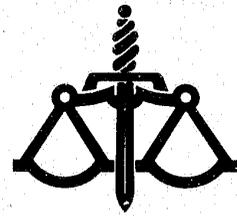


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Law Department
Victoria

Community Services and Courts in Victoria

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May, 1985
Courts Management Change Program

U.S. Department of Justice
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COMMUNITY SERVICES AND COURTS IN VICTORIA

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COMMUNITY SERVICES AND COURTS

1. BACKGROUND TO THE DISCUSSION PAPER

Mr. Ben Bodna, Executive Consultant to the Public Service Board is undertaking a number of projects for the Law Department. In consultation with the Courts Administration Division he has been requested to -

- (1) Develop an appropriate policy with regard to the relationships between the courts and various agencies providing welfare services to clients at courts.
- (2) To develop a policy with regard to Poor box expenditure and a training programme for Clerks of Courts in the administration of the Poor Box.

Mr. Bodna has been assisted by Ms. Helen Halliday (Policy Officer) in the Policy and Research Division in both of these projects with particular emphasis on (1). Since policies regarding Poor Box expenditure are the subject of another report,⁽¹⁾ this matter will be dealt with only in passing in this discussion paper.

A number of interviews have been conducted by Mr. Bodna and Ms. Halliday with a range of key groups involved with the provision of services to either clients of the court or clients at court. (See Attachment 1 for a list of those interviewed). Visits have been made to Prahran Court to talk to both court personnel and others providing services at Prahran Court, on three occasions. Prahran Court was selected as it is generally considered the model or the most advanced court in terms of the range of "welfare" services which are provided in the court itself.

This paper is to be circulated as a discussion document to those who took part in the initial discussions. It is also to form part of the material to be distributed for the community consultation on proposals for changes in court administration as part of the Courts Management Change Program being undertaken by the Court Administration Division of the Law Department. It is not seen as being comprehensive due to the shortness of time available for preparation. It is therefore raising issues for discussion rather than putting forward recommendations.

Community response is requested for these main propositions and issues which are summarised in the next section of the discussion paper.

2. SUMMARY OF THE DISCUSSION PAPER AND ISSUES REQUIRING COMMUNITY RESPONSES

The starting point for the project has been the desire by Courts Administration Division to look at the total operation of the courts including the welfare services it provides, to enable a more rational assessment of where the Victorian court system should be going in the future in relation to support services they provide.

The courts in Victoria, particularly the magistrates' courts, now have a well established community service role in addition to their judicial function. Clerks of court generally provide a range of statutory services, advice and referral to members of the local community which may or may not relate directly to a court appearance. People appearing before the court are frequently experiencing personal and social problems for which advice and assistance is required. Most personnel of the courts, both magistrates and clerks of court, would consider that part of their function was to provide information to people about where they can get further assistance. Some of the larger courts are able to provide these services in a systematic way at the courts.

There are therefore significant formal and informal links between court services and the community but these have not been developed on a well formulated programme basis or structure, and are not state wide in their coverage.

Courts themselves have a dual role - they are responsible to ensure protection for the community from criminal and anti-social elements and they are also responsible to ensure that people can receive legal justice and resolution of disputes without recourse to force.

In both of these areas of operation there have been significant changes in the community view of the operation of courts. In the area of protection from crime there is a broadening of approach toward a concept of community justice and the need to see the operation of the court as but one aspect of a range of community initiatives directed towards this end. Policies and practices are gradually being developed to try to identify client groups e.g debtors and provide alternatives which meet the underlying causes of court appearances. In the children's court area, as another example, the police warning system is aimed at reducing the numbers of children appearing in courts. The general direction of these policies are then to reduce the number of cases appearing at court.

In the area of dispute resolution also the traditional operation of the court is under challenge from a number of directions. Other alternatives are being developed such as mediation centres operating at neighbourhood level as well as the setting up of specialist tribunals to deal with particular matters such as the Small Claims Tribunal.

The discussion paper looks at the court and support services which are currently provided at courts or which are closely related to the operation of courts and assesses their current operation against the main objectives of the service delivery system. The objectives are consistent with the 1984 Australian Labour Party platform stated in "Social Development and Justice - The Next 4 years" include comprehensive service development, capacity to co-operate or integrate with the functions of other agencies, equity in the location and provision of services and administrative and cost efficiency in the provision of services.

The discussion paper focuses on the magistrates courts as they are located throughout the state and are the courts most frequently used by the general community. The discussion paper describes services currently provided at magistrates courts and looks in particular at those services that relate to the person at court rather than the legally identified problem. It also explores other services relevant to the operation of the courts which are provided by government departments or other agencies.

Regionalization of court administration is seen as a means of overcoming some of the problems of service delivery identified in the discussion paper. The discussion paper proposes that regionalization should be based around a broader concept of a justice system rather than the proposal put forward as part of the Court Management Change Program, for regionalization around the existing court system.

In order to ensure that regionalization provides an administrative capacity and policy framework a number of key directions and issues are identified and are proposed for community consideration:-

Key policies which achieve the following are proposed: -

- . Identification of the function of the court and the services which need to be provided at courts.
- . Support for the notion of a broadly based system of justice as the main unit around which services are organized.
- . Closer integration of a justice system with other services being provided through other agencies or Government departments operating at the community level.
- . Recognition of the need to see appearance at court as a point of last resort in most instances.

The key issues in service delivery are proposed as follows -

1. Ensuring a comprehensive range of services courts by -
 - . Determining on an area by area basis the sorts of services that should be attached to courts.
 - . Providing a framework for community participation to allow this to happen.
 - . Integrating future court house design with community requirements.
2. Ensuring a comprehensive range of services within communities by -
 - . Increasing the flexibility of the operation of courts in line with appropriate functions and community perceptions.

