

THE IMPACT OF CRIMINAL CASE CONFERENCING ON EARLY GUILTY PLEAS IN THE NSW DISTRICT CRIMINAL COURT

Wai Yin Wan, Craig Jones, Steve Moffatt and Don Weatherburn

Aim: *The aim of this study was to test whether the legislative Criminal Case Conferencing (CCC) trial scheme had any impact on the number of late guilty pleas in courts affected by the legislation.*

Method: *A quasi-experimental research design was used, whereby outcomes for matters affected by the legislation (the intervention site) were compared with matters committed from all other NSW Local Courts (the comparison site). Interrupted time series analyses were employed to test whether the scheme had any impact on four markers of late guilty pleas.*

Results: *Only one of the four measures showed effects consistent with a reduction in late guilty pleas. There was a small decrease in trial registrations in the intervention site (less than 1% per week) but no corresponding reduction in the comparison site. If all of this decrease were attributable to the CCC scheme, it would reflect a reduction of 23 trials in the year following the introduction of the CCC scheme (95% confidence interval = 8 to 44 trials).*

Conclusion: *This report provides only very weak evidence that the CCC scheme has achieved its stated objectives. Possible reasons for this are discussed.*

INTRODUCTION

Background

Only 30 per cent of all criminal matters registered for trial in the NSW District Criminal Court actually proceed to trial. In more than half of cases, the defendant changes their plea some time after being committed for trial. In approximately one in ten cases, the Office of the Director of Public Prosecutions (ODPP) requests that a trial be 'no billed' (i.e. directs no further proceedings) (NSW Bureau of Crime Statistics and Research, 2009). Furthermore, in about 60 per cent of matters where the defendant changes their plea, they do so on the first day of the trial (Weatherburn & Baker, 2000).

The uncertainty created by late plea changes and withdrawal of proceedings can have significant adverse effects on both crime victims and defendants. Delays also have significant financial and human resource implications for all parties involved in the trial process. Among other things, there are significant prosecutorial and District Court costs associated with committal and arraignment hearings, jury members have to be

called and empanelled for the trial, the Crown Prosecutor and defence have to prepare for the trial, police have to organise witnesses and exhibits for the trial, and solicitors often have to invest time conferencing witnesses prior to the trial.

There has been considerable debate about what factors underpin the high rates of late guilty pleas. The reasons are likely to vary depending on the facts and antecedents of the case. However, a survey of defence representatives conducted by the Bureau of Crime Statistics and Research in 1999 revealed that the two most commonly endorsed factors were that there was a late decision on behalf of the Crown to accept a plea to a lesser charge and that the defence were unable to discuss the matter with a senior prosecutor until late in the process (Weatherburn & Baker, 2000). Prosecutors might well nominate other factors. Few would disagree, however, that much of the negotiation between defence and prosecution solicitors happens in the days and weeks immediately preceding the trial.

Sentencing discounts for early guilty pleas

One of the primary mechanisms by which the courts seek to discourage late plea changes is to offer sentencing discounts in exchange for an early guilty plea. These sentencing discounts are referred to as the utilitarian value of the plea. In practice, there appears to have been widespread scepticism in the legal profession that such discounts are, in fact, conferred on their clients (Lumsden, 2006). This scepticism was noted in the guideline judgement of *R v Thompson & Houlton* [2000], NSWCCA 309 (126):

"Nevertheless the scepticism about the benefits of an early plea, which appears to be widespread amongst participants in the New South Wales criminal justice system, does suggest an element of inconsistency. Most significantly, however, the evidence available to this Court indicates that the scepticism is reflected in actual practice: where pleas occur, they tend to be late. One of the reasons for that fact is the scepticism about the benefits in fact afforded."

This Court of Criminal Appeal guideline judgement directed that sentencing Judges

should explicitly state that the guilty plea had been taken into account and to quantify the degree of benefit afforded by the early guilty plea. The judgment concluded that the utilitarian value of the plea should be assessed in the range of 15-25 per cent. Despite this guideline judgement, the very high rate of late guilty pleas has persisted (NSW Bureau of Crime Statistics and Research, 2009).

Criminal Case Conferencing

The Criminal Case Conferencing (CCC) scheme was introduced to bring about a reduction in the number of late guilty pleas. The CCC scheme is a multi-faceted case management approach to District Court criminal trials. The key feature of the scheme requires representatives of the defence and prosecution to convene a compulsory conference prior to the committal hearing. The aim of CCC is to bring much of the plea negotiation between defence and prosecution forward in the process, rather than leaving it until the days or weeks before the trial begins.

Critically, under the CCC scheme, the utilitarian value of the plea is embedded in legislation. If the defendant pleads guilty prior to committal, the legislation states that the sentencing court must allow a 25 per cent discount on the sentence that would otherwise have been imposed. If the defendant pleads guilty after committal, the legislation states that the sentencing court may only allow a discount of up to 12.5 per cent. The sentencing court may, under certain exceptional circumstances set out in s17(5) of the Act, allow discounts exceeding 12.5 per cent but not exceeding 25 per cent for late guilty pleas. However, the legislation explicitly seeks to encourage the earliest possible guilty plea by offering a larger discount on sentence if the plea is entered prior to committal.

