



PERFORMANCE EXAMINATION

Order in the Court

Management of the Magistrates' Court

REPORT NO 8 – NOVEMBER 1996



A OFFICE OF THE **G**ENERAL
AUDITOR
WESTERN AUSTRALIA

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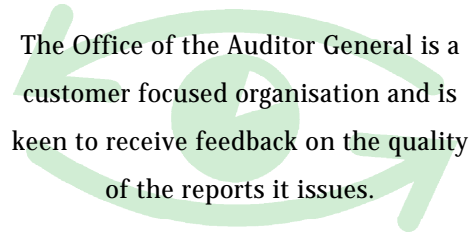
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**THE SPEAKER
LEGISLATIVE ASSEMBLY**

**THE PRESIDENT
LEGISLATIVE COUNCIL**

**PERFORMANCE EXAMINATION — ORDER IN THE COURT – Management of the
Magistrates' Court**

This Report has been prepared consequent to examinations conducted under section 80 of the Financial Administration and Audit Act 1985 for submission to Parliament under the provisions of section 95 of the Act.

Performance examinations are an integral part of my Office's overall Performance Auditing Program and seek to provide Parliament with assessments of the effectiveness and efficiency of public sector programs and activities, thereby identifying opportunities for improved performance.

The information provided through this approach will, I am sure, assist Parliament in better evaluating agency performance and enhance Parliamentary decision making to the benefit of all Western Australians.

A handwritten signature in blue ink, appearing to read 'D D R Pearson'.

**D D R PEARSON
AUDITOR GENERAL**

November 12, 1996

Contents

Executive Summary	1
Background	1
Overall Findings and Conclusions	1
Summary of Recommendations	3
Introduction	5
Background	5
Examination Focus and Approach	8
Court Access	9
Conclusions	9
Background	9
Listing Interval	10
Utilisation of Courts Maintained by the Ministry of Justice	12
Utilisation of Courts Maintained by the Police Service	16
Recommendations	19
Court Administration	20
Conclusions	20
Background	20
Court Listings	21
Court of Petty Sessions' Listings	21
Local Court Listings	22
Deliberate Overbooking of the Court	22
Trial Transfer	24
Trial Start Time	25
Increasing Certainty of Trials Proceeding	25
Court of Petty Sessions	26
Local Court	27
Reduce the Need for Court Appearance	29
Fines Enforcement	29
Use of Affidavits in Ex parte Hearings	30
Balancing Court Fees and Court Access	31
Magistrates' Court Expenditure and Revenue Collection	31
Recommendations	33

Contents

Management Information	34
Conclusions	34
Background	34
Findings	34
Recommendations	36
Glossary of Terms	37
Performance Examination Reports	38

Executive Summary

Background

The Magistrates' Court is a generic term used to refer to the operations of the Court of Petty Sessions, which handles criminal matters, and the Local Court, which handles civil matters. These Courts are situated in 123 locations of which 88 are maintained by the Police.

In 1995–96, the Magistrates' Court dealt with 97 per cent (217 400 matters) of all civil and criminal matters. The remaining matters were dealt with by the superior courts.

Since 1991, significant changes have been made to the Magistrates' Court's jurisdiction to alleviate backlogs in the Supreme and District Courts. These changes have had considerable effect on Magistrates' Court workload. Additional pressure on the Court will arise from further jurisdictional changes that occurred in October 1996.

Court Administration, a sub program of the Ministry of Justice, assists Magistrates by providing essential logistic support. This support is integral to court efficiency.

The examination addressed key components of Magistrates' Court management, including:

- ◆ trial waiting times;
- ◆ location of the Courts;
- ◆ utilisation; and
- ◆ court fees.

Overall Findings and Conclusions

Waiting Time

The examination found that the waiting time to have a matter heard varies between courts. In the Perth Court of Petty Sessions, waiting time for a matter to be heard has increased to 17 weeks (from five weeks in February, 1994). Waiting times across the six suburban courts varies between six and 16 weeks and between five and 15 weeks across country courts with a resident Magistrate. Key stakeholders advise the optimal waiting time is about nine weeks.

Executive Summary

Utilisation

The examination also found that Magistrates' Courts are not fully utilised. This is due to:

- ◆ a high proportion of last minute trial cancellations and adjournments; and
- ◆ many rural courts dealing with only a small number of matters.

Cancellations and Overbooking

The effect of last minute trial cancellations and adjournments are particularly significant as these timeslots cannot be reallocated. To minimise this effect the Courts are deliberately overbooked. However, the overbooking strategy is only partially effective. For instance:

- ◆ 25 per cent of Perth court rooms still close by 1:00 pm;
- ◆ excessive overbooking of some court rooms requires trial transfers to other rooms without notice. This can affect the ability of the Police to prosecute effectively as each Police prosecutor is assigned a court room; and
- ◆ the Court does not know which matters will be cancelled and therefore schedules most to commence at 10:00 am. As a result, the community, including police, can wait at court for several hours. The cost of police and civilian waiting times has been estimated at \$1 million per year.

Pre-trial Conferences

Pre-trial conferences in the Local Court are another strategy introduced to minimise the effect of last minute trial cancellations. The examination found that 77 per cent of matters have been resolved without trial leading to a reduction in overbooking from 400 per cent to 20 per cent. However, the effectiveness of conferences could be further improved if the parties involved were required to make a bona fide attempt to resolve matters in dispute as is required in the District Court.

Costs and Fees

The examination also looked at court costs and fees. Court fees should balance potentially conflicting principles of User Pay and Access to Justice. If fees are too high, sections of the community would be denied access to justice. If too low, the Court could be overburdened with frivolous matters.

In the Court of Petty Sessions only one fee of \$36.50 is charged irrespective of whether the matter goes to trial or of the duration of the trial. This helps ensure that the defendant's plea is not influenced by concern as to liability for court fees.

However, in the Local Court, three different fees are charged for bringing a matter to trial: a Summons Fee; a Defence Fee; and a Hearing Fee. Analysis found the fees:

- ◆ were equivalent to about 16 per cent of the judicial cost;
- ◆ represented about 10 per cent of the total legal cost of going to trial; and

Executive Summary

- ◆ appear inequitable. For instance, 90 per cent of those paying a Hearing Fee, which is for the pre-trial conference and trial, did not go to trial.

Opportunities

Other opportunities for improved court efficiency and community convenience were identified. These included:

- ◆ greater use of the Fines Enforcement Registry to reduce the number of minor matters going through the courts;
- ◆ use of affidavits for civilian witnesses in less serious matters to shorten ex parte hearings and reduce community waiting times;
- ◆ more efficient implementation of technology; and
- ◆ greater use of technology to increase operational efficiency and provide improved information for court management.

Summary of Recommendations

- ◆ **The Ministry of Justice and the Chief Magistrate should:**
 - ◆ **assess options for reducing listing intervals and making listing intervals between courts more equitable; and**
 - ◆ **consider having more than one scheduled start time for court matters.**
- ◆ **The Ministry of Justice should:**
 - ◆ **develop criteria for court locations;**
 - ◆ **address the deficiencies in court facilities identified in its 1995 internal report into court facilities;**
 - ◆ **advise Government on the need to provide the Local Court with authority to require parties to make a bona fide attempt at pre-trial conference to reach agreement on the matters in dispute;**
 - ◆ **make relevant agencies more aware of the advantages of using the Fines Enforcement Registry;**
 - ◆ **advise Government on the scope for making Local Court fees more equitable and providing the Court with discretion to charge for trial cancellations;**
 - ◆ **consider giving priority to developing the Magistrates' Court computer system; and**

Executive Summary

- ♦ **give appropriate attention to project controls and management information needs whilst developing the Magistrates' Court computer system.**
- ♦ **The Ministry of Justice and the Police Service should:**
 - ♦ **consider options for reducing the impact on prosecutions of trial transfers between courts; and**
 - ♦ **consider making greater use of affidavits for civilian witnesses where legislation permits.**

Introduction

Background

The Magistrates' Court is a generic term that is used to refer to the operations of the Court of Petty Sessions, which deals with criminal matters, and the Local Court, which deals with civil matters. These Courts represent one of three levels of the Western Australian court system that hear criminal and civil matters.

