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# **Sentence Indication Scheme Evaluation**

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New South Wales Bureau of Crime Statistics and Research

1995

Published by the NSW Bureau of Crime Statistics and Research

Attorney General's Department

Level 8

St James Centre

111 Elizabeth Street

Sydney

ISBN 0 7310 6469 0

## PREFACE

At the commencement of the first law term in 1992, the NSW Parliament passed legislation allowing the Chief Judge of the District Court to introduce a ‘Sentence Indication’ scheme. Under the scheme defendants committed for trial in the NSW District Court could elect to receive an indication of the sentence which would be imposed on them if they changed their plea to guilty. The scheme was introduced in the expectation that it would produce ‘earlier pleas of guilty and more pleas of guilty’. Earlier pleas of guilty are useful in that they reduce the amount of trial court time wasted when a plea of guilty is entered on the day a trial is due to commence. An increase in the percentage of defendants pleading guilty, if accompanied by a reduction in the demand for trial court time, is also useful (unless purchased at the cost of wrongful conviction) because it can lead to a reduction in trial court delay.

There are obvious similarities between the sentence indication scheme and the practice of plea bargaining widely employed in United States criminal jurisdictions. The NSW Judicial Commission has argued, however, that the sentence indication scheme has a number of advantages over the practice of plea bargaining. These are: that the assessment of sentence takes place in open court, not in chambers or in some other private forum; that the scheme involves an adjudication as to the nature and duration of the penalty to be imposed rather than the nature of the charges to be preferred; and that the scheme involves judicial adjudication rather than ‘negotiation’. These are compelling arguments in favour of sentence indication but their force depends on whether sentence indication is as effective as plea bargaining in reducing the workload of trial courts.

An initial evaluation report published earlier this year cast doubt on whether the scheme had achieved any reduction in the proportion of matters proceeding to trial or any reduction in the time taken to enter a plea of guilty. This report presents the findings of the Bureau’s final evaluation. Regrettably, the scheme does not appear to have been generally effective in encouraging either earlier or more frequent guilty pleas. Only one court exhibited any sign of a reduction in the number of matters proceeding to trial and that effect was transient. Court delays for cases where an accused person committed for trial changes their plea to ‘guilty’ were found to be lower after the introduction of sentence indication than before. The decline, however, began before the introduction of the sentence indication scheme and did not appear to accelerate after it.

The sentence indication scheme also had one unintended consequence. It would appear that those who accept a sentence indication are treated as, if not more, leniently than those who plead guilty at committal. This state of affairs conflicts with sentencing principles laid down by the NSW Court of Criminal Appeal in cases such as *R v. Warfield* and *R v. Winchester*. The report concludes, therefore, that there is little justification for continuing with the sentence indication scheme.

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**Director**

October 1995

## **ACKNOWLEDGEMENTS**

The preparation of this report was greatly assisted by discussions with a number of people. Particular thanks are due to the Chief Judge of the NSW District Court, Mr Reg Blanch, QC, Ms Megan Latham (Director of the Criminal Law Review Division, NSW Attorney General's Department), Mr Paul Byrne (Barrister), Mr Bob McClelland (Registrar, NSW District Criminal Court), and Ms Donna Spears (Research Director, NSW Judicial Commission).

Thanks are also due to Ms Karin Daugulis of the NSW District Court who assisted in the distribution of data collection forms, Ms Maria Gojski who provided invaluable assistance in extracting Higher Criminal Court data from the Bureau's databases, to Mr Les Kery who was responsible for desk-top publishing and to those Judges' Associates who assisted in the compilation of data about the outcome of cases committed for trial in the NSW District Criminal Court.

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# 1. INTRODUCTION

The NSW District Court has for some time been experiencing problems with trial court delay. While delays for trial matters have declined significantly over the last five years, more than 40 per cent of matters proceeding to trial in the District Court, where the accused is on bail, still take more than twelve months to finalise.<sup>1</sup> In a bid to address the problem, at the commencement of the first law term in 1992, the NSW Parliament passed temporary legislation allowing the Chief Judge of the NSW District Court to introduce a ‘Sentence Indication’ scheme.<sup>2</sup> The scheme provided for an accused person committed for trial in the NSW District Court to seek an indication of the sentence that would be imposed if a guilty plea were entered. The aim of the scheme was said to be ‘to obtain earlier pleas of guilty and more pleas of guilty’.<sup>3</sup>

The 1993 District Court Review described the operation of the sentence indication 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.<sup>4</sup>

It is easy to see why an increase in the guilty plea rate might be expected to reduce court delay. An increase in the guilty plea rate should bring with it a reduction in the number of cases awaiting trial. Provided there is no reduction in the court time available to hear cases, this shorter ‘queue’ of cases awaiting a trial hearing should result in cases joining the end of the ‘queue’ having a shorter time to wait for a hearing. Hence, in due course, with fewer cases waiting for trial, the average time from committal to trial commencement (and finalisation) should fall.

Earlier pleas of guilty also have the potential to reduce trial court delay. 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’ trial court (and judge) time. The wastage occurs because it is not always possible to list another trial for hearing on a hearing date vacated as a result of a change of plea. The sooner a change of plea occurs after a case is committed for trial, therefore, 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. Earlier pleas of guilty, in other words, allow administrators to make fuller use of the

court time allocated to hearing trial matters. As a result, trial cases should be disposed of at a higher rate and with fewer delays.

The sentence indication 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.<sup>5</sup> The extension of the scheme to all District Criminal Courts was accompanied by glowing 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'.<sup>6</sup> The same report claimed that 80 per cent of those who asked for a sentence indication pleaded guilty immediately, making a trial unnecessary.

A preliminary 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, 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.<sup>7</sup> Of the 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, was 'very similar to the estimates provided in the District Court Annual Review'.<sup>8</sup>

The Commission's data on the rate at which sentence indication hearings were being sought and accepted provided strong evidence of the popularity of the scheme among defendants. However the Commission's preliminary report did not provide any evidence bearing on its assumption that those who accepted an indication would otherwise have proceeded to trial. Nor did it attempt to examine the question of whether the scheme had succeeded in its objective of bringing about 'earlier' guilty pleas. The Bureau examined both of these issues in an interim report on the operation of the scheme. The report argued that the sentence indication scheme had not in fact altered the proportion of defendants proceeding to trial. It also argued that, although delays for cases finalised on a plea of guilty were lower after the introduction of the scheme than before, it was unclear whether the scheme itself (or earlier initiatives) had produced this result.

The Bureau's interim assessment of the impact of the sentence indication scheme on plea rates and case delay was limited in several respects. Firstly, it was based on data from a limited sample of courts. For example, the impact of the scheme on courts attached to the Sydney West District Court Registry was limited to the Parramatta District Court. Secondly, it made no attempt to see what effects the scheme had had on sentencing practice. This last question is of particular importance because the NSW Court of Criminal Appeal has ruled that sentencers should give larger discounts on penalty to defendants pleading guilty at committal and being dealt with under Section 51A of the *Justices Act 1902* (NSW) than to defendants who initially plead not guilty but change their plea to guilty following a sentence indication hearing.

The point was most clearly made by the NSW Court of Criminal Appeal in *R v. Warfield*.

... although those who plead guilty following a sentence indication hearing may expect some discount for that utilitarian benefit, they should not expect as much leniency as those who plead at an earlier stage and who do so as a result of their contrition.<sup>9</sup>

The same point was reiterated in *R v. Hollis* where it was observed that:

... a plea of guilty entered when the trial is called on for hearing is treated as a matter in mitigation upon the utilitarian basis that the plea saves the time and cost of the trial, as well as upon the basis that the plea shows some contrition by an accused ... A plea of guilty entered after a sentence indication, however, should not be thought to disclose any such contrition at all.<sup>10</sup>

These judgments suggest that special regard should be had to the question of whether those who plead guilty and are dealt with under Section 51A of the Justices Act are dealt with more leniently than those who change their plea to guilty following a sentence indication. Apart from its jurisprudential significance, defendants who see no advantage in pleading guilty at committal might be inclined to plead not guilty to preserve their right of access to a sentence indication hearing. Such an outcome would be unsatisfactory because pleas of guilty under Section 51A present fewer administrative burdens than sentence indication hearings and arguably consume less judge-time.

Given the preceding considerations, this report seeks to address the following questions:

**Question 1**

Has the sentence indication scheme reduced the proportion of defendants committed for trial who proceed to trial?

**Question 2**

Has the scheme reduced the delay between committal and case finalisation for cases where the accused is committed for trial but has their case finalised on a plea of guilty?

**Question 3**

Are those who plead guilty at committal and are dealt with under Section 51A of the Justices Act dealt with more leniently than those who plead guilty after a sentence indication?

**Question 4**

Has the sentence indication scheme reduced the proportion of defendants pleading guilty under Section 51A of the Justices Act?

Once again, it should be noted that, although questions (1) and (2) were the subject of the interim evaluation report, they are re-examined in this report using a significantly larger body of data.



## 2. METHOD

The NSW District Court is organised into seven Registries, with each Registry administering a number of courts (see Appendix). The sentence indication scheme was introduced across the State in three distinct phases. As noted earlier, 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; Sydney District Court; and the remaining courts attached to the Sydney West District Court Registry. Cases disposed of in the Newcastle and Wollongong Registries were grouped together for the purposes of analysing changes in method of case disposal, as were cases disposed of in Lismore, Dubbo and Wagga Wagga Registries.

### 2.1 QUESTION 1 - THE IMPACT OF SENTENCE INDICATION ON METHOD OF CASE DISPOSAL

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 (finalised as a trial, on a plea of guilty, as a 'no-bill' or because the accused absconded or died) before and after 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.<sup>11</sup>

### 2.2 QUESTION 2 - THE IMPACT OF SENTENCE INDICATION ON DELAYS FOR CASES FINALISED ON A PLEA OF GUILTY

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 finalisation 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.<sup>12</sup>

Separate one-tailed Mann-Whitney tests were conducted on the median case delays for both bail and custody cases in the periods twelve months before and twelve months after the introduction of the sentence indication scheme in Parramatta and Sydney District Courts. In the case of Sydney West, Newcastle, Wollongong, Dubbo, Lismore and Wagga Wagga Registries, only eight months worth of follow-up data were available, so the Mann-Whitney tests for the courts in these Registries 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 twelve (or eight) because in some comparisons no case of the required kind was finalised in one or more of the months involved in the test.

It should also 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 finalised on a plea of guilty in the District Court had been committed for trial within the previous six months.<sup>13</sup> The follow-up period for Sydney and Parramatta District Courts was at least twelve months, while the follow-up period for the remaining courts was at least eight months. The available follow-up data are therefore considered to provide a reasonable basis on which to make an assessment of whether the sentence indication scheme influenced the relative frequency of different methods of case disposal and/or the case delay.

### **2.3 QUESTION 3 - THE IMPACT OF SENTENCE INDICATION ON SENTENCING PRACTICE**

Question 3 invites a comparison of the sentences imposed on those who plead guilty under Section 51A of the Justices Act with those imposed on persons who plead guilty following a sentence indication. In order to be sure that any observed differences between the two groups in the way they were sentenced were the result of the circumstances in which the guilty plea was entered, however, it was necessary to ensure that both groups were matched on all factors relevant to the sentencing decision other than the way they were dealt with.

Because an unlimited number of factors are potentially relevant to the sentencing decision it is impossible in practice to match cases on all relevant particulars. However, empirical studies of sentencing typically show that sentencing decisions are most strongly affected by the offence, and the defendant's prior criminal record.<sup>14</sup> The following research strategy was therefore adopted in addressing Question 3.

Defendants were first separated according to whether they had entered a plea of guilty under Section 51A of the Justices Act or pleaded guilty following a sentence indication hearing. An attempt was then made to match each case where a defendant had pleaded

guilty following a sentence indication with a case where the defendant had pleaded guilty under Section 51A of the Justices Act. All offences except drug offences were eligible for inclusion in the matching process.<sup>15</sup>

The matching was carried out on the basis of the following characteristics:

- Nature of principal offence (defined at Act and Section level).
- Number of counts of principal offence.
- Total number of offences.
- Previous criminal record.

