

Court figures report needs clarifying

Letter from Chief Justice Brian Martin

Just a few thoughts on your report concerning the Territory Superior Courts published in the February edition of *Balance*. I was unable to respond earlier because the complete statistics generated by the Office of Court Administration as the foundation for the Report on Government Services 2003 was not available to me until quite recently.

Lest the report be seen as a valid basis for criticism of the work of the members of the Supreme Court the following might be taken into consideration:

- The report was not directed to the Supreme Court of the Northern Territory alone. It included the Federal Court of Australia's work in the Territory. But, excluding that factor it cannot be said that the figures for the Supreme Court are materially altered.

- The report itself expressly recognises that performance comparisons between the courts in the various jurisdictions on the basis of the published statistics is not valid. It makes the obvious point that unlike other jurisdictions, Tasmania, the ACT and Northern Territory do not have intermediate courts.

I note that the Supreme Courts of those three jurisdictions are at the bottom end of the table of non-appeal civil matters finalised in the reporting year.

Obviously the criminal jurisdiction of those courts has a significant impact upon the time it takes to deal with matters. This Court bears a heavy burden of criminal work which has traditionally been given priority by way of allocation of sitting time. Reducing time devoted to crime would enable increased time to be made available in the civil jurisdiction, but then the figures would be skewed in the other direction.

- The appellate jurisdictions of the Northern Territory Supreme Courts are well up the table. Given the small number of Judges available is it suggested we should cut back on the number of appeal sittings each year, which utilise at least three Judges on each occasion, and

redirect those judicial resources to the hearing of civil cases at first instance.

- The published figures are for all non-appeal civil matters finalised in the period. It includes all matters, not just those which are defended. There are a significant number of cases which simply sit in registry without any action for a long time. They are included in the figures. They have nothing to do with court performance. Prompt action by practitioners in "finalising" non-contentious actions would lead to a significant apparent improvement in the court's performance.

- Another way to make the figures look better would involve increasing judicial case management directed to recently initiated actions and reducing efforts in relation to older matters. By this and other means it would be fairly easy for the court to make itself look better but, at a cost to some litigants.

- The figures are significantly defective in that I am told they do not include matters dealt with on appeal from the Court of Summary Jurisdiction, Local Court and Work Health Court. Nor do they include the work undertaken by the Motor Accidents Appeals Tribunal constituted by a Judge.

They absorb a significant amount of time both in hearing and often in preparation of reasons for judgment, but are normally dealt with expeditiously. Matters in the Tribunal sometimes take a while to be completed due to the issues involved. Nevertheless, I am satisfied that if those matters were all included, then the percentage of matters finalised within 12 months would be significantly increased. That is but another

example of how the statistics can be misleading if they are supposed to reflect upon the performance of the Court. I regret that I am not able to provide details in respect of the numbers of those cases and the length of time it takes to finalise them as they have not been able to be supplied by the Office of Courts Administration.

- The number of actions, civil and criminal, which can be finalised in a given period depends upon the judicial time available to devote to hearing cases. That time is significantly reduced by a well known factor which rests in the hands of the parties and the profession. It is notorious that many defended cases resolve by settlement or change of plea at a time when it is not possible, so we are told, to substitute backup trials.

The court continues its endeavours to keep matters moving through case management both in its civil and criminal jurisdictions. Ultimately, however, the speed with which matters can be finalised depends upon the response of the parties which, to a large degree, is in the hands of the profession.

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