- . Providing both greater flexibility and greater specialization by broadening the professional input at court and within the service delivery framework developed.
 - . Developing service framework capable of providing for a range of different community needs and able to provide services on a programmed rather than ad hoc basis.
3. Ensuring an integrated range of services by -
- . Consistency between the boundaries selected by the justice system and other key government departments.
 - . A mechanism for consultation and an opportunity for participation in the framing and implementation of new programmes administered either within the jurisdiction of the justice system or another Department or agency.
 - . Adequate information and the capacity to plan the development and implementation of new programmes.
4. Ensuring equity in the provision of services and access to services by-
- . The selection of a geographical unit which is appropriate to the type of services and likely usage.
 - . Distinguishing between functions where it is desired to encourage access or where access must be provided because of the nature of the services being provided.
 - . Developing comprehensive programmes so that those appearing before the court are able to do so on an equal basis with any other groups within the community.
 - . Monitoring and evaluation of services usage needs to be done at the central and regional levels to ensure that only those issues needing the intervention of the courts are brought before the courts and that other alternatives are explored and developed.
5. Ensuring administrative efficiency and cost efficiency by -
- . Defining the role and function of the system.
 - . Developing means of measuring cost and performance against function.
6. The principal issues in regionalization are -
- . Regionalization of court administration has the potential to provide some answers to problems of service delivery encountered by courts but which are common to government departments providing human services (or services to people).

- Regionalization proposals need to be assessed against the service delivery standards identified previously.
- Questions of policy direction and the future operation of a court or justice system need to be considered and included as part of the regionalization package.

3. THE OPERATION OF THE COURT SYSTEM IN VICTORIA

The court system in Victoria is a pyramidal system with magistrates' courts at the local level then the county courts and the supreme court. The magistrates' court is the court with which the public is in most frequent contact. It deals with most criminal cases in the first instance and is responsible for hearing of charges on a wide range of offences including criminal and civil matters.

3.1 Magistrates Courts and Magistrates

Magistrates' courts operate at a local level in Melbourne and throughout the country centres of Victoria. In the past 10 years a number of the courts have closed and the current proposals are for ⁽²⁾ a major building programme to provide magistrates' courts equipped to meet current needs and to extend the non hearing services of the court.

Magistrates' courts in Victoria hear well over 90% of criminal cases, and 80% of civil cases. Civil matters are those which concern the private rights of individuals of which the main categories are cases concerning money owing, possession of land and personal injury and damages. ⁽³⁾ In 1984 the figures for civil cases commenced at the magistrates' court level were 155,639 (i.e.: summons issued) of which 88% were default summons for money owing and 12% were special summonses for other matters. Although a defence is lodged in a third of cases, of these less than 5% actually proceeded to court hearing with the vast majority either not proceeding, being finalized by default judgment (an administrative task of the court) or being settled out of court.

The criminal jurisdiction includes the hearing of summary offences (heard without a jury) and indictable offences able to be tried without a jury with the agreement of the person charged with the offence. The magistrates' court is also responsible for preliminary examinations with regard to indictable offences and applications for bail.

Less serious summary offences such as parking fines and some traffic offences are able to be dealt with in chambers on affidavit evidence without the appearance of the informant if the defendant does not elect to appear. More serious offences able to be heard in the magistrates' court include burglary, theft, possession of illegal drugs, assault and indecent assault. Prosecution in criminal cases is usually by a police officer. ⁽⁴⁾

In 1983/4 year period the total number of criminal cases dealt with at magistrates' courts were 513,804, of which 127,509 were cases appearing before the courts on arrest and 173,738 appearing on summons. Of the more minor traffic and parking offences, 158,677 were dealt with in chambers with a further 17,451 choosing to appear in open court.

Under the Magistrates' Court Act, magistrates are given discretion in the running of the courts and, as described previously, have the power to deal with a wide range of matters. The independence of the judiciary has always been an important principle in the Australian system of justice and this principle has been further confirmed at the magistrates level with recent changes to the Act. These changes have the effect of removing the magistrates from the Public Service. (5) Previous amendments to the Act had already removed justices of the peace from duties on the bench and raised the academic qualification to a minimum of a law degree (appointment to the magistracy was previously limited to clerks of court).

3.2 Hearing of Children's Court and Family Matters

Under the Children's Court Act, children's courts are given jurisdiction to hear care and protection application and offence cases where the offender is under 17 years of age at the time that the offence was committed. Stipendiary magistrates have the power to hear children's court cases and they do so at the various gazetted courthouses throughout the state.

In the metropolitan area children will be heard at the Children's Court at Batman Avenue or, if they are appearing on summons, they may appear at their nearest gazetted children's court. Court hearing for these children will be conducted by the magistrates from the Children's Court. These courts have a range of associated facilities including the Children's Court Clinic funded by the Health Commission and responsible for providing psychiatric assessments and advice to the magistrate (located at Batman Avenue) the duty lawyers from the Legal Aid Commission (circuit) and duty officers from the Department of Community Services (regional offices).

Country children required to be kept in custody, are remanded to the city with the exception of those who go to Miralee (Mildura) or Warrabee (Ballarat). Those remanded to the city are heard at the Melbourne Children's Court. Children appearing on summons are required to attend their nearest gazetted children's court. Country magistrates sit in both the magistrates and children's court jurisdiction in these courts with most of the matters they deal with being for adult offenders. By contract magistrates operating at the Children's Court in the city have generally developed greater expertise in children's court matters as they are dealing with them on a day to day basis. Children appearing in country courts have available the same support services such as those of duty solicitors etc. as may be provided to adults at such courts.

The question of the children's court, legislation affecting children, the links with the responsibility of the Department of Community Services and the role of voluntary agencies in matters concerning children has been the subject of considerable research and community consultation. This work was done by a jointly establishment committee set up by the Law Department and the Department of Community Services chaired by Mr. T. Carney. Its

final report 'Child Welfare Practice and Review' is soon to be publically released. This discussion paper therefore only deals in passing with some of the issues around matters of social concern relating to children.

Both Victorian and Commonwealth Acts give magistrates the power to hear some matters concerning the family. Under powers vested in the magistrate under the Commonwealth Family Law Act a magistrate is able to hear and determine some family law matters including contested maintenance and uncontested custody and access.

