SENTENCE INDICATION SCHEME EVALUATION INTERIM REPORT: THE IMPACT OF THE NSW SENTENCE INDICATION SCHEME ON PLEA RATES AND CASE DELAY

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SECTION 1: INTRODUCTION

At the commencement of the first law term in 1992, the NSW Parliament passed legislation [1] allowing the Chief Judge of the NSW District Court to introduce a 'Sentence Indication' scheme. The scheme provided for an accused person committed for trial in the NSW District Court to seek an indication of the sentence that will be imposed if a guilty plea is entered. The aim of the scheme was said to be 'to obtain earlier pleas of guilty and more pleas of guilty'.[2] The 1993 District Court Review described the operation of the scheme in the following terms:

> It is usual for the application [for a sentence indication] to be made at first arraignment, but it may be made up to four weeks prior to the date of the trial if the accused was first arraigned prior to the commencement of the scheme. An application for an indication may only be made once.
>
> The indication is heard in open court to avoid any possible perception of improper practices, but the court may make orders prohibiting publication where it thinks fit. In determining the indication the Court will have regard to the sentencing benefits an accused is entitled to by entering an early guilty plea.
>
> After the indication is given, the accused is given the opportunity to either accept or refuse it. If the accused refuses it, the matter is then listed for trial before a different Judge.
>
> If the accused accepts, then the indication binds the Judge who formulated it, provided that the material presented at the indication hearing is not altered when the matter proceeds to a sentencing hearing.[3]

The scheme was introduced in Parramatta District Court on a trial basis on 31 January 1993. Four months later (on 4 June) it was introduced in the Sydney District Court. On 31 January 1994 the scheme was extended to all NSW District Criminal Courts.[4] The extension of the scheme to all District Criminal Courts was accompanied by reports of its success in reducing the demand for trial court time. According to one newspaper report, the number of District Court criminal trials had been 'slashed by half, saving 376 weeks of court sitting time or the equivalent of 5.9 years of judge time in just 14 months'.[5] The same report claimed that 80 per cent of those who asked for a sentence indication pleaded guilty immediately, making a trial unnecessary.

A recent study by the NSW Judicial Commission of the operation of the sentence indication scheme over the period between 4 June and 5 November 1993 offered some support for these claims. According to the Commission report,[6] of the 320 new matters arraigned or listed for arraignment during the study period, 31 per cent made an application for a sentence indication hearing. Of the 206 defendants who applied for a sentence indication hearing, 81 per cent accepted the indicated sentence offered by the sentencing judge. On the assumption that those who accepted an indication would otherwise have proceeded to trial, the Commission estimated the maximum savings in trial court time over the period of its monitoring to be 4.8 judge years. This, it said, is 'very similar to the estimates provided in the District Court Annual Review'.[7]

The Commission's report did not provide information supporting the assumption on which its calculations about potential savings in judge time were based. It acknowledged, however, that, even before the introduction of the sentence indication scheme 'a considerable number of accused persons committed for trial changed their plea

to guilty at some stage between their committal and their trial date'.[8] The question of whether the sentence indication scheme actually reduced the proportion of persons proceeding to trial in the District Criminal Court is clearly central to any objective assessment of claims that the scheme has produced significant savings in judge time. The main purpose of this report, therefore, is to examine trends in the proportion of matters proceeding to trial in the District Criminal Court before and after the introduction of the sentence indication scheme.

It should be noted, nevertheless, that the sentence indication scheme could produce savings in judge time even if it did not bring about a reduction in the proportion of persons proceeding to trial. Changes of plea which occur very close to or actually on the date on which a trial is set down for hearing tend to 'waste' court (or judge) time. The wastage occurs because it is not always possible to list another trial for hearing on the hearing dates vacated as a result of a change of plea. The sooner a change of plea occurs after a case is committed for trial, the easier it is for court administrators to allocate the trial court time set aside for that case to other cases awaiting trial, thereby preventing any wastage of trial court time. This report therefore also examines the impact of the sentence indication scheme on the time between committal for trial and case finalization where the accused person changed plea.

The organization of the report is as follows. Section 2 describes the basis on which the sentence indication scheme might be expected to reduce the proportion of defendants proceeding to trial in the District Criminal Court and reduce the time between committal for trial and case finalization where a defendant elects to change his or her plea. Section 3 describes the approach taken to assess the impact of the scheme on these variables. Section 4 examines the impact of the sentence indication scheme on the method of finalization of matters registered for trial in that Court. Section 5 examines the impact of the sentence indication scheme on trends in delay for matters registered for trial but finalized on a plea of guilty. Section 6 summarizes the result of the preceding sections and discusses their implications.

SECTION 2: THE SENTENCE INDICATION SCHEME IN THEORY

Neither the second reading speech to the sentence indication scheme nor the press release accompanying its introduction in Parliament provide a detailed rationale for the expectation of 'earlier and more frequent' guilty pleas. However, in a newspaper article published earlier this year, the Director General of the NSW Department of Courts Administration was quoted as saying that, prior to the introduction of the scheme,

> defendants had tended to wait until the last minute before pleading guilty out of fear or a desire to put off facing the situation.[9]

If this is true it is easy to see why the scheme might bring about earlier guilty pleas. Sentence indication applications are made at first arraignment. This is always well before the date the case is or would be set down for trial. A change of plea at this stage would therefore substantially reduce the period between committal for trial and finalization of the case (on a plea of guilty).

It is rather more difficult to understand why the sentence indication scheme would be expected to increase the rate at which those committed for trial change their plea to guilty. The second reading speech accompanying the legislation did not deal with this issue. In the newspaper article referred to above, however, the Director General of Courts Administration was also quoted as saying that:

> If people have got an undue fear of what's going to happen [to them] they may be more likely to plead not guilty.

This suggests that one possible rationale for the expectation of an increase in guilty pleas might proceed along the following lines: some defendants proceed to trial only because they would prefer to plead not guilty and secure the chance of a full acquittal than face the sentence which they believe will be imposed on them if they plead guilty. If defendants in this situation could be persuaded to believe that a scheme had been introduced which guaranteed (or, at least provided strong assurance of) a much more lenient penalty in exchange for a plea of guilty than would be imposed upon conviction following a plea of not guilty, the proportion of them tempted to change their plea might increase.

