

DELAYS IN THE HIGHER CRIMINAL COURT

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INTRODUCTION

The issue of court delays has received widespread media attention in recent times. While it is readily conceded that there exists an unacceptable level of delay, especially in the higher courts, it is also apparent that, in some instances, the nature and extent of the problem has been misrepresented, with figures quoted from outside my Department often being outdated or having dubious validity.

The major purpose of this paper is to present an accurate picture of delays in the higher criminal courts. The information presented represents the best, most complete and up-to-date data available in relation to court delays. It covers basic details such as caseload, time intervals between registration and disposal of matters, and information, such as registration and disposal rates, related to the delay equation.

This paper also serves to update the background paper presented in support of my speech to the Institute of Criminology's Seminar on delays in the higher criminal jurisdictions in August 1989. The current year statistics have been collated by the Court Statistics Unit of my Department, which commenced operations in January of this year and will perform the important function of providing accurate and timely management information concerning court delays. This invaluable information will enable my Department and members of the judiciary to gauge the effectiveness of programmes which have been introduced to reduce delays and indicate 'problem areas' and their possible causes.

While mention is made of various improvements which have been made over the past two years, I do not pretend that the road ahead is not long. A problem which has been allowed to build up over a long period of time cannot be cleared up overnight. This is not to say, however, that the advances made in recent times are not significant and they should not be devalued because results are not immediately apparent. For example, a positive inroad such as a reduction in case backlog will not necessarily result in an immediate decrease in the time taken by the system to process trials. Reductions in delay will follow only when the backlog of older trials has been cleared and are manifested gradually rather than immediately.

The following is a discussion of present levels of caseload and delay in the higher criminal Courts, the effect of past reforms and likely future trends.

SUPREME COURT CASELOAD AND DELAY

The Criminal Division of the Supreme Court currently receives in the range of 200 to 250 new trial registrations per annum.

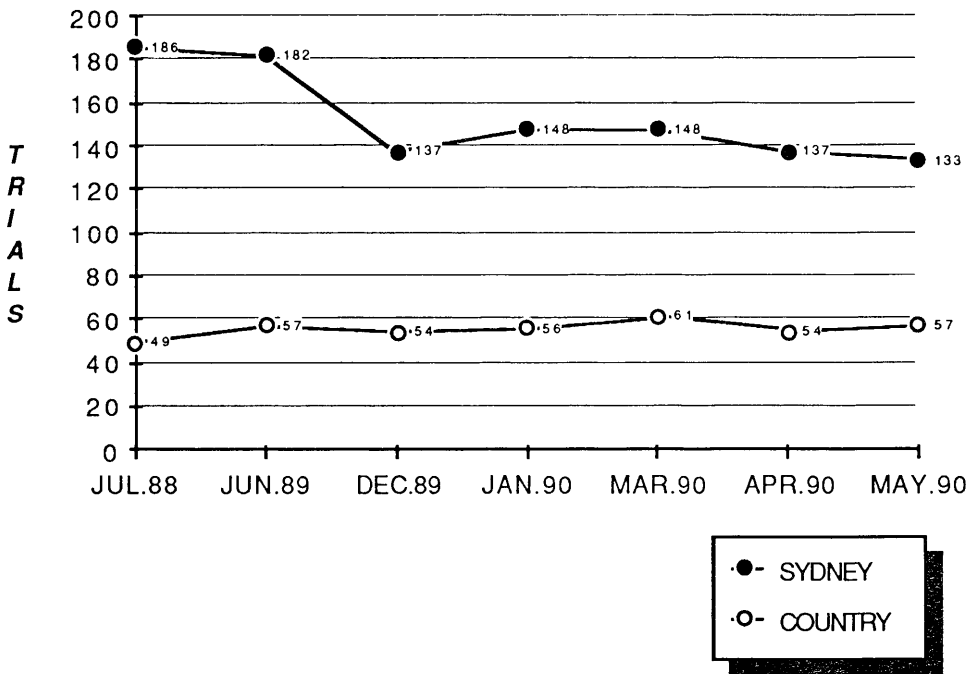
At the end of May 1990, the caseload in the Division totalled 190 matters, with 57 of these being country circuit trials (see Figure 1.2). This is in stark contrast to the caseload in June 1988 and, encouragingly, the caseload has remained relatively stable since December 1989, when it reached its lowest point. Figure 1.1 below illustrates the escalation in trial registrations which occurred from 1987 in the Supreme Court and, although 1989 registrations were down on previous years' figures, they still represent a significant increase in workload over mid 1980's registrations. The trend in 1990 indicates that registrations will be on par with 1989 figures.

