

Long-term trends in trial case processing in New South Wales

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In 2002, court delay between committal and outcome for trial matters finalised in the NSW District Court was at its lowest level since the Bureau of Crime Statistics and Research began publishing NSW Higher Courts data in 1988. Similarly, committal to outcome delay for sentence only matters fell to its lowest point in 2001. Between 1988 and 2003, median court delay nearly halved in cases where the defendant had been remanded in custody before trial. Median court delay fell by almost 63 per cent for all trial matters, and by over 33 per cent for sentence only matters over the same period.

The delay between arrest and committal for cases committed to trial fell by just over 39 per cent between 1988 to 1997. Since that year, however, it has increased by about 75 per cent. Committal delays for sentence cases remained relatively stable between 1988 and 1998. Since that year, however, the delay between arrest and committal has almost doubled. These changes suggest that delay reduction strategies in court system now need to focus on the period between arrest and committal.

INTRODUCTION

In 1988 it took more than a year and a half for a trial to proceed from committal to outcome in the NSW District Court. In that same year, trial cases where the accused was in prison on remand took almost a year to finalise. Trial court delay fell substantially between 1988 and 1996. However, as late as 1996 the NSW District Criminal Court still had the longest trial court delays in the country (Australian Bureau of Statistics 1998, p12). The purpose of this bulletin is to present data bearing on the progress that has been made in reducing delays for criminal cases in the NSW District Court since 1996.

The rationale for using court delay, as a measure of trial court performance, has been canvassed in a previous publication by the Bureau of Crime Statistics and Research (Weatherburn 1996). The report identifies trial hearing delay, the time between the date on which a matter is committed for trial and

the date on which the trial commences, as the most appropriate basic performance measure for trial courts.

The report also notes that the period between committal for trial and finalisation of a trial, called trial finalisation delay, is a reasonable approximation for trial hearing delay, given that the time spent hearing cases is usually much shorter than the delay between committal and commencement of the trial. For this reason the time between committal and outcome¹ will be used to measure court delay here. In addition, the period of delay from arrest to committal will also be examined.

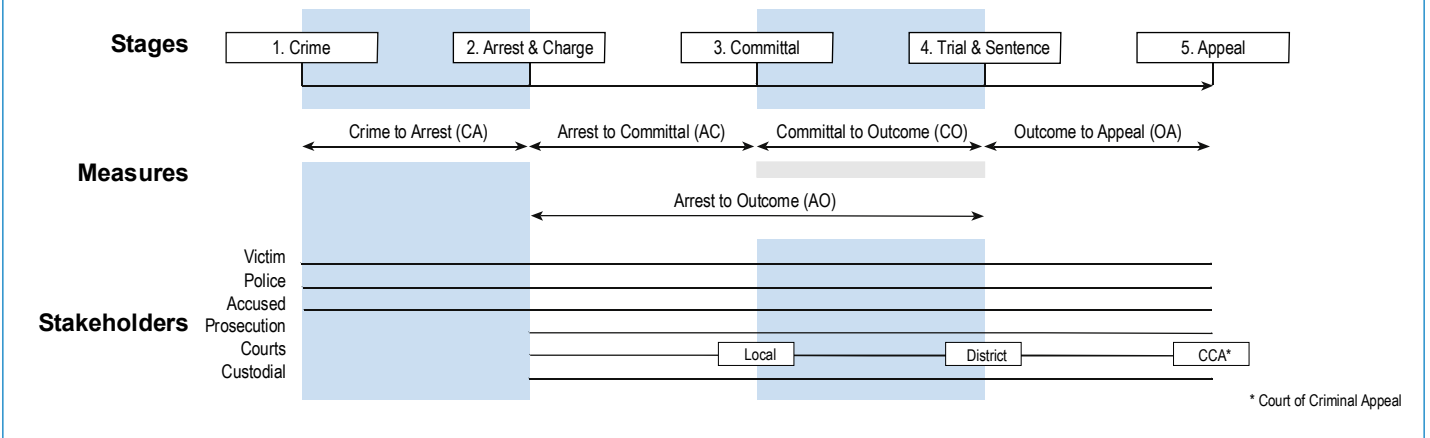
Figure 1 depicts the trial system as a five-stage process, beginning with the commission of a crime, the arrest of a suspect, followed by a committal hearing, then the trial itself and potentially an appeal.

In Figure 1, the stages are represented as points (e.g. Stage 4, Trial and sentence) separated by intervening

periods. This is because, even though each stage actually takes up a certain amount of time, in practice the duration is relatively short compared with the length of the intervening periods. For example, in 2001 the average length of a criminal trial in the District Court was 5.6 days (District Court of New South Wales 2002) compared with a median delay of 213 days from committal to outcome in trial matters (see Figure 2).

