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The impact of the Early Appropriate Guilty Plea reforms on guilty pleas, time to justice, and District Court finalisations

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AIM To measure the impact of the Early Appropriate Guilty Plea (EAGP) reforms on guilty pleas, court delay and weekly court finalisations.

METHOD We compare cases initiated by the Office of the Director of Public Prosecutions (ODPP) after the EAGP reforms (i.e., with a charge date on or after the 30th April 2018 and finalisation date before 16 March 2020) to cases initiated before the reforms (i.e., with a charge date after 13 June 2016 and a finalisation date before 30 April 2018), using a regression approach that controls for demographics, offence characteristics, prior criminal history, seasonality, and court and magistrate practices. Five outcomes are considered: (1) the percentage of early guilty pleas; (2) the percentage of guilty pleas overall; (3) the percentage of matters initiated by the ODPP finalised in the Local Court; (4) the average time from charge to finalisation and; (5) the weekly number of case finalisations in the District Court.

RESULTS We find (a) a 6.5 percentage point increase in early guilty pleas (b) no change in the proportion of cases committed to the District Court that were resolved by way of guilty plea (c) no substantial change in the proportion of ODPP cases finalised in the Local Court (d) a 6.7 p.p. increase in the proportion of ODPP matters resolved by a guilty plea in the Local Court (e) a significant decrease in days from committal to finalisation (from 182 days on average to 155 days) and (f) a significant increase in the number of District Court finalisations of between 7.5 and 12.3 additional matters per week. Although not intended, the results also revealed a significant increase in days from charge to finalisation for matters that were finalised in the Local Court.

CONCLUSION The EAGP reforms achieved most of its objectives but further research, using a longer follow-up, will be necessary to gauge its effect on matters proceeding to trial in the District Court.

KEYWORDS

Court processes and delay

Legislative evaluation

District Court

INTRODUCTION

In recent years, the New South Wales (NSW) District Criminal Court (hereafter the District Court) experienced a significant increase in the size of its pending trial caseload (Thorburn & Weatherburn, 2018). Late guilty pleas (viz. pleas entered on or close to the trial date) have been identified as one of the contributors to this congestion. The NSW Law Reform Commission (2014) identified several inefficiencies in the District Court process that discourage early guilty pleas. Senior crown prosecutors, who make the final decision on the contents of the indictment did not generally become involved in a case until close to the date on which it has been set down for trial (Thorburn & Weatherburn, 2018). This caused some defendants to delay pleading guilty in the expectation that the charges against them would eventually be changed or downgraded. Late changes to the prosecutor dealing with the case also discouraged early negotiations between prosecution and defence that could have resulted in more early guilty pleas.

Congestion in the District Court is problematic for many reasons. Court delay can increase stress on victims, delay justice for the community, waste time and resources of police, courts and lawyers, and delay offender entry into programs that can address their offending behaviour. Long delays in the finalisation of criminal proceedings might also serve to reduce the deterrent effect of punishments imposed by the courts (e.g. Chalfin & McCrary, 2017; Dalla Pellegrina, 2008; Torre, 2003). Finally, court delay places stress on prisons by increasing the number of defendants that are remanded in custody while awaiting trial, if these defendants would not have otherwise been in sentenced custody. Remand has negative impacts for both the defendant and the State, including the increased financial cost to the State of incarceration and various social, economic, legal and emotional consequences for the defendant (see Kirk & Wakefield, 2018).

The NSW government has introduced several measures aimed at reducing the District Court backlog.¹ The Early Appropriate Guilty Plea (EAGP) reforms is one such measure. The EAGP reforms sought to increase the number of early guilty pleas by: streamlining the process by which the police compile their evidence; ensuring that a single senior crown prosecutor is responsible for a given case; ensuring that the charge(s) associated with a given case does not change over time; increasing the level of communication between the prosecution and defence; giving the Office of the Director of Public Prosecutions (ODPP) more control over which cases proceed to the higher courts; and finally, by introducing sentencing discounts at different stages of the court process.

The criminal justice process prior to the EAGP reforms

Criminal proceedings generally begin when a government agency (most commonly the NSW Police Force) charges an individual with one or more offences. After this occurs, the matter must be finalised in a NSW Criminal Court. The first few court appearances occur in the Local Court. During these hearings, the prosecution lays out evidence (summarised in a "brief of evidence") against the defendant. The defendant formally enters a plea to the charge(s) (guilty or not guilty) and the magistrate determines whether bail should be granted.

Proceedings from then on depend on the nature of the offence that the defendant has been accused of. There are three types of offences in NSW: summary offences, Table offences, and strictly indictable offences. Summary offences are less serious offences and are finalised in the Local Court. This can occur through a defended hearing, if the defendant enters a plea of not guilty, or a sentence hearing if they plead guilty to the offence. Table offences are more serious offences (e.g., assault occasioning actual bodily harm) that can be finalised summarily in the Local Court or a higher court if the prosecutor or in some circumstances, the defendant, elects to deal with the matter on indictment.² Strictly indictable offences are the most serious offences (e.g., murder, assault occasioning grievous bodily harm) and must be finalised in a higher court (i.e., the District or Supreme Court). For elected table and strictly indictable

¹ This includes the appointment of an additional seven judges to the District Court (NSW Department of Justice, 2018), and the Table Offences Reforms (Ringland, 2020).

² For Table 1 offences, the defendant may elect to have the matter dealt with in the higher courts.

offences, defendants appear before a magistrate for a “committal hearing”. In this hearing, the magistrate determines whether there is enough evidence to warrant committal to the higher courts or whether the charges should be dismissed. If there is sufficient evidence to proceed, the magistrate either commits the matter to trial (if the defendant entered a plea of not guilty) or to sentence (if they entered a plea of guilty). Matters that proceed to the higher courts (i.e., elected Table offences and strictly indictable offences) take the longest to finalise and have the most intensive process in both the Local and higher courts.

Before the EAGP reforms there were several inefficiencies in the process. Firstly, the NSW Police Force would prepare a brief of evidence for the prosecution, but this brief of evidence was often delayed. This was largely because the NSW Police Force had to prepare this brief in a form admissible in court, which was time-consuming to prepare. Similarly, there would often be further delays if they were incomplete as the prosecution would need to requisition additional information from the police. Secondly, the prosecution could change the charges against the defendant at any time, even as late as the day of the trial. This meant defendants rarely pleaded guilty early in the criminal process as they hoped their charges would be downgraded in later stages. Thirdly, there was no requirement for the prosecution and defence to discuss the case prior to committal. Informal discussions may have occurred but often involved lawyers who did not have the authority to negotiate the charge. This delayed the resolution of any matters further into the criminal process. Finally, although a 25% sentencing discount was available to defendants pleading guilty “at the earliest opportunity”, it was not clear at what point in the process this would be applied. In fact, the earliest opportunity could be the date of the trial if the prosecution made late changes to the charges. Taken together, these processes meant that there was little incentive for a defendant to enter an early guilty plea.

The EAGP reform program

The EAGP reform program commenced on 30 April 2018. It changed the criminal justice process for all matters dealt with on indictment. This included all strictly indictable matters and elected Table offence matters that were finalised in the higher courts. However, some cases may have begun on indictment but through charge negotiation offences were downgraded or a mutual agreement was reached to have the matter dealt with summarily in the Local Court. These cases would have been impacted by at least some of the EAGP processes.

The EAGP reform program changed the criminal process for these matters in five meaningful ways. First, the reforms streamlined the brief of evidence provided by police. Under the EAGP reforms, the police generate an *inadmissible* summary of the evidence which is simpler to prepare than the previous admissible document. This change is expected to reduce the time taken for police to summarise evidence, enabling the ODPP to review the charges at an earlier stage. It also enables the police to reallocate resources toward cases that are expected to proceed to trial.