Two cases were regarded as having been matched on the basis of principal offence if the offence attracting the most severe penalty constituted a breach of the same Act and Section number.<sup>16</sup> Cases were regarded as matched on the number of counts of the principal offence if both had only one count of the principal offence or if both had more than one count of the principal offence. Likewise, two cases were regarded as matched in relation to the total number of offences if each involved only one type of offence or if each involved more than one type of offence. Finally, two cases were regarded as matched in relation to their prior criminal record if (a) each involved a defendant with no previous convictions or (b) each involved a defendant with previous convictions but no previous custodial sentence or (c) each involved a defendant with previous convictions and a previous custodial sentence.

Sentence indication matters (Group SI) were drawn directly from the District Courts (via information sent to the Bureau by Judges' Associates) and from lists kept by the Registrar of the District Court. These were matched against a pool of some 2000 cases (drawn from the Bureau's Higher Criminal Courts database) where the accused person pleaded guilty under Section 51A of the Justices Act (Group 51A). In this way a sample of 112 matched pairs was generated. Although full sentencing data were available for each of the 112 pairs of cases, penalties other than imprisonment were each used too infrequently to allow meaningful comparisons between them. Question 3 was accordingly addressed by testing the hypothesis that the percentage of persons imprisoned in Group 51A was lower than the percentage imprisoned in Group SI.

## **2.4 QUESTION 4 - THE IMPACT OF SENTENCE INDICATION ON THE RATE AT WHICH DEFENDANTS PLEAD GUILTY AT COMMITTAL**

It will be recalled that Question 4 was raised for consideration because there is reason to believe that the sentence indication scheme may encourage those who would otherwise have pleaded guilty at committal to plead not guilty instead in order to obtain a sentence indication hearing. If this is true, then, regardless of any factors which might influence both the number of sentence and trial committals, we should expect to see a decrease in the number of sentence committals relative to the number of trial committals. The strategy adopted to address Question 4, therefore, was to carry out a chi-square analysis of the difference between the proportions of trial and sentence committals before and after the introduction of the sentence indication scheme.

## 3. RESULTS

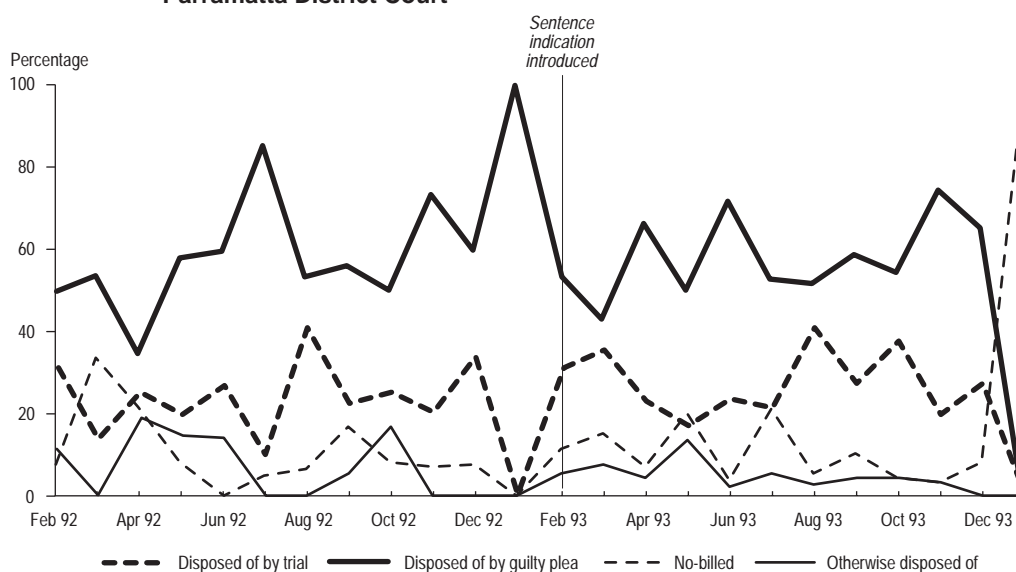
### 3.1 QUESTION 1 - THE IMPACT OF SENTENCE INDICATION ON METHOD OF CASE DISPOSAL

The first five figures to be examined below show the monthly trends in method of case disposal for the Parramatta District Court and for the District Courts attached to the following Registries: Sydney; Sydney West (excluding Parramatta District Court); Newcastle and Wollongong; Dubbo, Wagga Wagga and Lismore.<sup>17</sup> The figures dealing with Parramatta and Sydney show trends in method of case disposal for twelve months before and twelve months after the introduction of sentence indication. The remaining figures show the same trends for eight months before and eight months after the introduction of sentence indication.

The heavy solid line in each graph shows the trend in the percentage of matters finalised each month which had been committed for trial but which were finalised on a plea of guilty. The heavy dashed line shows the percentage of matters finalised each month which had been committed for trial and which were actually finalised with a trial. The light dashed line shows the percentage of matters each month which were finalised because the DPP no-billed the charges. The light solid line shows the percentage of matters finalised each month by any other means (e.g. because the defendant absconded or died). The vertical line indicates the month in which sentence indication was introduced.

Each graph is accompanied by a table which shows the relative frequency of different methods of case disposal in each court (or group of courts) before and after the introduction of sentence indication. Each table is based on the same data as are shown in the figure which accompanies it.

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



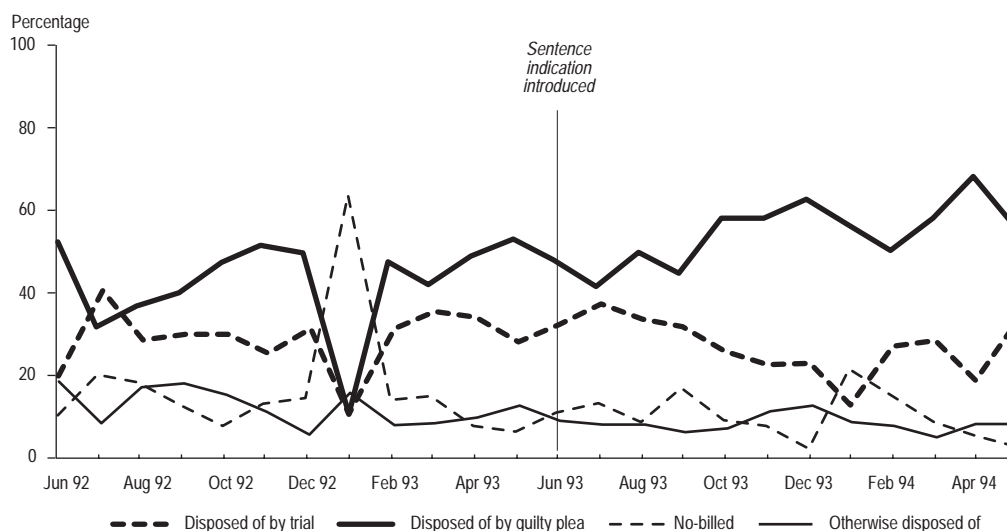
Inspection of Figure 1 (Parramatta) reveals no obvious evidence of any upward or downward trend following the introduction of sentence indication hearings in any of the four methods of trial case disposal. Table 1 shows the method of case disposal for persons committed for trial, whose cases were finalised in the twelve 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 finalised before and after sentence indication  
Parramatta District Court

<i>Method of case disposal</i>	<i>Cases finalised before sentence indication (Feb 1992 to Jan 1993)</i>		<i>Cases finalised before sentence indication (Feb 1993 to Jan 1994)</i>	
	<i>Number of persons committed for trial</i>	<i>(%)</i>	<i>Number of persons committed for trial</i>	<i>(%)</i>
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)
<b>Total</b>	<b>406</b>	<b>(100)</b>	<b>423</b>	<b>(100)</b>

Inspection of Figure 2 (Sydney), reveals clear evidence of an upward trend in the proportion of matters finalised on a plea of guilty. There appears to be a downward trend in the proportion of matters proceeding to trial, at least until January 1994, but the proportion of matters finalised as a trial begins to rise past this point.

**Figure 2: Persons committed for trial by method of case disposal**  
Sydney Registry



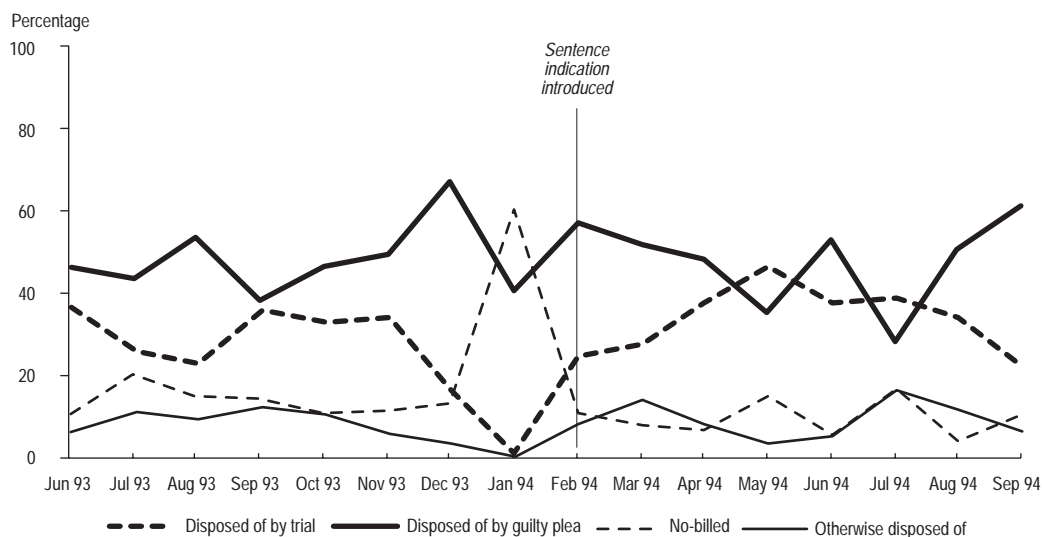
As might have been expected, on the basis of Figure 2, there is a significant difference before and after sentence indication in the relative frequency of the four types of case disposal ( $X^2_{\text{Test 1}} = 27.3$ ,  $df = 3$ ,  $p < 0.05$ ). Table 2 shows that, after the introduction of sentence indication, there was a higher proportion of persons whose cases were finalised as guilty pleas and smaller proportions of persons whose cases were no-billed or otherwise disposed of. There is no difference, however, when methods of case disposal are grouped into 'trial' and 'non-trial', respectively ( $X^2_{\text{Test 2}} = 0.2$ ,  $df = 1$ ,  $p > 0.05$ ).

**Table 2: Persons committed for trial**  
Method of disposal for cases finalised before and after sentence indication  
Sydney Registry

Method of case disposal	Cases finalised before sentence indication (Jun 1992 to May 1993)		Cases finalised after sentence indication (Jun 1993 to May 1994)	
	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)
<b>Total</b>	<b>1492</b>	<b>(100)</b>	<b>1250</b>	<b>(100)</b>

Figure 3, (Sydney West Registry excluding Parramatta) indicates considerable month to month variation in the relative frequencies of the different types of case disposal but no evidence of any overall difference in their relative frequency before and after the introduction of the sentence indication scheme.