The *Criminal Case Conferencing Trial Act 2008* was assented to on 16 April 2008 and requires compulsory conferences to be held for all indictable offences for which (a) the Court Attendance Notice (CAN) was filed after 1 May 2008, (b) committal proceedings are held in the Downing Centre or Central Sydney Local Court registries and (c) trials are to be held in the Sydney District Court registry. The trial was initially legislated for a period of 12 months but this was later extended to include all CANs filed up to 1 July 2010. The Act states that a trial must be held, unless:

- The offence is against Commonwealth law or is being prosecuted by the Commonwealth DPP;

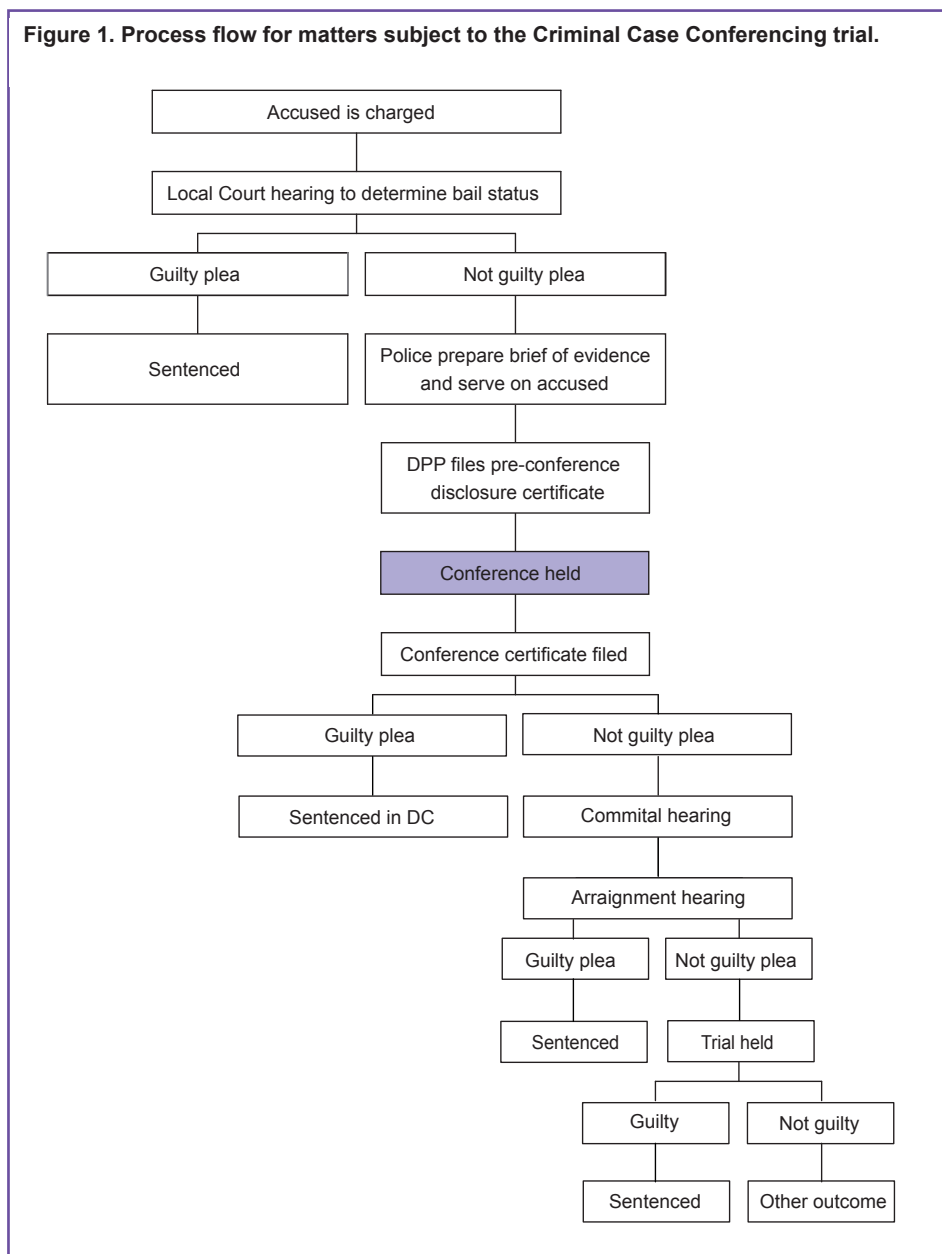
- The accused pleads guilty prior to the conference;
- The accused is unrepresented;
- The prosecution is not conducted by the NSW DPP; or
- A Magistrate orders that a conference not be held.

Figure 1 shows, at a very broad level, the steps involved in the CCC process. All conferences are held before the committal hearing¹, while matters are still within the jurisdiction of the Local Court. The first step requires the prosecution to serve a full brief of evidence on the accused. This brief outlines all of the evidence that the prosecution intend to present to the court and typically includes any written statements and other documents that might be presented as exhibits before the court. Under the CCC legislation, the

prosecution is also required to prepare and serve on the accused a pre-conference disclosure certificate, which outlines:

- The offence(s) with which the accused has been charged;
- That a copy of the brief of evidence is in the possession of the prosecution and that all material to be dealt with at the conference has been disclosed to the defence;
- That the prosecution believes that the evidence proves the guilt of the offender; and that
- Only relevant offences are being dealt with at the conference.