Second, the EAGP reforms introduced a requirement that the prosecution certify charges within six weeks of receiving the brief of evidence. Charge certification seeks to encourage earlier guilty pleas by removing the expectation that charges could be downgraded further on in the proceedings.

Third, the EAGP reforms introduced mandatory case conferencing. This involves a meeting between senior crown prosecutors (who have the authority to negotiate a plea bargain, ideally the prosecutor who certified the charges) and defence counsel at the Local Court level to determine whether there are any offences to which the accused is willing to plead guilty and facilitate the resolution of other matters. The senior prosecutor then files a certificate with the court following the conference detailing any offers made. Mandatory case conferences intend to increase guilty pleas before committal by involving senior prosecutors early in the process, and by reinforcing the sentencing discounts that apply if a guilty plea is entered in the Local Court.

Fourth, the reforms abolished committal hearings and instead shifted the onus for screening cases for the District or Supreme Court onto the ODPP instead of a Local Court magistrate. The intuition here is that the ODPP is in a better position to determine whether there is sufficient evidence for a matter to proceed on indictment.

Finally, the EAGP reforms introduced a statutory discount scheme. The scheme is a transparent and structured three-tiered regime to incentivise defendants to plead guilty before the matter proceeds to trial. The legislation permits a 25 per cent sentencing discount for pleading guilty before the end of committal proceedings in the Local Court;³ a 10 per cent discount after the matter has been committed for trial (and at least 14 days prior to the first trial listing date); and a five per cent discount in any other circumstances.

Past research

Several reforms have been introduced over the last decade to tackle the growth in the NSW District Court backlog. While none of these have overhauled court processes to the same extent as the EAGP reforms, they share some of its key elements.

One of the most relevant is the NSW Criminal Case Conferencing (CCC) scheme. Case conferencing was introduced for all indictable cases committed to the NSW District Court between 1 May 2008 and 1 July 2010 from the Downing Centre or Central Sydney Local Courts. Case conferencing was introduced to reduce the number of late guilty pleas by encouraging earlier negotiation between the prosecution and defence. An evaluation of the scheme (Wan, Jones, Moffatt, & Weatherburn, 2010) considered four court efficiency outcomes: the ratio of trial to sentence matters; the proportion of matters committed for trial that proceeded to trial; the time between committal and outcome; and the number of cases committed to trial. Of these, the authors only found evidence for a small reduction in the number of cases committed to trial after the scheme commenced. They argue that the relatively small effect of the CCC is likely due to the fact that conferences were not always held in matters where they should have been and that there was no certainty that significant sentence discounts would be applied if the accused were to plead guilty.

Another recent initiative which shares elements of the EAGP reforms is the NSW Rolling List Court (RLC). The RLC commenced in 2015 and sought to improve court efficiency by encouraging earlier contact between senior prosecutors and defence lawyers. It achieved this through a court model of two fixed teams, each consisting of prosecution and defence practitioners. While one team was at trial, the other engaged in negotiations and prepared for trial. A randomised controlled trial of the model (Rahman, Poynton, & Weatherburn, 2017) found that 58% of cases balloted to the RLC resolved in an early guilty plea compared to 22% of matters in the control courts. Cases randomised to the Rolling List Court were also finalised 69% faster and guilty pleas were entered 73% sooner than cases dealt with through the regular court process. Earlier contact between defence and the senior prosecutor who would take the matter to trial was identified as a key mechanism for achieving these benefits. The fixed team setup also enabled more flexible scheduling of matters and, in some cases, pre-trial negotiations for multiple matters. While these results are encouraging for the EAGP reforms, the RLC only included publicly-funded cases as the fixed teams consisted of public lawyers.⁴ The RLC model in its entirety is therefore not applicable to the wider set of NSW District Court matters but some of the beneficial elements have been incorporated into the EAGP reform program.

Further initiatives to improve the efficiency of the NSW District Court were introduced in 2016 and 2017. The first of these involved the creation of additional sitting weeks (by appointing additional judges and one extra public defender), special call-overs (days where public defenders try to negotiate with defendants in an attempt to finalise matters), and readiness hearings (a system of hearing and case management for cases with long expected durations to ensure that they are ready to proceed on their trial dates). An evaluation of these measures (Thorburn & Weatherburn, 2018) found that special call-overs increased finalisations by between 9 and 39 cases a month and the additional judges increased monthly finalisations by around 8.5 cases per judge (or approximately 43 cases after all 5 judges commenced). However, there was no measurable impact of readiness hearings or additional public defenders (except through their role in special call-overs). The second suite of measures introduced in late 2016 was the first tranche of the Table Offence Reforms. This involved the reclassification of a small number of strictly indictable break and

³ Although the reforms abolished committal hearings, cases still originate in the Local Court and follow committal proceedings to be committed to the District or Supreme courts.

⁴ That is, prosecutors from the ODPP, defence counsel from the Public Defenders, and defence solicitors from Legal Aid.

enter offences so that they could be dealt with in the Local Court instead of the District Court. Evaluating these changes, Ringland (2020) found that the reforms resulted in 62 fewer trials and 509 fewer sentenced finalisations in the District Court in the first two years of operation and reduction of around 6 months in days from charge to finalisation for reform-related offences compared with equivalent matters in the pre-period. She concluded that there are clear benefits in moving offences to the Local Court both in terms of reducing the caseload of the District Court and enabling offences to be dealt with more quickly.

Overall, the evaluations summarised above provide some evidence to support the effectiveness of reforms in reducing court delay. However, there are mixed results from the international literature on whether a major system-wide reform program to improve court efficiency can achieve the same level of success. For example, Dušek and Montag (2016) evaluated a 'fast-track' scheme introduced in the criminal courts in 2002 in the Czech Republic. The scheme removed several procedural steps, administrative paperwork, and imposed strict deadlines at certain stages of the criminal process. Dušek and Montag (2016) identified substantial time savings from the scheme using a difference-in-differences approach by exploiting the regional variation in the timing and intensity of the reform. The authors found a reduction of 47 days in the pre-court stage of criminal case processing. A "fast-track" program was also implemented in the 1990s in the United States (US) federal court system. The program applied only to immigration cases and allowed a prosecutor to offer a discounted sentence "in exchange for a defendant's prompt guilty plea and waiver of certain pre-trial and post-conviction rights" (Kim, 2013). Using a propensity score matching analysis, Kim (2013) found only modest effects of the "fast-track" scheme on time to justice outcomes, reducing case processing time in the range of 10 to 21 days. Similarly, Bridges (1982) found that the 1974 Speedy Trial Act introduced in the US had little effect on court efficiency. The legislation, which attached strict time limits on the processing of federal criminal cases, was found to only affect the slowest cases handled in court and thus had little overall impact on median court processing time.

The current study

The primary aim of the EAGP reform program is to maximise the opportunities and incentives for defendants to enter early guilty pleas. The reforms should, however, produce several other desirable outcomes. We expect that the continuity of legal representation would increase the total proportion of guilty pleas through the improved communication between the prosecution and defence. Further, because the reforms are expected to increase guilty pleas and cases finalised by guilty plea are resolved more quickly than cases finalised by trial, we would expect an overall reduction in the time taken to finalise cases involving EAGP indictable offences. Further, because we anticipate earlier negotiations between senior prosecutors and defence counsel, and more certainty regarding the charges that should proceed on indictment, we expect more EAGP cases to be finalised summarily in the Local Court. Finally, with fewer guilty pleas occurring after committal, fewer case adjournments (due to increased trial readiness), and therefore more efficient use of court time, we expect more cases to be finalised in the District Court after the reform commenced. The current study therefore seeks to examine whether the EAGP reforms produced the following outcomes:⁵

- An increase in early guilty pleas;
- An increase in guilty pleas overall;
- An increase in the proportion of cases that started the committal process but were finalised summarily in the Local Court;
- A decrease in time to case finalisation;
- An increase in the number of matters finalised per week in the District Court.

