Queensland 2000, letter to writer, 28th September.

Barnard, A. and Withers, J. 1989, *Financing the Australian Courts*, Australian Institute of Judicial Administration, Melbourne

Beaumont, Justice B. 1999, 'The Self-administering Court: from Principles to Pragmatism', *13th South Pacific Conference*, Samoa, 2 July.

Blanch, Hon. Justice R 2000, letter to writer, 20th June, in response to survey and interview 16th July, Darwin.

Boilermakers' Case, *R v. Kirby; Exparte Boilermakers' Society of Australia (1956)* 94 *Commonwealth Law Reports* 254.

Brennan, Hon. Sir Gerard, 1998, 'The State of the Judicature', *Australian Law Journal*, vol. 72, p. 33.

Byron, G. 1998, 'Court Governance: The Owl and the Bureaucrat, *Legal Practice Judges' Forum at the International Bar Association Conference*, Vancouver, Canada 13-18 September.

Cain, J. 1994, 'The Courts and Accountability: A Government Perspective', *Australasian Study of Parliament Group 16th Annual Conference*, Darwin.

Church, T.W. and Sallman, P.A.1991, 'Governing Australia's Courts', *Australian Institute of Judicial Administration Incorporated*, Melbourne.

Coopers & Lybrand W.D. Scott 1989, *Review of the New South Wales Court System*,Sydney.

Corbett, D. 1996, *Australian Public Sector Management*, 2nd ed., Allen & Unwin, Australia.

Debelle, Justice B.M. 1993, 'Current Topics- Judicial Independence', *Australian Law Journal* vol.63, pp.234-248.

de Jersey Hon. Chief Justice P. 2000, interview with writer, 12th September.

Denham,Hon. Justice Susan, 2000, 'The Diamond in a Democracy: An Independent, Accountable Judiciary', 18th *Australian Institute of Judicial Administration Annual Conference,* Darwin*, 14-16th* July.

District Court of Queensland, 2000, *Court Statistics June*.

District Court of Queensland 1996-1998, *Annual Reports*, Department of Justice.

Eyland, A. 2000, Research Officer, Justice Research Centre, NSW, interview with writer 11th June.

Fitzgerald, G.E. 1989, 'Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct', *Report of a Commission of Inquiry,* Government Printer*,* Brisbane.

Fraser, C. 2000, 'Judicial Independence', *New Law Journal*, vol.150, March 24, pp.437-438.

Gallop, Hon. Justice John, 2000, 'The Attorney-General – A Hybrid Character Who Needs to be Versatile', *15th Sir Richard Blackburn Lecture*, Australian Capital Territory, 16th May.

Glanfield, L. 2000, 'Governing the Courts – Issues of Governance Beyond Structure', *18th Australian Institute of Judicial Administration Annual Conference*, Darwin 14-16 July, including the discussion which followed.

Glanfield, L. and Wright, E. 2000, 'Model Key Performance Indicators for NSW Courts', *Justice Research Centre and Law Foundation of NSW*, February.

Gleeson, Hon. M. 1997, 'Maintaining Independence in an Age of Accountability', *Local Courts Conference*, Sydney, 2nd July.

Gleeson, Hon. Chief Justice M. 1999, 'The State of the Judicature', *Law Institute Journal*, December, pp.67-74.

Gleeson, Hon.Chief Justice M. 2000, 'Judicial Legitimacy', *Australian Bar Association Conference,* New York, 2nd July*.*

Green, Hon. Chief Justice Sir Guy, 1985, 'The Rationale and Some Aspects of Judicial Independence', *Australian Law Journal*, vol. 59, pp.135-150.

Green, Hon. Chief Justice Sir Guy, 1994, 'Comment on Court Governance Papers' (in relation to conference papers presented by Hon. King C.J. (1994) 3 JJA 133 and Sallmann P., (1994) 4 JJA 5*, Journal of Judicial Administration,* vol.4, pp.5-17

Guest, C. and Murphy, T. 1995, 'Economic Evaluation of Differential Case Management', *Civil Justice Research Centre and Law Foundation of NSW*, November.

