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Charter of the Committee

The Public Accounts Committee has responsibilities under the Public Finance and Audit Act 1983 to inquire into and report on activities of government that are reported in the State’s Public Accounts and the accounts of the State’s authorities. The Committee, which was established in 1902, scrutinises the actions of the Executive Branch of Government on behalf of the Legislative Assembly.

The Committee recommends improvements to the efficiency and effectiveness of government activities. The sources of inquiries are the Auditor-General’s reports to Parliament, referrals from Ministers and references initiated by the Committee. Evidence is primarily gathered through public hearings and submissions. As the Committee is an extension of the Legislative Assembly, its proceedings and reports are subject to Parliamentary privilege.

Members of the Committee

The Committee comprises members of the Legislative Assembly and assumes a bi-partisan approach in carrying out its duties.

Chairman: Joseph Tripodi MP, Member for Fairfield
Vice-Chairman: Pam Allan MP, Member for Wentworthville
Members: Ian Glachan MP, Member for Albury
          Katrina Hodgkinson MP, Member for Burrinjuck
          Richard Torbay MP, Member for Northern Tablelands
          Barry Collier MP, Member for Miranda

1 See Part 4 of the Act – The Public Accounts Committee.
Committee Secretariat

Secretariat members involved in the Inquiry were:

Committee Manager: David Monk
Project Officer: Craig Gillman (to 17 January 2002)
Committee Officer: Stephanie Hesford (to 14 December 2001)
Jacqui Isles (from 29 January 2002)
Assistant Committee Officer: Mohini Mehta
Advisor to the Committee: Belinda Archer (to 12 April 2002)

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Chairman’s Foreword

The Public Accounts Committee is pleased to present its report on court waiting times in the Supreme, District and Local Courts of New South Wales.

The Committee appreciates the concerns expressed by the judiciary regarding the application of “private sector style” performance management in the court environment. Such measurement and management tends to focus on quantifiable issues such as delay when court performance has much more to do with issues that cannot be easily measured, such as the quality of justice.

Nevertheless, the reduction of delay is an appropriate goal for both the judiciary and court administrators as long as efforts to improve court efficiency do not adversely impact the legal system’s ability to deliver “fair outcomes arrived at by fair procedures.”

The Committee consulted widely in preparing this report and received submissions from interested individuals, organisations and Departments. Hearings were held in Sydney in December 2001. The Committee thanks all those who have contributed to the inquiry for their time, effort and insights.

The performance of the courts of NSW has been the subject of three reports by the Audit Office of NSW since 1995 and one previous Public Accounts Committee inquiry in 1996.

The current inquiry built on this existing body of work by examining the results achieved by the Courts in the context of the justice system as a whole. The Committee has investigated the interactions between parties in both criminal and civil cases to gain a better understanding of how stakeholders inside and outside the courts can contribute to judicial delays. Nowhere else in the public sector do the activities of individuals, professionals and diverse agencies interlock in such a critical and complex manner.

The resourcing and operations of the NSW Police (as both investigators and prosecutors), the Office of the Director of Public Prosecutions, the Legal Aid Commission and the Public Defenders all affect the performance of the Courts. Similarly, the performance of the Courts influences the operations of these agencies. The culture and conduct of the legal profession is also crucial.

It is impossible, therefore, to attempt to manage court waiting times in isolation. Policy changes in the courts will not produce their anticipated results unless the other agencies in the justice system have the capacity to play their part. If resourcing in one agency is inadequate, the bottleneck will simply be moved, not removed.

Effective and efficient judicial management is not just a matter of resourcing. Easily obtainable, reliable management information is essential. Without information on activity in other agencies, appropriate resource allocation and planning is impossible. Cross agency data is not immediately available in the NSW justice system but will be provided in the medium term by the Justice System Information Sharing (JSIS) project. The Committee regards the implementation of both JSIS and the Courts Administration System as being essential to the achievement of significant improvements in court performance over the longer term.

The Supreme, District and Local Courts have all sought, with varying levels of success, to improve their timeliness through the introduction of case management procedures and associated time standards. Big improvements have been achieved in criminal waiting times in the Supreme and District Courts. In addition, the District Court has maintained steady civil performance in the face of a rapidly growing caseload. The Local Court has also continued its strong performance record in comparison to similar jurisdictions in other Australian States and Territories.