**Figure 3: Persons committed for trial by method of case disposal**  
Sydney West Registry (excluding Parramatta)



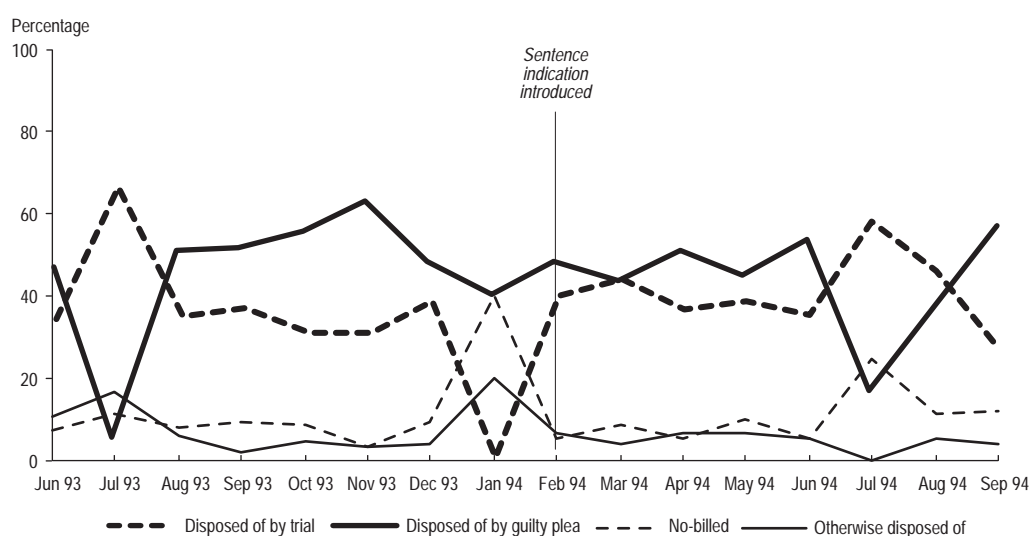
**Table 3: Persons committed for trial**  
**Method of disposal for cases finalised before and after sentence indication**  
**Sydney West Registry (excluding Parramatta)**

<i>Method of case disposal</i>	<i>Cases finalised before sentence indication (Jun 1993 to Jan 1994)</i>		<i>Cases finalised after sentence indication (Feb 1994 to Sep 1994)</i>	
	<i>Number of persons committed for trial</i>	<i>(%)</i>	<i>Number of persons committed for trial</i>	<i>(%)</i>
Trial	143	(29.8)	193	(32.4)
Sentence	233	(48.5)	301	(50.5)
No-billed	64	(13.3)	50	(8.4)
Other	40	(8.3)	52	(8.7)
<b>Total</b>	<b>480</b>	<b>(100)</b>	<b>596</b>	<b>(100)</b>

The statistical analysis accompanying Table 3 confirms this result. There were no significant differences in relative frequencies of methods of case disposal ( $X^2_{\text{Test 1}} = 7.0$ ,  $df = 3$ ,  $p > 0.05$ ) or when matters were grouped into 'trial' and 'non-trial' respectively ( $X^2_{\text{Test 2}} = 0.8$ ,  $df = 1$ ,  $p > 0.05$ ).

Inspection of Figure 4 (Newcastle and Wollongong), reveals very little evidence of any consistent upward or downward trend in the relative frequency of the four methods of case disposal.

**Figure 4: Persons committed for trial by method of case disposal**  
**Newcastle and Wollongong Registries**

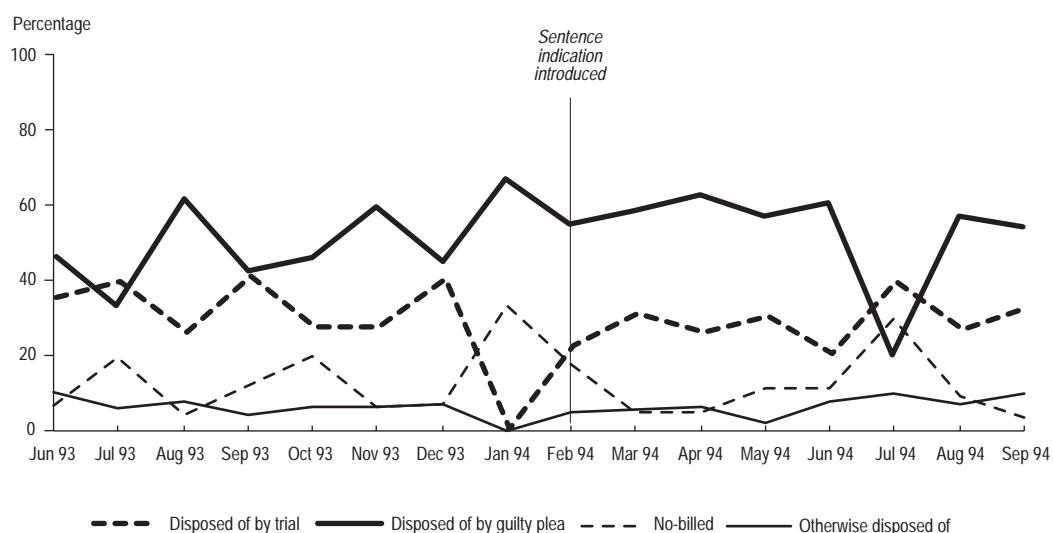


The statistical analysis accompanying Table 4 confirms this result. There was no significant difference before and after the introduction of the sentence indication scheme in the relative frequency of the four methods of disposal when considered individually ( $X^2_{\text{Test 1}} = 0.8$ ,  $df = 3$ ,  $p > 0.05$ ) or when trial disposals were compared with all other methods of disposal combined ( $X^2_{\text{Test 2}} = 0.5$ ,  $df = 1$ ,  $p > 0.05$ ).

**Table 4: Persons committed for trial**  
Method of disposal for cases finalised before and after sentence indication  
Newcastle and Wollongong Registries

Method of case disposal	Cases finalised before sentence indication (Jun 1993 to Jan 1994)		Cases finalised before sentence indication (Feb 1994 to Sep 1994)	
	Number of persons committed for trial	(%)	Number of persons committed for trial	(%)
Trial	153	(36.0)	219	(38.2)
Sentence	213	(50.1)	273	(47.6)
No-billed	35	(8.2)	51	(8.9)
Other	24	(5.6)	30	(5.2)
<b>Total</b>	<b>425</b>	<b>(100)</b>	<b>573</b>	<b>(100)</b>

**Figure 5: Persons committed for trial by method of case disposal**  
Dubbo, Wagga Wagga and Lismore Registries



Inspection of Figure 5 (Dubbo, Wagga Wagga and Lismore) also shows little evidence of any consistent upward or downward trend in any of the four methods of case disposal, an impression confirmed in the results of the statistical analysis accompanying Table 5. There was no significant difference before and after sentence indication in the method



of case disposal for any of the methods when considered separately ( $X^2_{\text{Test 1}} = 3.9$ ,  $df = 3$ ,  $p > 0.05$ ) or when combined into 'trial' and 'non-trial' groups ( $X^2_{\text{Test 2}} = 2.1$ ,  $df = 1$ ,  $p > 0.05$ ).

**Table 5: Persons committed for trial**  
Method of disposal for cases finalised before and after sentence indication  
Dubbo, Wagga Wagga and Lismore Registries

Method of case disposal	Cases finalised before sentence indication (Jun 1993 to Jan 1994)		Cases finalised before sentence indication (Feb 1994 to Sep 1994)	
	Number of persons committed for trial	(%)	Number of persons committed for trial	(%)
Trial	126	(32.2)	121	(27.7)
Sentence	195	(50.0)	248	(56.8)
No-billed	42	(10.8)	40	(9.2)
Other	27	(6.9)	28	(6.4)
<b>Total</b>	<b>390</b>	<b>(100)</b>	<b>437</b>	<b>(100)</b>

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 from all District Courts were pooled to obtain estimates of the relative frequency of different methods of case disposal eight months prior to and eight months subsequent to the introduction of the sentence indication scheme.

**Figure 6: Persons committed for trial by method of case disposal**  
All District Courts

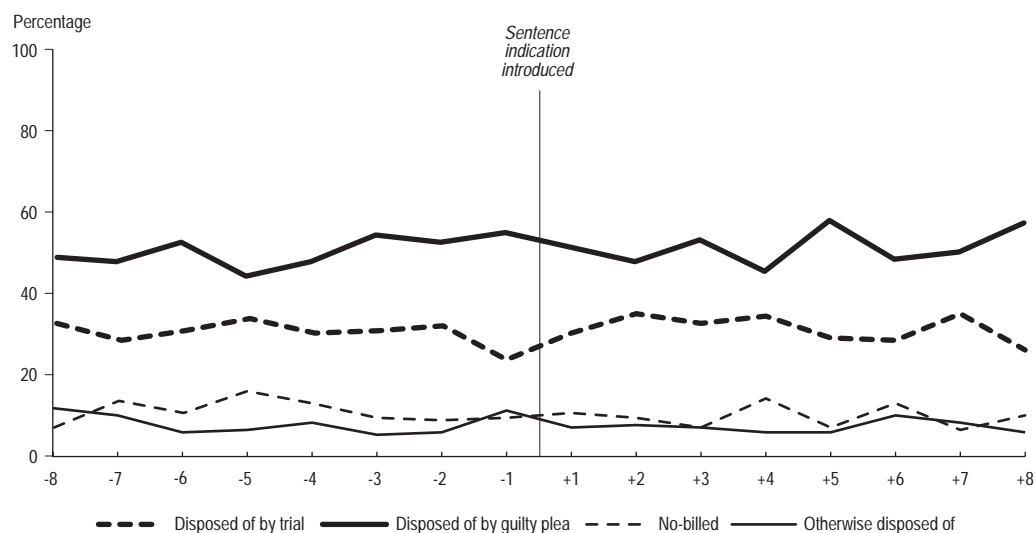


Figure 6 shows the trend in method of case disposal in the eight months before and the eight months following sentence indication using the pooled data. Inspection of Figure 6 suggests no significant change occurred following the introduction of the sentence indication scheme in the relative frequency of any of the methods of case disposal. This observation is confirmed in Table 6 which shows no statistically significant difference before and after sentence indication in the relative frequency of each method of case disposal considered separately ( $X^2_{\text{Test 1}} = 4.2$ ,  $df = 3$ ,  $p > 0.05$ ) and no statistically significance in the relative frequency of methods of case disposal when they are combined into 'trial' and 'non-trial', respectively ( $X^2_{\text{Test 2}} = 0.2$ ,  $df = 1$ ,  $p > 0.05$ ).

**Table 6: Persons committed for trial**  
Method of disposal for cases finalised before and after sentence indication  
All District Courts

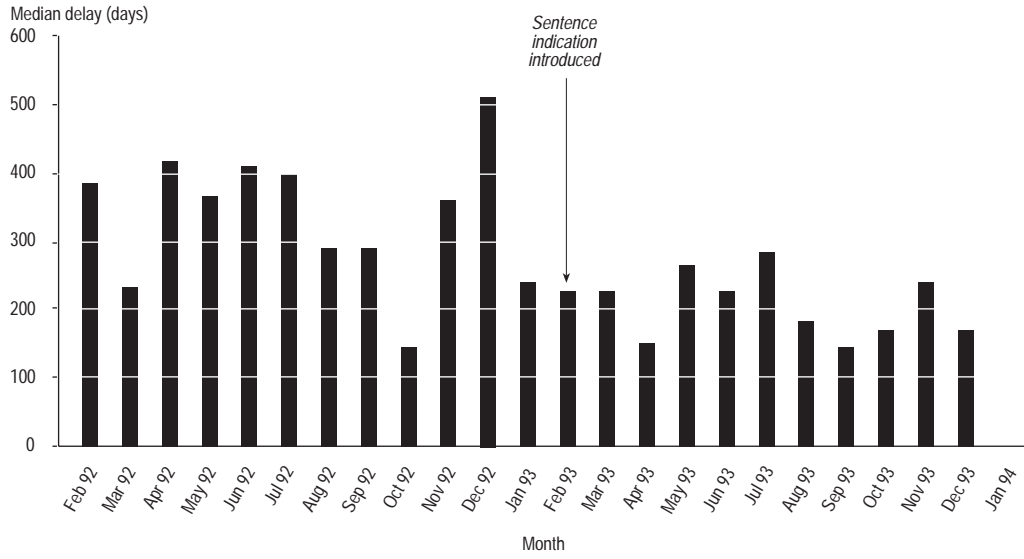
<i>Method of case disposal</i>	<i>Cases finalised in the 8 months before sentence indication</i>		<i>Cases finalised in the 8 months after sentence indication</i>	
	<i>Number of persons committed for trial</i>	<i>(%)</i>	<i>Number of persons committed for trial</i>	<i>(%)</i>
Trial	763	(31.0)	865	(31.6)
Sentence	1233	(50.1)	1414	(51.7)
No-billed	268	(10.9)	262	(9.6)
Other	195	(7.9)	194	(7.1)
<b>Total</b>	<b>2459</b>	<b>(100)</b>	<b>2735</b>	<b>(100)</b>

### 3.2 QUESTION 2 - THE IMPACT OF SENTENCE INDICATION ON DELAYS FOR CASES FINALISED ON A PLEA OF GUILTY

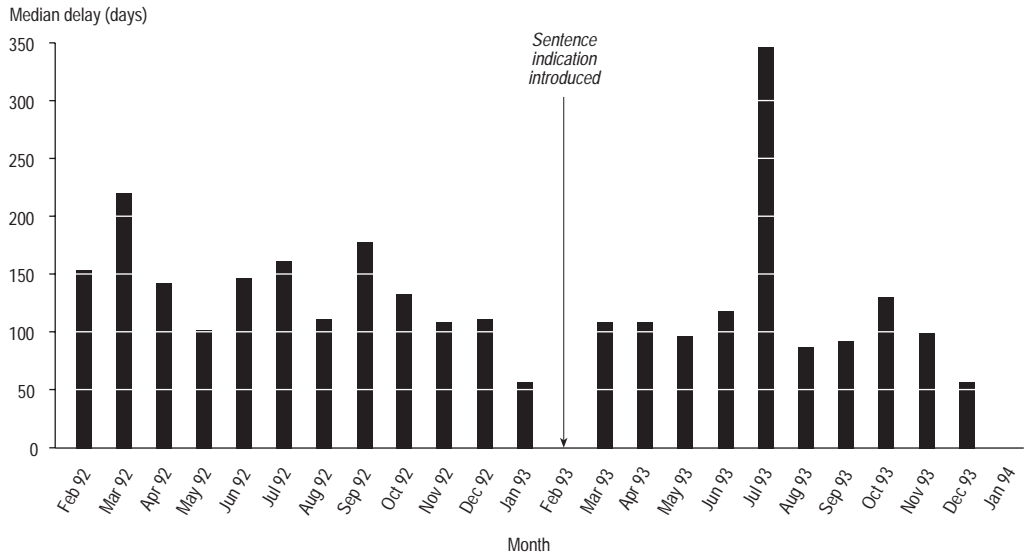
Figures 7a to 12b show the trends in median monthly delay between committal and case finalisation for cases committed for trial and finalised on a plea of guilty. The same Registry groupings have been employed as were shown in Figures 1 to 6. The first graph in each pair (graph a) indicates the trend in case delay for cases where the accused was on bail at his or her final appearance. The second graph in the pair (graph b) indicates the trend for cases where the accused was in custody (on remand) at final appearance. As with Figures 1 to 6, the month in which sentence indication was introduced is indicated on each graph. Gaps in the data occur in months in which no case (of the relevant type) was finalised.

