

DELAY REDUCTION THROUGH INTEGRATED CASEFLOW MANAGEMENT

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In September 1988, my firm was commissioned to undertake a review of the New South Wales Court system. Our terms of reference were to identify the extent and causes of the delays and inefficiencies in the court system. Having regard to the fundamental principles and due process of justice and the independence of the judiciary, we were also to recommend what action should be taken or what options are available to the Government to remedy those deficiencies.

The review commenced in October, 1988 and our final report was presented in May 1989.² The review covered both criminal and civil jurisdictions and all levels of courts in New South Wales, although the emphasis was placed on those courts and jurisdictions where the delays were greatest. The report has been made a public document and I do not intend, in this paper, to retrace the many findings and conclusions of that report. However, there is a significant aspect of the recommendations made in our report that I think may be of particular interest to the Institute of Criminology and it is on this subject, caseload management, that I have prepared this paper. This paper will discuss:

- the concept of caseload management
- the dimension of delay
- resource planning
- management information
- standards for case disposition
- the elements of caseload management
- the impact of caseload management

THE CONCEPT OF CASEFLOW MANAGEMENT

Court supervised caseload management is fundamental to the successful resolution and continued control of court delays. While caseload management has been mainly applied in relation to the expeditious disposition of civil matters, the fundamentals of caseload management are also applicable to criminal matters. Various elements of caseload management have been in operation in New South Wales courts for some time, but, with some exceptions, not as a comprehensive system under court supervision.

1 Paper delivered at a Public Seminar entitled "Delay in the Criminal Justice System", convened by the Institute of Criminology, 9 August 1989

2 Report to the Premier and the Attorney General on a Review of the New South Wales Court System, Coopers & Lybrand WD Scott, May 1989

During the course of our review of the New South Wales court system I had the privilege of working with Maureen Solomon, one of the leading consultants on court administration in the USA and a proponent of caseload management. Mrs Solomon describes caseload management in the following terms:

As now generally accepted in the courts community, caseload management connotes supervision or management of the time and events involved in the movement of a case through the court system from the point of initiation to disposition, regardless of the type of disposition. In fact, caseload management emphasises early case management to achieve early disposition in the great majority of cases that ultimately will reach a non-trial disposition...

Caseload management is strictly a management process. While some aspects are performed by court administrators and some by judges, and while the events involved are conferences, hearings, and trials, caseload management should not directly impact the adjudication of substantive or procedural issues in the litigation. The resolution of each case on its legal merits is never compromised by an effective caseload management system...

A predictable, regulated flow for each case from filing to termination will achieve important goals in addition to expeditious disposition. Court management of case progress as part of an organised, predictable system should assure:

- (a) equal treatment of all litigants by the court;
- (b) timely disposition consistent with the circumstances of the individual case;
- (c) enhancement of the quality of the litigation process; and
- (d) public confidence in the court as an institution.³

THE DIMENSION OF DELAY

From the information available to us at the time of our review it appeared that the average delay period at the end of 1988 in criminal cases was as shown in the following table.

Table 1 Average Delay Periods - 1988

	In Custody (months)	On Bail (months)
Supreme Court		
From committal to trial	9	12
District Court - Sydney		
From committal to trial	14	26

In addition, the period from arrest to committal to the District Court in Sydney averaged 22 weeks for an accused person in custody and 30 weeks for persons on bail.

3 "Caseload Management in the Trial Court - Now and for the Future", American Bar Association publication, 1987

RESOURCE PLANNING

The growth in new cases registered over the last five years is set out in Table 2 below:

Table 2 **New Cases Registered**

	1984	1985	1986	1987	1988
Supreme Court					
Committals for trial	N/A	157	175	282	250
District Court					
Committals for trial	2,247	2,402	2,891	3,156	3,218

In our report we commented on the need for improved resource planning and postulated preliminary models illustrating the relationships between the expected case load and required judicial resources, given certain assumptions.

