

# *Performance Audit Report*

## **Department of Courts Administration**

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- **Management of the Courts**

**(A Preliminary Report)**

**AO**

THE AUDIT OFFICE  
OF NEW SOUTH WALES

AUDITING WITH EXCELLENCE





BOX 12 GPO  
SYDNEY NSW 2001

Mr R D Grove  
The Clerk of the Legislative Assembly  
Parliament House  
SYDNEY NSW 2000

Dear Mr Grove

In compliance with Section 38E(2) of the *Public Finance and Audit Act 1983*, I present to you a performance audit report titled **Department of Courts Administration - Management of the Courts.**

The report is issued pursuant to Section 38C of the *Public Finance and Audit Act 1983* and is to be dealt with in accordance with Section 63C of that Act.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'A C Harris'.

A C HARRIS

Sydney  
5 April 1995





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## **Executive Summary**

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## EXECUTIVE SUMMARY

### **Background to Current Reform Efforts**

*Excessive delays and extensive backlogs in the NSW courts system:* these were the findings of a major external review in 1989 jointly commissioned by the then Premier and the Attorney-General. In response, a program of reform was developed and a new government agency established: the Department of Courts Administration.

Managing the State's courts system is a complex function which is achieved through a partnership between the judiciary and the Department. Both parties responded positively to concerns over court delays and backlogs, and set about working together to implement a detailed reform agenda. Initiatives taken ranged across a wide front, involving:

- changes in the processes of law
- organisational reforms
- additional resources, including extra infrastructure.

### **Progress to Date**

Audit found that progress has been made in reducing delays and backlogs. Improvements are particularly apparent in both the criminal and civil jurisdictions of the District Court. The Supreme Court Common Law and Equity Divisions also show marked improvement as do the Local Courts. Improvements in other jurisdictions are less apparent, such as the Supreme Court Criminal Division where disposal times have remained static for custody cases, but have lengthened for bail cases.

### **Status of the Reform Process**

Although efforts have been underway for some five years in the courts and three years in the Department, the program of reform is still unfolding and evolving. A range of significant reform initiatives are still to be implemented. For these reasons a preliminary report has been prepared at this time, in advance of a full performance audit report to be completed later.

This Report highlights initiatives which have had a high impact up to this point, including greater use of alternate dispute resolution; the sentence indication scheme; the acting judge scheme; and the special sittings program.

**Further Issues  
for Attention**

The Report points to a number of matters which Audit believes should be given priority attention as part of continuing reform efforts, including:

- funding arrangements and priorities
- improvements to costing and management information systems
- resolution of the future macro model for management of the courts system
- continued and expanded training for members of the judiciary in management systems and issues
- the intensity of use of present facilities
- improvements to court performance indicators
- development of performance standards and targets for all jurisdictions
- additional operational data to assist ongoing performance analysis.

The Report also recommends development of *Guarantees of Service* for the courts along similar lines to the court charters being mooted in the Commonwealth or to *The Courts Charter* already developed in the United Kingdom.





## Recommendations

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## RECOMMENDATIONS

The formal response to the recommendations listed below is provided in the next section of this Report.

In terms of further efforts by Audit it should be noted that a performance audit focussing on the topic *management of the courts* has been scheduled to commence during the first half of 1996, or as close to this time as is practicable.

**In terms of continuing efforts for reforming the management of the courts it is recommended that:**

1. funding arrangements be clarified and priorities determined for all remaining elements of the Department's program of reforms and initiatives
2. improvements to costing and management information systems be allocated a high priority
3. continued high priority attention be given to the development of performance standards and targets for all court jurisdictions
4. efforts be directed to making further improvements to court performance indicators, and to collecting expanded operational data to assist ongoing performance analysis
5. the focus of continuing reform efforts incorporate the following as priority issues to be addressed and resolved:
  - the future macro model for management of the courts system
  - continued and expanded training for members of the judiciary in management systems and issues
  - the intensity of use of present facilities.

## Response to the Report

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# RESPONSE TO THE REPORT

## Departmental Response

The Department of Courts Administration was invited to comment on the Report. The Department, in turn, sent a copy of the Report to all heads of jurisdiction and has incorporated comments received into a single consolidated formal response which is reproduced below.

**Funding Matters** *The Department of Courts Administration considers it essential that criteria by which funding is calculated and allocated is clearly understood by both the Treasury and the Department.*

*The Department requires a concise funding base to ensure the progression of its reform agenda. For example, the extent to which user pays revenue produced by civil litigants is expected to fund criminal proceedings must be determined. Ideally it is the Department's view that the cost of criminal proceedings should be isolated and adequately funded.*

**Costing Systems** *The Department of Courts Administration agrees that costing and management information systems should be improved. The management and costing information currently available is under general review by the Department. The management information to be provided by the Case Management System is expected to greatly improve the quality and quantity of information available to court administrators.*

*It is agreed that the cost of the civil and criminal jurisdictions should be dissected to ensure that the criminal system is adequately funded. This issue is being addressed in the benchmarking exercise discussed below.*

*The report suggests that the future macro model for management of the court system should be resolved. The Department agrees that this is desirable to ensure proper planning and development in relation to the courts. However, this is a matter of policy to be determined by Government. While the Department can have a view, it is not a decision that the Department has the authority to make.*

*In relation to the suggestion that there be continued and expanded training for members of the judiciary in management systems and issues, while the Department is supportive of this proposal, judicial education is the responsibility of the Judicial*



Commission. However, funds are made available for education and training for the judiciary, particularly courses and seminars conducted by the Australian Institute of Judicial Administration. The increasing involvement of the judiciary in matters of administration with the Department assists the process of familiarisation.

The Department agrees that it is desirable to optimise the usage of court facilities having regard to client and other court user needs.

**Performance  
Standards**

The Department of Courts Administration acknowledges that it is important for the courts to continue to set and monitor time standards and supports such initiatives.

With regard to the need for better performance measurement and reporting, the Department is conscious of the importance of performance measurement and is examining the present measures with a view to improving their relevance.

The Department of Courts Administration is currently participating in a national benchmarking study of effectiveness and efficiency measures in the courts. Efficiency is being examined in two parts: the civil jurisdiction and the criminal jurisdiction. Measurement of the criminal jurisdiction is already underway. Effectiveness measures, one aspect of which relates to access to the courts, have been settled and collection of information is expected to commence in 1995.

**Guarantee of  
Service**

The Department of Courts Administration agrees with the recommendation in the report that there be a greater emphasis in the courts on client needs. A guarantee of service has been developed for the Department. It is agreed that more work needs to be done. The matter is being addressed currently as are a number of other suggestions in relation to the provision of information and assistance to clients of courts and the Department.

