

Measuring Trial Court Performance: Indicators for Trial Case Processing

Don Weatherburn¹

INTRODUCTION

Public sector agencies have come under increasing pressure over the last decade to provide a clearer statement of their goals and to identify key performance indicators which can be used to monitor progress in achieving those goals. This is as it should be. Citizens are entitled to be provided with objective evidence that governments spend public money efficiently and effectively. Progress in developing performance indicators, however, has been much more rapid in some areas of public administration than others. One area where progress in developing performance indicators has been particularly difficult is that of trial court administration.

Part of the reason for this may be found in the conflicting interests involved in trial court administration. Conscious of the cost of building new court complexes, central agencies are inclined to assess trial court administration in terms of the percentage of available trial court time utilised or the number of trial cases disposed of. Conscious of the role of the trial courts in dispensing justice, judges are inclined to emphasise access to justice or adherence to due process. Conscious of the public preoccupation with court costs and delays, the media tend to emphasise cost and delay. Clearly at least some of what appears to be disputation among interested parties about the most appropriate measure of trial court performance is, in reality, disputation about the main role and function of the trial courts.

Courts themselves are increasingly taking a lead in expressly identifying their primary goals and functions. The United States Commission on Trial Court Performance Standards (1990), for

example, has identified five standards by which trial court performance in the United States should be assessed.

These are: *access to justice*; *expedition* (in case processing) and *timeliness* (in the implementation of new law and procedure); *equality, fairness and integrity*; *independence and accountability*; and *public trust and confidence*. These standards have recently been adopted (in somewhat modified form) by the NSW District Court, which has also identified the strategies which it intends to deploy in seeking to achieve them (The District Court of New South Wales 1995). To date, however, the court has not identified a detailed set of performance indicators which could be used to gauge progress in achieving these standards.

The goal of expedition in case processing is perhaps the easiest goal to construct performance measures for and it is one which has attracted a great deal of Government attention in NSW in recent years. Yet there is little obvious consensus on how one should go about the business of measuring expedition in the movement of cases through the court system. Measures of expedition in trial case processing in use in NSW over the last five years, for example, have included:

- the time between a matter being committed for trial and the date on which a trial (if one occurs) is finalised;
- the time between a matter being committed for trial and the date on which the matter is finalised (regardless of whether it is finalised by way of trial);
- the amount by which the period between committal for trial and the

date of trial finalisation (if one occurs) exceeds some designated standard;

- the time between a matter being committed for trial and the date on which a trial (if one occurs) commences; and
- the time between a matter being ready to be listed for trial and the earliest date on which it can be set down for trial.

Although the adoption of clearly stated objectives and strategies by the NSW District Court is a very significant achievement, this plethora of performance measures can easily create uncertainty about the efficiency and effectiveness with which a court system is run. If trial court performance can be made to appear satisfactory when one measure of performance is examined and unsatisfactory when another is examined, Ministers and central agencies are apt to take a sceptical view of demands for additional resources or claims that new policies are needed to improve trial court performance. Members of the interested public are also likely to take a sceptical view of Government claims about the efficiency of criminal justice. At the very least, the absence of an agreed set of performance indicators makes it difficult to achieve consensus on how to improve trial court performance. The purpose of this bulletin, then, is to discuss how we should go about the business of measuring case processing performance in trial courts.

It should be said at the outset that there are no objective considerations which can be used to define (i.e. limit) the range of information which should be collected to monitor case processing in

the trial courts. Some indicators are more fundamental than others but, with enough time and resources, there is no limit to the range of useful information which can be collected. The fact is, of course, that time and resources do limit the practical scope for collecting management information in any enterprise. In this bulletin we seek to identify those indicators which ought, ideally, to be the subject of routine monitoring in the administration of trial courts. The inclusion of these indicators in a court management information system will not obviate the need, from time to time, to conduct research into particular aspects of trial court operation.

THE GOAL OF CASE PROCESSING IN TRIAL COURT PERFORMANCE

It is the responsibility of both the Executive and the Judiciary to ensure that the trial court system is run efficiently. Questions about what constitutes efficient trial court management, however, cannot be separated from questions about the goals of trial court administration. This is nowhere more true than in relation to trial case processing. If we decide that the goal of case processing in trial court

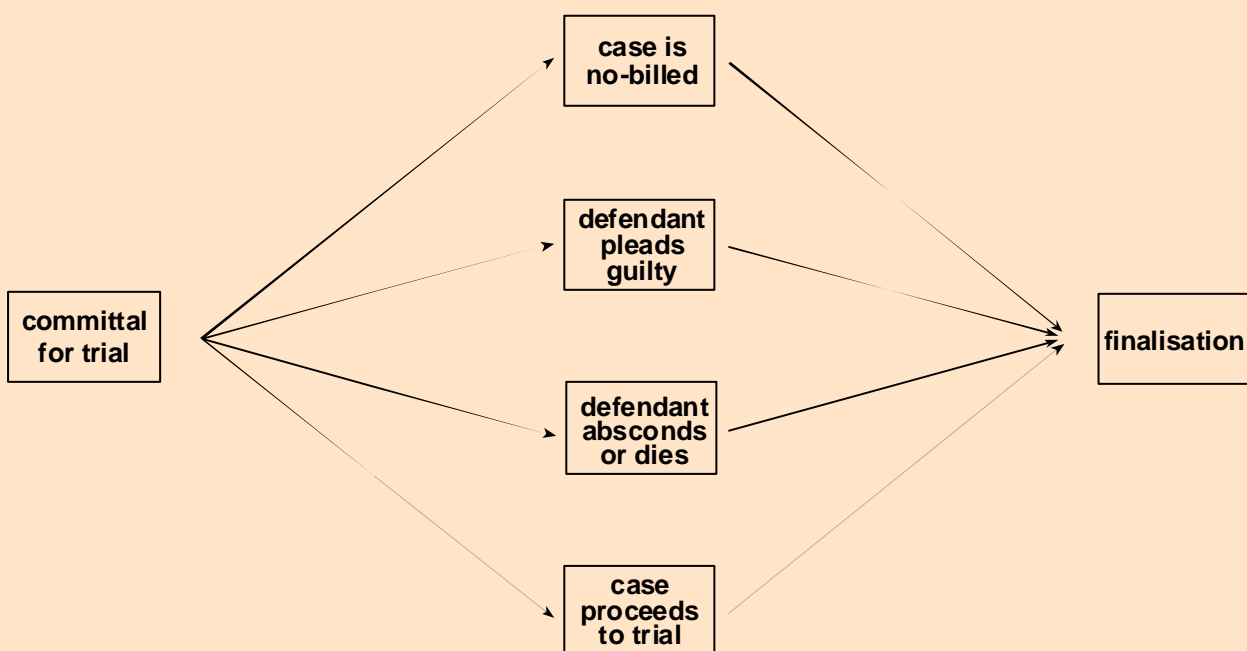
administration is to maximise the throughput of criminal trials, our efficiency assessments will tend to favour one set of performance indicators. If we decide that the goal of trial court administration is to maximise the speed with which cases are brought to trial, our efficiency assessments will tend to favour another set of performance indicators.