The argument underpinning claims that the sentencing indication scheme will deliver an increase in the proportion of guilty pleas is less straightforward than that underpinning claims that the sentencing indication scheme will deliver earlier guilty pleas. There is, after all, no direct evidence that significant numbers of defendants proceeded to trial (in the hope of acquittal) before the advent of the sentencing indication scheme out of concern about the sentence which would be imposed if they pleaded guilty. Nor is it immediately obvious why the scheme would tempt a large number of defendants to forsake their chances of a full acquittal in order to obtain the certainty of a lenient sentence. Nevertheless, if the sentencing indication scheme does have the effect of attracting more guilty pleas, two consequences should flow. Firstly, one should be able to detect an increase in the proportion of cases registered for trial but finalized on a plea of guilty. Secondly, one should be able to observe a decrease in the proportion of matters registered for trial which actually proceed to trial.

It might be thought that the first of these implications logically implies the second. Cases committed for trial, however, may be finalized by means other than a trial or a plea of guilty. They may be finalized if the Director of Public Prosecutions (DPP) 'no-bills' the charges or, alternatively, if the accused person absconds or dies. An increase in the proportion of cases committed for trial but finalized on a plea of guilty, therefore, does not necessarily imply a reduction in the proportion of matters proceeding to trial. This is an important point because it indicates that we cannot infer a reduction in the demand for trial court time simply from the observation that the percentage of cases registered for trial but finalized on a plea of guilty has risen. Such inferences can only be drawn from evidence that the proportion of matters registered for trial and proceeding to trial has fallen.

SECTION 3: METHOD

As noted in Section 1, the sentence indication scheme was introduced across the State in three distinct phases. The scheme commenced in pilot form at the Parramatta District Court in February 1993. It was then extended to the Sydney District Court in June 1993. Finally, in February 1994, the scheme was extended to all other District Courts.

In assessing the impact of the scheme on the method of case disposal it would have been preferable to examine differences in method of case disposal before and after the introduction of sentence indication, taking into account any secular trends in method of case disposal. To do this would have required a comparison of trends in method of case disposal (before and after sentence indication) for courts which introduced the scheme with the corresponding trends in courts which did not introduce it at the same time. Unfortunately the rapid expansion of the sentence indication scheme across the State made it impossible to compare trends in method of case disposal in courts which introduced the scheme with the corresponding trends in courts which did not.

The only available alternative strategy was to compare the relative frequencies of different methods of case disposal in each of several courts, before and after the implementation of the scheme in those courts. Unfortunately, courts outside the Sydney metropolitan area do not deal with enough criminal cases each month to accurately determine changes in method of case disposal for each court separately. In order to deal with this problem the following strategy was adopted. Changes in method of case disposal were separately examined for Parramatta District Court and Sydney District Court. However, cases disposed of in the Newcastle and Wollongong District Courts were grouped together for the purposes of analyzing changes in method of case disposal, as were cases disposed of in Lismore, Dubbo and Wagga Wagga District Courts.

To test for an effect of sentence indication on method of case disposal two separate chi-square tests were performed. The first test (Test 1) compared the relative frequency of the four different methods of case disposal before and after[10] the introduction of sentence indication. In the second test (Test 2), the four methods of case disposal were reduced to two: the first consisting of cases disposed of by trial, the second consisting of all other cases. The object of the first test was to see whether there was any significant change in any of the methods of case disposal. The object of the second test was to see specifically whether the proportion of matters proceeding to trial had changed relative to the proportion of cases disposed of by any other means.

For reasons already detailed in connection with the analysis of trends in method of case disposal, the analysis of trends in case delay (i.e. the period between committal for trial and finalization of a case on a plea of guilty) had to be restricted to an examination of changes in monthly case delay before and after the introduction of sentence indication. The court groupings employed in showing changes in method of case disposal have also been employed in showing changes in case delay. However, because the observations are not frequency counts but monthly median case delays, the test employed to see whether case delays were lower following the introduction of the sentence indication scheme was a Mann-Whitney test rather than a chi-square test.[11]

Separate one-tailed Mann-Whitney tests were conducted on the median case delays for both bail and custody cases in the period 12 months before and 12 months after the

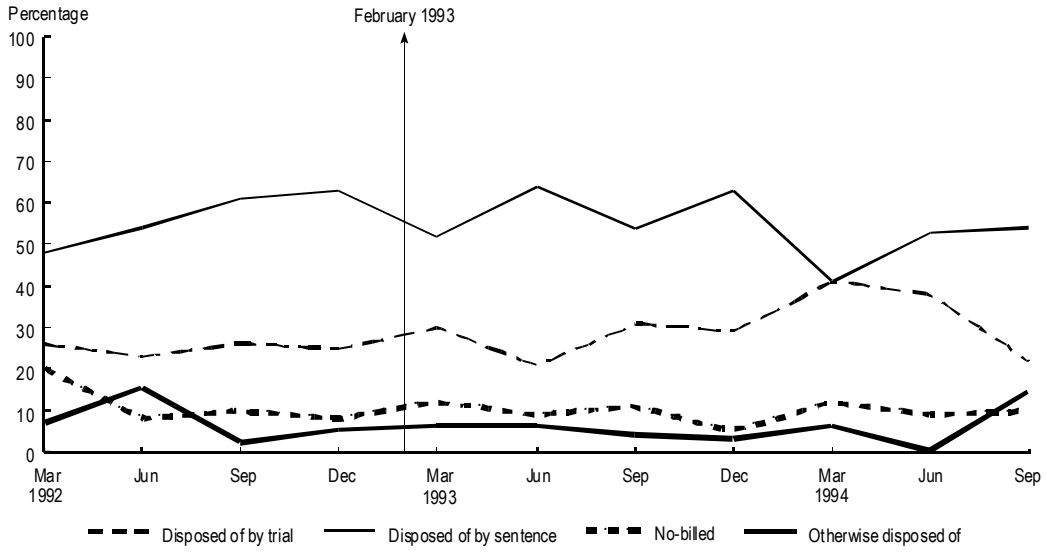
introduction of the sentence indication scheme in Parramatta and Sydney District Courts. In the case of Newcastle, Wollongong, Dubbo, Lismore and Wagga Wagga Courts, only eight months worth of follow-up data were available, so the Mann-Whitney tests for these courts were conducted on the median case delays for the eight months preceding and the eight months following the introduction of sentence indication. It should be noted that the number of observations involved in the Mann-Whitney tests sometimes falls below 12 (or 8) because in some comparisons no case of the required kind was finalized in one or more of the months involved in the test.