One of the models was an inventory based model, which attempted to project a rolling inventory of cases, based on actual and projected registrations and dispositions. This model is outlined in Appendix A to this paper, to illustrate the relationships involved in resource planning and caseflow management. I refer readers to our report for a more detailed analysis of the model.

The figures used in the model were based on information and assumptions available at the beginning of 1989 and may have been superseded by later information and events since then. They are rudimentary models, intended to illustrate relationships, not to provide accurate forecasts, and they need considerable refinement. For this illustration I have selected the District Court, but similar relationships can be modelled in the Supreme Court and the Local Courts.

What this model indicated, subject to the validity of the statistics and assumptions on which it was based, was that, other things being equal, the caseload inventory was likely to continue to increase, with the volume of new cases registered exceeding the capacity of the courts to dispose of them. If this imbalance persisted, delays could be expected to lengthen.

Efforts to reduce delay in the criminal courts need to focus on the three major factors in the equations outlined in the model, that is, the:

- number of cases coming before the courts
- average duration of cases
- disposition capacity of the courts

I will not deal, in this paper, with options for reducing the number of cases. This involves a range of policy issues relating to the rate of guilty pleas, appeals and so on. Nor is it the purpose of this paper to deal with questions of disposition capacity - that is, the number of courts and judges assigned to criminal cases and the sitting times and utilisation of resources. These matters were covered broadly in our

report and a number of the policy issues have been outlined for public debate in the Attorney-General's White Paper,⁴ in May of this year.

What I do emphasise in this paper, is the importance of effective caseload management in reducing the average duration of trials. I also signal the importance of adequate management information to enable resource planning and modelling to be carried out with confidence as to the data base and the relationships between caseload and disposition rates. If, through improved caseload management and resource planning, the average duration of cases can be reduced and the effective utilisation of judges and courtrooms increased, then disposition rates will be increased with a consequent favourable impact on delays.

To provide for adequate resource planning for the future, models of the type described in Appendix A need to be refined and developed further, based on appropriate standards and management information, to provide a forecasting ability over the medium to long range. The models need to be expanded to cover court staff and courtroom facilities as well as judicial resources and could also be expanded to help plan resource requirements in other organisations related to the judicial system.

The inter relationship of resource planning, management information, standards and caseload management can be illustrated by the diagram at Figure 1. It is important to recognise that the court does not operate in a vacuum but is the central hub of a series of related and dynamic processes which require resources, time and co-ordination amongst the many parties involved in the justice system. What is needed is an **integrated** resource planning and caseload management system.

MANAGEMENT INFORMATION

Effective caseload management, resource planning and control depend upon the availability of adequate and accurate management information. The need for improved management information has been recognised by the Attorney General's Department, the Director of Public Prosecutions and the Bureau of Crime Statistics and Research and I understand that steps are being taken to institute the necessary statistical systems.

In my view, the information to be reported regularly should include the:

