

# Appendix one – Response from agency



Communities  
& Justice

Ms Margret Crawford  
Auditor-General for New South Wales  
Level 19, 201 Sussex Street  
Darling Park Tower 2  
SYDNEY NSW 2000

Ref EAP19/10558

Dear Ms Crawford,

Thank you for the opportunity to respond to the Performance Audit Report: Supporting the District Criminal Court.

The report focuses on only two areas of this complex support system, data and technology, as well as considering the recent implementation of the Early Appropriate Guilty Pleas (EAGP) reform.

The District Court of NSW is the busiest trial court in Australia, with a complex jurisdiction of serious criminal offences, appeals from lower courts and civil proceedings. The department supports the District Court in a myriad of ways, including but not limited to the provision of jury management services, court support officers, court security services and prisoner transports.

Over the period 2011/12 to 2017/18, the number of arrests for serious offences increased, resulting in a significant increase in in-flow to the District Court.<sup>1</sup> In addition, this growth was the highest in more complex matters, which meant an increase in the number of cases proceeding to trial and an increase in trial duration. This led to a temporary increase in the trial backlog, which has been shown to result in an increase in time to justice.<sup>2</sup>

The NSW Government responded with significant investment in a number of initiatives and resources to support the District Court's criminal workload. This includes:

- Seven extra judges appointed as part of a package of \$150m over four years, announced in October 2018. This includes: funding for court support staff, sheriff's officers, jury costs and security upgrades at courthouses; additional crown prosecutors, lawyers and witness assistance service officers; additional senior lawyers at Legal Aid and more grants for private practitioners representing legally aided clients; additional funding for court prisoner transfers.
- This package built on the previous 'District Court Backlog Program', announced in 2016 with funding of \$86m over three years. This package included five additional judges and the requisite staff for the agencies outlined above. It also included the introduction of a number of new case management initiatives, such as special call overs, the establishment of the rolling list court, and extra sitting weeks.

<sup>1</sup> Bureau of Crime Statistics and Research, Crime and Justice Bulletin 184, *Trial Court delay and the NSW District Court*, August 2015.

<sup>2</sup> Bureau of Crime Statistics and Research, Crime and Justice Bulletin 217, *An evaluation of measures taken to increase finalisations in the NSW District Criminal Court*, October 2018

Department of Communities and Justice

Postal address: Locked Bag 10, Strawberry Hills NSW 2012

W [www.facs.nsw.gov.au](http://www.facs.nsw.gov.au)

T (02) 9377 6000 | TTY 133 677

ABN 36 433 875 185

- From 2016 to 2018 a series of reforms to table offences were introduced, which shifted workload from the District Court to the Local Court (where it can be done more efficiently) to allow certain strictly indictable offences (which must be heard in the higher courts) to be able to be heard in the Local Court.
- The EAGP and table offences reforms formed part of the Criminal Justice Reform package. Other major elements of this package focused on reducing reoffending and moderating the demand for prison beds and costs to Corrective Services, including significant reforms to sentencing and parole laws.

These reforms and initiatives are, together, contributing to significant improvements in key performance indicators for the District Court. For example, while there was a growing problem with the District Court's criminal trial backlog from 2012 to 2017, from 2017 to 2019 there has been a very significant reduction. During 2018-2019, the District Court trial backlog declined by over 400 matters (from 2,031 to 1,596) the largest annual decrease since 2000.

It is also important to acknowledge that, given the length of the process to finalise serious criminal cases, there is a significant lag between the commencement of reforms and their impact on the average time to completion. I am pleased to advise that recently, the average time to case completion has also started to decline, although this impact is less dramatic than the impact on the backlog, due to the number of pre-EAGP or 'legacy' cases still being finalised. It is expected that the recent improvements in backlog and time to justice will continue into the future.

I note that in particular, the Report acknowledges that the EAGP reform was well managed, with coordination across multiple agencies, and successfully delivered. Progress is being measured in a range of ways, from monitoring key performance indicators to formal evaluations.