Figures 7a and 7b show the trend in median case delay for Parramatta District Court. Median delays for both bail matters (Figure 7a) and custody matters (Figure 7b) are significantly lower after the introduction of the sentence indication scheme ( $U_{\text{bail}} = 17$ ,  $N1 = 12$ ,  $N2 = 11$ ,  $p < 0.05$ ;  $U_{\text{custody}} = 33$ ,  $N1 = 12$ ,  $N2 = 10$ ,  $p < 0.05$ ) than before.

**Figure 7a: Median finalisation delay for persons changing plea to guilty Parramatta District Court: persons on bail at final appearance**



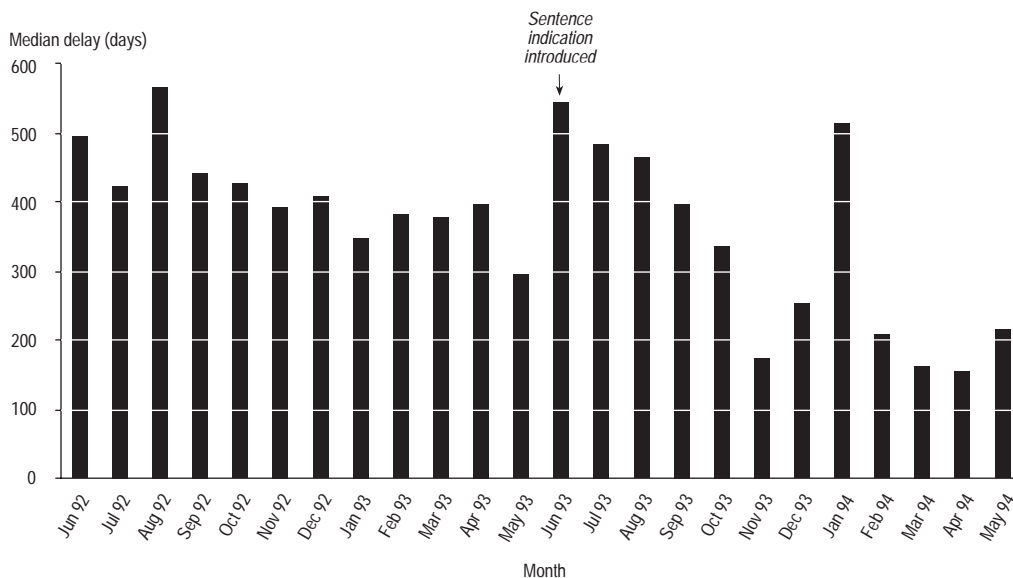
**Figure 7b: Median finalisation delay for persons changing plea to guilty Parramatta District Court: persons in custody at final appearance**



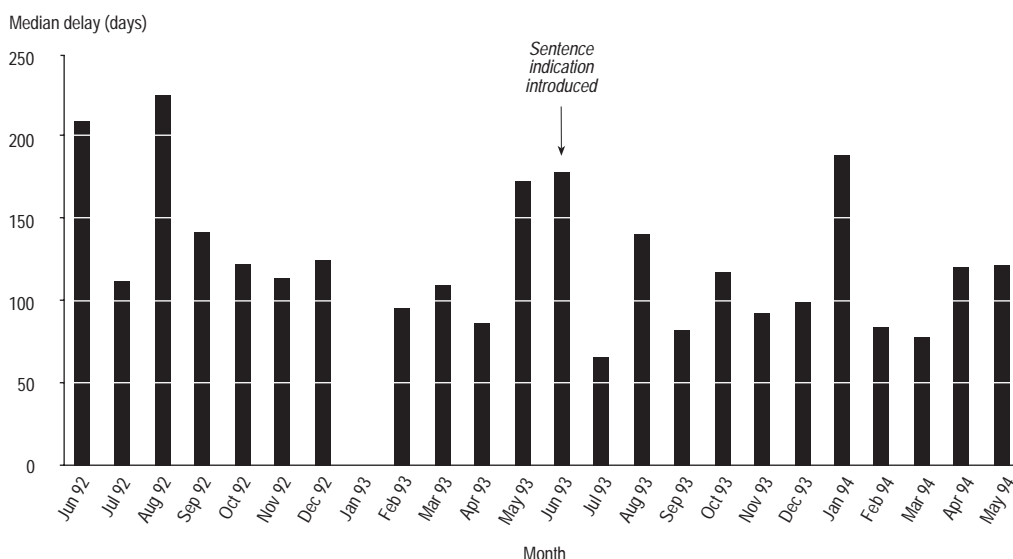
Figures 8a and 8b show the trend in median case delay for the Sydney District Court. Median delays for bail matters (Figure 8a) appear to be slightly lower after the introduction of sentence indication than before but the difference is not statistically significant ( $U_{\text{bail}} = 49, N1 = 12, N2 = 12, p > 0.05$ ). Inspection of Figure 8b suggests that

case delays for custody matters were not significantly lower in the period after the introduction of sentence indication than before. The Mann-Whitney test confirms this result ( $U_{\text{custody}} = 43$ ,  $N1 = 11$ ,  $N2 = 12$ ,  $p > 0.05$ ).

**Figure 8a: Median finalisation delay for persons changing plea to guilty  
Sydney Registry: persons on bail at final appearance**



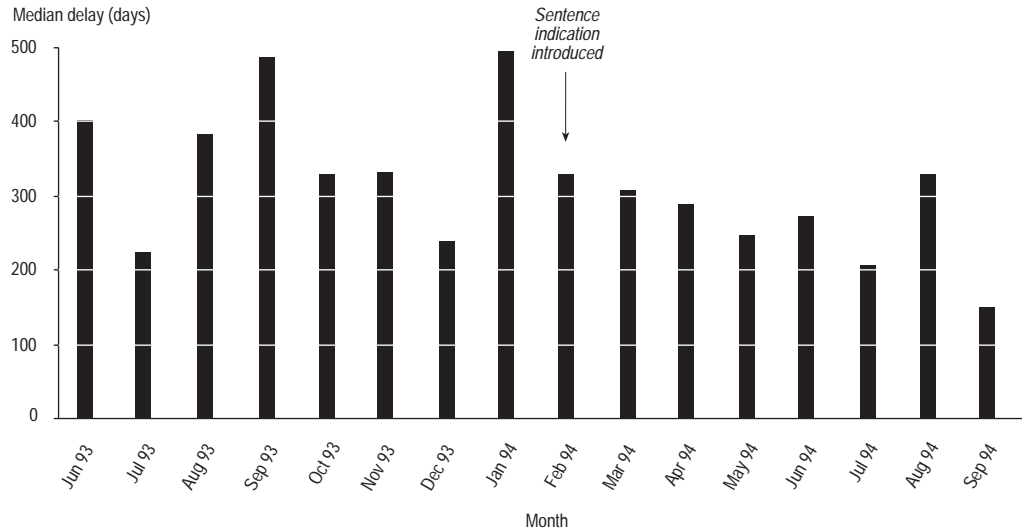
**Figure 8b: Median finalisation delay for persons changing plea to guilty  
Sydney Registry: persons in custody at final appearance**



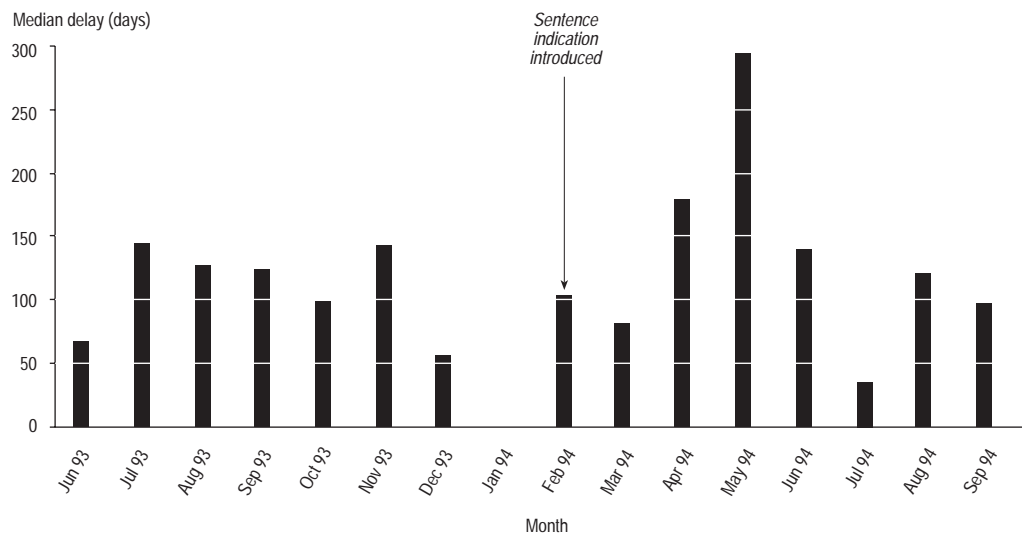
Figures 9a and 9b show the trends in monthly median case delay for courts attached to the Sydney West District Court Criminal Registry (excluding Parramatta District Court). Case delays for defendants on bail (Figure 9a) appear to be slightly higher before the introduction of sentence indication than after but case delays for custody matters

(Figure 9b) do not appear to exhibit any upward or downward trend in case delay. As it happens, there is no statistically significant difference between case delays before and after sentence indication for either category of case ( $U_{\text{bail}} = 14, N1 = 8, N2 = 8, p > 0.05$ ;  $U_{\text{custody}} = 27, N1 = 7, N2 = 8, p > 0.05$ ).

