



WORKING GROUP  
ON A  
COURTS COMMISSION

THIRD REPORT

TOWARD THE COURTS SERVICE

November, 1996

Le ceannach díreach ón  
OIFIG DHIOLTA FOILSEACHAN RIALTAIS, TEACH SUN ALLIANCE,  
SRAID THEACH LAIGHEAN, BAILE ATHA CLIATH 2,  
no tríd an bpost ó,  
FOILSEACHAIN RIALTAIS, AN RANNOG POST-TRÁCHTA,  
4 - 5 BOTHER FHEARCHAIR, BAILE ATHA CLIATH 2,  
(Teil: 01 - 6613111.—fo-line 4040/4045; Fax: 01 - 4752760)  
no trí aon díoltóir leabhar.

---

To be purchased directly from the  
GOVERNMENT PUBLICATIONS SALE OFFICE, SUN ALLIANCE HOUSE,  
MOLESWORTH STREET, DUBLIN 2,  
or by mail order from  
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,  
4 - 5 HARCOURT ROAD, DUBLIN 2,  
(Tel: 01 - 6613111 — ext. 4040/4045; Fax: 01 - 4752760)  
or through any bookseller.

(Pn. 3273)

£10.00

© Government of Ireland 1996

The Working Group on a Courts Commission was established by the Minister for Justice, Nora Owen, T.D.

1. To review, (a) the operation of the Courts system, having regard to the level and quality of service provided to the public, staffing, information technology, etc; (b) the financing of the Courts system, including the current relationship between the Courts, the Department of Justice and the Oireachtas in this regard; (c) any other aspect of the operation of the Courts system which the Group considers appropriate.
2. In the light of the foregoing review, to consider the matter of the establishment of a Commission on the Management of the Courts as an independent and permanent body with financial and management autonomy (as envisaged in the December 1994 document entitled "**A Government of Renewal**").
3. To have investigative, advisory and recommendatory functions and to make a report (and any interim reports and recommendations as they see fit) to the Minister for Justice on the foregoing matters.

The Working Group on a Courts Commission consists of:

Mrs. Justice Susan Denham, Judge of the Supreme Court.  
Mr. Justice Robert Barr, Judge of the High Court.  
Mrs. Justice Catherine McGuinness, Judge of the High Court.  
Judge Kevin O'Higgins, Judge of the Circuit Court.  
Judge Peter Smithwick, President of the District Court.  
Mr. Justice Anthony J. Hederman, President of The Law Reform Commission.  
Mr. Ken Murphy, Director General of The Law Society.  
Mr. James Nugent, Senior Counsel, Chairman of The Bar Council.  
Mr. Ken Wright, Management Consultant.  
Mr. John Rogers, Senior Counsel.  
Ms. Roisin McDermott, Chairwoman of Women's Aid.  
Mr. Kevin Duffy, Assistant General Secretary, Irish Congress of Trade Unions.

#### *Departmental Representatives*

Mr. Caoimhín O Huiginn, Department of Justice.  
Mr. Colm Breslin, Department of Finance.  
Mr. Richard Barrett, Attorney General's Office.

#### *Secretariat*

Mr. Noel Synnott, Department of Justice.  
Ms. Niamh O'Donnell, Department of Justice.

Working Group on a Courts Commission  
Four Courts,  
Dublin 7.



# Table of Contents

---

	<i>Page</i>
<b>CHAPTER 1</b>	
The Courts Service	7
The Third Report	7
An Historic Step	8
European Court of Justice	8
Northern Ireland	9
England and Wales	9
United States of America and Japan	10
New Zealand	10
South Australia	10
Irish Courts Service	11
<b>CHAPTER 2</b>	
Proposed Heads of Courts Service Bill	12
Part 1 — General	13
Part 2 — Courts Service	13
Part 3 — Chief Executive	19
Part 4 — Staff	19
Part 5 — Buildings	21
Part 6 — Finance	21

### CHAPTER 3

#### **Management:**

Overview of strategies, structures and systems for the transfer from the Department of Justice to the Courts Service	23
<b>A.</b> The Courts Service	23
<b>B.</b> Background	23
<b>C.</b> Autonomous Units	24
<b>D.</b> Empowerment	24
<b>E.</b> Transfer of Staff to the Courts Service	24
<b>F.</b> Staff Structures	25
<b>G.</b> Senior Statutory Positions	25
<b>H.</b> Venues	26
<b>I.</b> Building Plan — 7 Year	26
<b>J.</b> Vacations	27
<b>K.</b> Financial Management of Courts	27
<b>L.</b> Wards of Court, Accountant's and General Solicitor's Office	27
<b>M.</b> Courts Service's Financial Management	28
<b>N.</b> Computerisation of the Courts	30
<b>O.</b> Human Resource Management	30
<b>P.</b> Legal Procedures	31
<b>Q.</b> Management Structure for Courts Service	31

### CHAPTER 4

Conclusion	33
Recommendation	33
Appendix	35

## CHAPTER 1

# The Courts Service

---

In April, 1996 the Working Group on a Courts Commission recommended that there be established by statute as a matter of urgency an independent and permanent body to manage a unified Court system. The details are set out in the First Report: Management and Financing of the Courts.

On 20th May, 1996 the Government approved the publication of the Report and accepted in principle the primary recommendation that there be established by statute an independent and permanent body to manage a unified Court system to be known as “The Courts Service” subject to appropriate arrangements being agreed as to accountability to the Dail for the Courts Service and agreement on the most effective arrangements as to the composition of the Board of the Service. The Government determined that the Chief Executive Officer should be a member of the Board and be recruited through open competition. The Minister for Justice asked the Working Group to submit further reports on how the establishment of a new Courts Service could be progressed. This Report is in response to that request.

### **THE THIRD REPORT**

This, the Third Report to the Minister for Justice from the Group, concentrates on two specific areas:—

- (a) the legal framework for the proposed Courts Service; and,
- (b) broad management approaches to the changing structure.

In Chapter Two a sketch of proposed heads of a Courts Service Bill are delineated with some explanatory notes. These draft heads set out in broad outline the structure of a Courts Service as advised and agreed in principle.

In Chapter Three the continuing work of the Group on management is stated. It contains an overview of strategies, structures and systems which may be used in the transfer of management from the Department of Justice to the Courts Service.

## **A HISTORIC STEP**

The establishment of an independent Courts Service is a historic move by government, representing unfinished business from the establishment of the State. In the 1920's, under the Constitution of Saorstát Eireann and legislation, the structure of government was altered. In that change the administrative infrastructure for the Courts was placed mainly with the Department of Justice. However, no serious analysis was carried out of the system. The State itself moved towards a structure closer to that in countries such as the United States of America than that in the United Kingdom. Under the Constitution of Ireland 1937 the fabric of government was restated, continued and developed with the dimension relating to the judicial arm of government continuing to be more in keeping with a structure such as in the American Constitution. In light of this constitutional framework the Group studied the administrative infrastructure of the Courts in other jurisdictions and institutions prior to making its recommendation to the Minister for the establishment of a Courts Service.

## **EUROPEAN COURT OF JUSTICE**

The European Court of Justice proved a useful source of information, especially as it has in recent times been developing its administrative infrastructure. The management structure of the European Court of Justice is a classic pyramid. The Court is composed of Members, Judges and Advocates General. One Judge is elected President for a period of three years. The Court elects its Registrar who has the same status administratively as a Judge but who is effectively the Secretary General of the Institution and the Registrar of the European Court of Justice. His mandate is for six years. All the staff (except the Judges' personal teams) and services of the Institution are conducted under the authority of the Registrar who acts on authority delegated from the Court, its Administrative Committee<sup>1</sup> or the President. The staff, other

<sup>1</sup> The Administrative Committee is a Committee of seven members, which includes the President of the Court, at least one of the Advocates General and up to five other judges.



than personal staff of the Members, are European Civil Servants and work under two managers, each of whom reports to the Registrar.