The issue of access to justice is an issue of high priority for both the courts and the Department. The Department and the courts have commenced work with the legal profession on the important issue of customer service provided to clients of the wider justice system.

**Additional  
Operational Data**

The Department has noted the recommendations for additional operational data which would help improve performance analysis. Steps are being taken to ensure that this information is collected and made available to assist in the management of the courts.



***Local Courts***

*The Local Courts undertake the overwhelming proportion of cases, by number, in the state. Various innovations have succeeded in maintaining high productivity and in containing delays. The Acting Magistrates' Programme; Registrars callovers and better administrative arrangements have all contributed to the current situation. A number of other initiatives and innovations have been introduced, also. Median delays in 1990 were 15 weeks but have now been reduced to 10 weeks, State-wide. Other initiatives are in the pipeline. While it is appreciated that there are fewer concerns about Local courts it would be appropriate for the comprehensive review which is to take place in 1996, to include an examination of this jurisdiction.*

# Introduction

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# INTRODUCTION

## An Agenda For Reform

### Impetus for Change

Access to the justice system, and its efficient operation, are fundamental issues in assessing the quality of life in our community and the overall performance of our public sector. Dissatisfaction with these aspects of public services in NSW was triggered during the mid to late 1980's in response to growing delays and backlogs in the justice system.

In 1988 a program of reform was initiated to combat case delays. The then Premier and the Attorney-General jointly commissioned a major external examination into the operation of the courts to identify the specific problems and set out directions for change. The *Review of the Courts* reported in 1989 that there were "... major delays, which were excessive by any reasonable standards, occurring in the Supreme Court and District Court ..." and that "... the backlog of cases awaiting trial or hearing in those jurisdictions are extensive"<sup>1</sup>.

### Directions for Change

The report identified a range of factors and underlying causes to the problems, including increasing demand, and difficulty in supplying required services due to resource limitations and operational inefficiencies. It supported initiatives already underway and recommended further reforms in eight major areas. These are illustrated in **Figure 1**.

Managing the State's courts system is a complex function which is achieved through a partnership between the judiciary and the executive. The 1989 review provided an initial platform for reform. One of its most significant recommendations was to split the functions of the Attorney-General's Department and to create a new government agency, the Department of Courts Administration (DOCA).

DOCA was given responsibility for working with the judiciary in the management of the courts generally, and in particular for assisting in the development and implementation of reforms to improve the overall performance of the system.

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<sup>1</sup> *Review of the Courts*, 1989, Executive Summary p(I).

## “Review Of the Courts”

### Key Recommendations of the 1989 Review

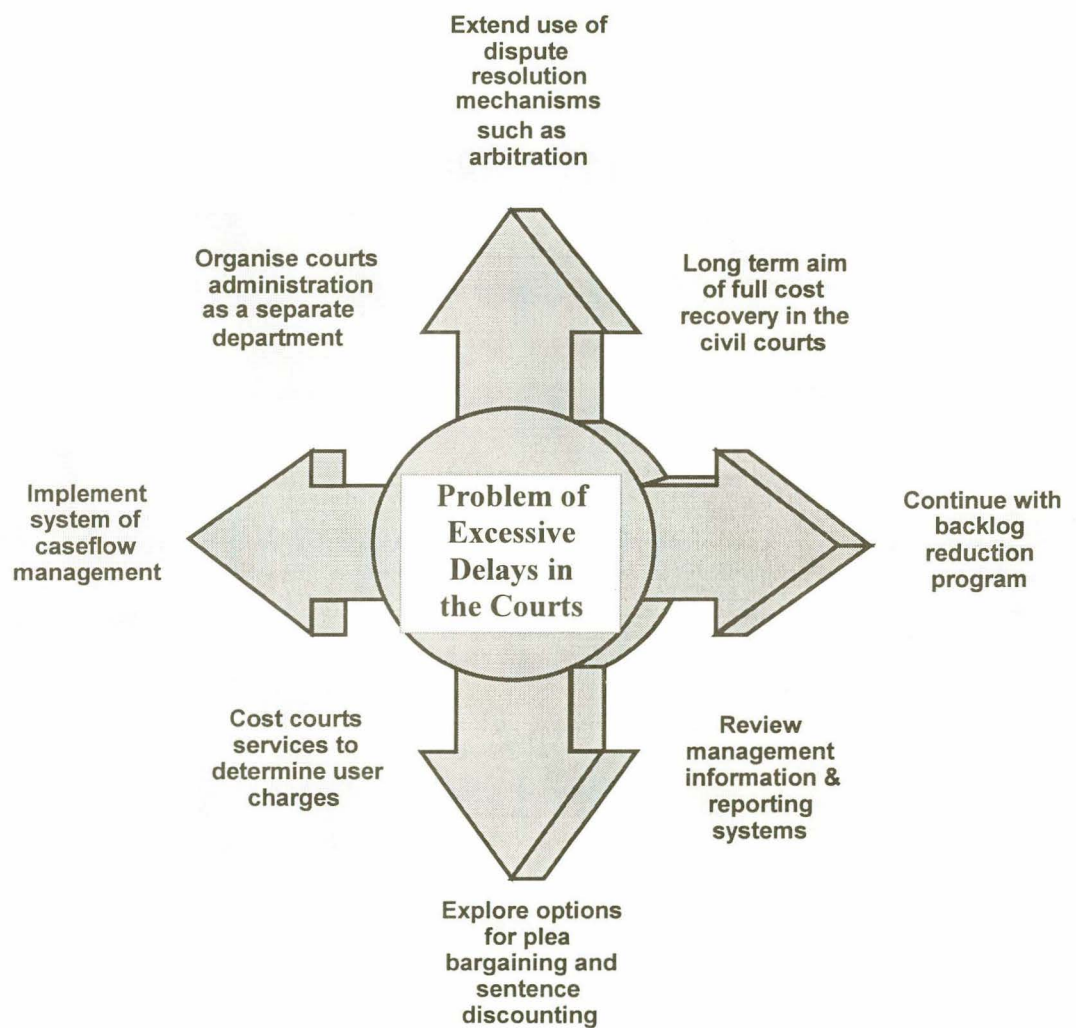


Figure 1

## Scope and Status of the Audit

### Impetus for Audit

Reform efforts have now been underway for some time. Given the importance of such efforts to the community the *management of the courts* was identified as a significant performance audit topic. Performance audits consider the extent to which public sector programs are effective and being carried out in an efficient and economical manner.

The Audit Office initiated preliminary work associated with making such an examination of the courts system. During this process Audit was presented with the view that the reform process was presently too incomplete for a performance audit to be balanced and effective. After examining the situation it was agreed with DOCA that an appropriate stage of the reform process would be reached in the near future to permit an effective performance audit to be undertaken. The date of scheduling such an audit is included in this Report.