It should be noted that it was impossible (on the information available to the Bureau) to separate out cases which received a sentence indication from cases which did not, in either the analysis of method of case disposal or the analysis of changes in case delay. At the time at which sentence indication was introduced, however, nearly 50 per cent of all bail cases and 80 per cent of custody cases being finalized on a plea of guilty in the District Court had been committed for trial within the previous six months.[12] The follow-up period for Sydney and Parramatta District Courts was at least 12 months, while the follow-up period for the remaining courts was at least six months. The available follow-up data are therefore considered to provide a reasonable basis on which to make an interim assessment of whether the sentence indication scheme influenced the relative frequency of different methods of case disposal and/or the case delay.

SECTION 4: RESULTS - THE IMPACT OF SENTENCE INDICATION ON METHOD OF CASE DISPOSAL

The first four figures to be examined show the quarterly[13] trends in method of case disposal for the District Courts of Parramatta; Sydney; Newcastle and Wollongong; and Dubbo, Wagga Wagga and Lismore between March 1992 and September 1994. The top solid line in each graph shows the trend in the percentage of matters finalized each quarter which had been committed for trial but which were finalized on a plea of guilty. The light dashed line shows the percentage of matters finalized each quarter which had been committed for trial and which were actually finalized with a trial. The heavy dashed line shows the percentage of matters each quarter which were finalized because the DPP no-billed the charges. The solid line at the bottom of each graph shows the percentage of matters finalized each quarter by any other means (e.g. because the defendant absconded or died). The vertical line indicates the month in which sentence indication was introduced.

Figure 1: Persons committed for trial by method of case disposal
Parramatta District Court



Inspection of Figure 1 (Parramatta) reveals no obvious evidence of any upward or downward trend following the introduction of sentence indication hearings in any of the four methods of trial case disposal. Table 1 shows the method of case disposal for persons committed for trial, whose cases were finalized in the 12 months before and after the introduction of sentence indication. Neither test result was statistically significant ($X^2_{\text{Test 1}} = 6.2$, df = 3, $p > 0.05$; $X^2_{\text{Test 2}} = 1.7$, df = 1, $p > 0.05$).

Table 1: Persons committed for trial
Method of disposal for cases finalized before and after sentence indication
Parramatta District Court

	Cases finalized before sentence indication (Feb 1992 to Jan 1993)		*Cases finalized after sentence indication (Feb 1993 to Jan 1994)*	
Method of case disposal	***Number of persons committed for trial***	***(%)***	***Number of persons committed for trial***	***(%)***
Trial	97	(23.9)	118	(27.9)
Sentence	238	(58.6)	247	(58.4)
No-billed	37	(9.1)	39	(9.2)
Other	34	(8.4)	19	(4.5)
Total	406	(100)	423	(100)

Inspection of Figure 2 (Sydney), reveals clear evidence of an upward trend in the proportion of matters finalized on a plea of guilty. On the other hand, there appears to be no change in the proportion of matters proceeding to trial. Instead, the upward trend in the proportion of guilty pleas appears to be counterbalanced by a downward trend in the proportion of cases in the categories 'no-billed' and 'otherwise disposed of'. As might have been expected, on the basis of Figure 2, there is a significant difference before and after sentence indication in the relative frequency of the four types of case disposal ($X^2_{\text{Test 1}} = 27.3$, df = 3, $p < 0.05$). Table 2 shows that, after the introduction of sentence indication, there was a higher proportion of persons whose cases were finalized as guilty pleas and smaller proportions of persons whose cases were no-billed or otherwise

Figure 2: Persons committed for trial by method of case disposal
Sydney District Court