New pressures are, however, emerging and delays have proved difficult to reduce in some areas. Continued vigilance, innovation and discipline are essential.

On behalf of the Committee, I would like to thank the secretariat for its support in this inquiry. I would especially like to thank Ms Belinda Archer, on secondment from Treasury, who researched and drafted the report.

The Committee trusts its recommendations will assist the Attorney General’s Department in further improving court administration in New South Wales.

Joseph Tripodi MP
Chairman
Executive Summary

Introduction

Excessive court delay concerns Governments around the world. Research indicates that the reasons for delay in different states and countries are surprisingly similar and often have more to do with the conduct of the participants in the trial process than the conduct of the judiciary or court officials.

In May 2000, the NSW Bureau of Crime Statistics and Research released the findings of a survey of criminal cases in the District Court which found 71 per cent of matters failed to proceed to trial on the day they were listed because of:

- late guilty pleas – 35 per cent;
- adjournments – 29 per cent;
- overlisting – 22 per cent;
- other – 14 per cent – including non-appearance and no bills.

These findings echo the results of research in Victoria, Western Australia and the United Kingdom.

The chief weapon against court delay is case management. This involves the court setting time standards within which most matters must be finalised and then “managing” the actions of defendants and the Crown in criminal matters, and litigants and their counsel in civil actions, to ensure these standards are met. Case management usually takes the form of a standard calendar of case processing events with which litigants must comply (for example, Practice Note 33 for matters in the General Division of the District Court) or specific judicial instructions (for example, the Defamation List of the District Court).

In either instance, case management represents a significant change for both those who judge and those who are judged. This is because, traditionally, the pace of litigation was controlled by the legal practitioners and the court’s role was simply to respond to processes initiated by those practitioners.

Courts have an overriding obligation to see to it that those using their facilities are proceeding in a way best calculated to bring litigation to an end at the earliest possible moment so long as the primary goal of achieving justice is not lost sight of... Judges have power, until the hearing is concluded, to make, and to continue to make, such directions as seem to them best suited properly and adequately to manage and direct the cases in their lists.

3 The strategies implemented by the District Court to address these issues are discussed in Chapter Five.
Findings and Recommendations

The Judiciary and Court Performance Measurement

Members of the judiciary have expressed concern regarding the increasing application of public sector performance management practices to the courts:

The compilation and publication of statistics relating to the measurement of [court] delay is a perfectly appropriate activity. Nevertheless, the most important functions performed by a court are not capable of measurement. In particular, the fundamental issue of whether or not the system produces fair outcomes arrived at by fair procedures is not capable of quantification at all.6

The Committee found:

While timeliness is only one aspect of court performance, the reduction of delay is an appropriate goal for both the judiciary and court administrators in the pursuit of a more effective and efficient legal system.

There is no Australia-wide standardisation of court data collection. This means it is difficult to achieve a valid comparison of delay or other court statistics between Australian States and Territories.

Recommendation

1. The Attorney General’s Department of NSW and the Courts of NSW should continue to work vigorously with the Australian Bureau of Statistics and other Australian States and Territories to establish common data standards for the measurement of the effectiveness and efficiency of court administration.

Court Delay and the Actions of Players in the Justice System

The performance of the courts – both civil and criminal – cannot be viewed in isolation. It represents a complex interplay between a range of stakeholders – both public and private – who often have conflicting interests.

In recognition of the relationships between the players in the justice system, the Committee has explored how participants in court cases can create court delays. For example, some witnesses raised the quality and timeliness of police briefs of evidence in this regard. The Committee found:

The quality and timeliness of police briefs of evidence continue to be a source of delay in the Local Court. NSW Police have recognised significant improvement is required and have undertaken some comprehensive reforms, particularly in the use of information technology.

Recommendation

2. The effectiveness of the reforms being implemented by NSW Police in the quality and timeliness of police briefs should be assessed at some stage in the future. In the interim, NSW Police should consider including these reforms in its review of the Court and Legal Services Division.