**Figure 9a: Median finalisation delay for persons changing plea to guilty Sydney West Registry (excluding Parramatta): persons on bail at final appearance**



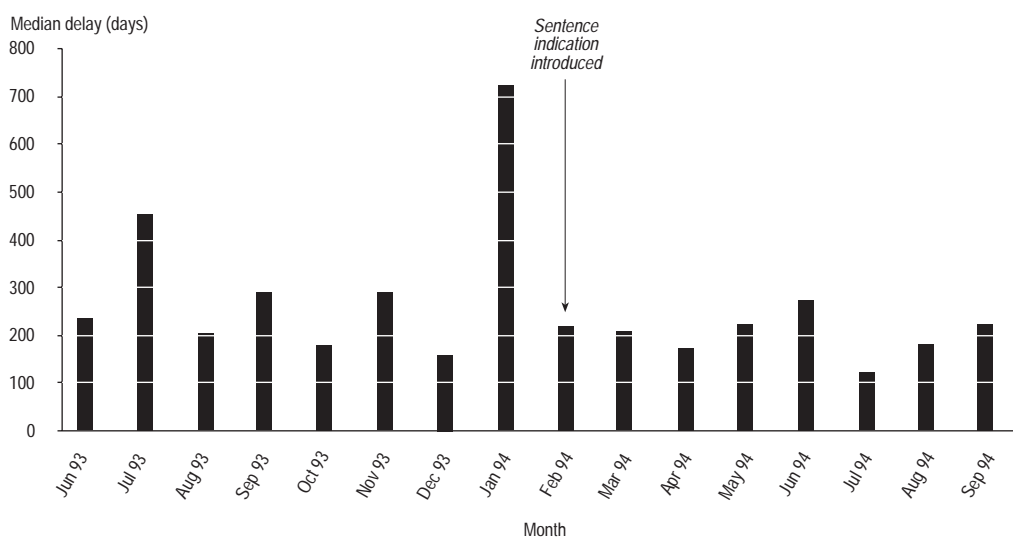
**Figure 9b: Median finalisation delay for persons changing plea to guilty Sydney West Registry (excluding Parramatta): persons in custody at final appearance**



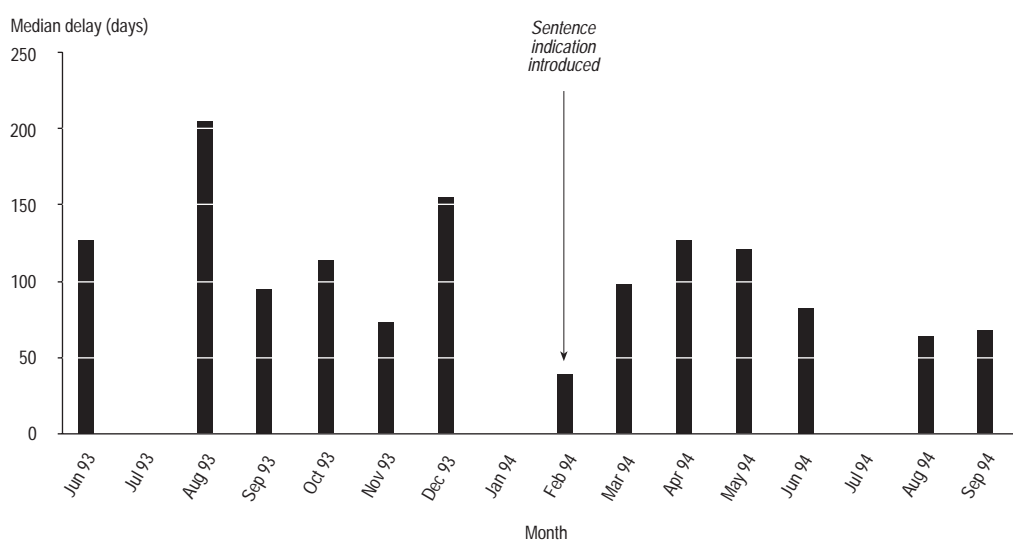
Figures 10a and 10b show the trends in case delays for Newcastle and Wollongong Registries. Neither bail matters (Figure 10a) nor custody matters (Figure 10b) appear to be exhibiting any downward trend in case delay. The Mann-Whitney test showed no

significant difference in delays before and after sentence indication ( $U_{\text{bail}} = 18, N1 = 8, N2 = 8, p > 0.05$ ;  $U_{\text{custody}} = 10, N1 = 6, N2 = 7, p > 0.05$ ).

**Figure 10a: Median finalisation delay for persons changing plea to guilty  
Newcastle and Wollongong Registries:  
persons on bail at final appearance**



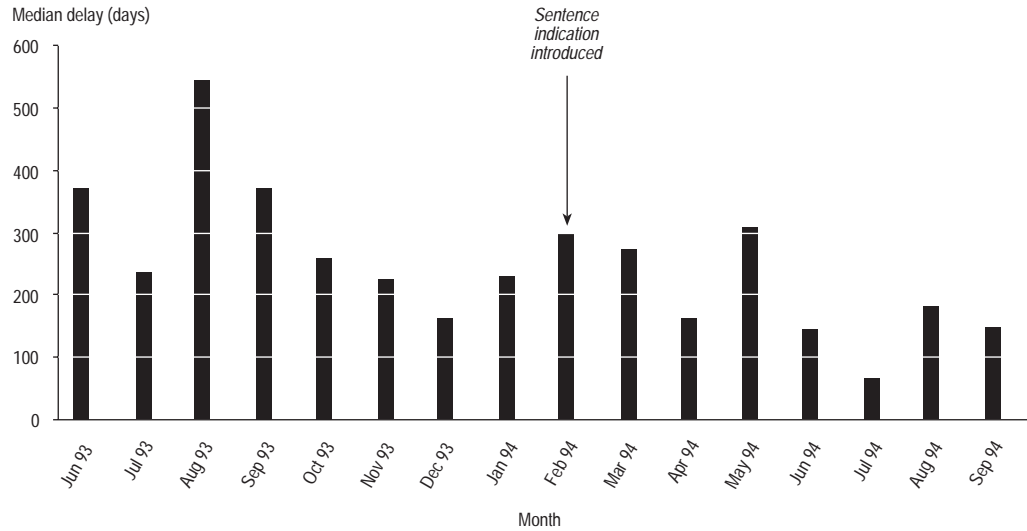
**Figure 10b: Median finalisation delay for persons changing plea to guilty  
Newcastle and Wollongong Registries:  
persons in custody at final appearance**



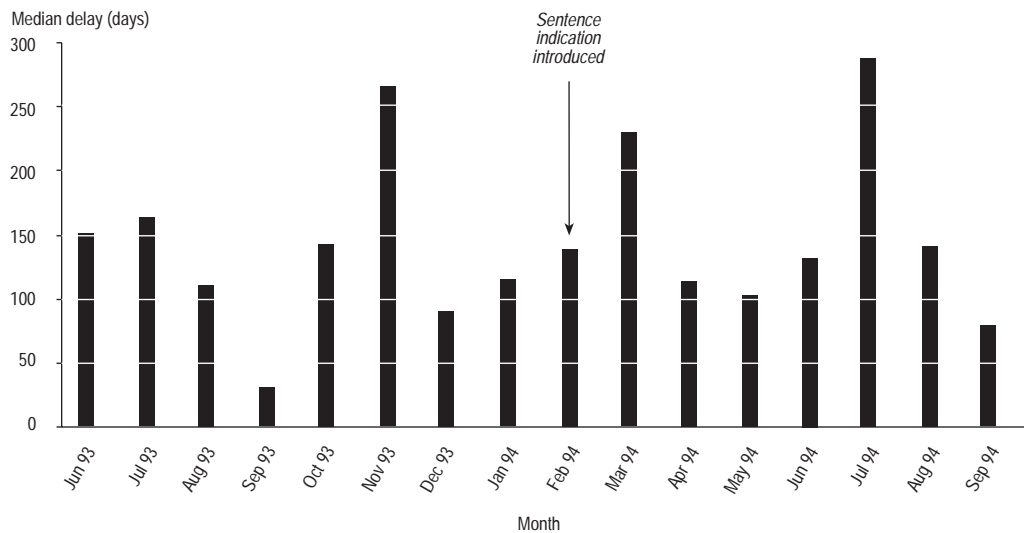
Figures 11a and 11b show the trends in case delay for Dubbo, Wagga Wagga and Lismore Registries. Neither Figure 11a (bail matters) nor 11b (custody matters) show any evidence of a downward trend in case delay. The Mann-Whitney test shows that the delays after

sentence indication are not significantly different from those before ( $U_{\text{bail}} = 16$ ,  $N1 = 8$ ,  $N2 = 8$ ,  $p > 0.05$ ;  $U_{\text{custody}} = 31$ ,  $N1 = 8$ ,  $N2 = 8$ ,  $p > 0.05$ ).

**Figure 11a: Median finalisation delay for persons changing plea to guilty  
Dubbo, Wagga Wagga and Lismore Registries:  
persons on bail at final appearance**



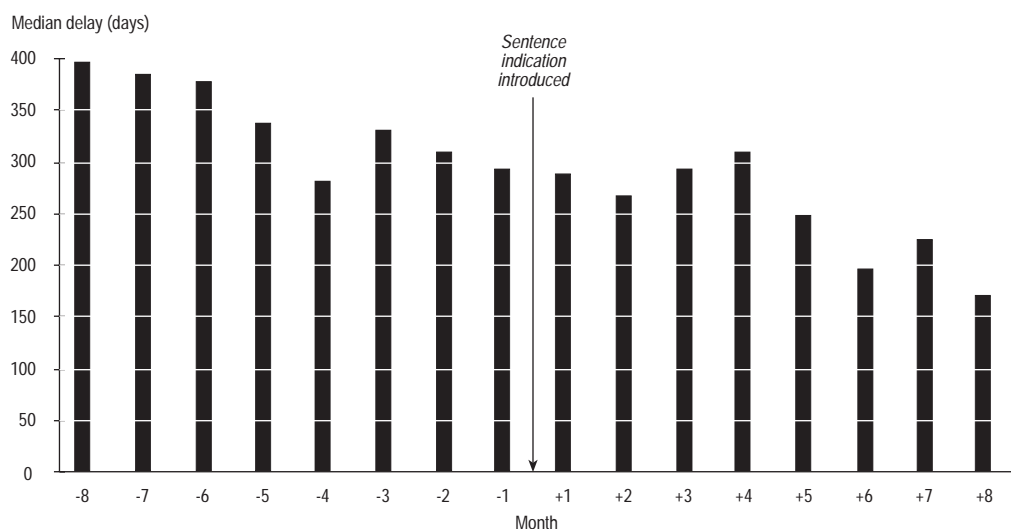
**Figure 11b: Median finalisation delay for persons changing plea to guilty  
Dubbo, Wagga Wagga and Lismore Registries:  
persons in custody at final appearance**



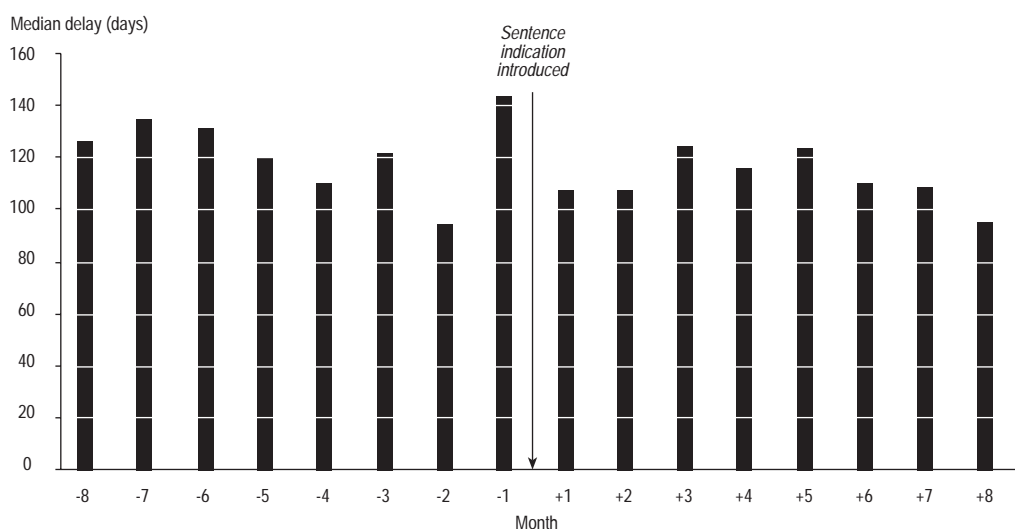
Once again, in order to conduct an overall assessment of the impact of sentence indication on case delay, the data on case delay for all courts were pooled following the same general strategy as that adopted in connection with Figure 6. Figures 12a and 12b show the

monthly median case delays for all courts combined in the eight months preceding and the eight months following the introduction of sentence indication.

**Figure 12a: Median finalisation delay for persons changing plea to guilty  
All District Courts: persons on bail at final appearance**



**Figure 12b: Median finalisation delay for persons changing plea to guilty  
All District Courts: persons in custody at final appearance**



There is no evidence that case delays for custody matters (Figure 12b) were lower after the introduction of sentence indication than before but there is clear evidence of a downward trend in case delay for bail matters (Figure 12a). Statistical testing indicates that case delays for custody matters were not significantly lower after the introduction of sentence indication than before whereas case delays for bail matters were lower ( $U_{\text{bail}} = 4$ ,  $N1 = 8$ ,  $N2 = 8$ ,  $p < 0.05$ ;  $U_{\text{custody}} = 16$ ,  $N1 = 8$ ,  $N2 = 8$ ,  $p > 0.05$ ).