At the conference, a representative of the ODPP and the accused person's legal representative meet to discuss the offence and the benefits of an early guilty plea. Separate conferences are



typically held for each co-accused, although there is some provision for joint conferences to be held. Although the discussions to be held at the conference are not clearly prescribed in legislation, both sides must complete, sign and file with the Local Court a conference certificate that certifies:

- The offence(s) for which the accused is charged;
- Any alternative offence(s) discussed at the conference;
- Any offence(s) for which the accused has offered to plead guilty;
- Whether the accused and the prosecution accept or reject each offer to plead guilty;
- The details of any agreed facts and any facts in dispute (where the accused has offered to plead guilty and this offer has been accepted);
- Any additional offences to which the accused has been charged and offered to plead guilty to, and which may be taken into account under relevant sentencing legislation; and
- Any details of perceived inadequacies in the brief of evidence.

The current study

Other things being equal, the CCC process is expected to lead to the following outcomes:

1. A reduction in the number of trial case registrations committed from the Central and Downing Centre Local Courts to the Sydney District Court;
2. An increase in the proportion of sentence case registrations from the Central and Downing Centre Local Courts to the Sydney District Court;
3. An increase in the proportion of defendants committed for trial from the Central and Downing Centre Local Courts to the Sydney District Court whose cases actually proceed to trial; and
4. A decrease in the number of cases where the accused changes his/her plea from 'not guilty' to 'guilty' on or about the first day of the trial in these courts.

Outcome (1) is expected because many matters that would have previously gone to the District Court will, under the CCC scheme, be resolved in the Local Court. Outcome (2) is expected because many defendants who would previously have been committed for trial in the District Court and then changed their plea will, under the CCC scheme, be persuaded to plead guilty prior to committal. These people will end up

being committed for sentence rather than for trial. Outcome (3) is expected because many of the defendants who presently change their plea from 'not guilty' to 'guilty' prior to trial will either be finalised in the Local Court or committed to the District Court for sentence. Outcome (4) is expected because, even if many of the accused still elect to plead not guilty after the compulsory conference, they might still plead guilty earlier than they otherwise would have by virtue of having been presented with all of the evidence at an earlier point in time.

The current study aimed to determine whether the introduction of the CCC legislation has been effective in bringing about one or more of these four outcomes. In the next section we outline the data sources and methods employed to investigate these research aims. We then describe the results of those analyses and finish with a discussion of the major findings and their implications.

METHOD

Design

The methodology employed was quasi-experimental because the legislative scheme only applies to matters dealt with in two Local Courts that feed into the Sydney District Court registries.² For all analyses reported in this paper, cases that fell within the intervention site were defined as those matters committed from the Central or Downing Centre Local Courts for trial in the Sydney District Court registry. All matters arising from another NSW Local Court and heard in either the Sydney or another NSW District Court represented an appropriate comparison site to observe what would have happened had the legislative scheme not been introduced. A pre-post analytical design was employed to identify whether there were any changes in each of the outcomes in the period after the introduction of the CCC scheme relative to the time period preceding the scheme. For the purposes of this study, September 2008 was defined as the start point for the intervention.³

Measures

Information on the number of trial and sentence registrations in the intervention and comparison sites, which bears on outcomes (1) and (2), was collected via manual returns from District Court officers. These counts have been collected historically as part of the Bureau's regular data collection, which allowed for an assessment of changes in the number of trial and sentence registrations over time. For the purposes of this

report, the weekly number of people committed for trial and sentence between 1 January 2007 and 31 December 2009 was tallied from these manual counts.

Information on the number of matters registered for trial that actually proceeded to trial (i.e. outcome 3) was collected from the Bureau's Higher Criminal Court database.⁴ One complicating factor in measuring the outcome of criminal trial matters is that some more recent matters have not yet been finalised and therefore have unknown case outcomes. To overcome this limitation, the CCC observation period for this part of the analysis was restricted to those people committed for trial between September 2008 and February 2009. This allowed sufficient time for most matters committed in the latter part of the observation period to be finalised and the outcome observed.

The Bureau has not, historically, been able to collect information on the timing of the guilty plea, which bears directly on outcome (4) of the study. As a proxy measure for timing of guilty plea, we measured the time between committal for trial and case finalisation among cases where the accused changed their plea from 'not guilty' to 'guilty'. All else being equal, if defendants in CCC matters were less inclined to plead guilty on or about the day of the trial, the delay between committal and finalisation should be reduced. Like outcome (3), this analysis was limited by the fact that some matters were not finalised at the time the data were extracted. To account for this 'censoring' issue, a unit record file was extracted that consisted of all people committed for trial in the District Court between 1 September 2004 and 30 September 2009 who changed their plea to guilty at some point following committal. Any matters that had not yet been finalised were also included in this file as censored observations. The following variables were included in this unit record file:

- The court location in which the matter was dealt with (intervention or comparison site);
- Date of committal;
- Method of finalisation (i.e. pleaded guilty, not yet finalised); and
- Number of days between committal and guilty plea, or between committal and December 31 for those matters not yet finalised.