Courts themselves tend to regard expedition as the key goal of case processing in trial court administration. This accords with the general community belief that justice delayed is justice denied. In this bulletin we also take expedition as the principal goal of trial case processing. The goal of expedition ultimately requires attention to all classes of matter dealt with by trial courts, including criminal trials, appeals, sentence hearings and civil cases. Indeed, the NSW District Court has established time standards in relation to all four classes of case. Unfortunately there is no scope within this bulletin to take up the issue of how best to monitor expedition in relation to all of these matters. For reasons of space we shall limit ourselves to a discussion of performance indicators in relation to criminal trial case processing. This course of action is not without its

problems. In particular, it will cause us to treat the time spent by trial courts on non-trial matters less thoroughly than we should. We will return to this point briefly later on in this bulletin in order to highlight its importance and outline how the task of developing performance indicators for non-trial work should be approached.

There are basically two ways in which we can define the goal of expedition for trial court case processing. One way involves seeking to *bring* persons who maintain a plea of 'not guilty' to trial as expeditiously as possible. The other involves seeking to *finalise* such matters as expeditiously as possible. The difference between the two goals is essentially that the second implies the conduct of an expeditious trial hearing whereas the former does not. While judicial management of the trial process is important, few would be prepared to argue that fairness in the conduct of a trial should be sacrificed in the interests of a speedy hearing. We shall therefore assume that the precise goal of case processing in the trial courts is *to ensure that persons committed for trial who maintain a plea of 'not guilty' are expeditiously brought to trial*. As we shall see, this choice of goal does not obviate

Figure 1: The paths from committal for trial to case finalisation



the need to keep a close watch on trends in trial duration.

THE PRIMARY MEASURE OF CASE PROCESSING IN TRIAL COURT PERFORMANCE

From the vantage-point of those charged with administering the trial court system, responsibility for bringing matters expeditiously to trial commences once a matter is committed for trial. Depending on the seriousness of the charge(s) involved, cases may be committed for trial in either the District or Supreme Court. In practice the vast majority of cases committed for trial are committed for trial in the District Court. Figure 1 shows the paths by which a trial case may reach finalisation. It can be seen that, while all trial cases start with a committal proceeding, once a case has been committed for trial there are essentially four ways in which it can be finalised.

Firstly, it may be finalised if the Director of Public Prosecutions issues a 'no-bill' (i.e. drops the charge or charges against an accused person). Secondly, if the defendant changes plea following committal for trial, it may be finalised on a plea of guilty. Thirdly, it may be finalised if the accused person absconds or dies. Finally, it may be finalised as a result of the accused person proceeding to trial. Although it is useful to keep track of the time it takes to finalise cases by all four of these routes, the focus of interest in managing trial court systems is naturally upon those cases which actually proceed to trial. Given that our goal of case processing deliberately excludes reference to the period actually spent conducting a trial, *the most appropriate basic performance measure for the trial courts is the time between the date on which a matter is committed for trial and the date on which the trial commences*. In what follows we will refer to this as **trial hearing delay** (D).

OTHER COMMONLY USED MEASURES OF TRIAL COURT PERFORMANCE

Aside from the measure we have just defined, there are six other commonly used measures of case processing in trial court performance. These are:

- remanet finalisation delay;
- trial finalisation delay;

- pending trial caseload;
- listing delay;
- number of trial cases finalised; and
- percentage of trial court time utilised in the hearing of trials.

Since they are so often thought of as primary measures of court performance some assessment of them is in order.

Remanet finalisation delay, though sometimes misleadingly referred to as trial court delay, is the time between committal for trial and finalisation of a matter *regardless of how it is finalised*. We have referred to it as the remanet finalisation delay because the term 'remanet', although somewhat archaic, denotes a case committed for trial but carries no tacit assumptions about the method of finalisation. As a crude measure of how quickly a jurisdiction is disposing of cases committed for trial, remanet finalisation delay may have its uses. Its use as a substitute for trial hearing delay, however, is apt to give a misleadingly favourable picture of trial court performance. The reason for this is that delays for cases committed for trial but finalised on a plea of guilty or a 'no-bill' are generally much shorter than delays for cases which proceed to trial.

Trial finalisation delay is the time between committal for trial and finalisation of a trial. Unlike trial hearing delay, it includes the time spent between trial commencement and completion (i.e. the trial duration). It would be appropriate as a basic measure of performance in case processing if the goal of case processing were to *finalise* cases expeditiously. Given the goal of trial court performance we have adopted, however, it is appropriate to choose a basic measure of trial court performance which *excludes* any time spent in the conduct of a trial. In practice, at least in NSW, there is little systematic difference between trial hearing delay and trial finalisation delay because most trials rarely last more than a week while the time between committal and trial commencement is generally measured in hundreds of days.

Another commonly used measure of trial court performance is the **pending trial caseload** (i.e. the number of matters committed for trial which have not yet been finalised). A decline in the pending trial caseload is sometimes taken as evidence of an improvement in trial court performance. This conclusion may not always be warranted. Matters committed for trial are not necessarily

finalised by way of a trial. Thus a decline in the pending trial caseload may come about simply because of an increase in the proportion of matters finalised by way of a 'no-bill' or on a plea of guilty. If this happens there will be no improvement in D, whatever the decline in the pending trial caseload.