3.3 The Role and Function of Clerks of Court

Under the Magistrates' Court Act provision is made for the appointment of a clerk of court for every magistrates' court subject to the provision of the Public Service Act. Since the magistrate has discretion in the running of the court, the clerk of court can be seen to have joint accountability of the court and also as a public servant under the Public Service Act. The accountability of the clerk of court as a public servant relate to the government of the day through the Courts Administration Division of the Law Department.

In addition to these obligations, clerks of court duties are specifically provided for in a number of Acts which require the performance of certain statutory duties. Included in the statutory duties are preparation of applications for license restorations under the Motor Car Act, submissions for bail and applications for variation of bail conditions, preparation of appeal documents, preparation of applications for the admission of drug dependent persons or alcoholics to assessment centres, filing/registering/enforcing small claims or Residential Tenancies Tribunal orders and enforcement of orders under the Family Law Act including the collection and distribution of maintenance money.⁽⁶⁾

They are also responsible for the preparation of documents in both civil and criminal matters including matters on behalf of the police, lawyers and barristers, local government, prosecuting authorities, the public and debt collection agencies.

Many of these functions involve the clerks of court in the giving of advice about procedures of the court and assistance to members of the public in these matters. Statistical returns for the 1983/84 year from all the clerks of court for time spent on such advice was 115,727 hours. Clerks of court have also traditionally had the responsibility for the distribution of funds from the Poor Box. Poor Box funds are donations to the court requested by magistrates as an alternative to fines or convictions. Recommendations on this aspect of the duties of clerks of court are included in another report as part of the Court Management Change Program and are therefore only referred to in passing in this report.⁽⁷⁾

Clerks of court are also involved in providing information and education to the community about the operation of the courts.

In the larger courts a degree of specialization is possible. Courts such as Broadmeadows, Prahran and Melbourne have officers who are specifically designated to deal with certain matters such as family law matters, the operation of the Poor Box and matters before the court of a civil nature. Even in these courts however, where senior staff have a management responsibility, individual clerks of court appear to have, and see themselves as having, considerable discretion in the way in which they perform their tasks. Other aspects of the Court Management Change Program however, including computerization will have a substantial effect on the current autonomy of operation of individual courts and their clerks of court.

Clerks of court are recruited through general intakes to the Public Service for basegrade administrative officers which require a Higher School Certificate. There is no formal training other than 'in-service' training, though a number are increasing qualifications by taking out law degrees. For appointment, promotion and transfer all clerks and would-be clerks are expected to pass qualifying examinations in the following subjects -

- Introduction to Law
- Administration and Practice of Court
- Statute Law

From the community point of view the clerk of court is seen as having an important advisory as well as administrative function. The Chelsea Citizens Advice Bureau in a submission on court closure identified the following functions as being important to them -

1. Free legal advice for separating couples.
2. Applications for maintenance, custody and restraining orders.
3. Information on court procedures for people to appear in court.
4. Fencing and other neighbourhood disputes.
5. Recovery of small debts.
6. Issue of summons.
7. Settling of small estates.
8. Allocation of emergency relief from the Poor Box.
9. Assistance in admittance of alcohol and drug addicted persons for treatment.
10. Cash donations to the Bureau's Samaritan Fund for emergency financial assistance.

The duties that clerks of court can perform therefore are wide and vary enormously from area to area depending on time available and the enterprise of the individual clerk of court. Formal training is limited with the main emphasis in the past being 'in-service' training and experience.

4. PROGRAMMES EITHER OPERATING FROM THE COURTS OR CLOSELY RELATED TO COURTS

Linked to the operation of the courts are a range of services provided by other government departments or voluntary agencies which have been identified according to the programme descriptions provided by UWAISIS.⁽⁸⁾ It should be pointed out that a more accurate description of them may be "services" rather than "programmes" since programmes implies a degree of planning and systematic resource development which does not appear to exist at this stage. This point will be taken up later in this report under Section 5. "Issues for the Future Operation of a Court or Justice System."

Services provided at courts will be described in terms of their objectives under the following headings -

- ensuring equal access to the courts;
- providing a wider variety of dispositions or alternatives to prison;
- assisting those using the courts through the court process;
- assisting in the dealing with the social problems which may underlie a court appearance;
- planning and development of court operations;
- community participation and co-operation.

4.1 Programmes Aimed at Ensuring Equal Access to the Courts

Services included in this programme description are those services intended to ensure that those appearing at court are not disadvantaged as a result of their income or ethnic background.

Included in this bracket of services is the newly set up legal interpreter service, and free legal advice service for those appearing at court and community legal centres.

The Legal Interpreter Service: has recently been set up to establish a comprehensive register of all legal interpreters and to provide an on call referral system for Government agencies.

It operates in accordance with Article 14 of the Human Rights Commission which provides a minimum guarantee of free assistance of an interpreter for anybody charged with a criminal offence. In such proceedings the informant in the case usually arranges for an interpreter to attend the court if an interpreter is considered necessary. If the magistrate requires an interpreter after the commencement of a case, the hearing is adjourned until an interpreter has been organized by the police informant or the clerk of court. In this case the Crown bears the costs of the accused person's interpreter though this does not extend to witnesses for the accused.

In civil proceedings the parties to the dispute are responsible for arranging interpreters to attend the court though the magistrate may adjourn a hearing until an interpreter has been obtained. In these cases each party bears his/her own costs. Depending upon the decision of the court interpreters' costs may be awarded against the unsuccessful party.

It is proposed to establish an accreditation and training scheme so that all interpreters used in the criminal justice system will be accredited and people with language difficulties will have qualified interpreters available to assist.

This service is administered by Ethnic Affairs Commission under a joint arrangement between the EAC and the Attorney-General. In its first year of operation it will be funded by the Federal Government and will operate with joint funding in the second and third years.

The Legal Aid Service: The main function of the Legal Aid Commission is to conduct actions on behalf of those assessed (on financial grounds) to be eligible for legal assistance. The Legal Aid Commission is principally funded through the State Law Department and the Federal Attorney-General's Department.