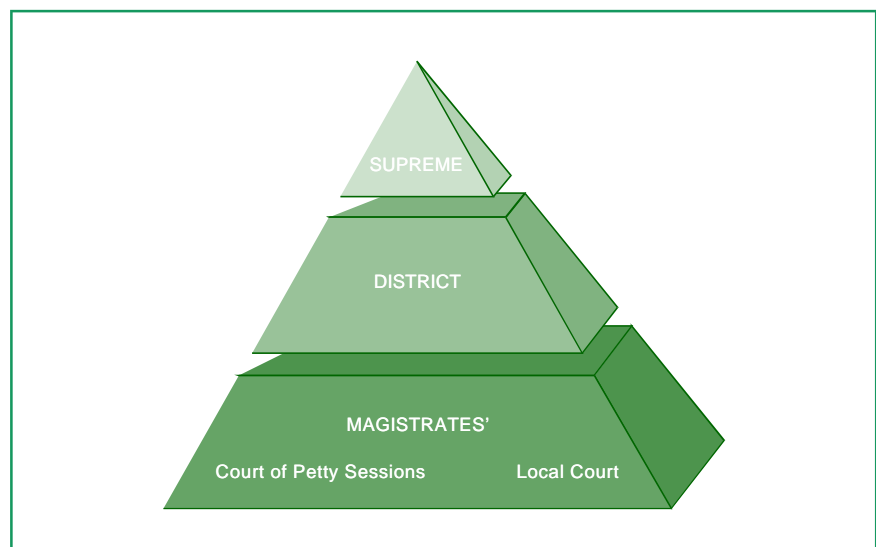


Figure 1: Western Australian criminal and civil courts

The Magistrates' Court deals with over 97 per cent of all civil and criminal matters (refer Table 1). In 1995–96 this involved 217 400 matters. The nature of these matters vary significantly with the majority requiring little court time. For instance, a plea of guilty for a less serious matter may require only five minutes of court time.

Introduction

	Magistrates'	District	Supreme
No of Matters	162 220 Criminal	2 179 Criminal	488 Criminal
1995–96	55 189 Civil	1 406 Civil	450 Civil
Jurisdiction			
<i>Civil</i>	< \$25 000 recovery of debt Small Disputes < \$3 000	< \$250 000 for damages Unlimited for personal injury	Unlimited
<i>Criminal</i>	Matters not required to be heard by superior court	Any indictable offence except those that carry life sentence penalties	Unlimited
<i>Other</i>	Coroner and Workers Compensation		
Structure			
<i>Judicial</i>	1 Chief Magistrate 1 Deputy Chief Magistrate 35 Magistrates (includes 1 Coroner and 1 Workers Compensation) 3 073 Justices of the Peace (Courts of Petty Sessions only)	1 Chief Judge 17 Judges 1 Principal Registrar 2 Registrars 2 Deputy Registrars	1 Chief Justice 14 Judges 3 Masters 1 Principal Registrar
<i>Non Judicial</i>	29 Managing Registrars 213 Registry Staff	1 Executive Officer 26 Registry staff 36 Judicial support 11 Managing Registrars	1 Executive Officer 38 Registry Staff 37 Judicial Support

Table 1: Composition of Western Australian criminal and civil courts

Source: Ministry of Justice

There are 123 Magistrates' Court locations in Western Australia, 28 of which are maintained by the Ministry of Justice. The remaining courts are maintained by the Police Service or Department of Minerals and Energy. Magistrates are permanently based in 13 of the Ministry maintained courts. Other courts are visited routinely or as required.

Introduction

Civil matters only commence in the Local Court if that Court has the jurisdiction to rule on the matter. However, prosecution of all criminal matters commences in the Magistrates' Court, except where the defendant is a juvenile. If the matter is beyond the Magistrates' Court's jurisdiction, the Court can conduct a preliminary hearing to determine whether there is sufficient evidence for a trial. If the Court determines there is sufficient evidence, the matter is then passed onto a higher court. Alternatively, the defendant can elect for the matter to go to a superior court without a preliminary hearing.

Since 1991, changes to the Magistrates' Court jurisdiction has significantly affected the Court's workload. These changes were made to alleviate backlogs in the superior courts. For instance, the Magistrates' Court jurisdiction was increased to enable hearings of burglaries up to \$4 000 and unlawful wounding. Previously these were dealt with by the District Court.

Further changes were made to Magistrates' Court jurisdiction in October 1996. These included, increases in jurisdiction to deal with burglary and fraud matters up to \$10 000 and indecent assault matters previously dealt with by a superior court.

Court Administration

Court Administration is a sub program within the Ministry of Justice. Functions performed by the administration include:

- ◆ court listing process, including helping to maintain the equality of waiting times between courts;
- ◆ identification and implementation of initiatives to improve court efficiency;
- ◆ maintaining court records and enforcement of court orders; and
- ◆ collecting agent for the State Revenue Department and for the Department of Transport.

A number of administrative initiatives to enhance court efficiency have been or are in the process of being implemented, including :

- ◆ use of video conference facilities for routine appearances of defendants in remand;
- ◆ scheduling some matters to start half an hour earlier thereby increasing court usage;
- ◆ creation of the Fines Enforcement Registry;

Introduction

- ◆ benchmarking performance with other States; and
- ◆ reviewing the adequacy of court facilities.

The Magistrates' Court is undergoing significant change. This examination contributes to this by identifying scope for further improvements.

Examination Focus and Approach

The examination focused on the management of the Magistrates' Court in relation to court usage and administrative support provided to Magistrates.

Court usage was assessed as being the extent to which court facilities are used for trials and hearings. Other measures of court activity, such as collection of other agencies' fees, were not included in the assessment of court utilisation.

The examination involved:

- ◆ analysing court records;
- ◆ visiting country and metropolitan courts;
- ◆ interviewing the Chief Magistrate and other Magistrates;
- ◆ interviewing key staff in the Ministry of Justice;
- ◆ interviewing key stakeholders including the Police Service, Aboriginal Legal Service of Western Australia, Legal Aid Commission of Western Australia and representatives of the Law Society of Western Australia; and
- ◆ interviewing court staff from other States by telephone.

The examination did not look at matters relating to the exercising of judicial powers or performing judicial functions. The examination also did not look at Magistrate workload and it should be pointed out that court usage is not an indicator of Magistrate workload.

Court Access

Conclusions

- ◆ ***Waiting times in the Perth Court of Petty Sessions have increased from five weeks to 17 weeks since 1994.***
- ◆ ***Trial waiting times vary between courts by up to 300 per cent.***
- ◆ ***The continued need for some courts is unclear.***
- ◆ ***Poor facilities in some courts may affect the quality of justice.***

Background

Distance to courts and reasonable timeliness in having matters heard are key criteria in assessing community access to justice.

Courts commonly measure timeliness in terms of listing intervals. A listing interval is the interval between date of requesting a trial and the first available trial date. Excessive listing intervals could hinder access to justice whilst short intervals indicate the community has better access to justice.

Magistrates' Courts manage their own listings of scheduled trials. The Courts, except for Perth, usually have one list. The Perth Magistrates' Court, due to the large number of matters handled, has several lists. Trials are scheduled into different lists according to whether the matter is civil or criminal, and if criminal, the expected trial duration (i.e. two hours, one day or multi day).

Access to justice is also affected by the distance the community has to travel to court. Whilst ideally all members of the community should only travel a reasonable distance, community demand and population density temper the application of this rationale.

Court Access

Listing Interval

Court Access

- ◆ Listing Interval
- ◆ Perth
- ◆ Metropolitan
- ◆ Country
- ◆ Utilisation

In 1995–96 the Perth Magistrates' Court¹ handled 40 per cent (65 561 matters) of all Petty Sessions matters. The examination found that the Perth Court of Petty Sessions' listing interval for matters that went to trial increased from five weeks in February, 1994 to 17 weeks in June, 1996 (refer Figure 2). Discussions with key stakeholders indicated a listing interval of around nine weeks is optimal.

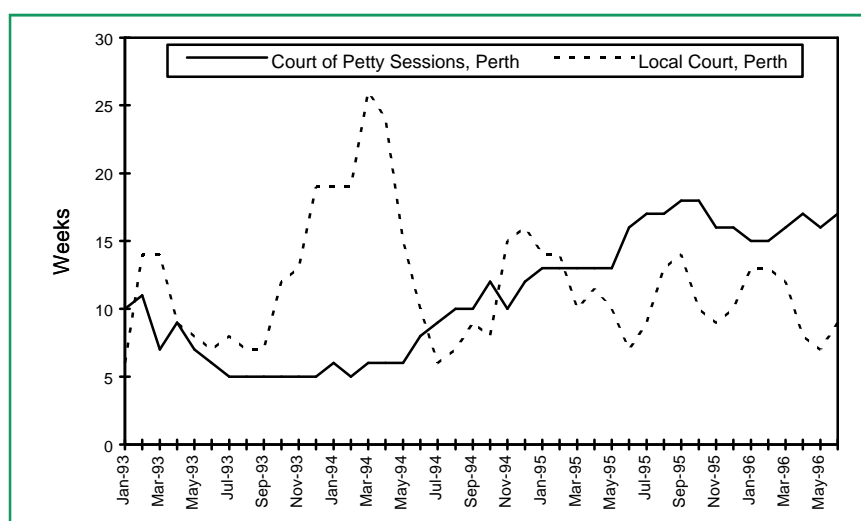


Figure 2: Listing intervals for Perth Courts

The Petty Sessions listing interval in Perth has increased to 17 weeks.

