Local Courts: Jurisdiction, Procedures and Administration

Terms of Reference

In 1969 the Committee was given a general reference to review the Local Courts Act 1904 (W A) ("the Act") and the Local Court Rules 1961 (W A) ("the Rules").

Background of Reference

The reference resulted from submissions made by the Law Society of Western Australia that the Act and the Rules, which are derived from 19th century English legislation, were out of date. At the time of the reference, a number of reviews of court systems in Australia and other jurisdictions had been undertaken. Some of these jurisdictions had effected substantial modifications to court structures or procedures. This reference complemented the Commission’s general reference to review the Justices Act 1902 (W A) which regulates the procedure of the Courts of Petty Sessions.1 The two projects together constituted a study of the entire inferior court system in Western Australia.

The Committee began work on the reference almost immediately by obtaining the views of magistrates and senior legal practitioners and conducting research on the jurisdiction and procedure of Local Courts. The conduct of the reference was taken over by the Commission upon its inception in 1973.2 In 1980 the Commission decided to divide the reference into two parts. Part I dealt with Local Court jurisdiction, procedures and administration and Part II dealt with the enforcement of Local Court judgments. The primary aim of Part I was to simplify the procedures involved in Local Court cases. The Commission’s guiding principles in making its recommendations were to ensure that courts of summary jurisdiction were able to deal with most minor disputes, that accessibility to the court process was enhanced and that the procedure employed in Local Courts was as simple and inexpensive as possible.

Nature and Extent of Consultation

The Commission began carrying out research in March 1977 by advertising in the press for preliminary submissions. A total of 14 responses were received, chiefly from solicitors with experience in summary litigation. These submissions assisted the Commission in preparing a working paper on the subject which was released for comment in April 1983. A short proposals paper was also issued in order to encourage and expedite submissions from the general public. These papers dealt generally with the jurisdiction, procedures and administration of Local Courts and raised a number of issues concerning the structure and operation of Local Courts. In response to the working paper the Commission received a substantial number of written and oral submissions from individuals and organisations including the Law Society of Western Australia, the Shire of Mundaring, the Crown Law Department and the Legal Aid Commission of Western Australia.

Throughout the consultation process, officers of the Commission were engaged in ongoing discussions with members of the judiciary, the magistracy, the staff of the Crown Law Department, legal practitioners and private individuals across Western Australia. A member of the Commission also visited courts and tribunals in New South Wales, Victoria, South Australia and Tasmania to discuss aspects of the reference with magistrates, administrators, registrars and legal practitioners in these jurisdictions. The Commission submitted its final report to the Attorney-General in June 1988.3

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1 See Project No 55.
2 The Law Reform Committee of Western Australia was formally reconstituted as the Law Reform Commission of Western Australia on 19 January 1973.
3 Law Reform Commission of Western Australia, Local Courts: Jurisdiction, Procedures and Administration, Project No 16(I) (1988).
Recommendations

The Commission’s principal recommendations included a number of proposals to clarify and extend the basic jurisdiction of Local Courts and enable several administrative changes. Importantly, the Commission confirmed the recommendation in its earlier report on the Justices Act 1902 (WA) that Local Courts and Courts of Petty Sessions be merged into a single court of combined civil and criminal jurisdiction.\(^4\) The key recommendations of the Commission were that:

- Local Courts and Courts of Petty Sessions should be merged to form a single court of general inferior jurisdiction with the following divisions:
  - (a) an Offences Division;
  - (b) a Civil Division;
  - (c) a Small Debts Division;
  - (d) an Administrative Law Division; and
  - (e) a Family Law Division.

- The basic jurisdiction of Local Courts should be clarified and extended by giving them express jurisdiction to:
  - (a) determine money claims up to $15,000 and to make orders for the recovery of unlawfully detained goods up to $15,000;
  - (b) grant relief against fraud or mistake and determine actions to restrain actual or threatened trespass or nuisance where the relevant amount does not exceed $15,000; and
  - (c) dissolve partnerships or wind up their affairs on dissolution where the value of the firm’s assets does not exceed $50,000.