There are four intervening periods; the period from commission of the crime to arrest of the alleged offender; the period between arrest and committal for trial; the period between committal and the outcome of the trial (or the outcome of the sentence hearing where the accused enters an early plea of guilty) and, finally, the period between the outcome and any appeal hearing. Combining arrest to committal and committal to outcome produces the period beginning with an arrest and ending with the outcome or finalisation of the case (sometimes known as arrest to finalisation).

Figure 1: Passage of a typical case through the trial system



This paper examines two critical periods of delay in the processing of serious criminal (indictable) cases, namely arrest to committal and committal to outcome. Assessment of trends in arrest to committal represents a first step in elucidating delay in processes prior to trial court delay.

A couple of limitations of the present analysis should be noted. First, although delays in the time from the commission of a crime to the arrest of alleged perpetrator(s) and the period from outcome to appeal are not assessed in this paper, these phases are of vital concern to the victims of the crime, the police and other members of the community. As such, further research is required into these two stages to provide

a complete picture of delays in the criminal justice system. Second, less serious (non-indictable) cases, which are finalised in the Local Criminal Courts, are not examined here.

The NSW Higher Courts database at the Bureau of Crime Statistics and Research is the source of the figures used in this paper.

METHOD OF FINALISATION – ITS IMPORTANCE TO MEASURING DELAY

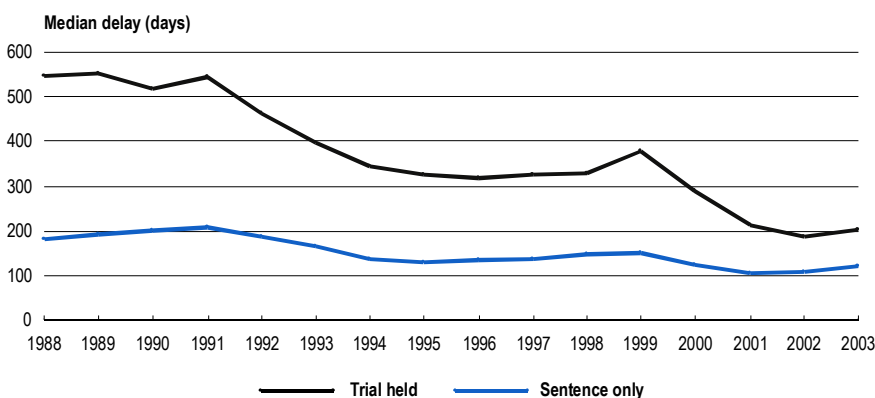
The term ‘trial court delay’ sometimes refers to the time between committal for trial and finalisation of a matter

regardless of how it is finalised. This would be an appropriate measure of criminal court delay if we could safely assume that case processing times are not affected by the method of finalisation.

However, trial matters finalised on a guilty plea (so-called “sentence only” cases) or by a “no-bill” (where the prosecution decides not to proceed with the matter) are generally shorter than delays for those cases where a trial is actually held and a determination of guilt or innocence reached. Measuring the overall court delay without distinguishing these two case types, as pointed out in Weatherburn (1996), would provide a misleading picture of the performance of criminal courts.

Court delay therefore will be considered separately for sentence only cases and those cases where a trial is held.

Figure 2: NSW District Court - Trial and Sentence only matters
Median delay - Committal to Outcome: 1988-2003



COMMITTAL TO OUTCOME

This section of the paper examines trends in median delay from committal to outcome, one of the traditional measures of trial court performance.

Figure 2 shows median court delay from committal to outcome for both trial and sentence only matters finalised annually in the District Court of New South Wales from 1988 to 2003. In 2001 and 2002, delays between committal and outcome for appearances finalised in the District Court were at their lowest levels since the Bureau of Crime Statistics and

Research began publishing NSW Higher Courts data in 1988.

In 2003, the median court delay for appearances that proceeded to trial was 203 days. This represents a drop of 46.4 per cent since 1999 (when the median was at 379 days), or almost 63 per cent since 1988 (when it was 548 days). The highest median court delay recorded by the Bureau between 1988 and 2003 was 553 days, in 1989.

For appearances that proceeded to sentence without trial, median court delay has also fallen in recent years. Though the fall is more modest, it appears to be a long-term trend. In the fifteen years since 1988, court delay in sentence matters has fallen by 33.7 per cent. The 2003 figure of 120 days was a marginal increase from the 15-year low of 104 days recorded in 2001. It is too early yet to tell if this rise represents the beginning of a new trend.