Information on the number of completed conferences was also required to assess the extent to which the scheme had been implemented as intended. This information was gathered

by manual returns from the ODP to the Department of Justice and Attorney General. Data on the number of relevant matters heard in the intervention and comparison sites between the start of the trial and October 2009 were then forwarded to the Bureau for inclusion in this report. The dates in these manual returns represent the date upon which the matter was finalised. In other words, the conference could have been held in the weeks or months preceding that finalisation date.

Analyses

One of the major difficulties that needed to be overcome with the analysis is that each of the dependent variables is highly volatile (i.e. variable from month to month). With such volatile series it is very difficult to partial out any effect of the intervention from the natural month-to-month fluctuation in these outcomes. Statistical techniques were employed to estimate the effect of the intervention while accounting for the volatile nature of the data. Another related difficulty is that the follow-up time was relatively short for this study (maximum = 16 months). To increase the sensitivity of the analysis with such a short follow-up period, the time series were modelled using weekly counts.

Outcomes (1) and (2) were assessed using interrupted time series analyses. For outcome (1), this involved fitting a regression model to the weekly count of trial registrations to identify whether there was any decrease in registrations after the introduction of CCC. Separate models were fitted to trial registrations in the intervention and comparison sites. Poisson regression, which is appropriate for low-count time series, was used for this part of the analysis. The form of the regression was:

$$\text{Log}(E(y)) = \alpha + \beta_1(\text{time}) + \beta_2(\text{year_end}) + \beta_3(\text{level}) + \beta_4(\text{level*time})$$

Where $E(y)$ is the expected number of trial registrations in the week, α is the intercept, time is a linearly increasing term to account for the underlying trend in trial registration, year_end is a dummy variable accounting for the last week of the year (when trials are not held), level is a dummy variable estimating whether there was any change in the level of trial registrations following the start of the CCC trial, and level*time is an interaction term testing whether there was any change in the trend of trial registrations following the start of the scheme.

Outcome (2) was assessed using a similar interrupted time series methodology. For this

research question, the relationship between trial and sentence registrations was explicitly modelled. Separate models were fitted to the series relating to sentence registrations in the intervention and comparison sites. Poisson regression was again used for this part of the analysis and the form of the regression was:

$$\text{Log}(E(y)) = \alpha + \beta_1(\text{trial}) + \beta_2(\text{level}) + \beta_3(\text{level*trial})$$

Where $E(y)$ is the expected number of sentence registrations in the week, α is the intercept, trial is the weekly number of trial registrations, level is a dummy variable account for any change in the level of sentence registrations following the start of the CCC trial, and level*trial is an interaction term testing whether the ratio of sentence to trial matters is different after the introduction of the CCC scheme. The critical term in this equation is therefore the level*trial interaction term. Positive values on the coefficient of this term indicate that sentence registrations increase relative to trial registrations following the introduction of CCC. Negative values, on the other hand, indicate that sentence registrations decrease relative to trial registrations following the introduction of the CCC scheme.

Outcome (3) was tested by comparing the proportion of matters committed for trial that were finalised by guilty plea in the period prior to CCC with the period immediately after the CCC scheme started. The intervention time period was defined as the six-month period from the start of the scheme in September 2008 to February 2009. The pre-intervention period was defined as the same six-month period in the preceding year (i.e. September 2007 to February 2008). The same months were observed in the pre- and post-periods to allow for any possible seasonal effects. The pooled two-proportion z-test was used to test whether any differences were statistically significant. Separate tests were carried out between the intervention and comparison sites.

Aim (4) was tested using survival analysis to account for the fact that some of the matters had not yet been finalised. In the current study, the time between committal and outcome was assessed for people who pleaded guilty and were sentenced in the intervention and comparison sites. Those for whom no outcome had been reached were treated as censored observations.⁵ The Cox proportional hazards regression model was used and the form of the regression was:

$$h(t) = h_0(t)e^{\beta_1(\text{court}) + \beta_2(\text{period}) + \beta_3(\text{court*period}) + e}$$

Where $h(t)$ is the instantaneous rate of guilty pleas at time t , $h_0(t)$ is the baseline hazard

function, court is the location in which the matter was heard (intervention vs. comparison site), period is the time period in which the matter was committed for trial (pre-CCC vs. post-CCC), and court*period is an interaction term testing whether time to guilty plea changed differentially in the intervention and comparison courts following the start of the scheme.

RESULTS

Number of conferences held

Figure 2 shows the number of relevant matters dealt with in the intervention site, as of October 2009. The court matters for which the first conferences were held were finalised in July 2008 ($n=2$). A small number of court matters were finalised in August 2008 and the number of matters subject to the CCC legislation increased from that point onwards. As can be seen in Figure 2, it was not until March 2009 that CCC scheme was fully operational. Between 50 and 60 conferences were held from that point onwards. The other important point to note from Figure 2 is that, even when fully operational, approximately 40 per cent of matters that fell within the legislation did not have a conference.

Outcome (1): number of matters committed for trial

Figure 3 shows the number of people committed for trial each week in the intervention and comparison sites between January 2007 and December 2009. The weekly numbers are highly variable and no clear pattern is evident by visually inspecting the series.