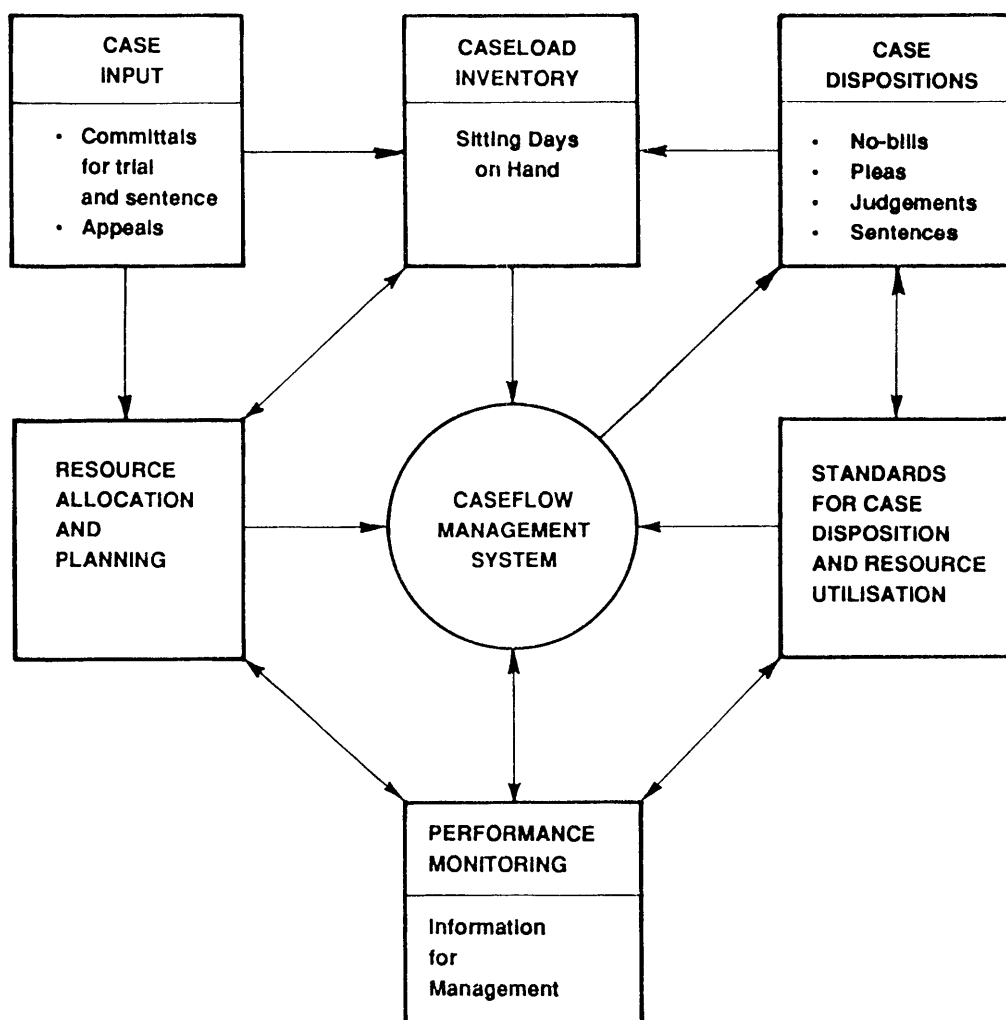
- number of filings of new commencements of actions such as committals in criminal cases, analysed by type of case
- number of filings of other key court processes
- timeframes between major milestones in the case processing
- inventory of pending caseload
- analysis of inventory by type of case
- number of dispositions by type of disposition and type of case
- factors affecting disposition, for example, plea and no-billing rates

4 Discussion on "Reforms to the Criminal Justice System", Attorney General's Department, May 1989

- adjournment rates
- not-reached levels
- court utilisation time and ratios, by courtroom and in total
- judicial utilisation time and ratios, in total for each main jurisdiction.

I cannot over-emphasise the importance of this type of comprehensive management information in providing the factual basis for programs to reduce court delays. Without adequate and reliably accurate information (not only current data but also trend data over some years) it is not possible to plan for appropriate resources (courtrooms, judges and staff) to meet expected workloads, nor is it possible to establish effective standards, caseload management or performance reporting.

Figure 1 **Model of an Integrated Caseload Management System**



STANDARDS FOR CASE DISPOSITION

The definition of time standards for case disposition is one of the first steps in developing an effective caseflow management system. Some jurisdictions overseas have legislated for time standards in criminal matters. When time standards are defined for civil matters it is more usual for the courts to define these standards.

Many arguments can be advanced in favour of judicial as opposed to legislative definition of disposition time standards, but three of the most important are:

- judicial definition of standards is more compatible with the principle of judicial independence
- development of time standards is part of the court's overall program of caseflow supervision; standards developed with the overall program in mind help ensure commitment by the judges and administrators
- development by the judiciary helps ensure consultation with the bar and other concerned bodies, promoting commitment to achieving the standards, by all who have a hand in their development

Once adopted, time standards serve important operational purposes in addition to defining the limits of delay. They provide a basis for measuring the effectiveness of the court's caseflow management system.

Public complaints that cases take too long can be evaluated more objectively if standards exist against which to measure the pace of litigation. A court that consistently is unable to meet disposition time standards, but has implemented an effective caseflow management system, should find less resistance to requests for additional resources.