In the absence of other data, all we can infer from a decline in the pending trial caseload is the fact that fewer cases have been committed for trial than have been finalised (having previously been committed for trial). In the *presence* of data on the method of case finalisation, however, the pending trial caseload can be a very useful measure of trial court performance. The reason for this is that it can be used to gauge whether there has been a drop in the demand for trial court time. We will return to this issue in more depth in the next section of this bulletin.

A fourth measure of trial court performance sometimes used is **listing delay**. This is the period between the date of committal for trial and the earliest date on which a matter can be set down for trial. Once again, as a crude measure of trial court congestion, listing delay has its purposes. On first impressions it appears to resemble a 'booking' delay, analogous to that confronted by hotels in providing accommodation where demand for it exceeds their capacity. Since courtrooms must also be 'booked' it is natural to suppose that listing delays provide a good measure of the waiting time for a hearing. Despite its intuitive appeal as a measure of court performance, however, measures of listing delay suffer from a number of significant deficiencies.

Firstly, in the District Court (in contrast to the Local Court), many cases listed for a trial never actually proceed to trial. Secondly, most cases (in NSW at least) listed for trial in the District Court do not proceed to trial on the date they are first listed for trial (i.e. they are adjourned). This means that listing delays are usually much shorter than the time it actually takes a case to get to a hearing. In terms of our goal of case processing, they are therefore inappropriate. Thirdly, it is difficult to give objective meaning to the phrase 'the earliest date on which a matter can be set down for trial'. In practice a case can be set down for hearing on any date as long as the cases already assigned that date may be assigned later hearing dates.

A fifth measure of trial court performance sometimes used, as we noted earlier, is the throughput of a trial court system, that is, the **number of trial cases**

finalised within a given period. The main problem with this measure is that there is no necessary linkage between the number of trial cases disposed of and the time it takes to bring a trial case from committal to the start of a hearing. Trial cases in NSW, for instance, are generally classified according to whether they are likely to be 'long' or 'short' trials, with different quantities of the available trial court time being assigned to each class of case. One could temporarily increase trial case throughput by reducing the quantity of trial court time assigned to 'long' trials. In the short run this would result in a greater number of short trials being disposed of. In the long run, however, it would only result in an increase in D.

A sixth and final measure of trial court performance is the **percentage of trial court time utilised in the hearing of trials**. As we shall see later, this measure is extremely useful in understanding trends in D. But a growth in the percentage of trial court time utilised in the hearing of trials does not necessarily imply a reduction in D. The full argument behind this conclusion is quite complex and has been fully explained elsewhere (Lind, Weatherburn & Packer 1991). In brief, the argument is as follows. At low levels of trial court utilisation, an increase in utilisation may result in more trials being held and shorter trial hearing delays. Due to the inherent variability of trial duration, however, the smaller the gap between trial court capacity and the demand for trial court time, the greater the risk that demand for trial court time will exceed trial court capacity. If demand for trial court time exceeds trial court capacity, trial hearing delay will tend to grow.

SECONDARY INDICATORS OF TRIAL COURT PERFORMANCE

On their own, trends in trial hearing delay provide guidance on whether courts are expeditiously bringing trial cases to a hearing but provide no guidance on the cause of unsatisfactory court performance. They therefore provide no means of gauging which strategies might be effective in improving trial court performance. This suggests the need for a 'layer' of secondary indicators, employed not because they provide a basis for assessing trial court performance, but because they assist in *explaining* and *understanding* trends in that performance.

To construct such a set of indicators it is necessary to reflect for a moment on the factors which influence trial hearing delay. Trial hearing delay may be broken up into two components, namely preparation time and queuing delay.

Preparation time is occupied by all the procedures required to bring a matter to the point where it can be listed for trial. In other words, it is the time between a matter being committed for trial and the date on which a trial hearing date is first set. In NSW, preparation time is not a very significant part of trial hearing delay. However, because a growth in trial hearing delay may in theory come about because of a growth in preparation time, for completeness we include:

- preparation time (PT)

among our secondary indicators of trial court performance.

Queuing delay is the time between the date on which a hearing date is first set and the date on which a hearing (i.e. trial) commences. Queuing delay is unquestionably the most substantial contributor to trial hearing delay. When trial hearing delays grow it is typically because of a growth in queuing delay. Yet although (in the absence of any other information) it would be of use to know whether a growth in trial hearing delay has come about as a result of a growth in queuing delay, for practical purposes it is much more important to know *why* queuing delay is growing. This suggests that the factors which influence queuing delay are likely to be more useful as secondary indicators of trial court performance than queuing delay itself.

Queuing delay is determined by five factors, each of which is an important secondary performance indicator. These are:

- amount of trial court time available to hear trials (TA);
- percentage of trial court time utilised in the hearing of trials (PU);
- trial duration (TD);
- number of cases registered for trial (NR); and
- proportion of matters registered for trial which proceed to trial (PP).

Note that PP can only be monitored by keeping continuous track of the outcome of matters registered for trial.

The indicators TA and PU can be thought of as providing information about trial court capacity. The measures TD,

NR and PP can be thought of as providing information about the demand for trial court time. Queuing delay (and therefore D), is driven by the balance between demand for trial court time and trial court capacity. A reduction in TA or PU, or an increase in TD, NR or PP will lead to a growth in queuing delay *but only when the result is insufficient trial court time to hear the matters which are competing for trial court time, that is, only when the demand for trial court time exceeds trial court capacity.*

It would clearly be useful to construct a secondary performance indicator which gave early warning this was likely to occur. The pending trial caseload can be used for this purpose because reductions in D will only occur after there has been a reduction in the pending trial caseload. We therefore include the:

- pending trial caseload (PC)

among our secondary performance indicators. Changes in PC, however, should always be read in concert with information on PP, that is, the proportion of matters proceeding to trial. The reason for this is as follows.