Table 1 shows the regression models estimating whether there was any change in trial registrations following the start of the CCC scheme. The critical terms in Table 1 are the level and level*time terms because they indicate whether, respectively, the weekly level of trial registrations changed and/or whether the weekly trend in trial registrations changed after the CCC scheme began. Looking first at the intervention site in the top half of Table 1, the significant positive time coefficient indicates that trial registrations were increasing in the intervention site prior to the start of the CCC scheme. The positive and significant level term indicates that trial registrations increased in the week defined as the start of the intervention. The negative and significant level*time interaction indicates that the weekly number of trial registrations began to decline following the onset of the scheme. The model estimates that the mean number of trial registrations swung from a 0.33 per cent increase to a 0.93 per cent decrease per week following the introduction of the CCC scheme.⁶ In the comparison site, the p-values are

larger than 0.05 for the *time*, *level* and *level*time* interaction, which indicates that there was no significant change in either the level or trend in trial registrations in those courts following the start of the scheme.

Prima facie, these results provide some evidence of a reduction in trial registrations being committed from the Central and Downing Centre to be heard in the Sydney District Court registry following the introduction of CCC. While the overall percentage change in trial registrations appears very small, over the course of a year the model estimates that there was a reduction of 23 trials in the year following the introduction of the CCC scheme (95% CI: 8 trials to 44 trials).

Outcome (2): ratio of trial to sentence matters

Figure 4 shows the weekly difference in the number of trial and sentence cases registered in the intervention and comparison sites between January 2007 and December 2009. The differences were calculated by subtracting the number of trial registrations in that week from the number of sentence registrations in the week. Negative numbers therefore reflect weeks where there were more trial registrations than sentence registrations. Positive numbers reflect weeks with more sentence than trial registrations. Figure 4 suggests that there were marginally more trial than sentence registrations in both the intervention and comparison sites prior to and after the introduction of the CCC scheme. The mean values shifted very slightly upwards in the post-period relative to the pre-period in both sites.

Table 2 shows the regression models estimating whether there was any change in weekly ratio of trial to sentence registrations following the start of the CCC scheme. The critical term in Table 2 is the *level*trial* term. This term indicates whether the number of sentence registrations changed relative to trial registrations following the start of the scheme. Looking firstly at the intervention site, the coefficient for this term is not statistically significant ($p=0.750$). This indicates that, relative to trial registrations, sentence registrations neither increased nor decreased in the intervention site following the start of the CCC scheme. The interaction term on the comparison series was also not statistically significant ($p=0.520$), which indicates that there was no change in the ratio of trial to sentence registrations in the comparison site following the start of the scheme.

These results provide no evidence that the CCC scheme has produced any increase in the ratio of sentence to trial registrations. This seems counter-

Figure 2: Number and percentage of trial cases involving a conference

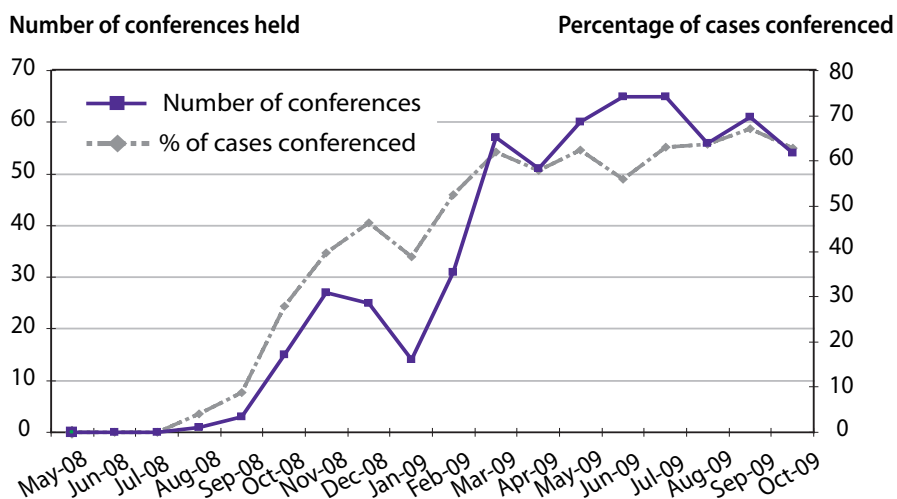


Figure 3: Weekly number of trial case registrations in the intervention and comparison sites

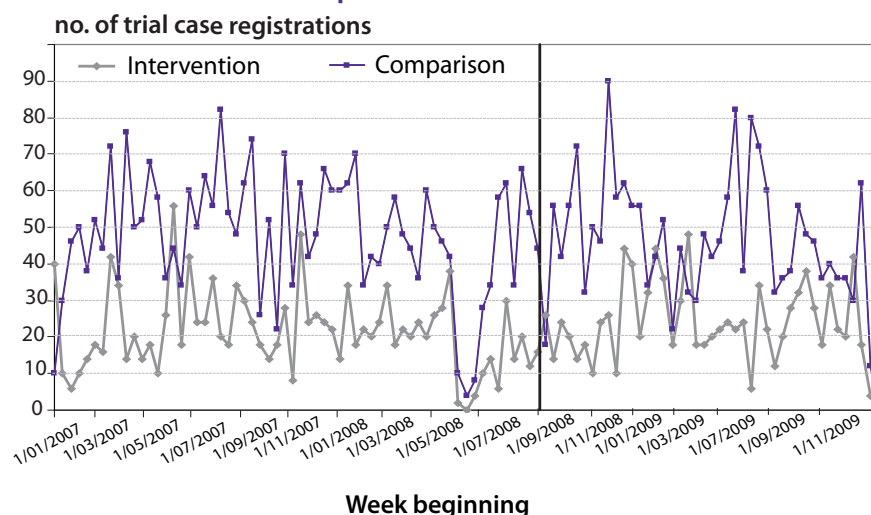


Table 1. Poisson regression models estimating change in (log) weekly trial registrations in the intervention and comparison sites following the start of CCC