Source: OAG

The increase in the Perth Court of Petty Sessions' listing interval can be attributed to:

- ◆ providing increased assistance to other courts. The Perth Court provides Magistrates to other courts to assist when the resident Magistrate is on leave or to reduce backlogs;
- ◆ increased court workload and complexity of matters as a result of the Court's higher jurisdiction; and
- ◆ a limited increase in the overall number of Magistrates. Apart from the appointment of a Workers' Compensation Magistrate, Magistrate numbers have not increased for six years.

¹ The Perth Magistrates' Court is located in the Central Law Court Building. Any reference to Metropolitan Courts excludes the Perth Magistrates' Court.

Court Access

The examination also found that the Perth Court of Petty Sessions lacks sufficient information to manage effectively court listings. While the Chief Magistrate receives reports on listing interval trends for the 'normal' two hour trials, information on listing intervals for the increasingly frequent single and multi day trials is not recorded. Without historical information, effective management of the listing process is difficult. At the time of audit, calculations found the listing intervals for one day and multi-day trials was 21 weeks. It is not known how this has varied over time.

However the Perth Local Court, unlike the Perth Court of Petty Sessions, does record such data. Currently, its' listing interval is nine weeks though this can fluctuate widely. For instance, during the period analysed, the listing interval fell from 26 weeks to six weeks within four months (refer Figure 2). This volatility can be attributed to the Local Court having less capacity to handle varying workloads due to its smaller size. For instance, a few unusually long trials can significantly affect listing intervals.

Court Access

- ◆ Listing Interval
 - ◆ Perth
 - ◆ Metropolitan
 - ◆ Country
- ◆ Utilisation

The examination found that listing intervals vary significantly across metropolitan and country courts with a resident Magistrate ² (Figure 3). This means that the delivery of justice is more prompt at some locations ³:

- ◆ across metropolitan courts the range is ten weeks—the listing interval in the Armadale Court is six weeks but sixteen weeks in the Midland Court.
- ◆ across country courts the range is ten weeks—the listing interval in the Carnarvon Court is five weeks but fifteen weeks in the Geraldton Court.

² only the listing intervals of courts with a resident Magistrate were considered

³ at June 1996

Court Access

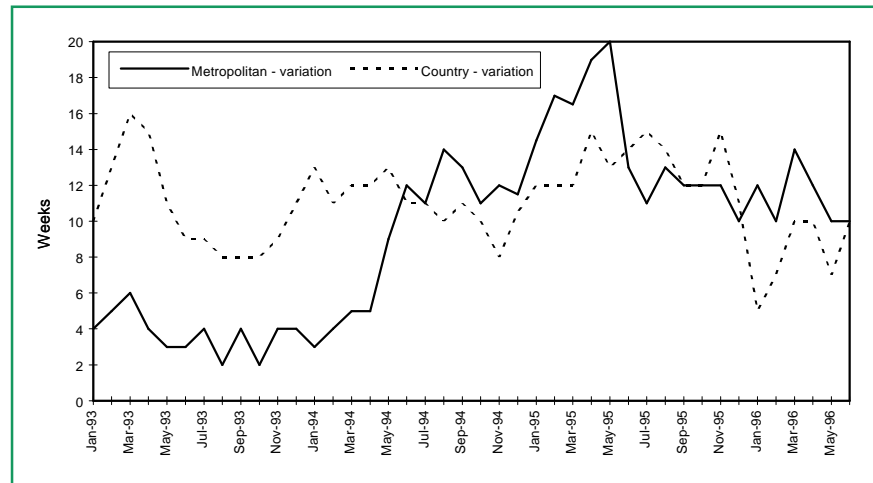


Figure 3: Range of listing intervals across metropolitan and country courts

The range in the listing intervals indicates the inequality in waiting times between courts

Source: OAG

Utilisation of Courts Maintained by the Ministry of Justice

Court Access

- ◆ Listing Interval
- ◆ Utilisation
- ◆ Ministry Courts
- ◆ Non-Ministry Courts

Currently there are 123 Magistrates' Court locations in Western Australia. Of these, 28 are maintained by the Ministry of Justice, with 23 located in rural Western Australia (Figure 4).



Port Hedland Magistrates' Court

Court Access

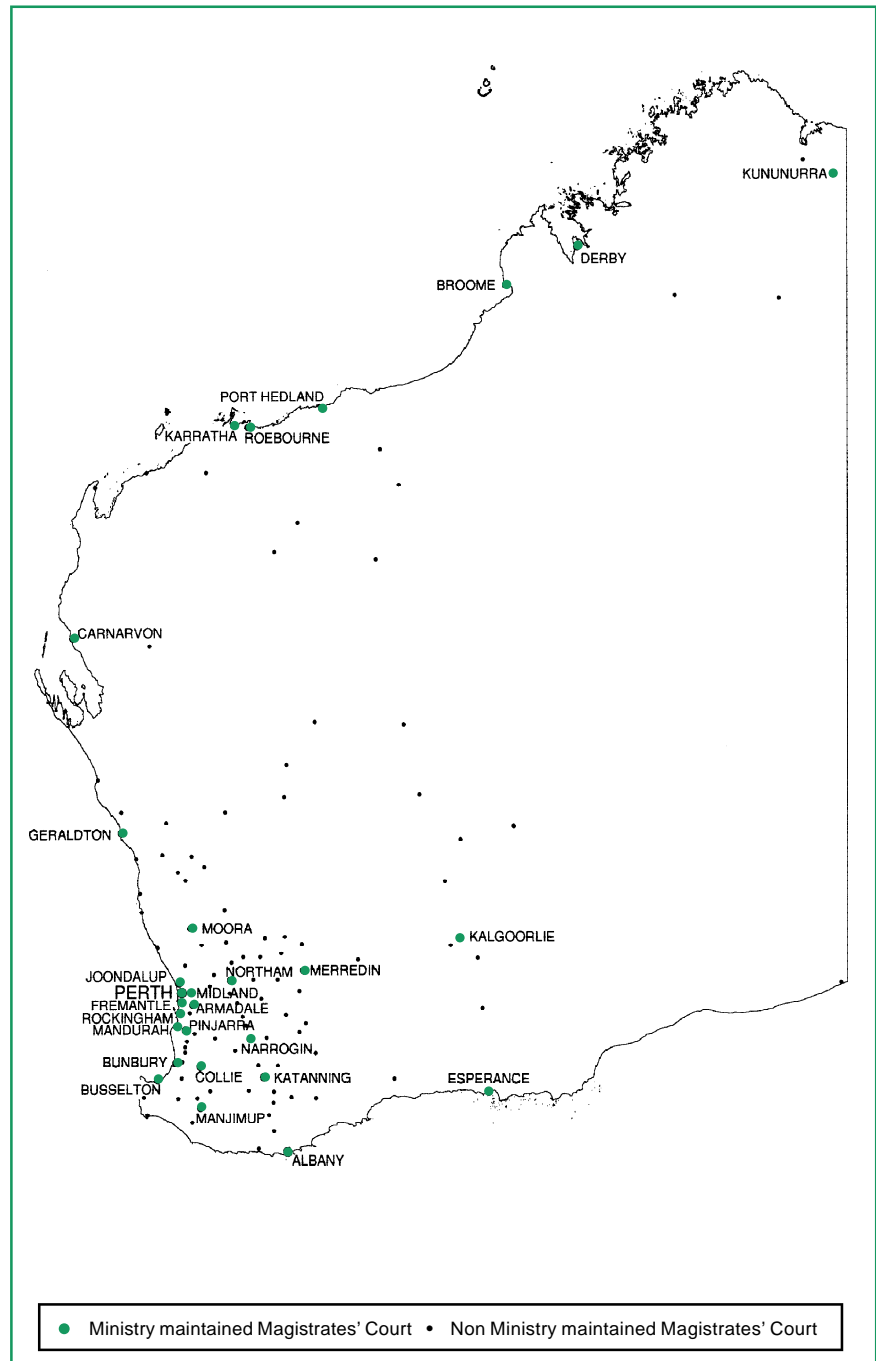


Figure 4: Location of Magistrates' Courts

Source: Department of Minerals and Energy and the Ministry of Justice

Court Access

Court utilisation is only one measure of the need for a court at a particular location. Courts with low utilisation rates may still be required if servicing remote locations. However, community perception of what is remote has changed over time. For instance, in the past travelling, say, 80 kilometres would have been a major inconvenience but is now less so given improved vehicles and roads. Nevertheless, 80 kilometres is still remote for those sections of the community without access to private or public transport.