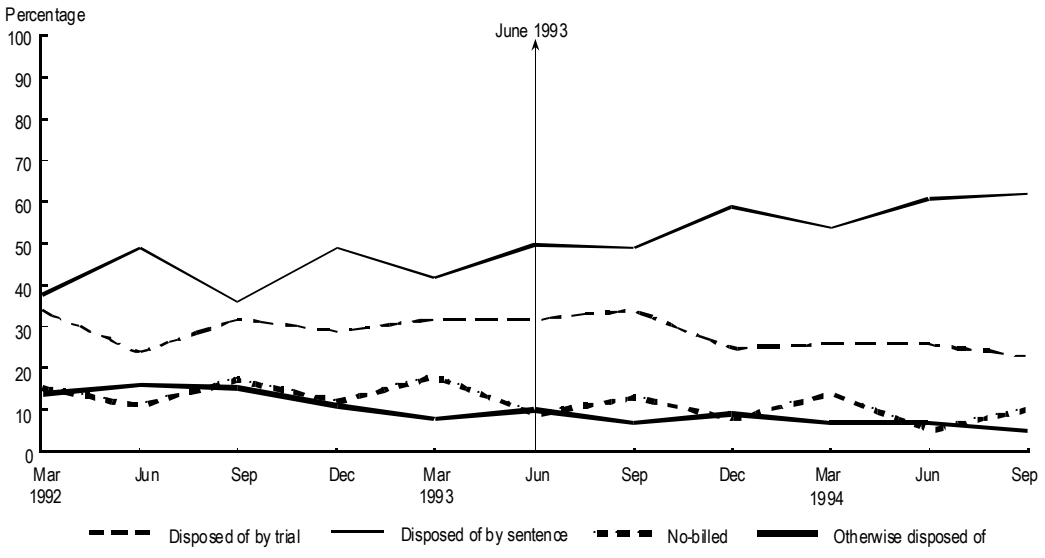


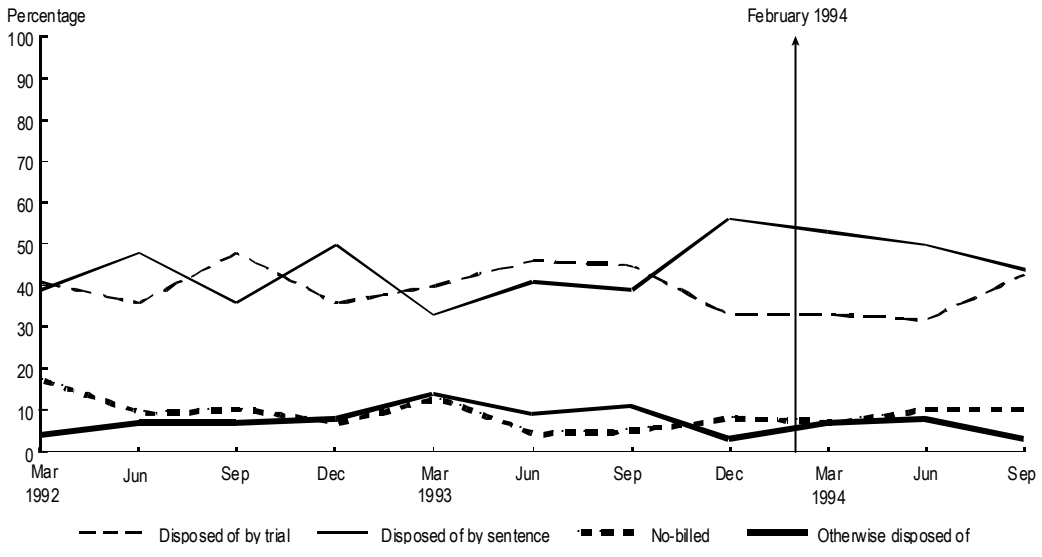
Table 2: Persons committed for trial
Method of disposal for cases finalized before and after sentence indication
Sydney District Court

	Cases finalized before sentence indication (Jun 1992 to May 1993)		*Cases finalized after sentence indication (Jun 1993 to May 1994)*	
Method of case disposal	***Number of persons committed for trial***	***(%)***	***Number of persons committed for trial***	***(%)***
Trial	444	(29.8)	362	(29.0)
Sentence	670	(44.9)	664	(53.1)
No-billed	196	(13.1)	124	(9.9)
Other	182	(12.2)	100	(8.0)
Total	1492	(100)	1250	(100)

disposed of. There is no difference, however, when methods of case disposal are grouped into 'trial' and 'non-trial', respectively ($X^2_{\text{Test 2}} = 0.2$, df = 1, $p > 0.05$). Approximately 30 per cent of persons committed for trial actually proceeded to trial, both before and after sentence indication.

Inspection of Figure 3 (Newcastle and Wollongong), reveals very little evidence of any upward or downward trend in the relative frequency of the four methods of case disposal. Tests for change were carried out as described in relation to Figures 1 and 2. Because data on method of case disposal were available for only eight months following the introduction of sentence indication, however, the 'before' and 'after' groups consist of only eight months of data before and eight months of data after the introduction of

Figure 3: Persons committed for trial by method of case disposal
Newcastle and Wollongong District Courts



sentence indication. The data are shown in Table 3. As might have been expected on the basis of Figure 3, neither test revealed any significant difference in method of case disposal before and after the introduction of sentence indication ($X^2_{\text{Test 1}} = 2.3$, df = 3, $p > 0.05$; $X^2_{\text{Test 2}} = 0.2$, df = 1, $p > 0.05$).

Table 3: Persons committed for trial
Method of disposal for cases finalized before and after sentence indication
Newcastle and Wollongon District Courts

	Cases finalized before sentence indication (Jun 1993 to Jan 1994)		*Cases finalized after sentence indication (Feb 1994 to Sep 1994)*	
Method of case disposal	***Number of persons committed for trial***	***(%)***	***Number of persons committed for trial***	***(%)***
Trial	68	(38.2)	86	(35.8)
Sentence	85	(47.8)	119	(49.6)
No-billed	11	(6.2)	22	(9.2)
Other	14	(7.9)	13	(5.4)
Total	178	(100)	240	(100)

Inspection of Figure 4 (Dubbo, Wagga Wagga and Lismore) reveals a complex pattern of changes in the method of case disposal. The proportion of matters finalized on a plea of guilty appears to have dipped sharply and then risen sharply in the period leading up to the introduction of sentence indication. In the two quarters following its introduction, the proportion of sentence matters continued to rise but it then fell sharply in the following quarter. It is difficult to discern any regular trend in any of the other methods of case disposal. When chi-square tests are conducted using the same 'before' and 'after' groupings as were described in connection with Figure 3, the results reveal significant changes both when all four methods of case disposal were considered ($X^2_{\text{Test 1}} = 9.7$, df = 3, $p<0.05$) and when trial cases were compared with all other methods of case disposal combined ($X^2_{\text{Test 2}} = 8.4$, df = 1, $p <0.05$).

Figure 4: Persons committed for trial by method of case disposal
Dubbo, Wagga Wagga and Lismore District Courts

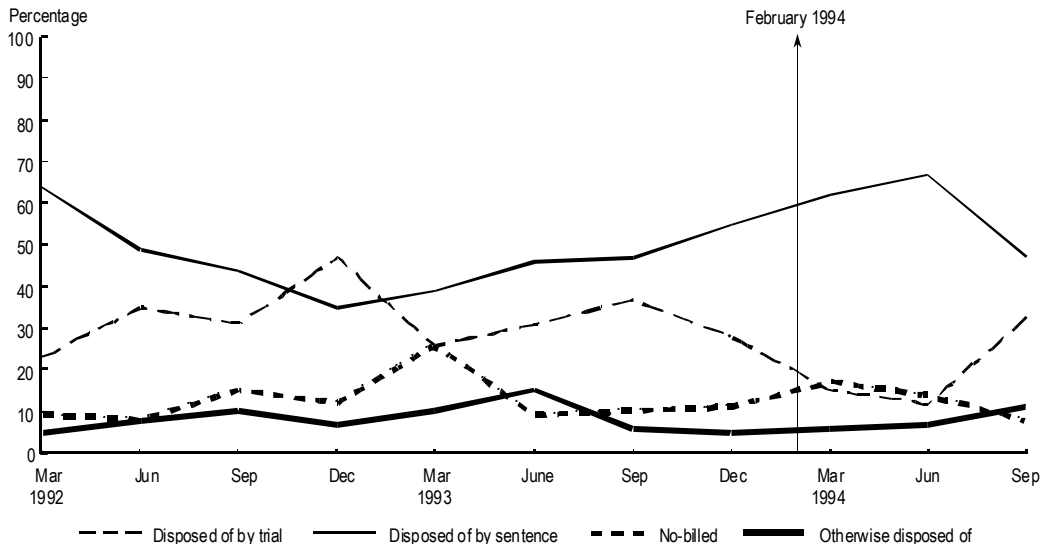


Table 4: Persons committed for trial
Method of disposal for cases finalized before and after sentence indication
Dubbo, Wagga and Lismore District Courts

	Cases finalized before sentence indication (Jun 1993 to Jan 1994)		*Cases finalized after sentence indication (Feb 1994 to Sep 1994)*	
Method of case disposal	*Number of persons committed for trial*	*(%)*	*Number of persons committed for trial*	*(%)*
Trial	48	(35.0)	25	(19.2)
Sentence	70	(51.1)	76	(58.5)
No-billed	11	(8.0)	19	(14.6)
Other	8	(5.8)	10	(7.7)
Total	137	(100)	130	(100)

It can be seen from Table 4 that, in the eight months before the introduction of sentence indication, 35.0 per cent of persons committed for trial actually had their cases finalized as trials, whereas in the eight months following the introduction of sentence indication, this percentage reduced to 19.2 per cent.

