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**AUDITOR-GENERAL
SPECIAL REPORT No. 73**

Timeliness in the Magistrates Court

June 2008

*Presented to both Houses of Parliament in accordance with the provisions of section 57 of the
Financial Management and Audit Act 1990*

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17 June 2008

President
Legislative Council
HOBART

Speaker
House of Assembly
HOBART

Dear Mr President

Dear Mr Speaker

SPECIAL REPORT NO. 73

Timeliness in the Magistrates Court

This report has been prepared consequent to examinations conducted under section 44 of the *Financial Management and Audit Act 1990*, for submission to Parliament under the provisions of section 57 of the Act.

The performance audit that is the subject of the report examined the performance of the Magistrates Court in its Criminal and Youth Justice Divisions.

Yours sincerely

A handwritten signature in black ink, appearing to read 'H M Blake', with a long horizontal flourish extending to the right.

H M Blake

AUDITOR-GENERAL

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Foreword

The progress of a matter within the Magistrates Court system, due to its nature, is time consuming. Time is necessarily spent in preparing a case for trial, conducting the hearings and determining the final outcome. Prolonged waiting times in courts affect efficient operation and impact on the effectiveness of the court system.

Excessive waiting times can also have other detrimental effects, such as evidence dissipating or deteriorating, gaols becoming overcrowded, victims of crime being subjected to stress and anxiety or possibly erosion of community respect for the criminal justice system.

While judicial independence is the centrepiece of any court system and the judiciary must, within the law, be individually independent in their decision-making, the efficient management of court resources is a distinct and separate issue from judicial independence.

This performance audit, in the Magistrates Court's Criminal and Youth Justice Divisions and in the four year period ended 30 June 2007, assessed the efficiency and effectiveness of the management of court cases, examined the appropriateness of objectives set and strategies applied and reviewed the effectiveness of internal and external reporting. Our main statistical focus was on active, 'not minor' cases, the main reportable workload of the Court.

We found that the large majority of Criminal and Youth Justice matters proceed through the court system in acceptable timeframes. Most of the causes of delay were outside direct control of the Court. In the Criminal Division, durations for not 'minor cases' reduced. However, the Magistrates Court's strategic plan was out of date needing targets and measures relating to timeliness, there are difficulties when comparing data between different jurisdictions and we noted that the number of unnecessary adjournments could be reduced by taking actions, or building on existing strategies, to reduce the non-appearance rate of defendants.

We also found a high rate of finalised cases that were not flagged as such in the Court's database and the use of an inefficient paper-based court file system, with data subsequently entered into a database.

This led to 12 recommendations aimed at improving planning, information collected and reported and at reducing case timeframes.

HM Blake

Auditor-General

17 June 2008

List of acronyms and abbreviations

Active pending	Cases that have a next appearance date scheduled in court
Attendance indicator	A measure of the average number of appearances required to finalise cases
Backlog indicator	A measure of the percentage of cases over 6 months and 12 months in duration. Highlights the numbers of long cases in the system
Clearance rate	The ratio of finalisations to lodgements. A result of 100% indicates that the Court is 'keeping up' with its caseload
CRIMES	Criminal Registry Information Management and Enquiry System
DIER	Department of Infrastructure, Energy and Resources
DPEM	Department of Police and Emergency Management
DurM	Average case duration in Months
Inactive pending	Cases that do not have a scheduled next appearance date
IT	Information technology
Minor	Mostly outstanding charges for unpaid traffic infringement notices
Not minor	Encompasses all other offences that appear in the Magistrates Court
ROGS	<i>Report on Government Services</i> published annually by the Productivity Commission
<i>sine die</i>	Case adjourned without a date specified for a next appearance date: adjourned indefinitely
SMS	Short Message Service, text messaging on mobile phones
The Court	The Magistrates Court
Waiting time	Elapsed time between the initiation date and the finalisation date of a case

Executive summary

Executive summary

The court process is necessarily time consuming and judicial independence must be respected. A factor that works against timeliness is that defendants may be less than willing to contribute to a speedy resolution of charges against them.