In relation to data and reporting, the former Department of Justice established the Performance and Analysis Branch (PAB) in 2016 to improve our data and analytics capacity. Since establishment, PAB has been providing data analysis, costings and other support for the District Court, including regular monitoring of the various initiatives that have been introduced to address the workload of the court. This includes supporting the District Court Backlog Senior Officers Group, the EAGP Steering Committee, and the Reducing Reoffending Strategy Steering Committee, in monitoring key performance indicators.

The long-established and well-regarded Bureau of Crime Statistics and Research provides regular statistical data on courts, as well as conducting independent evaluations for our initiatives. Many of the reforms mentioned above have already been the subject of a BOCSAR independent evaluation, and many others will be evaluated by BOCSAR over the next two years.

In addition, as the Report acknowledges, the Department has established a dedicated courts and tribunals data unit to specifically improve our data capability in this area. With the creation of the new Department of Communities and Justice, there is an opportunity to build upon our data capacity, as well as evaluation and benefits realisation approaches, as a larger entity.

In addition to building data capability, the department will continue to enhance court and tribunal efficiency and customer experience through process improvements and reducing dependency on legacy systems.

Please find enclosed with this letter a table responding to each recommendation in the report. As you will see, we have outlined a number of positive steps and actions to improve how we deal with data and technology in the District Court, as well as considering minor improvements to our already robust monitoring and evaluation of the EAGP reform.

The department, and other agencies in the criminal justice system, will continue to work tirelessly to support the District Court to manage its workload. I look forward to continuing to lead this work, including in response to the report's recommendations.

Yours sincerely,



Michael Coutts-Trotter  
Secretary

6 DEC 2019

New South Wales Auditor-General's Report - Performance Audit  
Supporting the District Criminal Court  
ACTION PLAN

Rec. No.	NSW Department of Communities and Justice should, by June 2020:		
1	Develop a strategic framework for improving and managing court data, including: <ul style="list-style-type: none"> <li>• a strategy for court data</li> <li>• a policy governing court data quality</li> <li>• assigning formal responsibility for data quality</li> <li>• proposed actions to improve the quality of court data, including the development of a data dictionary for JusticeLink</li> <li>• proposed actions to improve the use of courts data</li> </ul>		
Agency Response	<b>Accepted</b> Courts, Tribunals and Service Delivery (CTSD) has established a Data and Analytics Unit and work has commenced to recruit resources and the relevant technologies required to meet the reporting and analytics needs of the Division. CTSD will develop a strategic framework for the management of court data including the management of data quality within the Division.		
ACTIONS		Person responsible	Date to be actioned by
1.1	Develop a strategic framework for the management of court data and data quality.	Director, Data and Analytics Unit, CTSD	June 2020

NSW Auditor-General's Report: Supporting the District Criminal Court – Action Plan

Rec. No.	NSW Department of Communities and Justice should, by June 2020:		
2	Formalise the responsibilities of the courts data team and ensure that it is appropriately resourced to carry out its responsibilities.		
Agency Response	<b>Accepted</b> CTSD has established a Data and Analytics Unit. The staffing structure and operating model has been approved. Work has commenced to recruit resources and the relevant technologies required to meet the reporting and analytics needs of the Division. CTSD will formalise the responsibilities of the Data and Analytics Unit to align with the needs and responsibilities of the Division.		
ACTIONS		Person responsible	Date to be actioned by
2.1	Formalise the responsibilities of the Data and Analytics Unit.	Executive Director, Strategy Reform and Support, CTSD	June 2020



