

# *Performance Audit Report*

## **Management of Court Waiting Times**

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## **Executive Summary**

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## **Executive Summary**

The audit has reviewed the planning and internal control systems used by the State's judicial administration with a focus on managing court waiting times. In particular the audit focused on the management processes of the three principal courts: the Supreme Court and the District Court, often called the "higher courts", and the Local Courts or "lower courts" of NSW.

The audit acknowledges that there are significant differences in the Courts. For example, courts higher in the hierarchy do not merely decide cases. They develop the law. Functions such as this highlight the importance of keeping the management of court waiting times in perspective, particularly in relation to the Supreme Court.

### **Management Processes**

Recognising the importance of judicial independence, the audit has been concerned only with management processes.

And in this regard, the audit has benefited from the support and openness of the NSW judiciary – in particular that of the Chief Justice, the Chief Judge of the District Court and the Chief Magistrate. It seems evident that courts are becoming increasingly mindful that judicial independence does not remove the need to manage public resources appropriately and to account for their performance.

The organisation of the courts bears little similarity to that of a conventional public sector agency and management responsibilities and accountabilities are not generally specified. There is no formal provision for the chief member of the judiciary in each court to exercise managerial authority over colleagues. Practice notes and rules are authorised by a committee, which includes the chief judicial officer. There is no conventional 'chain of command'.

Whilst the judiciary have a leading role in the courts, the management of the system as a whole also depends on the efforts of the registries, Office of the Sheriff, Reporting Services Branch, Law Courts Library and several specialist branches within the Attorney General's Department, plus key stakeholders including the Department of Public Prosecutions and the Legal Aid Commission.

**Audit Findings  
and Opinions**

The audit found that the court system in NSW does not possess a comprehensive management framework and, with some exception in relation to the District Court, there is a distinct lack of any reporting system in a management sense. There is little evidence of realistic objectives, forward plans, or clear definition of responsibilities for performance, and there have been few reviews of performance.

There is no assessment of waiting time performance in relation to other measures of court performance.

Whilst it is recognised that the Attorney General's Department and the courts have taken positive steps to improve court waiting times, The Audit Office considers that a more systematic approach is needed.

**Case Finalisation  
Times**

The audit observed that, when compared with available information against the other Australian Supreme/District Courts, the operations in NSW compare unfavourably in terms of overall case finalisation times. This could in part be caused by significant differences between States in terms of the adequacy of resources in relation to caseload. Whilst case finalisation times do not alone provide a complete measure of the efficiency and effectiveness of the management of court waiting times, The Audit Office considers these must be taken into consideration and, based on audit observation, could be improved upon.

**No Overall  
Framework**

The audit has been unable to identify the likely impact of actions to improve court waiting times. There is no overall framework for these efforts and little formal evaluation of the alternatives available.

**Standards**

An objective assessment of delay in the courts is not possible without reference to time standards. The audit found that whilst there is evidence of progress in establishing such standards in NSW courts, there is little evidence that they have been widely used, with the exception of the District Court.

On the other hand, there is evidence of the negative effects of overlisting, particularly in relation to the District Court, and there is evidence of recent efforts to better manage the listing process.

**Information Shortcomings**

There is no lack of information to establish the extent of waiting times, but establishing the causes is less well supported. Extensive information is available on changing demand, but this is not matched by equivalent detail on resource utilisation and processing efficiency. The information shortcomings are exacerbated by the lack of standards against which waiting time information at different stages can be reported and assessed. Managers lack an integrated information system to identify, examine and manage waiting time problems, and evaluate initiatives taken to improve.

**Management Responsibilities**

Management responsibilities and accountabilities within the courts are not generally specified. Few of the courts' committees possess any statements of management responsibility and there is little reporting of committee achievements. In contrast the audit found the support to the courts provided by the Attorney General's Department to be clearly structured and documented. Moreover, this support is extensive and is fundamental to the effective operation of the courts.

**Plans**

The current court plans do not identify specific outcomes, time frames, or priorities. The plans provide little guidance on how the courts will achieve their goals and do not identify the areas of the courts responsible for particular actions. The current registry plans are linked to the Attorney General's Department's Corporate Plan, but are not directly linked to objectives and strategies in the courts' plans.

**Summary of Recommendations**

A number of recommendations have been developed to assist the management of the courts. The Audit Office acknowledges that the implementation of these recommendations will initially require judicial time, which is a scarce resource. However, in time, improved management should lead to a more efficient and effective court system in NSW.

The recommendations are:

**Standards**

1. **Steps should be taken to improve the basis against which performance in NSW courts may be assessed and managed:**
  - standard times should be established for durations and intermediate stages of all court processes



- the standards should contain realistic and achievable targets, and progressively be adjusted over time in the direction of ideal figures
- adjournment rates and ‘not reached’ figures should be regularly monitored and reviewed with those affected
- the courts should report on the level of compliance achieved against standards.

## Information

2. **Information should be reported against all key waiting time stage standards, and more generally as exception reports to norms/targets/standards.** A hierarchy of performance information is needed (on contributory factors to waiting time) in a simple management information system. This should link high level indicators to low level causes for the benefit of managers at all levels. This simple management information system should not wait for the Department’s new Court Administration System, but will benefit in the long-term from improved data collection. All reports from this system should have owners responsible for their contents and accuracy. A more balanced set of indicators is needed than the information currently assembled in court annual reviews (covering more aspects of waiting time, like the impact of ‘not reached’ cases on the Department of Public Prosecutions and Legal Aid Commission, like the results of initiatives; plus interstate comparators and measures of court processing efficiency).

## Annual Reviews

3. **Annual Reviews should describe progress against strategic plans and include a reporting framework set in consultation with interested stakeholders.** Strategic Plans should be routinely prepared and published by each court, in consultation with stakeholders. Court Charters should be prepared by each court, in consultation with stakeholders, setting out standards for the delivery of court services. Annual Reviews should also include the terms of reference and progress reports for all court committees.

## Management

4. **A committee system should be developed for the management of the courts and their support functions.** Formal linkages should be established between the committees of the courts and the departmental structure of the Attorney General’s Department so that shared accountabilities are defined.

**Planning**

5. **Court Plans should be prepared and published by each court, in consultation with stakeholders.** The plans should be formulated in accordance with guidelines to show court objectives, strategies, actions, target/indicators, resources, finances and expected results. The plans should be realistic, reflect the operation of the whole of the court, including the support provided by Attorney General's Department – including registries, IT and capital works. More formal consultation arrangements could assist this process.

## **Response from the Attorney General's Department**

*Thank you for the opportunity to comment upon the draft Performance Audit Report on the management of court waiting times (“the Report”).*

*The recommendations contained in the Report are consistent with the direction in which the Department is heading in the management of court waiting times and accord with our priorities. The Report notes that efficient and effective court management requires very close links between the judicial and administrative components of the Courts, and I believe that the recommendations in the report will assist the Department and the Courts in achieving their existing goals of working together to clarify the division of responsibilities, and improve planning and information management.*

*In reviewing the draft Report, I have considered a number of issues. These include the unusual management environment surrounding the management of court waiting times and the need to recognise the independence of the judiciary. I have also seen the report as providing the opportunity to inform Parliament of the initiatives that have been implemented by the various jurisdictions to improve court waiting times.*

*To understand the importance of the initiatives that have been introduced by the courts I consider it appropriate that they should be seen against a context of little change over many preceding years. In particular the reforms of the District Court are not as well recognised in the Report as should be the case. The initiatives of the District Court in recent years are quite remarkable and they are even more so when compared to the level of change in earlier years.*

*I have been working with the Justice Research Centre on the development of model key performance indicators for courts. The indicators will assist the courts to meet increasing demands within their jurisdictions, to manage their resources efficiently and to be publicly accountable for their performance by improving the information they use to inform decision making. The development of these indicators will also enable efficient joint management of workload by the Judiciary and Registries by establishing one set of core indicators, reported monthly, which focus on timeliness and cost-effectiveness measured against performance standards.*

*These key performance indicators will form an important part of the Department-wide Management Information System, which was highlighted as a priority in the Department's Information Technology Strategic Plan. Initial planning for the system has commenced and it is hoped that the system will be operational within the next twelve months, providing management information not just for courts but for all areas of the Attorney General's Department. The system will bring together management information that is currently held on several systems throughout the Department.*

*The Department has also been working with the Courts on how and at what level we report data within the Department and to stakeholders. One area where major improvements have been made over the past eighteen months is the reporting of performance information for the management of the Local Courts. Data is collated and produced in an increasingly meaningful and useful manner, and reports containing varying levels of detail are produced for the different levels of management within Local Courts. The information is now being used by the Chief Magistrate for resource planning and management, ensuring that decisions on local courts management are based on consistent data.*

*The Report acknowledges that the strategic planning within the Attorney General's Department provides the Department with clear and well documented structures and responsibilities. While the development of strategic plans by the Courts has been an ongoing task and the process is continually being refined, I believe credit should be given to the Courts for adopting strategic plans of their own initiative and for reporting annually on them. Work is continuing on the process of linking the Court strategic plans to the Registry Business Plans and the Attorney General's Department's Corporate Plan.*

*As noted in the Report, the District Court was the first of the Courts to produce a Plan which established time standards for the finalisation of matters. These time standards were then linked to the District Court Registry Plan and are regularly reported on by the Court and the Department in the Court's Annual Review, the Department Annual Report and Budget Papers. The Supreme Court has also recently recognised the need to develop time standards and is presently in the process of identifying appropriate time standards for different classes of matters.*

*It is recognised that the District Court has not been totally successful in meeting its time standards, but I believe that the progress that the District Court has made to meet changing and increasing workloads has not been fully acknowledged in the Report. It should also be acknowledged that several thousand matters were transferred to the District Court from the Supreme Court and these matters are being handled without a large increase in resources and the Court has been successful in ensuring that current waiting times for all matters have not increased.*

*In relation to developing greater co-ordination in planning processes, I note that the Report also emphasises the need for co-operation between the key government departments, statutory and professional bodies, commissions and other bodies involved with the Courts. It omitted any reference to two key forums in which this co-operation presently occurs. The Civil and Criminal Justice Forums were established by the then Attorney General, the Hon Peter Collins MP, in 1992 to bring together key players in the justice system for frank and open discussion about the operation of the system with the aim of facilitating greater co-operation. The Forums have generally been held twice a year and have enabled politicians, judicial officers, magistrates and administrators to discuss, in camera, the difficulties facing the justice system and opportunities for change. In addition, the Standing Committee of Criminal Justice System Chief Executive Officers meets every two months to discuss matters having an interagency impact, which frequently involve issues relating to the court system.*

*I would like to take this opportunity to acknowledge that the audit was conducted by your Office in a consultative manner, with the full co-operation of Departmental staff and judicial officers. I would also like to extend my thanks to you and your staff for keeping my Department informed of progress throughout the audit.*

*The Department sees the Report's recommendations as being consistent with its own current strategies and therefore, in conjunction with the Judiciary, will implement the recommendations as part of its ongoing co-ordinated reform of court waiting times.*

(signed)  
Laurie Glanfield  
Director General  
26 August 1999

# **1. Introduction**

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## 1. Introduction

The expenditure of NSW courts in 1997-98 amounted to \$283 million. This includes the costs of the judiciary, support staff, equipment, courtrooms and associated facilities but not the costs of capital.

The conduct of activities within the court system, due to its nature, is time consuming. Time is necessarily spent in the preparation of a case for trial, the conduct of its hearing and the determination of its final outcome. Courts handle large numbers of cases and time may also be required due to queuing and backlogs. The total time between the commencement and conclusion of court proceedings is referred to as the waiting time.

### Waiting Time

Waiting time in courts affects the efficient operation of the courts and, as such, impacts on how efficiently public funds are expended.

Additionally, excessive delays can have other detrimental effects. A study of the NSW court system described these as follows:

- a) *evidence dissipates or deteriorates; witnesses' memories fade with time, and witnesses may die or go missing*
- b) *gaols become overcrowded, with detainees on remand awaiting trial for lengthy periods of time*
- c) *they cause anxiety for the victims of crime, the persons accused of crime and close family members of both the victims and the accused*
- d) *the deterrent effect of the criminal justice system becomes undermined*
- e) *community respect for the justice system becomes eroded*
- f) *delay has a compounding effect; for example, delay can be used, in some instances by some parties, to postpone a hearing which would be detrimental to the interests of that party; this may reinforce the power of the financially stronger party - the one better able to withstand the financial consequences of delay*
- g) *court resources are wasted*
- h) *witness, juries and other participants in the system are inconvenienced.*<sup>1</sup>

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<sup>1</sup> Coopers & Lybrand WD Scott, *Review of the New South Wales Court System*, May 1989 p45

In view of this, a performance audit has been undertaken of the management of court waiting times.

## 1.1 Audit Approach

A preliminary performance audit on this subject was conducted in 1995<sup>2</sup>. The audit was intended to be a review of the effectiveness of a program of reform to reduce delays. The audit was curtailed because the reform process was then incomplete. The resultant audit report was the subject of a review by the Public Accounts Committee, which made a number of recommendations. This audit does not examine the extent to which those recommendations were adopted.

Nor has the audit examined the impact of specific initiatives to reduce court waiting times, although a number of new initiatives have been noted.

Rather, the audit adopts a different approach, focusing on the courts' management.

### Guidelines

The audit has reviewed the planning and internal control systems used by the State's judicial administration with a focus on managing court waiting times. The audit was undertaken with reference to general guidelines developed by the NSW Government for strategic planning<sup>3</sup> and internal control<sup>4</sup>, based on a framework developed for all organisations by the Committee of Sponsoring Organisations of the Treadway Commission (COSO) and representing best world practice. In particular the audit focused on the management of the three principal courts: the Supreme Court and the District Court, often called the "higher courts", and the Local Courts or "lower courts" of NSW.

The audit has benefited from the support and openness of the NSW judiciary – in particular that of the Chief Justice, the Chief Judge of the District Court and the Chief Magistrate. Members of the judiciary greatly assisted the audit's understanding of the topic area and contributed valuable insights and suggestions for improvement.

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<sup>2</sup> The Audit Office of NSW, *Management of the Courts*, 1995

<sup>3</sup> See OPM's Corporate and Strategic Planning Checklist

<sup>4</sup> See Treasury's Risk Management and Internal Control Toolkit



## Courts Assisting

The NSW courts which directly assisted the audit perform different functions as follows:

- The **Supreme Court** is the highest court in NSW. It has unlimited civil jurisdiction and handles the most serious criminal matters. The Court of Appeal and Court of Criminal Appeal hear appeals from decisions made in most of the courts in NSW and appeals from decisions made by a single judge of the Supreme Court.
- The **District Court** has jurisdiction to hear all indictable criminal offences (except murder, treason and piracy); and civil matters with a monetary value up to \$750,000 – or greater with the consent of the parties. The Court also has an unlimited jurisdiction in respect of motor accident cases. The Court's judges hear appeals from the Local Court and also preside over a range of administrative and disciplinary tribunals.
- The **Local Courts** deal with criminal matters which can be decided without a jury and committal hearings, juvenile prosecution and care matters, motor traffic prosecutions, civil actions to recover amounts up to a certain value, some family law issues and coronial inquiries.

There are also qualitative differences in the Courts. Courts higher in the hierarchy, particularly the Supreme Court and, within this Court, particularly the Court of Appeal and Court of Criminal Appeal, do not merely decide cases. They develop the law. They also have a particular responsibility to articulate the reasons for their judgements which, unlike lower courts, are widely published. These judgements form the basis on which advice is given by practitioners.

Functions such as this highlight the importance of keeping the management of court waiting times in perspective, particularly in relation to the Supreme Court.

The Audit Office first examined the current information available on court waiting times in NSW, including some comparison with waiting times in other States, and identified some of the measures adopted to reduce delays.

**Criteria**

For the conduct of the audit the following criteria were developed:

- Court objectives provide guidance on what is expected, and are supported by specific targets for each significant court process, to provide a basis for assessing and managing waiting time performance.
- Systems provide information to the right people in sufficient detail and on time to enable them to carry out their responsibilities efficiently and effectively.
- Appropriate organisation structures exist with clear reporting relationships. Assignment of responsibility, delegation of authority and establishment of related policies provide a basis for accountability and control.
- A strategic plan exists with objectives for the organisation which reflect responsibility. Options are evaluated to arrive at strategic plans for major functional areas which will achieve the corporate objectives. Tactical or action plans are developed for teams and individuals to implement throughout the organisation. The progress against targets in all plans is monitored. Plans are reviewed annually.

The report is structured in chapters according to the audit approach outlined above.

## **1.2 Judicial Independence**

**Audit Concerned  
Only With  
Management  
Processes**

Judicial independence is the centrepiece of any court system and the judiciary must, within the law, be individually and collectively independent in their decision making. However, the efficient management of the court facilities is distinct and separate from the judicial independence. There is a need for accountability and transparency in the management of our courts as in the rest of the public administration. Because of that this audit has been concerned only with management processes, and has been particularly concerned not to intrude in the area of judicial independence.