This decrease in court delay for sentence matters has occurred while the number of persons appearing in sentence only cases has been decreasing steadily, at least between 1991 and 1997. Figure 3 shows the number of persons in trial and sentence only cases finalised annually in the District Court from 1988 to 2003. The number of appearances finalised in the District Court fell by 41 per cent from 1991 (n=4,835) to 1997 (n=2,854), before stabilising at around 3,000 cases between 1998 and 2003.

TRIAL DELAYS BY BAIL STATUS

Figure 4 shows the median delay from committal to outcome, for cases finalised by trial in the District Court by bail status. As one would expect, committal to outcome delay for defendants remanded in custody is shorter than for those released on bail. Also evident is the fact that the shape of the delay curve for this category of case (the 'on bail' curve) closely follows committal to outcome delay of trial matters in general (see Figure 2). This is hardly surprising given that the majority of defendants committed to trial (e.g. 71.5% in 2002) are granted bail.

Figure 3: NSW District Court - Trial and Sentence only matters
Number of persons in cases finalised: 1988-2003

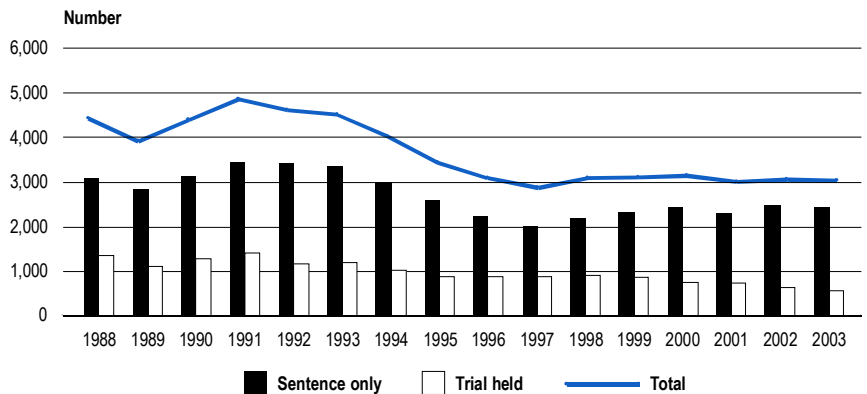
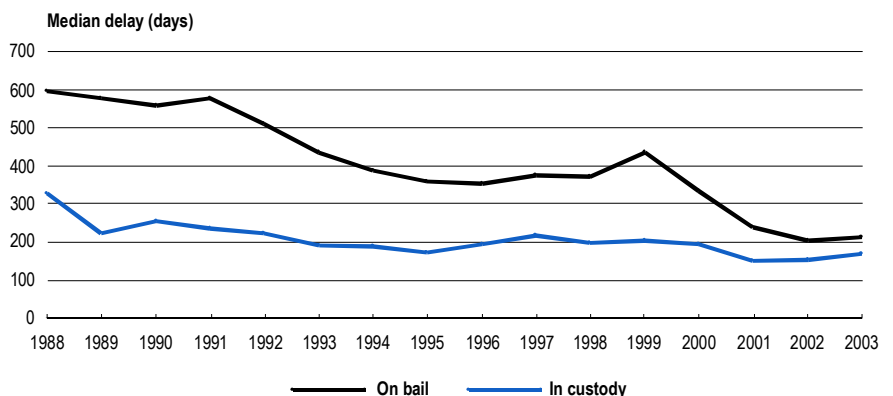


Figure 4: NSW District Court - Trial matters
Median delay - Committal to Outcome: 1988-2003



Importantly, from 1988 to 2003 there has been a downward trend in committal to outcome trial delay in cases where the defendant was remanded in custody. In that time the median delay almost halved (48.6%). The 2003 figure of 169 days was only marginally higher than the delay in 2001, which, at 152.5 days, was the lowest since 1988.

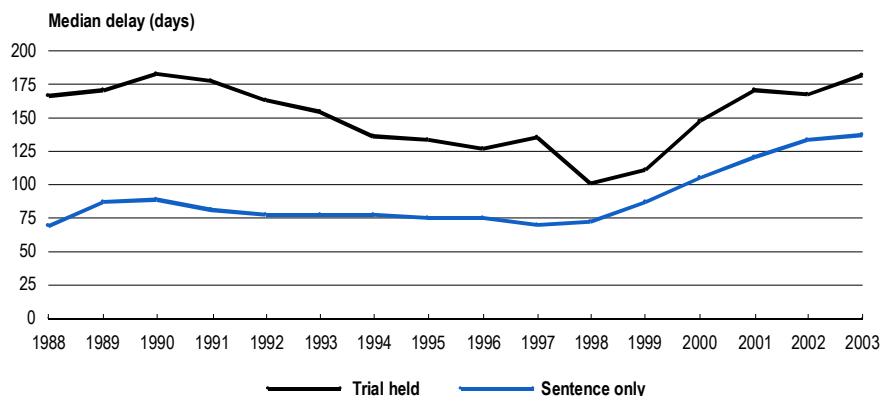
ARREST TO COMMITTAL

This section of the paper examines long-term trends in the arrest to committal period of delay. Figure 5 shows the median delay for arrest to committal for