The pending trial caseload will rise whenever the number of trial matters committed for trial in any given period exceeds the number of trial matters finalised over that period. However, this situation does not necessarily portend a growth in D. Figure 1 tells us that the additional matters registered for trial may not end up proceeding to trial and, if they do not, the underlying balance between the demand for court time and court capacity will not change. Thus only when one observes a growth in PC *and no change in PP*, can one reasonably expect a growth in D. The secondary indicators PP and PC should therefore always be examined together.

An alternative and more sensitive forward indicator of changes in D is the **age of the pending trial caseload**. For practical purposes, changes in D are only observed once cases are finalised. But if the average period of time spent by trial cases not yet finalised is rising *and those cases end up proceeding to trial*, there will be a rise in the value of D.

In general, there should be a close correspondence between the age of the pending trial caseload and its size (i.e. the magnitude of PC). The age of the pending trial caseload, however, is a more sensitive forward indicator of changes in D, than PC. Unfortunately, the age of the pending trial caseload can

only be monitored if one can keep continuous track of the age of each individual case in the pending trial caseload and compute summary measures of age (e.g. averages) across these cases. This requires a higher level of automation in case tracking than one finds in the NSW District or Supreme Court. For this reason alone we shall exclude it from our secondary measures of trial court performance.

Another, so far unmentioned, factor which is commonly thought of as influencing trial hearing delay is the number of adjournments. It is a common assumption that, as the number of adjournments increases, trial court hearing delays will lengthen. In fact, although cases which are adjourned will obviously take longer to get to a hearing than cases which are not adjourned, adjournments only exert an overall influence on trial hearing delays if they result in a wastage of trial court time. To see this more clearly, consider the following example drawn from Weatherburn (1993).

Suppose five cases are awaiting trial at any given time and that each case consumes a day of court time. Let us number the cases from 1 to 5 in the order in which they have been registered and listed for trial. Case number 1, due to go to trial, is instead adjourned and goes to the back of the queue. Since each case takes a day to dispose of and there are now four cases in front of it, case number 1 must now wait four days for a hearing. On the other hand, if cases 2, 3, 4 and 5 can take advantage of the hearing date vacated by case 1, each one of them will be heard a day earlier.

With five cases in the queue at any one time, case 1 will have to wait four working days to get back to its pre-adjournment position at the head of the queue. The adjournment, however, allows case 2 to go on immediately. Cases 3, 4 and 5, respectively, wait one, two and three days for a hearing. Summing the delay for each of the five cases and dividing by five gives a figure of two days as the average waiting time for trial when there is an adjournment. Notice, though, that the result would have been the same even if there had been no adjournment. The average delay would then have been made up of: no delay for case 1 and delays of one, two, three and four days for cases 2, 3, 4 and 5, respectively. Dividing the sum of these delays by five also gives a figure of two days as the average waiting time for trial for the five cases.

The situation changes significantly when adjournments result in wasted trial court time. Suppose, for example, that as a result of an adjournment of case 1, case 2 could not be heard at the time previously allocated for case 1. Then the respective delays for each case would have been five days (case 1), one day (case 2), two days (case 3), three days (case 4) and four days (case 5). Dividing the sum of these delays by five gives a waiting time for trial of three days instead of two days. Clearly then, adjournments are relevant to an understanding of trends in trial case delay but only because of their impact on the effective use of trial court time. This means that it is not necessary to monitor trends in the number of adjournments but it is desirable to keep track of their effect on the utilisation of trial court time. The issue of how best to keep track of the utilisation of trial court time is the subject of the next section of this bulletin.

TERTIARY INDICATORS OF TRIAL COURT PERFORMANCE

Changes in the secondary indicators mentioned above will in most cases provide enough information to suggest possible remedial strategies. In certain circumstances, however, it may be useful to employ several 'tertiary' indicators of trial court performance, that is, indicators which are useful in explaining the behaviour of our secondary indicators. The circumstances, typically, are those where a secondary indicator provides warning of a management problem but insufficient information to guide remedial action.

In NSW (and, perhaps, most other jurisdictions) a large percentage of the available trial court time is either lost or used in non-trial matters. In the Sydney District Court, for example, in 1994, less than 60 per cent of the available trial court time was consumed in the hearing and disposition of criminal trials (The District Court of New South Wales *Annual Review 1994*). The remaining time was either not spent in any formal hearing (i.e. it was 'lost' for various reasons, such as insufficient trial cases being listed or adjournments) or given over to one of the following non-trial activities:

- conducting sentence hearings;
- dealing with 'short' matters (e.g. mentions, applications for bail);
- hearing appeals against decisions in Local Courts; and

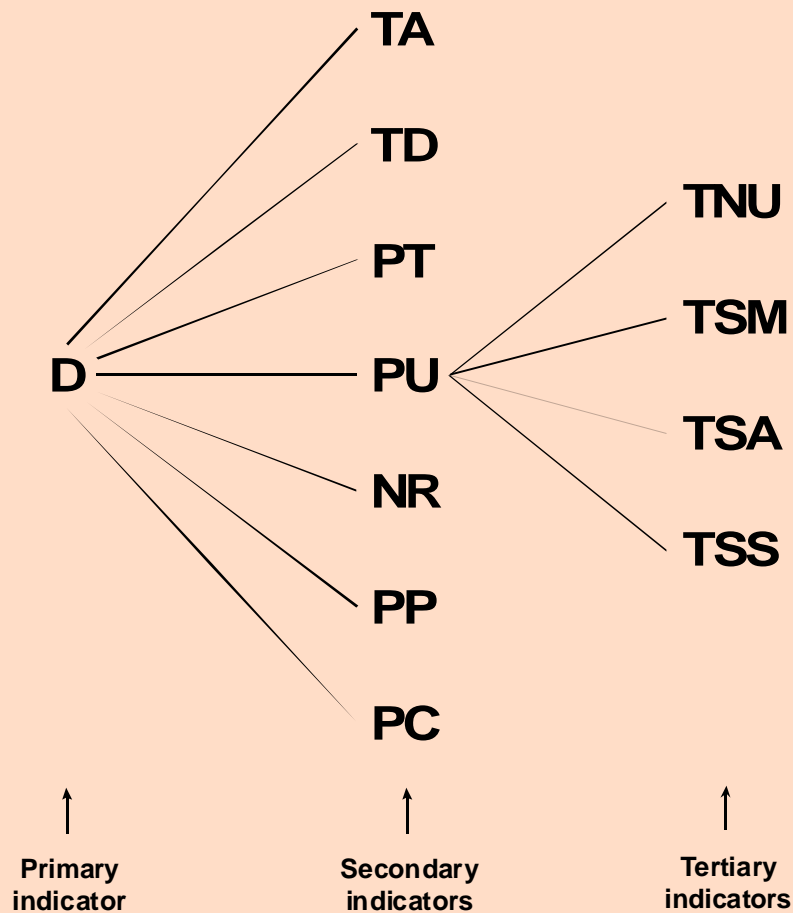
- hearing certain civil matters.