Judicial independence is explained by the Judicial Commission of NSW as follows:

*The tenure of judicial officers is secured by the New South Wales Constitution Act. Subject to a statutory retiring age (72 in the case of judges), judicial officers can only be removed from office by the Governor upon an address of both Houses of the New South Wales Parliament, on the ground of proved misbehaviour or incapacity.*

*Judicial officers, like all other citizens, are subject to the criminal law. However, outside the ordinary application of the criminal law, they are not subject to punishments or other reprisals for the manner in which they perform their judicial duties. They are often called upon to make decisions, which are unpopular with certain sections of the community, or with the media, or with governments. The maintenance of their independence, and especially their independence from the executive government (which is itself a major litigant), is the reason for this immunity.<sup>5</sup>*

In practice the separation of powers is not rigidly delineated. For example, the NSW Attorney General (part of the executive) appoints the members of the judiciary and the legislature has the power to change the structure of the judiciary (although this power is subject to significant constitutional restrictions).

**Real and Perceived Pressures**

There are real and perceived pressures on the judiciary with the main ones being:

- the increasing pressure for accountability for the management of the courts as public sector resources, and
- the increasing concern from the judiciary that judicial independence was being eroded.

The Chief Justice of the Supreme Court recently commented:

*There is an increased concern with accountability and efficiency. Indeed, perhaps the foremost challenge for judicial administration at the present time is to ensure that contemporary expectations of accountability and efficiency remain consistent with the imperative of judicial independence.<sup>6</sup>*

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<sup>5</sup> Judicial Commission of NSW, Annual Report 1997 p1

<sup>6</sup> Hon J Spigelman, Chief Justice of the NSW Supreme Court, in a speech given to the Compensation Court of NSW Annual Conference, 7 May 1999.

These days, society is increasingly requiring courts and judicial officers to be more efficient, to increase their “productivity”, and to justify requests for additional funds and staff in terms that demonstrate full and efficient utilisation of existing resources. The judiciary, for its part, frequently regards such demands as insensitive to the special nature of courts, the peculiar and almost inherently inefficient nature of the adversary process, and the importance of the principle of judicial independence.

The dilemma that this poses for the judiciary has been summarised as follows:

*These pressures are unlikely to disappear in the near future and may, in fact, increase. This poses a significant dilemma for the judiciary because in their efforts to improve management practices, Australian judicial officers are not, in the terms of a leading Canadian treatise on the role of the executive and judiciary in court administration, “Masters of their Own House”. In other words, the judiciary finds that as more is expected of them in terms of judicial administration they have neither the authority nor the resources to do the job. As his Honour Mr Justice Gleeson, the Chief Justice of the Supreme Court of New South Wales, observed in 1989:*

*“ ... it is impossible to discuss [delay reduction] without becoming involved in more fundamental questions as to the respective roles of the different branches of Government and in particular of the relationship between the executive and the judiciary in connection with the administration of justice.”<sup>7</sup>*

### 1.3 Management of Courts

#### **Linkages Between Judicial and Administrative Components**

Efficient and effective court management requires very close linkages between the judicial and administrative components of the courts.

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<sup>7</sup> Prof Church and Prof Sallmann, *Governing Australia’s Courts*, AIJA 1991 p3.

The following comments describe the courts' adoption of case management techniques and illustrates the importance of these linkages.

*... A particular feature of this dilemma is "case management", a body of principles and techniques increasingly accepted in the courts of Europe, North America, and Australia since the mid-1960's. Originally developed as a response to increasing delays and crises in the processing of cases, case management is based upon an explicit assertion of judicial responsibility for the expeditious progress of all matters before the court, through all stages of the process from first filing to final disposition.*

*Modern case management rejects traditional notions of the judicial role in the pre-trial processing of cases. No longer is the judicial officer a passive referee, waiting to provide a service at the convenience of the parties. Rather, judicial officers, or court officials on their behalf, are expected to monitor the progress of cases and encourage the parties and their lawyers to resolve the matter speedily, either by settlement or trial. Effective case management requires close linkages between the judicial and administrative components of a court. It involves the quintessential judicial duty of directing and supervising the actions of parties and their lawyers in the litigation process but cannot operate successfully without extensive administrative support, in record keeping, listing of hearings, giving notices to parties and so on.*

*Adoption of a case management philosophy involves the judiciary assuming responsibility for activities that can only be satisfactorily performed in conjunction with non-judicial staff. Yet in most Australian courts that staff is directed by, or at least subject to, the direction of, another branch of government. The point of this is not that the executive branch has been unsupportive of judicial efforts in the area of case management. Quite the contrary: in many Australian courts the major impetus for case management has come from court administrators. The fact remains, however, that a case management philosophy involves a rejection of the separation of the traditional roles of judge and administrator. Case management necessarily involves judicial officers in functions that were previously considered administration; and it just as clearly involves administrators in aspects of the litigation process previously regarded as the special province of the judiciary.<sup>8</sup>*

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<sup>8</sup> Prof Church and Prof Sallmann, *Governing Australia's Courts*, AIJA 1991 p4

## **Different Models of Court Governance**

The audit was also aware that the Federal Government and the South Australian Government have established different models of court governance that provide their courts with greater autonomy and accountability. With the removal of administrative responsibilities from the Federal Attorney General's Department, the High Court, the Federal Court, and the Family Court are to a large extent judicially and administratively autonomous. The South Australian model is similarly autonomous, except that it is served by a single administration for the whole court system.

In practice, all jurisdictions need to find an acceptable balance between the pressure for independence and the pressure for accountability for efficient and effective use of public funds. Inevitably this requires an active and continuous cooperation on the part of those involved. As the (former) Attorney General of Victoria said:

*The proper administration of the courts depends on the active and continuous co-operation in a multitude of ways by members of the Government, the public service, the legal profession and major court users in an atmosphere that is ever mindful of the public interest.<sup>9</sup>*

The Audit Office considers that the management of courts, and in particular the management of waiting times, is the responsibility of those primarily involved in the court system, and that a cooperative management approach is necessary.

### **1.4 Courts in NSW**

There are seven court jurisdictions in NSW, plus a range of smaller tribunals.

- Supreme Court
- District Court
- Local Courts
- Land and Environment Court
- Industrial Commission
- Compensation Court
- Drug Court

Cases frequently pass between courts.

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<sup>9</sup> Hon J H Kennan, Attorney General of Victoria, Seminar on Constitutional and Administrative Responsibilities for the Administration of Justice, AIJA 1985

## 1.5 Principal Bodies Involved with the Courts

A number of key government departments, statutory and professional bodies, commissions and other bodies are involved with the courts:

- Attorney General's Department
- Office of the Director of Public Prosecutions
- Police Department
- Judicial Commission
- Legal Aid Commission
- Department of Corrective Services
- Legal profession
- Users of the courts and other participants.

The chief means of support to the courts is through the services of the Attorney General's Department.

## 1.6 Attorney General's Department

The Attorney General's Department administers and supports the system of courts in New South Wales in cooperation with the judiciary. It has a diverse range of functions, ranging from the provision of court registry services to operation of the Registry of Births, Deaths and Marriages, and consists of 40 cost centres.

### Support Provided to the Courts

The audit found that the support provided to the courts by the Attorney General's Department is extensive and is fundamental to their operation. It involves the following cost centres within the Department.

- Supreme Court registry
- District Court registry
- Local Courts registry
- Office of the Sheriff
- Reporting Services Branch
- Law Courts Library
- Finance and Strategic Services
- Capital Works Unit
- Information Technology Branch
- Legislation and Policy Division
- Corporate Human Resources Division

The Department is responsible to the Attorney General, who is a Minister of the Government and a member of the Legislative Council. The Attorney General also represents the Government in the courts, and represents the interests of the courts and judicial officers in the annual budget process before Parliament.

### **1.7 Cost of the Audit**

The total cost of the audit is as follows:	\$
Direct salary and overhead costs	112,916
Printing (estimate)	6,000
Miscellaneous	500
<b>Total costs</b>	<b>\$119,416</b>

### **1.8 Acknowledgments**

The Audit Office would like extend its appreciation to the NSW judiciary, court officials and justice agencies for the way they have advanced the course of the audit and for the assistance provided to audit staff. In particular, The Audit Office wishes to acknowledge the support of the NSW Supreme Court, NSW District Court, NSW Local Courts, Attorney-General's Department, Bureau of Crime Statistics and Research, the Office of the Director of Public Prosecutions, the NSW Legal Aid Commission, the Ministry for Police and the NSW Police Service. The Audit Office also wishes to acknowledge the assistance of the NSW Parliamentary Library, the Centre for Court Policy and Administration at the University of Wollongong, the Judicial Commission of NSW and the Commonwealth Industry Commission (now Productivity Commission).



## **2. Court Waiting Times in NSW**

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## 2. Court Waiting Times in NSW

### Court Delay

The time taken between the lodgement of a matter and its finalisation is popularly referred to as the court delay. Because court delay often extends over several years, the publication of these times has attracted much public attention. However, as court processes invariably take time to complete, case finalisation times generally represent delay only when they exceed expectations or standards. For example, lower courts complete a greater proportion of their workload in a shorter period of time, because of the less complex nature of the matters heard. Lower courts would be expected to have shorter benchmark times for case finalisation than higher courts, where greater preparation time, and more and longer hearings are to be expected. As a consequence, it is considered that it is important, and for efficient management imperative, for each court or judicial system to establish a standard against which its efficiency (and implicitly that of its practitioners) can be measured.

Of course it is recognised that case finalisation times do not alone provide a complete measure of the efficiency and effectiveness of the management of court waiting times. There are other measures, some of which are examined later in this report. However, an examination of some interstate comparisons and NSW trends can usefully serve to highlight the problems currently faced in the NSW court system.

### 2.1 Interstate Comparisons

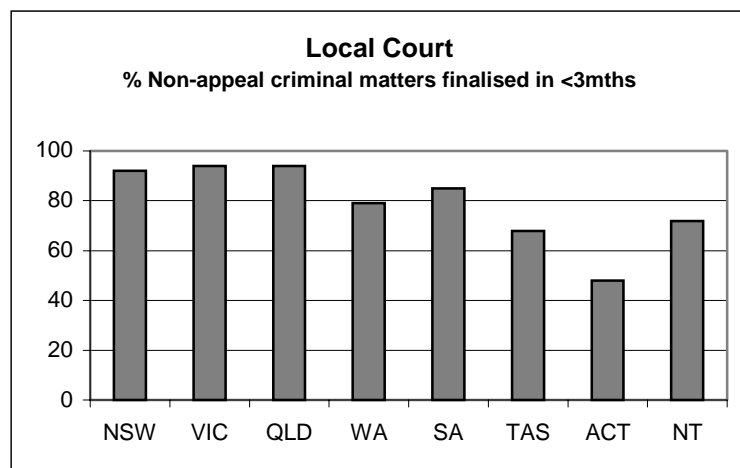
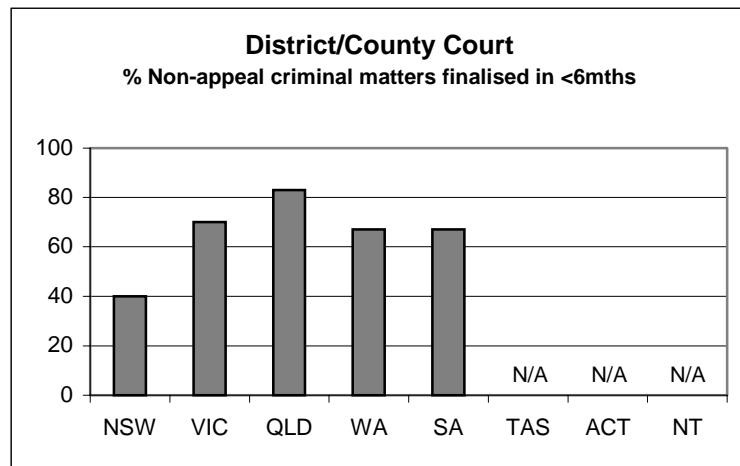
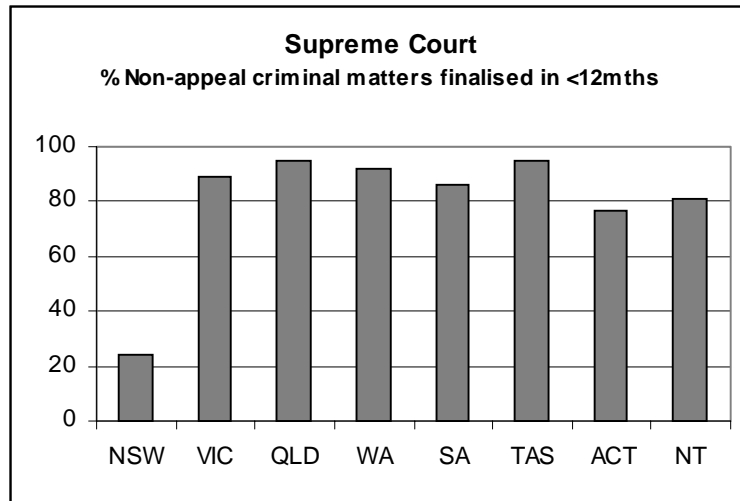
In recent years national comparative studies have been conducted under the auspices of the Council of Australian Governments.<sup>10</sup>

The 1999 report, covering the 1997/98 financial year, indicates that NSW has had the longest finalisation times nationally for processing matters before the Supreme Court and the District Court in the criminal jurisdictions.

The following figures show the comparison, based on the percentage of non-appeal criminal matters finalised.

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<sup>10</sup> Steering Committee for the Review of Commonwealth/State Service Provision produces a annual Report on Government Services which includes comparisons of case finalisation times in each state.

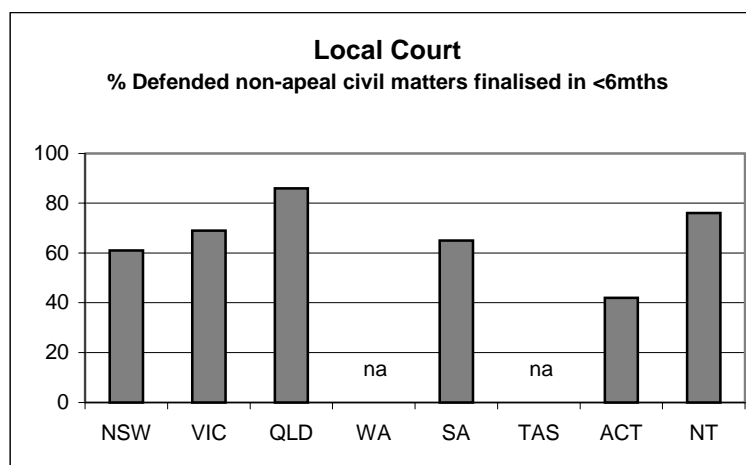
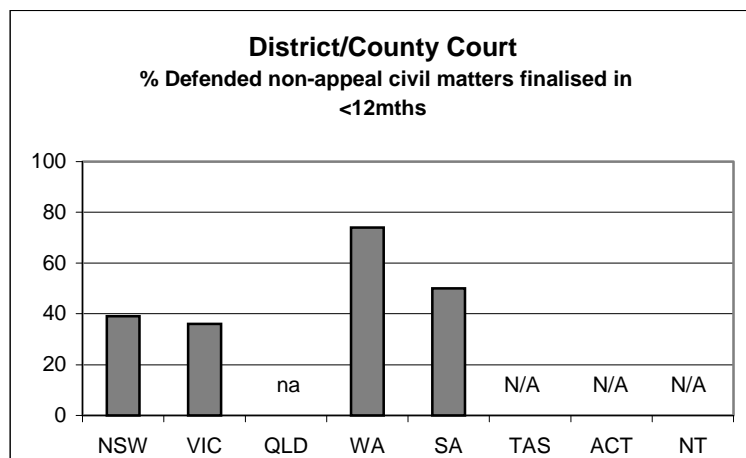
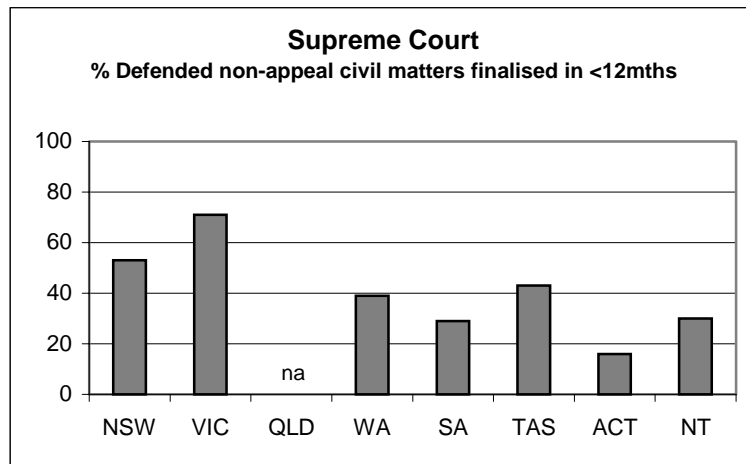


Note: N/A - Not Applicable.

Source: Report on Government Services 1999, vol 1 Table 7A.9.

2. Court Waiting Times in NSW

The following figures show this has not been compensated for by better than average waiting times in civil cases.



Note: na denotes data not available; N/A - Not Applicable.

Source: Report on Government Services 1999, vol 1 Table 7A.10.

It is recognised that comparisons must be treated with caution, especially when they focus only on throughput without regard to complexity or resource utilisation.