Hansen, N. 2000, Sheriff of the Supreme Court of Queensland, interview with writer, 13th September.

Jolly, B. Court Administrator Supreme and District Courts of Queensland, 2000, answer to survey distributed by writer.

Kable v. Director of Prosecutions (1995-1996) 189 *Commonwealth Law Reports* 51.

Kellam, Hon. Justice M. 2000, letter to writer, 8th August, response to survey.

Kenny, Justice Susan, 1998, 'Maintaining Public Confidence in the Judiciary: A Precarious Equilibrium', *Monash University Law Review*, Vol.25, pp.209-224.

King, Chief Justice L.J. 1994, 'A Judiciary Based State Courts Administration- the South Australian Experience', *Journal of Judicial Administration*, vol. 3, pp.133-142.

Lagan, B. 2000, 'Dowd cited over 15 month judgment', *Sydney Morning Herald*, 14th July, p.5.

Lane, B. 2000, 'Family Court Stonewalls Senate', *The Australian*, 28th August, p.3.

Lane, B. 2000, 'Support for vocal judges', *The Australian*, 16th September, p.30.

Mason, Hon. Sir Anthony, 1997, 'No place in a modern democratic society for a supine Judiciary', *Law Society Journal*, vol. 35, No. 2, pp.51-55.

Mason, Hon. Justice Keith, 2000, 'Bench and Bar Dinner', *New South Wales Bar Association Journal*, 12th May, pp.18-24.

McGarvie, Rt. Hon. R.E. 1992, 'The Ways Available to the Judicial Arm of Government to Preserve Judicial Independence' *Journal of Judicial Administration*, vol. 1, p. 236-280.

McPherson Hon. B.H. 1992, 'Structure and Government of Australian Courts', *Journal of Judicial Administration,* vol. 1, pp.167-193.

Millar P. & Baar C. 1981, *Judicial Administration in Canada*, McGill- Queen's University Press, Figure 1 p.56.

Montesquieu, Charles de Secondat, Baron de,1748, 'The Spirit of the Laws', *Book XI,* Encyclopaedia Britannica Inc. 24th Printing, 1982.

Moodie, G.C.1964, *The Government of Great Britain*, University Paperback, Britain.

Murphy, C. 2000, 'Lies,lies and damned statistics on performance', *Australian Financial Review*, 11th August, p.37.

New South Wales Bureau of Crime Statistics and Research 1999*, Key Trends in Crime and Justice* [Online] Available at www.lawlink.nsw.gov.au

Nicholson, Hon. Mr. Jusice R.D. 1993, 'Judicial Independence and Accountability:Can They Co-exist?', *Australian Law Journal*, vol. 67, pp. 404-426.

O'Ryan, Justice S. and Landsell, T. 2000, 'Benchmarking and Productivity for the Judiciary', *Journal of Judicial Administration*, vol. 10 No.1 August, pp.25-49.

Parker, Professor Stephan, 1998, *Courts and the Public*, Australian Institute of Judicial Administration Inc. Victoria.

Parliament of the Commonwealth of Australia 1995, *Funding and Administration of the Family Court of Australia*, *Joint Select Committee on Certain Family Law Issues,* AGPS, Canberra.

Parliament of Queensland 1997, *Report of the Legislative Scrutiny Committee,* Alert Digest No.5 of 1997, Government Printer, pp.22-27.

Roper, C. 2000, 'Judicial Education – A proposal for an Australian Judicial College', 18th *Australian Institute of Judicial Administration Annual Conference*, Darwin, 14th-16th July.

Sallmann, P. 1989, 'Tilting at Windmills and Sacred Cows: A Commentary on the Coopers & Lybrand W. D. Scott Review of the New South Wales court System: An Antidote to Mithradates', *Australian Institute of Judicial Administration Inc. Annual Conference*, Sydney, 18th-20th August.