⁵ It was not possible to examine two additional outcomes relevant to trial committals, namely the percentage of trials that proceed on original listing date and average trial length, due to data limitations. In particular, trial length is only available for trials that result in a verdict. Therefore, it would show only a partial and possibly misleading impact of the EAGP reforms. It was also not possible to examine the impact of the EAGP reforms on penalties imposed by the courts because the NSW sentencing reforms which commenced in 2018 (shortly after the EAGP reforms) significantly impacted the likelihood of a short prison sentence and a supervised order particularly for matters finalised in NSW higher courts (see Donnelly 2020).

METHOD

Data

We use a dataset of all indictable cases prosecuted by the ODPP. This accounts for over 90% of cases eligible to be dealt with under the EAGP reforms.⁶ The ODPP data was then matched to case level data from the NSW Bureau of Crime Statistics and Research's Reoffending Database (ROD)⁷, where a case is defined as an offence or group of offences that are finalised in court on the same date for the same individual. ROD contains a range of demographic, offence and appearance related data for all criminal court appearances finalised in NSW since 1994.

We restrict our sample to all indictable cases where prosecution was commenced by the ODPP (henceforth, 'ODPP indictable matter') with an earliest charge date after 13 June 2016 and a finalisation date before 16 March 2020. The latter was the last day before new jury trials were suspended in NSW due to the COVID-19 pandemic. We also exclude all cases affected by Tranche 2 of the Table Offence Reform as we cannot separate the impact of the Table Offence Reform from the EAGP reforms for these cases (Ringland, 2020).⁸

As mentioned earlier, the Table Offence Reform involved a reclassification of certain offences from strictly indictable, meaning the offences had to be dealt with in the higher courts, to table offences, which could be dealt with in the higher or lower courts. These reforms occurred in two tranches (Ringland, 2020). A list of the Tranche 2 offences (the offences we excluded from our analysis) is available in Table A1. As a robustness check we also examined whether the results changed by including these offence types in our models and controlling for them by including an interaction term with the EAGP reforms. This addition did not meaningfully impact our results.

We also restrict the dates of our sample so that the pre- and post-periods are of equal duration (approximately 686 days). The pre-EAGP period includes only matters with an earliest charge date after 13 June 2016 and a finalisation date before 30 April 2018, and the post-EAGP period includes only matters with an earliest charge date after 30 April 2018 and a finalisation date before 16 March 2020. This ensures that our pre- and post-EAGP periods are comparable with respect to the amount of time available for the matters to be finalised. However, it is important to note that these date restrictions also mean that both the pre-EAGP and post-EAGP samples are unlikely to be representative of all elected Table and strictly indictable cases finalised in NSW Criminal Courts. To illustrate this, Table 1 compares the composition of cases in our pre-EAGP sample with the composition of pre-EAGP matters that have been excluded from our sample due to the 686 day restriction.⁹ As seen here, our sample contains a much smaller proportion of cases committed for trial and a higher proportion of matters finalised in the Local Court. This is to be expected, given the median number of days from arrest to finalisation was 716 days for trial committals in 2017 (NSW Bureau of Crime Statistics and Research, 2018). The sample date restriction was necessary given the unanticipated disruption to court processes brought about by the COVID-19 pandemic. Therefore, if the EAGP reforms has unique impacts on complex matters that are committed to trial we would not see these impacts in this study.

While this means that trial committals are significantly underrepresented in the analysis, the EAGP reforms might be expected to have less impact on more complex matters as the possibility of an acquittal would outweigh any incentives to plead guilty early. Furthermore Trimboli (2021) in her qualitative evaluation found that some key elements of the reform package intended to reduce trial length and hence impact trial committals, were not being delivered as intended. For example, many stakeholders

⁶ We estimate that only 9% of relevant EAGP cases were not prosecuted by the ODPP. This was calculated as the number of cases in our dataset that were marked as EAGP cases but not DPP cases.

⁷ We are unable to identify all relevant indictable cases from ROD, since ROD is only recorded at finalisation and many relevant indictable cases may be finalised in the Local Court or Children's Court.

⁸ We include Tranche 1 of the Table Offences as these were only a small number of offences and impacted a small portion of our sample.

⁹ This is possible in the pre-EAGP period because cases have had a substantial amount of time to be finalised, which is not true of cases in the post-EAGP period.

asserted that mandatory criminal case conferencing was not identifying the key issues for trials, and that continuous legal representation was not being achieved. Further implications of this sample restriction are considered in the discussion. Thus, while we are unable to estimate the impact of the EAGP reforms on these longer matters, we have reason to believe that the sample included in this study captures most of the impacts of the reform.

Table 1. Comparison of pre-EAGP ODPP indictable matters included in the sample with those that commenced after 13 June 2016 but were excluded from the sample.

Committal type	Outcome	Finalised on or before 30th April 2018 (within 686 days)		Finalised from 30th April 2018 to end of January 2021 (>686 days)		Total (Finalised anytime)	
			%		%		%
Committed for sentence	Early guilty plea	938	26%	1,722	26%	2,660	26%
	Late guilty plea	214	6%	1,459	22%	1,673	17%
	Proceeded to trial / Other	205	6%	1,579	24%	1,784	18%
Finalised in LC		2,200	62%	1,755	27%	3,955	39%
Column Total		3,557	100%	6,515	100%	10,072	100%

Note: LC=Local Court. Percentages may not add up to 100 because of rounding.

Outcome variables

We examine five outcomes related to court efficiency:

1. The proportion of all ODPP indictable cases committed to the District Court with a guilty plea in the Local Court (early guilty plea).
2. The proportion of all ODPP indictable cases finalised with a guilty plea, specifically:
 - a. The proportion of all ODPP indictable cases finalised in the District Court with a guilty plea in any court (guilty plea).
 - b. The proportion of all ODPP indictable cases finalised in the Local Court with a guilty plea
3. The proportion of all ODPP indictable cases finalised in the Local Court.
4. Time to justice, specifically:
 - a. The number of days from earliest charge date to finalisation.
 - b. The number of days from committal hearing to finalisation, among cases committed to the District Court.
5. Weekly number of cases finalised in the District Court.

Outcomes 3 to 4 are examined for all ODPP indictable cases, that is any matter in which the ODPP commenced committal proceedings regardless of the jurisdiction where the matter was ultimately finalised. This is because all cases that commenced the committal process would have been affected by

the EAGP reforms even if they were eventually finalised summarily. Additionally, Outcome 4 is examined for two subsamples (a) all matters committed to the District Court (b) all ODPD indictable cases finalised in the Local Court.¹⁰

Case characteristics

Our merged ODPD and ROD data allows us to observe a wide range of case characteristics, including:

- Demographic characteristics of the defendant
 - Age at finalisation: coded 1 if aged 17 or younger, 2 if aged 18-24, 3 if aged 25-34, 4 if aged 35-44, and 5 if aged 45 and above.
 - Gender: coded one if the defendant is male, zero otherwise.
 - Aboriginality: coded one if the defendant has ever identified as Aboriginal to the police, zero otherwise.
 - SEIFA quartiles: a measure of socioeconomic disadvantage based on the defendant's postcode of residence at the time of finalisation. Lower scores indicate more disadvantage (Australian Bureau of Statistics, 2011).¹¹ We code SEIFA into five indicator variables, one for each quartile of the distribution and a fifth category for those with a missing SEIFA rank.
- Characteristics of the case
 - Month the case was finalised: coded as a variable from 1 to 12.¹²
 - Bail status at time of finalisation: coded one if the defendant was bail refused at the finalisation of their case (including warrant executed and in custody for a prior offence) and zero otherwise.
 - Jurisdiction of finalisation: coded as the Local Court, Children's Court, District Court or Supreme Court.
 - Median sentence ranking (MSR): The MSR of the most serious offence.¹³
 - Offence type: the ANZSOC division classification for the most serious offence.¹⁴
 - Number of concurrent offences: coded as 0, 1, 2, 3 or more offences.
 - Indictable offence: whether the initial charge was a strictly indictable, Table 1 offence, Table 2 offence or other.¹⁵
 - Judicial officer: a deidentified code for the judge or magistrate presiding over the matter at finalisation.
 - Courthouse: the code for the Local or District Court where the case was finalised.
- Characteristics of prior offending
 - Number of prior court appearances with a proven offence: coded as zero, 1 – 2, 3 – 4, 5 – 6, 7 – 8, 9 – 10, 11 and above.
 - Number of prior prison sentences: coded as zero, 1, 2 or more.