The type of matters processed in the superior courts may vary from state to state, and this has an effect on the timeliness data. The audit was advised that civil matters coming before the Supreme Court in New South Wales tend to be more complex than in other states because of Sydney's position as the nation's financial and commercial capital. In the criminal jurisdiction, New South Wales has a policy of transferring less contentious matters to a lower court so that the higher courts may concentrate on the more serious offences. By comparison, some states may process some matters, such as drug offences, in the higher courts.

Differences in throughput and resources can also be demonstrated by comparing the number of cases handled by the Supreme Court of NSW, with around 45 judges, to the Supreme Court of Victoria, with around 32 judges. As the following table shows, the NSW Supreme Court processed a case load substantially greater than its additional resources would have suggested likely.

### Supreme Court Cases Finalised 1997-1998

	<b>Civil</b>	<b>Criminal</b>	<b>Civil Appeal</b>	<b>Criminal Appeal</b>
<b>NSW</b>	8,436*	92	926	538
<b>VIC</b>	3,085	103	315	374

\* After deducting 2,174 cases transferred to the District Court

Source: Report on Government Services 1999. Tables 7A.8 7A.10.

But even taking into account the above considerations, there is some acceptance that, in view of the magnitude of the differences with all other states, NSW has had relatively unfavourable waiting time performance:

*The current position in respect of the management of serious criminal cases in New South Wales is a matter of increasing attention. While the causes of the current position can be debated, data drawn from the Australian Bureau of Statistics report series, Australian Criminal Courts, indicates that the position had not improved between the period 1995 to 30 June 1997.*

*If the national comparisons from other studies hold true for 1997/98, the performance of the New South Wales higher courts is less than ideal. Initial indicators from the Bureau of Crime Statistics & Research on results for the full 1997 calendar year suggests that the position may, in fact, have deteriorated further.<sup>11</sup>*

### **2.2 Criminal Case Finalisation Times in NSW**

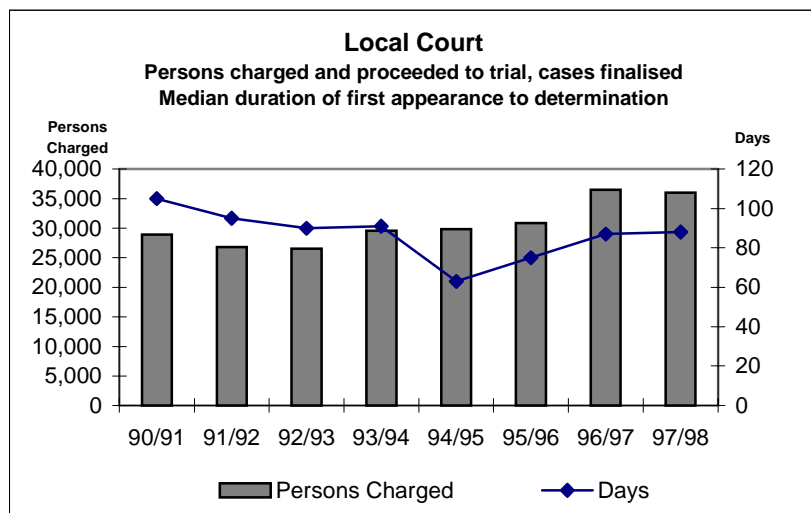
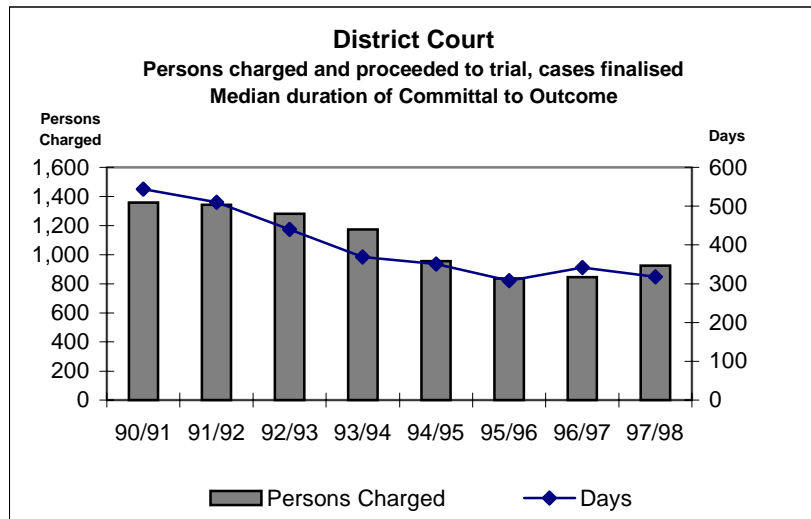
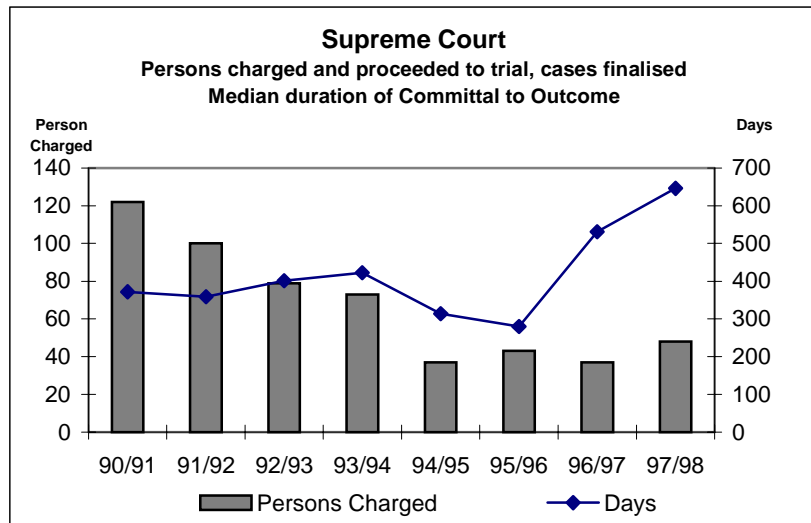
#### **Significant Reductions**

This does not mean that there has been no reduction in criminal case waiting times in NSW at all. A closer examination indicates that, despite the less than favourable performance compared to other states, some significant reductions in case finalisation times have been achieved for the greater part of the decade.

Figures from the NSW Bureau of Crime Statistics and Research show that, with the aid of a declining case load, case finalisation times have been improving in the District Court and have been rising only recently in the Supreme Court. In fact, the latest quarterly figures suggest that case finalisation times in the Supreme Court may now have peaked and started to decline. In the Local Court, despite rising caseload, waiting times have reduced overall.

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<sup>11</sup> Attorney General's Department, Paper to NSW Criminal Justice Forum – 1 September 1998



**Recent Sharp Increase**

The recent sharp increase in delays for criminal trial cases in the Supreme Court attracted a good deal of attention. Factors influencing this rise have been described as follows:

1. *Increased average trial length*

*The Supreme Court normally applies a consistent amount of judicial resources to its criminal jurisdiction, around 250 “judge weeks” per annum.*

*While there has been a decline in the number of cases registered and finalised as compared to 1990/91, the increase in delays is largely attributable to longer cases being heard. This is entirely consistent with restructuring of the jurisdiction, with the District Court taking all serious cases except murder, and the Local Courts having an expanded scope to deal with all cases up to a maximum penalty of 10 years.*

2. *High Court decision in ‘Dietrich’*

*The High Court has made a decision which effectively means that an accused who is legally unrepresented is unlikely to receive a fair trial. If, as a result of the application of legal aid guidelines (ie. \$80,000 cap on long trials), that representation is unavailable, the case may well be stayed until legal aid is granted and accumulate further delay. This is likely to be significantly exacerbated with the most recent reductions in the global Legal Aid budget by the Federal Government.*

3. *Other causes*

*There are also a number of largely uncontrollable matters which impact on delay in this class of case, namely:*

- *late cancellation of long trials (eg R v Milat) where there is insufficient time to schedule a replacement (in these cases the judge usually must take a civil, rather than criminal, case).*
- *increasing numbers of multi-accused cases where separate trials are granted*



- *the number of hung juries and aborted trials where a re-trial is required.*<sup>12</sup>

Whilst similar factors also affect jurisdictions in other states, the relative position of NSW remains a problem.

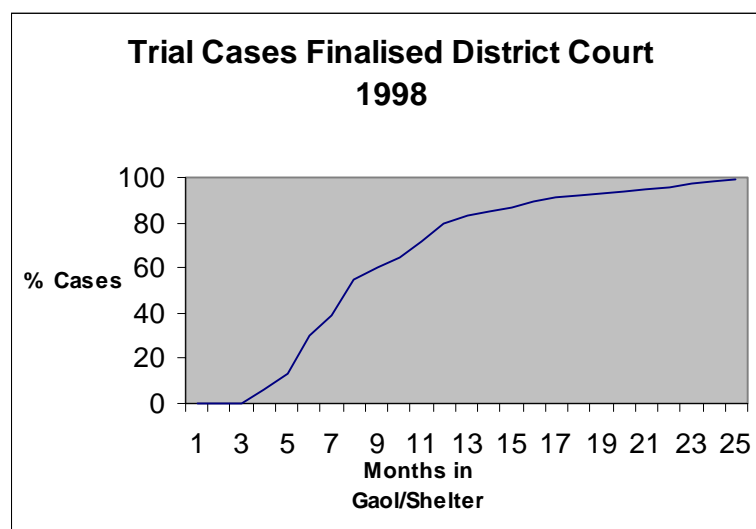
### 2.3 Comparison between Cases

As would be expected, however, a focus on middle or ‘median’ figures does not convey the whole picture. There is a wide distribution of individual experience of court waiting times that can only be appreciated by examining cumulative distribution graphs.

One reason for this is that the published statistics include all cases committed for trial – including those that do not go to full trial because of no-bills or a changed plea to guilty. Cases, which proceed to trial, are likely to be considerably longer.

For example, for those people being held in relation to a matter before the District Court:

- three quarters of the people remanded in custody in NSW and whose cases go to trial in the District Court are being dealt with outside the court’s “ideal” time standard of 112 days (16 weeks).
- half are waiting six months in custody and close to 30 percent are spending between 6 and 12 months in custody.



<sup>12</sup> Attorney General’s Department of NSW, *Supreme Court Delay Reduction*, Forward Budget Estimates 1998/99 to 2001/02

Source: Figure 13 District Courts in gaol/shelter, NSW Bureau of Crime Statistics and Research, *Higher Courts Quarterly Report Series*, December Quarter 1998

## **2.4 Audit Observations and Findings**

When compared with available information against the other Australian Supreme/District Courts, the operations in NSW compare unfavourably in terms of overall case finalisation times.

However, The Audit Office considers that, because the information collected by the Steering Committee for the Review of Commonwealth/State Service Provision is not strictly comparable, NSW should establish its own standards as a basis for assessing the performance of its courts.

### **3. Measures Adopted to Reduce Delay**

### 3. Measures Adopted to Reduce Delay

Case finalisation times, if they exceed expectations or standards, will result in court delays. This chapter describes the factors which influence court delay and the various measures that have been proposed to reduce it. Recent efforts by the Government and the courts in NSW are then illustrated by examples.

#### 3.1 Factors that Influence Court Delay

The Bureau of Crime Statistics and Research, in the context of criminal cases, has identified several broad factors that influence court delay:

- the preparation time to bring a matter to the point where it can be listed for trial
- the amount of court time available to hear trials
- the percentage of court time used in the hearing of trials
- the duration of trials
- the number of cases registered for trial
- the proportion of matters registered for trial which proceed to trial.<sup>13</sup>

Based on this framework and drawing from a NSW Parliamentary Library Briefing Paper, *Reforms to Reduce Court Waiting Times*, many of the causes of court delay can be summarised as follows:

##### 3.1.1 Preparation Time

Some of the matters that can prolong the time between commencement of a case and readiness for hearing are:

- slowness by the parties in following pre-trial procedures and preparing for trial
- extended interlocutory proceedings and appeals from interlocutory orders
- failure by the parties to narrow the issues in dispute as early as possible
- adjournments of cases, which must then be re-listed
- over-listing of cases
- judge-shopping

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<sup>13</sup> NSW Bureau of Crime Statistics and Research, *Measuring Court Performance: Indicators for Trial Case Processing*, Crime and Justice Bulletin No 30, June 1996 p4

- reluctance or lack of power of judicial officers and registrars to supervise or control the pre-trial activities of the parties
- delays in the legal aid system in processing applications for aid.

### **3.1.2 Court Time Available**

The main factor in determining the amount of available court time is the number of judges.

### **3.1.3 Court Time Used**

Matters which tend to reduce the amount of available court time actually spent hearing matters include:

- late settlement or adjournment of cases, and late changes of plea in criminal matters
- under-listing of matters
- over-estimating the length of trials and leaving the court with unused time
- trials that need to be re-heard due to a mis-trial, or a hung jury.

### **3.1.4 Duration of Trials**

Long trials occupy the courts and reduce the number of cases that can be handled. Some of the matters identified as lengthening trials are:

- the failure or inability of the parties to define or narrow the issues before the trial
- insufficient or inadequate preparation of cases
- lack of legal representation
- complexity of the case; number of parties; number of witnesses; number of charges
- reluctance or lack of power of judges to control the course and manner of proceedings effectively.

### **3.1.5 Cases Registered for Trial**

When a case is ready for hearing, it is placed in a queue of cases for a hearing date. The number of cases pending before the courts affects the time required for a case to obtain a hearing date. This may in turn depend on factors such as the crime rate and the number of police.

### 3.1.6 Cases that Proceed to Trial

Most civil matters, and a significant proportion of criminal matters, that are commenced do not ultimately proceed to trial. Factors which are likely to affect the number or timing of cases finalised without trial include:

- the existence of incentives or sanctions for parties to discuss resolution at an early stage; for example, incentives to plead guilty
- the availability and use of alternative dispute resolution procedures
- the availability of legal aid in criminal matters.

### 3.2 Range of Measures To Reduce Delay

Many measures to reduce delay have been proposed, from the very general (such as modifying the adversarial legal system to introduce more inquisitorial procedures) to the very specific.

A detailed list of possibilities is included in the Appendix. A brief list of possibilities is as follows:

- *more use of alternative dispute resolution in civil matters*
- *altering the structure and management responsibility of the courts*
- *enacting an obligation on the courts to hear matters expeditiously, and encouraging judges through judicial education to use their powers and discretions for this end*
- *expanding the powers of the courts to manage cases, particularly in the criminal jurisdiction*
- *restricting time-consuming pre-trial procedures such as discovery and interrogatories*
- *modifying committal proceedings*
- *setting mandatory time limits for the disposal of cases*
- *restricting or modifying trial by jury*
- *increasing court fees*
- *reducing the number of criminal offences and causes of action*
- *simplifying and clarifying legislation*
- *encouraging early settlement and guilty pleas*
- *appointing more judges*
- *improving computer facilities and information technology in the courts*
- *extending the sitting hours of judges and reducing judicial vacations*

- *modifying the method of charging legal costs, to discourage over-servicing by lawyers.*<sup>14</sup>

## **Initiatives**

The audit found that the Government and the courts in NSW had recognised that there were problems with court waiting times and had taken a number of steps to deal with the issue. The Government had been active in increasing the resources available to the judiciary and the courts had developed a number of initiatives to improve their procedures. These are described in the following sections.

### **3.3 Appointing More Judges**

There has been a major emphasis on increasing the number of judges on a temporary basis to deal with the backlogs that have accumulated in the higher courts. Given progress made in respect of civil cases during 1996 and 1997, the main attention of the Government and the courts in 1998 has been on the criminal jurisdiction.

In the Supreme Court several acting judges were appointed for varying periods to assist in hearing the backlog of cases. During the early stages of this program, legislation to increase the jurisdiction of the District Court came into effect which resulted in a total of 3199 cases being transferred to the District Court. The Supreme Court in 1998/9 has increased its rostered sittings in the criminal jurisdiction by about 64% to 315 sitting weeks, compared to 1997.

In the District Court traditional fixed judicial vacations were replaced by variable vacations and an acting judges scheme was introduced. In 1996/97 the court's judicial sitting capacity was increased by 310 weeks and in 1997/98 by about 490 weeks. This was equivalent to the workload of around 12 extra judges. The District Court in 1998/9 has increased its rostered sittings in the criminal jurisdiction by 12%, most markedly in country areas where an additional 61 weeks are scheduled (being an increase of 22% over 1997).

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<sup>14</sup> NSW Parliamentary Library, *Reforms to Reduce Court Waiting Times*, Briefing Paper No 31/96 p2

### **3.4 Court Initiatives**

Five initiatives, illustrating efforts by the courts to address the problems associated with court waiting times, are highlighted below:

- District Court Civil Listing Practices
- Centralised Committals Scheme
- Arraignment in the Supreme Court
- Keeping Police Out of Courts
- Partnerships with Community Justice Centres

#### **3.4.1 District Court Civil Listing Practices**

At the commencement of 1996, the Chief Judge introduced new case management and listing practices for civil actions in the District Court. At that time the District Court was suffering a considerable caseload and the Chief Judge believed that the current practices for managing and listing civil cases were contributing to the delay in finalising cases in the court.