Rec. No.	NSW Department of Communities and Justice should, by June 2020:
3	Align its internal benefits realisation guidance with the NSW Government's Benefits Realisation Management Framework
Agency Response	<p><b>Partially Accepted</b></p> <p>Based on the commentary in the report, the department has assumed that this recommendation relates specifically to the Early Appropriate Guilty Pleas reform. The department considers that the EAGP Reform Monitoring and Evaluation Framework is consistent with the NSW Government's Benefits Realisation Management Framework. Before the reform was approved and funded, the Department developed a comprehensive business case in consultation with partner Justice agencies. Well in advance of reform implementation, the EAGP Steering Committee approved the EAGP Reform Evaluation and Monitoring Framework, a comprehensive benefits realisation plan, which:</p> <ul style="list-style-type: none"> <li>- Identified appropriate KPIs including: detailed Output KPIs to measure the anticipated reform outcomes; detailed Input KPIs to measure the reform levers that together produce the reform outcomes, and; a range of 'Tracking Metrics' (designed to ensure additional metrics could be investigated if necessary, but were excluded from the monitoring metrics to prevent unnecessarily complex reporting).</li> <li>- Identified IT system requirements for data collection, which were implemented in advance of the reform commencing.</li> <li>- Established a clear plan over time for monitoring and evaluation of the reform, including the timeframes in which monitoring of particular KPIs and evaluation activities would become meaningful.</li> <li>- Included both an outcome evaluation and early process evaluation – embedding a continuous improvement approach to benefits realisation throughout the early implementation of the reform as well as a robust outcome evaluation.</li> <li>- Established a strong post-implementation governance framework to manage benefits realisation.</li> </ul> <p>Following the commencement of the reform the <i>EAGP Reform Evaluation and Monitoring Framework</i> continues to be a living document supported by strong governance:</p> <ul style="list-style-type: none"> <li>- An officer level working group meets every three months to monitor the implementation of the reform and identify and resolve issues.</li> <li>- The EAGP Steering Committee (which includes senior representatives from all agencies affected by the EAGP Reform) meets every three months, with secretariat support provided by the department.</li> <li>- KPIs are monitored and reported to the Steering Committee on a dashboard every three months.</li> <li>- There is active and ongoing management of issues arising in the monitoring phase, including data capture and quality issues – with further changes to JusticeLink being implemented in December 2019.</li> <li>- A formation process evaluation is currently underway.</li> </ul> <p>Nevertheless, the Department considers some adjustments could be made to respond to Audit Office findings.</p>

	ACTIONS	Person responsible	Date to be actioned by
3.1	Asking the EAGP Steering Committee to consider amending the <i>EAGP Reform Evaluation and Monitoring Framework</i> to formally include economic evaluation as part of or in conjunction with the BOCSAR evaluation already planned to be finalised in early 2021	Director, Courts, Access to Justice and Regulatory, Policy, Legalisation and Reform Branch, Law Reform and Legal Services Division	June 2020
3.2	Asking the EAGP Steering Committee to consider amending the <i>EAGP Reform Evaluation and Monitoring Framework</i> to formally assign responsibility for some input KPIs to particular agency leads, noting that it remains the Department's view that responsibility cannot meaningfully attributed to any single agency for any of the output KPIs and some of the input KPIs	Director, Courts, Access to Justice and Regulatory, Policy, Legalisation and Reform Branch, Law Reform and Legal Services Division	June 2020

Rec. No.	NSW Department of Communities and Justice should, by June 2020:		
4	Measure all benefits stated in the Early Appropriate Guilty Pleas business case		
Agency Response	<p><b>Not Accepted</b></p> <p>The Department is measuring 8 of the 9 benefits identified in the EAGP business case.</p> <p>The one benefit not being measured is <b>Reduction in bed pressure on the correction system due to reduced average time in custody</b>.</p> <p>As previously advised to the Audit Office, the Department has determined not to measure this benefit for the following reasons:</p> <ul style="list-style-type: none"><li>• This benefit was only 6% of the anticipated NPV (net present value) of the reform.</li><li>• The calculation of this benefit was based on an analysis of the increase in prison time served due to a sentence of 'time served' being handed down after an extended delay, while the defendant has been remanded in custody. It is unlikely that this analysis can be repeated because of a number of compounding factors that have arisen since the analysis in the Business Case was undertaken. These include introduction of the 'Table offences' reforms and an unexpectedly higher rate of EAGP cases finalising summarily (leading to a larger proportion of offences being finalised in the Local Court, where matters resolve more quickly than the District Court).</li><li>• The impact of these factors on this measure is likely to swamp the relatively small benefit predicted as a result of the EAGP Reform.</li></ul> <p>This decision is consistent with the following principles of the <b>NSW Government Benefits Realisation Management Framework</b>:</p> <ul style="list-style-type: none"><li>- Principle 8 – Benefits are dynamic; they need to be regularly reviewed and updated</li><li>- Principle 9 – Keep the number of benefits monitored and reported to a sensible, manageable number</li></ul> <p>As noted at p.10 of the Framework, it is important to ensure priority is given to those benefits that provide the best business value and are most likely to be realised. Overly complex reporting may not be commensurate with the value of the benefits to be realised.</p> <p>It is also noted that, beyond the EAGP reform, the Department is closely monitoring the status of CSNSW beds a result of the Strategy and Reduce Reoffending and the Prison Bed Capacity Program.</p>		
ACTIONS		Person responsible	Date to be actioned by
4.1	No action	N/A	N/A