¹⁰ Note that by guilty plea we mean that the matter was finalised by way of guilty plea. For example, a defendant that pleads guilty to a certain offence in their case, but that proceeds to trial for another offence is not counted as having a guilty plea.

¹¹ Defendants held on remand at the time that their matter was finalised have missing SEIFA scores in our data.

¹² The baseline category in our regression analysis for this variable is January (i.e., 1).

¹³ The MSR ranks offences from 1 to 135, by seriousness of the penalty the median person received for the offence. Lower values correspond to more serious offences (e.g., rank 1 is murder). Further information is provided by Mackinnell, Poletti, and Holmes (2010).

¹⁴ See Australian Bureau of Statistics (2011) for more information. The most serious offence is the offence with the lowest MSR.

¹⁵ For matters that comprise multiple indictable offences, the variable takes the value of the most serious indictable offence category. That is strictly indictable, followed by Table 1, followed by Table 2, followed by other.

Descriptive statistics

Table 2 summarises the demographic, current offence, and prior offence characteristics of ODPPI indictable cases before and after the EAGP reforms. The table shows the proportion in each time period with the characteristic of interest, the standard deviation, the difference between the two periods and a p-value for a test of equality of the two proportions.

Table 2. Characteristics of matters finalised, pre- and post-EAGP reforms

Variable	Pre-EAGP [N=3,612*]		Post-EAGP [N=3,100*]		Difference	
	Proportion	Std. Dev.	Proportion	Std. Dev.	Estimate	p-value
<i>Demographics</i>						
<i>Age</i>						
<=17	0.01	0.10	0.02	0.13	0.01	0.027
18-24	0.29	0.45	0.26	0.44	-0.03	0.004
25-34	0.34	0.47	0.35	0.48	0.00	0.750
35-44	0.21	0.41	0.21	0.41	0.01	0.543
> 44	0.15	0.36	0.16	0.37	0.02	0.079
Male	0.86	0.35	0.86	0.34	0.01	0.538
Aboriginal	0.33	0.47	0.32	0.47	-0.01	0.639
<i>SEIFA</i>						
Q1 (Most disadvantaged)	0.26	0.44	0.28	0.45	0.02	0.155
Q2	0.21	0.41	0.20	0.40	-0.01	0.143
Q3	0.22	0.41	0.23	0.42	0.02	0.085
Q4 (Least disadvantaged)	0.11	0.31	0.11	0.32	0.01	0.299
Unknown	0.20	0.40	0.18	0.38	-0.03	0.006
<i>Current Offence</i>						
Remand	0.50	0.50	0.54	0.50	0.04	0.001
<i>ANZSOC category</i>						
Homicide	0.01	0.10	0.01	0.12	0.00	0.172
Assault	0.14	0.34	0.18	0.38	0.04	0.000
Sexual assault	0.09	0.28	0.11	0.31	0.02	0.001
Dangerous or negligent acts	0.01	0.08	0.01	0.09	0.00	0.266
Abduction and harassment	0.01	0.11	0.02	0.15	0.01	0.001
Robbery	0.07	0.25	0.10	0.30	0.03	0.000
Break and enter	0.21	0.41	0.19	0.39	-0.02	0.019
Theft	0.08	0.26	0.07	0.26	-0.00	0.434
Fraud	0.05	0.21	0.05	0.22	0.00	0.599
Drug offences	0.20	0.40	0.11	0.31	-0.09	0.000
Weapon offences	0.02	0.14	0.02	0.15	0.00	0.204
Property damage	0.01	0.10	0.01	0.10	0.00	0.795
Public order offences	0.04	0.19	0.04	0.21	0.01	0.111
Traffic offences	0.01	0.12	0.01	0.09	-0.01	0.008
Justice procedural offences	0.06	0.23	0.05	0.22	-0.01	0.317
Miscellaneous offences	0.01	0.10	0.01	0.11	0.00	0.660

Table 2. Characteristics of matters finalised, pre- and post-EAGP reforms - continued

Variable	Pre-EAGP [N=3,612*]		Post-EAGP [N=3,100*]		Difference	
	Proportion	Std. Dev.	Proportion	Std. Dev.	Estimate	p-value
Concurrent charges						
0	0.12	0.32	0.12	0.32	0.00	0.719
1	0.36	0.48	0.36	0.48	0.00	0.941
2	0.20	0.40	0.21	0.41	0.01	0.532
3+	0.32	0.47	0.31	0.46	-0.01	0.384
Case type						
Strictly indictable	0.81	0.39	0.81	0.39	-0.00	0.972
Table 1	0.13	0.33	0.14	0.35	0.02	0.062
Table 2	0.04	0.19	0.04	0.20	0.00	0.662
Other	0.03	0.16	0.01	0.09	-0.02	0.000
Court						
Children's Court	0.01	0.11	0.02	0.14	0.01	0.019
District Court	0.38	0.48	0.46	0.50	0.08	0.000
Local Court	0.61	0.49	0.52	0.50	-0.09	0.000
Supreme Court	0.00	0.04	0.00	0.06	0.00	0.295
Prior Offending						
Prior court appearances with a proven offence						
0	0.22	0.41	0.22	0.41	0.00	0.971
1 - 2	0.17	0.38	0.16	0.37	-0.01	0.459
3 - 4	0.12	0.32	0.11	0.31	-0.01	0.145
5 - 6	0.09	0.29	0.09	0.29	-0.00	0.695
7 - 8	0.08	0.27	0.07	0.26	-0.00	0.586
9 - 10	0.06	0.25	0.06	0.24	-0.01	0.378
11+	0.26	0.44	0.29	0.45	0.03	0.007
Prior sentences of imprisonment						
0	0.57	0.50	0.56	0.50	-0.01	0.408
1	0.12	0.32	0.11	0.31	-0.01	0.387
2+	0.32	0.47	0.33	0.47	0.02	0.144

*There are 3572 and 3067 non-missing Aboriginal observations in the pre- and post- periods, respectively.

Broadly speaking, cases in the pre- and post EAGP periods had similar characteristics. The average defendant in both samples was aged between 25 and 34 years old, male, non-Aboriginal and was bail refused at the time of finalisation. A plurality of cases in both time periods involved defendants residing in areas of the most disadvantaged quartile. In both periods, the four most common offences were break and enter, drug offences, assault and sexual assault offences (with rankings amongst these varying across periods). A plurality of defendants in both periods were charged with one concurrent offence and most were initially charged with a strictly indictable offence. In both periods, the majority of cases were finalised in the Local Court. Finally, many defendants in both samples have long criminal histories, with over one-quarter recording 11 or more prior proven court appearances. Most defendants in both periods had no prior prison sentences.

There were, however, some statistically significant differences between cases finalised before and after the reforms. A greater proportion of EAGP cases involved juveniles (2% compared to 1%) and a smaller proportion involved defendants aged 18 to 24 (26% compared to 29%). In a greater proportion of EAGP

cases the defendant was on remand at the time of finalisation (54% compared to 50%). There were also more assault, sexual assault, abduction and harassment offences, and robbery offences but less break and enter, drug offences, and traffic offences after the reforms. A smaller proportion of EAGP cases were finalised in the Local Court (52% compared to 61%), and a higher proportion were finalised in the Children's (2% compared to 1%) and District (46% compared to 38%) Courts. Further, after the reforms there was a higher proportion of cases involving defendants with more than 11 prior proven court appearances (29% compared to 26%).