Figure 1.1 Committals for Trial Registered in the Supreme Court

| | | |
|------|---|-----|
| 1985 | : | 157 |
| 1986 | : | 175 |
| 1987 | : | 282 |
| 1988 | : | 250 |
| 1989 | : | 210 |

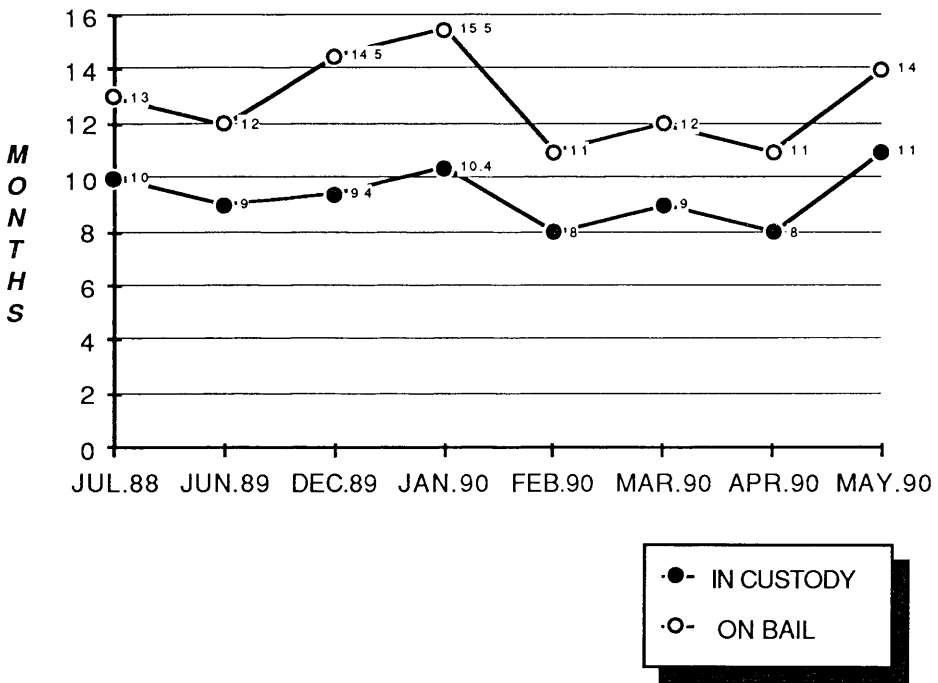
Figure 1.2 illustrates the variance in the caseload of the Criminal Division for the period between January and May 1990, and provides a comparison with the caseload in preceding years.

Figure 1.2 Supreme Court Criminal Profile of Trials on Hand



While it will be seen from Figure 1.3 that waiting times in the Criminal Division at the end of May 1990 were higher than in preceding months, this does not of itself present a negative picture. Trials are presently being listed into March 1991, as all available court sitting time during 1990 has been allocated. The December-January court vacation also inflates waiting time, due to the reduction in court sitting time during these months. Further, it is evident that, during 1989/90, waiting time has, with the exception of 'peaks' which have occurred due to the aforementioned reasons, generally remained lower than mid-1988 levels.