Rec. No.	NSW Department of Communities and Justice should, by December 2020:		
5	Investigate additional key performance indicators to measure its support activities, such as the accuracy of its data entry and its own contribution to the efficiency of the court.		
Agency Response	<b>Partially Accepted</b> The new data unit in CTSD will investigate the reporting of court support activities by other comparable states and determine the need for additional performance indicators for NSW.		
	ACTIONS	Person responsible	Date to be actioned by
5.1	Investigate reporting of court support activities of comparable states and determine the need for additional performance indicators for NSW.	Director, Data & Analytics Unit, CTSD	Dec 2020

Rec. No.	NSW Department of Communities and Justice should, by December 2020:		
6	Report performance in the court system annually against its key performance indicators in its annual report.		
Agency Response	<b>Partially accepted</b> As identified in the report, the Department uses the Productivity Commission Report on Government Services, the NSW District Court Annual Review and the annual Bureau of Crime Statistics and Research (BOCSAR) Criminal Court Statistics Report to publish information about District Court performance. The District Court Annual Review reports annually on: trial registrations, trial finalisations, pending trials, median finalisation time, average length of trial, and time standards (and others). BOCSAR reports annually on: charges, defendants, finalisations, penalties, median court delay and appeals (amongst other metrics). ROGS reports annually on: lodgements, finalisations, expenditure, income, backlog indicators, clearance rates and numbers of judicial officers and staff and other metrics). The Department is concerned about the appropriateness of including additional detailed statistical information in the Department's Annual Report, which could result in duplication across the existing publications. In addition, the Department's Annual Report covers a financial year period, which would introduce a different reporting time period than other reports. This may increase confusion about court performance. However, in line with the previous recommendation and action item, the Department will give consideration to this recommendation. This will include discussing with stakeholders (such as the head of jurisdiction) about whether reporting should be expanded, and what is the most appropriate publication for this reporting.		
	ACTIONS	Person responsible	Date to be actioned by
6.1	Subsequent to the completion of action 5.1 and the identification of additional performance indicators, give consideration to expanding the current reporting.	Director, Data and Analytics Unit, CTSD	Dec 2020

Rec. No.	NSW Department of Communities and Justice should, by December 2020:		
7	Evaluate options for improving the delivery of technical support to regional and rural courts and commence implementation of the preferred option		
Agency Response	<b>Accepted</b> As identified in the report, the Department's Information and Digital Services (IDS) does not have a regional workforce base. Instead, IDS contracts with local service providers. Regional registrars liaise with staff and judicial officers at a local level and respond to technology issues. All staff in CTSD are able to receive remote technical support, either over the phone or via video conferencing. Recently, the Department has contracted with a third party vendor to provide support to Courts in regional areas for priority 1 (critical) and priority 2 (high) incidents for desktop, DAT and network switches. At a systemic level, court registries conduct regular Court User Forums, where local users can meet to discuss issues, including issues related to technology. There is also a District Court technology committee, established under the Chief Judge's District Court's Strategic Plan 2018-2021, where issues can be raised. The Strategic Plan includes a commitment to reviewing its processes to maximise the benefits of technology. A new role has been created called Director, Frontline Divisional Services, CTSD intended to drive the day to day functional delivery of Information Technology and digital services. This role is structurally based within IDS, to provide a closer working relationship between IDS and CTSD for technology support.		
	AGREED ACTIONS	Person responsible	Date to be actioned by
7.1	Consult with CTSD on regional technology support and responses	Director Frontline Divisional Services CTSD	June 2020
7.2	Identify alternative approaches to improve IT support to regional areas, such as pop up IT services and proactive checks, potentially utilising internal workforce	Director, Operations and End User Services, IDS	June 2020
7.3	Implement any identified alternative approaches (if required)	Director, Operations and End User Services, IDS	Dec 2020