Statistical analysis

Guilty pleas, Local Court finalisations, and days to justice

We estimate the following equation to identify the impact of the EAGP reforms on the probability of an early guilty plea, the probability of any guilty plea, the probability of finalisation in the Local Court, and time to justice outcomes:

$$y_{ijcm} = \beta_0 + \beta_1 EAGP_{ijcm} + \gamma X'_{ijcm} + \alpha_j + \theta_c + \lambda_m + \epsilon_{ijcm} \quad (1)$$

y_{ijcm} refers to the outcome variables described in the method section. For example, for outcome 1, y_{ijcm} is equal to one if defendant i whose case is presided by judge j in courthouse c , in calendar month m enters a guilty plea before committal, and zero otherwise. $EAGP_{ijcm}$ is a binary variable that equals one if the case commenced in our post-period and zero otherwise. X'_{ijcm} refers to a vector of controls and includes all the controls in Table 2, excluding the court jurisdiction. α_j refers to a set of judge or magistrate fixed effects, which controls for time-invariant differences between judges and magistrates, such as the average leniency and harshness of each judge. θ_c refers to a set of courthouse fixed effects for time-invariant differences between courthouses (e.g., courthouse capacity, or location-based differences in crime). λ_m refers to a set of month fixed effects which control for factors common to all cases that vary by month (e.g., court holidays). Finally, ϵ_{ijcm} is an error term. We clustered our standard errors by courthouse. This is because the intensity of EAGP treatment is expected to vary by courthouse, primarily because individual prosecutors are generally attached to particular courthouses and these prosecutors play an important role in how elements of the EAGP reform package were delivered. Therefore, we consider assignment to treatment (at least in terms of intensity) as clustered by courthouse (Abadie, Athey, Imbens, & Wooldridge, 2017).

Wooldridge (2015) describes the classical assumptions of an ordinary least squares model. The main assumptions are that the model is linear in the coefficients and error term; the error term is not correlated with the independent variable, (i.e., any factor that affects both the EAGP reform and our outcomes is included in the regression; this is discussed in the following paragraphs); and, the errors of different observations are not related with each other. The last assumption has been relaxed because we employ cluster robust error, meaning the unobserved variance of cases within the same courthouse may be related.

β_1 is the parameter of interest. It describes the effect of the reform on a particular outcome after controlling for demographic, offence and prior offending characteristics, as well as our fixed effects. We cannot be certain β_1 captures the causal effect because it is possible that changes other than the EAGP reforms occurred between our two periods and these may not have been sufficiently accounted for in the models. We estimate model (1) using ordinary least squares for its ease of interpretability and superior performance with the presence of fixed effects (Gomila, 2021).

Our controls and fixed effects are the only way we can correct for selection bias and ensure that the pre-EAGP and post-EAGP groups are comparable on observable characteristics. We have carefully selected these variables on the belief that they may influence the probability and timing of guilty pleas, and the time to justice. Ringland and Snowball (2014) empirically found most of the following variables had an impact on the timing of guilty pleas (they did not examine time to justice). Demographic characteristics such as age, gender, Aboriginality and socio-economic status (i.e. SEIFA quartile) can influence how a

defendant's matter progresses through the legal system. For example, older defendants may have more resources and the ability to sustain a longer case, and therefore may plead guilty later if they choose to do so. Bail status is also important to include as remanded defendants are more incentivised to plead guilty. Similarly, characteristics of the index offence (e.g. MSR and ANZSOC division of the current offence, number of concurrent offences, type of indictable offence and jurisdiction in which the case was finalised) can influence case complexity and the potential penalties that apply; both of which can affect time to justice and decisions to plead guilty. Finally, prior offending, including prior court appearances and prison sentences can influence the severity of the penalty that the defendant faces. A defendant that faces a severe penalty may be less likely to plead guilty.

District Court finalisations

To estimate the impact of the EAGP reforms on District Court finalisations we change our analysis in several ways. Firstly, we aggregate the dataset, so each observation is a unique week. Secondly, as we are counting cases at their finalisation date, unlike the previous section, there are no restrictions on when the charge date occurred for a case. Thirdly, we only examine District Court finalisations and not Supreme Court finalisations, because there are only a very small number of Supreme Court finalisations and a long delay in resolution of these matters. The time period we examine is the same as used in the earlier analysis (i.e., the 13th of June 2016 and the 16th of March 2020). Further, we also exclude offences impacted by the second tranche of the Table Reforms from this analysis. We estimate the following equation.

$$Finalisation_{wm} = \beta_0 + \beta_1 Lagk_{wm} + \gamma X'_{wm} + \theta_m + \epsilon_{wm} \quad \text{where } k = 0, 12, 24, 36, 48 \quad (2)$$

Where $Finalisation_{wm}$ refers to the number of cases finalised in week w of month m . $Lagk_{wm}$ is our definition of the post EAGP period. $Lag0_{wm}$ is a binary variable equal to one when the EAGP reforms took place (after and including week 18 in 2018). However, cases take a substantial amount of time to be finalised. Therefore, it is unlikely that we would expect to see any impact of the EAGP reforms immediately following week 18 in 2018 as there would be no time for any EAGP cases to be finalised by that time. To account for this, we vary our treated time. For example, $Lag12_{wm}$ is a binary variable that is equal to one, 12 weeks following the EAGP reforms. We examine how weekly finalisations vary over time by lagging our post-period by 12-week periods up to the 48 weeks following EAGP commencement. All our post-variables are compared with the period prior to the EAGP reforms (prior to week 18 in 2018).

X'_{wm} refers to a vector of weekly-aggregated controls. The controls are the same as equation (1) in the method section, however, they are aggregated at the weekly level. For example, rather than the gender variable indicating whether a defendant was male or not, it now refers to the proportion of cases that involved a male defendant in week w . The full list of weekly-aggregated controls is available in Table A2 of the Appendix. θ_m are a set of month fixed effects (i.e., a unique variable for what month the week is in), and ϵ_{wm} is the error term. Our errors show evidence of autocorrelation, meaning the unexplained variance in weekly finalisations in a particular week is correlated with the unexplained variance in prior weeks. To correct for this, we employ Newey-West standard errors that correct for autocorrelation up to a lag of 52 weeks.

The coefficient of interest is the β_1 coefficient. β_1 represents the change in the average level of weekly finalisations after the EAGP reforms commenced. We would expect our β_1 coefficient to rise as we examine more lagged (or later) periods. This is because as time goes on, the proportion of cases being finalised that are EAGP matters will increase.

RESULTS

Mean comparisons of outcomes

In Table 3 we examine the (unadjusted) differences in guilty plea and Local Court outcomes before and after the EAGP reforms. The proportion of early guilty pleas (that is cases committed to the District Court with a guilty plea in the Local Court) increased by 8 p.p. after the reforms commenced, rising from 69% to 77%.