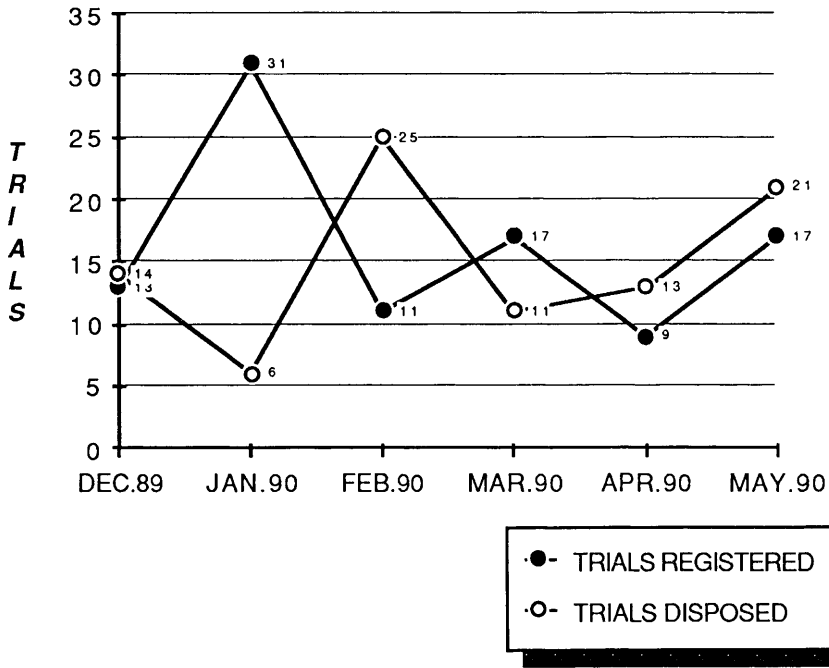
Figure 1.3 Sydney Supreme Court Criminal Time from Committal to Hearing



The success of the Court in reducing the caseload is largely attributable to an increased allocation of Judges, which is discussed further in the summary of past reforms and initiatives undertaken. Overall, the caseload was reduced by 8 per cent during 1988, and 16.9 per cent during 1989. A comparison of the Court's performance during the first five months of 1989 and 1990 reveals a further increase in productivity. In the period between January and May 1990, 76 trials were finalised, compared with 58 disposals over the same period in 1989: a productivity increase of 24 per cent.

Figure 1.4 illustrates the registration and disposal of trials in the Supreme Court in recent months.

Figure 1.4 Sydney Supreme Court Criminal Registration and Disposal of Trials



DISTRICT COURT CASELOAD AND DELAY

As with the Supreme Court, there has been a significant growth in the demand for trials in the District Court over the past few years, as is illustrated by Figure 2.1 below.

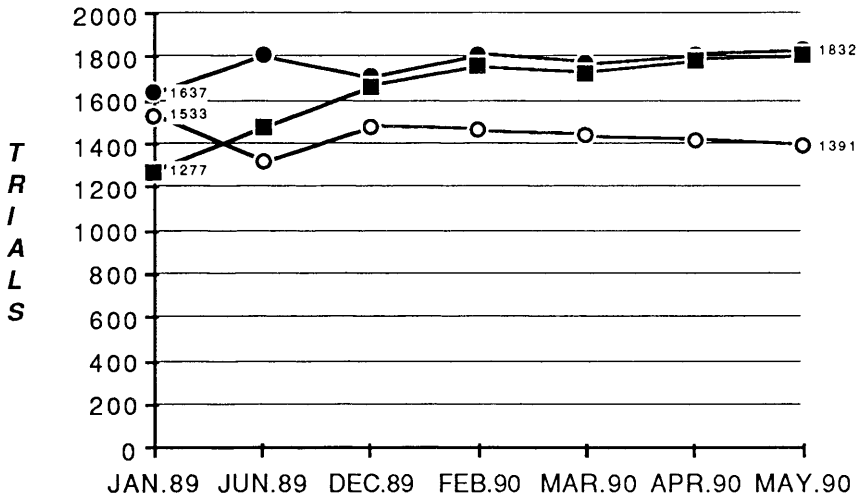
Figure 2.1 Committals for Trial Registered in the District Court

| | | |
|------|---|-------|
| 1985 | : | 2,402 |
| 1986 | : | 2,891 |
| 1987 | : | 3,156 |
| 1988 | : | 3,218 |
| 1989 | : | 4,018 |