No policy exists that states the required level of community access to justice in terms of court proximity and demand for court facilities. Therefore, for the purposes of this examination, low utilisation was assessed as being when a court:

- ◆ hears less than an average of five matters per available day (excluding public holidays and weekends);
- ◆ presides for an average of less than one hour per available day (a standard court day is five hours); and
- ◆ presides for less than 40 per cent of available days.

Examination against these utilisation measures found:

- ◆ the number of matters heard varied significantly between courts with some courts hearing relatively few matters (Figure 5);
- ◆ sitting hours per available court room day also varied greatly;
- ◆ eleven courts sat for an average of less than one hour per available court room day; and
- ◆ eight courts presided for less than 40 per cent of the available number of days.

Court Access

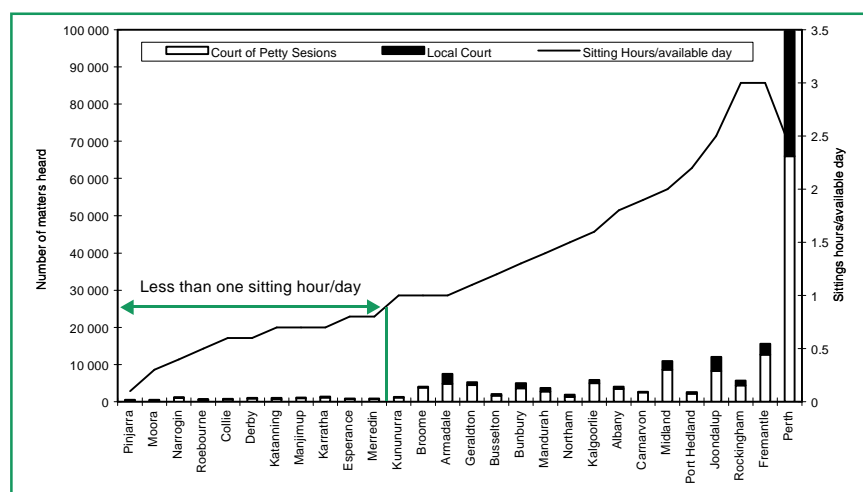


Figure 5: Matters dealt with in Magistrates' Courts 1995-96

Utilisation of some courts is low

Source: OAG

Six courts were found to have low utilisation rates for all three measures (refer Table 2). Four of these courts heard an average of only three matters per available day and presided for less than 40 minutes per available day. Three of these six courts are also less than 80 kilometres from another Magistrates' Court (Table 3). Administrative salaries and utility costs of these three courts totals \$260 000 per annum.

Court	< 5 matters per available day	< than 1 hour per available day	< 40% of Sitting Days
Moora	2	0.3	21%
Pinjarra	2	0.1	16%
Roebourne	2	0.5	38%
Collie	3	0.6	31%
Merredin	4	0.8	38%
Manjimup	4	0.7	31%
Esperance	3	0.8	> 40%
Katanning	4	0.7	> 40%
Derby	4	0.6	> 40%
Karratha	> 5	0.7	> 40%
Narrogin	> 5	0.4	33%
Mandurah	> 5	> 1	34%

Table 2: Summary of utilisation analysis

Six courts rated lowly for the utilisation measures used

Source: OAG

Court Access

Court	Distance to nearest Court	
Pinjarra	19 km to Mandurah	} Low Utilisation Rates
	56 km to Rockingham	
Roebourne	32 km to Karratha	
Collie	46 km to Bunbury	
Mandurah	36 km to Rockingham	
Busselton	53 km to Bunbury	

Table 3: Country courts less than 80 km from another court

Three of the six courts with low utilisation rates are also close to other courts

Source: Main Roads Western Australia

The Ministry in 1995 undertook two reviews of court locations. The first review found scope to rationalise several Ministry maintained courts. The second review found that the quality of justice in some courts was affected by inadequate public and professional facilities.

This examination found that facilities in some courts also limited the potential for listing intervals to be equalised through relocation of Magistrates. For example, courts which have long listing intervals and only one court room cannot be assigned additional Magistrates to reduce waiting times.

Utilisation of Courts Maintained by the Police Service

Court Access

- ◆ Listing Interval
- ◆ Utilisation
 - ◆ Ministry Courts
 - ◆ Non-Ministry Courts

Of the 123 Magistrates' Courts, 95 are maintained by the Police or Department of Minerals and Energy. These courts are attached to either a police station (88 courts) or a Department of Minerals and Energy Office (7 courts) and are located throughout rural Western Australia. Administration of these courts, including clerk of court functions, is undertaken by the local Police Officer or Mining Registrar.

Historically, these courts were established to serve remote communities. The examination found minimal use made of many of these courts, with statistics showing overall use averaged less than one matter per day (refer Figure 6).

Court Access

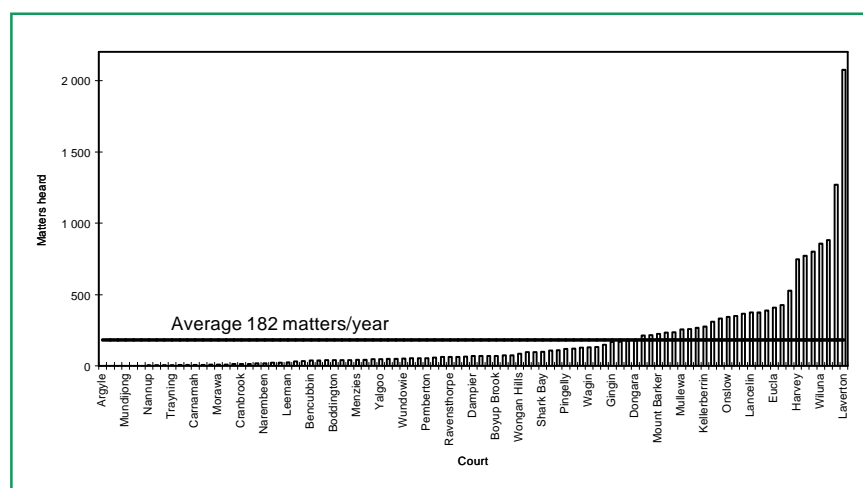


Figure 6: Matters heard in non Ministry of Justice maintained courts

Most courts hear few matters.

Source: OAG

Many of these courts still fulfil their role of providing access to justice for remote communities. For instance, 27 courts are more than 160 kilometres from a Ministry of Justice maintained court (refer Table 4).

Number of Courts	Distance
32	< 60 km
8	61 km – 80 km
28	81 km – 160 km
27	> 160 km

Table 4: Distance to a Ministry of Justice maintained court

Many courts could still be regarded as remote.

Source: OAG

However, for many of the less remote courts, their continued need is unclear. For instance, 25 of the 40 courts within 80 kilometres, or about one hour's drive, from a Ministry of Justice maintained Magistrates' Court heard less than 100 matters in 1995–96.

Magistrates routinely visit 20 of these 40 courts. In the Magistrates absence, Justices of the Peace preside. The use of these courts does carry some inefficiencies in terms of lost Magistrate time. Magistrate attendance at these courts is usually

Court Access

routinely based rather than workload driven. While this ensures that matters are dealt within a reasonable time, it can mean that Magistrates on arrival at a court may preside only briefly. A more efficient use of Magistrate resources would be to bring these matters to a nearby Ministry of Justice maintained Magistrates' Court.

Another aspect to the use of these courts is the extent to which the facilities support delivery of justice. Court facilities ideally include solicitor/defendant interview rooms, suitable waiting area and court room. The examination found that some of the courts visited had inadequate facilities. For instance, one court visited during this examination was convened in the police station's reception area while another visited was convened in the office of the constable in charge of the police station.

A further element to the use of these courts is the cost arising from police and mining staff performing non core duties. Duties include:

- ◆ preparing the matters for the Magistrate;
- ◆ assisting the Magistrate in court;
- ◆ processing and receipting fines;
- ◆ completing administrative reports; and
- ◆ maintaining court records.