Table 3. Unadjusted differences in guilty plea, Local Court, and time to justice outcomes for ODPP indictable cases, pre- and post-EAGP

	Pre-EAGP		Post-EAGP		Difference	
	(1)	(2)	(3)	(4)	(5)	(6)
	N	Mean	N	Mean	Difference	p-value
<i>Panel A: Guilty pleas and Local Court outcomes</i>						
Committed to DC with guilty plea in the LC	1,357	0.69	1,412	0.77	0.08	0.000
Committed to DC with guilty plea in any court	1,357	0.85	1,412	0.86	0.01	0.588
Finalised in the LC with guilty plea	2,200	0.73	1,614	0.76	0.03	0.043
ODPP indictable case finalised in the LC	3,612	0.61	3,100	0.52	-0.09	0.000
<i>Panel B: Time to justice</i>						
Days from earliest charge date to finalisation (DC)	1,357	376.40	1,412	373.07	-3.33	0.409
Days from committal to finalisation (DC)	1,357	181.59	1,412	155.04	-26.55	0.000
Days from earliest charge date to finalisation (LC)	2,200	230.10	1,614	255.88	25.79	0.000
Days from earliest charge date to finalisation (all ODPP indictable)	3,612	286.41	3,100	310.86	24.45	0.000

Note: DC = District Court, LC = Local Court

However, there was no increase in guilty pleas overall among cases committed to the District Court. Among these cases, the percentage with a guilty plea at any stage in court proceedings was 85% before the reforms and 86% after the reforms. Among ODPP indictable cases finalised in the Local Court, there was a slight increase in the percentage of cases with a guilty plea, from 73% before the reforms to 76% after the reforms. Table 3 also shows a decrease in the proportion of ODPP indictable cases that were finalised in the Local Court after the reforms. Before the reforms 61% of cases were finalised in the Local Court compared with 52% of cases following the reforms.

Looking at our time to justice outcomes, there is a slight but statistically insignificant decrease of 3.3 days in the number of days from earliest charge date to finalisation among cases committed to the District Court. There is also a decrease in the days from committal to finalisation among cases committed to the District Court. The average number of days from committal to finalisation decreased from 182 days before the reforms to 155 days following the reforms. However, there was both an increase in time to justice, from earliest charge date to finalisation, among cases finalised in the Local Court as well as among all ODPP indictable matters. The increase was around 26 days and 24 days, respectively.

These simple comparisons do not account for any systematic differences between the two samples. In the next section, we control for a broad range of demographic, offence, and prior offending characteristics in a regression analysis.

Regression analysis

Guilty pleas and Local Court finalisations

Table 4 shows our regression estimates for the impact of EAGP on early guilty pleas, guilty pleas and Local Court finalisations. After adjusting for other factors, the EAGP reform program was found to be associated with a 6.5 p.p. increase in early guilty pleas among cases committed to the District Court. However, there was no change in the proportion of matters committed to the District Court which had a guilty plea in any court. The adjusted estimate for a guilty plea in any court is very close to zero for all cases committed to the District Court. With respect to matters finalised in the Local Court, the EAGP reforms were associated with a 6.7 p.p. increase in guilty pleas. Finally, although our unadjusted estimate showed a decrease in cases finalised in the Local Court after the reforms, when we adjust for demographic, offence and prior offending characteristics, this effect becomes substantially smaller.¹⁶

Table 4. Guilty plea and Local Court outcomes for ODPP indictable matters, pre- and post-EAGP

Outcome variable	Estimate	Std. Err.	Controls/ Court and		Observations	R squared
			Month FEs	Judge FEs		
	(1)	(2)	(3)	(4)	(5)	(6)
Committed to DC with guilty plea in the LC	0.0821***	(0.0166)	No	No	2769	0.01
	0.0647***	(0.0183)	Yes	Yes	2735	0.48
Committed to DC with guilty plea in any court	0.00730	(0.0113)	No	No	2769	0.00
	-0.00878	(0.00924)	Yes	Yes	2735	0.77
Finalised in the LC with guilty plea	0.0295**	(0.0114)	No	No	3813	0.00
	0.0666***	(0.0114)	Yes	Yes	3685	0.47
ODPP Indictable case finalised in the LC	-0.0862***	(0.0289)	No	No	6619	0.01
	-0.0279*	(0.0158)	Yes	No	6532	0.46

Note: DC = District Court, LC = Local Court. * p<.10 ** p<.05 ***p<.01

Days to justice

Table 5 presents the regression results for time to justice outcomes for all ODPP indictable matters, and for two subgroups: (1) committals only; and (2) ODPP indictable matters finalised in the Local Court. Overall, there is no evidence that matters were resolved faster after the EAGP reforms commenced. After adjusting for other relevant factors, we found that the number of days from charge date to finalisation for all ODPP indictable matters increased by 7.5 days, from an average of 286.4 days. However, there were significant reductions in time to justice outcomes for matters dealt with in the District Court. Our adjusted estimate for committal matters (in the second row) indicates a significant decrease in days from committal to finalisation of 26.7 days (from an average of 181.6 days), and a very small non-significant reduction in days from charge to finalisation of 1.9 days (from an average of 376.4 days) after the EAGP program commenced. In contrast, ODPP indictable cases finalised in the Local Court took slightly longer to resolve after the EAGP reforms. Our adjusted estimate for matters finalised in the Local Court indicates that the EAGP reform program was associated with a significant increase in the number of days from earliest charge date to finalisation of 17.4 days.

¹⁶ We cannot include judge (i.e., judicial officer) FEs, because there is no within-judge variation in whether a case was finalised in the Local Court. Our dataset only records the judicial officer at case finalisation. Because judicial officers are assigned to particular courthouses, judicial officers will either deal only with cases finalised in the Local Court or only with cases finalised in the District Court etc.

Table 5. Time to justice for ODPP indictable matters, pre- and post-EAGP

Outcome variable	Estimate	Std. Err.	Controls	FEs	Observations	R squared
	(1)	(2)	(3)	(4)	(5)	(6)
Days from earliest charge date to finalisation (DC)	-3.33	(8.630)	No	No	2769	0.00
	-1.92	(6.683)	Yes	Yes	2735	0.27
Days from committal to finalisation (DC)	-26.55***	(8.681)	No	No	2769	0.02
	-26.69**	(10.30)	Yes	Yes	2735	0.30
Days from earliest charge date to finalisation (LC)	25.71***	(5.848)	No	No	3813	0.01
	17.37***	(4.914)	Yes	Yes	3685	0.24
Days from earliest charge date to finalisation (all ODPP indictable)	24.43***	(5.564)	No	No	6711	0.01
	7.47	(5.285)	Yes	Yes	6533	0.42

Note: DC = District Court, LC = Local Court. * $p < .10$ ** $p < .05$ *** $p < .01$

District Court finalisations

Figure 1 shows the average trend in weekly District Court finalisations for our sample of ODPP indictable cases. The vertical black line represents the introduction of the EAGP reforms. There are significant variations week to week, but similar patterns emerge across years. For example, District Court finalisations spike in December and then decrease through January. However, there is no obvious change in the level of finalisations after the EAGP start date. The peak number of finalisations appears lower in December 2019 compared with previous years, but this is because there were more finalisations for all weeks of that month rather than a spike in one specific week.

Figure 1. Weekly finalisations in the NSW District Court, between 13/06/2016 and 16/03/2020