The secondary indicator PU captures the combined influence of all of these factors but does not allow us to distinguish between any of them. This is an unsatisfactory situation. Without further information, the knowledge that an increase in trial hearing delay is attributable to a drop in PU provides no immediate guide to remedial action. If a growth in adjournments is the cause of a decrease in PU, for example, we might want to look at strategies designed to encourage greater judicial control of trial court proceedings. This same strategy will be of little avail if the cause of a reduction in PU is an increase in the amount of trial court time spent hearing appeals.

There is clearly some value in maintaining a layer of tertiary performance indicators which can be used to monitor the factors which influence PU. But which of the factors listed above (i.e. sentence hearings, 'short' matters, Local Court appeals and civil matters) should be regarded as influencing PU? The percentage of criminal trial court time spent on civil matters in the NSW District Court is so small (less than 0.2 per cent) as to be hardly worth considering.² In principle, we could treat each of the remaining factors (sentence hearings, 'short' matters and appeals) as the subject of a tertiary performance indicator. This course of action, however, presents a problem for the NSW District Court when dealing with sentence matters.

The heart of the problem is that some sentence hearings are the outcome of cases in which a person is convicted after a trial while others are the outcome of a committal for sentence (i.e. are the result of a defendant pleading guilty). A tertiary indicator designed to measure the utilisation of trial court time in sentence matters should, in theory, only pick up time spent on sentence matters which are the result of a sentence committal. Sentence hearings which are an integral feature of the trial process should be added to the overall duration of trials when measuring TD. This procedure would be straightforward if sentence hearings which resulted from a trial were always held immediately after the trial. Unfortunately (from the standpoint of court performance monitoring) it is often desirable for courts to adjourn a case for sentence following the conviction of a defendant on one or more charges. The sentence hearings which result from these adjournments are listed en bloc with those issuing from a sentence committal.

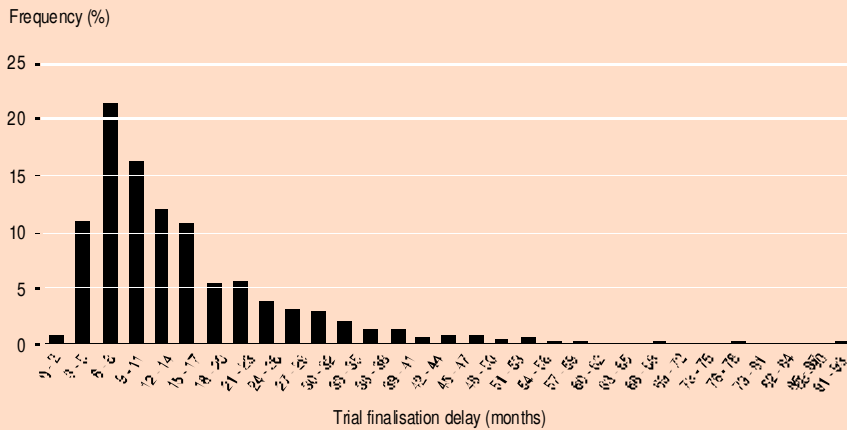
Figure 2: The hierarchy of trial case processing performance indicators



Legend:

- D = trial hearing delay
= time between committal and trial commencement
- TA = amount of trial court time available to hear trials
- TD = trial duration
- PT = preparation time
= time between committal and date on which a trial hearing date is first set
- PU = percentage of trial court time utilised in the hearing of trials
- NR = number of cases registered for trial
- PP = proportion of matters registered for trial which proceed to trial
- PC = pending trial caseload
= number of matters committed for trial but not yet finalised
- TNU = trial court time not utilised in any formal hearing
- TSM = trial court time spent dealing with 'short' matters
- TSA = trial court time spent hearing appeals against Local Court decisions
- TSS = trial court time spent dealing with sentence matters

Figure 3: Frequency distribution of trial finalisation delay for persons on bail NSW District Court 1995



Given current levels of court computerisation, many courts (including the NSW District and Supreme Courts) would probably find it extremely difficult to construct a measure of TD which (a) includes the entire period from commencement of a trial to the end of the sentence hearing whenever a sentence hearing occurs immediately after the trial but which (b) adds sentence hearing time to the period between trial commencement to trial completion whenever the sentence hearing is adjourned. The more practical course of action would be to count the period of the sentence hearing in measuring TD whenever the sentence hearing is contiguous with the trial and construct a tertiary indicator for time spent on sentence hearings in all other cases.

The foregoing considerations suggest that there are four tertiary performance indicators of potential use in trial court management. These are:

- trial court time not utilised in any formal hearing (TNU);
- trial court time spent dealing with ‘short’ matters (TSM);
- trial court time spent dealing with sentence matters (TSS); and
- trial court time spent hearing appeals against Local Court decisions (TSA).

Note that, in the light of the above discussion, the measurement of TSS in NSW should exclude time spent on sentence hearings which are contiguous with the trial itself.