The Commission provides salaried duty lawyers at various courthouses on court days to assist persons appearing at Court. Additionally, various law associations organize a roster of voluntary duty lawyers at nominated courts throughout the State to assist persons appearing at court without the benefit of legal representation. The Commission also briefs private solicitors to appear on its behalf.

Servicing of the magistrates' courts in the metropolitan area is through salaried duty lawyers based either at the head office of the Legal Aid Commission or in the regional offices that are being set up and the voluntary lawyers through the local legal associations. The Commission currently has salaried duty lawyers at the following magistrates' courts - Berwick, Broadmeadows, Brunswick, Chelsea, Cranbourne, Dandenong, Frankston, Melbourne, Pakenham, Prahran, Preston, Sunshine, Queenscliff and Winchelsea.

Duty lawyers are also available both at the central Children's Court at Batman Avenue and the following courts which have hearings for children's court matters - Box Hill, Broadmeadows, Cheltenham, Dandenong, Dromana, Frankston, Heidelberg, Melbourne, Melton, Preston, Ringwood, Springvale, Sunbury, Sunshine, Werribee and Geelong.

In the country duty lawyer services are organised by the Legal Aid Commission in co-operation with the seven country law associations or on a voluntary basis through the law associations. Courts are selected on the basis of the volume of business of the court and are reviewed annually by the Legal Aid Commission with the co-operation of the magistrate and the clerk of court. Courts covered are -

Warnambool, Colac, Geelong, Ballarat, Bendigo, Mildura, Shepparton, Wangaratta, Wodonga, Morwell, Moe and Taralgon with requests under consideration by Sale and Portland.

Community Legal Centres: Each CLC is controlled and managed independently and is generally locally based. Most centres provide free evening advice and referral services and, with the support of volunteers, offer members of the public and community groups legal advice (and at times representation). All centres have some mandate to ensure that the services they provide are given in the most appropriate way eg. some of the centres have a policy of recruiting clients for positions of management as a method of ensuring that the centre remains 'in tune' with the needs of the local or client community. A clear common policy of the CLC's is to attempt to break down the mystique of 'The Law', particularly to the disadvantaged groups in our society, by working with unemployed youth groups such as CYSS and EPUY, and by visiting the local hospital and offering an advice service on the premises. CLC workers can be found at the youth training centres run by the Department of Community Services and offering advice and information to newly formed residents association or youth groups on civil rights. They have an important community liaison and education role on a range of legal matters. Funding is provided by the State and Commonwealth, the Legal Aid Commission, councils and grant in aid schemes. Services currently funded include centres at Brunswick, Broadmeadows, Camberwell, Coburg, Doveton, Fitzroy, Flemington, Frankston, Oakleigh, North Melbourne, Nunawading, Southern suburbs, Springvale, St. Kilda, Sunshine, West Heidelberg and Western suburbs.

In addition there are several similar legal centres providing for the needs of special groups. These include the Aboriginal Legal Service, the Consumer Credit Legal Service, the Tenants Union Legal Service and the Womens Legal Resource Group. All of these services are based in the metropolitan area.

4.2 Programmes Aimed at Providing a Wider Range of Alternatives to Prison

The Office of Corrections is in the process of setting up a court service of duty officers at courts in all their regions. The Department of Community Services provides a similar service for children's court matters. These officers provide a service to magistrates by assessing and advising the magistrate on the suitability of the person for alternatives to prison such as community service orders, attendance centres and probation. The range of such sentences is currently under review by the Law Department.

Agencies attached to the courts or within the community may be used by the magistrate for reporting or assistance associated with bonds. Agencies which have been used traditionally in this capacity are the Salvation Army. Other agencies increasingly used are Citizens Advice Bureaus providing information services to the courts, the Court Information and Welfare Network, and drug treatment agencies such as Oddessey and Taskforce.

4.3 Programmes Aimed at Assisting People Through the Court Process

A number of voluntary agencies are setting up general information and assistance services to operate at the courts. Most of them operate with volunteers who make a direct approach to those waiting at the courts and offer their assistance. The assistance offered can vary enormously and may include information about entitlements to pensions, referral to other community agencies able to offer counselling or family support services, support and assistance through the trial process and afterward with advice and information. This assistance is available to anybody appearing at court. In some instances police will contact these services prior to a court appearance and notify them that a particular person is to appear in court and needs some assistance.

The Court Information and Welfare Network - This is a voluntary service which operates in a number of courts including the magistrates courts at Prahran, Melbourne, St. Kilda, South Melbourne, Cheltenham, Broadmeadows, Sunshine, Footscray, the Supreme Court, County court and Family Court. In the country the Network operates at the Bendigo Court.

It is rapidly expanding into other courts and has recently set up in the Coroners Court and several other magistrates courts. Most of the service operates on volunteer time. In 1983/4 the amount of time was assessed at 25,000 hours with the only salary payment being for a co-ordinator. (9) Volunteers provide practical and moral support to anybody appearing at court, assist in sorting out social problems and provide information and referral to community resources. They see themselves as providing a link between the court and the community. (10)

Citizens Advice Bureaus: These are starting to extend their services to operate from the courts. Such services are operating from Springvale, Camberwell and Box Hill.

Though the two services (i.e. the Network and CAB's) are similar in terms of the assistance that they provide, they operate from somewhat different philosophies. The Court Information and Welfare Network is made up of specially trained volunteers able to operate in a court setting. The CAB service emphasizes the importance of operating from a community base and from a general community framework rather than a specialist framework. Court work is therefore part of the overall advice and assistance they provide to the general community.

In addition to these groups a number of more traditional agencies provide services to courts including the Salvation Army, Sisters from the Church of England and more recently, organizations such as Odyssey. Most of these organizations have responsibilities back to their own organization and, it seems, provide information and often advice to the magistrate in terms of their own service network rather than of community services in general. For example people with housing needs would be referred to Salvation Army housing facilities.