### Scope of Preliminary Report

Audit is aware of the high level of interest in the performance of our courts system, and in particular, concern about backlogs and delays. Recognising this, in advance of the recommended performance audit this *preliminary report* provides some brief information about, and some comments and suggestions by Audit upon, key matters such as:

- progress made in reducing court delays since the 1989 review
- performance reporting for the courts system
- plans for continuing reform.



## **Achievements in Implementing Reforms 1989-1994**

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## ACHIEVEMENTS IN IMPLEMENTING REFORMS 1989-1994

### The Extent of the Task

Concern over backlogs and delays in court systems is not limited to NSW. Similar problems in the United Kingdom, for example, were highlighted by an independent 1993 report<sup>2</sup>, and actions taken to address the situation there were catalogued in a recent report of the United Kingdom National Audit Office<sup>3</sup>.

To put the NSW situation into some perspective, delays in the United Kingdom Crown Court<sup>4</sup> reached a peak in 1979, when average waiting times<sup>5</sup> were:

- 4.8 months for defendants on bail
- 2.8 months for defendants in custody on remand

London figures were higher than the overall average:

- 8.2 months for defendants on bail
- 5 months for defendants in custody on remand

When the NSW report *Review of the Courts* was published in 1989, delay figures for comparable criminal jurisdictions in NSW were considerably higher<sup>6</sup>:

Supreme Court Criminal Division<sup>7</sup>

- 12.3 months for defendants on bail
- 11.5 months for defendants in custody

District Court Criminal Division<sup>8</sup>

- 22.5 months for defendants on bail
- 10 months for defendants in custody

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<sup>2</sup> *From Committal to Trial: Delay at the Crown Court*, Standing Commission on Efficiency (United Kingdom), July 1993

<sup>3</sup> *Administration of the Crown Court*, National Audit Office (United Kingdom), September 1994.

<sup>4</sup> The Crown Court deals with the more serious criminal cases in England and Wales. All trials take place before a jury. The Crown Court also has jurisdiction to hear committals for sentence and certain appeals from the magistrates' courts.

<sup>5</sup> time between committal and trial. UK figures were reported in weeks, and have been approximated to monthly figures for comparison purposes.

<sup>6</sup> except where otherwise noted, figures have been taken from the *Key Performance Summary* published by DOCA (the June 1994 edition has been used). Figures shown here are not intended to be used for any strict international comparison. Directly comparable measures are not available, so similar statistics have been used as a surrogate to provide a general guide.

<sup>7</sup> median time from committal to finalisation for trials (1990 figures)

<sup>8</sup> 1989 figures for Sydney District Court only

Delays in NSW civil jurisdictions were even higher:

Supreme Court Common Law Division<sup>9</sup>

- 42 months

District Court Civil Division<sup>10</sup>

- 47.1 months

The 1989 NSW review identified that improvements to performance were also required in other jurisdictions of the state's courts system.

The universal nature of difficulties in court systems is well illustrated by the following extract, which considers the causes of case delays in the United Kingdom:

The causes of delay in bringing cases to trial are numerous and complex. Some of the factors which can cause or mitigate delay are within the control of the Court Service - court resources and information technology. Others are within the control of the judiciary - listing and decisions as to adjournments. There are also many other factors outside the control of the Court Service and the judiciary.<sup>11</sup>

Whilst details of the NSW system may vary, in general the same comments could be applied here. The important message is that a holistic, multifaceted approach to reform is essential for any significant and lasting benefits to be achieved.

## **Implementing Reforms**

Both DOCA and the judiciary, supported by the Office of Public Management (Premier's Department) and private consultants, have played a part in developing and implementing a program of reforms to court management systems and practices. Support from the Attorney-General's Department and The Cabinet Office has also been important to introduce important policy initiatives and changes to impact on the situation.

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<sup>9</sup> 1989/90 figures for time awaiting hearing (average of jury list and non-jury list matters) from DOCA Annual Report

<sup>10</sup> median time from filing a praecipe to finalisation (1990 figures for matters finalised at hearing; Sydney District Court only).

<sup>11</sup> *Administration of the Crown Court*, page 15.

Initiatives taken have ranged across a wide front, which Audit has classified into four categories:

- additional resources
- changes in the processes of law
- additional infrastructure
- organisational reforms.

A summary of initiatives under each of these categories is provided in **Figure 2** (a dissection of reforms by court jurisdiction is provided at **Appendix 1**).

Additional funds of \$5 million per annum were provided through the Budget between 1989 and 1992 to facilitate changes aimed at reducing delays and backlogs.

From 1991/92 pressure for Budget savings required DOCA to reduce recurrent expenses by \$26.5 million over four years. This directive was linked to the Premier's Financial Statement of July 1991 which introduced the imposition of full cost recovery in the civil jurisdictions of the courts. Hence DOCA's ongoing recurrent (operational) funding, and to some extent the funding of elements of the program of reform, would be linked to receipts from courts fees.

A scale of fees was recommended by the Department in early 1993, but was subsequently disallowed by Parliament. A courts fees structure which is acceptable to Parliament and consistent with Government policy has yet to be determined.

The most recent Budget (1994/95) has provided \$2.7 million additional funding for additional judges and magistrates (covering all three jurisdictions) to achieve further reductions in case backlogs and delays.



## **The Past 5 Years .....**

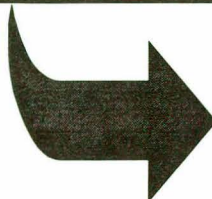
### **Extra Resource Inputs**

- ◆ The Acting Judge and Associate schemes were introduced in the Supreme and District Courts
- ◆ Additional permanent judicial appointments were approved for the Supreme and District Courts, and support staff positions for additional judicial and managerial positions were created
- ◆ Partial and full cost recovery fees were introduced in the Supreme, District, Land and Environment and Local Courts
- ◆ Other initiatives were implemented in the Supreme and District Courts aimed at backlog reduction, such as Settlement Week, special sittings and extended sittings