The new listing practices were a direct result of the Court's 1995 Strategic Plan which had as one of its objectives to provide a more orderly, cost effective and expeditious system for the final disposal of civil actions. To achieve that objective, new case management and listing practices were developed based on the principle that all contested civil actions be within the Court's control from the time of commencement, and that they meet time standards set for their movement through the court system.

The Court introduced a timetable for all actions other than those in the Construction and Commercial lists. The timetable sets out the maximum periods in which specific actions are to be finalised, including the filing of a defence, application for discovery and status conferences. Actions that fail to meet the timetable are listed before the Court for directions. The timetable seeks to give effect to the Court's aim that 90% of civil actions will be completed within 12 months of commencement and 100% within 2 years.

In order to achieve the time standards set by the Court for final determination of civil cases, the Court reviews actions not heard or listed for hearing within 9 months after filing. Priority is given to any case not heard within 18 months of filing.



### 3.4.2 Centralised Committals Scheme

Since early April 1998, the Chief Magistrate, Director of Public Prosecutions and the Legal Aid Commission have been piloting a scheme of centralised committal hearings for the inner metropolitan program. The scheme has since been extended to Sydney West.

A key element of this change was the commitment of funds from the Solicitor's Trust Account Fund to provide Legal Aid to defendants in committal proceedings who would otherwise have been unrepresented.

Prior to this time, committals were conducted across all inner metropolitan Local Courts. In response to increasing general court workloads, and in recognition of the inefficiencies of allocating prosecution and defence resources across dispersed locations with varying listing practices, committals have been centrally listed before senior magistrates in the Downing Centre.

The main features of the pilot project are:

- granting of Legal Aid early in the committal process
- continuous representation, following a grant of Legal Aid, through both the committal and trial process
- early discussions between the DPP and defence solicitors with a view to an early plea, finalising the matter as a defended hearing in the Local Court, or resolving issues likely to arise in any subsequent trial.

The key benefits are seen as:

- better communication between the prosecution, the defence and the courts
- more accurate identification of issues in dispute
- more appropriate elections for summary jurisdiction
- reductions in hearing times
- more certain case management and listing.

In Sydney/Sydney West there has been a reduction of 33% in the number of criminal trial registrations, comparing May 1999 to the same period in 1998.

### **3.4.3 Arraignment in the Supreme Court**

On 1 November 1998 the Supreme Court introduced reforms to manage criminal trials in a systematic way and to achieve early preparation and disposal of criminal trials. The procedures have been developed in consultation with the NSW Director of Public Prosecutions, the NSW Legal Aid Commission and the Senior Public Defender.

Persons pleading guilty will appear in the Supreme Court four weeks from their committal date. Those pleading not guilty will appear in the Supreme Court for arraignment within four months of committal and are expected to be legally represented on that date.

Prior to the arraignment the Court will require:

- the Crown to serve on the defence a copy of the indictment, a statement of the Crown case, a list of witnesses it proposes to call, and all statements of those witnesses
- accused needing legal aid to have received a grant of aid
- a public defender or other defence counsel to have advised the accused
- the practitioners to have discussed all available ways of shortening the trial and the Crown to be in a position to state whether it is prepared to accept a plea of guilty to a lesser charge in discharge of the indictment
- the defence to be in a position to inform the Crown which facts asserted by the Crown are agreed and which are in issue, and which witnesses are required for cross-examination and which are not
- the practitioners to be in a position to identify any preliminary matters to be decided in the absence of the jury and to estimate how long they may take.

### **3.4.4 Keeping Police Out of Courts**

On 23 April 1998, the Premier announced a plan for Cabramatta. As part of that plan, the Premier advised that strategies would be devised to reduce the number of hours spent by Fairfield and Cabramatta police attending court.

A Chief Executives group made up of the Police Commissioner, the Director General of the Attorney General's Department, and the head of the Premier's Department was established to devise the strategies. Altogether, thirty eight strategies are to be implemented by the NSW Police Service and the Attorney General's Department. Each of the strategies is designed to improve the procedural efficiency of both police officers and court staff and reduce the time spent by police officers at court. The reforms range across a number of areas including:

- initiating court actions
- bail procedures
- pre-trial information exchange
- case listing
- court hearings
- registry services
- legislative reforms
- consultation
- client service initiatives.

A number of the agreed initiatives focus particularly on the issues affecting Fairfield Court. Many initiatives are now being implemented statewide. Details of those initiatives have been provided to all Clerks of the Local Courts with instructions to meet with Local Area Commanders to seek support for their implementation at Local Court registries across the state.

#### **3.4.5 Partnerships with Community Justice Centres**

A number of metropolitan Local Courts have formed partnerships with Community Justice Centres to provide the Department's clients with improved access to mediation as a means of resolving disputes, particularly in civil actions and personal violence matters.

These arrangements have reduced the burden on courts by appropriately referring those matters that are more effectively dealt with outside the adversarial system. A working group has been established to identify a best practice model for partnerships between CJsCs and Local Courts.

### **3.5 Audit Observations and Findings**

The audit finds that the Government and the courts have taken steps to address the problems of court delay being experienced in NSW. However, there has been little assessment of the likely impact of current activity designed to improve court waiting times. There is a lack of framework with which to evaluate these efforts or the alternatives available.

In view of this the audit is not in a position to draw any conclusion in relation to:

- the extent to which each initiative was expected to reduce court waiting times
- the cost to taxpayers
- when and where the public can expect to see the results
- what other initiatives should be formulated and with what priority.

## **4. Objectives for Waiting Times**

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## 4. Objectives for Waiting Times

### Prerequisite to Effective Control

Best practice management guidelines indicate that the establishment of objectives is a prerequisite to achieving effective control over court waiting times.

- objectives provide the measurable targets toward which an entity moves in conducting its activities
- with objectives, management can identify risks to their achievement and take necessary actions to manage the risks
- objective setting enables management to identify measurement criteria and assess performance.

### Audit Criterion

*That court objectives provide guidance on what is expected, and are supported by specific targets for each significant court process, to provide a basis for assessing and managing waiting time performance.*

### 4.1 Court Objectives for Timely Disposition

#### Delay

Excessive delay is measured in time and is the amount of time that exceeds a time standard for disposition. So it would be expected that an objective assessment of delay in the courts would require the prior establishment of standards for disposition times.

Such delays could arise during any stage of a case.

Stages in a Court Case Potential Areas of Delay	
Criminal	Civil
Registration	Filing
Pleas entered	Defence
Readiness	Readiness
Pre-trial conference	Pre-trial conference
Commencement	Commencement
Conclusion	Conclusion
Sentencing	Judgement

**Established Objectives**

The audit has found that both the NSW District Court and the NSW Local Courts have established objectives, which emphasise the importance of managing cases in accordance with established time standards.

For example, the objectives of the District Court include:

- *manage cases in accordance with published guidelines, rules and procedures which establish time criteria for case processing*
- *develop and publish time standards for criminal and civil cases and establish monitoring, reporting and review systems.*<sup>15</sup>

The objectives of the Local Courts include:

- *establish an equitable framework which ensures timely access to the court and its processes*
- *develop procedures directed to the management of cases to ensure their economic, timely and efficient determination*
- *ensure strict compliance with time standards and practice notes.*<sup>16</sup>

On the other hand, the audit found that the NSW Supreme Court has not issued objectives on disposition times - other than a statement by the Attorney General's Department's in its 1997-98 Annual Report describing a particular initiative:

- *reduce delays from committal to 12 months for persons in custody and 18 months for persons on bail, through increasing the number of Common Law Division judges allocated to criminal trial work.*<sup>17</sup>

However, both the Supreme and the District Courts have issued guidance in relation to the use of Case Management.

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<sup>15</sup> District Court of NSW, *Strategic Plan*, p16

<sup>16</sup> Local Courts of NSW, *Strategic Plan 1997-1998*, p11

<sup>17</sup> Attorney General's Department of NSW, Annual Report 1997-98 p30

**Case Management** Parties are being required to prepare their cases for trial according to a number of events controlled by the court, such as pre-trial conferences, directions hearings and call overs. At each point, the progress of the case is assessed and opportunities are taken to explore possibilities for settlement or referral to alternative dispute resolution schemes to encourage timely disposal. Case management is aimed at increasing the number of early settlements, encouraging the parties to prepare thoroughly and identify the contentious issues at an early stage, bringing cases that cannot settle to trial in the shortest possible time, and reducing the costs of litigation.

Case management is also being introduced for criminal matters, although the courts have fewer powers to control the parties.

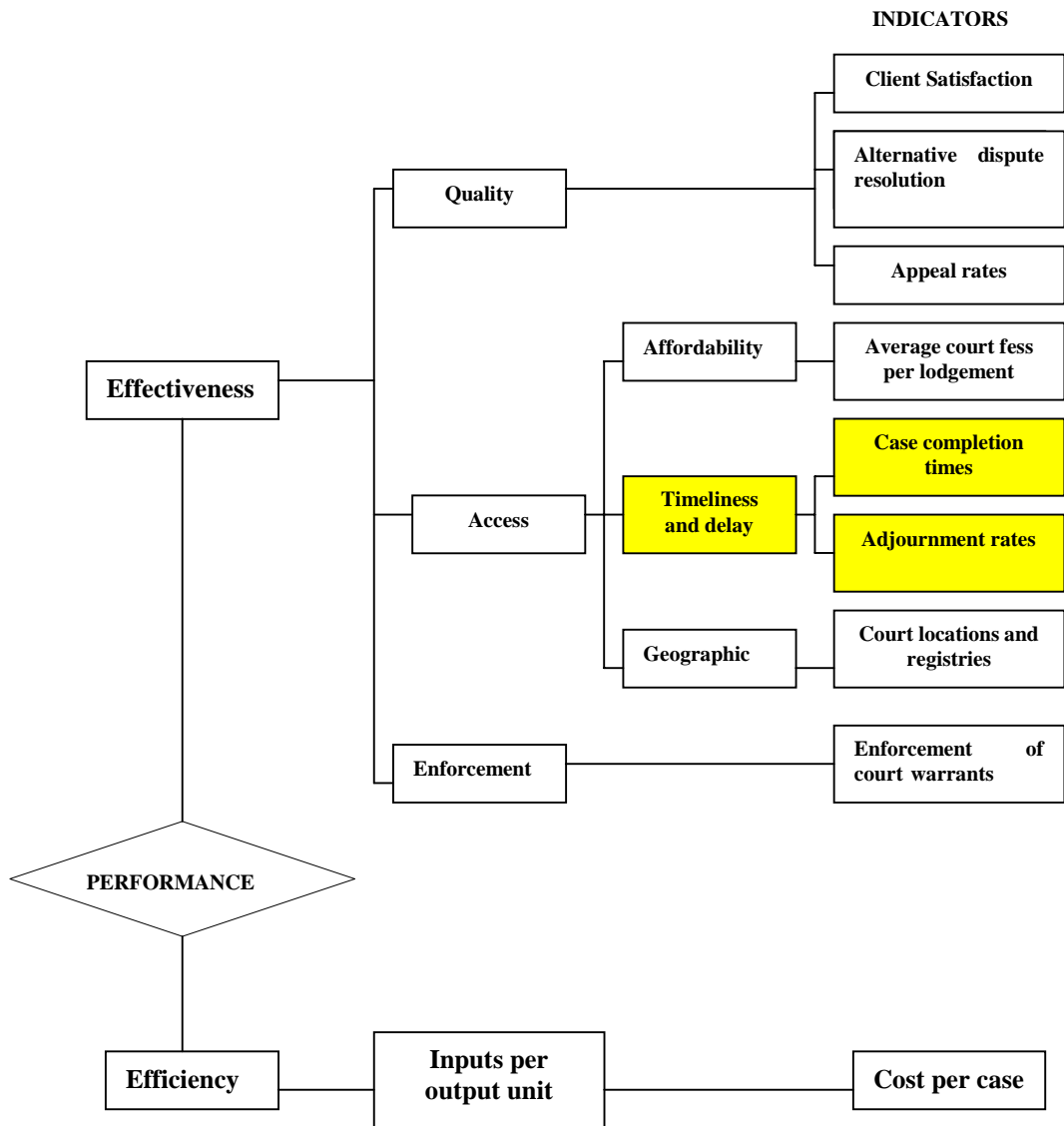
Case management requires the court to establish standards and procedures. Case management also requires the court to monitor, assess and manage the progress of individual cases over time. So the audit expected to see considerable evidence of time standards.

**Level of Certainty** Time targets are unlikely to be fully effective, unless there is a high level of certainty that trials or other hearings will occur when scheduled. Adjournments at the request of the parties may be outside the control of the court and may occur when the parties are not ready or a witness is not available. Adjournments may also occur at the request of the court because of such factors as overlisting.

**Industry Commission's Framework** Never the less, as the then Industry Commission's framework of performance indicators shows, the court's adjournment rate is a necessary additional measure of timeliness (see attached figure).



**Performance Indicators for Court Administration**



## 4.2 Time Standards

The NSW District Court has led the establishment of overall time standards in NSW, as shown in the following table.

<b>Supreme Court</b>	<b>District Court</b>	<b>Local Courts</b>
<p><b>Time Standards for Criminal Cases</b></p> <p>To be developed.</p>	<p><b>Time Standards for Criminal Cases</b></p> <p>90% should be commenced within 112 days (16 weeks) of committal or other event which gives rise to the need for a trial; 100% within 1 year</p> <p>90% of all grounds appeals from the decisions of magistrates should commence within 112 days of the lodging of the appeal; 100% within 1 year</p> <p>90% of matters committed for sentence should be commenced for hearing within 2 months; 100% within 6 months</p> <p>90% of appeals against sentences imposed by magistrates should be commenced within 2 months of the appeal being lodged; 100% within 6 months</p>	<p><b>Time Standards for Criminal Cases</b></p> <p>100% of criminal cases should be processed within 16 weeks.</p>
<p><b>Time Standards for Civil Cases</b></p> <p>To be developed.</p>	<p><b>Time Standards for Civil Cases</b></p> <p>90% of civil cases should be disposed of within 12 months of the initiation of the proceedings</p> <p>100% of cases should be disposed of within 2 years of the initiation of proceedings in the Court.</p>	<p><b>Time Standards for Civil Cases</b></p> <p>None.</p>

The Supreme Court has been investigating this issue for some time and has recently decided to introduce time standards. It has commenced the process of determining a set of achievable standards.

The District Court has established standards by which to measure not only the overall progress of its criminal and civil cases, but also the intermediate stages of its civil cases. The time standards at the intermediate stages allow excessive delays to be identified as they arise, enabling early corrective action.

An activity timetable, to which the parties should comply, was devised as follows:

<b>Activity</b>	<b>Completion Date</b>
Filing the ordinary Statement of Claim	File date
Service of statement of claim	File date + 2 months
Defence	Within 28 days of service
Interrogatories etc.	File date + 4 months
Plaintiff's certificate of preparedness	File date + 4 ½ months
Jury demand	File date + 5 months
Review date	File date + 5 months
Final 'Part 12 Particulars'	File date + 6 months
Status Conference	File date + 7 months
Further medical examinations	File date + 8 months
Hearing (within 1 month of)	File date + 9 months
Judgement (if reserved)	File date + 11 months

It was explained to the audit that Registry staff monitor incoming material according to this timetable. The alarm may be raised if cases fall behind, but that the staff mainly rely on 2 key staging points:

- File date + 5 months review by registrar. If things are going according to schedule – no need for the registrar to meet with the parties; but the registrar will call them in if it is not, to try to encourage progress or closure
- File date + 7 months status conference. This is a mandatory meeting between the parties and the registrar. If the case is not ready, the registrar refers it to a judge for a directions hearing. Latest figures show that, of 300 general cases, only 40% were ready; the rest went to a directions hearing.

If the judge supports the timetable and case management approach, the judge will be inclined to enforce available sanctions to throw out the case or similar. If not, then there will be further delay.

There is no published management information on the extent of judge enforcement of case management deadlines, but major discrepancies are reported to the Chief Judge.

However for criminal trials, unlike similar District/County courts in other states, no time standards have been established in the NSW District Court for either the conduct of the trial or the sentencing of the accused.

Additionally, it is noted that the standards that the District Court has adopted:

- are based on those of the American Bar Association for civil cases
- are based on standards used in England and Wales for its criminal jurisdiction
- have not been widely achieved in practice in NSW, although the Court has had some success in civil cases.

Significantly, the ideal standards have not been achieved for criminal cases, as illustrated by the following comparison with times actually recorded:

<b>Criminal hearings to be commenced within 112 days of committal or lodgment of appeal</b>				
	standard	1995/96	1996/97	1997/98
in custody	90%	46.4%	52.1%	48%
on bail	90%	21.5%	19.4%	16.3%

It can be argued that where there is little prospect of achieving a standard, its usefulness in the day to day management of court operations is questionable, although it may serve as a useful tool as a long term objective. On that basis it would be desirable to establish both short term and long term standards.

The Local Courts have procedures for monitoring civil claims matters, but these do not involve the use of time standards. The Local Courts have established intermediate standards for criminal cases only:

Practice Note 1/95 provides the following intermediate time standards.