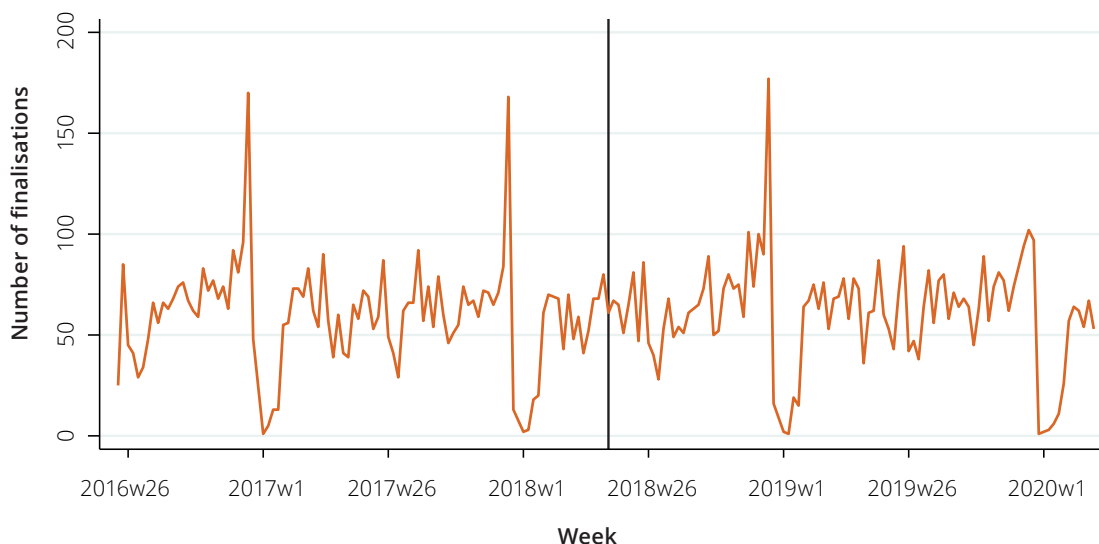


Table 6 reports the results of our regression analysis examining how the average level of weekly finalisations changed at different lagged periods after the reforms. There are three estimates for each lag. The first is an estimate of how the average level of finalisations changed following the reforms, not controlling for any other factors. The second estimate controls, at a weekly-aggregated level, for changes in the demographic and offending composition of cases following the reforms, namely the average age of defendants, the proportions of Aboriginal and male defendants, the proportion of cases where the primary offence belongs to each ANZSOC division and the proportion of cases that commenced as strictly indictable, Table 1 and Table 2 offences. Finally, the last column adds all remaining controls, including priors and month fixed effects.

Table 6 shows that all our fully adjusted estimates, in each lag period, are positive and statistically significant. This suggests that the EAGP reforms are associated with an increase in the number of weekly finalisations in the District Court. Further, as expected our estimates increase in magnitude as the lag increases. The lowest increase is 7.5 cases a week, at a lag of zero weeks, which increases to 12.3 cases a week at a lag of 24 weeks. Interestingly, in each lagged period, our estimates of the impact of the EAGP reforms only become significant once we control for the demographic and offence composition of cases. This suggests that some of these variables have changed following the EAGP reforms, in ways that affect the number of finalisations. Notable changes in these variables are an increase in the average age of defendants, from 35.4 to 36.4, an increase in the proportion of sexual assault cases from 21.1% to 23.7%, and a decrease in the proportion of break and enter offences from 18.3% to 13.4%.¹⁷

Table 6. Effect and lagged effects of the EAGP reforms on weekly District Court finalisations

Lag	Estimate	Std. Err.	Demographic and offence composition	Month FEs/ other controls	Observations	R squared
0 weeks	1.656	(2.132)	No	No	192	0.00
	9.895**	(4.759)	Yes	No	192	0.23
	7.534**	(3.167)	Yes	Yes	192	0.60
12 weeks	2.256	(2.412)	No	No	180	0.00
	12.69***	(4.113)	Yes	No	180	0.26
	9.820***	(2.654)	Yes	Yes	180	0.63
24 weeks	2.250	(2.643)	No	No	168	0.00
	14.68***	(5.314)	Yes	No	168	0.27
	12.28***	(3.135)	Yes	Yes	168	0.65
36 weeks	-0.402	(2.617)	No	No	157	0.00
	10.73**	(4.588)	Yes	No	157	0.28
	10.72***	(2.496)	Yes	Yes	157	0.65
48 weeks	0.979	(2.879)	No	No	145	0.00
	11.70***	(3.586)	Yes	No	145	0.30
	11.40***	(3.063)	Yes	Yes	145	0.66

Note: * $p < .10$ ** $p < .05$ *** $p < .01$

DISCUSSION

The purpose of this study was to examine the impact of the NSW EAGP reforms on measures of court efficiency. Comparing indictable cases prosecuted by the ODPP before and after the EAGP reform program commenced, we assessed changes in several measures of court efficiency, including early guilty pleas, time to matter resolution and weekly District Court finalisations. We expected an increase in the proportion of cases finalised by early guilty plea as well as the proportion of cases finalised by way of any guilty plea. As cases finalised by guilty plea are resolved quicker than cases finalised by trial, we also expected a reduction in the time to matter resolution, and through the more efficient use of court time, an increase in the weekly number of cases finalised in the District Court.

The results suggest that among cases committed to the District Court, the EAGP reforms were not associated with a significant increase in guilty pleas overall but did significantly affect the timing of guilty pleas. The proportion of cases committed to the District Court with a guilty plea in the Local Court (i.e. sentence committals) increased by 6.5 p.p. after controlling for other variables. We also found a significant

¹⁷ Although they refer to different samples, similar trends are also evident in how these variables change before and after the EAGP reforms, in Table 2.

6.7 p.p. increase in the proportion of guilty pleas among ODPP indictable cases finalised in the Local Court. However, we found no substantial change in the proportion of ODPP indictable matters that were ultimately finalised in the Local Court.

We find no evidence that the increase in sentence committals and guilty pleas in matters finalised in the Local Court resulted in a significant reduction in the time taken to finalise matters that commenced as indictable. In fact, we estimate a small increase in average days from charge to finalisation since the introduction of the EAGP program when all indictable matters prosecuted by the ODPP are considered. This appears to be due to a shift in the length of court processes for indictable cases finalised in the Local Court, which are the bulk of the matters included in our sample due to our sample restrictions. These cases took, on average, 17 days longer to finalise after the EAGP reforms were introduced. Similar delays were not apparent for matters committed to the District Court because time from committal to finalisation decreased significantly. We also find an increase in District Court finalisations (of between 7.5 and 12.3 additional finalisations per week, depending on how the post period is defined).

Given the significant increase in early guilty pleas, the relatively small impact of the EAGP reform program on time to justice outcomes is somewhat unexpected. This result may be due to the additional Local Court processes introduced by EAGP in order to maximise early disclosure and opportunities for early guilty pleas. The court now adjourns matters for six weeks after the brief of evidence is served to allow for charges to be certified by a senior ODPP prosecutor. Once ODPP certifies the charges, the matter is then adjourned for a further eight weeks to hold a case conference and for the conference certificate to be filed with the court. Although it is likely that both these processes contributed to the rise in sentence committals and guilty pleas in the Local Court during the post-reform period, they appear to have had a negative impact on Local Court processing time. The EAGP reforms succeeded in reducing case processing time later in criminal proceedings (i.e. after committal), but this increase in efficiency was not sufficient to offset the additional time the matters spend in the Local Court, at least for the types of cases included in our sample.

This account is consistent with findings from the EAGP process evaluation undertaken by Trimboli (2021). Interviewing stakeholders involved in the implementation of various elements of the EAGP program, she found that briefs of evidence were not served earlier after the reforms commenced. Stakeholders also reported that matters took longer to resolve after EAGP commenced because charge certification and case conferencing must occur. Further, while case conferencing occurs and facilitates early guilty pleas, this process was not considered to be successful in resolving other outstanding matters or narrowing the issues for trial. It is possible that these views partly reflect early implementation, or “teething”, issues and as practitioners become more familiar with the EAGP process over time greater benefits will emerge. Nevertheless, briefs of evidence, charge certification and mandatory case conferencing are considered by most stakeholders to be critical elements of the reforms (Trimboli, 2021). Any refinements or modifications that can be made to these Local Court processes to further improve court efficiency should therefore be considered.

An alternative explanation is that our follow-up period is too short to adequately capture the full impact of EAGP on time to justice outcomes. Due to the COVID-19 pandemic we could only consider cases that were finalised before March 2020. The result being that trial committals, which generally involve more complex matters and therefore take much longer to finalise, are underrepresented in our study sample. While these matters are arguably less likely to include marginal defendants whose plea decision would change through earlier disclosure and the promise of sentencing discounts, the increased rate of sentence committals may have had flow-on effects for District Court efficiency. Further, some elements of the EAGP reform package, namely continuity of legal representation and criminal case conferencing, were expected to increase trial readiness and reduce trial length. Due to limitations of the data and lack of clarity regarding definitions, these outcomes could not be measured here but, if achieved, would also have facilitated the timely resolution of trial matters. Ideally, future research should repeat the current analysis with a larger sample of trial committals. Any such study would, however, need to somehow isolate the effect of the EAGP reforms from other changes in court practice due to the COVID-19 response.