BUILDING IN PERFORMANCE INDICATORS FOR NON-TRIAL WORK

So far we have only discussed the task of monitoring the speed with which trial courts bring criminal trial cases to a hearing. That may have created the misleading impression that the time spent by trial courts on non-trial work, such as sentence and appeal hearings, is simply a distraction from the main task of bringing criminal trial cases to a hearing as expeditiously as possible. In fact, as noted earlier, trial courts are obliged to ensure that all classes of case with which they deal are expeditiously brought to a hearing. The question therefore arises as to whether any adjustments would need to be made to the set of performance indicators we have identified in setting up case processing performance indicators for all the case processing work performed in trial courts, including that pertaining to sentence matters and appeals.

The answer to this question is that modifications are required but they are simply additions to the performance indicator set. For each different class of matter dealt with by a trial court the first step is to identify a measure of delay which will serve as an appropriate primary performance indicator. For appeal matters, for example, this would be a measure of the time between the registration of an appeal and the commencement of the appeal hearing. Factors which play a significant role in

influencing the primary indicator then become possible subjects for secondary or tertiary indicators. In the case of appeal matters, such indicators would include the number of appeals registered, the average duration of an appeal, the amount of trial court time available to hear appeals and the percentage of appeals registered which proceed to a hearing.

Furthermore, just as we have defined an indicator (TA) which measures the quantum of time set aside to hear trial matters, so too we need to define indicators for the quantities of time set aside to hear matters such as sentence cases and appeals. Similarly, just as we defined an indicator (PU) for the percentage of trial court time actually utilised in the hearing of trials, so too we need indicators for the percentage of trial court time set aside to hear sentence matters and appeals which is actually consumed in hearing each of these classes of case.

Of course, not all the secondary indicators we have defined will be of use for all classes of matter. Whereas, for example, a large proportion of matters registered for trial do not proceed to trial, virtually all matters committed for sentence actually proceed to sentence. Thus although it is important to establish an indicator of the percentage of cases registered for trial which actually proceed to trial (PP) when managing trial cases, no equivalent need arises in relation to sentence cases.

REPORTING ON TRIAL COURT PERFORMANCE INDICATORS

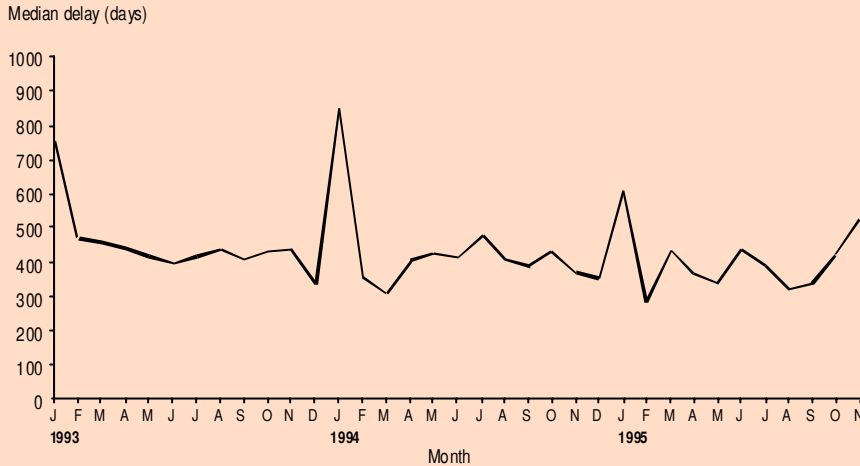
The relationship among measures of case processing we have now defined is summarised schematically in Figure 2.

The final question we must address is how best to present data on these measures of performance. There are two interrelated aspects to this question: how frequently should courts report on these measures and what form should that reporting take.

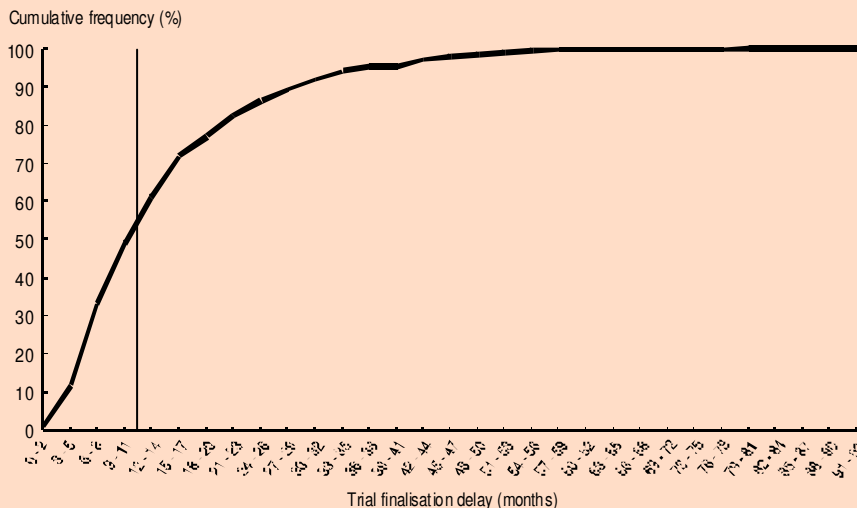
MONITORING THE PRIMARY PERFORMANCE INDICATOR (D)

Figure 3 shows the variation in trial finalisation delay for cases (where the defendants were on bail) which

**Figure 4: Median trial finalisation delay for persons on bail
NSW District Court, January 1993 to November 1995**



**Figure 5: Cumulative frequency distribution of trial finalisation delay
for persons on bail
NSW District Court 1995**



proceeded to trial in the NSW District Court during 1995. As noted earlier, this period differs from the primary measure of performance defined in this bulletin only in that it includes trial duration. Since trial duration is an inconsequential part of trial finalisation delay for the vast majority of cases concluded in the District Court, for our purposes it will suffice to illustrate the problems associated with the measurement of trial hearing delay (i.e. D).

Figure 3 indicates that values of D vary dramatically from case to case. In particular, delays for some cases proceeding to trial are very long. Since we do not want to respond to random variations in D, we need some means by which to separate any underlying trends

in D from such variation. There are a variety of techniques which can be employed to this end. In the present context it is desirable to choose a measure of D which is not affected unduly by extreme values of delay. One of the simplest solutions is to group cases by month and plot the median value of D in each month as shown in Figure 4.