**Time Standards for Criminal Cases in the Local Courts**

Summary charges – plea of not guilty	
Arrest to first appearance	21 days
Adjournment to decide on plea	21 days
Hearing	63 days
Summary summons – plea of not guilty	
Issue of summons to first appearance	28 days
Adjournment to decide on plea	21 days
Hearing	63 days
Indictable charges – plea of guilty – s 51A	
Arrest to first court appearance	21 days
Prosecution to prepare and serve brief	21 days
Deal with plea	7 days
Indictable offences – committal proceedings	
Arrest or issue of summons to first appearance	21 days
Prosecution to prepare and serve brief	21 days
Defence to reply	7 days
Hearing	56 days
After a committal for trial, papers to leave court	6 days

The Local Courts' time standards were not adopted from those used in other lower court jurisdictions, but were determined by a Local Courts committee.

### 4.3 Adjournment Levels

Judges are being encouraged to adopt a firm approach in relation to adjournment levels. For example:

*Adjournments will only be granted for good cause. This does not include carelessness or lack of preparation by a Practitioner. Adjournments will not be granted because a particular Legal Practitioner is not available. Adjournments will not be granted if witnesses are not available who have not been subpoenaed.*<sup>18</sup>

#### Impact

The impact of adjournments on the orderly conduct of trials is significant. Trial Disposal Statistics for the District Court in 1998 show that only 49% of criminal trials listed in Sydney were actually dealt with during the trial week. In Sydney West only 41% of cases were dealt with during the trial week.

A recent study by the Council on the Cost of Government reported the reasons for trials being adjourned or stood over in the District Court, during the period March-August 1998, summarised as follows.

Reasons for Trials Being Adjourned or Stood Over after Trial Commencement	Percent Total
Accused not legally represented	14%
Trial not reached – judge or courtroom not available (overlisting)	11%
Victim/witness failed to appear or unwilling to give evidence	10%
Guilty plea entered or being considered	8%
Trial to continue but stood over temporarily	8%
Accused sick, injured or in hospital	7%
Defence counsel not briefed or not ready to proceed	7%
Victim/witness sick, injured or in hospital; unfit to give evidence	6%
Accused failed to appear at court	6%
Defence or prosecution needed to obtain further evidence; considering change of evidence	6%
Other	17%
<b>Total</b>	<b>100%</b>

<sup>18</sup> NSW District Court, Notes attached to Practice Note 48

The Court has adopted measures to improve the current situation:

*The Court has already implemented a new practice in an attempt to overcome some of the problems. In Sydney, matters will now be listed for call-over 10 days before the trial date. The call-over will be used to determine the readiness of the case and to deal with adjournment requests. It is hoped that this will also assist in reducing late pleas and help to resolve issues earlier.*<sup>19</sup>

#### 4.4 Overlisting

In a climate where parties are not prepared, where significant numbers of adjournments are granted, the District Court and the Local Courts have resorted to the use of overlisting to offset expected judge or court downtime. In determining listing priority, the Court takes into account the accused's bail status, specific offences such as child sexual assault and other factors. In the Local Courts, around twice as many cases are listed each day compared to the court's capacity to deal with them. In the Supreme Court there is no overlisting of criminal cases (several cases are held in reserve to fill any gaps), but there is overlisting of civil cases.

#### Problems

Overlisting is, however, a two-edged sword. Whilst on the one hand it can provide a better utilisation of judicial resources, it can also cause problems and additional costs.

The overlisting of cases can cause problems for those who are kept waiting, and cause considerable disruption to those whose cases are not even heard on the day in question, or 'not reached' on the list.

*Overlisting of cases, which was repeatedly mentioned by the Public interviewees as a problem, sometimes only externalises costs to people who are kept waiting, or whose cases are not reached, such as lawyers, prosecutors, police, witnesses and litigants, even though it might be a rational use of resources from the court's perspective.*<sup>20</sup>

#### Uncertainty

The uncertainty associated with overlisting can also undermine the preparedness of the parties.

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<sup>19</sup> Minute from Principal Courts Administrator (District Court) dated 26 June 1998

<sup>20</sup> Professor S Parker, *Courts and the Public*, AIJA 1998 p161



*Heavy overlisting can “feed” on itself, leading to low preparedness of cases, high rates of adjournment and therefore court delays.<sup>21</sup>*

## **Waste**

It can also waste taxpayers’ funds. For example, an assessment of wasted time in the Office of the Department of Public Prosecutions:

*The over-listing of short matters and cases for trial by the District Court and the frequency of trial adjournments, particularly caused by the actions of defendants and their counsel ... have caused approximately 11 percent of the time spent by ODPP prosecutors and lawyers to be wasted because of the need for re-briefing or re-familiarisation after matters did not proceed as originally scheduled.<sup>22</sup>*

All parties, with the possible exception of the courts, appear to be adversely affected by overlisting. The Legal Aid Commission advised the audit that wasted effort, as a result of overlisting, was similar to that experienced by the DPP.

As the Chief Justice of the Supreme Court recently noted:

*... it has adverse effects on parties whose cases are not reached. Their costs are increased, generally quite disproportionately to what the Court 'saves'. There is a very real balancing exercise involved in this process and it is not an easy one. We must all be sensitive to the extent to which a Court by its own practices imposes costs on parties or other persons, like witnesses.<sup>23</sup>*

The District Court, in conjunction with the DPP and the LAC, has focussed on better management to reduce the ‘not reached’ figure for cases that have been overlisted and, although ready, are unable to proceed because a judge or courtroom was not available.

*The not reached figures in Sydney are 7%. Not reached figures in Sydney West are 12.5%, which is down from 17% in 1997. Not reached figures in the country remain a concern at 23%. ... Various strategies are being developed to improve court performance in the country. ... The District Court, DPP and LAC will continue to meet regularly to monitor the not reached figures.<sup>24</sup>*

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<sup>21</sup> Coopers & Lybrand WD Scott, *Review of the New South Wales Court System*, May 1989 p82

<sup>22</sup> Council on the Cost of Government, *Review of the Office of the Director of Public Prosecutions*, November 1998 pi

<sup>23</sup> Hon J Spigelman, Chief Justice of the NSW Supreme Court, in a speech given to the Compensation Court of NSW Annual Conference, 7 May 1999.

<sup>24</sup> NSW Criminal Justice Forum - 1 March 1999

*A Presiding Criminal List Judge has been appointed to manage the listing process and apply a consistent and transparent adjournment policy in the District Court. The channelling of arraignment work through a List Judge is allowing for closer scrutiny of matters coming before the Court and the resolution of representation and legal aid issues.<sup>25</sup>*

Whilst the Court continues to examine and review its criminal case management practices, the District Court has identified the need for a more coordinated and timely involvement of DPP and LAC.

*It is clear that what is required in New South Wales is a system in which an independent prosecution system and the legal aid system are involved in criminal matters from the earliest stage allowing issues to be resolved early and minimising the number of cases which require a hearing before the higher courts.<sup>26</sup>*

The Department, in a separate initiative, has involved the courts and the agencies in a Quality review team to streamline the criminal listing process for criminal trials to provide a greater degree of listing certainty and provide more credible trial dates.

This points to the need for adjournment and listing policies to be the subject of regular review and consultation with those affected.

#### **4.5 Audit Observations and Findings**

The Audit Office considers that overall there is not currently an adequate basis against which court delays in NSW may be assessed and managed:

- excessive delay is measured in time and is the amount of time that exceeds a time standard for disposition
- an objective assessment of delay in the courts is not possible without standards for disposition time
- there is evidence of progress in establishing such standards in NSW courts
- there is evidence of the negative effects of overlisting in the District Court but there is also evidence of recent efforts to better manage the listing processes

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<sup>25</sup> NSW Criminal Justice Forum - 1 March 1999

<sup>26</sup> Hon Justice R O Blanch, *District Court of NSW Annual Review 1997*, p2

- there is no assessment of waiting time performance in relation to other measures of court performance.

The audit observed that some courts see delay as an outcome, the solution to which lies in more resources, whilst courts see delay as something that can be managed. The former need only measure delay in an aggregate sense. The latter monitor and assess the components of delay as a basis for management. The NSW District Court is a good example of this.

The Audit Office considers that there is a need to establish, apply and monitor standards for waiting times in courts. The standards should be realistic and achievable, as is planned by the Supreme Court.

*We suggest that there should be “achievable” time standards, benchmarks initially empirically fixed according to current and historical achievement but with allowance for reasonable and achievable improvement where appropriate. Over time, and with regard to resource and other requirements, the benchmarks can be adjusted whilst remaining realistically achievable.*

Source: NSW Supreme Court Caseload Management Committee, Interim Report Draft 13 July 1999

## 4.6 Recommendations

Steps should be taken to improve the basis against which waiting time performance in NSW courts may be assessed and managed:

- standard times should be established for durations and intermediate stages of all court processes
- the standards should contain realistic and achievable targets, and progressively be adjusted over time in the direction of ideal figures
- adjournment rates and ‘not reached’ figures should be regularly monitored and reviewed with those affected
- the courts should report on the level of compliance achieved against standards.

## **5. Information for Managing Waiting Time**

## 5. Information for Managing Waiting Time

The management of waiting times involves decision-making by different managers over various time intervals. From short-term decisions by front-line operational managers (judges, registrars, listing clerks) to long-term decisions by policy/decision-makers for the court system as a whole (Chief judges, Attorney General). The parties involved need to be provided with information to match.

The second audit criterion focuses on the provision of information to manage court waiting times.

### **Audit Criterion**

*That systems provide information to the right people in sufficient detail and on time to enable them to carry out their responsibilities efficiently and effectively.*

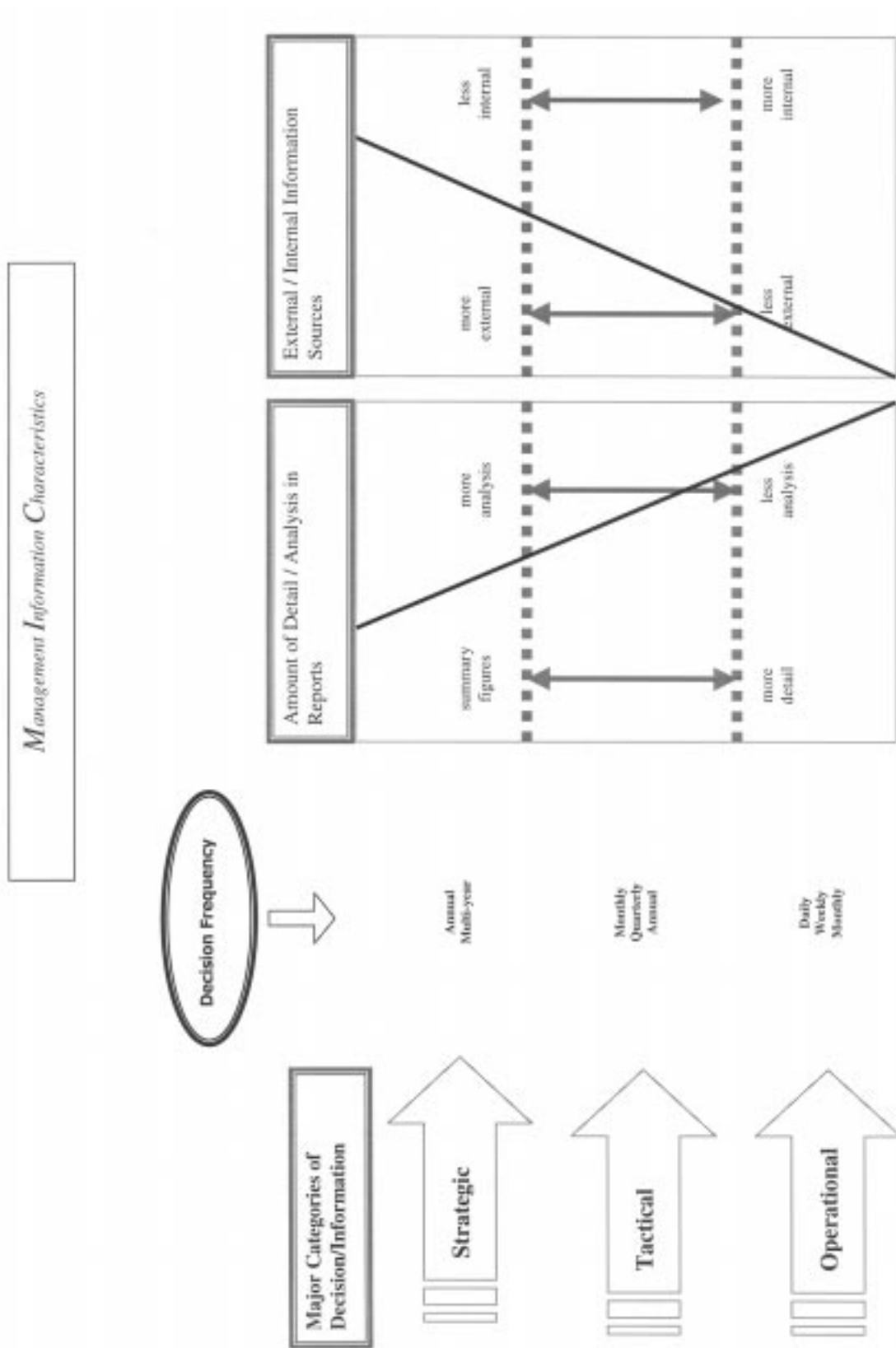
### 5.1 Information Needed to Manage/Reduce Waiting Times

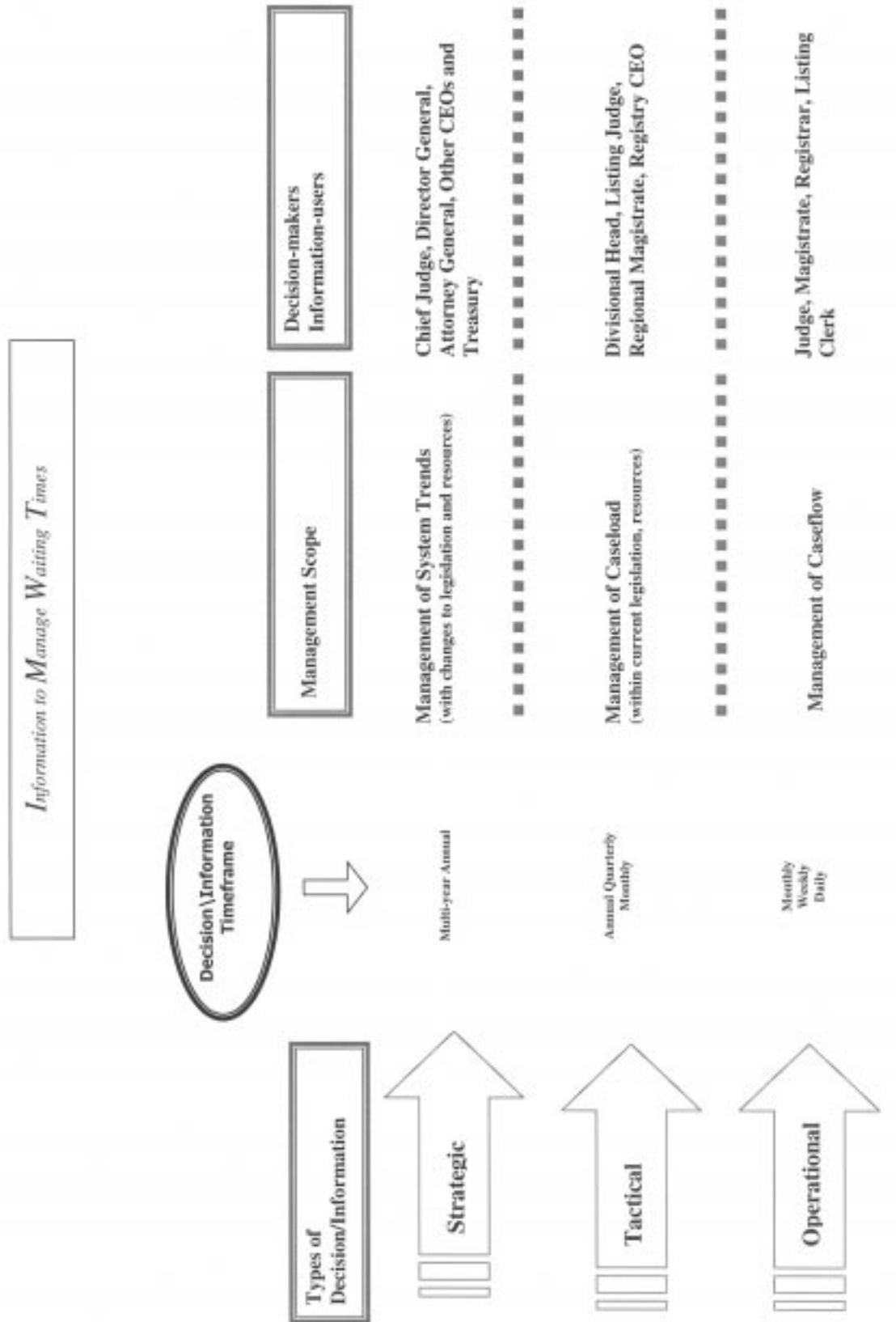
In order to manage court waiting times, information is needed in relation to:

- the cases filed at court (the demand)
- the resources available to deal with these cases (the supply)
- the processing efficiency of the court system itself.

#### **Categories of Decision Makers**

The audit has identified three major categories of decision-makers who need this information, as the following chart indicates.