Our analysis of weekly District Court finalisations provides preliminary evidence for increased efficiency in the higher courts after the EAGP reforms were introduced. For our sample of District Court finalisations, we estimate an increase of between 7.5 and 12.3 finalisations per week, after the reforms took effect. As the average number of weekly District Court finalisations in the pre-reform period was 60.0, this corresponds to an increase of between 12.5% and 20.5%. This result is consistent with the observed reduction in average days from committal to finalisation for EAGP matters finalised in the District Court and emerges only after adjusting for changes over time in the demographic and offence composition (namely, an increase in the proportion of sexual assault offences and decrease in the proportion of break and enter offences) of indictable cases.

While suggestive of an association it is not clear how much of the increase in finalisations can be attributed to the EAGP reforms. Most cases finalised in the period immediately after the EAGP reforms would have been legacy matters since cases committed to the higher courts took on average 377 days to finalise in the pre-EAGP period. By early 2020 EAGP cases still only comprised just over three-quarters of sentence committals and around 40% of trial committals finalised in the higher courts (Trimboli, 2021). Even so, any increased efficiency associated with EAGP cases would likely spill over to legacy matters as they are finalised concurrently with EAGP matters. Therefore, even if EAGP matters make up a relatively small proportion of total matters finalised in the District Court, we might expect to observe some impacts of the reforms in the periods shortly after EAGP commenced.

An important caveat to the findings presented here is that they do not allow for a causal interpretation. Because the EAGP reforms affected every ODPP indictable case in NSW that commenced after the 30th April 2018, we did not have a contemporaneous group of indictable cases unaffected by the reforms that could be used as a counterfactual. Therefore, we employed a pre-post research design with controls to assess any changes in court efficiency. The limitation of this approach is that there may have been other influences affecting our outcomes which have not been adequately captured by our control variables. Most notably, there were two other measures designed to reduce the District Court backlog that were introduced at or around the same time as the EAGP reforms: tranche 2 of the Table Offence reforms which occurred in April and July 2018 and the appointment of seven new District Court judges in February 2019. While we excluded offences affected by the former, it was not possible to rule out the influence of the new judges since they were not allocated to specific courts or matter types (see Yeong, forthcoming for further discussion).

A further limitation of the current research is that it considered only a narrow set of outcomes. Reforms, like EAGP, that encourage early guilty pleas by facilitating earlier negotiation and disclosure, and offering substantial sentencing discounts, might be expected to have other meaningful impacts on the criminal justice system, on accused persons, and on victims. Most notably, we would expect the increase in early guilty pleas to significantly affect sentences imposed by the courts. Sentencing outcomes could not be considered in our study because further reforms were introduced by the NSW Government in September 2018 which were found to reduce the likelihood of a prison penalty for matters dealt with in the Local, District and Supreme Courts (Donnelly, 2020). Disentangling the effect of these sentencing reforms from those generated by the EAGP reform program was not possible. International literature has identified several other consequences of fast-tracking criminal cases which also have not been considered in our study. For example, Langer (2021) reviewed numerous studies examining the impact of trial-avoiding mechanisms on outcomes such as sentencing discounts, the equity of sentences, false guilty pleas and wrongful convictions, and the role of the police and prosecutors in the court systems. Focusing largely on empirical studies conducted in the United States, the review found that plea bargaining and sentence discounts can increase false guilty pleas, and that plea bargaining generally elevates the role of the police and prosecutors in the justice system. However, there was mixed evidence as to whether matters which still proceed to trial result in harsher penalties. Outcomes such as these were out of scope of the current study, but the work summarised by Langer (2021) suggests the EAGP reforms could have far-reaching impacts beyond court efficiency; examining these broader impacts could be a further benefit of any future research.

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APPENDIX

We excluded offences from our analysis that were affected by Tranche 2 of the Table offences reforms. The list is shown in Table A1.

Table A1. Excluded offences

Lawpart	Act	SECTION	Description
454	Crimes Act 1900	94	Assault with intent to rob-SI
455	Crimes Act 1900	94	Robbery-SI
1062	Crimes Act 1900	319	Do act etc w/i to pervert the course of justice-SI
16960	Drug Misuse and Trafficking Act 1985	25(1)	Supply prohibited drug >indict. quantity (not cannabis)-SI
58340	Crimes Act 1900	193B(3)	Recklessly deal with proceeds of crime-SI
68395	Drug Misuse and Trafficking Act 1985	25(1)	Take part supply prohib drug >indict. qty (not cannabis)-SI
92056	Crimes Act 1900	319	Do act etc intending to pervert the course of justice-T1
92057	Crimes Act 1900	193B(3)	Recklessly deal with proceeds of crime >\$5000-T1
92058	Crimes Act 1900	193B(3)	Recklessly deal with proceeds of crime <=\$5000-T2
92279	Crimes Act 1900	94(a)	Robbery-T1
92280	Crimes Act 1900	94(a)	Assault with intent to rob-T1
92283	Drug Misuse and Trafficking Act 1985	25(1)	Supply prohibited drug >indictable & <commercial quantity-T1
92284	Drug Misuse and Trafficking Act 1985	25(1)	Take part supply prohib drug > indictable & < comm qty-T1

Table A2 describes the full set of weekly aggregated controls used in equation (2), in our analysis of the impact of the EAGP reforms on the number of weekly case finalisations in the District Court.

Table A2. Weekly aggregated controls

Control	Description (all variables are measured weekly)
Age	Average age of defendants
Male	Proportion of male defendants
Aboriginal	Proportion of Aboriginal defendants
ANZSOC Division 1	The proportion of defendants accused of an offence in ANZSOC division 1
ANZSOC Division 2	The proportion of defendants accused of an offence in ANZSOC division 2
ANZSOC Division 3	The proportion of defendants accused of an offence in ANZSOC division 3
ANZSOC Division 4	The proportion of defendants accused of an offence in ANZSOC division 4
ANZSOC Division 5	The proportion of defendants accused of an offence in ANZSOC division 5
ANZSOC Division 6	The proportion of defendants accused of an offence in ANZSOC division 6
ANZSOC Division 7	The proportion of defendants accused of an offence in ANZSOC division 7
ANZSOC Division 8	The proportion of defendants accused of an offence in ANZSOC division 8
ANZSOC Division 9	The proportion of defendants accused of an offence in ANZSOC division 9
ANZSOC Division 10	The proportion of defendants accused of an offence in ANZSOC division 10
ANZSOC Division 11	The proportion of defendants accused of an offence in ANZSOC division 11
ANZSOC Division 12	The proportion of defendants accused of an offence in ANZSOC division 12
ANZSOC Division 13	The proportion of defendants accused of an offence in ANZSOC division 13
ANZSOC Division 14	The proportion of defendants accused of an offence in ANZSOC division 14
ANZSOC Division 15	The proportion of defendants accused of an offence in ANZSOC division 15
ANZSOC Division 16	The proportion of defendants accused of an offence in ANZSOC division 16
Table 1 offence	The proportion of defendants who were initially charged with a Table 1 offence
Table 2 offence	The proportion of defendants who were initially charged with a Table 2 offence
Strictly Indictable offence	The proportion of defendants who were initially charged with a Strictly indictable offence
Prior court appearance	The average number of prior court appearances of defendants
Prior prison sentences	The average number of prior prison of defendants
Concurrent offences	The average number of concurrent offences of defendants
Remand	The proportion of defendants that were on remand at case finalisation
Median sentence ranking	The average median sentence ranking of the most serious offence that defendants were accused of

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