Several witnesses to the inquiry suggested legal effectiveness and efficiency would be advanced if police prosecutors were replaced by solicitors from the Office of the Director of Public Prosecutions (DPP) in the Local Court. A pilot study by Premier’s Department in 1996-97, Prosecuting Summary Offences: Options and Implications was cited in support of this change.

Further, in 1997 the Final Report of the Wood Royal Commission discussed the arguments for and against retaining police prosecutors and recommended the responsibility for all prosecutions should be progressively transferred to the DPP.

Recommendation

3. The current review of the Court and Legal Services Division of NSW Police should consider the transfer of the prosecution function from NSW Police to the DPP.

Delays in developing forensic evidence are a common cause of delay in preparing police briefs of evidence. The Division of Analytical Laboratories tests exhibits for NSW Police. The Committee found:

The introduction of DNA analysis and the continuing growth in the volume and complexity of illicit drug analysis means the provision of effective, efficient and timely laboratory services to the criminal justice system is an issue of the highest priority.

The Division of Analytic Laboratories is not, currently, providing a service that meets these criteria.

Recommendations

4. As a matter of urgency, the Forensic Services Group of NSW Police develop and distribute its proposed guidelines to assist investigating officers in screening and prioritising DNA exhibits.

5. As a matter of urgency, the establishment of a State Institute of Forensic Science be considered by the State Institute of Forensic Services Committee.
Recommendations

6. As immediate measures to improve the effectiveness and efficiency of exhibit analysis:

- the Deed of Agreement between the Commissioner of Police and the Western Sydney Area Health Service to Deliver DNA Analysis Service and the Establishment of a DNA Profile Database should be reviewed. This review should include the consideration of a fee for service payment system and the devolution of the Forensic Service Group budget to Local Area Commands and crime agencies;

- illicit drug analysis should be reviewed to ensure: “fast track” and “controlled operations” protocols are understood and are being used appropriately; and laboratory funding/staffing is adequate to meet demand in a timely way (fee for service should be considered); and

- the Division of Analytic Laboratories should review best practice in other Australian States and Territories (and overseas where relevant) both in terms of funding and laboratory operation for all forms of criminal exhibit analysis undertaken.

7. The Division of Analytic Laboratories (or a State Institute of Forensic Services) should be part of the Justice Service Information System (see page 28).

In addition the Committee found, on the basis of evidence from practitioners, that:

The legal profession believes the “quality of justice” has not been negatively affected by implementation of case management practices and other administrative efficiencies.

Cases involving unrepresented criminal defendants and unrepresented civil litigants take longer to finalise. The Committee found:

The overall impact of unrepresented criminal defendants and unrepresented civil litigants on the court system is not known. What is certain is that, in jurisdictions where legal representation is the norm, unrepresented defendants and litigants can have a significant impact on court resources required by, and the “quality” of justice achieved in, their individual cases.

Recommendation

8. The courts should collect and analyse data on unrepresented criminal defendants and unrepresented civil litigants as part of their standard dataset so the extent of this issue can be determined and its impact better managed.

The Justice Service Information System (JSIS) is a cross-agency initiative which will allow the Police, DPP, Legal Aid and the Courts to share information. Given the interlinked nature of their operations, this type of cooperation is essential.
The Committee found:

Whole of justice sector coordination and cooperation has improved in recent years. Cross sector forums and initiatives, particularly in the information technology area, are proof of this growing organisational consciousness.

Policy innovations in one agency will not yield their anticipated results unless the other agencies in the “justice chain” have the capacity to play their part. If resourcing in one part of the chain is inadequate, the “bottleneck” will simply be shifted, not removed.

### Recommendations

9. Proposed changes in agency policy and resourcing should be fully communicated to other agencies whose operations may be affected.

10. Central agencies should fully appreciate the interconnections within the justice sector when assessing changes in the policy and/or resourcing of individual agencies.

11. Cross-agency initiatives like JSIS and e-Briefs should be pursued as matters of high priority. The first will give agencies the cross-sector information they need to improve planning while the second represents a project which will bring genuine returns across the system.