Operational managers – judges, magistrates, registrars and listing clerks - need day-to-day and week-to-week information to manage demand (eg new cases to be listed, existing cases disposed before trial, cases adjourned or not reached, case management reviews due); and to manage supply (adjust rosters for staff availability, for changes in case priorities and backlogs).

Tactical managers – divisional heads, listing judges, regional magistrates, registry chiefs - need information to make annual plans (expected backlogs, workload, rosters) and to monitor/adjust progress against them (actual usage vs planned).

Strategic managers – chief judges, Director General, Attorney General, other CEO's and Treasury - require information covering longer time periods (year to year trends in waiting time, demand and supply, processing efficiency) and with much greater analysis and context (comparisons against standards or targets, evaluation of initiatives taken, the causes of change in demand and supply, and processing efficiency).

Much of the information for all three levels can be derived from the same data sources. But this requires management information systems to combine, compare and analyse the data in a form suitable for the different needs of users.

## **5.2 Information Currently Available**

The management information systems currently supporting managers in the courts system are relatively inflexible, limited in content and not well integrated. Court records are maintained on the *Courtnet* system. A new more integrated court administration system (CAS) is planned, but it is four years from being fully implemented and does not have management information as its major focus.

Whilst the information currently available is limited, this has not prevented some courts and managers from taking greater advantage than others of what is available.



### **5.2.1 Local Courts**

The Local Courts have by far the greatest volume of cases, but durations are generally short, and so are waiting times. In these circumstances, the audit expected to find an emphasis on information that managed caseload (blocks of cases) rather than individual cases. This is borne out in practice, although this may have more to do with the limitations of current information systems with their monthly collection cycle of data and an emphasis on quarterly/annual reporting. The new administrative system (CAS) should save significant data collection time, but its focus is on day to day operations. Its potential to improve management information is as yet unclear.

This is also the court with the most dispersed locations and dispersed operational and tactical managers of waiting time (magistrates and regional magistrates). The audit found the information available to these managers from corporate systems was very limited. Current statistical information systems feed monthly summary data to the centre for processing; but offer little management information that is useful to local managers, some of whom run their own rudimentary information systems to compensate. Data accuracy and timeliness on the corporate information system is reported to be poor, as one might expect in these circumstances.

The corporate information system does provide reasonable information for annual monitoring of waiting times and workloads, as a basis for court decisions on magistrate reallocation/rostering statewide (including centralisation at the Downing Centre and Western Sydney). Although there was little information on possible causes or contributory factors to support wider strategic decisions in this area. The reports produced for strategic purposes (the annual comparative workload and performance reports) seem to have been produced by and for the Treasury and Attorney General's Department, rather than for decision-making by the Magistracy.

The audit's view of the information currently available in the Local Court is summarised as follows:

<b>Information Available to Manage Waiting Time in the Local Courts</b>			
<b>Type of Information</b>	<b>Strategic</b>	<b>Tactical</b>	<b>Operational</b>
<b>Waiting Time</b>	Adequate	Adequate	Limited
<b>Demand (cases)</b>	Adequate	Adequate	Adequate
<b>Supply (resources)</b>	Limited	Limited	Limited
<b>Processing Efficiency</b>	Limited	Very Limited	Limited

### 5.2.3 District Court

The District Court has a greater need than the local court for case flow management information, as well as for information on caseload and waiting time. It has the most wide-ranging management information needs of all courts. Waiting times are longer here and therefore require more management attention.

The District Court has the most well-developed management information system of any of the courts. The District Court has access to case data, similar to that available to the other courts, developed from *Courtnet* for civil cases and from the Bureau of Criminal Statistics and Research for criminal cases, but has developed a greater capability within the registry for analysing this data to provide useful management information. The Local Courts rely more on distant processing in the Attorney General's Department's corporate statistical section. There is more regular monitoring of waiting time performance against time standards; and more reporting on contributory factors like adjournment, settlement and "not reached" rates, trial length, etc. The planning and evaluation of new initiatives is also stronger here than elsewhere, with information requests to match.

However, the information is still limited (by the current data collection system) largely to identifying the problems, rather than indicating directions for management action. There is little information reported on the processing efficiency of specific courts or individuals, or on the underlying causes of most of the trends. This also applies to the monitoring of case management against targets.

The audit’s view of the information currently available in the District Court is summarised as:

<b>Information Available to Manage Waiting Time in the District Court</b>			
<b>Type of Information</b>	<b>Strategic</b>	<b>Tactical</b>	<b>Operational</b>
<b>Waiting Time</b>	Good	Good	Adequate
<b>Demand (cases)</b>	Adequate	Adequate	Adequate
<b>Supply (resources)</b>	Limited	Limited	Limited
<b>Processing Efficiency</b>	Limited	Limited	Limited

#### 5.2.4 Supreme Court

This court has the smallest caseload of the three levels, but the longest cases with the greatest complexity. It also has some of the longest waiting times. As a result, the audit would expect this court to have the most active caseflow management of the three and the strongest information and analysis supporting management in this area.

The Common Law Division and the Court of Appeal offer good examples. Generally, however, what management information there is in the Supreme Court has been generated by specific managers’/judges’ initiatives eg in monitoring sitting days and progress on reserved judgements. There has been very limited information reported on resource utilisation or processing efficiency either. For example, although management of civil cases is well-articulated (with several different tracks), there is no management information to monitor resources used or time taken against targets.

The audit's view of the information currently available in the Supreme Court is summarised as:

<b>Information Available to Manage Waiting Time in the Supreme Court</b>			
<b>Type of Information</b>	<b>Strategic</b>	<b>Tactical</b>	<b>Operational</b>
<b>Waiting Time</b>	Limited	Limited	Limited
<b>Demand (cases)</b>	Adequate	Adequate	Adequate
<b>Supply (resources)</b>	Very Limited	Very Limited	Limited
<b>Processing Efficiency</b>	Very Limited	Very Limited	Limited

### 5.3 Audit Observations and Findings

Based on the examination of information currently reported to managers, the audit's findings are summarised below:

#### **Information to Establish the Extent of Waiting Times**

There is information in the courts to establish the extent of waiting times. There are also trends and comparators reported for all major courts to help gauge the relative seriousness of the problem. Thus the Productivity (formerly Industry) Commission's interstate comparisons of the relatively long waiting times in NSW Supreme and District courts have been used to support bids to Treasury in 1998 for additional resources. Although there are some concerns in the Supreme Court registry about the accuracy and appropriateness of the comparisons, these concerns appear not to be of a scale to call into question the general finding that waiting times in these NSW courts are relatively high.

This information on the extent of waiting time is well-supported by statistical information on the most obvious external influences on waiting time: trends in the level of demand (cases arriving, disposed of and pending). This has provided a basis for the major management initiatives up till now on waiting time which have focused on:

- increasing or shifting judicial resources towards areas with high waiting times, viz. the increase in acting and permanent judges in the Supreme and District Courts; the increased emphasis on criminal cases in these courts and the creation of specialist lists in all courts
- shifting cases between jurisdictions (and reviewing progress more closely) to promote efficiency, viz the “triage” of cases from Supreme to District Courts (District Court Act 1997) and from District to Local Courts; centralised committals in the Local Courts; civil case management, including “show cause” reviews in the higher courts.

**Information to Reduce Waiting Times**

However, as the more obvious measures to reduce waiting times are introduced, so the initiatives needed to achieve further improvements, and the information needed to support them, require more sophistication. They include:

- internal information to demonstrate that resource utilisation and case processing within the courts are being managed efficiently to reduce waiting times (eg courtroom and judicial resource utilisation, caseload and cases not-reached rates)
- information on the causes of waiting time hold-ups in the wider justice system (eg in relation to settlement rates, adjournment rates).

The courts are less well-supported by information on these other major influences on waiting time: resource utilisation and processing efficiency. This means that, although there is information on the extent of the problem, there is less information to isolate causes and to support the analysis and management of those causes. For example, questions about the reasons for high levels of adjournment and low levels of cases heard on their planned listing day, have recently required supplementary information gathering exercises.

A study 10 years ago of the NSW Court system, drew the following conclusion about information:

*In our opinion the inadequacy of planning data has been a significant contributing factor to the present delays. It is difficult for governments to make major and early resource commitments in the absence of reliable information about past trends and future projections of workload and about productivity relationships between increased resources and expected outputs, in terms of disposition rates and delay reduction<sup>27</sup>.*

**Improvements  
Have Been Made**

The conclusion of this study is that some improvements have been made, particularly on the demand and workload side, and on the collection of waiting time information itself. But information supporting the use of resources continues to be under-developed. The courts have produced annual reviews that provide analysis, to varying degrees, of the waiting time issues and initiatives taken to address them. The reporting of information on delays, trends and comparators is better. So too is the analytic support provided by the Attorney General's Department and the Bureau of Criminal Statistics and Research (BOCSAR) on the statistical information already collected. But the lack of an integrated information system to support management of waiting time and its causes at all levels in the courts remains a constraint on effective management; not least in demonstrating that current resources are being used to best effect.

**Lack of an  
Integrated  
Information System**

A more recent study, of the Criminal Justice system in Victoria<sup>28</sup> has proposed six key measures of performance for the system as a whole and, by implication the information needed to support them:

***Throughput** – volume of cases handled per unit time or resource*

***Process time** – actual effort or time expended in processing a case*

***Elapsed time** - total elapsed service time including idle time or time waiting for availability of resources*

***Resource utilisation** – unused capacity of resources, both people and physical facilities*

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<sup>27</sup> Report on a Review of the NSW Court System Coopers & Lybrand & Scott, May 1989, p62, para 727

<sup>28</sup> The Pathfinder Project - Re-engineering the Criminal Justice System, Department of Justice, Victoria, Final Report of the consultant KPMG, July 1996, p.iv.

*System integrity* – stakeholder expectations met or exceeded (stakeholders include the suspect, defendant, offender, defence, prosecution, victim, witness, community)

*Continuous improvement* – process quality and potential for innovation and improvement.

The audit has found that in NSW, as would appear to be the case in most other States, these measures were not regularly reported for the criminal or civil system and, for half of them, the data needed would not be readily available.

There is also limited information at an operational level to assess delay, disposal rates and resources used at key stages of case management. Without them, it is hard if not impossible to judge the cost-effectiveness of such initiatives. The lack of such information means that the evidence to demonstrate that the judicial system is working at maximum effectiveness and efficiency in this area is incomplete. This is particularly important in the higher courts because of their longer cases, and longer waiting times.

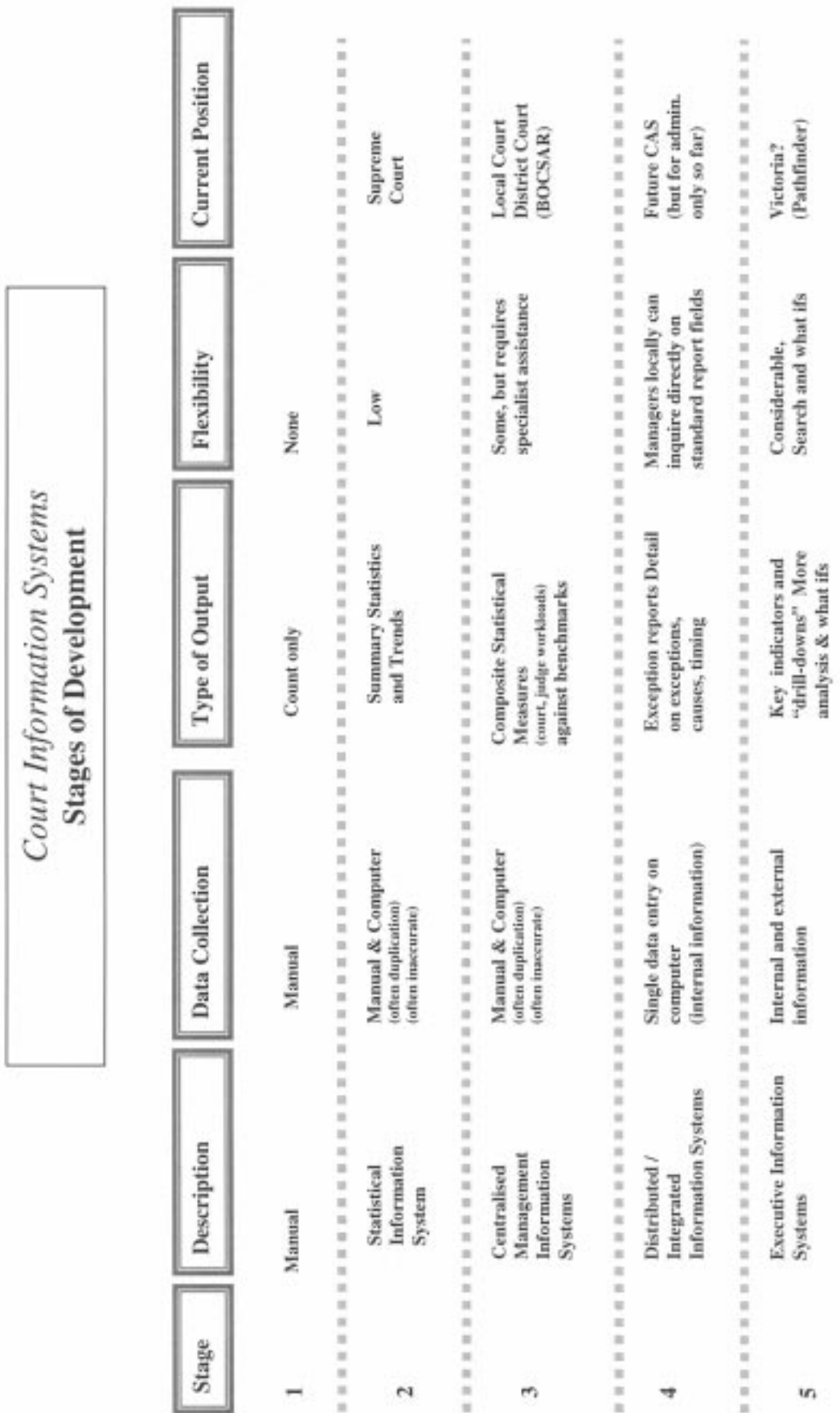
The availability of strategic statistical information, yet the lack of links to lower level management information; is explained in part by the nature of the information systems currently available to the courts and the Attorney General's department. They are generally centralised and relatively inflexible statistical information systems. They serve central and therefore more strategic needs, rather than more local tactical and operational needs. One result of this is that those responsible for data entry derive little benefit from the output, leading to problems with data accuracy and timeliness. And, as a result, where they have a choice, many managers prefer to call upon the information assembled and checked by BOCSAR rather than by the Attorney General's own systems.

It is also caused in part by the split of responsibilities in managing waiting times, and the priorities of the other stakeholders. And further complicated by the different concerns/priorities of important stakeholders whose involvement and co-operation is essential to address particular aspects of waiting time. So, for example, Legal Aid and DPP are concerned primarily about the waste of (their) time in cases listed, prepared, but “not-reached” and would prefer greater hearing date certainty even if that meant longer waiting times. Police and Corrective Services also have important priorities to be taken into account.

It is also influenced by the priorities of the Attorney General’s Department for information systems development. The major new development, Court Administration System (CAS), is focused on administrative efficiency, for example on eliminating duplication of data entry and improving data interchange. In terms of management information, it will streamline current data entry and allow more flexible report production. It will also have user interfaces that will allow managers to “drill down” below headline indicators to diagnose problems and causes, with the aid of additional software – but plans for this have not as yet been developed.

The following table shows stages of increasing sophistication in Information Systems. It also indicates that NSW courts have a long way to go.





It is also caused by the limited recognition within the court system of the importance of information to support and monitor management initiatives on priorities and waiting time, like caseflow management. This is evident in the lack of reports produced on case management performance against priorities and time targets and, in the case of the Supreme Court, the lack of any explicit targets at all. Without such information, and clear objectives and responsibilities assigned for monitoring and management, it is difficult to manage effectively in this area.

#### **5.4 Recommendations**

Information should be reported against all key waiting time stage standards, and more generally as exception reports to norms/targets/standards.

A hierarchy of performance information is needed on contributory factors to waiting time in a simple management information system. This should link high level indicators to low level causes for the benefit of managers at all levels. This simple management information system should not wait for CAS, but will benefit in the long-term from CAS's improved data collection. All reports from this system should have owners responsible for their contents and accuracy.

A more balanced set of indicators is needed than the information currently assembled in court annual reviews. This should cover more aspects of waiting time, like the impact of overlisting on the Office of the Director of Public Prosecutions and the Legal Aid Commission, like results of initiatives; plus interstate comparisons and measures of court processing efficiency.

## **6. Accountability for Court Management**

## 6. Accountability for Court Management

The control environment is greatly influenced by the extent to which individuals recognise that they will be held accountable. Accordingly the third audit criterion focuses on the extent to which accountability for the management of court waiting times has been clearly assigned.

### **Audit Criterion**

*That appropriate organisation structures exist with clear reporting relationships. Assignment of responsibility, delegation of authority and establishment of related policies to provide a basis for accountability and control.*

### 6.1 Pressure for Greater Accountability

Courts are becoming increasingly mindful that judicial independence does not remove the need to manage public resources appropriately and to account for their performance.