As has been mentioned before the magistrate may use such organizations for reporting requirements attached to bonds.

4.4 Programmes Assisting in Dealing With Other Social Problems Which May Underlie a Court Appearance

There is growing evidence that other problems may underlie a court appearance and that treatment options other than prison are required to deal with these matters.

One example of the sorts of problems that may underlie or cause court appearance is drug usage. In the past five years the number of drug offenders in gaol has increased by 247% with an increase of 57% in the same period for drug offenders on probation. Figures collected by the Prosecutions Unit of the Office of Corrections show that drug offenders on probation are between 50% and 75% more likely to be returned to court for breach of probation than other probationers. The incidence of drug related offences and drug offences varies from area to area, with areas such as Broadmeadows and Prahran having much higher incidences of such offenders appearing at court.

Similarly those appearing at court for debts may have a range of problems not solved by any decision of the court. The newly introduced Judgment Debt Recovery Act recognises this fact by providing for the assistance of a community agency before a more drastic decision is made by the court. The Judgment Debt Recovery Act provides that persons in debt may seek financial counselling and advice and arrange for payment of the debt by instalment rather than having property or goods seized on warrant.

Police charges and the nature of court appearances is a useful indicator of social malfunction though it is apparent that current solutions available to courts are not able to deal with such problems and require the court to go outside its own frame work to attempt to deal with them. (11)

For some of these people a psychiatric assessment will be required by the magistrate and this is generally done through the Health Commission. Since such facilities are not dispersed widely on a state basis this often means that people have to travel considerable distances and often on more than one occasion for the psychiatric assessment. The Legal Aid Commission does have some capacity for payment of private psychiatrists to do this work but it is generally only able to be used where direct benefit for evidence in the case can be demonstrated.

Other organisations described in section 4.3 provide a range of information and advice on benefit entitlements, housing and other support services that are available in the community.

4.5 Programmes Aimed at Planning and Development of Court Operations

Until quite recently courts were seen as providing a specific service to the community for which the main consideration was 'demand' as measured by the legal case description. There is very little statistical information about the operation of the courts much less descriptive information about the client population of the courts.

Some of this is changing with proposals under the Courts Management Change Program for management and administration change and upgrading of courts and with the statistical work that was done on civil cases appearing before the courts as part of the work of the Civil Justice Committee. Most of this information is however about 'cases' and what happens to them from a court operations point of view. Very little of the data could provide the sort of information needed to be able to look at the operation of courts in the future, the policies that should be adopted and the demand for particular services which may need to be considered from a social point of view. Examples of the sort of information that would need to be collected include the age of people being charged, their ethnic background, marital status, financial situation and the area they come from.

Capacity is required to both collect this data in a usable form in the first instance and then use it for resource allocation purposes and policy analysis. This capacity is required at both the central and regional levels.

Some recent research has also lead to proposals for the development of options to the operation of the courts. The two main proposals that fall into this category are as follows -

The Dispute Resolution Project: This is a recently completed research and consultation project which concluded that there is a need for a neighbourhood disputes service in Victoria similar to the service in New South Wales. Research revealed that disputes between neighbours had the potential to escalate into major criminal and civil matters if no alternatives providing a preventative service were available.

The report of the project provided findings that the extension of the present court system to handle neighbourhood disputes was unlikely to meet with general acceptance. This was on the basis that those consulted generally believed that the resolution of disputes between people in a continuing relationship was best conducted on neutral ground away from the courts and other institutions perceived to be authoritarian and closer to services which already form part of human support services at the local level. It proposes the use of a process of mediation conducted by people from the community trained as mediators. The role of the mediator is in assisting in reaching a solution to the problem with the people involved having the control over the process rather than a third party.⁽¹²⁾

Family Conciliation Centre: Dandenong/Springvale. This centre is in the process being set up as a result of a proposal to the Federal Attorney-General by the Family Law Council. It relates to the operation of the Family Law Court and is intended to provide services for the early intervention into marital problems to assist in resolution of difficulties at an early stage. Its emphasis is on providing mediation for family disputes with the use of trained mediators as well as establishing a range of services including

family counselling, financial counselling, legal advice and counselling in custody and property matters. It is proposed that these centres work closely with a range of existing services in the community including marriage guidance agencies, welfare bodies, legal aid agencies and the Family Court.

4.6 Programmes Aimed at Community Participation and Co-operation

The newly established Office of Corrections has set up community corrections committees in each of its 12 regions. These committees generally meet on a quaterly basis and are made up of senior police, magistrates and Office of Corrections staff. Some of the committees also include representatives of probation officers and local councils.

The aim of these committees is to provide an opportunity for the discussion of issues of mutual concern between key practitioners, to consider new legislation and matters which relate to the operation of the courts. They can therefore be seen as providing some opportunity for planning, development and integration of services provided at a regional level.

These committees are a recent innovation and it is not possible yet to assess their effectiveness in encouraging participation and co-operation.

5. ISSUES FOR THE FUTURE OPERATION OF A COURT OR JUSTICE SYSTEM

The preceding section of the discussion paper describes the various programmes and programme areas where there are linkages between the operation of the courts and other government departments and agencies. Section 4 is therefore primarily descriptive. Section 5 moves on to look more closely at the problems and issues this analysis points up.

The main issues identified are as follows -

- . The lack of a comprehensive range of services provided on a state wide basis.
- . The lack of capacity to integrate the functions of a court and justice system with the operation of other agencies.
- . Current inability to ensure equity in the provision of services and access to these services.
- . Current difficulties in ensuring administrative efficiency and cost efficiency in the provision of services.

A distinction has been made between the court system and a justice system on the following basis -

- . The court system is seen as that system which relates to the traditional operation of the courts.
- . A justice system is seen as a system of services responsive to a broader range of identified community needs. It includes the operation of the courts but also extends to other services that are being provided by the Law Department as a whole or which could be provided.

5.1 Comprehensive Service Development

5.1.1 Comprehensive Service Development Within Courts

Issues around service development within courts relates to those services which courts are clearly going to continue to provide and those services which should be attached to the courts.