All in all there are approximately 40 Judges and 950 staff. The Court is financed out of the budget of the European Union. Each year, after consultation, a draft budget is drawn up. It is presented to the Court by the Registrar where it is discussed, modified if necessary and approved. The President communicates the Court's budgetary requests (in all languages) to the Commission in early May. The Court's proposed budget is then incorporated in the Preliminary Draft Budget of the Union and formally published. Thereafter it enters the procedure for political approval. The implementation of the budget is the responsibility of the Registrar.<sup>2</sup>

## **NORTHERN IRELAND**

Useful information was obtained by the Group in its study of the Northern Ireland Court Service. The fact that the Court Service was relatively recently created, by the Judicature (Northern Ireland) Act 1978, meant that it was particularly apt to consider the position both before and after that Act. The day-to-day detail of the administration and the legislation on which it is grounded provided fruitful information to the Group. The Court Service has developed since 1979. In particular it has modernised the structure, unified roles and completed a major building programme. It is clear that the Northern Ireland Service has much to recommend it. However, the officers and staff of the Northern Ireland Court Service are appointed by the Lord Chancellor of Great Britain (with the concurrence of the Minister for the Civil Service) and discharge their functions in accordance with directions given by the Lord Chancellor. In Northern Ireland the Lord Chancellor is the most senior judicial figure, a Minister of the United Kingdom Government and Speaker of the House of Lords. Such a position does not exist, and could not exist, under the Constitution of Ireland. Therefore, the Northern Ireland model was not an appropriate structure for the Group to recommend.

## **ENGLAND AND WALES**

The Court Service in England and Wales was also studied. However, again, because of the position of the Lord Chancellor in its structure and

<sup>2</sup> The Group wishes to thank Mr. T.L. Cranfield, Deputy Registrar, Court of Justice of the European Union, for his exposition of the administrative infrastructure of the European Court.

because of the Constitution of Ireland in our jurisdiction, it could not be followed.

### **UNITED STATES OF AMERICA AND JAPAN**

Similarities between the Constitution of Ireland and that of the United States of America made it pertinent to consider the governmental structures in the United States and countries which have followed their system. A useful comparison was found in Japan where the Courts and their infrastructures were reorganised in the 1940's on the United States model. A pyramid structure exists in Japan with the Supreme Court vested with overall administration to ensure the independence of the judiciary. Administration is performed by the Judicial Conference which is composed of all the Justices of the Supreme Court presided over by the Chief Justice. There is a General Secretariat to assist the Judicial Conference which is staffed mainly by Court Secretaries but in view of the nature of the work certain positions are designated by the Supreme Court to be staffed by judges. As to the budget of the Courts, the Supreme Court, upon the resolution of the Judicial Conference, submits annual estimates of necessary expenditure directly to the Cabinet. This system exemplifies a country with a clearly delineated separation of powers.

### **NEW ZEALAND**

In its studies of other jurisdictions the Group analysed the systems in New Zealand and Australia. New Zealand was of special interest because of its many similarities to Ireland. It was also important because the administrative infrastructure of the Courts in New Zealand was reviewed recently and reorganised. As a result of the Report of the Court Services Review Committee October 1994, which identified the need for a separate body to focus on the core business of the Courts and issues faced by Courts administration, the Department for Courts was established on 1st July, 1995. The decision in New Zealand to establish a separate Department for Courts, while considered carefully by the Group, was not followed by the Group or recommended to the Minister.

### **SOUTH AUSTRALIA**

A most useful example of Court administration was found in South Australia where the management of the Courts has been reorganised

in the Courts Administration Act, 1993. The entire of that Act is set out in the Appendix. Reference is made to it in Chapter Two.

The most important difference between the South Australian system and that advised by the Group is that under the South Australia Courts Administration Act, 1993 the State Courts Administration Council is composed solely of judges while the Court Services Board in the proposed Irish Courts Service in addition to Judges includes representatives from the Bar, the Law Society of Ireland, the staff of the Courts Service, the Department of Justice, Court users, a person nominated by the Irish Congress of Trade Unions, a person appointed by the Minister for Justice with knowledge or experience of commerce, finance or administration and the Chief Executive.

### **IRISH COURTS SERVICE**

The Irish Courts Service as proposed by the Group and agreed in principle by the Government represents progress towards a modern structure and a dynamic system. It is a scheme which has some similarities to systems in other countries and yet at its core it is a wholly Irish organisation pursuant to the Irish Constitution created to meet the needs of the Irish community. It is a system to enable justice to be delivered with greater speed and efficiency to the people.

## CHAPTER 2

# Proposed Heads of the Courts Service Bill

---

### **INTRODUCTION**

The Working Group considers that one of the most effective ways in which it can progress the establishment of a new Courts Service is by setting out draft Heads of a Bill to aid the Department of Justice in advancing the necessary legislation. Consequently this chapter contains a sketch of Heads of a Bill to enable steps towards legislation to be taken to implement the primary recommendation of the Working Group in its First Report.

### **LONG TITLE**

An Act to provide for the improved management of the Courts established pursuant to Article 34 of the Constitution, to create an agency of the State to be called the Courts Service, to define its functions and to provide for related matters.

### **NOTE**

Sets out the general intention and scope of the legislation. Indicates that the service will be an agency of the State. Long title may be an aid to interpretation subsequently.

## **PART 1 — GENERAL**

Head 1 Short Title and Citation

Head 2 Interpretation

### *NOTE*

Terms such as “Courts Service”, “functions”, “Chief Executive”, “Courts established under the Constitution”, and “Minister”, will need definition.

*The term “Courts Service” is used to cover the corporate entity.*

Head 3 Establishment Day

Designation Day

### *NOTE*

The Establishment Day to be the date identified in the Bill or by order on which the Courts Service will come into existence.

There may be a need for a designation date relating to the transfer of staff to the new Courts Service.

Head 4 Orders

Head 5 Expenses

## **PART 2 — COURTS SERVICE**

Head 6. The principal functions of the Courts Service shall be to manage the Courts established under the Constitution, to include the provision of support services to the Judges, the provision of information on the courts system to the public, the provision, management and maintenance of court buildings and the provision of facilities for users of the courts.

Head 7. On the establishment day there shall stand established a body to be known as the Courts Service to perform the functions and exercise the powers conferred under this Act. The Courts Service shall be a body corporate with perpetual succession and an official seal and the power to sue and be sued in its corporate name. Subject to the provisions of this

Act, the Courts Service shall be independent in the exercise of its functions.

*NOTE*

Sets out the legal nature and purpose of the Courts Service.

Head 8. No function or power vested in the Courts Service under this Act may be exercised so as to impugn the independence of the judiciary in the exercise of judicial functions.

*NOTE*

This is adapted from the South Australia Courts Administration Act, 1993.