In 1994 the then Chief Justice of the Supreme Court of NSW noted that the public were becoming increasingly interested in how the court manages its operations.

*... with greater public interest in the efficiency of the operation of the justice system, wider concern is being shown about aspects of the arrangement of court business that were previously regarded as matters of judicial administration, and left to the judges themselves. Court rules and procedures, techniques of case management, listing arrangements, the giving of priorities to certain types of case, and a number of other administrative matters are all capable of having a substantial effect upon the efficiency with which a court disposes of the business that comes to it.<sup>29</sup>*

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<sup>29</sup> Hon M Gleeson, Chief Justice of NSW, *Courts in a Representative Democracy*, AIJA 1994

More recently the District Court of NSW has included in its Strategic Plan a statement to this effect.

*Judicial independence underpins our system of government. It encompasses both the personal independence of an individual judge in reaching a decision in the courtroom, and the autonomy and collective independence of the judiciary from the other branches of government. While the Court needs to be mindful of any encroachments on its independence in any form, it is also aware of the corresponding obligation which arises to manage public resources appropriately, and to account for its performance.*<sup>30</sup>

References to the need for accountability are also included in the stated primary goals of the District and the Local Courts of NSW, respectively as follows:

*To promote and protect the independence of the Judges of the Court and account for the performance of the Court and its use of public funds.*<sup>31</sup>

*Promote community understanding of the role and performance of the Local Courts and the practical importance of judicial independence and accountability.*<sup>32</sup>

The accountability arrangements of the courts can be viewed as:

- the accountability arrangements which have been established within the courts
- the means by which the courts account for their performance to the public.

## **6.2 Accountability for Management Within the Court**

The management of the court involves both the judiciary and the support provided by the Attorney-General's Department. Accountability for management is discussed under these headings.

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<sup>30</sup> District Court of NSW, *Strategic Plan*, p21

<sup>31</sup> District Court of NSW, *Strategic Plan*, p9

<sup>32</sup> Local Courts of NSW, *Strategic Plan*, p7

### 6.2.1 Judiciary

The organisation of the courts bears little similarity to that of a conventional public sector agency and management responsibilities and accountabilities are not generally specified. In general, there is no formal provision for the chief member of the judiciary in each court to exercise managerial authority over colleagues. Practice notes and rules are authorised by a committee, which includes the chief judicial officer. There is no conventional 'chain of command'.

This situation has been described as follows:

*Statutes constituting courts usually identify a chief justice, chief judge or chief magistrate by that title or some other which identifies the judicial officer as the head of jurisdiction. Usually, however, the legislation does not specify the responsibilities of the head of jurisdiction in much, if any, detail.*

*The chief judge is ... first among equals. This puts the chief justice in a position more analogous to that of a chairman of partners than that of a managing director since it does not involve line authority.*<sup>33</sup>

There are some exceptions to this. For example, recent amendments to the legislation have enabled the Chief Justice to create lists and appoint judges to supervise them, breaking down the statutory divisional structure of the Supreme Court.

### Committees

The courts have organised themselves on a 'collegiate' basis. A range of committees have been established in each court with general areas of responsibility and there are regular collegiate meetings of judges for management purposes.

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<sup>33</sup> D R Williams QC MHR, *Courts in a Representative Democracy*, AIJA 1994 p8

In NSW courts these committees are as follows:

<b>Court Committees</b>		
<b>Supreme Court</b>	<b>District Court</b>	<b>Local Courts</b>
Policy and Planning Committee	Policy and Planning Committee	
Rule Committee	Rule Committee	Rules Committee
	Criminal Law Committee	Statute Law Revision and Procedures Committee
	Civil Listing Review Committee	Civil Rule Committee
Alternative Dispute Resolution Steering Committee	Criminal Listing Review Committee	
	Conditions Committee	Terms and Conditions of Service Committee
Education Committee	Education Committee	Education Committee
Library Committee	Library Committee	
Building Committee	Building Committee	
Judges' IT Committee	Computer Committee	Ethics Committee

Other committees are formed from time to time for special purposes. However, few of these committees possess any statements of management responsibility and there is little reporting of committee achievements.

In the Local Courts, the Committees have no stated responsibilities but act on the basis of a referral from the Chief Magistrate, or possibly an individual magistrate.

*There are four committees established by the Chief Magistrate. These Committees have been constituted to assist the Chief Magistrate with respect to any of the functions of the Chief Magistrate, and to investigate and report to the Chief Magistrate on any matter relating to the administration of the Local Courts Act referred to the Committee by the Chief Magistrate. From time to time, these Committees accept and consider questions raised directly by individual magistrates.<sup>34</sup>*

<sup>34</sup> NSW Chief Magistrate's Review 1997 p40

Only the work of the Education Committee is reported on in the Chief Magistrate's Annual Review.

In the District Court only the objectives of the Education Committee are reported.

In the Supreme Court, only the origin and purpose of the Rules Committee is explained, as follows:

*The Rule Committee is a statutory body constituted under s123 of the Supreme Court Act 1970. It has nine members comprising seven Judges of the Court, one practising barrister and one practising solicitor.*

*The Rule Committee constantly monitors the operation of the Supreme Court Rules with a view to facilitating the dispatch of business in the Court with as much efficiency, and as little cost and delay, as is consistent with the requirements of justice. For this purpose the Committee receives and considers proposals for change from the Secretary, from its own members (who represent all Divisions of the Court and both branches of the practising profession) and from a variety of outside sources.<sup>35</sup>*

But there is no description of the work of this committee. The Annual Reviews state, for example:

*During 1997 the Committee made 33 substantive amendments to the Supreme Court Rules and two substantive amendments to the Criminal Appeal Rules.<sup>36</sup>*

*During 1995 the Committee made 49 substantive amendments to the Supreme Court Rules.<sup>37</sup>*

*During 1989 the Committee made 43 substantive amendments to the Supreme Court Rules.<sup>38</sup>*

The same statement appears year after year. Only the number of amendments changes.

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<sup>35</sup> The Supreme Court of NSW, Annual Review 1997

<sup>36</sup> The Supreme Court of NSW, Annual Review 1997

<sup>37</sup> The Supreme Court of NSW, Annual Review 1995

<sup>38</sup> The Supreme Court of NSW, Annual Review 1989



### **6.2.2 Support Provided by Attorney General's Department**

In contrast, the audit found the support to the courts provided by the Attorney General's Department to be clearly structured and documented. Moreover, this support is extensive and is fundamental to the effective operation of the courts.

- Supreme Court registry
- District Court registry
- Local Courts registry
- Office of the Sheriff
- Reporting Services Branch
- Law Courts Library
- Finance and Strategic Services
- Capital Works Unit
- Information Technology Branch
- Legislation and Policy Division
- Corporate Human Resources Division

For example, the 1998-1999 Business Plan of the Supreme Court Registry, a unit within the Attorney General's Department that consists of 133 staff excluding the personal staff of judges and masters, includes the following information:

- Program area description
- Vision for the future
- Statement of Values
- Strategic Directions
- Management Improvement Programs and Projects
- Services, Priorities and Standards
- Responsibilities and service standards of functional areas

The other supporting units within the Attorney General's Department have developed similar detailed statements, in addition to the usual organisation structures, position descriptions etc... as the basis for accountability and control of their activities.

### **6.2.3 Absence of Linkages**

Whilst it was evident that the judiciary and the officers of the Department were endeavouring to work together, the audit noted the difficulty of maintaining active and continuous cooperation when the organisation of responsibilities on one side have not been specified or clearly communicated to the other side.

For example:

- it is impractical for all communication to be conducted through the head of the registry and the chief judicial officer, particularly considering the limited availability of the latter
- there are no clear linkages between the responsibilities of the court committees and the responsibilities of the supporting units within Attorney General's Department eg the Department has a large Information Technology Branch endeavouring to support the courts, only the District Court has a 'computer' committee
- there is uncertainty by staff on both sides as to responsibilities (eg for information systems) and future intentions.

### 6.3 Accountability to the Public

The means, by which the courts might best account for their performance to the public, whilst preserving judicial independence, have received considerable attention in recent years.

In 1994 the then Chief Justice suggested that the best means involved judges providing the community with an account of their actions.

*The judiciary's best answer to pressure for accountability involving control of the judiciary lies in embracing that form of accountability which involves responsiveness. The community accepts, and insists upon, adjudicative independence, so long as judges function openly and explain their decisions. Similarly the community will allow, and come to demand, administrative independence, but only so long as judges function in that area with the same openness. It is a collective responsibility of the judiciary to see that the community values judicial independence and, at the same time, to meet the legitimate expectation that judges, in appropriate ways, give an account of themselves.*<sup>39</sup>

The Chief Justice pointed to the Supreme Court's Annual Report, an innovation in Australian courts when it was first produced in 1990, as one means of accomplishing this.

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<sup>39</sup> Hon M Gleeson, Chief Justice of NSW, *Courts in a Representative Democracy*, AIJA 1994 p33

*There is, however, another form of accountability that has in recent years been voluntarily adopted, and that is of particular significance in relation to matters of this kind. Since 1990, the Supreme Court of New South Wales has published an Annual Review. The matters referred to in it are not matters in respect of which the judiciary is under a legal obligation to report to anybody. However, it is acknowledged that the public has a legitimate interest in being informed about the decisions that are taken concerning administrative matters of the kind to which reference has been made.<sup>40</sup>*

At the time, he added:

*There is a trend, which will continue, towards the formulation of corporate plans or charters for courts.<sup>41</sup>*

## **6.4 Court Charters and Annual Reviews**

Service Charters, coupled with Annual Reviews of performance, are increasingly accepted as management best practice for those organisations dealing extensively with the public.

In 1994 the Federal Government's Access to Justice Report had recommended that each federal court and tribunal should formulate its own charter to set standards for its dealings with the public and the extent to which performance matches the standards.

*We think that federal courts and tribunals should, as far as is consistent with the proper administration of justice, formulate and publish more comprehensive and specific performance standards and report regularly on the extent to which those standards have been achieved. The advantages we see in federal courts and tribunals developing charters are that each charter would:*

- *have symbolic value as a statement of aspirations for the delivery of accessible justice through the court system*

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<sup>40</sup> Hon M Gleeson, Chief Justice of NSW, *Courts in a Representative Democracy*, AIJA 1994 pp25

<sup>41</sup> Hon M Gleeson, Chief Justice of NSW, *Courts in a Representative Democracy*, AIJA 1994 p31

- *provide a framework for identifying and addressing deficiencies in court practices in a systematic way*
- *provide information to court users on standards that can be expected and assistance that is available*
- *allow structured assessment of court administration and practice and the development of improved practices over time*
- *provide a more informed basis for the allocation of resources to maintain standards.*<sup>42</sup>

The *Access to Justice Report* described the preparation of the Court Charter as follows:

*Each federal court and tribunal should develop and implement a charter specifying standards of service to be provided to members of the public coming into contact with the court or tribunal.*

*In preparing a charter, each court and tribunal should set up a consultative committee, including representatives of the Law Council of Australia, the Attorney General's Department and, where appropriate, organisations capable of representing those who use the court or tribunal.*

*Whilst recognising that it is the obligation of governments to provide adequate resources to enable the courts to maintain proper standards, charters should deal with at least the following matters:*

- *the physical facilities of the court or tribunal*
- *information made available by the court or tribunal*
- *timeliness and efficiency in the delivery of services, including the delivery of judgements*
- *courtesy towards members of the public*
- *access to the courts*
- *accountability for service delivery, including complaints handling procedures and methods for drawing the existence of these procedures to the public.*<sup>43</sup>

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<sup>42</sup> Australian Government, *Access to Justice Report*, 1994 p xlii

<sup>43</sup> Australian Government, *Access to Justice Report*, 1994 Action 15.1

The linkage between the Court Charter and the court's Annual Report was stressed as follows:

*Once an appropriate set of standards has been developed and published as a 'court charter', the standards should be implemented progressively and reviewed annually, with a report on implementation to form part of the Annual Report of the relevant court or tribunal.<sup>44</sup>*

The audit noted that this view is now widely held in other jurisdictions. For example:

- annual reviews are now issued by most courts, including the courts in NSW
- court charters are used extensively in the U.K. and have been, or are being, developed in most jurisdictions in Australia, except NSW
- a "Guarantee of Service" has been prepared by the Supreme Court registry, including aspects such as information, hours of service and responses to enquiries
- a Client Survey and a Client Service Charter are being prepared by the Supreme Court registry.

The audit noted the following shortcomings in the reports issued by the NSW Courts:

- the Annual Reviews make no reference to Strategic Plans or the achievement of objectives
- the Annual Reviews contain no explanation of court costs (and any potential Community Service Obligations). The Annual Report of the Attorney General's Department, while providing a summary of income and expenses for each of the Courts, provides little explanation in the text of the report or the notes to and forming part of the financial statements about the summary figures.

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<sup>44</sup> Australian Government, *Access to Justice Report*, 1994 Action 15.2

The Audit Office agrees with the following assessment by the Law Society of NSW:

*In the interests of accountability and transparent management of the Courts, it is important that information published for community use provides a full and accurate representation of the work and financial status of the Courts. The current annual reports and reviews do not provide the community with sufficient information so that they can reach an informed judgement about whether the Courts are adequately resourced, whether caseload management practices are effective and so on.*<sup>45</sup>

The audit examines court planning in the next chapter.

## 6.5 Recommendations

To provide greater accountability the NSW courts should :

- routinely prepare and publish strategic plans, in consultation with stakeholders.
- prepare and publish court charters, in consultation with stakeholders, setting out standards for the delivery of court services.
- report in annual reviews against strategic plans, using a reporting framework set in consultation with interested stakeholders; and include the terms of reference and progress reports for all court committees.

The Audit Office also recommends that a committee system be developed for the management of the courts and their support functions. Formal linkages should be established between the committees of the courts and the departmental structure of Attorney Generals so that shared accountabilities are defined.

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<sup>45</sup> Law Society of NSW, *Profile of the Courts of NSW*, 1997 p4

## **7. Extending Planning**

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## 7. Extending Planning

Good strategic planning can provide a framework for the court system to make considered judgements about how its various parts will work together to achieve its objectives, and provide a basis to allocate priorities between different objectives in a rational manner. Additionally, as noted in the preceding chapter, it can assist the courts in accounting for their performance to the public.

### **Audit Criterion**

*That a strategic plan exists with objectives for the organisation which reflect responsibility. Options are evaluated to arrive at strategic plans for major functional areas which will achieve the corporate objectives. Tactical or action plans are developed for teams and individuals to implement throughout the organisation. The progress against targets in all plans is monitored. Plans are reviewed annually.*

### 7.1 Developing a Systemic Approach

The Audit Office considers that a systemic approach is a fundamental requirement for efficient and effective court planning in NSW.

Inter-jurisdictional issues, a common source of funds, common reliance on the support of the Attorney General's Department, common stakeholders and a common legislative framework are some of the more obvious reasons why this is necessary.

The magnitude of some events can have an impact on the whole system. For example, the recent decision by the High Court in relation to "cross vesting", which will result in hundreds of corporate cases being transferred to State supreme courts.



**Judicial and Administrative Components**

It is also important for the judicial and administrative components of the courts to be closely linked. As observed in the Federal Government's *Access to Justice Report*:

*Professors Church and Sallmann support a model of judicial administration that clearly recognises the distinctiveness of the management problems of courts and encourages judicial participation in policy making and administration within the court systems. They base this view on a number of factors emerging from their study of different models of judicial administration. These include the benefits of such a model for policy proposals put forward on behalf of the court within the budgetary process, the development of career structures leading to a greater professionalism in judicial administration and fostering a cooperative approach between judicial officers and administrators. More importantly (in my view) they argue that effective case management of the kind adopted by most Australian courts requires close linkages between the judicial and administrative components of a court. Unless the judges at least have a "meaningful role" in the management machinery, it will be more difficult for the courts to achieve the standards of expedition and effective use of resources that the community demands.<sup>46</sup>*

**Moves by Others**

The view that a systemic approach is necessary appears to be widely held.

For example, a recent review of the Legal Aid Commission found that other States are taking a systemic view of running their Legal Aid Commissions and are looking at other parts of the justice system to gain efficiencies for the whole system. All respondents to that review, who raised issues relating to the justice system, supported the concept of bringing together all relevant justice system stakeholders. A recent review of the Office of the Director of Public Prosecutions similarly raised systemic issues and recommended a coordination of reform across the whole system.

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<sup>46</sup> R Sackville, *Access to Justice Report: Change and Accountability in the Justice System*, paper to AIJA Annual Conference 1994 p19

The same pressures are evident in other countries. The pressures in the UK were recently described as follows:

*There are increasing pressures from Ministers, the public and users of the system, to view the Criminal Justice System as a whole and run it more coherently. This will require the separate agencies responsible for managing the individual components of the system to focus on eliminating duplication and coordinating their work more effectively. We are therefore continuing to focus on strengthening our consultation and cooperation with other criminal justice agencies.*<sup>47</sup>

There have already been moves to establish a more systemic approach in NSW courts at the operational level.

For example, the listing formula used in the District Court over the years has varied to accommodate the dynamics of the listing process. A Criminal Listing Review Committee monitors trial numbers. The committee is chaired by the presiding Judge at the Downing Centre and is comprised of representatives of the courts' major users, such as State and Commonwealth DPP, Crown Prosecutors, Public Defenders, Legal Aid Commission, Law Society and Bar Association.