The dramatic increase in committals for trial in recent years, particularly in 1989, has resulted in an increased caseload during 1990. The present caseload in the criminal jurisdiction of the District Court is indicated by Figure 2.2 below.

Figure 2.2

District Court Criminal Profile of Trials On Hand



●- SYDNEY
 ○- SYDNEY WESTERN
 ■- COUNTRY

The pending caseloads in all regions during 1990 appear to have achieved a new, and higher equilibrium. This is no doubt due to the 25 per cent increase in trial registrations experienced during 1989.

In the face of this large increase in workload, the Court has achieved some pleasing productivity gains. In the period between January and May 1990, the Sydney District Court disposed of 420 trials, compared with 296 trial disposals for the same period in 1989. While disposals by the Sydney Western District Court during 1990 are down on 1989 figures, the Court has consistently been able to finalise, on a monthly basis, more matters than are registered: a feat it was unable to achieve during 1989.

Figures 2.3 and 2.4 illustrate the registrations and disposal rates for trials in the Sydney and Sydney Western regions during the period from January to May 1990.

Figure 2.3 Sydney District Court Criminal Registration and Disposal of Trials

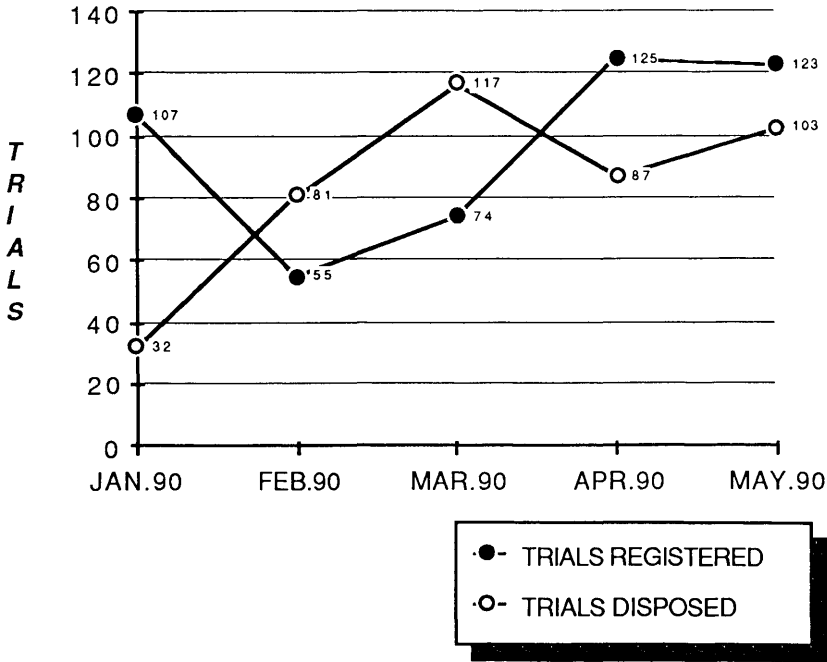


Figure 2.4 Sydney Western District Court Criminal Registration and Disposal of Trials