In 1991, the Royal Commission into Aboriginal Deaths in Custody raised the potential for conflict of interest from police performing multiple roles. For instance, a police officer could perform the roles of arresting officer, court witness, prosecution, clerk of the court and collecting agent for subsequent fines imposed.

The Aboriginal Legal Service supported this concern but advised that cultural and transport difficulties would arise in the absence of these courts.

A recommendation from the 1995 internal Ministry review of court locations was that most non Ministry maintained courts be closed.

Court Access

Recommendations

- ◆ **Ministry of Justice and the Chief Magistrate should assess options for reducing listing intervals and making listing intervals between courts more equitable.**
- ◆ **Criteria for court locations be developed by the Ministry of Justice.**
- ◆ **The Ministry of Justice should address the deficiencies in court facilities identified in their 1995 internal report into court facilities.**

Court Administration

Conclusions

- ◆ *Court utilisation is significantly affected by the high trial cancellation rate.*
- ◆ *The strategy of deliberate overbooking of trials increases utilisation of courts, but often causes community inconvenience.*
- ◆ *Transfer of trials between court rooms can reduce the effectiveness of Police prosecutions.*
- ◆ *Local Court pre-trial conferences are successful but would be more so if the Court had authority to require parties to make a bona fide attempt to reach agreement.*
- ◆ *The Local Court fee structure does not appear equitable.*
- ◆ *Pressure on the Court could be reduced by making more use of the Fines Enforcement Registry.*
- ◆ *Witness attendance in court could be reduced through more use of affidavits by Police (where legislation permits).*

Background

Court administration assists Magistrates in dispensing justice by providing logistic support. Without effective support, the Court is unable to maximise throughput and minimise delays. Key administrative functions include:

- ◆ making best use of Magistrate time by arranging court listing to minimise court downtime and maximise court throughput;
- ◆ performing clerk of the court functions; and
- ◆ provision of information and advice concerning issues such as listing procedures, court delays, fees and costs.

A number of strategies have been introduced by the Court to improve throughput and minimise delays. These include:

- ◆ deliberate overbooking of court listings;
- ◆ trial transfers;
- ◆ status conferences;
- ◆ discovery of evidence;

Court Administration

- ◆ pre-trial conferences;
- ◆ Fines Enforcement System; and
- ◆ equalising court listing intervals by reassigning Magistrates.

Court Listings

Court utilisation is closely related to trial listings. For example, a trial listed for three days that lasts only one day could leave the court room under utilised for the remaining two days. Other complications to the listing process that can lead to inefficiencies include; insufficient notice of trials being postponed or cancelled, charges being withdrawn or the defendant not appearing at trial.

Court of Petty Sessions' Listings

Analysis undertaken to ascertain the effectiveness of the Court of Petty Sessions' listing process found that only 45 per cent of listed matters proceeded to trial on the day (Figure 7). Nearly 25 per cent of the trials were adjourned and nearly 20 per cent of defendants changed their plea to guilty on the day of the trial.

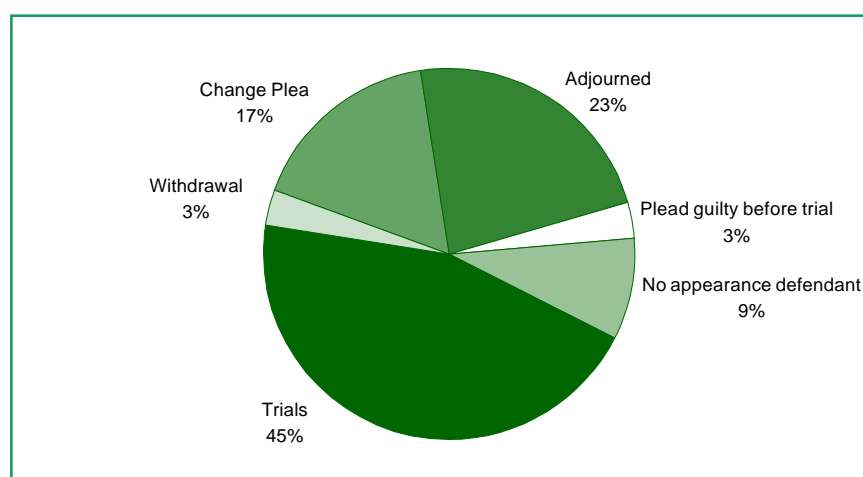


Figure 7: Outcome of matters on day of trial at the Perth Court of Petty Sessions
Less than half of matters listed for trial proceed.

Source: OAG

These figures demonstrate that without offsetting strategies, Magistrates and court rooms would not be optimally used.

Court Administration

Local Court Listings

The examination found a similar situation in the Perth Local Court with the Court sitting for only 55 per cent of the listed time (Figure 8).

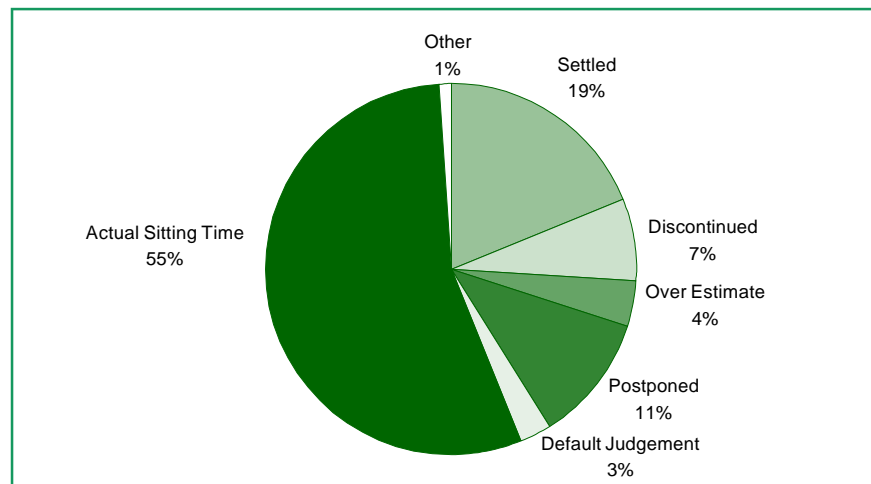


Figure 8: Outcome of the Perth Local Court listed time

Only about half the matters listed for trial proceed.

Source: OAG

Improving the certainty of listings has long been a significant challenge to the Local Court. The problem facing the Court is that it lacks power to induce parties to provide sufficient notice of trial cancellations. Furthermore, as there is no trial fee the Court has no remedy for the inconvenience caused by trial cancellations.

The Deputy Chief Magistrate advised that postponements, which are one of the main causes of avoidable cancellations, are often due to either party not being ready despite having sufficient time to prepare for trial.

Deliberate Overbooking of the Court

↑ Court Efficiency

- ◆ Overbooking
 - ◆ trial transfer
 - ◆ trial start time
- ◆ Increasing Certainty
- ◆ Reducing Need

Deliberate overbooking of court rooms is the principal administrative strategy employed to minimise the effect of late cancellations. Overbooking involves scheduling more trials than could be handled in one day if all proceeded. The challenge for the Court is to overbook at a rate that compensates equally for trial cancellations.

Court Administration

Overcompensating for trial cancellations has a community cost. If more trials proceed on the day than was anticipated then some trials have to be adjourned to another day. This inconveniences all parties and results in additional costs to the community in terms of lost productivity and increased legal fees.

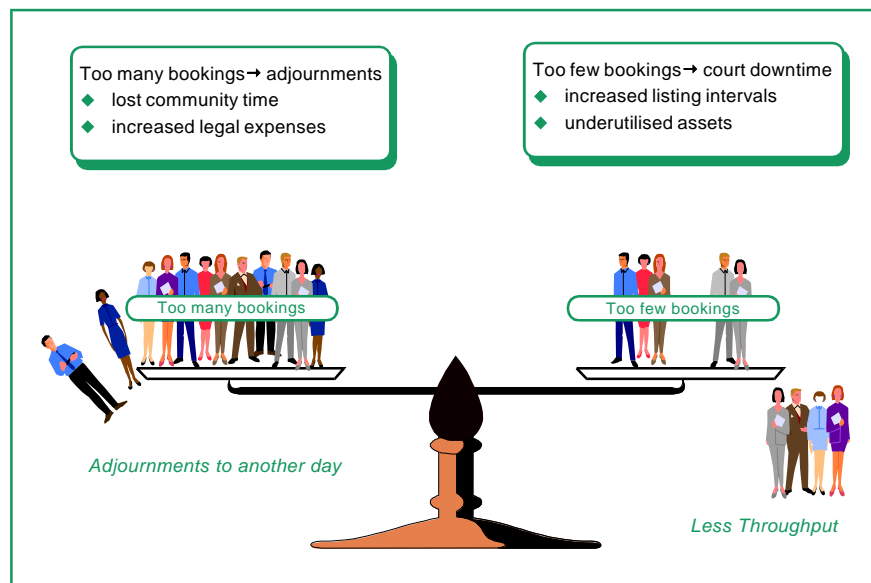


Figure 9: The ideal balance in deliberate overbooking of trials

The consequence of inaccurate overbooking is increased community cost or inconvenience.