With regard to Local Court procedure the Commission recommended that:

- The scope of provisions for summary judgment should be extended.
- Local Courts should be given power to set aside summary judgments on just terms.
- The position of third parties should be assimilated as far as is practicable to that of the principal parties.
- Provision should be made for the discovery and inspection of documents against a person who is not a party.
- Procedure in chambers should be simplified and magistrates should be empowered to deal with an application by telephone and to fix the costs of an application.
- Litigants in person should be able to be compensated for work done in preparing and arguing their case.

The Commission also made a number of administrative and consequential recommendations. A comprehensive discussion of the Commission’s recommendations may be found in chapter 21 of the final report.

Legislative or Other Action Undertaken

The Commission’s report was tabled during parliamentary proceedings in 1988 but the proposals contained therein were not debated.\(^5\) In 1997 the Commission’s recommendations were considered in a Ministry of Justice report on Amalgamation of Courts of Summary Jurisdiction.\(^6\) The report acknowledged the widespread support for a proposed merger of Local Courts and Courts of Petty Sessions and contained proposals for the introduction of legislation to implement the Commission’s recommendations.

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Currency of Recommendations

The currency of the Commission's recommendations should be considered in light of its more recent recommendations in the extensive review of the criminal and civil justice system (“Project No 92”). In that report the Commission stated that of all the courts in Western Australia exercising civil jurisdiction, the Local Court should be the most user-friendly and urged that the procedures be simplified and the antiquated Rules reformed. The Commission reaffirmed its recommendation for the establishment of a single new court, the Magistrates' Court, combining the civil jurisdiction of the Local Courts and the criminal jurisdiction of the Courts of Petty Sessions. However, instead of separate civil and administrative jurisdictions of the proposed Magistrates' Court (as recommended in Project No 16), the Commission suggested that those jurisdictions be transferred to a tribunal to be called the 'Western Australian Civil and Administrative Tribunal'.

Apart from the recommendation pertaining to the administrative division of the proposed Magistrates' Court the Commission's recommendations remain current. Since the Commission's 1988 report the Ministry of Justice has continued to acknowledge the importance of these reforms and has been progressing the implementation of legislative changes. The Courts Services Division at the Ministry (now Department of Justice) is currently in the process of preparing a Cabinet submission for approval to draft a Magistrates' Court Bill with the possibility of proclamation in 2003. This new legislation will establish a single Magistrates' Court of combined general inferior jurisdiction. The Department of Justice has indicated that this legislation will be drafted with the specific aim of incorporating as many of the Commission's recommendations from Project No 92 as possible. The Department of Justice is in the process of setting up a steering committee of key stakeholders to oversee the development of the Bill and to examine and consider how to incorporate and implement the Commission's recommendations.

Action Required

The Commission's recommendations may be effectively implemented by the enactment of legislation establishing a Magistrates' Court of combined summary jurisdiction. The introduction of this legislation will provide the opportunity for a complete review of the Rules with the aim of simplifying and refining current procedure.

Priority - High

The pressing need for substantial changes to the existing inferior court jurisdiction to simplify procedures and enhance accessibility has been widely acknowledged. In particular, the recommendation for merging the courts of inferior jurisdiction has received broad community and bipartisan political support.

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7. Law Reform Commission of Western Australia, Review of the Criminal and Civil Justice System in Western Australia, Project No 92 (1999).
8. This recommendation has resulted in a further reference to the Commission to detail the jurisdiction and operation of the proposed tribunal. The Commission's final report on Judicial Review of Administrative Decisions (Project No 95) is expected to be submitted in early 2002.
9. It should be noted, however, that the Commission's recommendations in respect of the Local Court's jurisdiction to determine money claims is now significantly out of date. In its final report the Commission recommended that the jurisdiction be extended from $10,000 to $15,000. The Local Court currently has jurisdiction to determine claims of up to $25,000.