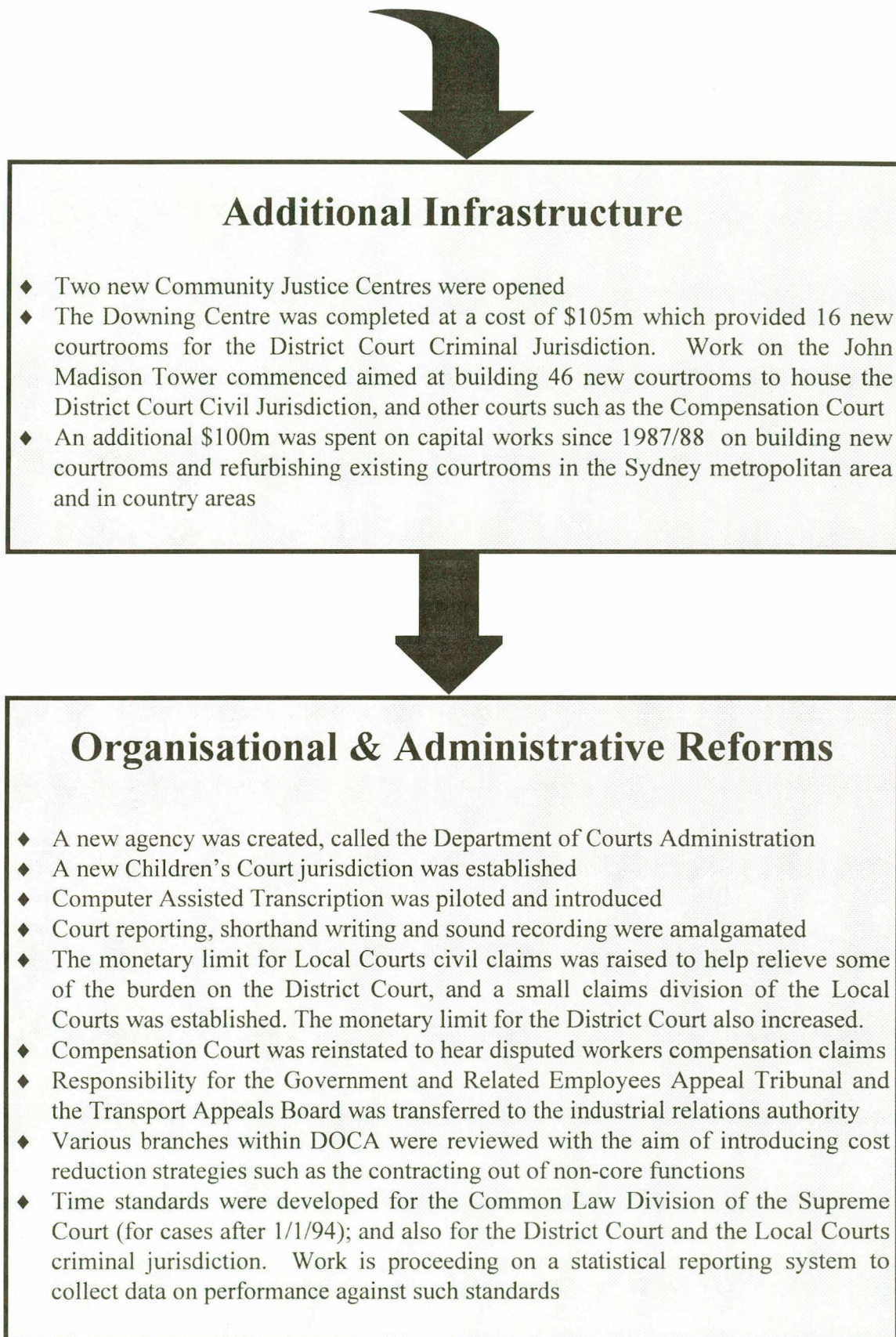
### **Changed Processes of Law**

- ◆ Call-over system introduced in various jurisdictions to remove adjournment applications from the court room
- ◆ Pre-trial hearings and conferences established in the District and Supreme Courts
- ◆ Philadelphia system of arbitration introduced in Sydney
- ◆ Legislation enacted in the Local Courts requiring Assessors or Magistrates to attempt conciliation as a first step in proceedings for civil claims below \$3,000
- ◆ The Land and Environment Court and the Industrial Court introduced mediation of disputes as an alternative to a full hearing
- ◆ Sentence Indication pilot scheme launched with the aim of attracting early guilty pleas where appropriate in matters committed for trial
- ◆ A pilot scheme aimed at achieving trial date certainty was launched in the District Court. Arraignment hearings introduced to better manage caseflow in early stages.
- ◆ Differential Case Management was introduced in the Common Law Division of the Supreme Court (post Active Case Management)



**Figure 2**





**Figure 2**

## Results From Reforms<sup>12</sup>

A commendable start has been made. Overall, backlogs and delays in the courts system have been reduced.

As would be expected, results vary between court jurisdictions and the picture looks different depending on the indicators used to measure performance.

Two of the primary indicators used to measure performance of the courts are:

- **matters on hand** (as a measure of backlog)
- **estimated disposal time** (as an indicator of expected future delays)

Figures 3 to 6 present the results for these indicators across the various court jurisdictions.

### Supreme Court Matters on Hand 1990-1994

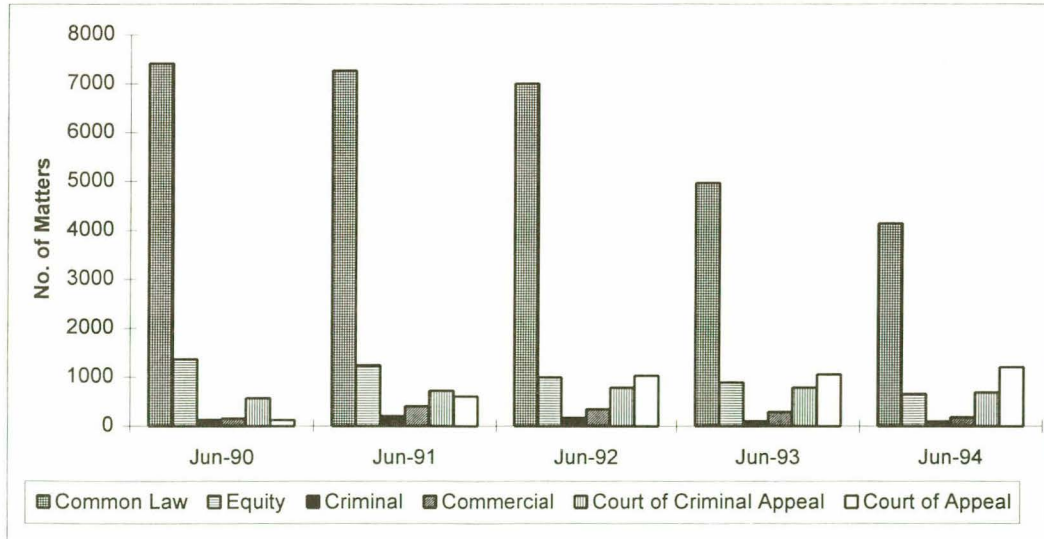


Figure 3

<sup>12</sup> figures have been taken from the *Key Performance Summary* published by DOCA (the June 1994 edition has been used). These figures were not subject to specific audit testing in preparing this report. Gaps indicate that data was not available.