There is clearly less variation in the measures of trial finalisation delay in Figure 4 than in Figure 3 but the variation is still considerable. In particular, there are notable increases in delay during January of each year during the court vacation. If we were to review progress in managing D on a monthly basis we would still find ourselves unsure about

whether an increase in D was something to worry about or nothing more than random month to month variation. We can deal with this problem by ensuring that we examine trends over a reference period of (say) 12 months but this still leaves us with the problem of deciding how often we should review the trends.

Perhaps the most powerful short-term measure available to the courts to reduce D (or the factors which adversely affect it) is through increases in TA or PU. This can be done, for example, by altering the allocation of court time between criminal and civil work or by putting on additional judges. These sorts of changes usually take some months to implement and are best implemented at the start of a new year or new law term. Their effects also take some time to be felt. There is therefore probably little point in reviewing the court performance indicators we have been discussing, much more frequently than once every three months. We can improve the process of monitoring D still further, then, if we plot the trends in D on a monthly basis, review them only every three to six months and ensure at each review that we examine trends over a reference period of 12 months or more.

The strategy of plotting monthly trends in D and reviewing them every three months assists us in determining whether D is increasing or decreasing. It is good management practice, however, to define a standard of performance regarded as satisfactory for an organisation and seek to measure progress in achieving it. This is especially true wherever it is imperative for an organisation to ensure that a large proportion of some population of individuals receive some minimum standard of service.

Trial courts are increasingly often endeavouring to meet some minimum standard of service in case processing. The NSW District Court, for example, has recently stipulated that it will seek to ensure that 90 per cent of cases proceeding to trial reach a hearing within 112 days and that 100 per cent of cases proceeding to trial are reached within 12 months (The District Court of New South Wales 1995). By definition, the median value of D in any given month can be used to gauge how long it takes to bring 50 per cent of matters to a hearing. However unless, by some happy accident, the median delay we observe corresponds with our time standard it will give us no useful information on what proportion of matters take longer than that standard.

This problem can be dealt with by plotting the cumulative distribution of D and drawing a vertical line through the distribution at the point represented by our standard, as shown in Figure 5.

The vertical line in Figure 5 represents the District Court's performance standard of 12 months. It can be seen that currently only about 50 per cent of matters where the accused person is on bail meet the standard (although it should be remembered that Figure 5 plots the cumulative distribution of time to finalise trial matters rather than bring them to trial). Thus plotting the cumulative distribution of D is a useful way of gauging trial court performance relative to some declared time standard.

Cumulative distributions of D in the NSW District Court are likely to vary somewhat from one three month period to the next, particularly when they coincide with the January court vacation. Indeed, they are likely to vary significantly from one period to the next in any court jurisdiction where the number of cases proceeding to trial in a given period is too small. This raises the question of how one measures progress from one time period to another in the percentage of matters meeting some time standard.

It is difficult to state in simple terms what number of cases constitutes too small a

sample for the purpose of constructing and comparing cumulative distributions of D. There are statistical techniques which can be used to assess whether the difference between any pair of cumulative distributions could have come about by chance, even where the number of cases involved is relatively small. These techniques are probably not worth applying unless it is especially important to know whether D has changed (even by a small amount) from one time period to another. As a rough rule of thumb it is therefore probably not advisable to construct and compare cumulative distributions of D when the number of cases which have proceeded to trial in any period is less than 100.

MONITORING SECONDARY AND TERTIARY PERFORMANCE INDICATORS

Since changes in secondary and tertiary performance indicators are used to interpret and understand changes in D, information on them should be provided at the same time as that on D, that is, every three to six months. It should also cover a reference period identical to that over which information on D is provided,

that is, at least 12 months. There are three other specific points to note about the construction and monitoring of each of the secondary and tertiary performance indicators we have referred to.

Firstly, four of the seven secondary indicators (PT, TA, PU and TD) and all four of the tertiary indicators (TNU, TSM, TSA and TSS) involve measurements of time. For the purposes of measurement these indicators need to be placed in two groups. TA, PU, TNU, TSM, TSA and TSS do not involve case-related measurements whereas PT and TD do. We can sum the total court time available or lost during any specified period and obtain a good picture of the trend in trial court availability or usage. Accordingly it suits our purposes in monitoring TA, TNU, TSM, TSS and TSA to keep a running (monthly) total of each.

For the purposes of monitoring PT and TD, however, we need a summary statistic which will tell us whether there has been a change in the amount of preparation time for each case or a change in the duration of each trial. The secondary indicators PT and TD will obviously vary considerably from case to case. We could use the median PT or TD as our summary measure of each but, unlike the situation with D, we do not wish to exclude very large values of PT

Glossary

- D = trial hearing delay
= time between committal and trial commencement
- TA = amount of trial court time available to hear trials
- TD = trial duration
- PT = preparation time
= time between committal and date on which a trial hearing date is first set
- PU = percentage of trial court time utilised in the hearing of trials
- NR = number of cases registered for trial
- PP = proportion of matters registered for trial which proceed to trial
- PC = pending trial caseload
= number of matters committed for trial but not yet finalised
- TNU = trial court time not utilised in any formal hearing
- TSM = trial court time spent dealing with 'short' matters
- TSA = trial court time spent hearing appeals against Local Court decisions
- TSS = trial court time spent dealing with sentence matters

and TD from consideration. A very few cases involving long preparation times or long trials may in fact provide the reason for an upward trend in D. It is more appropriate, therefore, to monitor the average (i.e. mean) PT and TD per case than it is to monitor the median PT or TD, since this will assist us to pick up the influence of large values of PT and TD on D.

Finally, although it is desirable to monitor monthly trends in both NR and PP, in the NSW District Court and, more especially, in the NSW Supreme Court, it is difficult to obtain meaningful monthly measures of PP. The reason for this is that the proportion of matters proceeding to trial varies markedly from month to month, especially in courts handling a small number of trial cases. Thus, whereas it is informative to measure NR on a monthly basis, measures of PP are best taken on a less frequent (e.g. quarterly) basis. This means that longer reference periods will be necessary to detect trends in PP than to detect trends in NR. All the same, a reference period of 12 months should suffice to detect any substantial upward or downward trend.