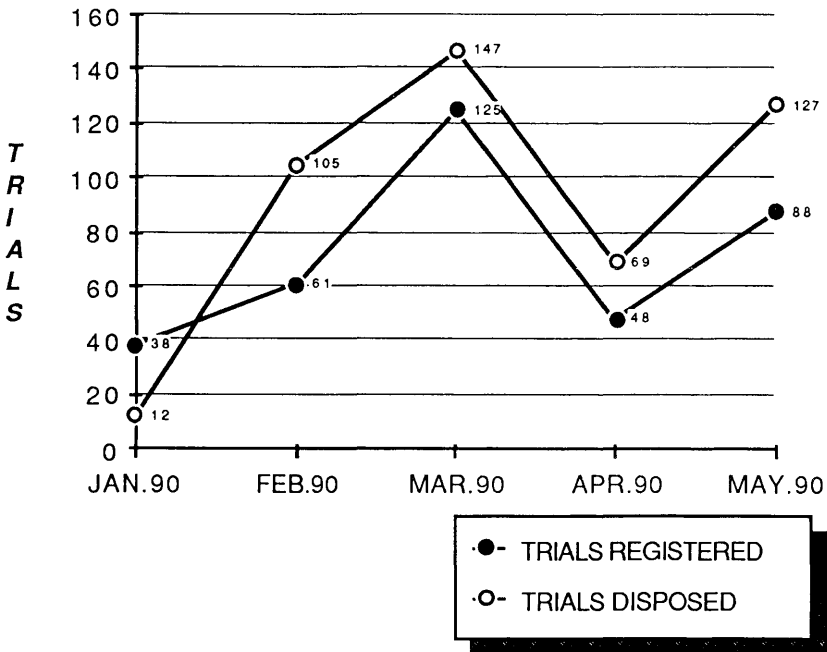


Figure 2.5 District Court Criminal
Median Time From Committal to Finalisation:
Accused in Custody

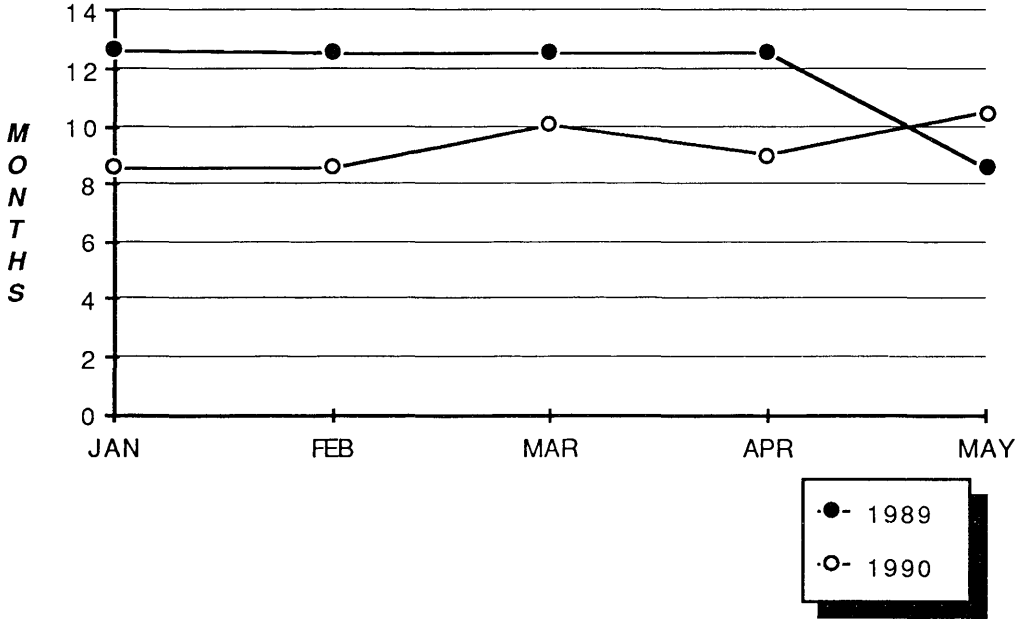
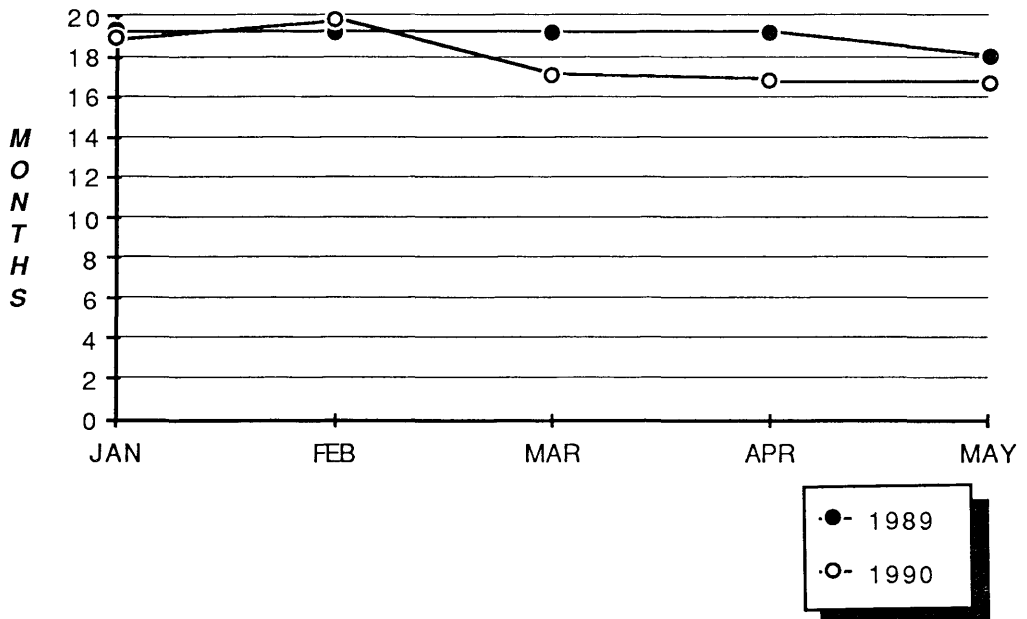