The Committee considered practitioner concerns regarding the implementation of civil case management in the Local Court and found:

Stakeholder consultation in the District and Supreme Courts has enhanced practitioner acceptance and understanding of reforms in court practices. Lack of understanding can lead to unnecessary anxiety for practitioners and litigants.

### Recommendation

12. Major reforms in court procedure should be subject to formal stakeholder consultation and, when implemented, accompanied by “plain English” practitioner education.

With regard to civil matters, the Committee heard evidence that unified court rules would benefit litigants and increase court efficiency.

### Recommendation

13. The Attorney General’s Department and the Courts should form a working group drawing on the existing resources of the Rule Committees of the Supreme and District Courts, which include representatives of the NSW Bar Association and the Law Society, to rationalise and simplify civil court rules in NSW.
**Comparisons of Court System Performance**

The Committee reviewed the available comparative data\(^7\) and found:

Despite the difficulties involved in comparing court performance between States and Territories in Australia, the results achieved by NSW in the 2002 Report on Government Services were relatively positive – in terms of the proportion of matters finalised within 12 months – for these types of cases:

Supreme Court – NSW was comparable to the national average in both first instance and appeal civil cases;

District Court – NSW bettered the national level in civil matters and recorded a significant improvement in criminal matters compared to the 2001 Report; and

Local Court – NSW continued its excellent performance, beating the national average in both criminal and civil matters.

The Committee also examined measures of court performance used in the United Kingdom, United States of America and New Zealand and found:

Despite the worldwide trend towards the use of performance indicators in the public sector, their use in court systems – with the exception of measures of timeliness – appears to be quite limited.

In addition, where wider applications have been attempted, the indicators used, although easy to understand, have little explanatory power in terms of assessing the “work” of the courts concerned.

**Should Court Sitting Hours be Extended?**

The Committee received submissions suggesting that court hours should be extended and found:

The extension of court sitting hours may be useful to speed the disposal of longer trials and hearings. This would not, however, create additional sitting hours “across the system” as the Judges involved would require dedicated time outside the courtroom to write their judgments.

Other witnesses suggested the introduction of US-style night courts. The Committee found:

Night courts, although relatively successful in the United States of America, have not been well supported by the legal profession, defendants or plaintiffs in Australian pilots. Given the evidence, a further pilot or the creation of a permanent night court is not justified in NSW.

---

\(^7\) As presented annually by the Steering Committee for the Review of Commonwealth/State Service Provision in its *Report on Government Services*.
The Committee heard evidence regarding the extent of judicial vacations and found:

On the basis of evidence submitted by both the legal profession and the courts, judicial vacations are not excessive and are not a factor in court delay. Adequate court services are available during vacation periods.

**Court Governance**

Some witnesses submitted that the administration of the courts would be more efficient and effective if it was controlled by the judiciary rather than the Executive Government.

While the Committee found there was no conclusive evidence that “autonomous” court administration enhanced performance, it also found consultation between the judiciary and the Attorney General’s Department regarding resourcing was insufficient.

**Recommendation**

14. As a matter of priority, the Supreme and Local Courts should establish Resource Committees or expand current committees that already carry out some of the relevant functions. These Committees, and the Resource Committee already established by the District Court, should:

- include members of the Judiciary, the Chief Executive Officer/Principal Administrator/Director of the Court and a senior financial representative from the Attorney General’s Department;
- meet each quarter to discuss demand trends and resource implications; and
- have an annual “pre Budget” meeting before the Department submits its Budget proposals to NSW Treasury. This meeting will analyse and prioritise the maintenance, enhancement and capital proposals of the Court.

With regard to staffing decisions relating to senior court administrators the Committee found:

The NSW judiciary has an appropriate level of input into decisions regarding the appointment and performance management of SES-level court administrators.

**Technology in the Courtroom**

The Attorney General’s Department has been criticised for the time taken to develop the Courts Administration System (CAS). The Committee reviewed the Department’s evidence, examined the implementation of technology in other court jurisdictions and found:

The delays experienced by the Attorney General’s Department in implementing a case management system are regrettable. In light of experience elsewhere,
however, the Inquiry is unwilling to criticise the Department for its caution as the system now proposed appears to offer significant benefits for both the courts and their users. What is of critical importance now is that the CAS, as tendered, is completed on time and on budget.