### Quality Teams

Similarly, in an effort to address some specific problems facing the courts, the Department has initiated cross-sectional Quality Teams. Highlighting the importance of a systemic approach, the teams consist of members drawn from the courts, the registry, support areas from within the Department, and affected agencies such as the DPP, Police, Corrective Services etc.

Team projects aimed at improving court services are:

- streamline the criminal listings process in Summary Matters and Not Guilty Pleas
- streamline paper flow between Local Court committals and registration of the matter with the District Court
- streamline the hearing of indictable matters in NSW courts ensuring a greater degree of certainty about which matters will proceed to trial

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<sup>47</sup> (UK) Court Service Plan 1998 – 2001, Strategic Task 1

- streamline the pre-hearing civil litigation process in Local Courts from initiation to settlement prior to a matter being set down for hearing
- streamline the civil litigation process in Local Courts for matters set down for hearing
- improve enforcement and recovery procedures related to Local Court Orders
- improve the attendance of witnesses in legal proceedings
- improve ‘in court’ trial processes relating to presentation of evidence, exhibit management, recording of proceedings
- develop a common matter ‘ID’ number to be applied across all jurisdictions
- improve ‘in court’ procedures and practices to assist people with disabilities.

The Audit Office believes that these efforts at the operational level should now be reflected by a similar approach at the strategic level.

## **7.2 Existing Plans of the Judiciary and the Registry**

The audit found that both the District and Local Courts of NSW had prepared and issued Strategic Plans. The Audit Office views this as a progressive step for the courts. The Supreme Court had not prepared or issued a Strategic Plan.

Whilst the preparation of the strategic plans is welcomed, more extensive detail could be provided to link objectives to specific strategies and performance measures. Both the courts’ strategic plans and the Registries’ business plans were examined in the context of the Government’s Strategic Planning Checklist. An assessment of existing plans is shown in the following table.

## 7. Extending Planning

<b>Assessment of Strategic Plans</b> based on OPM's Corporate and Strategic Planning Checklist		
<b>Criterion</b>	<b>Court Strategic Plans</b>	<b>Registry Business Plans</b>
The <b>process</b> is integrated into a regular planning, budgeting and performance management cycle with wide participation, including the Minister.	No. Supreme Court has never issued a strategic plan. District Court once (1995), Local Courts once (1997).	Yes. But integrated into Attorney General's Department's Corporate planning and budgeting process.
Regular <b>analysis</b> of the risks, weaknesses, and opportunities faced by the organisation, which sets the context/objectives of the plans	No	Only for registry.
A <b>vision and mission</b> which reflects the business of the organisation and communicates it to all staff	District Court only.	Only for registry.
<b>Court objectives</b> which: <ul style="list-style-type: none"> <li>• are specific to the organisation</li> <li>• are realistic and measurable</li> <li>• are prioritised (key result areas) and matched with resources</li> </ul>	No. Supreme Court has issued no objectives. District Court and Local Courts have stated objectives, but not measurable or prioritised.	Only for registry
<b>Court strategies</b> which are realistic and match court objectives	No. Strategies tend to be ideal, not agreed with the Department and not resourced.	Only for registry.
<b>Registry strategies</b> which: <ul style="list-style-type: none"> <li>• match court objectives and strategies</li> <li>• are used to guide resource allocation</li> </ul>	Not applicable.	Yes. But match Attorney General's Department strategies, not court strategies.
<b>Action plans</b> which match strategies and objectives	No	Yes
<b>Management responsibilities</b> for plan implementation clearly defined.	No. Tend to refer to court committees or the Department.	Yes
<b>Targets &amp; performance indicators</b> are included and are realistic	No. District Court included time standards, but described as ideal.	Yes
<b>Monitoring</b> of performance against plans is undertaken and reported	Generally no. District Court comes closest with broad reference to strategies in its annual review and monitors compliance with time standards.	Yes
<b>Plans are reviewed</b> regularly in light of changing circumstances	No	Yes

Whilst the courts' plans have many positive features, the audit found they relate principally to the judiciary – not the whole court including the support staff of the Attorney General's Department. They make no reference to the registries' business plans or the other plans prepared by the Attorney General's Department – such as for IT and capital works. As the support staff are seen to 'belong' to the Department, this is perhaps not surprising. But it does little to assist a 'whole court' approach to the problems of managing court waiting times.

An extract from the Local Courts Strategic Plan is shown below by way of illustration.<sup>48</sup> The example refers to the establishment and monitoring of court performance - a fundamental requirement for the management of court waiting times. The example makes no reference to any other stakeholder – not even the Registry, whose direct support would be needed to implement the plan.

Extract from NSW Local Courts Strategic Plan		
Objectives	Strategies	Actions
<i>Establish and monitor appropriate standards for courtroom performance.</i>	<i>Review current time standards.</i>	<i>Continue to monitor time standards in consultation with the Chief Judge's Committee.</i>
	<i>Publish periodic reports on overall court performance against established standards.</i>	<i>Develop time standards for civil matters.</i>
		<i>Include statistical analysis of the Local Courts' performance in the Chief Magistrate's Review.</i>

**Perception of a split** This perception of a split would appear to be not uncommon, as observed in a recently published Australian study *Courts and the Public*.

*Perhaps most fundamentally, there is no clear consensus within the world of courts about how they should see themselves. Different implicit models are in use within courts and across courts. The most evident split we found is between an idea of courts as 'judges + support staff' (with the consequence that judicial officers are for some purposes as internal clients) and a 'whole court' approach where the organisation regarded as a partnership or common enterprise.<sup>49</sup>*

<sup>48</sup> Local Courts of NSW, Strategic Plan 1997-1998

<sup>49</sup> Prof S Parker, *Courts and the Public*, AIJA 1998 p32

Additionally, the courts' plans appear to have been prepared in isolation from each other and from the Government. As a result, each court has simply continued to manage from year to year on the annual financial allocation it might receive from the Government. This was described to the audit as a 'hand to mouth' existence. Such an approach is not conducive to the effective management of court waiting times, as noted in a recent submission from the Attorney General's Department to Treasury.

*The difficulty in developing sustainable delay and backlog reduction programs for the courts have been compounded by reliance on single budget year programs, developed as a reactive measure to already accumulated difficulties. Programs under the current structure have also tended to operate within each jurisdiction largely in isolation from each other.*

*Recent experience in deploying a more strategically focussed program over a longer period, operating in conjunction with new case management systems, suggests that this approach is far more effective in dealing with the enduring and systemic causes of court delay.<sup>50</sup>*

### **Current Court Plans**

The current court plans do not:

- identify specific outcomes to be achieved by the plans
- clearly state the priorities of the courts
- provide sufficient guidance on how the courts will achieve their goals
- refer to other levels of planning
- include time frames
- identify the areas of the courts responsible for particular action
- include specific performance indicators for key objectives or strategies.

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<sup>50</sup> Attorney General's Department, *Forward Budget Estimates 1998/9 to 2001/02 – Enhancements, Creation of a Case Management Fund p2*

The current registry plans are linked to the Attorney General's Department's Corporate Plan but are not directly linked to objectives and strategies in the courts' plans. For example, the business plan objectives are not overtly linked to the courts' objectives and the business plans are expressed in terms different from the Courts' plans so that it is not clear that they are consistent with the direction of the current courts' plans.

## **Communication**

Additionally, the audit found that the courts' plans were not widely known and considers that the courts would benefit from an increased emphasis on communicating their strategic planning endeavours.

As observed in the recent publication *Courts and the Public*:

*A strategic and business plan can clearly show that the court has initiatives in place to aid the public in its dealing with the court. In England, we believe that there has been some attempt to use the document in this light by placing both the Lord Chancellor's Department's Strategic Plan and Corporate Plan on the Internet. This ensures that the maximum number of people have access to the plans of the Department. In Australia, while some of the information to be found in strategic and business plans is contained in annual reports or court charters, we have not yet found examples where the court's future plans are freely available to the public. Such a step may be seen as desirable, so as to enhance the public's knowledge of the initiatives being taken by the courts, especially in relation to client service matters.<sup>51</sup>*

## **7.4 Consultation**

In order for the plans to be realistic and achievable, there would need to be a common understanding between the Government and the courts before finalising the courts' strategic directions as outlined in the strategic plans. The Audit Office considers issues of resourcing and priorities for the courts to be a matter for ongoing dialogue between the courts and the Government, in a context where the Government determines the overall budget and the legislative framework in which the courts operate. The courts are responsible and accountable for their operational decisions within that framework.

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<sup>51</sup> Prof S Parker, *Courts and the Public*, AIJA 1998 p81

The audit has been advised that there is an informal monthly meeting of the Chief Justice and other judicial heads. There are also separate informal discussions with the Director General of the Attorney General's Department. The Audit Office sees value in this, but considers there would be value in formalising some of those meetings where overall planning of the judicial system could be considered.

In the UK, for example, the following approach has been adopted:

*These strategic tasks are supported by plans at each level in the Court Service. Every Circuit, Group, Court and Headquarters Division has produced its own plan of how it will achieve the results in the main plan. There are also separate plans for accommodation and information technology. ... For the first time we have a comprehensive planning system.*<sup>52</sup>

The Judicial Council of California offers a similar model:

*... the long-range strategic plan for the California judicial system. This plan, a vision for the future of the California courts, has been refined by the council over the last five years, with significant involvement by judges and court administrators from across the state, as well as representatives of the State Bar, the Legislature, the executive branch, and the public.*

*The plan establishes primary goals and sets broad policy directions by which to achieve those goals.*

*The implementation of this plan involves both statewide efforts of the Judicial Council and court-specific efforts at the local level.*<sup>53</sup>

It is also useful to consider a previous Victorian attempt to establish an overseeing body, which has been seen as less than successful:

*The (Victorian) Civil Justice Committee recommended that a Courts Advisory Council be established, consisting of the three heads of jurisdiction and representatives of the Attorney General's Department, the Treasury and the*

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<sup>52</sup> M Huebner, (UK) *Court Service Plan 1998 – 2001*, foreword

<sup>53</sup> R M George, Chair of the Judicial Council of California, 1998



*legal profession. The main purpose of the Council was to oversee implementation of the recommendations of the CJC, and to serve as a focus for system-wide consideration of court administration. .. It has not stood the test of time ... and never has had any clear-cut operational responsibilities.*<sup>54</sup>

The Audit Office sees value in establishing more formal consultation arrangements, directed initially at major resource issues such as IT and capital works. To the extent that these prove to be effective, the scope of such formal consultative arrangements might be usefully extended to include other issues relating to the management of the court system.

## **7.5 Recommendations**

Court Plans should be prepared and published by each court, in consultation with stakeholders. The plans should be formulated in accordance with guidelines to show court objectives, strategies, actions, target/indicators, resources, finances and expected results. The plans should be realistic and reflect the operation of the whole of the court, including the support provided by Attorney General's Department – such as registries, IT and capital works.

More formal consultative arrangements could assist this process.

For the planning system to be effective there needs to be:

- A clear allocation of responsibility and accountability for developing and reviewing each plan, with specialised staff support as necessary.
- A review mechanism to regularly review and revise each of the plans, when and where necessary. Clearly defined time frames for review need to be set and responsibility for implementing reviews allocated to defined action officers.
- An effective consultation process for gaining input from stakeholders in the development and subsequent review of each plan.
- Mechanisms to ensure that all stakeholders have access to each plan.
- Formalised links between court plans and supporting plans, performance measurement, monitoring and reporting.

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<sup>54</sup> Prof Church and Prof Sallmann, *Governing Australia's Courts*, AIJA 1991 p22

## **Appendices**

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## **Appendix - Reforms to Reduce Court Waiting Times**

(Source: NSW Parliamentary Library Briefing Paper No 31/96)

Reforms which have been raised in the literature, in the context of reduced court waiting times, are summarised in the following. Many have been introduced in the NSW courts.

### **A. Modifying the adversarial system**

1. encouraging judges to use their existing powers and discretion to expedite proceedings through measures such as sanctions on lawyers who delay proceedings, or the appointment of neutral experts to report to the court
2. increasing the power of judges to control proceedings by adoption of more inquisitorial practices and procedures
3. requiring or encouraging a degree of cooperation between defence and prosecution

### **B. Court structure and funding arrangements**

1. proposals to merge the District and Supreme Courts, or the District and Local Courts, to eliminate wasteful duplication
2. courts to manage themselves, rather than being managed by the Attorney-General's Department
3. establishing court funding arrangements which provide an incentive to efficiency gains
4. establishing court fee structures which provide an incentive to efficiency gains

### **C. Procedural reforms**

1. introduction of active judicial case management
2. earlier disclosure of arguments and agreement on issues in civil cases
3. improved listing procedures to avoid over or under listing
4. special legislative schemes to handle some high volume areas of civil claims
5. greater uniformity between courts to avoid needless complexity
6. committal proceedings as short as possible
7. limiting discoveries and interrogatories
8. limiting the number of adjournments
9. using mandatory time limits
10. imposing time limits on evidence and submissions
11. requiring disclosure by the defence in criminal matters
12. limiting or varying the role of the jury
13. allowing evidence to be presented by charts, video and phone links
14. tape recording or video taping police interviews
15. changes to multiple related trials to avoid repetition

### **D. Reducing the number of cases**

1. increasing charges and introducing user-pays in civil matters
2. referring civil litigants to tribunals, community justice centres, ombudsmen, and procedures for alternative dispute resolution
3. diverting minor criminal matters from the courts
4. transferring cases to the lower courts
5. decriminalising some actions to reduce the number of offences before the courts

6. simplifying legislation to remove ambiguity and to clarify rights and obligations
7. encouraging defendants to criminal charges to plead guilty early

**E. Increasing the resources available to the courts**

1. appointing more judges
2. employing more administrative staff
3. better computer facilities and information technology

**F. General reforms**

1. increasing judge time by methods such as extending sittings
2. prosecution guidelines designed to avoid unduly complex or lengthy hearings
3. introduction of class actions
4. detailed monitoring of delay indicators.

## Performance Audit Reports

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No.	Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
1	Department of Housing	<i>Public Housing Construction: Selected Management Matters</i>	5 December 1991
2	Police Service, Department of Corrective Services, Ambulance Service, Fire Brigades and Others	<i>Training and Development for the State's Disciplined Services: Stream 1 - Training Facilities</i>	24 September 1992
3	Public Servant Housing	<i>Rental and Management Aspects of Public Servant Housing</i>	28 September 1992
4	Police Service	<i>Air Travel Arrangements</i>	8 December 1992
5	Fraud Control	<i>Fraud Control Strategies</i>	15 June 1993
6	HomeFund Program	<i>The Special Audit of the HomeFund Program</i>	17 September 1993
7	State Rail Authority	<i>Countrylink: A Review of Costs, Fare Levels, Concession Fares and CSO Arrangements</i>	10 December 1993
8	Ambulance Service, Fire Brigades	<i>Training and Development for the State's Disciplined Services: Stream 2 - Skills Maintenance Training</i>	13 December 1993
9	Fraud Control	<i>Fraud Control: Developing an Effective Strategy</i> (Better Practice Guide jointly published with the Office of Public Management, Premier's Department)	30 March 1994
10	Aboriginal Land Council	<i>Statutory Investments and Business Enterprises</i>	31 August 1994
11	Aboriginal Land Claims	<i>Aboriginal Land Claims</i>	31 August 1994
12	Children's Services	<i>Preschool and Long Day Care</i>	10 October 1994
13	Roads and Traffic Authority	<i>Private Participation in the Provision of Public Infrastructure</i> (Accounting Treatments; Sydney Harbour Tunnel; M4 Tollway; M5 Tollway)	17 October 1994
14	Sydney Olympics 2000	<i>Review of Estimates</i>	18 November 1994
15	State Bank	<i>Special Audit Report: Proposed Sale of the State Bank of New South Wales</i>	13 January 1995
16	Roads and Traffic Authority	<i>The M2 Motorway</i>	31 January 1995

No.	Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
17	Department of Courts Administration	<i>Management of the Courts: A Preliminary Report</i>	5 April 1995
18	Joint Operations in the Education Sector	<i>A Review of Establishment, Management and Effectiveness Issues (including a Guide to Better Practice)</i>	13 September 1995
19	Department of School Education	<i>Effective Utilisation of School Facilities</i>	29 September 1995
20	Luna Park	<i>Luna Park</i>	12 October 1995
21	Government Advertising	<i>Government Advertising</i>	23 November 1995
22	Performance Auditing In NSW	<i>Implementation of Recommendations; and Improving Follow-Up Mechanisms</i>	6 December 1995
23	Ethnic Affairs Commission	<i>Administration of Grants (including a Guide To Better Practice)</i>	7 December 1995
24	Department of Health	<i>Same Day Admissions</i>	12 December 1995
25	Environment Protection Authority	<i>Management and Regulation of Contaminated Sites: A Preliminary Report</i>	18 December 1995
26	State Rail Authority of NSW	<i>Internal Control</i>	14 May 1996
27	Building Services Corporation	<i>Inquiry into Outstanding Grievances</i>	9 August 1996
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65	Attorney General's Department	<i>Management of Court Waiting Times</i>	September 1999





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