Section 4 of the discussion paper identifies the sorts of services needed at courts including assistance provided by duty lawyers, general support and assistance provided by the Court Information and Advice Network, Citizens Advice Bureaux and other welfare agencies and duty officers provided by the Office of Corrections and the Department of Community Services. These sorts of services are generally most likely to be provided in the higher volume courts since resourcing of all courts in this way is generally not feasible.

Courts providing these services also need to have the physical space for accommodation. At this stage very few of the courts (even the larger courts) have been designed to meet these needs. Prahran Court has modified some of its interviewing areas for other agencies to use but even so they are inadequate; the Melbourne Court is very large in terms of court facilities but has no accommodation even to provide interviewing space for the duty solicitors. The Melbourne Children's Court is also inadequate in that the court related facilities are scattered in a number of different buildings on the site and the holding facilities for children remanded to appear do not provide separation between types of offenders and age groups. The future of this court will however depend on the Government's response to the recommendations of the Carney Report. One of the few courts able to provide a full range of services that have been identified as being needed at court is the newly built Broadmeadows Court. Flexibility is needed in considering additional physical space allocation as needs vary from area to area. Making such decisions requires a process of public participation in determining regional or sub-regional needs and considering a way in which these needs can be met.

The principal issues in ensuring a comprehensive range of services in courts are therefore -

- . Determining on an area by area basis the sorts of services that should be attached to courts.
- . Providing a framework for community participation to allow this to happen.
- . Integrating future court house design with community requirements.

5.1.2 Comprehensive Service Development Within The Community

In this part issues around establishing a comprehensive range of services is limited to those services that come within the responsibility of the court and other proposals for new services which relate to a justice system.

A number of suggestions have been made concerning services which need to be included in any more comprehensive view of service delivery.

They include providing some of the services of the Public Trustee on a more accessible basis, incorporating free legal centres into a system of preventative services and providing a much more comprehensive range of dispute resolution alternatives such as those discussed in the report of the Dispute Resolution Project Committee.¹³

It is understood that the Garney Report proposes the regionalization of childrens court operations and the setting up of specialist tribunals to hear certain types of offences.⁽¹⁴⁾ In South Australia legislation is being proposed for the hearing of drug offences by a Board made up of specialists. More recently in Victoria the Small Claims Tribunals are using court houses for their hearings in some areas. In the Supreme and County Courts pretrial conferences have been introduced as a means of encouraging early resolution of certain types of disputes.

The general objective in each of these processes, although not explicitly stated, seems to be towards providing a range of options to people in dispute. Some of these options are in the direction of providing alternatives which require the least possible intervention or, by community education and information, aim at preventing legal disputes.

At this stage most of the services described in Section 4 and mentioned above are far from comprehensive, e.g. legal centres are generally only provided with the metropolitan area, dispute resolution centres are proposals which have started in other States but have not yet started in Victoria etc.

If the services are to be provided within localities on a comprehensive basis then they will need first of all to be defined and specifically programmed then supported by appropriate administrative structures. Although courts have been organised on a local basis they have not seen it as part of their function to provide comprehensive services to a geographical community.

There are some difficulties in attaching responsibilities for all of the above proposals to existing court operations or to the regionalized court administration proposed as part of the Court Management Change Program.

These difficulties are as follows:-

- . The courts see themselves, and are seen by the community as serving a certain function. Expansion of its operations needs to be compatible with these functions and perceptions and should not result in role confusion either for the courts or the community they serve. This difficulty is explored for example in the Dispute Resolutions Project's consideration of whether or not mediation should be provided within the framework of the court or under a different umbrella. The recommendation of the project committee, based both on community perception and the role compatibility, was that a mediation service should be separate from the authoritarian model provided by courts. Such a service could be administered through a justice system but is incompatible with a court based system of administration.

There are limitations within the court system and with the magistrates themselves in the capacity to deal with the range of problems that present at the magistrate court. In the past the solution has been to set up specialist tribunals generally operating at the central level. Examples of this are the Small Claims Tribunal and the Residential Tenancies Tribunal. Setting up of such courts and tribunals provides specialist expertise more adapted to the needs of the particular problem to be addressed at the expense of geographic accessibility. It is however possible to suggest a range of more flexible alternatives based on a justice model rather than the current operation of the magistrate on a court based model. Other more flexible alternatives especially for country areas are put forward in the report of the Carney Committee and include childrens court tribunals meeting on an as needed basis. Such proposals require flexibility and broadening of the professional input and uses to which courts could be put. It suggests the inclusion of part time tribunal members and the use of professional expertise in an area which is currently the sole domain of the magistrate.

The role undertaken by many clerks of court is already broad requiring compliance with statutory duties, the requirements of the magistrate and responding to the information and advice needs of the community. Capacity to take on new functions appears to require a greater degree of specialization of skills at the regional level than is currently contemplated. The need for a broader range of functions and people to fill these functions will be increased if it is decided to move to a justice based system rather than a court based system.

The principal issues in ensuring a comprehensive range of services within communities are therefore -

- . **The need to increase the flexibility of the operation of courts in line with appropriate functions and community perceptions.**
- . **The need for both greater flexibility and greater specialization by broadening the professional input at court and within the service delivery framework developed.**
- . **The need for a service delivery framework capable of providing for a range of different community needs and able to provide services on a programmed rather than ad hoc basis.**

5.2 Integration of the Functions of the Justice System With the Operation of Other Agencies

This part moves beyond those services which are the direct responsibility of a justice system to a range of services needed to respond to the needs of clients either at court or required within a geographically described community.

Section 4 describes a wide range of services which may be required to meet aims which include ensuring equal access to courts, providing a wider variety of dispositions and non-penal alternatives; assisting those in court through the court process; assisting in dealing with the social problems which may underlie a court appearance and planning and development and community participation.