**Recommendation**

15. The Audit Office should consider reviewing the CAS on an ongoing basis as an emerging case study in e-Government. The findings of this review should be reported to the Public Accounts Committee.

Concerns were also expressed regarding the size and complexity of the CAS. The Committee found:

> Although the CAS a large project its implementation has been broken down into manageable units. In addition, the Attorney General’s Department appears to have conducted an adequate preliminary risk assessment which has now been developed into a full Risk Management Plan.

With regard to the cost of the CAS and its importance to ongoing improvements in case management, the Committee found:

> The cost of full implementation of the CAS is double the Attorney General’s Department’s 1997-8 estimate. This result, combined with the long delays experienced in implementing the system, is not satisfactory. Given similar delays and cost overruns interstate and overseas, however, it is not unique.

Replacement of existing court information systems is essential to support further improvements in case processing efficiency and enable the courts to better identify demand trends and their associated resource implications. Additionally, existing systems are reaching obsolescence and cannot be effectively enhanced or expanded due to design limitations.

**Recommendation**

16. Given the importance of the CAS and its history, the Office of Information Technology should oversee the conduct of an independent post implementation review in addition to its standard monitoring procedures.

The Inquiry also considered the potential of teleconferencing, videoconferencing, technology courtrooms, electronic callovers, electronic document lodgment and electronic transcripts in NSW courts. With regard to the availability of transcripts, the Committee found:

> Barristers and their instructing solicitors have, over the years, become increasingly computer-literate. Improvements in IT and the increasing use of computers in the District and Supreme Courts clearly permit, even now, access to transcripts on a daily basis.

> The provision of daily transcripts to criminal defence counsel on disc is one
obvious method. The disc could be supplied by the legal practitioners themselves. In the longer term, transcripts could be supplied electronically at low cost.

**Recommendation**

17. The Attorney General’s Department and the Courts should consider, as a matter of urgency, the provision of daily transcript to defence counsel in criminal trials.

In the short term, this could be as simple as the provision of a computer disc containing the transcript. The disc could be supplied by the legal practitioners themselves.

In the longer term, the provision of daily transcript by other electronic means - in appropriate civil and criminal cases in the higher courts - should be considered.

With regard to the introduction of technology in general, the Committee found:

Courts in NSW are introducing a range of technological innovations to increase the efficiency and effectiveness of the administration of justice including cross-agency projects such as JSIS and videoconferencing. The Inquiry has received information regarding the anticipated benefits of some of these developments and is keen to ensure that these forecasts are achieved. Anecdotal feedback to date is very positive but is not a substitute for formal assessment.

**Recommendation**

18. New technologies introduced in the Attorney General’s Department, and other justice agencies, should be subject to formal evaluation when fully implemented to determine whether projected business case benefits have been delivered.

Where forecast benefits have not been achieved, the reasons for this failure should be analysed to determine generic risks and risk management strategies to assist in the successful implementation of future technology projects.
**Waiting Times in the Supreme Court**

### Court Waiting Times

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<td>Comparative information is not available.</td>
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<tr>
<td><strong>Court of Appeal (6)</strong></td>
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<tr>
<td>General List</td>
<td>10</td>
<td>14</td>
<td>21-22</td>
<td>23-24</td>
<td>23.7</td>
<td>33.2</td>
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<tr>
<td>Other Lists</td>
<td>10</td>
<td>6</td>
<td>7-8</td>
<td>10-16</td>
<td>...</td>
<td>...</td>
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</table>

1. Median time from commencement to plea, verdict or other finalisation.
2. The only list with longer term data is the Administrative Law List. This List’s median time from commencement to finalisation has fallen from 12 months in 1995-96 to 6 months in 2000-01. The other civil lists are: Defamation, Possession (that is, property), Professional Negligence, Differential Case Management and Summons.
3. Median time from commencement to finalisation except for Equity List cases prior to 2000-01 where waiting time is the time from establishment of readiness for hearing to the hearing date. This change in timeframe is the reason for the increase in Equity List waiting times in 2000-01.
4. The low number of matters in this list (24 disposals in calendar 2000) means performance can be skewed significantly by one or two cases.
5. Case numbers in this list are also low (38 disposals in calendar 2000).
6. Before 1997-8 the figure represents the median time from establishment of readiness for hearing to finalisation. From 1997-8, the figure represents the median time from lodgment to finalisation. Waiting times have, therefore, improved more significantly than the figures suggest as the statistic now used represents the entire period to finalisation rather than a portion of it.