The objective of the audit was to assess the efficiency and effectiveness of the management of court waiting times; to examine the appropriateness of objectives, strategies, standards and performance indicators; and to review the effectiveness of reporting.

We audited data and process at the Magistrates Court of Tasmania, focussing on the Court's Criminal and Youth Justice Divisions for the period 2003–07.

We accessed the Court's annual reports; Reports on Government Services (ROGS) produced by the Productivity Commission; consulted with Court staff; and observed proceedings in the courtroom.

Audit opinion

Our opinion of whether a strategic or operational plan existed to manage waiting times.

We found that the Magistrates Court Strategic plan was out of date and contained no targets and inadequate measures relating to timeliness.

Our opinion as to whether court processes were monitored against the strategic or operational plan.

Court processes were not directly monitored against the strategic plan.

Our opinion as to whether there was adequate performance information in the annual report or other publicly available accountability reports.

Information provided in the Court's annual reports and in ROGS relating to the timeliness of court proceedings was adequate. However, difficulties exist with comparing different jurisdictions.

We found difficulties with the performance indicators used to measure timeliness of court proceedings and efficiency of the Court. The large numbers of cases that become inactive have an impact on the usefulness of the measures in regard to court performance. Measurement of total elapsed time from lodgement of a case to its finalisation did not necessarily reflect the amount of time a matter was under the Court's control.

Our opinion of whether court cases have been processed within reasonable time frames.

Our main statistical focus was on active, ‘not minor’ cases, the main reportable workload of the Court. We found that the large majority of matters proceed through the court system in acceptable timeframes. Most of the causes of delay were outside direct control of the Court.

We found that the national benchmark for backlog indicators is not being met by any state with the exception of NSW and may be inappropriate. This is because the measure of case duration includes time that the Court is not directly involved with the case and if the defendant pleads ‘not guilty’ the case time will extend over the benchmark.

In the Criminal Division, durations for ‘not minor’ cases have reduced over the last four years.

Our opinion of whether the number of court attendances required to finalise court cases are kept to a minimum.

We found that the reported average number of attendances per case was lower due to the inclusion of minor traffic offences. Consequently, Tasmania’s attendance indicator figure was incompatible with figures from other states. The ROGS backlog indicator also included minor traffic offences unlike the figures from other states.

Our opinion regarding whether the number of unnecessary adjournments are kept to a minimum.

We found that the number of unnecessary adjournments could be reduced by taking actions to reduce the non-appearance rate of defendants. The Court is introducing a system of sending text reminders to defendants to improve appearance rates.

Our opinion regarding whether the cost per finalisation was reasonable.

The cost per finalisation for ‘not minor’ cases is reasonable and comparable to other jurisdictions.

Our opinion of whether data recording systems were fully functional and appropriate to their tasks.

Examination of paper case files revealed a high rate of finalised cases that were not flagged as such in the Court’s database.

We found that the use of a paper-based court file system, where data was subsequently entered into a database, was inefficient.

List of recommendations

The following table reproduces the recommendations contained in the body of this Report.

Rec No.	Section	We recommend ...
1	1.1.2	... that the Magistrates Court treat inactive pending cases as a classification of finalisation and re-list matters upon reactivation. This would enable accurate calculation of the time spent by the Court processing the pending caseload.
2	1.1.3	... that the Court instigate a project to systematically examine case files to ensure the information in CRIMES is accurate. In addition, steps should be taken to ensure accurate input of case finalisation details.
3	1.2	... that waiting time statistics be reported separately for minor and 'not minor' cases.
4	3.3.2	... that the Court continue to develop processes aimed at reducing the level of adjournments caused by non-appearance of defendants. An example might be to investigate further methods of reminding defendants of impending appearances.
5	3.3.4	... that the Court record appropriate data regarding the reasons for adjournment. This retrieved data should be entered into the CRIMES system.
6	3.3.4	... that the Court develop key performance indicators focussed on the types of adjournments where improvement can be made. An example would be the defendant attendance rate for cases where the SMS reminders are applied.
7	3.4	... further analysis by the Court to determine whether the contest mention process provides net benefits and in which situations it should be used.
8	4.1	... that the Magistrates Court update its strategic plan.
9	4.1	... that the Court develop more measurable objectives which explicitly include timeliness.
10	4.2.1	... that reported indicators only take into account 'not minor' cases.
11	4.2.2	... that internal monitoring be based on the Court's strategic plan and the objectives and targets therein.
12	4.4	... that the Magistrates Court further develop CRIMES to a point where court proceedings can be directly entered from court rooms.