Figure 2.6 District Court Criminal
Median Time From Committal to Finalisation:
Accused on Bail



Despite the large increase in registrations and the resultant increase in the caseload during 1990, delays in the current year have generally remained lower than 1989 levels. Figures 2.5 and 2.6 above compare the 1989 and 1990 State-wide delay averages for custody and bail matters in the period between January and May.

SUMMARY OF INITIATIVES AND REFORMS UNDERTAKEN IN THE HIGHER CRIMINAL COURTS

Long Term Planning

While the demands placed on the courts by the criminal justice system and the resources made available to meet them are important causes of delay, there are, however, a number of 'internal' factors which have exacerbated the problem. It is difficult to plan a system which is partly driven by demands beyond its control, that is, the incidence of crime. However, accurate forecasting is a desirable aim to the extent that it is possible.

A study is currently being conducted into the feasibility of building a model of the criminal justice system. It is hoped that a model can be developed which will be able to predict with some accuracy how a policy decision in one area, (for instance, a police crack-down on a particular type of crime), may affect other areas of the criminal justice system including, of course, court criminal lists. In the Supreme Court, a separate model has been developed of the sitting days required to contain the present and projected caseload in the Court of Criminal Appeal. However, much has already been done at an administrative and legislative level to make the criminal justice process more efficient.

Court and Judicial Resources

In the area of resources, one of the most pressing concerns in managing the work of the courts has been the provision of suitable courtrooms, particularly trial court rooms. A number of capital works projects are currently being planned or undertaken which will significantly improve court facilities. For instance, the Downing Centre will provide a complex of 16 District Court trial courtrooms from the beginning of 1991 and this will allow a concentration of judicial resources in the Sydney region and facilitate a concerted attack on the backlog. While containment of the caseload in Sydney at 1989 levels has not been possible as a result of the escalation of trial registrations, caseload increases appear to have reached a new plateau, bearing testament to the increased output of the Court in that region.