To obtain an overall picture of the trends in method of case disposal two composite 'before' and 'after' groups were formed in the following way. Data on method of case disposal from the months preceding and the months following the introduction of sentence indication in each court were pooled. Data for 12 months before and after were included for Sydney and Parramatta but only for eight months for the other courts. Because sentence indication was introduced at different times, the before and after periods were not the same for each court.

Figure 5: Persons committed for trial by method of case disposal
Pooled District Courts

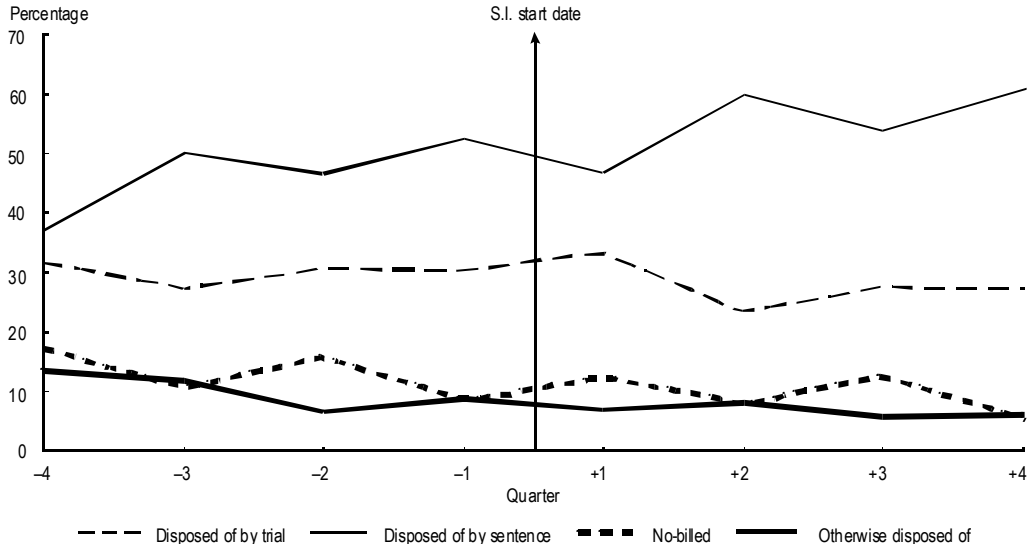


Figure 5 shows the trend in method of case disposal in the four quarters before and the four quarters following sentence indication using the pooled data. Inspection of Figure 5 suggests a general increase in the proportion of cases finalized as 'sentence

matters', no change in the proportion of matters finalized by way of a trial and a general decline in the proportion of matters finalized as a 'no-bill' or by some other means. Chi-square tests confirm this conclusion.

Table 5: Persons committed for trial
Method of disposal for cases finalized before and after sentence indication
Pooled District Courts

	Cases finalized before sentence indication		*Cases finalized after sentence indication*	
Method of case disposal	***Number of persons committed for trial***	***(%)***	***Number of persons committed for trial***	***(%)***
Trial	657	(29.7)	591	(28.9)
Sentence	1063	(48.0)	1106	(54.1)
No-billed	255	(11.5)	204	(10.0)
Other	238	(10.8)	142	(7.0)
Total	2213	(100)	2043	(100)

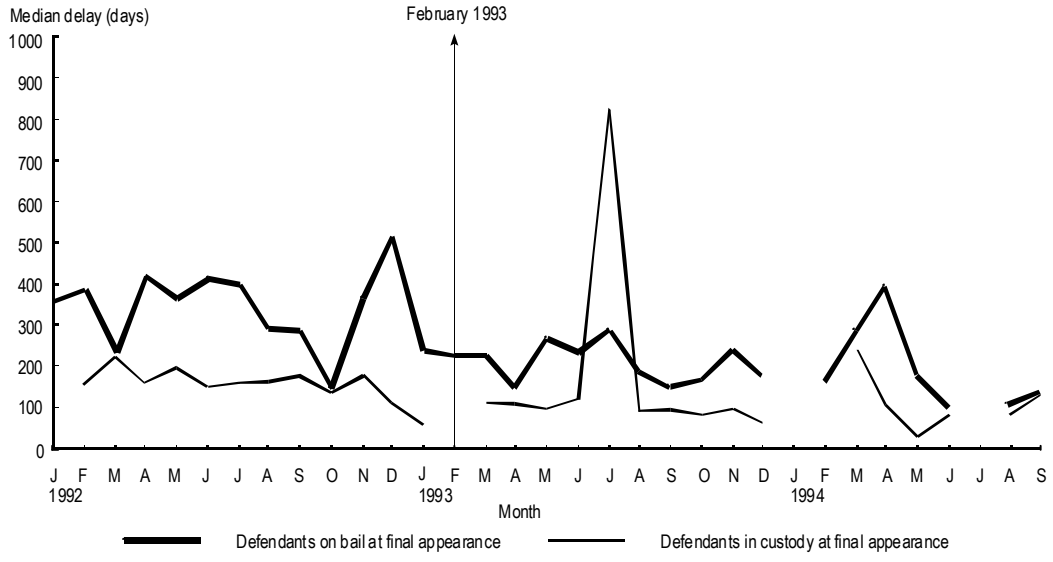
Table 5 shows the method of case disposal for persons committed for trial, whose cases were finalized in the periods (12 months or 8 months, depending on the court) before and after the introduction of sentence indication. There is a significant difference before and after sentence indication in the relative frequency of the four methods of case disposal ($X^2_{\text{Test 1}} = 27.5$, df=3, $p < 0.05$). Table 5 shows that, after the introduction of sentence indication, there was a higher proportion of persons whose cases were finalized as guilty pleas and smaller proportions of persons whose cases were no-billed or otherwise disposed of. This difference disappears, however, when the relative frequency of matters disposed of as a trial is compared with the relative frequency of all other methods of case disposal combined ($X^2_{\text{Test 2}} = 0.3$, df = 1, $p > 0.05$). About 30 per cent of persons committed for trial actually proceeded to trial both before and after sentence indication.