Management responses

Chief Magistrate

Thank you for providing me with your Special Report No 73 entitled *Timeliness in the Magistrates Court* and for your invitation to comment upon it.

1. Your recommendations

I have carefully considered the list of Recommendations set out in your Report.

I endorse each of those Recommendations.

The Court has commenced an examination of the manner of their implementation.

2. Justice according to law

Your review has produced a range of interesting and useful results following a quantitative assessment of case backlog, clearance rates, and case duration. However, it must be kept in mind, of course, that the administration of justice according to law involves a significant qualitative element.

As you appreciate, every judicial officer of the Court has either sworn or affirmed ‘to faithfully execute’ his or her judicial office and to ‘do equal right and justice to all persons to the best of my judgment and ability according to law’: *Promissory Oaths Act 1869* section 4.

A comprehensive review of the Court’s administration would therefore require an assessment of the wide range of qualitative factors that go into each and every judicial decision. Qualitative factors include such things as ensuring a fair trial for an accused person by ensuring parties have sufficient time to prepare their defence, obtain legal advice and engage competent legal representation; and ensuring magistrates have sufficient resources and time for deliberation. Such an assessment is beyond the scope of your review.

Moreover, the proper administration of justice should never be judged on time measures alone. The shortest duration between case initiation and case finalisation may measure an efficiency of resource inputs, but it does not measure whether the elusive notion of “justice” has been attained. In fact, the reverse may be the case.

3. Some current initiatives of the Magistrates Court

I take this opportunity to set out some information that provides insight into the awareness of the Magistrates Court of the challenges that are facing the administration of justice in a high volume court in

a changing environment, and the Court's proactive response to those challenges.

As you appreciate, the Magistrates Court is involved in a number of initiatives that are designed to address issues of efficiency and effectiveness of the Court's processes, one measure of which is "court waiting time" as measured by factors such as case backlog, clearance rates, case duration, and age at finalisation.

Some of the Court's initiatives already in progress to absorb increasing caseloads across the Court's various jurisdictions, to streamline litigation processes, and to reduce delays are set out below.

(a) Bail Project

Work is in progress to improve the attendance rates of defendants on bail so as to avoid unnecessary adjournments and, therefore, delay and expense. As you will recall, the Launceston survey conducted in 2006, and repeated state-wide in January-February 2008, both reveal that approximately 20% of all adjournments are caused by the failures of defendants to attend court pursuant to their legal obligations to do so, or to obtain legal advice in a timely manner. In order to address this problem, it is planned to:

- issue SMS text reminder messages to defendants on bail;
- publish information pamphlets (and to distribute them widely) and posters to remind defendants of their bail obligations, and the increased penalties for failure to attend; and
- improve arrest warrant issuing and processing procedures.

Jointly with Tasmania Police, work is well under way to deliver these project outputs. Indeed, some elements of the package of reforms have been completed and their implementation is awaiting completion of all elements.

(b) Youth Justice Project

The Court is working collaboratively with Tasmania Police, Legal Aid, and DHHS (Youth Justice) to reduce the elapsed time of court proceedings by reducing unnecessary adjournments by requiring early Prosecution disclosure, facilitating defendants' access to legal advice and representation, and consolidating all outstanding cases against individual young offenders. An inter-agency working group, of which the Court is a member, has developed work plans to deliver these outcomes, with the Court, Police and DHHS (Youth Justice) commencing some of the new procedures a few months ago.

These initiatives result from a series of Workshops which the Court promoted state-wide and which identified a number of systemic problems, as well as solutions thereto.