### Other Courts Matters on Hand 1990-1994

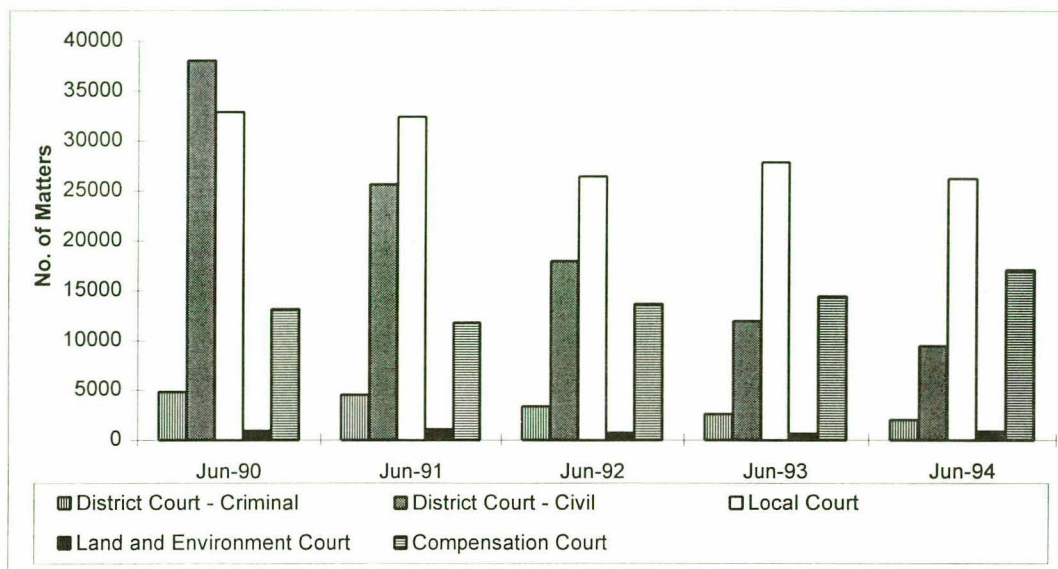


Figure 4

### Supreme Court Estimated Disposal Times 1990-1994

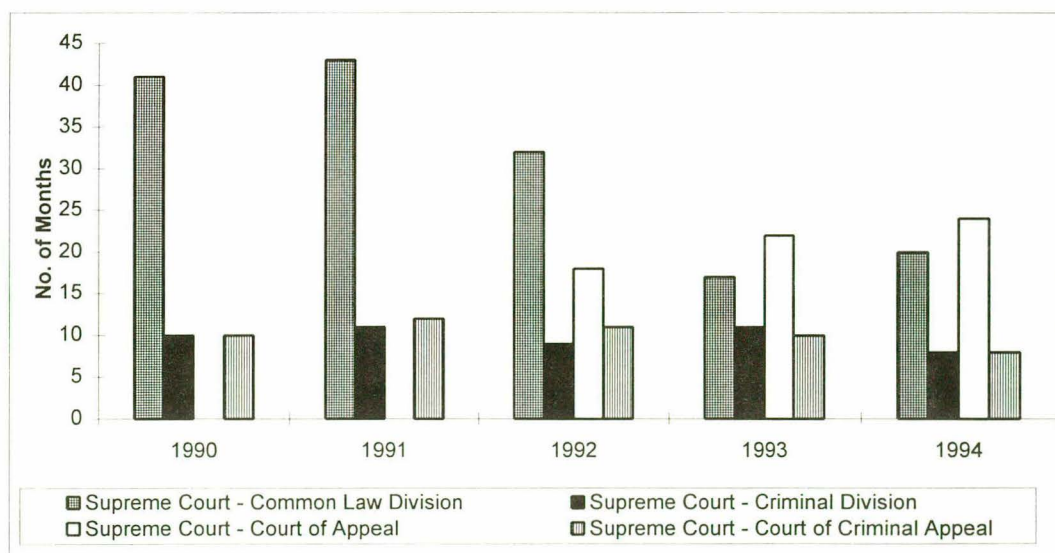


Figure 5



## Other Courts Estimated Disposal Times 1990-1994

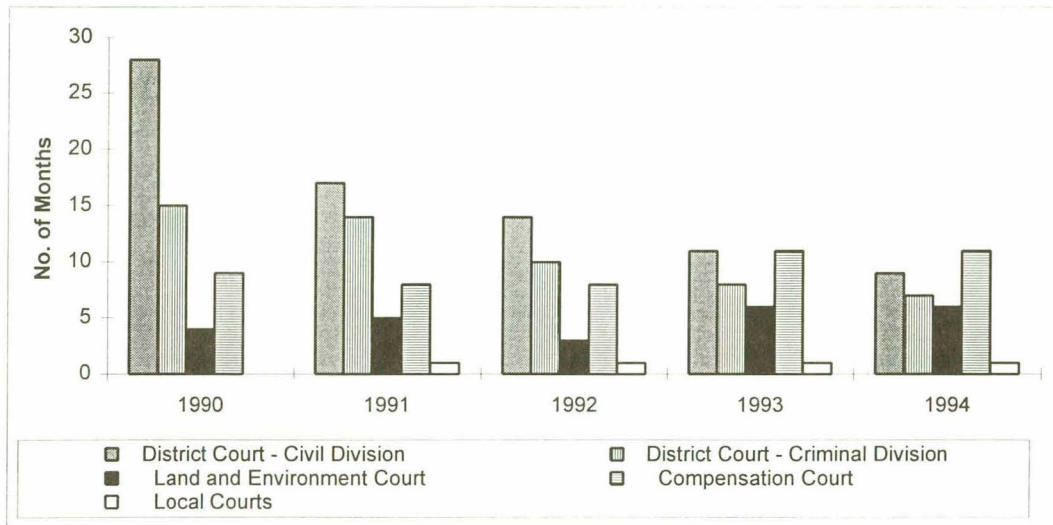


Figure 6

A third key indicator used to measure court performance is **median disposal time** (as an indication of delays experienced by cases now finalised).

Overall, compared to the situation in 1989, **by 1994 delays in a number of District Court jurisdictions were considerably less** as shown below<sup>13</sup>:

### District Court Criminal Division

- 9.6 months for defendants on bail, compared to 22.5 months in 1989
- 6.4 months for defendants in custody, compared to 10 months in 1989.

### District Court Civil Division

- 32.2 months, compared to 47.1 months in 1990.

<sup>13</sup> 1994 data covers the period January to June only.

The general trend over the years 1989 to 1994 is for a reduction in matters on hand in a number of jurisdictions, particularly:

- Supreme Court, Common Law and Equity Divisions
- Local Courts, General and Children's matters
- District Court Criminal and Civil jurisdictions.