Head 9. Subject to the provisions of this Act the Courts Service may do anything which it considers necessary or expedient for enabling it to perform its functions under this Act. Without prejudice to the generality of the foregoing the Courts Service shall have power:

- (a) to acquire, hold and dispose of land or an interest in land or rights over or in respect of land and to acquire, hold and dispose of any other property,
- (b) to enter into contracts or arrangements,
- (c) to arrange staff training and education,
- (d) to establish arrangements for consultation with users of the courts,
- (e) to make proposals to the Minister in relation to scales of court fees and charges,
- (f) to make proposals to the Minister in relation to the distribution of jurisdiction and business among the courts and matters of procedure,
- (g) to provide services to other bodies subject to such conditions including the payment of fees as may seem appropriate,
- (h) to designate court venues notwithstanding any other statutory provisions in that regard,
- (i) to engage consultants or advisors for the performance of its functions.

*NOTE*

In (e) and (f), areas where the Minister necessarily retains policy control, the Service may make proposals as to court fees, Rules of Court and jurisdictional changes. (h) would override all current statutory provisions designating venues.

Head 10. The Courts Service shall draw up three year strategic plans for submission to the Minister who shall lay them before the Oireachtas.

*NOTE*

This is based on s. 5 of the Combat Poverty Agency Act, 1986.

Head 11. The seal of the Courts Service shall be authenticated by the signature of the chairman or an ordinary member authorised by the Courts Service to act in that behalf and the signature of an officer of the Courts Service authorised by the said Service to act in that behalf. Judicial Notice should be taken of the seal of the Courts Service and every document purporting to be an instrument made by the Courts Service and to be sealed with the seal (purporting to be authenticated as set out in the previous sentence) of the Courts Service shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

*NOTE*

This is based on paragraphs 11 and 12 of the Fourth Schedule to the Industrial Relations Act, 1990.

Head 12. The Courts Service shall consist of:

- (a) the Chief Justice or a member of the Supreme Court nominated by the Chief Justice,
- (b) a Judge of the Supreme Court elected by the ordinary members of that court (excluding ex officio members),
- (c) the President of the High Court or a member of the High Court nominated by the President,

- (d) a Judge of the High Court elected by the ordinary members of that court (excluding ex officio members),
- (e) the President of the Circuit Court or a member of the Circuit Court nominated by the President,
- (f) a Judge of the Circuit Court elected by the ordinary members of that court (excluding ex officio members),
- (g) the President of the District Court or a member of the District Court nominated by the President,
- (h) a Judge of the District Court elected by the ordinary members of that court,
- (i) a judge nominated by the Chief Justice in respect of his or her experience or expertise in a specific area of court business,
- (j) the Chief Executive,
- (k) a practising barrister who shall be nominated by the Chairman for the time being of the Council of the Bar of Ireland,
- (l) a practising solicitor who shall be nominated by the President for the time being of the Law Society of Ireland,
- (m) a member of the staff of the Courts Service to be elected in accordance with this Act,
- (n) an official of the Department of Justice appointed by the Minister,
- (o) a person appointed by the Minister to represent users of the courts,
- (p) a person appointed by the Minister on the nomination of the Irish Congress of Trade Unions,



- (q) a person appointed by the Minister with knowledge and experience of commerce, finance or administration, after consultation with bodies representative of such interests.

*NOTE*

Elected judges. This is based on the comparable provision in relation to the Court of First Instance of the European Communities. It will be for each bench to agree its own method of election. The election of the staff member should be regulated by the Minister in regulations similar to the scheme of the Worker Participation (State Enterprises) Acts 1977 — 1993.

The membership of the Courts Service is as advised by the Working Group in the First Report with two additions. First, the Chief Executive is a member as decided by Government on 20th May, 1996. Secondly, there is provision for a Judge to be nominated by the Chief Justice in respect of his or her experience or expertise in a specific area. It is envisaged that the Courts Service would benefit from the expertise of a specialist member of the judiciary when a specific area of court business is going through a particular process of change, for example, in the areas of family law or insolvency law.

The membership of the Board has thus an effective and constitutional composition.

Head 13. The persons appointed to the Courts Service by the Minister may be removed by the Minister for stated reasons. Persons appointed on the nomination of named bodies may be removed by the Minister but only with the consent of the nominating body.

*NOTE*

The judicial members could not be removed by the Minister. The elected staff member could not be removed by the Minister. If a person is appointed on the nomination of an organisation that person may be removed by the Minister only with the consent of that organisation.

Head 14. Terms of office.

All Presidents (and those holding office on their nomination)	while the President holds such judicial office, and the nominee so long as the nominating President holds office and the nominee is a member of that Bench.
Chief Executive	only while holding that post.
Elected Judges	3 years from election. May be re- elected. Position vacated if the Judge ceases to be a member of that Bench.
Nominated Judge	such term (not exceeding 3 years) as may be directed by the Chief Justice. May be re- nominated.
Other members	Up to 3 years. May be re- nominated.

Head 15. The Chairman of the Courts Service shall be the Chief Justice or such other member of the Supreme Court as shall be nominated by the Chief Justice to represent him or her from time to time.

Head 16. The Courts Service shall lay down its own rules of procedure. Each member shall have one vote and in the event of an equality of votes the Chairman shall have a casting vote. The Courts Service shall meet within one month of establishment day and at least quarterly thereafter.

Head 17. Casual vacancies may be filled by the same method of nomination or appointment for the remainder of term. The Courts Service may act notwithstanding any vacancy in its membership. The quorum for a meeting of the Courts Service shall be not less than 7 or such other number being not less than 7 as the Courts Service shall determine.

Head 18. The Courts Service may act through sub-committees appointed by it for specific purposes. Sub-committees may include persons not in the Courts Service.

Head 19. Non membership of Oireachtas or European Parliament of Courts Service members or Chief Executive.

Head 20. Obligation on Courts Service members not to disclose information arising out of Courts Service business.

### **PART 3 — CHIEF EXECUTIVE**

Head 21. The Chief Executive shall be appointed as such by the Courts Service. The terms of appointment of the Chief Executive including remuneration, period of office (not exceeding seven years) and termination shall be fixed by contract with the Courts Service subject to consultation with the Minister and approval of the Minister for Finance. The contract may be renewed.

#### *NOTE*

The Chief Executive shall not be a civil servant. The circumstances under which he or she might be removed by the Courts Service shall be regulated by contract. A civil servant will be eligible for appointment.

Head 22. The Chief Executive shall perform such functions as may be assigned to him or her by the Courts Service. Such functions may, with the consent of the Courts Service, be performed by such member or members of the staff of the Courts Service as may be authorised by the Chief Executive.

Head 23. The Chief Executive shall at the request of an Oireachtas committee attend before it to answer questions about the administration of the Courts Service, provided that no questions may be asked or answered about the exercise of the judicial function.

### **PART 4 — STAFF**

Head 24. The Courts Service shall be a unified organisation and structure. The Courts Service may appoint such number of persons as staff of the Courts Service as may be approved by the Minister with the consent of the Minister for Finance. The grades of the staff of the Courts Service and the number of staff in each grade shall with the approval of the Minister

given with the consent of the Minister for Finance be determined by the Courts Service. An officer of the Courts Service shall on his or her appointment as such be a civil servant in the civil service of the State. The “appropriate authority” for the purpose of the Civil Service Commissioners Act, 1956 and the Civil Service Regulation Act, 1956 shall be the Courts Service.

*NOTE*

The concept of the unified staff structure is also to be found in the Judicature (Northern Ireland) Act 1978. The designation of the staff of the Courts Service as civil servants of the State is to clarify that they are officers of an independent organ of Government rather than of the executive. In the case of another category of civil servant of the State the Chairman of Dail Eireann is the “appropriate authority” for the purposes of the Civil Service Acts in the case of staff of the Houses of the Oireachtas (Staff of the Houses of the Oireachtas Act, 1959). Because the staff will be established Civil Servants their selection by competition will have to be undertaken by the Civil Service Commissioners.