(c) Criminal Procedure Project

The Court is developing new legislation which will speed up the criminal litigation process, by such things as early Prosecution disclosure, earlier entry of pleas, facilitating the summoning of Police officers as witnesses, shorter preliminary proceedings on serious indictable charges, and straightforward methods of evidence presentation.

Some of these procedures (preliminary proceedings, and police officer witness provisions) are already in force in the Court following legislation enacted in late 2007 and certain radically changed administrative arrangements within Tasmania Police as part of a joint Court-Police project.

Further work is continuing on a comprehensive legislative framework in the *Magistrates Court (Criminal & General Division) Bill* and the *Magistrates Court (Criminal & General Division) Rules*.

(d) Traffic Courts project

Commencing in mid-2007, the Court created more traffic court sessions to deal with a significant increase in the number of Tasmania Police lodgements of traffic offences that flow from the Road Safety Strategy.

With significant liaison and co-ordination between Court staff and Police Prosecutions in dealing with issues that neither Tasmania Police nor the Court were able to manage adequately alone, the Project has produced some very impressive results:

- Since commencement in May 2007, approximately 25,800 traffic prosecution files were processed; and 13,000 traffic matters in the Hobart Magistrate's Court were prosecuted to finalisation;
- The time period between filing of Complaints and their first listing has been reduced from 16 months to 7 months;
- Police have reduced the time period between offence date and filing the Complaint from 5 months to 3 months.
- Assisted by earlier commencement of proceedings, successful service of traffic summonses by Police has increased from 60% to 80% (thereby avoiding a significant number of matters requiring to be re-listed and re-served).

While these additional courts have helped to reduce the backlog of traffic charges, they have transferred the backlog pending in the criminal justice system generally to the Court alone, and adversely affected the Court's statistics in the interim. However, as the backlog continues to reduce, the commencement of the *Monetary Penalties Enforcement Act 2007* on 28 April, 2008, is further assisting in

removing approximately 40,000 minor traffic cases per year from the Court's pending caseload.

(e) Court Management Information Project

With assistance from the Strategic Systems Unit in the Department of Justice, the Court has been developing methods of improving the quality of case management information that is collected by its key information systems, such as CRIMES. Recent examinations reveal that some information is not accurately recorded, which again has adversely affected the Court's statistics. A review of counting rules is in progress.

(f) Magistrates' Professional Development

A feature of the regular professional development sessions provided to Magistrates is the issue of case management generally. The issue is raised in the context of criminal case finalisation rates, as well as civil claims, child protection, family violence applications and similar proceedings. I emphasise that it is part of the culture of the Magistrates Court to strive to achieve the timely finalisation of cases, consistent with the proper administration of justice.

4. Appreciation

I take this opportunity to express my appreciation to officers of the Magistrates Court of Tasmania throughout the State for their diligent and conscientious cooperation with your officers by extracting and providing information, consulting with them whenever requested and generally assisting and facilitating your examination.

Further, I wish to express my acknowledgment of the consultative and cordial manner in which your officers carried out this review, while, simultaneously, conducting an independent, impartial, rigorous and disciplined examination.

5. Conclusion

The Magistrates Court welcomes your very useful report and looks forward to implementing your recommendations with a view to enhancing the Court's effectiveness as an institution that is dedicated to seeking to do justice according to law.

Department of Justice

The Court has found this performance audit of considerable assistance in thinking about its measures of timeliness and some aspects of its processes. There are also specific recommendations which the Department will need to consider, and if possible progress, including those relating to the CRIMES system and the reporting of performance information, locally as well as to the Productivity Commission's Report on Government Services.

CRIMES redevelopment is a high priority for the agency for a range of reasons but it will not come without a cost. Work is starting on a business case to form the basis of a bid for the 2009–10 Budget. As CRIMES is a key component of the Criminal Justice Framework there are other agencies such as DPEM which have a stake in its future development.

The recommendations from this Audit will be considered for inclusion in enhancements to CRIMES but without additional funding the degree to which new functionality can be added to the existing system will be severely circumscribed.