The frequency of trial adjournments caused by overbooking is not recorded and no standard is used for measuring adjournments and court room utilisation. Therefore, it is difficult to gauge the success of overbookings in compensating equally for trial cancellations.

A partial indicator of the effectiveness of the overbooking strategy is court room utilisation. Audit analysis found that court rooms remain significantly under utilised, with 25 per cent of the Perth Court of Petty Sessions and 35 per cent of the Perth Local Court rooms closing by 1:00 pm (Figure 10).

Court Administration

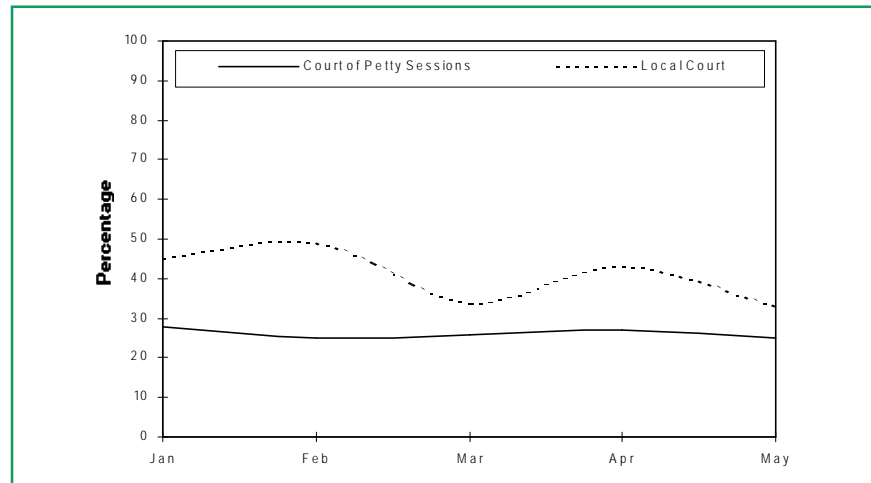


Figure 10: Perth Court rooms closing by 1:00 pm (1996)

A high percentage of Perth Court rooms close by 1:00 pm rather than the normal 4:15 pm. (excludes the times when the court rooms are not used for the day.)

Source: OAG

Trial Transfer

Overbooking is most heavily used in the Perth Court of Petty Sessions because of its greater number of court rooms and shorter trials. The large use of overbooking does carry the risk of overcompensating for cancellations. However, as scheduling of trials is on a court room basis there is the flexibility to transfer trials between court rooms. This balances the effect of the varying court room trial cancellation rates.

Management of the trial transfer is the responsibility of the clerk of the court. To effect transfer between court rooms, defendants, witnesses and prosecution files are sent to the reallocated room.

The Police advise that a negative consequence of the transfer is their reduced capacity to effectively prepare the prosecution of reallocated trials. As police prosecutors are assigned to individual court rooms they often have little time to read the transferred files, interview witnesses and develop a prosecution strategy .

Court Administration

Trial Start Time

Trial cancellations have the greatest impact on the Court of Petty Sessions. The inability of the Court to know which trials will cancel causes it to schedule most starting times at 10:00 am. Consequently parties to the trial do not know when their trial is likely to be heard and often may be required to wait several hours or longer.

Afternoon scheduling is done in some situations such as ex parte hearings⁴ and pre sentence reports. There are risks in scheduling more matters for the afternoon. Magistrates may be unoccupied for part of the morning if there is an unexpectedly high trial cancellation rate. Conversely, the Court's capacity to hear trials scheduled for the afternoon would be reduced should the morning trials extend into the afternoon.

However, there appears scope to schedule more matters in the afternoon as demonstrated by the court room utilisation analysis (Figure 10). It is understood that South Australia's Magistrates' Court has for many years scheduled some matters throughout the day.

Scheduling of some matters in the afternoon would reduce community waiting time. For illustrative purposes, it is estimated that if 30 per cent of the 'normal' two hour trials held in the Perth Courts of Petty Sessions were able to be scheduled for 2:00 pm, savings of about \$1 million per year could be achieved from reduced police and civilian waiting⁵.

Increasing Certainty of Trials Proceeding

↑ Court Efficiency

- ◆ Overbooking
- ◆ Increasing Certainty
 - ◆ status conferences
 - ◆ pre-trial conferences
- ◆ Reducing Need

In addition to the overbooking strategy, the Magistrates' Court has implemented other processes to establish the need for a trial and/or reduce the frequency of late trial cancellations.

⁴ refer Appendix 1 for definition

⁵ estimated savings based on analysis that found an average of 0.9 police and 0.7 civilian witnesses at each trial, assuming 30% of defendants represented and using relevant salary rates and Legal Aid Commission's schedule of fees.

Court Administration

Court of Petty Sessions

To ensure all parties are ready to proceed to trial the Court holds a 'status conference' one month prior to the scheduled trial date for trials expected to last three days or more. Conferences also aim to establish any last minute plea changes or withdrawal of charges.

In 1995, the Perth Court of Petty Sessions held status conferences for 48 matters, 36 of which were for preliminary hearings. The examination found that the Chief Magistrate does not receive management information on the overall effectiveness of status conferences. Such information might include:

- ◆ number of trials rescheduled at status conference;
- ◆ the cancellation rate of trials after status conferences;
- ◆ number of defendant plea changes at trial; and
- ◆ number of charges withdrawn by the prosecution at trial.

Conclusions on the effectiveness of status conferences were restricted by the relatively small number held during the year. Nevertheless, analysis did indicate a degree of effectiveness. For instance, 15 per cent of trials were rescheduled at the status conference thereby reducing last minute cancellations. However, in these instances the benefit went unrealised as the allocated timeslots for these trials was left vacant.

Analysis was inconclusive on the success of status conferences in reducing trial cancellations. The examination found that 75 per cent of trials did not proceed on the scheduled day despite a status conference. This result was no better than for shorter trials that had no status conference.

The result was contrary to expectations. Discussions with the Legal Aid Commission and the Police Prosecution Branch had indicated that status conferences address the main reasons for trial adjournments, i.e.:

- ◆ the defendant's solicitor has not had the opportunity to discuss the case with the defendant; and
- ◆ the witnesses could not appear in court on the scheduled date.

The success of status conferences in respect of preliminary hearings could not be determined. While 80 per cent of the preliminary hearings proceeded on the scheduled date, records were unavailable to compare this result with that for preliminary hearings not requiring a status conference.

Court Administration

Another initiative introduced in the Court is the disclosure of evidence to defence counsel prior to trial. This initiative was introduced by Police Prosecutions on a six month trial in August 1996. At this stage the Court has no information on the success of this initiative. However, solicitors interviewed by audit believe it will reduce the number of trials and last minute trial cancellations. This outcome is expected because the defence will be able to plea on the basis of the weight of evidence rather than adopting a 'wait and see approach'.

Local Court

In an attempt to reduce the number of trials the Local Court introduced pre-trial conferences in January 1989. Pre-trial conferences involve the parties to a dispute attending a meeting facilitated by a clerk of the court. At the conference the clerk may:

“enquire into the likelihood of settlement, the delineation of issues in dispute, the state of preparation of the cases of the respective parties and such procedural matters as the clerk thinks fit.”⁶

It is understood that prior to pre-trial conferences, the Perth Local Court was sometimes deliberately overbooked by up to 400 per cent to compensate for trial cancellations. Since the introduction of pre-trial conferences overbookings have fallen to 20 per cent.

The examination found pre-trial conferences are successful in reducing the number of matters scheduled for trial. Analysis found that 57 per cent of matters were settled as a result of the conference and a further 20 per cent were presumed settled (Figure 11).