In relation to alternative dispute resolution, the Committee found:

Mediation has the potential to reduce court waiting times in the Supreme Court but more information is needed on the extent of its application and the “success rates” of both court-based and external mediators.
Recommendation

19. The Supreme Court should include mediation statistics as part of the dataset to be collected by the CAS.

In general, the Committee found:

Civil case management, which has focussed on creating specialist lists to provide procedures best suited to particular types of matters, appears appropriate given the varied and complex nature of cases before the Supreme Court. To date, however, court waiting times in the Equity Division have been relatively static and lack of data means trends in performance in civil cases in the Common Law Division cannot be assessed.

First instance criminal case management has recently focused on a combination of early arraignment and the use of Acting Judges to boost disposals and has achieved good results in reducing trial delay.

With regard to the Appeal Courts, the Court of Appeal has achieved substantial improvements in waiting times. Current performance in the Court of Criminal Appeal is on par with first instance criminal matters and this also represents a good result.

The establishment of time standards in 2000 for first instance criminal and appeal cases (civil and criminal) has now provided court-determined benchmarks against which performance can be assessed. Performance against these standards was clearly and fully reported in the Court’s Annual Review for 2000. First instance civil time standards have still to be developed, however, and this process is dependent on the implementation of the CAS.

In short, the Supreme Court has now assembled many of the elements required to improve the efficiency and effectiveness of case processing. The major outstanding issue is the availability of management information. As CAS is the “catch all” solution to this problem, it is essential this system is appropriately tailored to the needs of the Court and implemented in a timely way.

Recommendations

20. The Supreme Court should establish civil time standards as soon as data availability permits. These standards should reflect comparable best practice in other states and countries.

21. The Supreme Court adapt the proposed key performance indicators (KPIs) to its circumstances. The Inquiry recognises the implementation of the proposed KPIs will be more difficult for the Supreme Court given the varied nature of its civil case load. However, these indicators will assist in the active management of divisional and list caseloads by providing an insight into the pending caseload. Measurement of delay, by comparison, can only demonstrate what has happened.
Waiting Times in the District Court

Civil Matters: Median Time from Commencement to Finalisation (months)

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<tbody>
<tr>
<td>Sydney</td>
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<td>11.4</td>
<td>11.9</td>
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<tr>
<td>Sydney West</td>
<td>10.9</td>
<td>10.4</td>
<td>9.3</td>
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<tr>
<td>Country</td>
<td>11.3</td>
<td>11.6</td>
<td>12.7</td>
</tr>
<tr>
<td>NSW</td>
<td>12.2</td>
<td>11.3</td>
<td>11.6</td>
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Source: Attorney General's Department, Annual Report 2000-01, p 165.

Criminal Matters: Median Time from Committal to Trial (months)

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<tbody>
<tr>
<td>Accused in Custody</td>
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<td>7.0</td>
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<tr>
<td>Accused on Bail</td>
<td>11.5</td>
<td>13.4</td>
<td>12.2</td>
<td>10.0</td>
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Source: BOCSAR Statistics provided by the District Court of NSW, 26 October 2001.

With regard to criminal case management, the Committee found:

The proportion of cases resulting in guilty pleas on trial date remains high and is trending up in Sydney. In addition, Sydney West has failed to reduce the proportion of cases adjourning on the first day of trial.

Recommendation

22. While it is accepted that some proportion of accused persons will plead guilty on the trial date, further investigation is needed to identify factors that may be increasing the proportion of late guilty pleas and adjournments. These factors could include:

- the timeliness of applications for Legal Aid;
- the proportion of cases with privately funded defence counsel;
- the timing of involvement of senior Crown prosecutors;
- the timing of plea (or charge) bargaining;
- the timing of changes to indictments;
- the completeness and timeliness of police briefs;
- the availability of witnesses; and
- the availability of physical exhibits and expert evidence.