The three main approaches to time standards in use are:

- maximum time interval between key milestones in case progress, and between filing and disposition
- median age of cases at disposition, measured from filing; this contemplates one-half of the dispositions being slower and one-half being faster than the specified median
- minimum percentage of cases to be disposed of within a stated interval after filing, with all cases completed within a slightly longer interval

For example, the American Bar Association (ABA) standards on caseflow management and delay reduction state the following general principles:

From the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery and court events, is unacceptable and should be eliminated. To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.

The ABA then defines the following standards in relation to criminal cases:

The following time standards should be adopted and compliance monitored:

- (a) Felony - 90% of all felony cases should be adjudicated or otherwise concluded within 120 days from the date of arrest; 98% within 180 days and 100% within one year;

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- (b) Misdemeanor - 90% of all misdemeanors, infractions and other nonfelony cases should be adjudicated or otherwise concluded within 30 days from the date of arrest or citation and 100% within 90 days;
 - (c) Persons in Pretrial Custody - persons detained should have a determination of custodial status or bail set within 24 hours of arrest. Persons incarcerated before trial should be afforded priority for trial.

In the UK, the Crown Courts have established objectives based on standard components, but tailored to the particular characteristics of the circuit. Examples are, from committal to trial:

- custody
 - average waiting time 15 weeks
 - % of defendants, cases disposed of within 8 weeks 32%
- bail
 - average waiting time 16 weeks
 - % of defendants, cases disposed of within 8 weeks 20%
 - % of defendants, cases disposed of within 16 weeks 55%

Agreement amongst the judiciary, the profession, the administration and the various parties concerned with the criminal justice system on appropriate disposition time standards for different types of cases is a fundamental first step in coming to grips with court delays and an important part of any caseflow management system.

Most of us would agree that the levels of delay currently being experienced in New South Wales in the criminal jurisdiction are excessive by any reasonable standard but the question is, by how much are they excessive? Unless we can come to some broad agreement on that question it is very difficult to set our sights on achievable targets for delay reduction. Some delay or time lapse is necessary between arrest and trial to permit both prosecution and defence cases to be adequately prepared and the time will no doubt vary depending upon the seriousness and complexity of the case. While no two cases are identical and there will always be considerable variations around the norm, this does not invalidate the need for establishing standards for the main types of criminal cases.

Professional bodies such as the Institute of Criminology could have an important contribution to make in the development of appropriate standards for case disposition times.

ELEMENTS OF CASEFLOW MANAGEMENT

Maureen Solomon proposes seven principles of caseflow management, as follows:

- (i) **Judicial Commitment and Leadership**
The judges of the court, particularly the Chief or presiding judge, set the tone for the organisation. If these judges are not committed to the philosophy of court responsibility for case progress, then little will be gained by devising systems for establishing deadlines and tracking cases.
- (ii) **Court Consultation with the Bar**
Development and maintenance of an orderly, predictable, and effective caseflow management system that minimises delay is of mutual concern to the court and bar. In fact, in some jurisdictions, impetus for development of such a system

comes from the organised bar. While final responsibility for development and operation rests with the court, the bar should be an active participant in development and evaluation of the caseload system.

(iii) **Court Supervision of Case Progress**

The court, in consultation with the lawyers in each case, should play an active role in determining the timetable which will govern all proceedings during the life of each case. The caseload system must incorporate mechanisms for monitoring the progress of each case from filing until disposition.

(iv) **Standards and Goals**

The system must incorporate three types of standards and goals: overall time standards governing case disposition for each major case classification; intermediate standards governing elapsed time between major case events; and system management standards, concerning such issues as adjournments or the annual disposition rate.

(v) **A Monitoring and Information System**

Setting standards and goals is ineffective unless accompanied by a system to monitor performance and compare it to the standards. Monitoring requires an information system designed with that function in mind. A caseload management information system must, at a minimum, facilitate court tracking of individual case progress and measurement of performance against standards and goals.