However, **not all courts have shown consistent improvement, and in some cases there are static or deteriorating trends on key indicators.** For example:

- waiting times for Supreme Court Common Law matters increased during the year 1993-94
- median disposal times in the Supreme Court Criminal Division have remained static for custody cases, but have lengthened for bail cases
- matters on hand have increased in the Supreme Court of Appeal and the Compensation Court
- estimated disposal times have increased in the Court of Appeal, the Land & Environment Court and the Compensation Court.

In considering the less encouraging trends, in some cases the situation may be better than it appears as performance measures may tend to understate the extent of improvement.

The Compensation Court, for example, was only re-established in 1989 and inherited a backlog of disputed workers compensation claims. As another example, increased throughput in the Supreme and District Courts will inevitably lead to increased workload for the appeal courts.

It should also be noted that in the Supreme Court Common Law Division significant reductions of waiting times were made between 1989 and 1993. The opposing trend experienced in the year 1993-94 is due to the recent introduction of Differential Case Management (DCM). The courts resources have been stretched by the implementation of DCM. An assessment of how successful DCM has been will only be possible in the longer term.

Another complicating factor in interpreting performance data is that the quantity of matters coming into the system is not constant over time, and some jurisdictions have experienced substantial increases. Neither is case complexity a constant.

DOCA has also suggested that some reforms may not been implemented long enough for their impact to be fully reflected in the indicators.

It should be noted that the nature of reforms, and their extent of direct impact on case delays and backlogs, is changing over time. When it was initially established, DOCA's first major goal was delay and backlog reduction. As the program of reform has developed, so its focus has expanded to include longer term reforms aimed at bringing about lasting long term improvements to the management of the courts. The future directions of reform efforts are outlined in the next section of this report.

What reforms have worked best so far? All initiatives are important and, to varying degrees, play a part in the overall result. However, the initiatives which appear to have provided the greatest direct impact up to this point are listed in **Figure 7**.

### **High Impact Reform Initiatives 1989-1994**

<b>Alternative Dispute Resolution</b>	This includes a range of initiatives, such as Community Justice Centres; court based arbitration (mainly in the District and Supreme Courts) and non-court based mediation procedures. The proportion of cases disposed of in the Supreme Court in 1993 using ADR has increased from 17% in 1990/91 to 34%, and in the District Court from 19% to 32%.
<b>Sentence Indication</b>	Pilot schemes were launched in Sydney and Parramatta in 1993. Significant savings of court time have been achieved. As at 31 October, 1994 Sentence Indication has saved in excess of 848 sitting weeks or almost 20.2 judge years since it commenced operation. The time savings are calculated on the basis of estimated sitting times had the matters proceeded to trial.
<b>Acting Judge Scheme</b>	There has been a real reduction of 16% in the number of District Court Criminal Division matters on hand managed under the scheme since it commenced.
<b>Specialittings</b>	Special sittings held in the Supreme Court around July 1992 and May 1993 achieved approximately a 90% settlement rate.

**Figure 7**

## **Priorities for Continuing Reform**

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# PRIORITIES FOR CONTINUING REFORM

## The Department’s Agenda

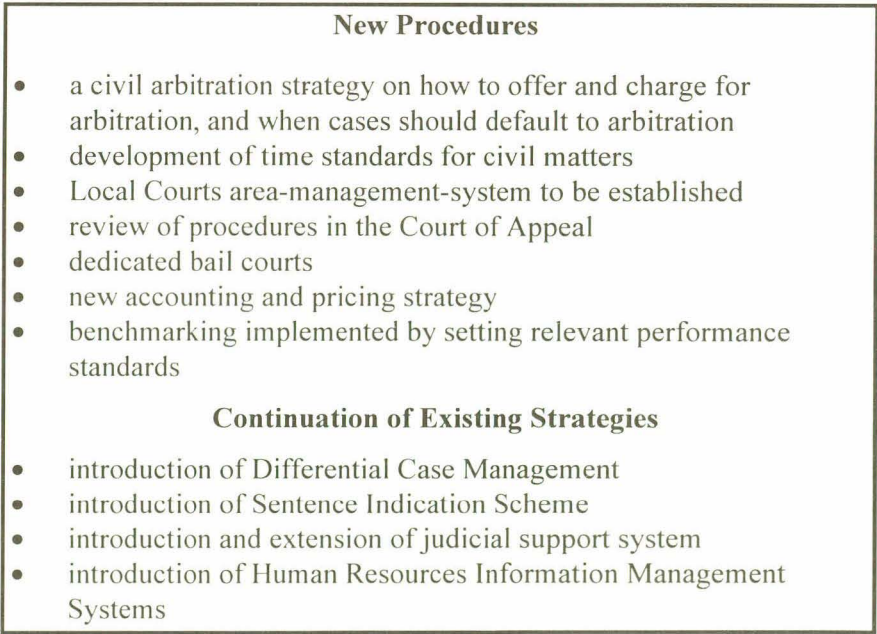
**Future  
Directions**

A further major external review of aspects of the courts system was commissioned by DOCA in 1993. The *Review of Court Services (CSR)* focused on the Local Court and, to a lesser extent, the Supreme and District Courts. CSR has provided an opportunity for DOCA to take stock of what has been achieved, and to reconsider its overall vision and detailed plans for what remains to be done.

DOCA has now set a substantial agenda over the next three to four years to implement the recommendations of CSR, and also any outstanding recommendations from the 1989 review. Progress over the next eighteen months in particular will be critical, as it will lay many of the foundations for substantial long term improvements to the performance of the courts. Some reforms, such as changes to court procedures, will require the support of other groups such as the legal profession.

**Figure 8** below outlines some of the major reform elements which DOCA intends to have in place by the end of 1995. A more detailed list of the Department’s reform targets over the next eighteen months is provided at **Appendix 2**.

### Key Reform Initiatives for 1995



**Figure 8**

## Observations and Recommendations

Having reviewed the proposed program for changes and improvements over the next two to three years, the following observations and recommendations are offered by Audit.

**Funding Matters** Audit noted that priorities for funding in some key reform areas have yet to be determined. For example, a major longer term project for which funding is yet to be approved is the development and implementation of a major information technology system (termed the *Case Management System*) intended to replace the present *Courtnet System*.

**A large number of the reforms planned have yet to be implemented. These will now need to be actioned having regard to DOCA's changed funding base, involving reduced Budget funding and increased revenue from civil user charges. Funding arrangements will need to be completely clear, so that reforms can proceed in a planned fashion.**

Specific plans, or even the overall reform agenda, can be altered to suit the available funding. However, too many unplanned variations due to unanticipated funding problems could hinder effectiveness, particularly where interdependencies exist between components of the reform program.