In general, the Committee found:

The District Court has demonstrated a strong, strategic commitment to the effective and efficient use of court resources and this is reflected by the
significant reduction of trial delay in criminal cases. The Court’s civil jurisdiction is, however, more problematic given the rapid growth in its caseload and the apparent reluctance of some practitioners to comply with case management requirements.

**Recommendations**

23. If practitioners continue to resist the case management of civil cases under Practice Note 33, cost orders should be applied. This remedy is preferable to dismissing matters as this latter course of action will injure the litigant who may not be at fault.

In instances where it is clear the litigant is responsible for non-compliance, the party in default should be required to show cause why their Statement of Claim, cross claim or defence should not be dismissed.

24. The greater use of alternative dispute resolution (ADR) must be promoted. Compulsory mediation should be ordered in appropriate cases. With regard to arbitration, specialist arbitrators should be considered for use in matters on the specialist lists and greater regional access should be provided.

**Waiting Times in the Local Court**

Waiting times in the Local Court are currently reported without distinction between civil and criminal matters.

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<td>13</td>
<td>13</td>
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In general, the Committee found:

Although waiting times in the Local Court compare very favourably to the results achieved in similar jurisdictions in other States and Territories, case finalisation times have increased by nearly 30 per cent since 1995-96. This has occurred in an environment of strong criminal case growth although, until 2000-01, civil caseload was in decline. Given this environment, it is essential the Court seeks to understand and manage its caseload strategically and proactively.

*A Guide to Best Practice Standards in Court and Case Management in the Local Court* was released last year and provides the Court’s first statewide time standards plus general court and case management guidelines. These guidelines were developed by the Chief Magistrate in consultation with Magistrates across the State and are presented in the Guide as a reference for both the magistracy and court administrators. The Guide, therefore,
represents a significant step toward the implementation of consistent case management practices across the Local Court.

Implementation of the Guide will also improve the quality of management information available to Magistrates and administrators as separate statistics will now be collected on civil and criminal matters. This task and the collection of data to determine the Court’s Key Performance Indicators will, however, be relatively difficult using existing information systems.

As for the Supreme Court, therefore, the Local Court has assembled most of the elements necessary to improve the efficiency and effectiveness of case processing. The major outstanding issue is, once again, the availability of management information. The timely implementation of an appropriately tailored CAS in the Local Court is of critical importance.

The Committee was concerned by the significant increase in pending caseload in the Small Claims Division and was in favour of a relatively aggressive approach to ensure full practitioner compliance.

### Recommendations

25. The Court should further investigate the nature of pending matters in the Small Claims Division in terms of their median age and to determine whether any particular type of action is over-represented. Further increases in resources, beyond that proposed to manage the demurrage cases, may be necessary.

26. Where appropriate the Local Court should impose available sanctions on litigants and/or practitioners.

Finally, with regard to ADR, the Committee found:

Mediation and arbitration work extremely well in the Local Court. Usage in the General Division is particularly high.

### Recommendation

27. Given the build up of pending matters in the Small Claims Division, mediation should be further encouraged.

The Committee received evidence regarding the particular difficulties faced by indigenous defendants and found:

More information is needed to assess the full impact of Aboriginal and Torres Strait Island (ATSI) cultural and social differences on both individual hearings and the effectiveness and efficiency of the justice system as a whole.
Recommendation

28. The courts should collect and analyse data on ATSI litigants as part of their standard dataset. The extent and effect of current judicial training programs in ATSI cultural and social issues should also be reviewed.

The Committee also heard evidence from a number of witnesses expressing concern about the closure of Local Court facilities in rural and regional NSW. The Committee found:

While changing patterns in case demand may mean physical court resources need to be reorganised from time to time, the issue of key importance was the provision of a “just, quick and cheap” legal system throughout the State.

Recommendation

29. The Local, District and Supreme Courts should explore, as a matter of priority, ways in which technology can be used to provide cost effective justice to court users in rural and regional NSW.