Although the Mann-Whitney test result indicates significantly lower case delays after sentence indication for bail matters, inspection of Figure 12a suggests that the change in delay resulted from a downward trend which began before the introduction of sentence indication. The question arises, however, as to whether the reduction in case delay observed after the introduction of sentence indication was simply a continuation of an existing trend or whether the introduction of sentence indication could be regarded as having accelerated that trend.

The simplest way of addressing this issue is to fit linear regression equations to the case delay data before and after sentence indication and then compare the slope coefficients of the two equations. If the sentence indication scheme accelerated a pre-existing downward trend in case delay, the slope coefficient of the linear equation fitted to the post-sentence indication data should be greater than the slope coefficient of the linear equation fitted to the pre-sentence indication data.

**Figure 13: Median finalisation delay for persons changing plea to guilty  
All District Courts: persons on bail at final appearance**

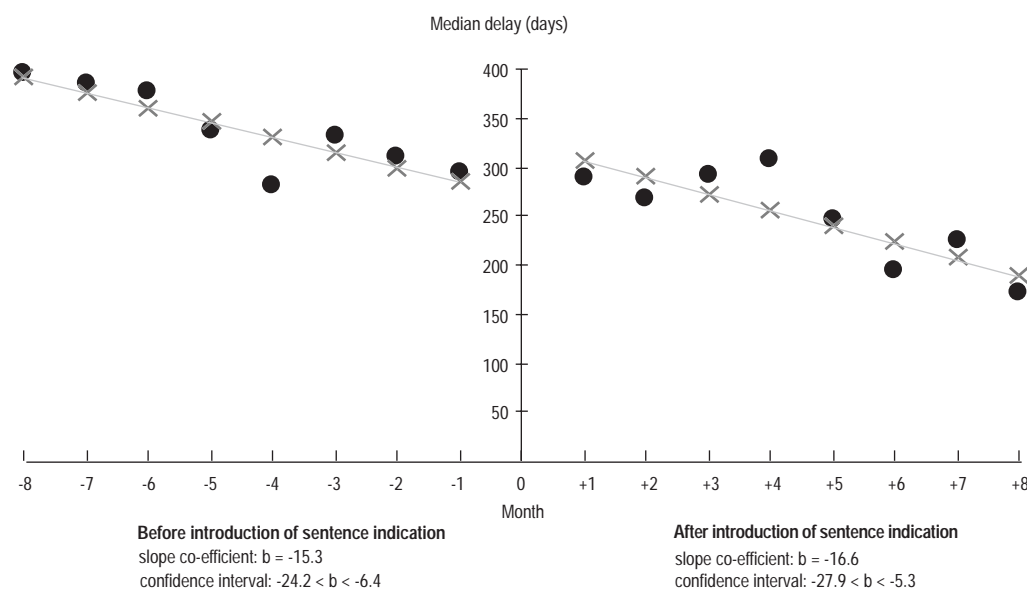


Figure 13 shows the median case delays previously exhibited in Figure 12a but separated according to whether the data stem from the pre-sentence indication period or the post-sentence indication period. The best-fitting linear trend is shown passing through each set of points. Underneath each portion of the figure is the slope coefficient of the fitted equation and its associated 95 per cent confidence interval.

The first point to note is that both slopes are negative and significantly different from zero (neither confidence interval contains zero). This result confirms that there is a significant downward trend both before and after the introduction of sentence indication. Secondly, it is obvious from inspection of Figure 13 (or the estimated slope coefficients) that the slopes of the two fitted equations are very similar. In fact, because each of the slope coefficients is contained within both of the confidence intervals, we can conclude that the slopes of the two fitted linear trend lines are not significantly different from each other. In other words, there is no evidence that the rate of decline in case delay for cases finalised on a plea of guilty is greater after sentence indication than before.

### 3.3 QUESTION 3 - THE IMPACT OF SENTENCE INDICATION ON SENTENCING PRACTICE

In this section we examine the question of whether those who are sentenced following a sentence indication hearing are treated more leniently by the sentencing judge than those who plead guilty under Section 51A of the Justices Act. The method of analysis adopted to address this question was to compare two groups of matched cases, Group SI and Group 51A, as described in Section 2.3 above. The results of the analysis, however, differ according to whether periodic detention is regarded as custodial or non-custodial. Tables 7a and 7b therefore show the difference in the number imprisoned in Group SI and Group 51A, according to whether those receiving a sentence of periodic detention are included within the custodial sentence group (Table 7a) or the non-custodial sentence group (Table 7b).

**Table 7a: Sentence type by method of case disposal  
(periodic detention counted as a custodial sentence)**

<i>Sentence type</i>	<i>Method of case disposal</i>		
	<i>Group SI</i>	<i>Group 51A</i>	<i>Total</i>
Custodial sentence	69	72	141
Non-custodial sentence	43	40	83
<b>Total</b>	112	112	224

**Table 7b: Sentence type by method of case disposal  
(periodic detention counted as a non-custodial sentence)**

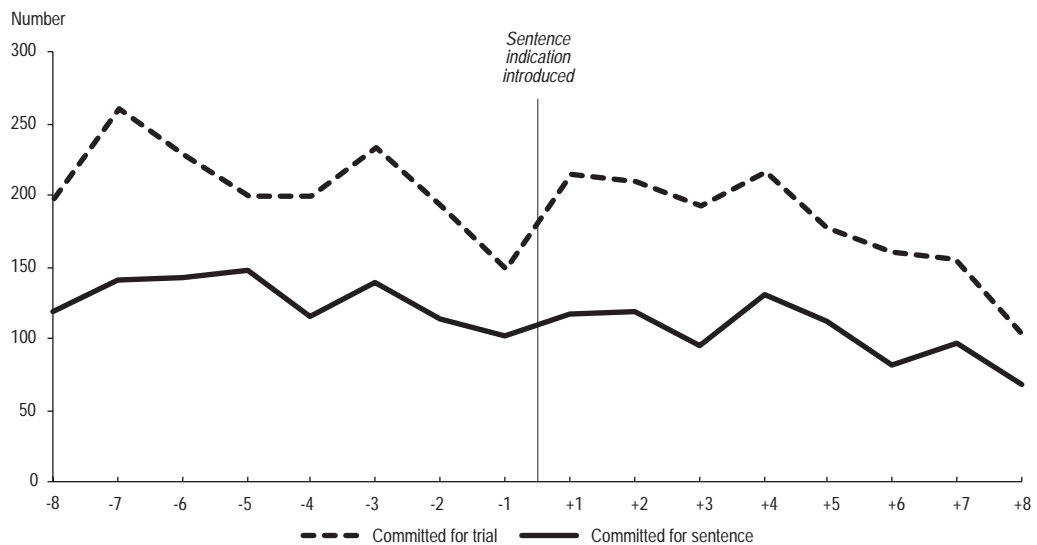
<i>Sentence type</i>	<i>Method of case disposal</i>		
	<i>Group SI</i>	<i>Group 51A</i>	<i>Total</i>
Custodial sentence	49	64	113
Non-custodial sentence	63	48	111
<b>Total</b>	112	112	224

It is clear from inspection of the two tables that those pleading guilty after receiving a sentence indication are dealt with as leniently as those pleading guilty at committal, if not more so. In fact, while there is no statistically significant difference between the two groups when imprisonment is defined to include periodic detention ( $X^2 = 0.2$ ,  $df = 1$ ,  $p > 0.05$ ), there is a significant difference between the two groups when periodic detention is counted as a non-custodial sentence ( $X^2 = 4.0$ ,  $df = 1$ ,  $p < 0.05$ ). Those who are sentenced following a plea of guilty at committal are more likely to receive a full-time sentence of imprisonment than those who plead guilty following a sentence indication hearing. The difference, moreover, is quite substantial. Fifty-seven per cent of Group 51A in Table 7b received a full-time sentence of imprisonment compared with 44 per cent of those in Group SI.

### 3.4 QUESTION 4 - THE IMPACT OF SENTENCE INDICATION ON THE RATE AT WHICH DEFENDANTS PLEAD GUILTY AT COMMITTAL

For reasons explained in Section 2 above, in order to assess the impact of sentence indication on the rate at which defendants plead guilty at committal we need to compare the relative frequency of sentence and trial committals before and after sentence indication. It is worth observing, nevertheless, that both sentence and trial committals appear to have been in decline during the period before and after the introduction of sentence indication. Figure 14 shows the numbers of persons committed for trial and for sentence (regardless of how the matter was finalised) in the eight months preceding and the eight months following the introduction of sentence indication. The figure is constructed on the same basis as that used to construct Figures 6, 12a and 12b. The dashed line shows the monthly number of trial committals. The solid line shows the monthly number of sentence committals.

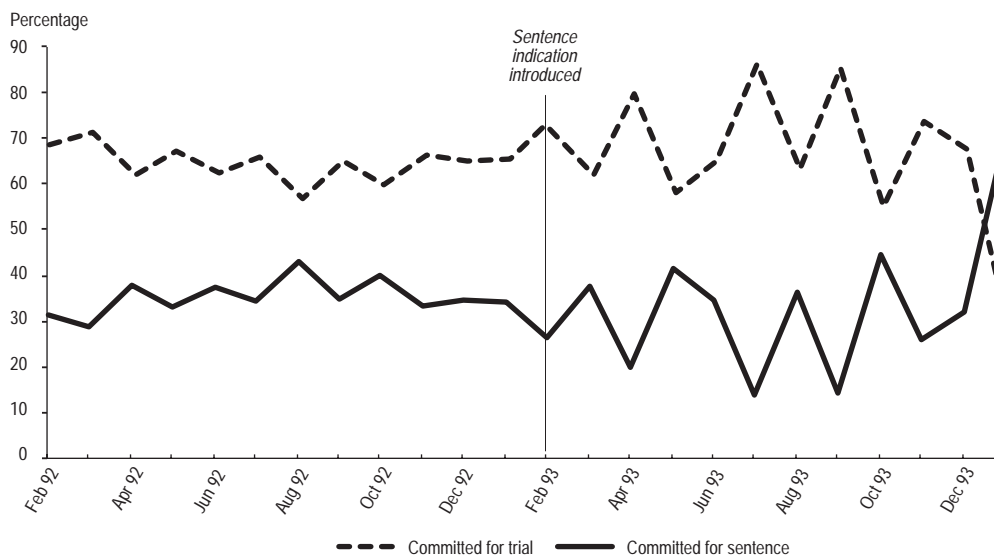
**Figure 14: Number of persons committed for trial and sentence by month  
All District Courts**



It can be seen from Figure 14 that, although the number of trial committals always exceeds the number of sentence committals, there is a general downward trend in both types of case over the study period. There is little evidence, however, that the rate of decline in sentence committals exceeds that for trial committals, either overall or at courts attached to particular Registries.

Figure 15 shows the percentage of trial and sentence cases registered each month in the Parramatta District Court twelve months before and twelve months after sentence indication was introduced in that court.

**Figure 15: Percentage of persons committed for trial and sentence by month Parramatta District Court**

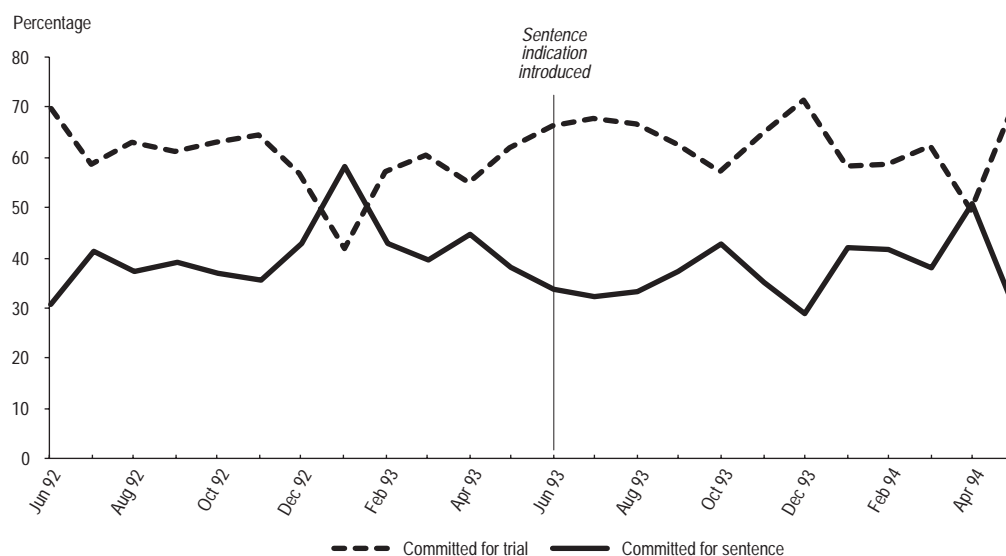


Although there appears to be significantly greater variation in the percentage of trial and sentence committals after sentence indication than before, Table 8 shows there is no difference before and after sentence indication in the relative frequency of the two types of case ( $X^2 = 0.5$ ,  $df = 1$ ,  $p > 0.05$ ).