⁶ Local Court Act 1904, S45B

Court Administration

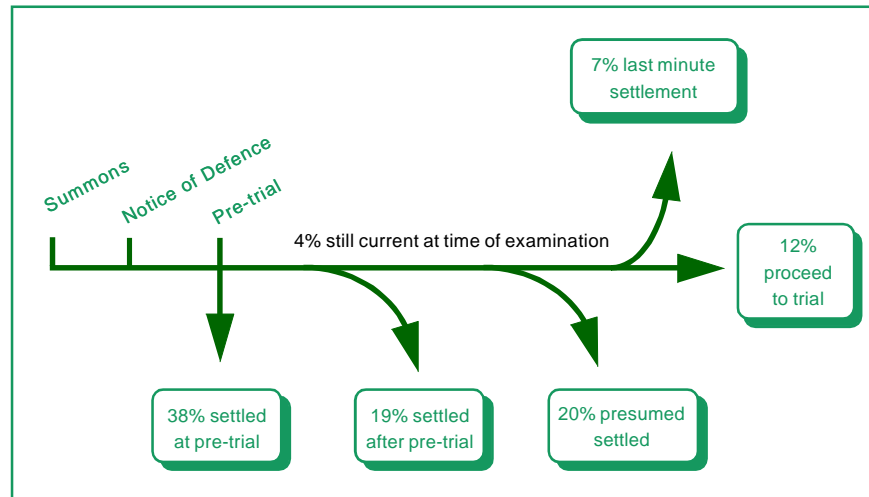


Figure 11: Outcomes of pre-trial conferences in the Local Court
Only 12 per cent of matters proceeded to trial

Source: OAG

However, of concern is the frequency of parties not attending pre-trial conferences. It was found that in 12 per cent of instances examined, pre-trial conferences did not proceed due to non attendance. The Court rescheduled these pre-trial conferences which most parties (70 per cent) then attended.

The examination found that the Local Court does not have authority to require parties to make a genuine attempt for early settlement. In contrast, the rules of the District Court ⁷ provide that the parties who attend a pre-trial conference must make a bona fide attempt to reach agreement on the matters in dispute. If the clerk of the court is not satisfied that a genuine attempt has been made, the clerk may decline to list the action for trial.

⁷ Order 5 rule 5

Court Administration

Reduce the Need for Court Appearance

↑ Court Efficiency

- ◆ Overbooking
- ◆ Increasing Certainty
- ◆ Reducing Need
 - ◆ Fines Enforcement
 - ◆ use of affidavits

Optimising the Court depends on efficient use of court time. Preventing unnecessary court attendance is essential for court efficiency.

Fines Enforcement

The Fines Enforcement Registry (FER) provides agencies with a mechanism to enforce payment of infringement notices without having to go through the courts. For example, FER is used for enforcing payment of infringement notices for speeding, failing to have a dog on a leash and littering. FER enforces payment by suspending driver or motor vehicle licences. Persons that do not have a drivers license may be prevented from obtaining one.

The Court of Petty Sessions has benefited from FER as significantly fewer minor matters are listed for trial. FER is also used to enforce payment of outstanding court fines.

However, scope remains for increased use of FER. For example during 1996, the Perth Court of Petty Sessions heard over 2 000 matters relating to non payment of infringement notices issued for fare evasion. In agency discussions it was explained that FER was not used as it was “too costly”. This is incorrect as using FER has no ongoing net cost to the agency. It also fails to recognise the consequent cost to the Court.

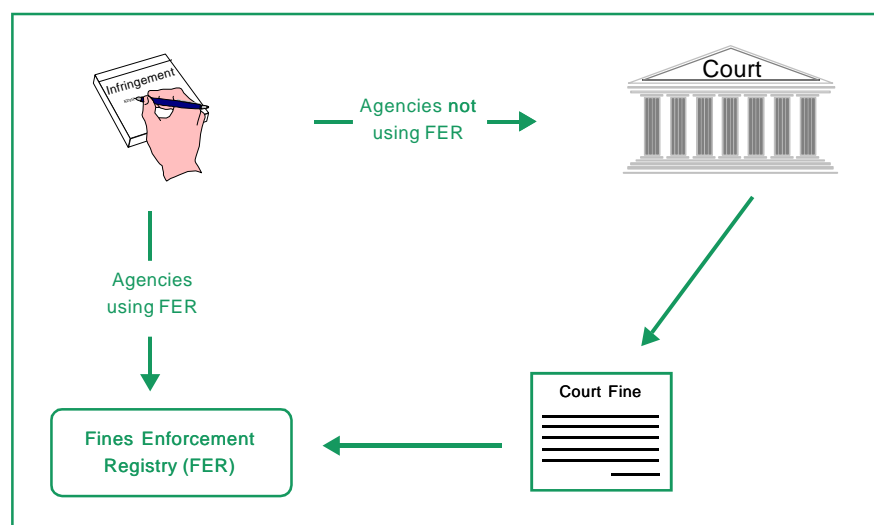


Figure 12: Enforcement of infringement notices
Increased use of FER would reduce court workload

Court Administration

Use of Affidavits in Ex parte Hearings

Police issue summons in preference to arresting the defendant wherever possible. Typically, summons are issued for minor offences where the police are confident of the defendant's identity and that he/she will appear in court. A summons is also issued when a defendant pleads not guilty to an infringement.

A summons is usually delivered by post. The defendant has the option to plead by mail and need not appear in court. If the defendant does not plead by mail nor appear in court, the matter is sent to trial. The defendant is then advised of this by mail. If the defendant fails to appear on the day of the trial, the matter usually proceeds ex parte (i.e.: without the defendant).

The *Justices Act* 1902 allows the Police Prosecution to submit witness evidence by way of affidavits for certain *Road Traffic Act* 1974 offences. This can reduce the need for witness attendance at court. However, the acceptability of affidavits and therefore the requirement for witness attendance remains a discretion of the Magistrate.

The examination found that the use of affidavits in ex parte hearings reduces court trial time and lessens inconvenience to witnesses. However, affidavits are currently only obtained from police witnesses. Civilian witnesses are therefore required to attend court.

Analysis of a sample of ex parte hearings found that police witness affidavits were submitted 20 per cent of the time. For these trials, an average of 1.5 civilian witnesses were required to attend court.

It is understood that in Victoria, South Australia and Queensland, police and civilian witnesses do not attend ex parte hearings for less serious offences. In New South Wales, witnesses are required to attend all ex parte hearings.

The Police advised that extending the use of affidavits to civilian witnesses would require an internal training program. Whilst police officers are competent in completing their own affidavits, they may not be fully aware of the process required to complete a civilian witness affidavit. The Police also advised that some logistic considerations would need to be taken into account such as the need for an affidavit to be sworn before a judicial officer.

Court Administration

Balancing Court Fees and Court Access

Ideally, the fees charged for court services would balance the potentially conflicting principles of User Pay and Access to Justice. If the User Pay principle was fully adopted, court costs would be higher and sections of the community could be denied access to justice. However, if there were no court fees, the community as a whole would be paying for relatively few court users and the Court could potentially be over burdened with frivolous matters.

Magistrates' Court Expenditure and Revenue Collection

In 1995–96, the cost of Magistrates' Court was \$20 million. This was partially offset by revenue of \$8 million from court fees. The Magistrates' Court also collected \$12 million in fines. It should be noted however that court fines are a form of punishment and not a means of offsetting the cost of the Court.

Court of Petty Session Fees

The Court of Petty Sessions charges a fee of \$36.50 irrespective of whether the matter goes to trial or the trial duration. This helps ensure that the defendant's plea is not influenced by concern as to liability for court fees.

For prosecutions brought by the Police, the fee is paid by the defendant if found guilty. However the Court receives no fee if the defendant is found guilty and gaoled or found not guilty.

For prosecutions brought by other parties, such as the Australian Taxation Office, Westrail and Local Councils, the fee is payable in advance. Where a defendant is found guilty, the Court normally orders the defendant to reimburse the fee to the prosecution.

Local Court Fees

Various fees can be incurred in processing a matter through the Local Court. These most commonly include:

- ◆ a **Summons Fee** payable by the plaintiff at the time of issuing a summons;
- ◆ a **Defence Fee** payable by the defendant at the time of submitting a Notice of Intention to Defend; and
- ◆ a **Hearing Fee** and **Bailiff Trial Attendance Fee** payable by the plaintiff, before either a pre-trial conference, chamber summons or trial (Table 5).

Court Administration

Process	Small	General		
	Debt	< \$5 000	\$5 000–\$10 000	> \$10 000
Issue summons	\$42	\$42	\$86	\$170
Notice of defence	\$32	\$32	\$32	\$32
Hearing fee	n/a	\$53	\$106	\$160
Bailiff Trial Attendance fee	\$2	\$2	\$2	\$2

Table 5: Local Court fees

Source: Ministry of Justice

The examination found that Local Court fees are relatively insignificant when compared to the overall cost parties pay when going to trial for a ‘general matter’. It is estimated that court fees represent less than 10 per cent of the total legal cost of the parties involved in a trial⁸. It was also found that the average fee charged for general matters that went to trial was equivalent to less than 16 per cent of the judicial cost incurred by the Court in hearing the matter.