Head 25. Every person who immediately before the establishment day is a civil servant attached to the courts established pursuant to the Constitution shall on that day, or on a designated day, be transferred to and become a member of the staff of the Courts Service. Power to the Minister to designate who is so attached. Civil Servants attached to the Courts Service who hold office under courts legislation shall continue to hold under such provisions except that any reference to the Minister for Justice shall be construed as a reference to the Courts Service.

*NOTE*

Established statutory positions such as the Master of the High Court, County Registrars, Taxing Masters, and Examiners shall be maintained except that where to date they had a formal statutory relationship with the Minister for Justice that shall change to become a relationship with the Courts Service.

Head 26. Provision for the terms and conditions under which existing staff will transfer to the Courts Service. The Courts Service may put in place superannuation schemes, with the approval of the Minister and the Minister for Finance, in respect of persons in the Courts Service not covered by Civil Service Pension arrangements.

*NOTE*

Precedents can be found in other legislation transferring functions and staff of Central Government to new bodies.

**PART 5 — BUILDINGS**

Head 27. Permissive provision for the transfer from the Office of Public Works to the Courts Service of the Four Courts complex of court buildings vested in them or part thereof. Provision for vesting orders to be made by the Minister in that regard.

Head 28. Permissive provision for the transfer from Local Authorities to the Courts Service of court buildings. Provision for the Minister to make vesting orders.

Head 29. Permissive provision for buildings in public ownership to come under the occupation, management and control of the Courts Service for the purpose of its functions. Designation orders may be made by the Minister in that regard.

Head 30. Exemption from stamp duty on transfers.

**PART 6 — FINANCE**

Head 31. The Chief Executive plans estimates with the Courts Service and proposes them to the Minister. The budget and estimates are presented for a period of not less than three years.

*NOTE*

While estimates will be presented on a multi-annual basis (for 3 years or more) the annual allocation for the Courts Service will continue to be agreed in the context of the Government's annual estimates process.

Head 32. Advances shall be made by the Minister for Justice with the consent of the Minister for Finance out of money voted by the Oireachtas. The sums shall be such as the Minister for Justice

may determine after consultation with the Courts Service for the purpose of the Courts Service in the performance of its functions.

Head 33. An obligation on the Courts Service to present an annual report to the Minister which shall be laid by the Minister before the Oireachtas.

Head 34. The format of annual accounts shall be agreed with the Minister with the consent of the Minister for Finance. There shall be an obligation on the Courts Service to keep accounts which shall be subject to the Comptroller and Auditor General. Accounts shall be signed by the Chief Executive who shall be the officer accountable for such accounts.

*NOTE*

This is based on s 12 of the National Treasury Management Agency Act 1990.

# Management:

## Overview of strategies, structures and systems for the transfer from the Department of Justice to the Courts Service.

---

### **A. THE COURTS SERVICE**

On 20th May, 1996 the Government accepted in principle the recommendation of the Working Group that there be established by statute an independent and permanent body to manage a unified Courts Service. Details of the management structure advised appear in the First and Second Reports of the Working Group and in the Heads of a Bill recited earlier in this Report.

In this chapter broad issues are considered. It is an overview of strategies, structures and systems in management for the transfer of responsibility for Court administration from the Department of Justice to the Courts Service.

### **B. BACKGROUND**

It is necessary to understand the current situation and methods of management to appreciate the approach proposed for adoption by the Courts Service. The Courts are administered by a number of autonomous units, due to the separation by jurisdiction of each of the Courts and to the lack of clearly identified management structures.

Within the existing system there have evolved a number of positive characteristics which should not be lost in any major reorganisation of the management of the Courts.

### **C. AUTONOMOUS UNITS**

The key strengths of the existing administrative systems are that each unit is self-contained, managing issues related directly to its activities, with clear responsibility for starting and completing its own work. In a number of cases this has led to many efficiencies within the Court's services avoiding the transfer of large volumes of information up and down hierarchical/bureaucratic structures. It is important to retain the features of efficiency and independence in these units. Within each of these units, while there are little or no modern systems, there is an exceptionally knowledgeable and expert staff with a high degree of motivation and dedication to their work.

### **D. EMPOWERMENT**

The Court's administrative units welcome increased resources and powers to initiate change and development. Empowerment should be the foundation of the new management systems.

The Courts managerial staff have evolved in their own areas a number of unique approaches to administration. Some of these are excellent. However, there are instances where unwieldy and cumbersome procedures exist for the performance of simple operational tasks. Using the skill and expertise already available, improved systems can be introduced with the aid of appropriate training and equipment.

The basic ingredients are present in the administration of the Courts to do a good job. The proposed Courts Service will release the potential of staff, through empowerment and lower level of decision-making. In addition it will establish a structure which will stimulate the use and development of modern technology.

### **E. TRANSFER OF STAFF TO THE COURTS SERVICE**

It is anticipated that all staff currently employed in servicing the Courts will become staff of the Courts Service. They will be re-classified as Civil Servants of the State. In line with previous practice, where the functions of Government Departments were transferred to new bodies, the



legislation establishing the Courts Service should provide for the preservation of the terms and conditions of employment of the staff transferring. These matters should be discussed with the relevant Trade Unions, through the appropriate industrial relations procedure.

Transitional arrangements, which will involve consultations with staff interests, will need to be put in place to facilitate the orderly transfer of functions from the Department of Justice to the new Courts Service.

## **F. STAFF STRUCTURES**

At present there is a low rate of staff turnover within the Courts branch of the Department of Justice. This benefits the service as expertise and knowledge, acquired over many years, is retained and developed. It is highly desirable that this pattern of staff retention continue within the Courts Service.

The objective should be to provide a career structure for all staff in which there are opportunities for progression within the service. The establishment of a unified organisation and structure with equal opportunities for advancement of all staff is a key element in the achievement of this objective.

### **Best Practice**

Modern participative systems will have to be put in place which maximise the contribution of staff to the development of the service. A 'World Class' work organisational model<sup>3</sup> should be developed in which the attainment of excellence, through the continuous enhancement of skill and knowledge and an acceptance of ongoing change, would be encouraged and rewarded.

## **G. SENIOR STATUTORY POSITIONS**

At present certain senior statutory positions within the Court system are appointed by the Government. These include the Master of the High Court, Taxing Masters and County Registrars. Such a method of appointment might be considered unusual and anomalous in the context of the proposed Courts Service. There is a new process of appointment for those who wish to be considered for judicial office and a settled process of appointment to the Civil Service. The method of appointment

<sup>3</sup> A 'World Class' model strives to ensure that all aspects of the organisation's measurable work are as effectively managed as in comparable organisations anywhere in the world.

to these senior statutory posts arises for consideration. As the Group progresses its analysis of Court and Case Management through submissions, consultation, the Conference and Seminars, the method of appointment to these important positions and their roles within the Courts Service will be considered.

### **Promotional Structure**

Steps should be taken to improve the existing management and promotional structures. It is recommended that qualified Courts Service staff be eligible for positions such as The Master of the High Court, Taxing Master and County Registrar, if they are a civil servant, have served at least ten years within the Courts Service and hold a degree in law or a legal professional qualification.

## **H. VENUES**

It is essential that the Court buildings be modernised. Basic standards are necessary in a courthouse in order to meet the requirements of the administration of justice and to provide a proper service to Court users and the general public. The Group is preparing a specific Report on Court Accommodation which will be presented to the Minister when completed.