Parameter	Coefficient	Standard error	p-value
Intervention sites			
Intercept	1.9181*	0.0816	<0.0001
Time	0.0033*	0.0015	0.0343
Year_end	-2.6504	0.5782	0.0001
Level	1.0750	0.3019	0.0004
Level*time	-0.0126	0.0029	<0.0001
Comparison sites			
Intercept	3.1036*	0.0459	<0.001
Time	0.0017	0.0009	0.0562
Year_end	-2.4285*	0.2779	<0.0001
Level	0.1456	0.1566	0.3526
Level*time	-0.0018	0.0015	0.2310

*Parameter estimate is significant at a 5% significance level

intuitive given that there was some evidence that trial registrations decreased in the intervention site following the start of the CCC scheme. If these matters were not registered for trial, they should have been registered for sentencing. It is possible that there is too much noise associated with the weekly counts to detect subtle increases in the ratio of sentence to trial registrations. Figures 5a and 5b show the raw number of trial and sentence registrations. Figure 5a shows that the number of trial registrations decreased slightly in the intervention site in the first year of the CCC scheme, while the number of sentence registrations increased slightly. This is consistent with an intervention effect although, again, this difference was not statistically significant ($p=0.246$). Figure 5b shows a similar trend for the comparison site. Collectively, these results suggest that if there was any increase in the ratio of sentence to trial matters, it was too small to be detected given the inherent noise in the data.

Outcome (3): proportion of matters committed for trial that proceeded to trial

Table 3 shows the number of matters committed for trial in the intervention and comparison sites prior to and following the introduction of CCC by the method of finalisation. In the first six months to February 2008 (i.e. prior to the introduction of CCC), 28.6 per cent of matters committed for trial in the intervention site proceeded to trial. This increased slightly to 31.4 per cent during the first six months of the trial. This difference was not statistically significant ($p=0.315$). There was a slight decrease in the proportion of matters committed for trial in the comparison site that proceeded to trial (from 27.0% to 24.9%). This difference was also not statistically significant ($p=0.755$).

Table 3 shows that there were still a large number of matters to be finalised when the data for this evaluation were extracted in May 2010 (3.0% pre- and 13.1% post-CCC in the intervention site, and 5.5% pre- and 14.1% post-CCC in the comparison site). If all non-finalised matters proceeded to trial, there would be a significant increase in the proportion of matters committed for trial from pre- to post-CCC in the intervention site (from 31.5% to 44.6%, $p=0.026$). However, there would also be a significant increase in the proportion of cases proceeding to trial in the comparison site

Figure 4: Monthly difference between trial and sentence case registrations in the intervention and comparison sites

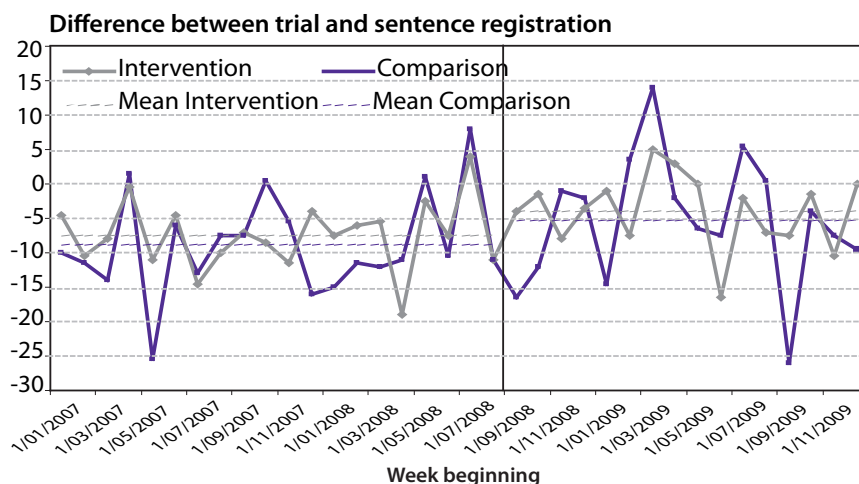


Table 2. Poisson regression models estimating change in (log) weekly sentence registrations in the intervention and comparison sites following the start of CCC

Parameter	Coefficient	Standard error	p-value
Intervention site			
Intercept	1.6005*	0.1024	<0.0001
Trial	0.0355*	0.0115	0.0021
Level	-0.1381	0.1433	0.3353
Level*trial	0.0055	0.0172	0.7501
Comparison site			
Intercept	2.2837*	0.0696	<0.0001
Trial	0.0303*	0.0025	<0.0001
Level	-0.1095	0.1096	0.3177
Level*trial	-0.0025	0.0040	0.5198

* Parameter estimate is significant at a 5% significance level

Figure 5a: Number of trial and sentence registrations in the intervention site in the 12 months pre-and post- CCC