There were a few observations I made last week about the draft which I repeat here briefly:

- The impact of recent changes to committals processes is not reflected in this audit, and indeed could not be, given their timing. For this reason some of the analysis may need to be revisited after the changes have bedded down and operated for a period.
- The distinction between the Court’s civil and criminal jurisdictions is not always clearly made in the report.
- The implementation of the *Monetary Penalties Enforcement Act 2005* on 28 April this year probably makes Recommendation 3 less relevant: the number of minor matters lodged with the Court is expected to fall very significantly as resulted of the Act’s ‘deemed convictions’ provisions.

Overwhelmingly it seems that this audit has been a positive experience for the Court and its officers, and I trust, your staff. I appreciate the contribution it will make to understanding the many factors influencing timeliness in the justice system.

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Introduction

Introduction

“Justice delayed is justice denied.”¹

The progress of a matter within the court system, due to its nature, is time consuming. Time is necessarily spent in preparing a case for trial, conducting the hearings and determining the final outcome. Courts handle large numbers of cases with long-running cases often increasing backlogs in the system. In this Report, we refer to waiting time as the total time between the commencement and conclusion of court proceedings. Prolonged waiting times in courts affect efficient operation and impact on the effectiveness of the court system.

Excessive waiting times can also have other detrimental effects, such as:

- Evidence can dissipate or deteriorate (e.g. witnesses may go missing or their memories may fade).
- Gaols may become overcrowded, with remand detainees held for lengthy periods.
- Victims of crime, the accused and their family members are subject to stress and anxiety.
- The deterrent effect of the criminal justice system may be undermined.
- Erosion of community respect for the criminal justice system may occur.
- Delay has a compounding effect.
- Some parties may manipulate delay to gain advantage.
- Court resources may be wasted.
- Witnesses, juries and other participants in the system may be inconvenienced.

Judicial independence is the centrepiece of any court system and the judiciary must, within the law, be individually independent in their decision-making.

However, the efficient management of court resources is a distinct and separate issue from judicial independence. As in other areas of the public sector, accountability and transparency are important aspects that must be present in the non-judicial management of our courts.

¹ William E. Gladstone (1809 – 1898)

How is the Court administered?

The Magistrates Court of Tasmania is a statutory body, created as a Court of record by the *Magistrates Court Act 1987*. It is comprised of the Chief Magistrate, the Deputy Chief Magistrate and the Magistrates, operating at four permanent registries at Hobart, Launceston, Devonport and Burnie. It also conducts circuit sittings in 15 county court locations.

The *Magistrates Court Act 1987* section 3 defines ‘lower courts’ as:

- The Magistrates Court, which consists of the following divisions:
 - Administrative Appeals Division
 - Coronial Division
 - Mining Division (also known as ‘The Mining Tribunal’)
 - Civil Division
 - Youth Justice Division
 - Children’s Division
- Courts of summary jurisdiction within the meaning of the *Justices Act 1959*
 - Criminal Division (the ‘Court of Petty Sessions’)
- The Land Valuation Court continued under part 7 of the *Valuation of Land Act 2001*
- Tribunals under any act that are constituted by a magistrate or of which a magistrate is the chairperson, such as:
 - The Anti-Discrimination Tribunal
 - The Motor Accidents Compensation Tribunal.

Magistrates in the Criminal Division, the Court of Petty Sessions hear and determine simple offences, crimes triable summarily under state and commonwealth legislation, breaches of duty and applications under various state and commonwealth statutes. The Criminal Division comprises a major aspect of the work of the Court and was the focus of this performance audit.

The *Youth Justice Act 1997* section 159 created the Magistrates Court (Youth Justice Division) and applies to persons under the age of 18 years at the time of the alleged offence. In addition to regulating court processes, the legislation makes transparent and accountable provision for diversionary practices and conferencing, the purpose of which is to encourage youths to take personal responsibility for their

actions. Cases in the Youth Justice Division were also included in this performance audit.