The programme to modernise Irish courthouses will require capital spending. The decision as to which courthouses are developed should be a matter for the Courts Service in accordance with appropriate criteria.

## **I. BUILDING PLAN — 7 YEAR**

The Courts Service should be empowered to establish and manage a seven year building and modernisation programme of selected Court premises. To service this need and due to the complexity of ownership, leasing etc., it is advisable to establish a small team of dedicated staff to work with external specialists where required. This team could develop, oversee and implement a planned programme within budget and timescale. This team would work with the Board of Works, local authorities or contract directly with the private sector. It would be guided by value for money and the best service that can be provided. The cost of a much needed “once off” building plan over a seven year period

would be substantial and therefore would require special financial arrangements over and above operational budget arrangements. Many existing courthouses are far below standards acceptable in a modern State.

## **J. VACATIONS**

The current Court vacations are a misnomer. The reality is that work in the Courts system continues throughout the year.

The Group have received submissions on this matter and are continuing to take submissions and to consult on the issue. It is anticipated that recommendations on this subject will be the subject matter of a later report.

## **K. FINANCIAL MANAGEMENT OF COURTS**

To allow for normal financial planning processes there would be a requirement for business and financial plans over a three year period, which plans would be reviewed annually. The Group appreciates that while the Courts Service will draw up multi-annual financial plans the annual allocation of the Service must continue to be agreed in the context of the Government's annual estimates process. It is advisable that the Courts Service put in place a professional and senior management team to manage all financial aspects of the Courts Service. Within this structure it is proposed that a Financial Controller with the Chief Executive would manage financial affairs subject to the Courts Service. The management of substantial sums of money should be as investment management which would require expertise to be incorporated into any future structure.

## **L. WARDS OF COURT, ACCOUNTANT'S AND GENERAL SOLICITOR'S OFFICE**

The proposed Courts Service would establish a comprehensive financial structure for management of all financial affairs of the Courts. This would provide a great opportunity to modernise the Wards of Court, Accountant's and General Solicitor's Offices where substantial monies are handled under the care of the Courts. These three offices have an urgent need for modernisation of systems and procedures. The current structures and procedures are all manually operated by a dedicated staff

without appropriate support and under exceptionally difficult circumstances. The accounting function lends itself to computerisation and to modern methods of management of large sums of money. There should be a number of changes in existing procedures to allow for a banking payment system to be operated. This would free existing staff to oversee and manage the complex cases (of which there are many) and to supervise the payment systems.

The Wards of Court Office, Accountant's Office and the General Solicitor's function would, under the current proposal be part of a wider finance function. This would include a full Management Information System (MIS) function, Investment Management and a Statistical Unit.

### **Intervening period**

In the intervening period before the establishment of the Courts Service there is an urgent need for support and reform of the Office of Wards of Court, the Office of the Accountant and the General Solicitor's functions. The Working Group has entered into a consultation process with these three offices in order to develop a blueprint for the future. The Group will outline to the Minister the initial steps that need to be addressed to support the staff, modernise the current working practices and provide access to computer resources for the accounting function.

## **M. COURTS SERVICE'S FINANCIAL MANAGEMENT**

The Courts Service would from the day of transfer have its own financial department. The following factors should be addressed on the transfer to the Courts Service from the existing structure. These are:

- (i) *Capital Structure*: in respect of buildings, equipment etc., and finances.
- (ii) *Financial Procedures*: For example, the Accountant's Office and Wards of Court Office should be administered in accordance with modern accountancy methods.
- (iii) *Pensions*: The existing pension scheme would remain within the Civil Service.
- (iv) *Fee earning Activities*: The Courts Service could engage in some commercial activities in respect of new services not provided for by the current structure. In addition, the Courts Service must be able to charge rents for buildings not used by public, Judiciary or

Courts' staff and should be allowed to retain certain percentages of these monies in addition to their current budget.

- (v) *Internal Audit.* There would be a requirement for an internal audit role for the Courts Service which could be undertaken by internal or external expertise. The Courts Service should be free to contract its own audit function requirements or develop its own internal function. The audit function would report directly to the Chief Executive and in turn to the Courts Service with an independent report being published as part of the annual report each year.
- (vi) *External Audit.* The Courts' accounts would be subject to audit by the Comptroller and Auditor General, and also be answerable to the Public Accounts Committee of Dail Eireann through its Chief Executive.
- (vii) *Pay Management Structures:* The Courts Service would continue to use the Department of Justice pay unit.
- (viii) *Statistical Unit.* A Statistical Unit should be established. This unit would come under the Courts Service Finance Division and would be integrated with the Management Information Systems (MIS). It would publish data on a regular basis on the performance of the Courts Service.

The Group advises that such a Unit is urgently required to gather statistics. There is a serious lack of information on the Court systems. It is anticipated that statistical information will aid the future development of the Courts Service. To aid research links should be established with other areas, including the Garda Siochana, the Probation Service and the Prison system.
- (ix) *MIS Function and Computer Section:* A computer and MIS Section should be established by the Courts Service and come under the Finance Division.
- (x) *Investment Management.* It is critical that monies in the protection of the Court are managed in a professional manner. Therefore, an investment function should be established in the Courts Service to ensure best returns on existing monies. This will be of importance to the development of modern financial systems in the offices of the Accountant and the Wards of Court.

## **N. COMPUTERISATION OF THE COURTS**

There is a need for major computerisation of the Courts to ensure the utilisation of modern technological tools. This will not necessarily substantially alter the manner in which the Courts are managed or the extensive waiting lists which are often outside the control of Court administrators. However, there are a number of steps which can be taken to modernise the Courts on the establishment of the Courts Service; thereafter full computerisation should follow.

The District Court is partly computerised. This system needs urgent modernisation and updating within the next couple of years. A unified system should be adopted in the long term. The benefits of a one-system approach to all jurisdictions will allow for flexibility of staff, listing of cases and the production of standard statistical and management information.

The other area that would gain a substantial benefit from computerisation would be the financial function, particularly the management of accounts, management information systems and statistical information. There are many readily available software packages. The use of computers will call for a rationalisation of existing Court systems and procedures to gain the full benefit of new technology.

The recording of Court proceedings by stenographers can also be computerised where justified. Account must be taken of the high cost of training personnel and of computerisation of this service. The case for computerisation is overwhelming in the areas listed herein. This development would represent a substantial cost over the first few years of the formation of the Courts Service.

## **O. HUMAN RESOURCE MANAGEMENT**

There is a clearly identified need for the Courts Service to have its own Human Resource Management Unit. This would be a small unit with a support and advisory role which in part is currently undertaken by the Department of Justice.

The role of staff management must rest with line managers. However, there should be professional personnel on hand for advice on a range of Human Resource Services.

Each unit would be provided with its own budget and responsibility for identifying, leading and developing training programmes. Therefore, managers would be expected to be pro-active rather than waiting for a specialist to tell them what they could and could not do. Developing staff,

providing a professional service and monitoring performance would be the responsibility of departmental managers.

It is proposed that there be introduced through the Human Resource function a performance planning and review system for all management and staff.

## **P. LEGAL PROCEDURES**

There is a need for ongoing internal review of Court procedures. The Rules Committees should continue their important work. It is recommended that these Committees have the full-time services of a person with legal expertise to enable the drafting of Rules etc.

## **Q. MANAGEMENT STRUCTURE FOR COURTS SERVICE**

Owing to the size and specialisation of services within the Courts the Group propose a number of Divisions. These are as follows:—

1. *Litigation Support Division.*

This division would have responsibility for direct support for Court proceedings and courtroom services.