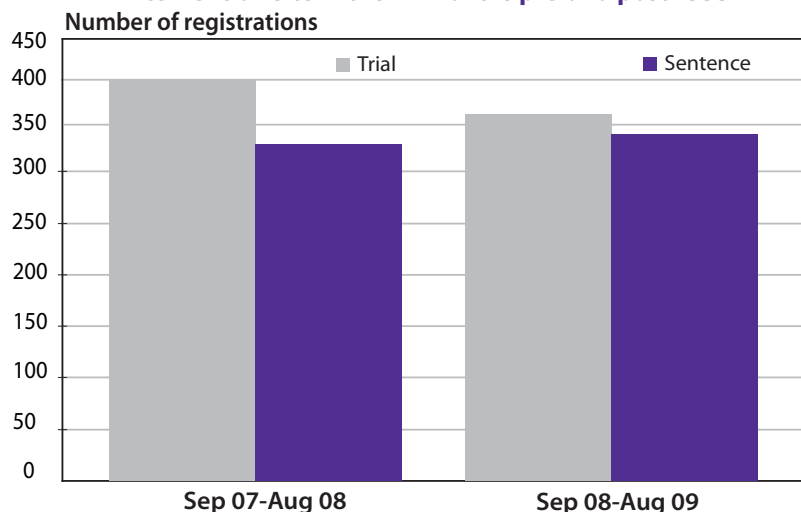


Figure 5b: Number of trial and sentence registrations in the comparison site in the 12 months pre-and post- CCC

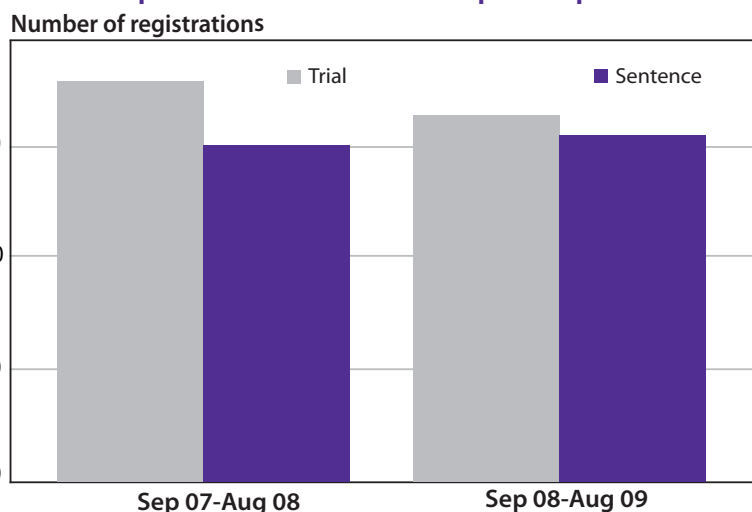


Table 3. Outcome of matters committed for trial in the intervention and comparison sites pre-and post-CCC

Location	Finalisation method	Committal period			
		Pre-CCC (Sept07-Feb08)		Post-CCC (Sept08-Feb09)	
		N	%	N	%
Intervention	Proceeded to Trial	48	28.6	55	31.4
	Other proven outcome	1	0.6	1	0.6
	Proceeded to sentence only	97	57.7	76	43.4
	No charges proceeded with	16	9.5	20	11.4
	All charges otherwise disposed of	1	0.6	0	0.0
	Not yet finalised ^a	5	3.0	23	13.1
	Total	168	100.0	175	100.0
Comparison	Proceeded to Trial	153	27.0	148	24.9
	Other proven outcome	3	0.9	2	0.3
	Proceeded to sentence only	305	53.8	284	47.8
	No charges proceeded with	69	12.2	65	10.9
	All charges otherwise disposed of	4	0.7	11	1.9
	Not yet finalised ^a	31	5.5	84	14.1
	Total	567	100.0	594	100.0

^a Not finalised cases are those which BOSCAR has received Justicelink data messages, none of which indicate that the case was finalised as at 31 December 2009

Table 4. Average time (in days) to finalise trial cases finalised on a guilty plea before and after CCC

Court	Sep 07 to Feb 08	Sep 08 to Feb 09	% change	p-value
Intervention	203.8	189.7	-6.93%	0.2272
Comparison	238.3	198.1	-16.87%	0.0001

Table 5. Proportional hazards model estimating change in the time between committal for trial and finalisation for cases finalised on a plea of guilty

Parameter	Coefficient	Standard error	p-value
Intercept	5.4442*	0.0432	<0.0010
Court	-0.2493*	0.0868	0.0041
Period	0.0344	0.0613	0.5752
Court*period	0.2216	0.1271	0.0813

(from 32.5% to 39.1%, p=0.030).

Collectively, these findings provide no evidence to suggest that the introduction of the CCC scheme produced any increase in the proportion of matters committed for trial that proceeded to trial.

Outcome (4): time between committal and outcome for trial matters where a guilty plea was entered

Table 4 shows the average time between committal and outcome for trial matters where a guilty plea was entered before and after CCC in the intervention and comparison sites. The average time to finalise cases of this type was lower after the CCC scheme began in both groups of courts, although the difference was only significant in the comparison site. While this suggests that the reduction in time to finalise trial cases that end in a guilty plea was larger in the comparison site (16.87%) than the intervention site (6.93%), it is important to bear in mind that many of the longer cases had not been finalized when these data were extracted. Because this truncation applied differentially to matters registered in the post-CCC periods, little can be read into this finding.