CONCLUSION

The main theme running through this bulletin is that there is much more to the business of monitoring case processing in the trial courts than reaching agreement on which measure of case processing delay to adopt. Court administrators and judicial officers who do not know why courts are failing to ensure the expeditious passage of trial cases through the court system can hardly be expected to agree upon, let alone implement, effective strategies for dealing with the problem. In order to understand why trial courts are failing to achieve the goal of expeditious case processing it is as vital to monitor factors which influence trial hearing delay as it is to measure trial hearing delay itself.

We have recommended a fairly detailed set of performance indicators designed to address this problem. It must be acknowledged that they represent something of a challenge to construct, especially in those courts which have rudimentary management information systems. In NSW it is possible to obtain information on only three performance indicators electronically (D, NR, PP). Manual procedures for collecting information on others, such as TA, TD, TSM, TSS and TSA have been

established by the courts but reporting on them generally occurs only annually and some of them may need refinement in the light of the issues raised in this bulletin. Others, such as PT, PU, TNU are still awaiting development.

The task of constructing and reporting on the performance indicators mentioned here should not be underestimated for another reason. Useful, reliable and valid management information systems require more than just appropriate data collection procedures. They require appropriate staff training programs, data auditing programs and good report production capabilities. In many instances they also require changes to the development of computing systems. Above all, they require a senior management willing and able to come to grips both with the exigencies of case processing in the trial courts and with the basic statistical knowledge required to analyse those exigencies. Persons unfamiliar with trial court processes cannot be expected to be able to interpret the data they produce, whatever their expertise in statistics or computing. Persons unskilled in the construction and interpretation of court performance indicators, on the other hand, cannot be expected to carry out skilled diagnoses of trial court performance problems.

Among the secondary and tertiary indicators we have discussed, the most important are unquestionably NR, PP, TD and TA, since these provide basic information on the balance between demand for trial court time and trial court capacity. Work on the construction of management information systems incorporating these indicators should take precedence over work on any of the others. At the same time, it should be remembered that expedition in case processing is just one of the goals of trial court management. Management information systems for trial courts need to provide reliable, timely and accurate information on all aspects of trial court administration, not just those pertaining to expedition in case processing.

Perhaps the most important precondition for more efficient case processing in trial court administration, however, is the need for explicit accord between the Judiciary and the Executive on its goals. If the goal of case processing is deemed to be to provide the greatest throughput of trial cases for the smallest cost, as central agencies are sometimes thought to assume, the number of trial cases disposed of or the percentage of trial

court time utilised will serve well as fundamental indicators of trial court performance. But if the goal of case processing in trial court administration is deemed to be to provide the most expeditious passage of trial cases (for the smallest cost), as the courts increasingly seem to assume, the adoption of these measures as *primary indicators of case processing performance* will hamper rather than facilitate progress in achieving an efficient trial court system. The starting point for reform of court management information systems, therefore, should be an open and frank discussion between the Executive and the Judiciary on the goals of trial court administration.

NOTES

- 1 Director, NSW Bureau of Crime Statistics and Research. My thanks to Bronwyn Lind and Christine Coumarelos for very helpful discussions about and comments on the material contained in this bulletin, to Maria Gojski for extracting the data in the figures, to both Les Kery and Jonathan Nichol for preparing the figures, and to Les Kery for desktop publishing.
- 2 Note the emphasis on 'criminal' trial court time. Both the NSW District and Supreme Courts spend a significant amount of overall trial court time on civil matters.

REFERENCES

- Commission on Trial Court Performance Standards 1990, *Trial Court Performance Standards*, National Centre for State Courts and the Bureau of Justice Assistance, United States Department of Justice.
- The District Court of New South Wales n.d., *Annual Review 1994*, The District Court of New South Wales, Sydney, p. 31.
- The District Court of New South Wales 1995, *District Court of NSW Strategic Plan*, The District Court of New South Wales, Sydney.
- Lind, B., Weatherburn, D. & Packer, J. 1991, *Planning Optimum Court Capacity*, NSW Bureau of Crime Statistics and Research, Sydney, p. 9.
- Weatherburn, D. 1993, *Grappling with Court Delay*, Crime and Justice Bulletin No. 19, NSW Bureau of Crime Statistics and Research, Sydney.

Other titles in this series

- No. 1 *Trends in Serious Crime in NSW*
- No. 2 *Bail in NSW*
- No. 3 *Heroin Use and Crime*
- No. 4 *The Criminal Prosecution Process in NSW*
- No. 5 *Homicide*
- No. 6 *Court Delay and Prison Overcrowding*
- No. 7 *Arson in NSW*
- No. 8 *Suicide*
- No. 9 *Juvenile Justice and the Children's Court in New South Wales*
- No. 10 *Sentencing Assault Offenders in the Higher Courts in New South Wales*
- No. 11 *Uses and Abuses of Crime Statistics*
- No. 12 *Domestic Violence in NSW*
- No. 13 *Aspects of Malicious Damage*
- No. 14 *Imprisonment Rates in NSW and Victoria: Explaining the Difference*
- No. 15 *Aspects of Demand for District Criminal Court Time*
- No. 16 *Stealing in NSW*
- No. 17 *Preventing Credit Card Fraud*
- No. 18 *Understanding Committal Hearings*
- No. 19 *Grappling with Court Delay*
- No. 20 *Adult Sexual Assault in NSW*
- No. 21 *Trends in Homicide 1968 to 1992*
- No. 22 *Women as Victims and Offenders*
- No. 23 *Why does NSW have a higher imprisonment rate than Victoria?*
- No. 24 *Household Break-ins and the Market for Stolen Goods*
- No. 25 *The Limits of Incapacitation as a Crime Control Strategy*
- No. 26 *Women in Prison*
- No. 27 *Risk Management in Assembling Juries*
- No. 28 *Crime Perception and Reality:
Public Perceptions of the Risk of Criminal Victimization in Australia*
- No. 29 *Methadone Maintenance Treatment as a Crime Control Measure*