2. *Administration Division.*

This division would provide general administration.

3. *Financial Division.*

This division would govern financial and investment management.

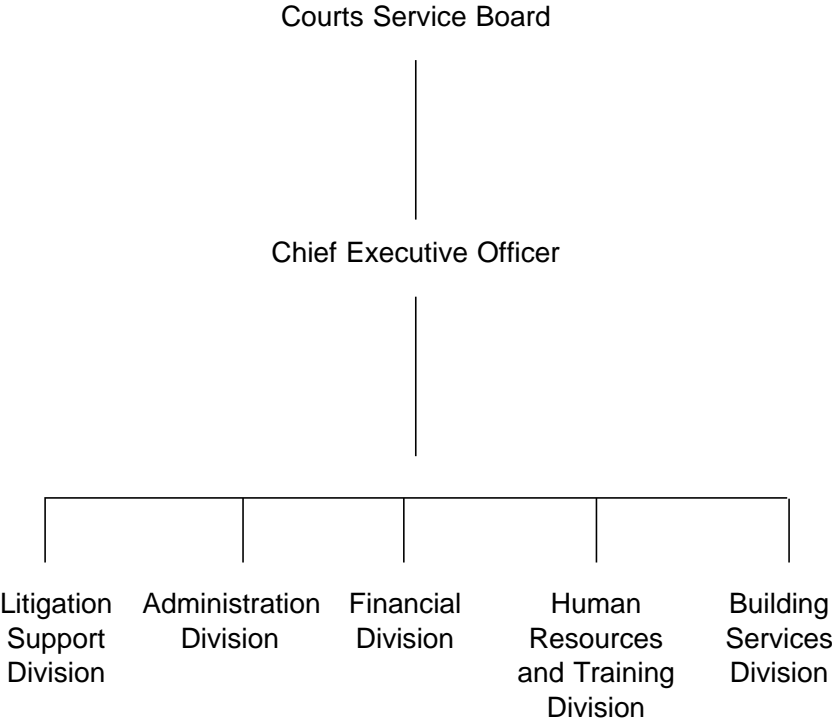
4. *Human Resources and Training Division.*

This division would support staff development.

5. *Building Services Division.*

This division would manage accommodation matters.

**PROPOSED STRUCTURE**





# Conclusion

---

The right to go to Court, the right of access to the Courts, is a fundamental constitutional right. Sometimes, in discussions on the Court system, reference is made to Court users' consumer rights. In fact, the rights of people in relation to the Courts are much more profound because they are constitutional rights. There exist serious delays and inefficiencies in the system of Court administration as delineated in the First and Second Reports of the Working Group and these affect the right of access to the Courts. The Courts Service as advised by the Group and agreed in principle by the Government would enable the Courts, whose business is justice and the protection of the rights of the people in Ireland, to have a modern management system to underpin the administration of justice.

### RECOMMENDATION

The Group *recommends* that steps be taken as a matter of urgency to legislate for a Courts Service as advised.



# Appendices

---

Courts Administration Act, 1993 (South Australia)



# South Australia

## Courts Administration Act 1993

---

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 14 December 1995.

It should be noted that the Act was not revised (for obsolete references, etc) by the Commissioner of Statute Revision prior to the publication of this reprint.

# Summary of Provisions

---

## **PART 1**

### PRELIMINARY

1. Short title
2. Commencement
3. Objects of this Act
4. Interpretation
5. Collective name

## **PART 2**

### THE JUDICIAL COUNCIL

#### DIVISION 1 — ESTABLISHMENT OF JUDICIAL COUNCIL

6. Judicial Council

#### DIVISION 2 — COMPOSITION OF THE COUNCIL

7. Composition of the Council

#### DIVISION 3 — PROCEEDINGS OF THE COUNCIL

8. Meetings of the Council
9. Proceedings and decisions of the Council

#### DIVISION 4 — FUNCTIONS AND POWERS OF THE COUNCIL

10. Responsibilities of the Council
11. Powers of the Council
12. Delegation

## DIVISION 5 — COUNCIL'S OBLIGATION TO REPORT

13. Annual Report
14. Additional reports

## **PART 3**

### CONTROL OF PROPERTY

15. Control of property

## **PART 4**

### STAFF OF THE COUNCIL

#### DIVISION 1 — THE STATE COURTS ADMINISTRATOR

16. The State Courts Administrator
17. Functions and powers of the Administrator

#### DIVISION 2 — SENIOR STAFF OF THE COUNCIL

18. Appointment of senior staff
19. Disciplinary action and termination of employment

#### DIVISION 3 — OTHER STAFF

21. Other staff

#### DIVISION 4 — GENERAL PROVISIONS AS TO STAFF

- 21A. Non-judicial court staff
- 21B. Application of Public Sector Management Act and Superannuation Act
22. Responsibility of staff
23. Commissioner to consult with the Council

## **PART 5**

### FINANCIAL PROVISIONS

24. Money required for purposes of this Act
25. Council's budget
26. Financial management
27. Audit

## **PART 6**

### MISCELLANEOUS

28. Immunity
29. Responsibility to Parliament
30. Regulations
31. Non-interference with individual powers or discretions

### SCHEDULE

### APPENDIX

### LEGISLATIVE HISTORY



# Courts Administration Act 1993

---

being

Courts Administration Act 1993 No. 11 of 1993  
[Assented to 25 March 1993]<sup>1</sup>

as amended by

Statutes Repeal and Amendment (Development) Act 1993 No. 54 of 1993 [Assented to 27 May 1993]<sup>2</sup>

Youth Court Act 1993 No. 58 of 1993 [Assented to 27 May 1993]<sup>3</sup>

Industrial and Employee Relations Act 1994 No. 52 of 1994 [Assented to 16 June 1994]<sup>4</sup>

Statutes Amendment (Courts Administration Staff) Act 1995 No. 85 of 1995 [Assented to 30 November 1995]<sup>5</sup>

<sup>1</sup> Came into operation 1 July 1993: Gaz. 1 July 1993, p. 196.

<sup>2</sup> Came into operation 15 January 1994: Gaz. 27 October 1993, p. 1889.

<sup>3</sup> Came into operation 1 January 1994: Gaz. 4 November 1993, p. 2177.

<sup>4</sup> Came into operation 1 November 1994: Gaz. 4 August 1994, p. 328.

<sup>5</sup> Came into operation 14 December 1995: Gaz. 14 December 1995, p. 1641.

**NOTE:**

- \* *Asterisks indicate repeal or deletion of text.*  
*For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.*

# An Act to provide for the administration of courts.

---

The Parliament of South Australia enacts as follows:

## **PART 1**

### **PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Courts Administration Act 1993*.

#### **Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

#### **Objects of this Act**

3. The objects of this Act are—
  - (a) to establish the *State Courts Administration Council* as an administrative authority independent of control by executive government;
  - (b) to confer on the Council power to provide courts with the administrative facilities and services necessary for the proper administration of justice.

#### **Interpretation**

4. In this Act, unless the contrary intention appears—

“Administrator” means the State Courts Administrator appointed under this Act;

“Council” means the *State Courts Administration Council* established under this Act;

“parliamentary committee” means a committee of either or both Houses of Parliament;

“participating courts” means—

- (a) the Supreme Court; and
- (b) the District Court; and
- (ba) the Environment, Resources and Development Court; and
- (bb) the Industrial Relations Court of South Australia; and
- (c) the Youth Court of South Australia; and
- (d) the Magistrates Court; and
- (e) coroner’s courts; and
- (f) any other court or tribunal declared by regulation to be a participating court;

“prescribed position” means a position on the staff of the Council designated by regulation as a prescribed position

“senior staff” of the Council means those members of the staff of the Council holding prescribed positions.