Whilst it is possible to identify each of these programmes operating in some areas none of them can be said to be comprehensively provided across the state or even in any single court house in any area. Many of the new innovations have been possible with the co-operation of individual courts but have generally been at the initiative of agencies outside the courts. Current Head Office personnel agree that much of the blame for lack of innovation at courts rests with the conservative view taken by Courts Administration in the past. The exception to this would probably be at the Prahran Court where the magistrate has initiated contact with a number of agencies which were considered useful to the operation of the Court. Even though the services provided at this court are reasonably comprehensive they could not be described as integrated with each other since there is no integrating mechanism and they tend to operate in isolation from each other.

In order to ensure the integration of services the following conditions are required -

- . An administrative structure the responsibility of which it is to provide comprehensive and integrated services within the court and within the geographical unit selected.
- . The administrative unit needs to be able to relate to boundaries of other Government Departments which are relevant to the administration of a justice system and if possible they should be the same.
- . A data base providing information on regional characteristics and client information is also needed to provide an analysis of the needs of clients of the courts and the various alternative facilities that may be needed within a region.
- . A system of consultation and participation may need to be developed to ensure the co-ordination of services provided at the courts and within the region more generally. Consideration is being given to means by which communities could participate through the setting up of regional consultative committees as the basis for community consultation and participation. There are however, some difficulties with the resourcing and indeed the need for, yet another regional consultative forum.

The other alternative is that the justice system take a more active part in existing regional consultative arrangements for ongoing consultation/participation processes and develops other arrangements with key departments such as the Police, Legal Aid and the Department of Community Services on a less formal basis along the lines of the Community Corrections Committees now operating.

The specific nature of the services provided will vary from area to area in accordance with the needs of a particular area. For example, a region with a high youth population may be able to develop a range of different options for dealing with youth problems in the area. Similarly an area with a high proportion of aborigines appearing before courts may wish to implement an entirely different programme. An example of the type of innovation to be encouraged is the magistrate and police co-operation in Shepparton to provide an advisory role for aboriginal elders for aborigines appearing before the court. The concern at this stage should be to establish an administrative structure capable of responding to these needs rather than providing a fixed model for all courts.

The principal issues in ensuring an integrated range of services are therefore -

- Consistency between the boundaries selected by the justice system and other key government departments.
- A mechanism for consultation and an opportunity for participation in the framing and implementation of new programmes administered either within the jurisdiction of the justice system or another Department or agency.
- Adequate information and the capacity to plan the development and implementation of new programmes.

5.3 Equity in the Provision and Location of Services

5.3.1 Equity in the Location of Services

As has been described previously the court system for magistrates courts has been developed on a local basis often with only one court room and frequently without associated facilities which would now be regarded as necessities. Despite the number of such courts the documentation from the Court Management Change Program⁽²⁾ shows that many of them are not well located with some within several kilometres of each other while newer areas may have missed out entirely.

These inequities need to be addressed and corrected by new courts, rationalization of some courts and their re-location to other areas. It has however, been pointed out by many groups that some of the rearrangements and court closures seem to have taken insufficient account of the distances that people have to travel. From some of the documentation it

seems that there is an expectation that people coming to court will have access to private transport and it has been frequently asserted the calculations of times for public transport usage are under estimates. These matters are being given more detailed attentions as part of the evaluation of the court closures in the metropolitan area and will also be considered as part of the state wide community consultation on court location. The issue of geographical accessibility is particularly important where court attendance is required - for example, a person on bail may have a warrant issued or his/her arrest for failure to appear.

In children's court matters it is also evident that current arrangements operate to the disadvantage of children and their families. This is particularly the case for children in country areas who may be dislocated from their families and the support that may be available within local communities. Those who have their cases hear at local courts are disadvantaged by having the matter heard by stipendiary magistrates without the benefit of the specialized experience available to children in the metropolitan area. Recommendations on this matter are part of the Carney Report on Child Welfare Practice and Legislative Review currently under consideration by the Government.⁽¹³⁾

Other functions provided by the clerks of court, for example, the distribution of money from the Poor box and assisting with maintenance orders may need to be provided locally rather than regionally or could perhaps be through another agency or a part time arrangement. Some of these alternatives have been canvassed in other reports and all are dependent on what is finally agreed to be the role and function of a justice system. If the system moves in the direction of providing more comprehensive services with alternative dispute resolution mechanisms, a greater role in community education and greater assistance with such things as maintenance, the making of wills and so on then other facilities may need to be developed at the local level independent of a court facility.

5.3.2 Equity in Access to Services

Section 4 of this Discussion paper describes those programmes which are aimed at ensuring access to those groups within the community considered to be more vulnerable. The basic argument in favour of services such as duty lawyers and interpreters is that issues of justice require more than the impartiality of the magistrate and may need programmes which positively discriminate in favour of certain disadvantaged groups.

At this stage none of these services are comprehensive across the State and as has been pointed out before many of them have developed at the initiative of other government departments rather than at the initiative of courts. Ensuring access requires a much greater role in assessing who is using the courts, why, what other alternative there are

and how appearance at court by particular groups within the community can be minimized. This requires a greater emphasis on a monitoring and planning approach to the use of the courts and an emphasis on developing creative alternatives.

The principal issues in ensuring equity in the provision of services and access to services is therefore -

- . The selection of a geographical unit which is appropriate to the type of service and likely usage.
- . Distinguishing between functions where it is desired to encourage access or where access must be provided because of the nature of the service being provided.
- . Comprehensive programmes need to be developed to ensure that those appearing before the court are able to do so on an equal basis with any other groups within the community.
- . Monitoring and evaluation of service usage needs to be done at the central and regional levels to ensure that only those issues needing the intervention of the courts are brought before the courts and that other alternatives are explored and developed.

5.4 Administrative Efficiency and Cost Efficiency in the Provision of Services

Much of the material generated from the Courts Management Change Program has emphasised questions of administrative efficiency and cost reduction.

Questions of efficiency can however, only be useful when considered against the stated aims of the organization.

The principal issues are therefore -

- . Defining the role and function of the system.
- . Developing means of measuring cost and performance against function.