SECTION 5: RESULTS - THE IMPACT OF SENTENCE INDICATION ON CASE DELAY

Figures 6 to 9 show the trend in median monthly case delay over the period January 1992 to September 1994, using the same court groupings as were shown in Figures 1 to 4. The heavy line in each figure indicates the trend in case delay for cases where the accused was on bail at his or her final appearance. The light line shows the trend in case delay for cases where the accused was in custody (on remand) at final appearance. As with Figures 1 to 5, the vertical line on each graph shows the month in which sentence indication was introduced. Gaps in the trend line indicate months in which no case (of the relevant type) was finalized.

Figure 6 shows the trend in monthly median case delay for Parramatta District Court. Median case delays for both bail and custody matters would appear to be lower in the period after the introduction of the sentence indication scheme than before, although the downward trend also appears to have commenced in the period prior to the introduction of the scheme. Mann-Whitney tests indicated the median monthly case delays for both bail and custody matters were significantly lower in the period after the introduction of sentence indication than before (U_{bail} =17, N_1=12, N_2=11, $p < 0.05$; $U_{custody}$ = 22, N_1=12, N_2=10, $p<0.05$).

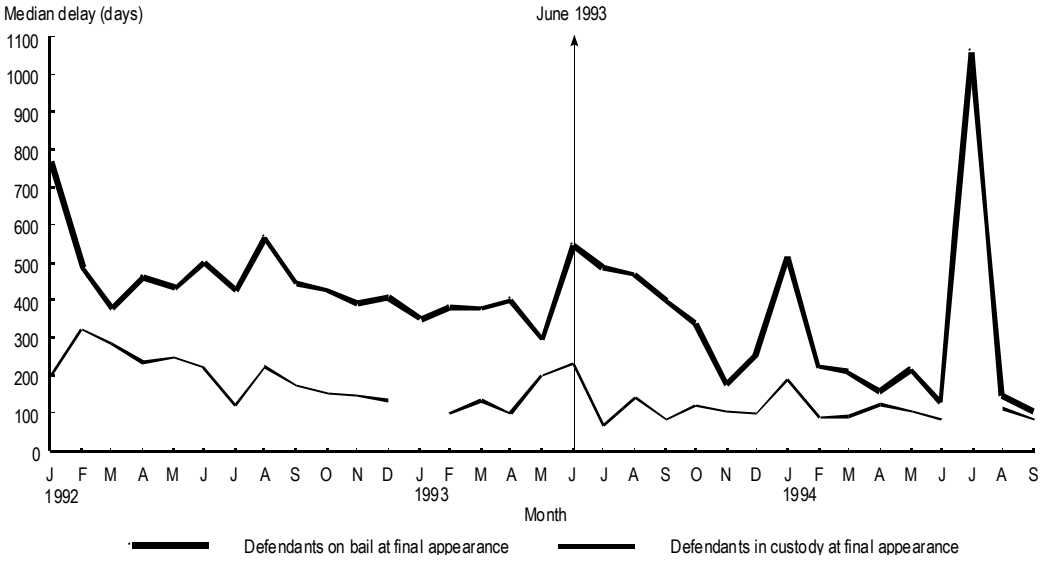
Figure 6: Median finalization delay* for persons changing plea**
Parramatta District Court



* Measured from date of committal to date of finalization. ** Restricted to cases finalized on a plea of guilty to all charges.

Figure 7 shows the trend in monthly median case delay for the Sydney District Court. As with Parramatta District Court, median case delays for both bail and custody matters appear generally to be lower after the introduction of sentence indication than before. Separate Mann-Whitney tests conducted on the case delay data 12 months before and after the introduction of sentence indication, however, only partially confirm this impression. Monthly median case delays for bail cases were not significantly lower after

Figure 7: Median finalization delay for persons changing plea
Sydney District Court



the introduction of sentence indication than before (U_{bail} = 49, N_1=12, N_2=12, $p > 0.05$). Monthly median case delays for custody cases were significantly lower after the introduction of sentence indication than before ($U_{custody}$ = 36, N_1=11, N_2=12, $p < 0.05$).

Figures 8 and 9 show the trends in monthly median case delay for Newcastle and Wollongong District Courts (Figure 8) and Dubbo, Wagga Wagga and Lismore District Courts (Figure 9). In the case of Newcastle and Wollongong, although monthly median case delays for both bail and custody cases appear to decline quite sharply in the early

Figure 8: Median finalization delay for persons changing plea
Newcastle and Wollongong District Courts