**Costing Systems** Given current policy, resolution of the funding issue will be at least in part linked to resolving the issue of cost recovery from civil jurisdiction court users. Whilst a number of considerations are always involved in any decision concerning cost recovery and fee setting, the accurate determination of operational costs is a key factor. In addressing that issue, DOCA will need to ensure that a high priority is given to implementing improvements in costing and management information systems.

**Program Statements** To illustrate, *Program Statements* for DOCA and the courts are included in the Budget Estimates Papers. The Supreme Court Services Program for 1993-94 stated its objective as "to provide superior court services in the state justice system". Unfortunately, the absence of a split between the Court's major jurisdictions in the program statement limits its usefulness. Further, the program statement did not provide sufficient information to determine the true full costs for the objective.

For example, the provision of court services (including hearings and trials) requires inputs from other programs which are not linked in the program statement. Such inputs include court reporting, juror services and court attendants.



Apart from any accountability issue, information which is costed and presented in this manner can act as an impediment to effective performance management, since an incomplete picture of the operations is provided. It also makes the matter of determining any scale of charges more difficult as the true level of costs to be recovered is unclear.

Some improvements appear to have been made to better reflect overall resources in the program statements supporting the 1994/95 budget estimates. However, further improvements, such as dissecting costs between the civil and criminal jurisdictions, are encouraged by Audit.

**Other Matters  
for Attention**

Other important issues which Audit believes should be addressed and resolved as part of the overall continuing reform efforts of all parties include the following:

- resolution of the future macro model for management of the courts system
- continued and expanded training for members of the judiciary in management systems and issues
- the intensity of use of present facilities
- better performance measurement and reporting.

In each of these areas Audit believes there are issues which may be acting as impediments either to the pace of reform or the potential long term effectiveness of courts management. It may be possible to derive significant benefits from exploring opportunities for improvement in these areas.

The first three of the points shown above are listed here without further detail. They represent matters in which the judiciary will play a principal role. However, Audit is not in a position to providing further discussion on such matters at this time.

**Performance  
Standards**

In terms of the final point listed above, Audit believes that making further improvements to performance measurement and reporting is particularly important and valuable. It is apparent that DOCA has made efforts to collate and provide more timely and reliable information to the public regarding the performance of the courts system. However there is clearly scope for further important enhancements.



As an example, the following limitations in present performance reporting could be addressed:

- the performance indicators used by DOCA do not identify the extent to which external factors impact on finalisation times. Changes in demand, for example, are not accounted for when measuring matters on hand
- the performance measures do not consider the accessibility of court services to its users or the cost effectiveness of the services provided
- there are no benchmarks and targets against which measured performance can be assessed.

Whilst performance benchmarks and targets should not be treated as an end in themselves, Audit considers them to be an essential element in focusing any program of reform, keeping it on track and maintaining its momentum.

Some progress has been made in this direction with time standards having been considered for District Court jurisdictions and Local Courts. Development of time standards has apparently begun for other courts as well. Further development of these performance indicators is needed if they are to be widely implemented, and to ensure that a balanced view of court performance within and between jurisdictions is available.

#### **Guarantees of Service**

*Guarantees of Service* (GOS) have been introduced into the NSW public sector in recent years as a global initiative aimed at improving customer service and overall performance. The continued development of detailed time performance standards suggested above is in accord with the GOS initiative. Audit suggests that such information should be incorporated into GOS documents for the courts.

Such an approach to standard setting, performance measurement and public reporting has been taken in the United Kingdom as part of the introduction of the *Citizen's Charter* initiative in 1991.

In relation to the United Kingdom courts, a special separate document titled *The Courts Charter* has been published which sets out a range of detailed performance standards and states:

The courts will achieve the standards of service and performance set out in this Charter. Some courts will provide even better service and will publish these standards locally.<sup>14</sup>

The development of court charters is also being mooted in the Commonwealth, as one of the recommendations from the *Sackville Report*<sup>15</sup>. The intent is that the charters would provide a framework for systematically identifying and resolving problems in the management of the courts.

DOCA states that it has been investigating the introduction of a variety of new performance measures. However, rather than implement measures independently of the Commonwealth and the other States, DOCA advises that it has become involved with a number of national bodies to consider an Australia-wide approach.

**Additional  
Operational  
Data**

Finally, there are a several items of additional operational data (for both the civil and criminal jurisdictions) which Audit feels would assist ongoing performance analysis if they were collected and centrally available. Suggestions for additional data relate to:

- comparison of the costs of providing services with revenues received and the level of disposals
- the number of matters by the method of disposal
- adjournment rates
- matters listed for hearing not reached
- courtroom utilisation rates
- identification of “active” and “inactive” case lists and the relationship of pending caseload to disposal rates.

**Further Audit**

A broad range of matters will be considered when a full performance audit of the *management of the courts* is undertaken. After examining the situation and discussing matters with DOCA, the audit has been scheduled to commence by mid 1996.

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<sup>14</sup> *The Courts Charter* (United Kingdom), 1993, p3.

<sup>15</sup> the Sackville Report (1994) was commissioned by the Commonwealth to report and make recommendations upon the issue of access to justice.

## Appendices

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# APPENDIX 1

## Initiatives Taken : Dissected by Court Jurisdiction

### Supreme Court

<b>Additional Staffing</b>	<ul style="list-style-type: none"><li>• Additional permanent appointments to the judiciary and support staff</li><li>• Acting judge scheme : The use of practicing barristers and retired judges as Acting Judges to increase the number of judges available for hearings.</li></ul>
<b>Special Sittings</b>	<ul style="list-style-type: none"><li>• Special sittings</li><li>• Extended sittings</li><li>• Settlement week : aimed at achieving a large number of case disposals by concentrating judicial resources on cases in which abnormal delays have occurred and for which it is considered there is a greater than usual prospect of settlement, at a time that does not significantly interfere with other Court business.</li></ul>
<b>Pre-Trial Hearings and Conferences</b>	These satisfy the Court that a case is ready for hearing by identifying all witnesses and identifying all issues for determination before the Court. A date can then be set for the hearing if it can be demonstrated that the case is ready to go before the Court.
<b>Differential Case Management</b>	A program for managing all cases which involves oversight and supervision by the Court of the progress of all cases filed. Cases are differentiated according to their complexity and the need for pre-trial activity. Each case is given only the necessary degree of management, thus reducing costs and encouraging early settlement.
<b>Philadelphia Style Arbitration</b>	Involves listing cases for a specific date at which the matter will come before one of a panel of arbitrators sitting on that day. Tries to ensure that matters are resolved on the day specified.