The model shown in Table 5 tests whether there was any difference in court delay between the intervention and comparison sites between the pre- and post-CCC periods. The coefficient for *court* was negative and statistically significant, which indicates that, overall, the rate of finalization was slower in the intervention site than it was in the comparison site. The *court*period* interaction term was not statistically significant, which suggests that there was no evidence of any significant impact of the CCC on court delay.

DISCUSSION

On the face of it, there is little evidence that the CCC scheme achieved its stated objectives. The only outcome that might be attributable to the CCC scheme was a decrease in the number of matters committed for trial from the two Local Courts feeding into the Sydney District Court. This effect, however, was comparatively small. We estimated that, at best, there was a 0.93 per cent decrease in the weekly number of trial registrations following the start of the CCC scheme. It is unclear how much of this decrease, if any, can be attributed to the scheme, especially in light of the fact that we were unable to detect a corresponding increase in the ratio of sentence

to trial registrations. There was also no evidence of any increase in the proportion of matters registered for trial that proceeded to trial and no evidence of any reduction in court delay following the onset of the CCC scheme. Collectively, these findings suggest that any effect of the scheme must have been very subtle.

Two data-related issues might have precluded our ability to find an effect of the CCC scheme. Firstly, the number of registrations varies dramatically from one week to the next in any particular District Court, which makes it very difficult to detect an intervention effect. We could have reduced this variability to some extent by looking at monthly registration counts but the second data issue is that our follow-up period was not very long. Short follow-up periods reduce the power of the statistical tests employed and, again, reduce our ability to detect subtle intervention effects. The short follow-up period may also have reduced our ability to detect changes in outcomes (3) and (4). As we saw in connection with Figure 2, it was not until March 2009 that the monthly number of conferences held and the monthly percentage of cases involving a conference exceeded 50. It would have taken a further eight months or so for half these cases to be finalized (NSW Bureau of Crime Statistics and Research, 2008). It could be argued, therefore, that the effects of CCC on outcomes (3) and (4) were not felt until after the end of our study period (i.e. early in 2010). The difficulty with this argument is that it is hard to see why the percentage of defendants proceeding to trial and the time taken to finalize trial cases would change significantly when there was only a modest change in trial registrations (outcome 1) and no increase in the ratio of sentence to trial registrations (outcome 2).

The question arises as to why the CCC scheme had little or no effect on outcomes (1) to (4). There are three main possibilities. The first is that the legislative scheme may not have been very different in practice to the administrative scheme that preceded it and that operated in both Sydney and non-Sydney courts. A second and related possibility is that the CCC scheme was never implemented consistently enough to influence the outcomes being measured. It will be recalled from Figure 2, for example, that, despite being compulsory, conferences were not always held in a matters where they should have been. The third possibility is that defendants and/or their legal representatives may continue to view the promise of significant sentence discounts for a plea of guilty with some skepticism. It is,

after all, impossible for any defendant to know what sentence would have been imposed had the discount not been applied. Defendants may prefer to hold onto a plea of not guilty in the hope of being listed for trial before a judge known or thought to be a lenient sentencer.

ACKNOWLEDGMENTS

We would like to express our gratitude to Anu Kakwani and Mark Johnstone for helpful feedback on an earlier draft of this report. We are especially grateful to Anu for her efforts in compiling the data presented in Figure 2.

FOOTNOTES

¹ Committal hearings are held in the Local Court to assess whether the strength of the evidence justifies committing the matter to the District Criminal Court.

² It is important to note that an administrative CCC scheme was introduced across NSW, starting 1 January 2006. This means that it is possible that conferences can be held in the comparison District Court registries. However, conferences are not compulsory under the administrative scheme and there is widespread acknowledgement that conferences are not being held in the majority of matters.

³ While the legislation applied to all CANs issued from May 2008, there is typically about four months between the issuing of a CAN and the date of the conference.

⁴ Historically, data on the outcome of criminal matters have been collected by manually entering data recorded on standard pro forma filled out by District Court staff. As of February 2008, court staff began entering this information electronically via the electronic Justicelink system.

⁵ It is important to note that some of these censored observations might have ended up proceeding to trial rather than observing the event of interest.

⁶ The per cent change on the time term is calculated by exponentiating the coefficient on the time estimate. The per cent change on the level*time interaction term is calculated by exponentiating the sum of the time and level*time coefficient estimates

REFERENCES

Lumsden, A. (2006). *Case conferencing*. Paper presented at the College of Law Continuing

Professional Education Autumn Intensive, 27 March 2006.

NSW Bureau of Crime Statistics and Research (2008). *New South Wales Higher Criminal Courts Proceedings September quarter 2008*. Sydney: NSW Bureau of Crime Statistics and Research.

NSW Bureau of Crime Statistics and Research (2009). *New South Wales Criminal Courts Statistics 2008*. Sydney: NSW Bureau of Crime Statistics and Research.

Weatherburn, D. & Baker, J. 2000. *Managing trial court delay: an analysis of trial case processing in the NSW District Criminal Court*. Sydney: NSW Bureau of Crime Statistics and Research.