**Table 8: Number of persons committed for trial and sentence before and after introduction of sentence indication Parramatta District Court**

<b>Committal type</b>	<b>Cases committed before sentence indication (Feb 1992 to Jan 1993)</b>		<b>Cases committed after sentence indication (Feb 1993 to Jan 1994)</b>	
	<b>Number of persons</b>	<b>(%)</b>	<b>Number of persons</b>	<b>(%)</b>
Trial	328	(65.1)	264	(67.3)
Sentence	176	(34.9)	128	(32.7)
<b>Total</b>	<b>504</b>	<b>(100)</b>	<b>392</b>	<b>(100)</b>

Figure 16 shows the percentage of trial and sentence cases registered each month in the Sydney District Court Registry in the twelve months before and after sentence indication was introduced in that court.

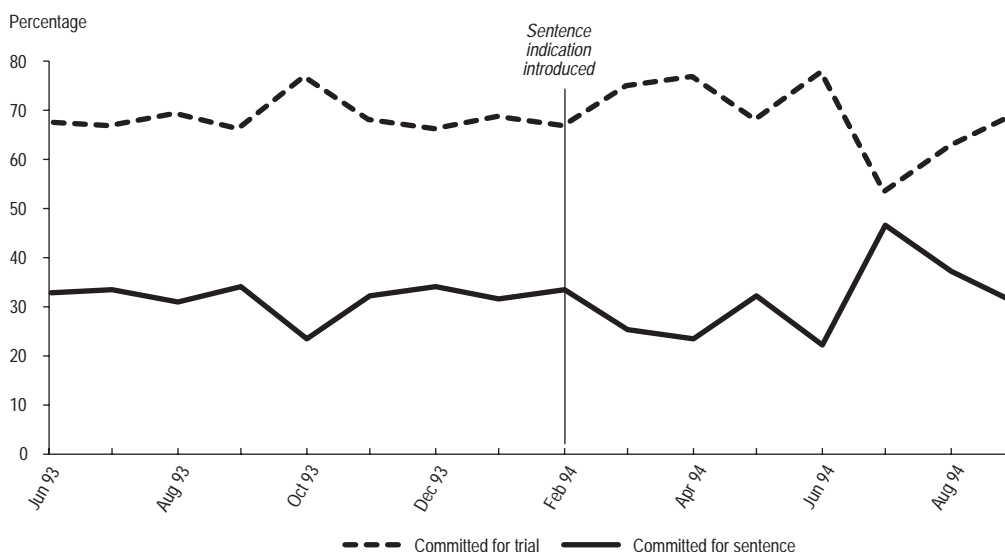
**Figure 16: Percentage of persons committed for trial and sentence by month Sydney Registry**

Once again, while there is obviously considerable month to month variation in the percentage of trial and sentence committals, there is no evidence that sentence committals increased in frequency relative to trial committals after sentence indication (Table 9). This impression is confirmed in the results of the chi-square analysis ( $X^2 = 2.5$ ,  $df = 1$ ,  $p > 0.05$ ).

**Table 9: Number of persons committed for trial and sentence before and after introduction of sentence indication Sydney Registry**

<i>Committal type</i>	<i>Cases committed before sentence indication (Jun 1992 to May 1993)</i>		<i>Cases committed after sentence indication (Jun 1993 to May 1994)</i>	
	<i>Number of persons</i>	<i>(%)</i>	<i>Number of persons</i>	<i>(%)</i>
Trial	786	(59.8)	675	(63.0)
Sentence	529	(40.2)	397	(37.0)
<b>Total</b>	<b>1315</b>	<b>(100)</b>	<b>1072</b>	<b>(100)</b>

Figure 17 shows the percentage of trial and sentence cases registered in courts attached to the Sydney West Registry (excluding Parramatta) eight months before and eight months after the introduction of sentence indication.

**Figure 17: Percentage of persons committed for trial and sentence by month Sydney West Registry (excluding Parramatta)**

Apart from an anomalous dip in trial committals and corresponding rise in sentence committals in July 1994, there is no evident tendency for the percentage of sentence committals to rise following the introduction of sentence indication. Table 10 indicates that there is little difference in the relative frequency of the two types of case before and after sentence indication and the chi-square test shows this difference is not statistically significant ( $X^2 = 0.1$ ,  $df = 1$ ,  $p > 0.05$ ).

**Table 10: Number of persons committed for trial and sentence before and after introduction of sentence indication Sydney West Registry (excluding Parramatta)**

<i>Committal type</i>	<i>Cases committed before sentence indication (Jun 1993 to Jan 1994)</i>		<i>Cases committed after sentence indication (Feb 1994 to Sep 1994)</i>	
	<i>Number of persons</i>	<i>(%)</i>	<i>Number of persons</i>	<i>(%)</i>
Trial	317	(67.1)	261	(69.0)
Sentence	150	(32.1)	117	(31.0)
<b>Total</b>	<b>467</b>	<b>(100)</b>	<b>378</b>	<b>(100)</b>

Figure 18 shows the percentage of trial and sentence cases registered in courts attached to the Newcastle and Wollongong Registries eight months before and eight months after the introduction of sentence indication in those courts.

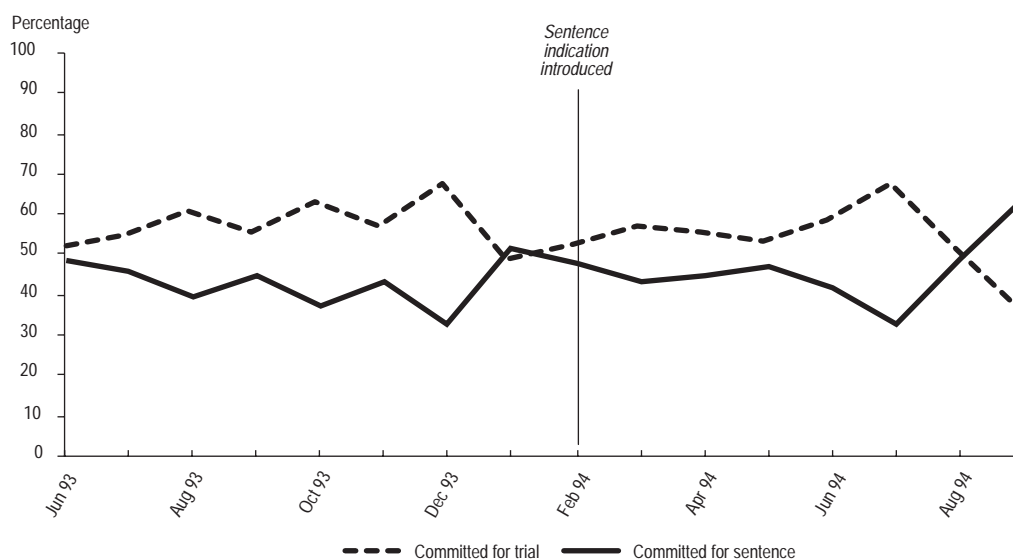
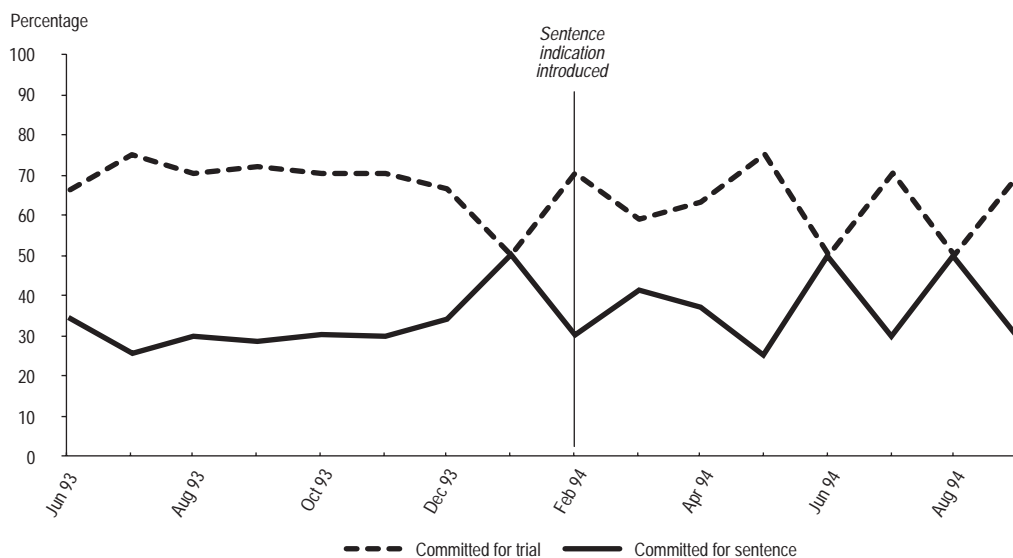
**Figure 18: Percentage of persons committed for trial and sentence by month Newcastle and Wollongong Registries**

Figure 18 suggests and the chi-square analysis confirms (see Table 11) that there is no statistically significant difference before and after the introduction of sentence indication in these courts in the percentage of cases committed for sentence ( $X^2 = 0.8$ ,  $df = 1$ ,  $p > 0.05$ ).

**Table 11: Number of persons committed for trial and sentence before and after introduction of sentence indication Newcastle and Wollongong Registries**

<i>Committal type</i>	<i>Cases committed before sentence indication (Jun 1993 to Jan 1994)</i>		<i>Cases committed after sentence indication (Feb 1994 to Sep 1994)</i>	
	<i>Number of persons</i>	<i>(%)</i>	<i>Number of persons</i>	<i>(%)</i>
Trial	357	(57.2)	274	(54.6)
Sentence	267	(42.8)	228	(45.4)
<b>Total</b>	624	(100)	502	(100)

Figure 19 shows the percentage of trial and sentence cases registered in courts attached to the Dubbo, Lismore and Wagga Wagga Registries eight months before and eight months after the introduction of sentence indication.

**Figure 19: Percentage of persons committed for trial and sentence by month  
Dubbo, Wagga Wagga and Lismore Registries**

Once again, although there appears to be greater monthly variation in the percentage of trial and sentence committals following the introduction of sentence indication, Table 12 shows there is little difference in the relative frequency of sentence committals before and after sentence indication. The difference is not statistically significant ( $X^2 = 2.3$ ,  $df = 1$ ,  $p > 0.05$ ).