## District Court

<b>Additional Staffing</b>	<ul style="list-style-type: none"> <li>• Additional permanent appointments to the judiciary and support staff</li> <li>• Associate judge scheme : involves the use of legal practitioners as Associate Judges to assist with civil cases.</li> </ul>
<b>Extended Sittings</b>	Involving the listing of Courts in the usual January courts vacation
<b>New Civil Listing Procedures</b>	<ul style="list-style-type: none"> <li>• Registrar to give 6 months notice of the call-over date</li> <li>• hearing dates to be allocated at the call-over, and a 2-4 month gap between the call-over and the hearing is required</li> <li>• if the call-over is adjourned twice at the plaintiff's request and is still not ready for hearing, it will be struck out and, on restoration, placed at the end of the list.</li> </ul>
<b>Pre-Trial Conferences</b>	Encourages the settlement of cases without the need for hearing or, where settlement is not possible, identifies issues for trial (such as admissibility of evidence) which would normally be considered by a judge on the morning of the trial. This saves Court time.
<b>Philadelphia Style Arbitration</b>	As for the Supreme Court.
<b>Sentence Indication Pilot Scheme</b>	Aims to attract early guilty pleas where appropriate in matters committed for trial.
<b>Arraignment Hearings</b>	Introduced to give the Court early control of cases after committing the accused for trial. Imposes strict time limits on the Director of Public Prosecutions for the preparation of indictments, and on DOCA for the preparation of transcripts.
<b>New Courtrooms</b>	Building of new courtrooms and renovation of existing courtrooms to provide more facilities.

## Local Courts

<b>Self Enforcing Infringement Notices (SEINS)</b>	Introduced in 1986 and expanded to cover an increasing range of matters. SEINS is a computerised system which enables public organisations to institute recovery action for relatively minor offences through administrative means without requiring a Court appearance by issuing a penalty notice and, if required, an enforcement order. Enforcement orders have the same force as an order of the Court. A matter will only be listed before the Court at the request of the defendant.
<b>Mediation by Community Justice Centres</b>	Using mediation as the alternate method of dispute resolution, agreements are made as the result of the settlement of disputes between parties and are generally not legally enforceable. Mainly aimed at the resolution of minor civil and criminal disputes (eg. between neighbours, family members, community groups). Any dispute which involves a continuing relationship can be dealt with by community justice centres.
<b>Small Claims Division</b>	This division was established to handle civil claims up to \$3000; with the legislative requirement that the Assessor or Magistrate presiding attempt conciliation as a first step in any proceeding.
<b>New Courtrooms</b>	Building of new courtrooms and renovation of existing courtrooms to provide more facilities.



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## APPENDIX 2

### Summary of Proposed Reforms and Changes to the Courts System to be Implemented Over the Next 18 Months

#### **Business, Strategy and Policy Projects**

- Formulation of a civil arbitration strategy, addressing such matters as:
  - how to offer and charge for arbitration
  - when cases will default to arbitration.
- Development of standards for civil matters to encourage speedier resolution
- Formulation of a policy concerning which court reporting is unnecessary or discretionary.

#### **Regional Organisational Changes**

- Sheriff's Office hours of business to be extended
- Local Courts area management system to be established, including the planning, design and setup of local area structures
- Local processing centres to be established, including the planning, design and setup of local area structures for the processing of local transactions and documents
- Introduction of interim service by post via the Local Courts
- Introduction of electronic lodgment of documents.

**Civil and  
Criminal Courts  
Projects**

- Continued introduction and development of Differential Case Management Scheme. Introduced in January 1994 to give all Common Law Division matters of the Supreme Court a level of case management with the aim of disposing of cases within 18 months
- Continued development of the District Court Sentence Indication Scheme and extension to country areas. The legislation enabling this scheme has a sunset clause which will result in a review of the scheme before January 1995.
- Review of procedures and resources in the Court of Appeal
- Extending the use of the existing Local Courts computer system to increase effectiveness of fine recording, collection and enforcement
- Introduction of dedicated bail courts to reduce Local Court bail matters being heard by the Supreme Court.

**Judiciary Based  
Projects**

- Continued development and extension of the judicial support system, linking the judiciary computer systems with the court registry, library and reporting areas
- Magistrates listing and rostering system
- Court annexed mediation.

**Other Projects**

- Further staff reductions resulting from the enhancement of procedures and use of technology
- Continued development of the Human Resources Management System, including decentralised data entry and integration with the Financial Management System
- Community youth conferencing
- New accounting and pricing strategy to be set, with prices to be based on cost and market factors
- Benchmarking to be implemented by analysing jurisdictions in other states and setting relevant performance standards for similar activities
- Extension of computer assisted transcription, which has been found to be the most cost effective resource to produce daily transcript.



## Performance Audit Reports and Related Publications

Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
Department of Housing	<i>Public Housing Construction: Selected Management Matters</i>	5 December 1991
Police Service, Department of Corrective Services, Ambulance Service, Fire Brigades and Others	<i>Training and Development for the State's Disciplined Services: Stream 1 - Training Facilities</i>	24 September 1992
Public Servant Housing	<i>Rental and Management Aspects of Public Servant Housing</i>	28 September 1992
Police Service	<i>Air Travel Arrangements</i>	8 December 1992
Fraud Control	<i>Fraud Control Strategies</i>	15 June 1993
HomeFund Program	<i>The Special Audit of the HomeFund Program</i>	17 September 1993
State Rail Authority	<i>Countrylink: A Review of Costs, Fare Levels, Concession Fares and CSO Arrangements</i>	10 December 1993
Ambulance Service, Fire Brigades	<i>Training and Development for the State's Disciplined Services: Stream 2 - Skills Maintenance Training</i>	13 December 1993
Fraud Control	<i>Fraud Control: Developing an Effective Strategy</i> (joint publication with the Office of Public Management, Premier's Department)	30 March 1994
Aboriginal Land Council	<i>Statutory Investments and Business Enterprises</i>	31 August 1994
Aboriginal Land Claims	<i>Aboriginal Land Claims</i>	31 August 1994
Children's Services	<i>Preschool and Long Day Care</i>	10 October 1994

Agency or Issue Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
Road and Traffic Authority	<i>Private Participation in the Provision of Public Infrastructure (Accounting Treatments; Sydney Harbour Tunnel; M4 Tollway; M5 Tollway)</i>	17 October 1994
Sydney Olympics 2000	<i>Review of Estimates</i>	18 November 1994
State Bank	<i>Special Audit Report: Proposed Sale of the State Bank of New South Wales</i>	13 January 1995
Roads and Traffic Authority	<i>The M2 Motorway</i>	31 January 1995
Department of Courts Administration	<i>Management of the Courts: A Preliminary Report</i>	5 April 1995



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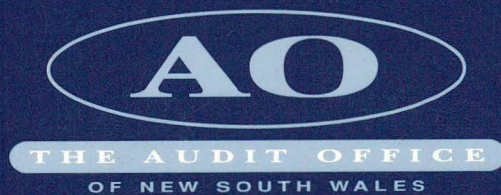












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