the past 15 years. From 1990 to 1998, arrest to committal delay fell steadily. Median delay in arrest to committal for trial appearances fell 82.0 days from a peak of 183.0 days in 1990 to a low of 101.0 days in 1998.

Since 1998, however, arrest to committal delay in sentence matters has been rising markedly. Arrest to committal delay for trial cases increased at an average of 15.9 days annually, reversing in just five years nearly all (99.2%) of the reduction in delay which occurred over the previous eight years. The 2002 and 2003 arrest to committal figures represent a return to the levels prevailing at the end of the 1980s.

Figure 5: NSW District Court - Trial and Sentence only matters
Median delay - Arrest to Committal: 1988-2003



Similarly for sentence only appearances, since 1998 arrest to committal delay has shown an average annual increase of 18.1 per cent.

DISCUSSION AND CONCLUSION

There has been a substantial reduction in the time cases take to progress from committal to outcome in the NSW District Court. In 2003 the median delay for trial matters in which the accused was on bail was about a third (64.1%) of what it was in 1988 and about half (44.7%) of what it was in 1994 (see Figure 4). Since 1988, the delay between committal and outcome for trial matters where the accused was on remand has also fallen substantially. In 2003 the median delay for these cases was nearly half (48.6%) the delay recorded in 1988.

Since 1998, however, the fall in delay between committal and outcome in the District Court has increasingly been offset by a rise in delay between arrest and committal for trial cases in the Local Court. The median delay from arrest to committal for cases committed for trial was 101 days in 1998 (see Figure 5). By 2003, it had risen to more than 181 days. The median delay between arrest and

committal, for cases where the accused is committed for sentence, was 72 days in 1998. By 2003, this figure had climbed to 137 days.

While a detailed examination of the reasons for the increase in delay between arrest and committal is beyond the scope of this paper, the upward trend in pre-committal delay does appear to have coincided closely with the introduction of a scheme under which all committal hearings were centralised rather than being dealt with separately by each Local Court. The Centralised Committal Scheme was commenced in Sydney in April 1998 and extended to other areas in subsequent years. The workload of the District Court fell significantly after the Scheme was introduced (District Court of New South Wales 1999 p 40, 2000 p 35, and 2001 p 37) because many matters that were previously dealt with in the District Court were, instead, dealt with in the Local Court. This undoubtedly contributed to a growth in delay in that jurisdiction.

The Local Court has itself identified a number of factors that, in its view, have further exacerbated delays in processing committal cases. These include delays by prosecuting authorities in the provision of DNA results, drug analyst certificates,

fingerprint and ballistic evidence, transcripts of telephone intercepts and the interpretation of foreign language material (Local Court of New South Wales 2004).

Whatever the relative contribution of these factors to the growth in delay between arrest and committal, future criminal case delay reduction efforts clearly need to focus on the period between arrest and committal. Otherwise much of the benefit of delay reduction efforts in earlier years will end up being lost.

NOTES

- 1 For the sake of convenience, the time between committal and sentence in cases where the accused pleads guilty before the trial commences is also referred to as committal to outcome (rather than committal to sentence).

REFERENCES

- Australian Bureau of Statistics (1998), *Higher Criminal Court Courts, Australia* [ABS 4513.0], Australian Bureau of Statistics, Canberra.
- District Court of New South Wales (1999), *Annual Review 1998*, District Court of New South Wales, Sydney.
- District Court of New South Wales (2000), *Annual Review 1999*, District Court of New South Wales, Sydney.
- District Court of New South Wales (2001), *Annual Review 2000*, District Court of New South Wales, Sydney.
- District Court of New South Wales (2002), *Annual Review 2001*, District Court of New South Wales, Sydney.
- Local Court of New South Wales (2004), *Annual Review 2003*, Local Court of New South Wales, Sydney.
- Weatherburn D (1996), "Measuring Trial Court Performance: Indicators for Trial Case Processing", *Crime and Justice Bulletin No. 30*, NSW Bureau of Crime Statistics and Research, Sydney.