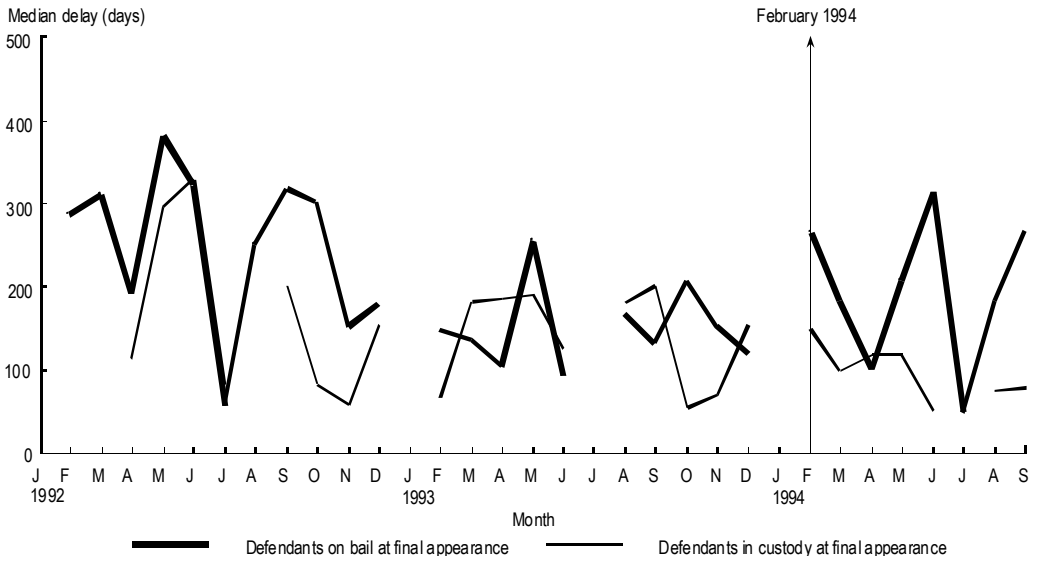
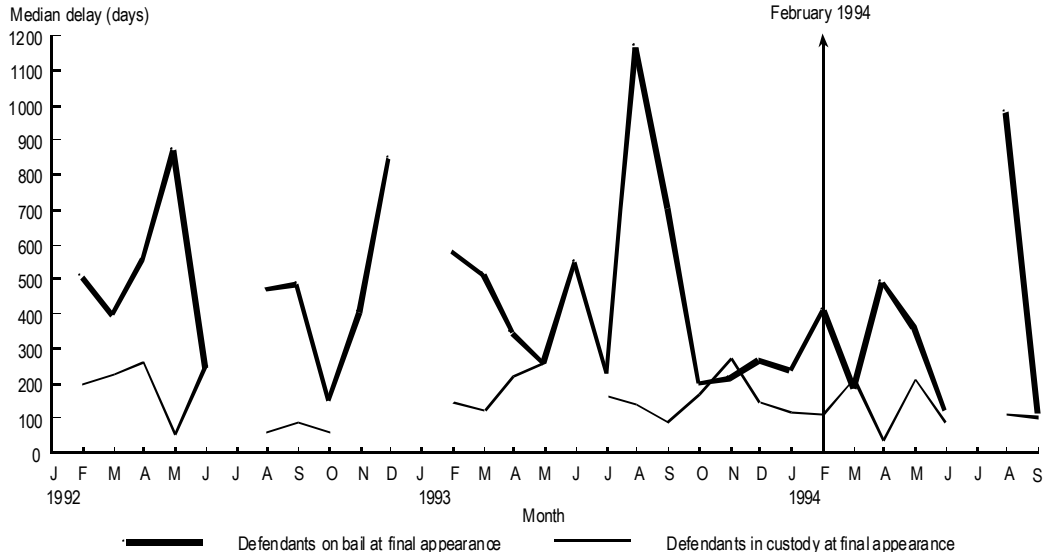


Figure 9: Median finalization delay for persons changing plea
Dubbo, Wagga Wagga and Lismore District Courts



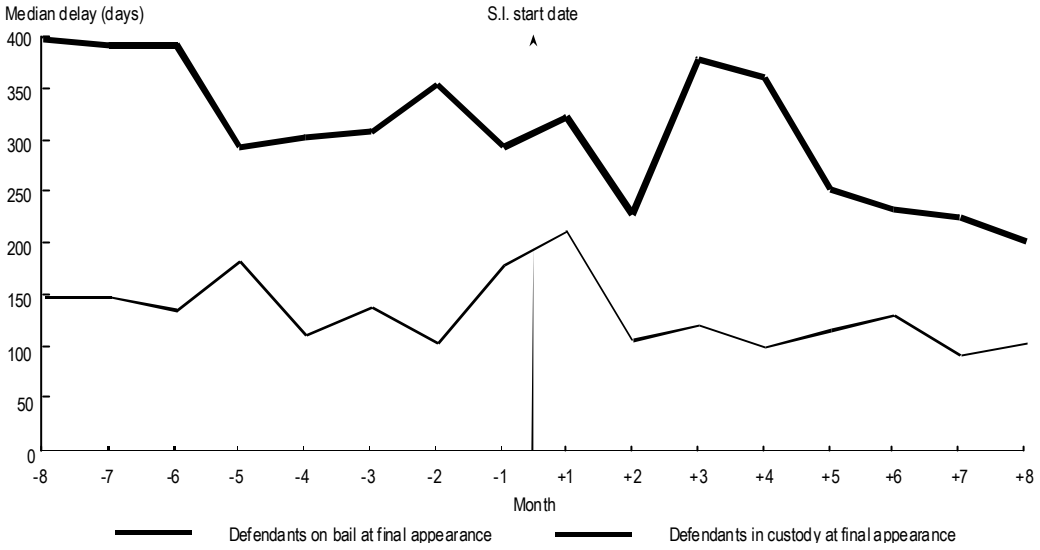
months of 1992, there is no evidence of a difference in monthly median case delay in the 8 months before and after the introduction of sentence indication. The Mann-Whitney test result confirms this impression (U_{bail} = 13, N_1=6, N_2=8, p >0.05; $U_{custody}$ = 13, N_1=6, N_2=7, p > 0.05).

Due to the smaller numbers of cases involved, the monthly median case delays for Dubbo, Wagga Wagga and Lismore District Courts are much more variable than those for other District Courts. Figure 9 does not appear to provide any evidence that case delays are lower in Dubbo, Wagga Wagga and Lismore District Courts following the introduction of sentence indication than before. In fact neither of the Mann-Whitney test results was significant (U_{bail} = 22, N_1=8, N_2=7, p > 0.05; $U_{custody}$ = 16, N_1=7, N_2=7, p > 0.05).

Because there are smaller numbers of observations of median delay involved in analyses of the impact of sentence indication on case delays in the Newcastle and Wollongong, Lismore, Wagga Wagga and Dubbo District Courts, the power of the Mann-Whitney test to detect a significant reduction in case delay in these courts is less than that associated with the tests for a reduction in delay in the Sydney and Parramatta District Courts. In order to conduct a more powerful assessment of the impact of sentence indication on case delay, the data on case delay for all courts were pooled following the same general strategy as that adopted in connection with Figure 5.

Figure 10 shows the monthly median case delays for all courts combined in the eight months preceding and the eight months following the introduction of sentence indication. Case delays would appear to be generally lower after the introduction of sentence indication than before both for bail and for custody cases. The Mann-Whitney test results confirm this impression. When all case delay data are pooled, median case delays for bail and custody cases are significantly lower after the introduction of sentence indication than before (U_{bail} = 14, N_1=8, N_2=8, p < 0.05; $U_{custody}$ = 15, N_1=8, N_2=8, p < 0.05).

Figure 10: Median finalization delay for persons changing plea
Pooled District Courts



SECTION 6: SUMMARY AND DISCUSSION

The data gathered so far by the Bureau do not provide much support for the proposition that the sentence indication scheme reduced the proportion of persons committed for trial who actually proceeded to trial. Only one group of courts (Dubbo, Wagga Wagga and Lismore) exhibited a significantly lower percentage of cases proceeding to trial after the introduction of the scheme. Figure 4 suggests that the downward trend in the percentage of matters proceeding to trial in these courts began prior to the introduction of the sentence indication scheme. No downward trend in the percentage of matters proceeding to trial appears to exist when a more powerful test was conducted by grouping all courts together.