Analysis of the fee structure raised the following issues concerning the User Pay principle:

- ◆ the Hearing Fee covers pre-trial conferences, chamber summons and trials. However, nearly 90 per cent of matters proceed no further than pre-trial conference and trials constitute the major court cost. Therefore for most users this fee is inequitable;
- ◆ the same Hearing Fee is payable irrespective of the trial duration. Analysis found that trial duration varied from one hour to over 14 hours (Figure 13); and
- ◆ for a Small Debt trial, no hearing fee is charged and only payment of a \$2 Bailiff Trial Attendance Fee is required. It is likely that the cost of processing this fee exceeds the fee itself. Furthermore, the \$2 fee represents less than 5 per cent of the cost of Bailiff attendance in court.

⁸ based on a sample of costs awarded by the Court.

Court Administration

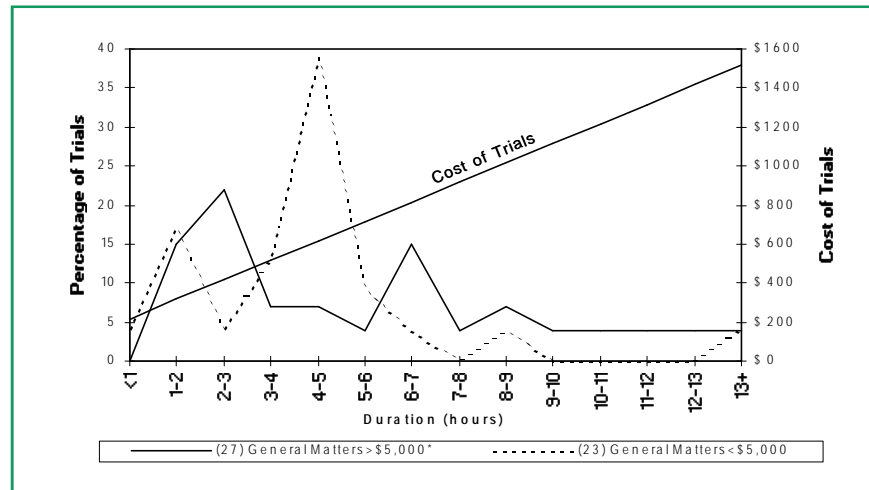


Figure 13: Duration of Perth Local Court trials

The one Hearing Fee does not reflect the cost of longer trials

** Includes trials of matters greater than \$10 000*

Source: OAG

Recommendations

- ◆ Consideration be given by the Chief Magistrate and the Ministry of Justice to having more than one scheduled start time for court matters.
- ◆ The Ministry of Justice and the Police Service should consider options for reducing the impact on prosecutions of trial transfers between courts.
- ◆ The Ministry of Justice should advise Government on the need to provide the Local Court with authority to require parties to make a bona fide attempt at pre-trial conference to reach agreement on the matters in dispute.
- ◆ The Ministry of Justice should make relevant agencies more aware of the advantages in using the Fines Enforcement Registry.
- ◆ The Ministry of Justice and the Police Service should consider making greater use of affidavits for civilian witnesses where legislation permits.
- ◆ The Ministry of Justice advise Government on the scope for making Local Court fees more equitable and providing the Court with discretion to charge for trial cancellations.

Management Information

Conclusions

- ◆ *Despite significant developmental and implementation costs, the Court's computer system has not met planned objectives.*
- ◆ *The Court's efficiency would be enhanced through more extensive use of computers.*
- ◆ *Provision of more comprehensive management information to the Chief Magistrate and the Ministry of Justice would assist effective court management.*

Background

Effective management requires timely and relevant information to:

- ◆ provide feedback on progress in achieving objectives; and
- ◆ alert management to potential problems and opportunities for improvement.

Meeting these management information needs in an environment characterised by significant volumes of data is usually achieved through the use of computers. Such an environment exists in the Magistrates' Court.

Findings

The examination found that computerisation of court administration functions is not well developed. Currently only the Perth, Joondalup and Armadale Courts have some automated functions, though a new system is being piloted in three other metropolitan courts.

Implementation of the current system (MAGIC) commenced in 1993 with full implementation expected by 1994–95. MAGIC was developed to improve the effectiveness and efficiency of the Court of Petty Sessions by automating the recording and tracking of charges and court appearances. Development and implementation cost was \$1.4 million.

Management Information

Since implementation, the system has undergone extensive but largely unsuccessful modifications. Enhancement costs are unknown but would be significant. In 1996 a decision was taken to significantly upgrade MAGIC by combining its best features with the best features of the Children's Court system. Development has commenced but full implementation is not expected for two years.

The examination found that insufficient consideration appears to have been given to the management information required by Magistrates and Court Administration. Some information being collected by the system may be redundant whilst other relevant information may not be collected. The system also does not facilitate the extraction of meaningful reports. Consequently little use is made of the information stored in MAGIC.

The examination found a lack of information concerning core court activities to assist in the management of the Court. For example, the Court Administration is not providing the Chief Magistrate with:

- ◆ the number of Local Court trials held;
- ◆ the number and reasons for Petty Session trial adjournments and cancellations;
- ◆ the duration of Petty Session trials; and
- ◆ analysis of matters brought before the Court.

The lack of useful reports hinders the analysis of court activities. For instance, audit analysis of a defendant's first appearance in the Court of Petty Sessions in answer to a charge found that 26 per cent were granted adjournments. The Chief Magistrate has advised that this high rate of first adjournments indicates potential to improve court efficiency by alternative treatment.

Computerisation also provides the potential to increase significantly operational efficiency. For instance, appropriate technology would simplify and expedite the prioritising of matters in the Court of Petty Sessions.

Prioritising of matters can be a complex process. Often the Court has more than one list of matters scheduled to be heard. For example there can be an Arrest List, a Remand List and a Shire Council List. The process is further complicated by the need to record attendance of defendants and other matters on lists maintained by different persons.

Management Information

During attendance in court, audit observed a number of instances which could have been avoided with the use of appropriate technology. For instance:

- ◆ a defendant was ill and could not attend court. The prosecution only became aware of this when the matter was raised at 12:34 pm. Three police witnesses, who waited 2.5 hours, were then dismissed.
- ◆ endorsed pleas (the defendant not present) were being dealt with whilst there were approximately 25 people waiting in court as defendants or witnesses for other matters.
- ◆ a matter was adjourned at 3:15 pm for a third time, due to lack of time for the matter to be heard. This means the defendant spent three days waiting in court.
- ◆ ex parte hearings involving 10 witnesses were adjourned following the Court's handling of another matter that lasted all day.

Court administration is conscious of the information management deficiencies and lack of appropriate technology. A strategic information technology plan has been developed. The first priority is to upgrade MAGIC and extend the use of computers to all the main Magistrates' Courts. Once this is achieved, the information needs of management will be addressed.

However there is a risk that unless sufficient early consideration is given to information management needs the system may not collect the required information.

Recommendations

- ◆ **The Ministry of Justice should consider giving priority to developing the Magistrates' Court computer system.**
- ◆ **In developing the Magistrates' Court computer system, appropriate attention should be given to project controls and management information needs.**

Glossary of Terms

Adjournment	Rescheduling of a matter.
Affidavits	A written statement confirmed by oath.
Chambers	The Magistrate's room for hearing matters outside of court.
Clerk of the Court	Court officer that provides administrative support to the Magistrate in Court.
Court of Petty Sessions	The component of the Magistrates' Court that hears criminal matters.
Endorsed Plea	The defendant has entered a plea without attending court (permissible where the defendant has been served with a summons).
Ex parte Hearing	A matter heard in one party's absence.
Infringement Notice	A Notice that prescribes the penalty fine to the offence allegedly committed. Payment of the fine means the matter does not then go to court.
Listing Intervals	The interval between date of requesting a trial and the first available trial date.
Local Court	The component of the Magistrates' Court that deals with civil matters.
Notice of Intention to Defend	The Notice issued when a defendant in a civil matter indicates an intention to defend.
Pre-trial Conference	A meeting of the parties in dispute to ascertain likelihood of settlement prior to trial.
Preliminary Hearing	A hearing in the Court of Petty Sessions to determine if there is sufficient evidence for the matter to proceed to trial in a superior court.
Status Conference	A conference held before the Magistrate in the Court of Petty Sessions, to ensure all parties are ready to proceed to trial.
Summons	Notice to defendant advising of plaintiff's/prosecution's claim and the required action.

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