Sallmann, P. 1989, 'Musings on the Judicial Role in Court and Caseflow Management', *Australian Law Journal*, vol. 63, p.98.

Sallmann, P. 1991, 'Court Performance Standards: An Australian Perspective', *Australian Law Journal*, vol. 65, pp. 195-204.

Sallmann P. 1998, 'Courts Governance: Whither Queensland?', *Conference of the Judges of the District Court of Queensland*, Brisbane, 8th April.

Sallmann, P. and Wright, R.T. 2000, *Going to Court – A Discussion Paper on Civil Justice in Victoria*, Department of Justice, Civil Justice Review Project, April.

Schultz, K. 2000, *Queensland Judicial Perspectives The Receipt of Child Witnesses Evidence in Criminal Proceedings – A Survey*, Australian Law Council Foundation, April.

Smith, B. 1998, 'Judges learn management', *Australian Financial Review*, 20th November, p.24.

Steering Committee for the Review of Commonwealth/State Service Provision (SCRCSSP) 1999, *Report on Government Services*, AusInfo*.,* Canberra.

Steering Committee for the Review of Commonwealth/State Service Provision (SCRCSSP) 2000, *Report on Government Services*, AusInfo., Canberra.

Shetreet, C and Deschenes, J. 1985, *Judicial Independence: The Contemporary Debate*, Martinus Nijhoff Publishers, the Netherlands.

Shetreet S. 1987, 'The Limits of Judicial Accountability: A Hard Look at the Judicial Officers Act 1986', *University of New South Wales Law Journal*, vol. 10, pp. 4-16.

Tai, A. 1997, 'Managing the Work of the Courts', *Australian Institute of Judicial Administration Asia-Pacific Courts Conference*, Sydney, Austscript Infodisc pp. 82-91.

Toogood, K. Registrar Supreme Court of Queensland, 2000, interview with writer, 22nd September.

United States Commission on Trial Court Performance Standards, 1989, *Tentative Trial Court Performance Standards*, National Center for State Courts and the Bureau of Justice Assistance.

Vanderbilt, J. 1949, *Minimum Standards of Judicial Administration*, Report of the Section of Judicial Administration (U.S.A.) referred to by Hill,L. (1995), *Constitutional and Managerial Principles of Judicial Court Governance: Implementation in the State of Victoria*, thesis, June.

Victorian Civil and Administrative Tribunal 2000, *Annual Report*.

Weatherburn, D. and Baker, J. 2000, 'Delays in Trial Case Processing: An empirical analysis of delay in the New South District Criminal Court', *Journal of Judicial Administration*, vol. 10 No.1, August, pp.5-24.

White, Judge T. 2000, 'Responsible Government: The Implications of Judicial Independence for Policy and Practice in the Provincial Courts of Canada', [Online] Available at: http://wwv.adjnet.org/capij/white.htm 4th February.

Whitton, E. 1989, *The Hillbilly Dictator*, ABC Enterprises, Crows Nest, NSW.

Williams, Hon. D. 1997, 'Judicial Independence, the Courts and the Community', *Australia Institute of Judicial Administration*, Adelaide, 7th February.

Williams, Hon. D. 1998, 'Judicial Independence and the High Court', *University of Western Australian Law Review*, vol. 27, July, p.140-145..

Williams, Hon.D. 1998, 'Judicial Independence', *Journal Law Society*, vol. 36(3), pp.50-51.

Wilson, D. 2000*, Main Report Survey of Queensland Jurors, December, 1999*, prepared by Deborah Wilson Consulting Services Pty. Ltd. for the Queensland Justice Department.

Witham J. 1997, ‘Making A Court Service Happen – The South Australian Experience: Developing a Managerial and Leadership Culture in the Courts’, *Australian Judicial Administration Conference*, Dublin.

Worthington, T. Chief Judge of South Australia, 2000, interview with writer 15th September.

Zander, M. 2000, ‘What On Earth Is Lord Justice Auld Supposed To Do?’, *Criminal Law Review*, June, pp.419-435.