The Sydney Western District Court continues to achieve high levels of productivity. The caseload in 1990 has steadily fallen, despite the increase in registrations, and the Court's output has consistently overshadowed registrations. The shifting of civil trials from certain courts in the region, thereby increasing the number of criminal trial courtrooms, has played a significant role in the successes of the Sydney Western District Court.

Vacation sittings in the District Court, which were introduced in the July 1989 vacation period, have continued to play an important part in coping with

increased trial registrations and containing delays. The July 1989 vacation sittings proved a resounding success, with 226 trials being disposed of out of a total listed of 307. At the time of this paper, vacation sittings in the Sydney District Court were underway, with eight Judges being rostered to deal with 140 trials over a three week period.

At present my Department is developing a ten year strategic plan for its capital works programme and possible projects include the construction of a headquarter for the Sydney Western District Court at Parramatta.

Increased court accomodation and availability must also be accompanied by an increase in judicial resources and staffing. The following initiatives have already been taken in this regard. In 1988, two additional Supreme Court Judge positions were created by the present Government and since February of this year, ten Barristers have been participating in an Acting Judge programme in the Supreme Court, providing on average a further two Judges at any given time. These increases in judicial resources have made the containment of the criminal backlog in the Supreme Court possible. While the delays at present are still unacceptable, the trend indicates that at the very least they have stabilised.

In the District Court four additional Judge positions were created in 1988. Since 1985, the judicial strength of the District Court has increased by approximately 30 per cent. These additional Judges have largely been utilised in the criminal jurisdiction and changes in the distribution of sittings throughout the State have reflected the priority accorded to criminal matters.

In the Sydney Western region, Parramatta has been assigned an additional 33 weeks sittings and as a result three full-time criminal trial courts now service the area. The same number of full-time trial courts now service the Penrith area, partly as a result of the reallocation of civil sittings. Campbelltown became a full-time criminal trial court from the beginning of the second term in 1988, providing an increase of seven weeks sittings over 1987.

In the country, Newcastle commenced full-time criminal sittings at the beginning of 1987 and in 1988 a further 28 weeks sittings were added to the area by utilising courtroom accommodation at East Maitland. Wollongong received similar increases to those of Newcastle. Gosford also received full-time criminal status in 1988 and received an additional 23 weeks sittings.

Overall, the 1989 Calendar made provision for a total of 103 additional sitting weeks in country regions. Longer sitting blocks (2-3 weeks at a time) have been implemented in country regions, thereby allowing the court to deal with more lengthy cases in the one sitting period. In the future, this Government proposes to extend the Acting Judge programme where necessary, to further reduce the backlog of criminal trials.

Management and Management Information

As a result of a number of managerial initiatives taken by my Department and the Director of Public Prosecutions, the District Court, which handles the vast majority of criminal trials, is presently operating at increased levels of efficiency. More trials are being disposed of more cost effectively and at a more rapid pace than ever before.

As mentioned in the preamble to this paper, the Court Statistics Unit of my Department became operational from January 1990, and this will facilitate a vast improvement in the quality and nature of management information available to Judges and court administrators, enabling them to better analyse the causes of delay, determine solutions and evaluate the Court's performance. In the past the statistical information collected by Courts has been neither comprehensive nor accurate enough to gauge where in the process improper delay is most a problem.

Court Reporting

The Court Reporting Services have also been targetted to improve efficiency and reduce delays in the provision of transcripts of court proceedings. A computer-assisted transcript system will be introduced, and modern sound recording units are being installed across all jurisdictions to improve the quality of sound recordings of evidence.

A review of the reporting needs of the Supreme Court has recently been concluded and a number of recommendations, designed to improve reporting services, are presently under consideration.