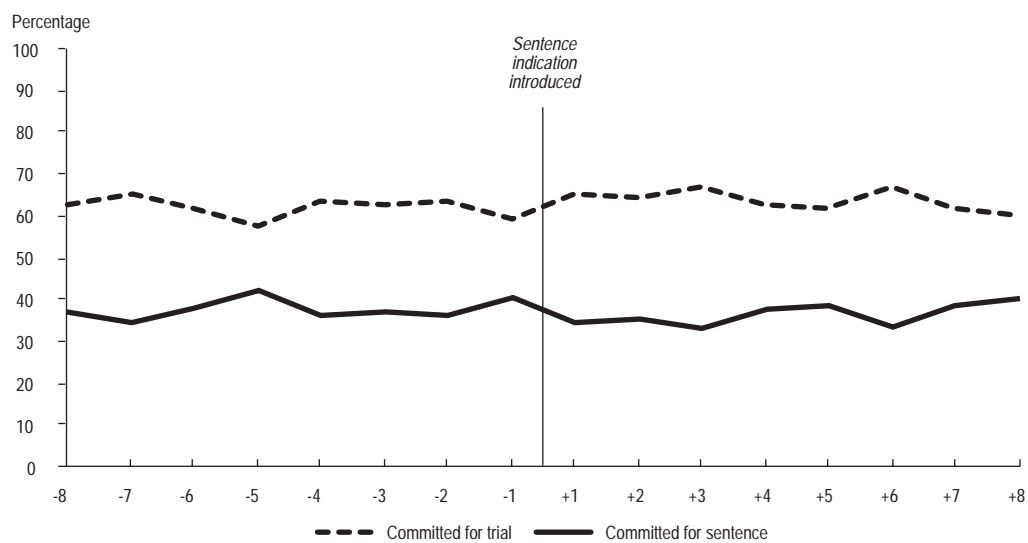
**Table 12: Number of persons committed for trial and sentence  
before and after introduction of sentence indication  
Dubbo, Lismore and Wagga Wagga Registries**

<i>Committal type</i>	<i>Cases committed before sentence indication (Jun 1993 to Jan 1994)</i>		<i>Cases committed after sentence indication (Feb 1994 to Sep 1994)</i>	
	<i>Number of persons</i>	<i>(%)</i>	<i>Number of persons</i>	<i>(%)</i>
Trial	269	(68.8)	193	(63.3)
Sentence	122	(31.2)	112	(36.7)
<b>Total</b>	391	(100)	305	(100)

Finally, Figure 20 shows the percentage of trial and sentence committals for all District Criminal Courts eight months before and eight months after the introduction of sentence indication. There is no evidence of any systematic tendency for the percentage of sentence committals to rise following the introduction of sentence indication (see Table 13). The chi-square test result is predictably not significant ( $X^2 = 1.5$ ,  $df = 1$ ,  $p > 0.05$ ).



**Figure 20: Percentage of persons committed for trial and sentence by month All District Courts**



**Table 13: Number of persons committed for trial and sentence before and after introduction of sentence indication All District Court**

<i>Committal type</i>	<i>Cases committed in the 8 months before sentence indication</i>		<i>Cases committed in the 8 months after sentence indication</i>	
	<i>Number of persons</i>	<i>(%)</i>	<i>Number of persons</i>	<i>(%)</i>
Trial	1649	(61.8)	1425	(63.5)
Sentence	1018	(38.2)	819	(36.5)
<b>Total</b>	<b>2667</b>	<b>(100)</b>	<b>2244</b>	<b>(100)</b>

## 4. SUMMARY AND DISCUSSION

Insofar as the aim of the sentence indication scheme was to produce ‘earlier and more frequent’ pleas of guilty the scheme must be judged, on the available statistical evidence, to have failed. The present report confirms the observation made in the interim report that the scheme has had no effect on the proportion of defendants proceeding to trial (Question 1). It also provides evidence suggesting (a) that the reduction in delay between committal and case finalisation for cases where the accused person changes his or her plea to guilty had begun before the introduction of the sentence indication scheme and (b) that it did not accelerate after the introduction of the sentence indication scheme (Question 2).

Unfortunately the scheme would also appear to have created a situation in which those who plead guilty under Section 51A of the Justices Act enjoy no greater discount on sentence than those who reserve their plea of not guilty in order to obtain access to a sentence indication hearing (Question 3). Indeed, where full-time sentences of imprisonment are concerned, the evidence suggests that those who plead guilty at committal are at a distinct disadvantage compared with those who do not plead guilty until a sentence indication hearing. It is reassuring to note that this state of affairs has not yet led to a fall off in the percentage of defendants who plead guilty at committal (Question 4). Nevertheless, the lack of clear differentiation in penalty between those who plead guilty under Section 51A and those who plead guilty after a sentence indication hearing is in clear violation of the principles laid down by the NSW Court of Criminal Appeal in cases such as *R v. Warfield*.

Although the statistical data presented here provide no evidence that the sentence indication scheme achieved its aims, interviews by two of the authors of this report with some of those directly involved with the scheme reveal a strong belief that the scheme either is or could have been made successful. The Registrar of the District Criminal Court, for example, is firmly of the view that, as a result of the scheme, at least in the metropolitan courts, there are substantially fewer pleas of guilty ‘on the door of the court’ and that this has reduced the amount of ‘overlisting’ required to ensure trial courts are fully utilised. This, he maintains, has lowered the demands on Registry staff time and reduced the inconvenience caused both to prosecutors and legal practitioners as a result of cases being adjourned. In his view, abandonment of the sentence indication scheme would lead to an increase in last minute changes of plea and increase the level of uncertainty about trials proceeding on the date on which they are set down to be heard.

The divergence between these views and the evidence presented here calls for some explanation. It will be recalled that, in the Sydney District Court (see Figure 2), the percentage of guilty pleas did rise immediately after the introduction of the sentence indication scheme while the percentage of matters proceeding to trial also began to fall. By January 1994, however, the percentage of matters proceeding to trial began to rise again, with the result that Table 2 revealed no overall change in the percentage of matters proceeding to trial before and after the introduction of the sentence indication scheme. These data could be read as indicating that the scheme produced at least a temporary reduction in the percentage of matters proceeding to trial in the Sydney District Court even if this was not evident in the statistical analysis.

Interestingly enough, during discussions with those present at a meeting of the NSW Law Society held to discuss the sentence indication scheme, one or two legal practitioners observed that the scheme had worked initially when the ‘right’ judges (i.e. those deemed to be more lenient in their sentencing practices) were given the task of doing sentence indications. This same observation was later made in writing by two other members of the NSW Law Society not able to attend that meeting. Moreover, when asked how important the sentencing practices of an individual judge were to the willingness of counsel to advise a sentence indication, one of the two practitioners who offered a written opinion advised that it was ‘very important’ while the other observed that it was ‘of overwhelming importance’. It is possible, then, that the sentence indication scheme did bring in ‘more pleas of guilty’ at the Sydney District Court but that this effect only lasted while a lenient judge was assigned the task of carrying out sentence indications.

This interpretation is supported by two other considerations. Firstly, past Bureau research has shown that there are indeed substantial disparities between NSW District Court judges in their willingness to impose a prison sentence.<sup>18</sup> Indeed, at the time this observation was made it was suggested that sentence disparity may have a significant bearing on the outcome of the sentence indication scheme, which was then in its infancy. Secondly, individual judges participating in the sentence indication scheme appear to have attracted markedly different sentence indication acceptance rates. No comprehensive examination of this issue was possible on the data available to the Bureau. Data supplied by the Registrar of the District Criminal Court in relation to the Sydney District Court, however, reveal that the acceptance rate of sentence indications across judges ranged between 221 out of 237 indications offered (i.e. 93 per cent) to 69 out of 96 indications offered (i.e. 72 per cent). The likelihood of such a difference in acceptance rates arising by chance is less than 1 in 1000.

The fact that some judges attracted sentence indication acceptance rates in excess of 90 per cent (when the median rate at which defendants committed for trial changed their plea to guilty before the sentence indication scheme was only about 50 per cent) suggests that the sentence indication scheme could be made to attract earlier and more frequent guilty pleas if the task of giving indications was assigned to suitably lenient sentencers. Such a practice, however, seems hardly likely to inspire confidence in the NSW criminal justice system. The existence of sentence disparity itself probably tends to undermine public confidence in the justice system, even if it is seen as inevitable in a system of justice which encourages individualised sentencing. To deliberately exploit sentence disparity in a bid to ensure more efficient or more effective use of trial court time may only succeed in replacing public concern about the effectiveness and efficiency of the NSW criminal justice system with public concern about its equity.

On the evidence presented here there would seem little utilitarian justification for extending the life of the sentence indication scheme. Abandonment of the sentence indication scheme, however, should not greatly reduce the scope for reducing trial court delay. Recent amendments to the jurisdiction of the Local Courts have the potential to reduce the demand on District Criminal Court time. With a moderate increase in judicial strength it would be possible to increase the effective capacity of the District Criminal Court without building new courts.<sup>19</sup> It should be remembered that, while trial court delays in the District Court are commonly regarded as unacceptable, they are substantially lower now than they were in 1987 when District Criminal Court delay first became an issue of public concern. It is encouraging to note that the Court itself has, for the first time, published time standards which it believes should govern the disposition of criminal cases.<sup>20</sup> That action, by itself, should focus judicial attention on other ways and means by which trial court delay may be further reduced.

## NOTES

- 1 NSW Bureau of Crime Statistics and Research 1995, *Higher Criminal Courts Proceedings, March Quarter 1995* (unpub.)
- 2 *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.
- 3 Press release, NSW Attorney General, 27 July 1992.
- 4 *The District Court of New South Wales Annual Review 1993*, p. 23.
- 5 Source: Mr Bob McClelland, Registrar, NSW District Criminal Court Registry, personal communication, 15 December 1994.
- 6 Keneally, M. 1994, 'Criminal trials slashed by half', *Telegraph Mirror*, 21 Mar.
- 7 Spears, D., Poletti, P. & McKinnell, I. 1994, *Sentence Indication Hearings Pilot Scheme*, Monograph Series Number 9, Judicial Commission of New South Wales, Sydney, p. 18.
- 8 Spears, Poletti & McKinnell, *ibid.*, p. 43.
- 9 *R v. Warfield* (unrep. 24/6/94, NSW CCA, per Hunt CJ at CL) at p. 14.
- 10 *R v. Hollis* (unrep. 3/3/95, NSW CCA, per Hunt CJ at CL) at p. 7.
- 11 For Parramatta and Sydney District Courts, twelve 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.
- 12 For details of this test see, for example, Runyon, R.P. and Haber, A. 1980, *Fundamentals of Behavioral Statistics*, Addison-Wesley Publishing Company, Reading, Mass. pp. 333 - 337.
- 13 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 finalised within six months tends to vary from court to court. At no court, however, were less than 30 per cent of the relevant cases finalised within six months.
- 14 See, for example, Wilkins, L.T. 1983, *Consumerist Criminology*, Heinemann, London.
- 15 Cases involving drug charges were excluded from the analysis because of the large variation in seriousness within a particular charge category. Two offences involving the supply of a prohibited drug, for example, may involve very different amounts of the drug.
- 16 The formal procedure for identifying the principal offence associated with each case may be found in the Bureau of Crime Statistics and Research publication *NSW Criminal Courts Statistics 1994*.
- 17 Note that these figures show monthly trends in methods of case disposal whereas those presented in the interim report showed quarterly trends.
- 18 Weatherburn, D. 1994, *Sentence Disparity and its Impact on the NSW District Criminal Court*, NSW Bureau of Crime Statistics and Research, Sydney.
- 19 Weatherburn, *ibid.*
- 20 *District Court of NSW Strategic Plan*, July 1995.

## **APPENDIX – DISTRICT CRIMINAL COURT REGISTRIES IN NSW**

### **1. *Sydney Registry***

Sydney District Court

### **2. *Sydney West Registry***

Campbelltown District Court  
Lithgow District Court  
Liverpool District Court  
Parramatta District Court  
Penrith District Court  
Katoomba District Court

### **3. *Newcastle Registry***

Cessnock District Court  
East Maitland District Court  
Gosford District Court  
Gunnedah District Court  
Moree District Court  
Muswellbrook District Court  
Newcastle District Court  
Port Macquarie District Court  
Singleton District Court  
Tamworth District Court  
Taree District Court

### **4. *Wollongong Registry***

Bega District Court  
Cooma District Court  
Goulburn District Court  
Moruya District Court  
Moss Vale District Court  
Nowra District Court  
Queanbeyan District Court  
Wollongong District Court

### **5. *Lismore Registry***

Armidale District Court  
Coffs Harbour District Court  
Glen Innes District Court  
Grafton District Court  
Inverell District Court  
Kempsey District Court  
Lismore District Court  
Murwillumbah District Court

## **APPENDIX - DISTRICT CRIMINAL COURT REGISTRIES IN NSW continued**

### ***6. Dubbo Registry***

Bathurst District Court  
Bourke District Court  
Broken Hill District Court  
Cobar District Court  
Condobolin District Court  
Coonamble District Court  
Dubbo District Court  
Forbes District Court  
Mudgee District Court  
Narrabri District Court  
Nyngan District Court  
Orange District Court  
Parkes District Court

### ***7. Wagga Wagga Registry***

Albury District Court  
Cootamundra District Court  
Cowra District Court  
Deniliquin District Court  
Griffith District Court  
Gundagai District Court  
Hay District Court  
Leeton District Court  
Narrandera District Court  
Wagga Wagga District Court  
Wentworth District Court  
Wyalong District Court  
Yass District Court  
Young District Court