It is possible that the apparent absence of any impact of sentence indication on the proportion of defendants proceeding to trial is due to the fact that some of the finalized cases depicted in Figures 1 to 4 were committed for trial before the advent of sentence indication. If the sentence indication scheme were exerting a strong effect on the proclivity of defendants to plead guilty rather than proceed to trial, however, one might have expected some clear evidence of this in Figures 1 to 4 and in the results of the statistical tests. Even among the comparisons where only eight months of follow-up data on method of case disposal were available, cases dealt with under the sentence indication scheme constituted no less than 50 per cent of the sample of cases examined for changes in method of case disposal.

The proportion of persons committed for trial but changing their plea to guilty was significantly higher after the introduction of the sentence indication scheme than before and this calls for some explanation. Figure 5 shows that the increase in the proportion of persons pleading guilty in the period was offset by a decrease in the proportion of accused persons whose case was finalized through a 'no-bill' and a decrease in the proportion of cases in which the accused person absconded or died. One possible explanation for this combination of trends may be found in the State Government's decision, at the end of 1990, to shift the burden of prosecution responsibility in committal proceedings from the NSW Police Service to the DPP. Canvassing the likely impact of this initiative on the District Court, the then DPP Director, Mr Reg Blanch Q.C., observed [14] that:

> This Office has embarked on the initiative with a policy of careful screening of all [committal] cases at the earliest opportunity. If a decision is made to discontinue a prosecution that decision should be made as soon as possible. When the prosecution proceeds it is policy to review the charges which have been laid by the police and we have the power to change the charges, if considered appropriate. An immediate benefit of changing charges is that a defendant will often plead guilty if the new charge is considered appropriate ... it is reasonable to expect that a greater proportion of the cases now being committed to the District Court are more difficult cases and ones which are more likely to go to trial. It might also be expected that the number of cases where a no bill is found will decrease and a greater percentage of cases will go to trial.

The approach of the DPP to the handling of committal proceedings suggests that the proportion of cases in which charges were no-billed decreased because the number of cases reaching the District Court in which the charges were not adequately supported by the evidence decreased. The increase in the proportion of District Court cases

committed for trial in which the defendant pleads guilty was not anticipated by the DPP. Nevertheless such a result is entirely consistent with the general thesis advanced by the DPP that defendants are more likely to plead guilty when the defendant considers the charge to be 'appropriate'. The Director of the DPP clearly expected the increase in pleas of guilty to occur at the committal stage. Some of the increase, however, may have flowed into the District Court following committal for trial.

The decrease in the proportion of cases in which the defendant absconded or died is also potentially explicable in terms of the assumption by the DPP of responsibility for committal proceedings. The vast majority of cases falling into the category 'absconded/ died' in fact involve abscondings. It is not unreasonable to suppose that defendants are less likely to abscond when the charges against them are less serious and/or are not perceived to be so unjust. If this is true, the changes made by the DPP to charging practices might have reduced the incentive to abscond, thereby reducing the proportion of cases falling into the category 'absconded/died'.

Although the sentence indication scheme does not appear at this stage to have altered the proportion of persons proceeding to trial, the present findings are consistent with the proposition that the introduction of the sentence indication scheme encouraged earlier guilty pleas. If this reduced the number of cases where a plea change occurs too late for court administrators to make effective use of the vacated trial court sitting time, it could be argued that the sentence indication scheme resulted in more efficient use of trial court and judge time. It is worth noting, however, that a process of early arraignment was introduced in the District Court several months prior to the advent of sentence indication in Sydney and Parramatta District Courts. This process was also be expected to produce earlier pleas of guilty.[15]

It is impossible to determine on the available data whether the introduction of early arraignment hearings or the introduction of sentence indication or both led to an increase in early pleas of guilty. Inspection of Figures 6 and 7 suggests that, in Parramatta and Sydney District Courts at least, the downward trend in delay for cases ending in a guilty plea may have begun before the introduction of sentence indication. The same figures, however, may be read as suggesting that the trend continued following the introduction of sentence indication. The only reliable way to determine whether the current rate of early pleas of guilty may be obtained in the absence of the sentence indication scheme is to suspend the operation of the scheme in one or more courts and compare the impact on case delay in those courts with case delays in courts where the scheme has not been suspended.

NOTES

1 The Criminal Procedure (Sentence Indication) Amendment Act 1992 (No. 98) (NSW) was assented to on 3 December 1992 and commenced on the date of assent.

2 Press release, NSW Attorney General, 27 July 1992.

3 The District Court of New South Wales Annual Review 1993, p. 23.

4 Source: Mr Bob McClelland, Registrar, NSW District Criminal Court Registry, personal communication, 15 December 1994.

5 Telegraph Mirror 21 March 1994.

6 Spears, D., Poletti, P. & McKinnell, I. December 1994, Sentence Indication Hearings Pilot Scheme, Monograph Series Number 9, Judicial Commission of New South Wales, Sydney, p. 18.

7 Spears, Poletti & McKinnell, op. cit., p. 43.

8 Spears, Poletti & McKinnell, op. cit., p. 32.

9 Telegraph Mirror 21 March 1994.

10 For Parramatta and Sydney District Courts, 12 months of case disposal data before and after sentence indication were used in the chi-square tests. Because only eight months of data were available in the period after the introduction of sentence indication in the remaining courts, comparisons of method of case disposal for these courts are based on eight months' case disposal data before and after the introduction of sentence indication.

11 For details of this test see, for example, Siegel, S. 1956, Non-Parametric Statistics for the Behavioural Sciences, McGraw-Hill Kogakusha, pp. 116-127.

12 See: NSW Bureau of Crime Statistics and Research 1994, Higher Criminal Court Proceedings, September Quarter 1994, (unpub.) Figure 19, p. 21. The actual percentage of cases finalized within six months tends to vary from court to court. At no court, however, were less than 30 per cent of the relevant cases finalized within six months.

13 Quarterly rather than monthly trends are shown because the relative frequency of the various methods of case disposal is too variable when examined on a monthly basis.

14 Office of the Director of Public Prosecutions New South Wales, Annual Report, 1991-2, Director's Overview, pp. 7-9.

15 The District Court of New South Wales Annual Review 1992, p. 13.