(vi) **Scheduling for Credible Trial Dates**

Certainty that trials or other hearings will occur when scheduled is a critical component of effective caseload management systems. Unless lawyers believe that deadlines and trial dates are meaningful, timely preparation or compliance is problematic. If timely preparation helps assure a just result, the absence of certainty degrades the potential quality of the outcome.

(vii) **Court Control of Adjournments**

Adjournments of scheduled trials should be limited to circumstances in which unforeseen and exceptional circumstances require diligent lawyers to request an adjournment. The court must maintain control over both the process and the date to which a case is continued. An atmosphere must be fostered in which timely, high quality lawyer preparation minimises the need for an adjournment.⁵

These principles of caseload management are just as valid in Australia as they are in the USA or, indeed, in any other country with an independent system of justice. There has been a growing recognition of court supervised caseload management in the Australian judicial system. In my discussions with members of the judiciary, the profession and the administration, I found an encouraging degree of understanding and acceptance of these principles. There is, however, a considerable gap between acceptance in principle of caseload management and its implementation in practice.

THE IMPACT OF CASEFLOW MANAGEMENT

Court supervised caseload management is fundamental to the successful resolution and continued control of court delays. While caseload management has been mainly applied in relation to the expeditious disposition of civil matters, the fundamentals of caseload management are also applicable to criminal matters. Various elements of

5 "Caseload management in the Trial Court - Now and for the Future", American Bar Association publication, 1987

caseflow management have been in operation in New South Wales courts for some time, but, with some exceptions, not as a comprehensive system under court supervision.

The introduction of caseflow management in the courts has been shown to have a dramatic impact on reducing court delays. An early study of delay reduction projects by the American Judicature Society in the United States, demonstrated the success of caseflow management in four criminal courts:⁶

Court	Median Processing Times (Filing to Disposition) for 50% of Cases (in days)	
	Before	After
Superior Court, Providence, Rhode Island	277	61
Montgomery Court of Common Pleas, Dayton, Ohio	69	43
Detroit Recorder's Court, Michigan	40	19
District Court, Las Vegas, Nevada	61	48

As discussed earlier, there are two practical pre-requisites of effective caseflow management: the establishment of standards; and the recording and reporting of adequate information for management to plan resources and monitor performance against standards. These need to be given high priority in the reforms of the New South Wales criminal justice system.

Under a court supervised caseflow management system the court takes responsibility for ensuring that all cases are dealt with expeditiously and disposed of within the time standards agreed. It follows that the court, through its administration, needs to be closely involved in the resource planning process, to be confident that there will be adequate resources to meet expected demands on the court system.

CONCLUSION

The achievement of significant delay reduction and the maintenance of a balanced court system thereafter, will depend significantly upon the successful planning and implementation of the principles of resource planning and caseflow management that we have discussed. The implementation of some requirements (for example, the provision of resources) without the other parts of the system described in this paper, will be unlikely to achieve the major improvements that are required in our court system in New South Wales. What is needed is an integrated resource planning and caseflow management system which incorporates resource planning, management information, standards for case disposition and court supervised caseflow management of all cases from registration until disposition.

6 "Managing the Pace of Justice, AJS Study", reproduced in Caseflow Management Report by Mr. Tim McGrath following secondment with US Institute for Court Management and Research, February, 1989, New South Wales Attorney General's Department

APPENDIX A

PRELIMINARY MODEL OF CASELOAD, INVENTORY AND JUDICIAL RESOURCE RELATIONSHIPS IN THE DISTRICT COURT CRIMINAL JURISDICTION⁷

The main criminal matters heard in the District Court are trials, sentence matters, severity appeals and all-ground appeals. For the purpose of the model, the District Court administration estimated average times taken to process these different types of matters, on the understanding that the averages vary between Sydney, Sydney Western and the country and, of course, the actual times for particular cases vary around the averages. The table below provides an estimate of the average processing times by the different types of criminal matters.