**Collective name**

5. The Council, the Administrator and the other staff of the Council may be collectively referred to as the *Courts Administration Authority*.

## **PART 2**

### **THE JUDICIAL COUNCIL**

#### **DIVISION 1 — ESTABLISHMENT OF JUDICIAL COUNCIL**

##### **Judicial Council**

6. (1) The *State Courts Administration Council* is established.
- (2) The Council is a body corporate.
- (3) The Council is an instrumentality of the Crown.
- (4) A document apparently bearing the Council's common seal will, in the absence of evidence to the contrary, be taken to have been duly executed by the Council.

#### **DIVISION 2 — COMPOSITION OF THE COUNCIL**

##### **Composition of the Council**

7. (1) The Council consists of—
  - (a) the Chief Justice of the Supreme Court; and
  - (b) the Chief Judge of the District Court; and
  - (c) the Chief Magistrate of the Magistrates Court.
- (2) A member of the Council may appoint a judicial officer of the relevant court to be an associate member of the Council.
- (3) An associate member of the Council is a deputy of the member by whom he or she was appointed and may, in the absence of that member, act as a member of the Council.

- (4) An associate member of the Council is entitled to attend meetings of the Council but, except when acting in the absence of a member, is not entitled to a vote on any question before the Council.

### **DIVISION 3 — PROCEEDINGS OF THE COUNCIL**

#### **Meetings of the Council**

8. The Council will meet at such times and places as may be determined by the Chief Justice.

#### **Proceedings and decisions of the Council**

9. (1) The Chief Justice or, in the Chief Justice's absence, the Chief Justice's deputy, will preside at any meeting of the Council.
- (2) The Chief Justice or, in the Chief Justice's absence, the Chief Justice's deputy, and one other member of the Council constitute a quorum of the Council.
- (3) A decision supported by the votes of the Chief Justice or, in the Chief Justice's absence, the Chief Justice's deputy and one other member of the Council is a decision of the Council.

### **DIVISION 4 — FUNCTIONS AND POWERS OF THE COUNCIL**

#### **Responsibilities of the Council**

10. (1) The Council is responsible for providing, or arranging for the provision of, the administrative facilities and services for participating courts that are necessary to enable those courts properly to carry out their judicial functions.
- (2) A participating court remains, however, responsible for its own internal administration.
- (3) The Council may establish administrative policies and guidelines to be observed by participating courts in the exercise of their administrative responsibilities.

- (4) Any such administrative policies and guidelines must be published in the annual report for the financial year in which they are established.

### **Powers of the Council**

11. (1) Subject to subsection (2), the Council has the powers of a natural person and may for example—
  - (a) enter into any form of contract or arrangement;
  - (b) acquire, hold, deal with and dispose of real and personal property;
  - (c) provide services on terms and conditions determined by the Council.
- (2) The Council may not, without the Governor's consent—
  - (a) incur contractual liabilities exceeding a limit fixed by regulation for the purposes of this section; or
  - (b) enter into a contract of a class prescribed by regulation for the purposes of this section; or
  - (c) acquire or dispose of an interest in real property.
- (3) The Council must, before entering into a transaction of a class prescribed by regulation for the purposes of this subsection, observe the appropriate procedures prescribed by regulation.

### **Delegation**

12. (1) The Council may, by instrument in writing, delegate any of its powers under this Act.
- (2) A delegation of power under this section—
  - (a) is revocable at will; and
  - (b) does not derogate from the power of the Council to act itself in any matter.

- (3) A delegation must be reported in the annual report for the financial year in which the delegation is made.

## **DIVISION 5 — COUNCIL'S OBLIGATION TO REPORT**

### **Annual report**

13. (1) The Council must on or before 31 October in each year make a report to the Attorney-General on—
- (a) the administration of justice in participating courts during the previous financial year; and
  - (b) any changes to the law and procedures of the participating courts that may be necessary or desirable to improve the administration of justice in participating courts.
- (2) The Attorney-General must within 12 sitting days after receiving a report under this section cause copies of the report to be laid before both Houses of Parliament.

### **Additional reports**

14. (1) The Council must make such further reports to the Attorney-General as may be necessary to ensure that the Attorney-General is kept properly informed about the administration of the participating courts.
- (2) The Council must, at the request of the Attorney-General, report to the Attorney-General on any matter relevant to the administration of a participating court.

## **PART 3**

### **CONTROL OF PROPERTY**

#### **Control of property**

15. (1) All courthouses and other real and personal property of the Crown set apart for the use of the participating courts is under the care, control and management of the Council.

- (2) The Council may assign a courthouse or other building that is under the Council's care, control and management for the use of a particular court.
- (3) A courthouse or other building will be taken to have been set apart for the use of participating courts if—
  - (a) it is dedicated or reserved for use as a courthouse under a law governing the administration or use of Crown property; or
  - (b) it is set apart for the use of participating courts by proclamation under this section.
- (4) The Governor may, by proclamation—
  - (a) set apart a courthouse or building belonging to the Crown for the use of participating courts; or
  - (b) vary or revoke a proclamation previously made under this subsection.
- (5) A proclamation may be conditional or unconditional, and, if conditional, will be subject to such conditions as the Governor thinks fit to include.

## **PART 4**

### **STAFF OF THE COUNCIL**

#### **DIVISION 1 — THE STATE COURTS ADMINISTRATOR**

##### **The State Courts Administrator**

16. (1) There is to be a *State Courts Administrator*.
- (2) The Administrator is to be appointed by the Governor for a term, not exceeding five years, specified in the instrument of appointment (but, on completion of a term of appointment, is eligible for reappointment).
- (3) The Administrator is to be appointed on terms and conditions determined by the Governor which must, however, include the following:



- (a) the Administrator must inform the Council in writing of—
    - (i) any direct or indirect interest that the Administrator has or acquires in any business, or in any body corporate carrying on business, in Australia or elsewhere; or
    - (ii) any other direct or indirect interest that the Administrator has or acquires that conflicts or may conflict with the Administrator's duties; and
  - (b) the Administrator must not engage, without the Council's consent, in any other remunerated employment.
- (4) A person cannot be appointed as the Administrator unless nominated for appointment by the Council.
  - (5) The Administrator cannot be dismissed from office or reduced in status except by or with the concurrence of the Council.
  - (6) The Administrator is not a member of the Public Service nor is the Administrator an employee for the purposes of the *Public Sector Management Act 1995* (other than Part 2 of that Act).
  - (7) The Council may assign an appropriate employee to act as the Administrator—
    - (a) during a vacancy in the office of Administrator; or
    - (b) when the Administrator is absent from, or unable to discharge, official duties.

### **Functions and powers of the Administrator**

- 17. (1) The Administrator is the Council's Chief Executive Officer.
- (2) The Administrator is, subject to control and direction by the Council, responsible to the Council for—
  - (a) the control and management of the Council's staff; and
  - (b) the management of property that is under the Council's care, control and management.

- (3) The Administrator has in relation to staff employed under this Act the powers of the Chief Executive of an administrative unit of the Public Service.

## **DIVISION 2 — SENIOR STAFF OF THE COUNCIL**

### **Appointment of senior staff**

18. The senior staff of the Council are to be appointed by the Administrator with the approval of the Council.

### **Disciplinary action and termination of employment**

19. The Council's consent is required before—
- (a) disciplinary action may be taken against a member of the Council's senior staff; or
  - (b) the employment of a member of the senior staff may be terminated.