In the Civil Division, Magistrates hear and determine civil matters to a value of \$50 000 or an unlimited amount with the consent of the parties. Matters up to a value of \$5 000 are dealt with as Minor Civil Claims and undergo simplified procedures.

Magistrates sit as Coroners to conduct inquests into sudden deaths, fires and explosions and sit as chairpersons of various statutory tribunals².

Magistrates in Tasmania manage the dates for each appearance using an individual docket or 'personal diary' system. Administrative staff list cases in the Court in accordance with policies and directives issued by the Chief Magistrate. The administrator of the Court ensures that the appropriate judicial support is available. Court clerks note progress of a case during court sessions on paper-based case files. That data is later entered into a database called the Criminal Registry Information Management and Enquiry System, CRIMES. Court sessions are also digitally audio-recorded.

What happens in court?

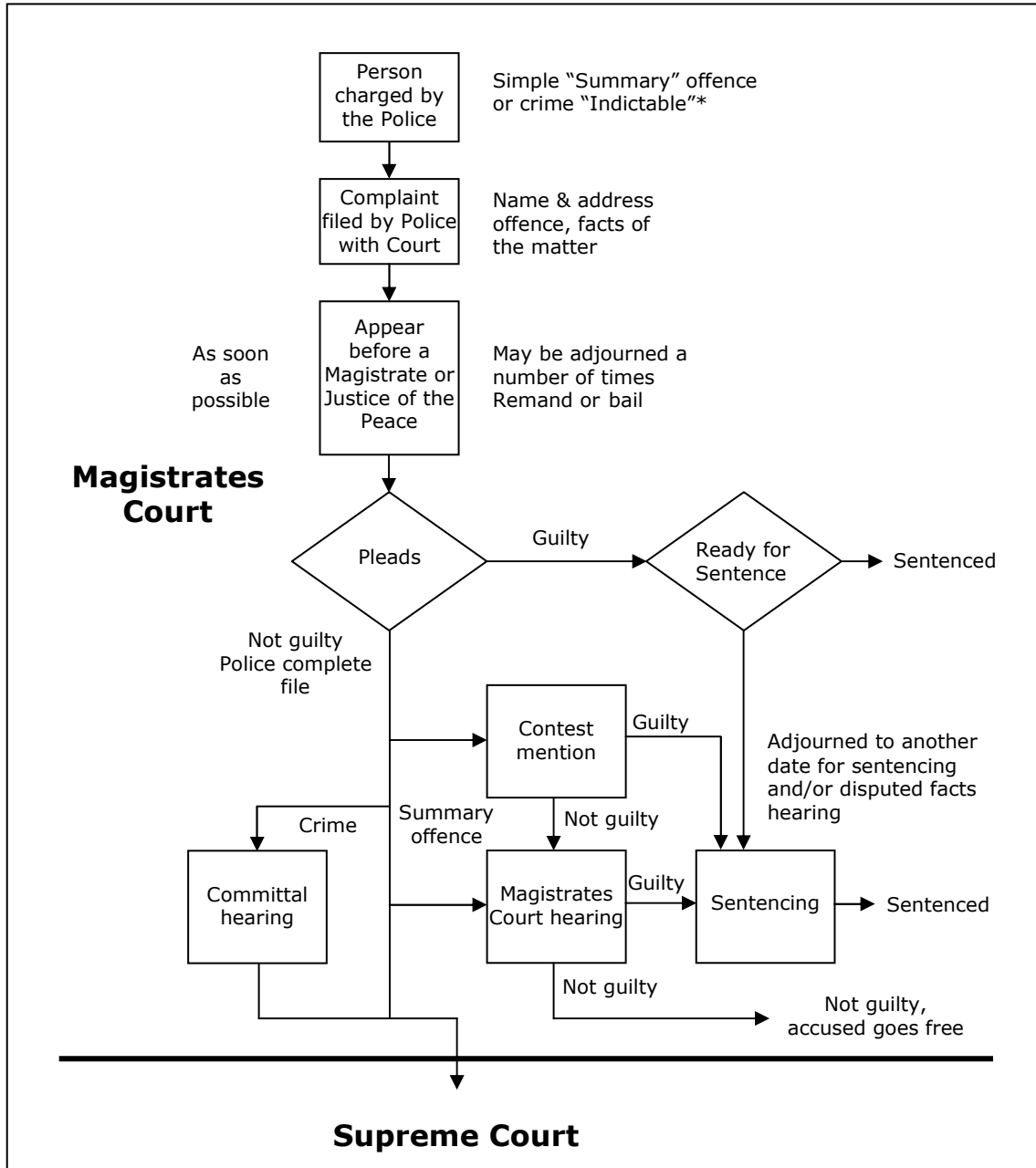
The judicial process is complex. Matters can be civil or criminal and might be heard in various divisions of the Magistrates Court or the Supreme Court. Figure 1 shows a simplified process flowchart for criminal actions and illustrates the paths in the system that a matter may take through the Magistrates Court.