5.5 The Impact of Regionalization

Many of the service difficulties raised previously in this section of the discussion paper are difficulties which are common to government departments especially those departments providing human services (i.e. service to people). These departments have moved to overcome these difficulties by regionalizing their operations.

The regionalization of the management is essentially a process of decentralization of the power to make decisions and the setting up of an area based management system. The benefits intended from this transfer of power are seen to be as follows -

- . An administrative structure can be set up to oversight or manage a particular area or region.
- . Required services can be identified and developed systematically rather than on an ad hoc basis within a particular geographical area.
- . Regional needs can more easily be identified and services can be developed to meet these needs.
- . There is an opportunity for community participation in the planning process.
- . Integration of services provided by a number of different departments and agencies is possible.

Regionalization of management of the operation of Court Administration has been agreed as part of the Court Management Change Program. Consideration is also being given to sub-regional groupings of courts in order to up-grade services and facilities at courts. From discussion with other departments and agencies providing services at courts it appear that other services can only be provided to the higher volume courts which have adequate physical facilities to accommodate services such as the duty lawyers scheme, the Office of Corrections advisory service and the voluntary service of community information and support provided either by the local Citizens Advice Bureaux or the Court Information and Welfare Network.

Accordingly, there appear to be good arguments for the regionalization of the management of the courts and some arguments in favour of sub-regional groupings of courts to provide a better range of service to people at court.

It is however, evident that regionalization of Courts Administration on its own will not enable the regional development of a full range of justice services as distinct from court services. Many of the other services mentioned previously such as the community education and advice role of the community legal centres, the development of neighbourhood dispute mechanisms as an option to the operation of courts, more flexible arrangements for dealing with childrens court matters require regionalization to be developed around a more broadly based administration of justice system rather than being based around a court system.

It also requires the development of a policy approach to the system which emphasizes the need for preventative services, provides greater support for monitoring analysis and planning at the central and regional level and sees the function of the magistrates court as a point of last resort in most instances.

The functions and personnel required to perform such functions should be in line with these overall directions rather than setting the direction in line with the current role of the magistrate and clerks of court.

The principal issues in regionalization are therefore -

- . Regionalization of court administration has the potential to provide some answers to problems of service delivery encountered by courts but which are common to government departments delivering human services (or services to people).
 - . Regionalization proposals need to be assessed against the service delivery standards identified previously.
 - . Questions of policy directions and the future operation of a court or justice system need to be considered and included as part of a regionalization package.
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NOTES

- (1) Report on the Administration of Court Poor Box Funds - Project Courts Management Changes Program 1984.
 - (2) Courts Needs Study: Courts Management Change Program, 1985.
 - (3) Civil Justice Committee Report to the Honourable the Attorney-General concerning the Administration of Justice in Victoria, 1984.
 - (4) Victorian Year Book 1983.
 - (5) Magistrates (Appointments) Act 1984.
 - (6) Issue Paper 3. Advisory Committees on the Future Role of Magistrates Courts. The Role of the Clerk of the Magistrates Court 1984.
 - (7) Report on the Administration of Court Poor Box Funds. Courts Management Change Program 1984.
 - (8) UWAISIS II, Taxonomy of Social Goals and Human Services Programmes United Way of America, 1976.
 - (9) Application for Funding of the Court Information and Welfare Network.
 - (10) The Criminal Court Experience as the Catalyst to Crisis Intervention. Carmel Benjamin. Aust & N.Z. Journal of Criminology (June 1984).
 - (11) Policy Proposal: Supervision of Drug Abuses. Office of Corrections. September 1984.
 - (12) Neighbourhood Mediation Service. Report of the Dispute Resolution Project Committee. February 1985.
 - (13) Report on Child Welfare Practice and Legislation Review: Chaired T. Carney 1985.
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APPENDIX 1

COMMUNITY SERVICES ON COURTS

LIST OF PEOPLE INTERVIEWED IN GROUPS

V.C.O.S.S	Doug McManus	Now Centre
	Veronica Elton	Social Sec. Sunshine
	Gweneth Terry	CAB
	Diedre Harrison	Diamond Valley CAB
	Bob Bath	V.C.O.S.S Emergency Relief Project.
Newport	Tim McCoy	Newport Legal Centre
	Lil Arden	Western Region Community Legal Centre
	Joe McGrath	Williamstown City Council
	Esther Lawlor	Western Region Financial Counsellor
	John Ernst	Western Region Council for Social Development
Premier & Cabinet	Connie Benn	Director of Social Development
	Geoff Fitzgerald	Justice Section
	Greg	Justice Section
Prahran Court	Jack Moloney	Magistrate
	Brendan Meehan	Clerk of Courts
	Bob McHugh	Deputy Clerk of Courts
		Salvation Army Court Information and Referral Network
Melbourne Court	Mihceal Quirk	

Childrens Court	Tony Chandrasekra	Psychiatrist C.C. Clinic
	Brenda Richards	Social Worker C.C. Clinic
	Carmen Steger	Psychologist C.C. Clinic
	Ann Brown	Court Advisory Service (Department of Common Services)
	Choy Lew	Court Advisory Service (Department of Common Services)
	Marlon Schwartz	Court Advisory Service
	Hayden Garmichael	Legal Aid Service (Legal Aid Commission)
St. Kilda Community Centre	Carolyn Ryan	St. Kilda Service
	Jan Egan	Financial Counsellor
	Ray Glickman	Social Planner City of St.Kilda
	Sue Douglas	Department of Community Services of St. Kilda
	Szana Awift	Social Security St. Kilda
	Christine Fawcett	St. Kilda Community Group
	Greg	Unemployed Workers Group
	Cynthia Levey	Assistant to Local Member
	Bev Dee	Social Security - Prahran
Legal Aid Commission	Joe Gorman	Duty Lawyer Scheme
	Glen Holden	Duty Lawyer Scheme
Springvale CAB	Merle Mitchell	CAB
	Mary Stone	CAB - Court Service
Child Welfare Practice & Legislation Review	Trish Harper	

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