Legislative and Procedural Reforms

A number of legislative reforms have been initiated in recent times, such as the paper committal system and the introduction of pre-trial procedures in criminal trials.

In the Supreme Court, call-over and pre-trial procedures have been implemented by utilising one Judge as the List Judge. In the District Court the Criminal Listing Director now conducts a call-over of all trials, appeals and short matters (sentences) in order to determine their readiness to proceed to hearing. Pre-trial conferences are also being conducted before the Trial Judge. The Criminal Listing Director, in consultation with the Chief Judge, has now adopted a standard approach to listings wherein the bail status of the accused, including whether there is a current substantive sentence being served, is taken into account when determining the priority of individual matters.

A Criminal Listing Review Committee has been established for the District Court to examine the listing process.

Amendments to the Criminal Procedure Act Regulations are planned to reduce the prescribed period for filing by the Director of Public Prosecutions of a Certificate of Readiness for Trial. This initiative will result in trials being brought on for hearing much sooner after committal than is presently the case. A review of the

procedures in the District Court Criminal Registry is presently underway and this will complement the shortened time standards for criminal trials by streamlining registry procedures which impact the ability of the prosecution and defence to meet the proposed deadlines for trial readiness. A review of the District Court Criminal regions is also underway and this will lead to a more equitable spread of work throughout the State on an administrative level and also lead to greater rationalisation of courtroom resources.

FUTURE TRENDS

The Supreme Court has achieved notable reductions in its caseload during the past two years. At the end of 1987, the trial caseload stood at 250, while the caseload at the end of 1989 totalled 191 and at present stands at 190.

Productivity increases achieved by the Supreme Court have also been pleasing. During 1989, 16.9 per cent more trials were disposed of than in 1988, and disposals for the first five months of this year indicate a 24 per cent productivity increase over 1989 disposals.

While waiting time at the end of May showed an upturn, on the whole, delays during 1990 have compared favourably with previous years. Further, it could be said that the increase in waiting time in May 1990 is indicative of further increases in activity and efficiency in the Supreme Court: more trials are becoming ready for hearing, resulting in the necessity to list matters further ahead as the Court's immediate calendar becomes fully booked.

With the improved listing efficiency and productivity increases which are being achieved in the Supreme Court, the prospects for further caseload reductions and concrete reductions in waiting time are bright, provided the Court is not inundated by inordinately long matters or a major increase in trial registrations. In this regard much will depend on the activities of law enforcement agencies, particularly the Commonwealth. Commonwealth drug trials have exhibited a tendency to consume substantial judicial resources at the expense of the general trial caseload. For example, in the period between January and September 1988, six Commonwealth drug trials occupied the equivalent of 137 judge-days, which is about 10 per cent of the total number of judge-days allocated to the Criminal Division in one year.

The success of the District Court in dealing with the substantial increases in trial registrations is worthy of special comment. While caseload levels have risen as a result of the increased registrations, delays have not shown a commensurate increase, indeed, they generally remain at or below 1989 levels. It is unfortunate that these workload escalations have consumed significant productivity increases in the jurisdiction. During 1989, the District Court disposed of 22.8 per cent more trial *and* sentence matters than was the case in 1988. Trial finalisations in Sydney for the first five months of 1990 were up by 41 per cent on figures for the same period of 1989. The Sydney Western District Court, while not presently reaching 1989 disposition levels, has displayed more consistency in 1990 by regularly disposing of more trials

than are registered, resulting in the arrest and subsequent downturn of the trial caseload.

Trial dispositions in the country regions have shown a significant improvement during 1990. In the period between January and May 1990, 556 country trials were disposed of, compared to only 476 during the same period of 1989, a productivity increase of 16.8 per cent.

Present indications are that trial registrations during 1990 will not approach the high level of 1989 registrations. It can therefore be expected that the easing off in new work will allow the significant improvements in productivity to be manifested in future caseload and delay reductions.