Matter/Location	Average Time to Process
Trial:	
Sydney	2.0 days*
Sydney Western	1.4 days*
Country	1.1 days*
Sentence	30-45 minutes
Appeals	30 minutes (severity appeal) 2 hours (all-ground appeal)

* average actual time, i.e. mix of guilty and not-guilty plea rates.

For the purpose of the model, CL was designated to represent the criminal caseload in days of hearing required in one year. It was assumed that the courts would sit between four and five hours per day, allowing for changeover time between different cases and other "downtime", and that this downtime would be more significant for short matters, which may change over more frequently during the court day. Based on the average processing times in the table above, we estimated CL to be approximately:

$$CL = 1.7T + 0.2S + 0.3A$$

where

CL	=	criminal caseload in days per year
T	=	average number of trials conducted per year
S	=	average number of sentence matters conducted per year
A	=	average number of appeals conducted per year

and where the coefficients T, S and A were the best estimates of the time in days required to hear a trial, sentence, and appeal matter, respectively, based on the table

⁷ Extracted from the Coopers & Lybrand WD Scott report on a review of the New South Wales Court System, May 1989

of average processing times in Sydney (2.0), Sydney Western (1.4), and the country (1.1). The co-efficient of A was an average of severity and all-ground appeals.

The model incorporated an analysis of registrations in the District Court, converted into pending caseload in sitting days. The case inventory position as at the end of 1988, was similarly converted into caseload in sitting days. This was followed by a rolling projection of caseload inventory to the end of 1990, based on registrations and dispositions and an assumed growth rate in the number of trials and sentences.

REGISTRATIONS

The number of trials registered in 1988, in the District Court, was 3,218, or 2,767 net or no-billing. In the same year, the number of sentences registered was 1,803. We assumed a 5% compound growth in these figures annually. The appeals from the Local Courts, based on another model, were assumed to occupy 1,485 days of caseload, remaining constant over the forecast period. The projected registrations to 1990 are set out below.

Year	Column A		Column B	Column C		
	Trials (net of no-bills) 5% growth	Trial Days (x 1.7)	Sentences 5% growth	Sentence Days (x 0.2)	Appeal Days	Total Days A + B + C
1988	2,767	4,704	1,803	361	1,485	6,550
1989	2,907	4,939	1,893	379	1,485	6,803
1990	3,050	5,185	1,988	398	1,485	7,068

INVENTORY

As at the end of 1988, the case inventory position in the District Court in New South Wales was approximately as follows:

	No. of Cases	Caseload (in days)
Trials	4,432	
- net of no-bills (x 0.86)	3,811	
- days (x 1.7)		6,480
Sentences		639
- days (x 0.2)		128
Appeals	2,136	
- days (x 0.3)		641
		7,249

DISPOSITION CAPACITY

For the purpose of the model, judicial disposition capacity was estimated (assuming adequate courtroom facilities and staff for the number of judges assigned to criminal cases) as follows:

- Approximate number of District Court Judges hearing criminal matters = 31
- Average number of weeks of sittings per judge, allowing for ten weeks leave, five weeks average sabbatical leave, one week for public holidays, and one week for sick and other leave, professional education or tribunal activities
= $52 - 10 - 5 - 1 - 1 = 35$ weeks
- Therefore, total number of judge-days available in one year
= $31 \times 35 \times 5 = 5,425$ days

This represents maximum disposition capacity and assumes 100% listing effectiveness and courtroom availability and, except to the extent that there may be allowance in the average times assigned to trial, sentence and appeal hearings, does not allow explicitly for the hearing of motions and other interlocutory matters. We allowed, therefore, a 5% reduction to cover such non-sitting time, leaving 5,153 days effective capacity per year.

PROJECTIONS

The rolling projected inventory of caseload in days, assuming no change in resources or disposition rates, is set out in the following table:

	Sitting Days
Inventory as at end 1988	7,249
+ projected registrations in 1989	6,803
--- effective disposition capacity	(5,153)
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Inventory projection as at end 1989	8,899
+ projected registrations in 1990	7,068
--- effective disposition capacity	(5,153)
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Inventory projection as at end 1990	10,814