## **DIVISION 3 — OTHER STAFF**

### **Other staff**

21. Other staff of the Council are to be appointed by the Administrator.

## **DIVISION 4 — GENERAL PROVISIONS AS TO STAFF**

### **Non-judicial court staff**

- 21A. (1) The staff of the Council includes—
- (a) the Registrars of the participating courts; and
  - (b) the Sheriff; and
  - (c) the Registrar of Probates; and
  - (d) the Youth Justice Co-ordinators (who are not Magistrates); and
  - (e) any deputies of the officers referred to above; and

- (f) the other non-judicial officers and staff of the participating courts.
- (2) This Act has effect in addition to, and does not derogate from, any provisions of another Act providing for the appointment of, or otherwise specifically relating to, officers or staff referred to in subsection (1).

### **Application of Public Sector Management Act and Superannuation Act**

**21B.** (1) Subject to this Act, the *Public Sector Management Act 1995* applies—

- (a) with any modifications and exclusions required by the context; and
- (b) with prescribed modifications and exclusions,

to the staff and positions on the staff of the Council in the same way as to an administrative unit and positions in an administrative unit of the Public Service.

- (2) Part 4 (other than section 17) and section 22(1)(c) and (e) of the *Public Sector Management Act 1995* do not apply to the staff or positions on the staff of the Council.
- (3) Section 7(3) and (4) of the *Public Sector Management Act 1995* do not apply to prescribed positions or the senior staff of the Council.
- (4) The regulations may modify or exclude the application of a specified provision of the *Public Sector Management Act 1995* to the staff or a position on the staff of the Council.
- (5) The *Superannuation Act 1988* applies to a member of the Council's staff in the same way as to a person employed in the Public Service.

### **Responsibility of staff**

**22.** A member of the Council's staff is answerable, through any properly constituted administrative superior, for the proper discharge of his or her duties to—

- (a) the Administrator; and

- (b) if the position relates to a particular participating court — the judicial head of that participating court.

### **Commissioner to consult with the Council**

23. (1) The Commissioner for Public Employment must consult with the Council before making a determination or giving an instruction that relates specifically to the Council's staff.
- (2) The Council—
- (a) may vary or revoke a determination or instruction of the Commissioner for Public Employment so far as it affects staff of the Council; and
  - (b) may itself exercise any power of the Commissioner for Public Employment to make a determination or to give an instruction in relation to the Council's staff,

(but a determination affecting remuneration or conditions of employment cannot be made, varied or revoked under this subsection).

## **PART 5**

### **FINANCIAL PROVISIONS**

#### **Money required for purposes of this Act**

24. The money required for the purposes of this Act is to be paid out of money appropriated by Parliament for those purposes.

#### **Council's budget**

25. (1) The Council must, from time to time, prepare and submit to the Attorney-General a budget showing estimates of its receipts and expenditures for the next financial year or for some other period determined by the Attorney-General.
- (2) The budget must conform with any requirements of the Attorney-General as to its form and the information that it is to contain.

- (3) The Attorney-General may approve a budget submitted under this section with or without modification.
- (4) The Council may not expend money unless provision for the expenditure is made in a budget approved by the Attorney-General under this section.

### **Financial management**

26. (1) The Council must ensure that proper accounting records are kept of its receipts and expenditures.
- (2) The Council's accounting records must conform with any applicable instructions issued by the Treasurer under section 41 of the *Public Finance and Audit Act 1987*.
- (3) The Council must ensure—
  - (a) that expenditures are not made out of money under the Council's control without proper administrative authorisation; and
  - (b) that proper control is maintained over the Council's property or property in the Council's control.

### **Audit**

27. The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Council.

## **PART 6**

### **MISCELLANEOUS**

#### **Immunity**

28. (1) A person engaged under this Act in functions related to the administration of a participating court incurs no civil liability for an honest act or omission in the exercise or purported exercise of those functions.

- (2) A liability that would, but for subsection (1), attach to a person engaged under this Act in functions related to the administration of a participating court attaches instead to the Crown.

### **Responsibility to Parliament**

- 29. (1) A member of the Council, or the Administrator, must, at the request of a parliamentary committee, attend before the committee to answer questions about—
  - (a) the financial needs of participating courts; or
  - (b) the expenditure of money by the Council; or
  - (c) any other matters affecting the administration of participating courts.
- (2) A member of the Council, or the Administrator, cannot however be required to answer questions about the exercise of judicial as distinct from administrative powers or discretions.

### **Regulations**

- 30. (1) The Governor may make regulations for the purposes of this Act.
- (2) Subject to subsection (3), a regulation may only be made on the recommendation of the Council.
- (3) A regulation may be made—
  - (a) designating a position on the staff of the Council as a prescribed position for the purposes of section 4; or
  - (b) for the purposes of section 11;

but, before such a regulation is made, the Council must be allowed a reasonable opportunity to comment on the terms of the proposed regulation.

- (4) A regulation may impose a fine, not exceeding \$2 000 for contravention of, or non-compliance with, the regulation.

## **Non-interference with individual powers or discretions**

31. No power or discretion vested in the Governor or the Minister by this Act may be exercised so as to impugn the independence of the judiciary in relation to the exercise of judicial powers or discretions.

## **SCHEDULE**

### *Transitional Provision*

- (1) A person who was employed, immediately before the commencement of this Act, in an office or position in the Court Services Department (except the Chief Executive Officer of the Department) is taken to have been appointed on the commencement of this Act to the corresponding office or position under this Act.
- (2) This section does not affect continuity of employment or prejudice existing or accruing rights in respect of employment.

## APPENDIX

### LEGISLATIVE HISTORY

#### Transitional Provisions

(Transitional provision from Statutes Amendment (Courts Administration Staff) Act 1995, s. 20)

20. (1) An appointment to a non-judicial office or position made or purportedly made before the commencement of this Act in accordance with an Act that is amended by this Act will be taken to have been duly made under the statutory provisions that, as amended by this Act, provide for the making of such an appointment as if this Act had been enacted and in force at the relevant time.
- (2) The provisions of the *Government Management and Employment Act 1985* and the *Public Sector Management Act 1995* as from time to time in force before the commencement of this Act will be taken to have applied (with necessary modifications and exclusions) before that commencement to the staff and positions on the staff of the State Courts Administration Council in the same way as to an administrative unit and positions in an administrative unit of the Public Service.
- (3) The provisions of the *Superannuation Act 1988* as from time to time in force before the commencement of this Act will be taken to have applied before that commencement to a member of the staff of the State Courts Administration Council in the same way as to a person employed in the Public Service.

#### Legislative History

*(entries in bold type indicate amendments incorporated since the last reprint)*

Section 4:	definition of "participating courts" amended by 54, 1993, s. 8; 58, 1993, Sched.; 52, 1994, Sched. 1 cl. 3 amended by 85, 1995, s. 4(a)
Section 16(6):	
Section 16(7):	
inserted by 85, 1995, s. 4(b)	
Section 17(3):	amended by 85, 1995, s. 5
Sections 18 and 19:	substituted by 85, 1995, s. 6
Section 20:	repealed by 85, 1995, s. 6
Section 21:	amended by 85, 1995, s. 7
Sections 21A and 21B:	inserted by 85, 1995, s. 8
Section 22:	amended by 85, 1995, s. 9

Wt. 48351. 800. 12/96 Cahill. (M21472). G.Spl.