The Magistrates Court deals with criminal matters with a maximum penalty of up to two years imprisonment for a single offence and up to five years imprisonment for multiple offences. More serious offences are indicted to the Supreme Court.

A number of appearances can occur before a defendant pleads to a charge. Time lines can be stretched when defendants fail to secure legal advice or lawyers have insufficient time to prepare. Non-appearance of the defendant inevitably causes further delays in the process. If a defendant pleads not guilty, the prosecution must complete its file, disclosure to the defence must be made and witnesses may need to be summoned.

² *Magistrates Court Annual Report 2005–06*, p 17

Figure 1: Court process flowchart



* Indictable cases are those serious enough to be heard in the Supreme Court

How long should court cases take?

Figure 2 details a ‘typical’ case profile in the Magistrates Court.

Figure 2: Typical case profile – Tasmanian Magistrates Court³

- **Day 1:** Arrest and bailed to appear.
- **Day 14 (Week 2):** Complaint filed with the Court. (This date may vary from 2 – 3 weeks before the scheduled first appearance date to the very day to which the person has been bailed. This is a critical date as the Court’s timeliness statistics are measured by reference to the date of filing.)
- **Day 30 (Week 4):** First Court appearance of the defendant at which the person is entitled as a matter of law to an adjournment. Adjournment granted to enable the defendant to seek legal advice.
- **Day 72 (Week 10):** Second Court appearance at which lawyer seeks adjournment on the basis that this is the defendant’s first Court appearance with a lawyer.
- **Day 100 (Week 14):** Third Court appearance at which the defendant enters a plea of not guilty whereupon the charges are adjourned for mention to enable police to obtain statements from all witnesses.
- **Day 130 (Week 18):** Fourth Court appearance at which the defendant confirms the plea of not guilty, whereupon the charges are listed for hearing.
- **Day 180 (Week 26):** Fifth Court appearance. Charges heard and determined. If the defendant is convicted, the Court may seek a Pre-Sentence Report to assist it in its sentencing deliberations.
- **Day 210 (Week 30):** Sixth Court appearance. Defendant sentenced.

The profile is typical except that it is rare for a defended case to flow with the ease that has been described. It is obvious that any one or more of numerous causes can interrupt that smooth flow — including the defendant failing to appear at one or more steps in the process.

In endeavouring to understand the amount of time cases should take, we took account of the following factors:

- Judicial independence is paramount. The magistrate’s role is to administer justice according to law, with each case considered on its merits.

³ *Magistrates Court Annual Report 2005–06*, p 14. This case profile is drawn from the process at the Launceston registry.

- The defendant may not necessarily be a willing participant in the process and therefore deliberately cause delay.
- Public expectations play a part in deciding what is reasonable in regard to court delays.
- The extent of the contest between prosecution and defence, so-called ‘court tactics’, can also influence the flow of matters through the system.
- Legal representatives, in the best interests of their clients, may not necessarily wish to move a case forward quickly.
- Many of the personnel and resources involved in the progress of a court case are beyond the control of the court.

All cases are different, involve different personalities and have different degrees of complexity: there is no standard product. While it is not unusual for one case to depend on other matters before the court, each case must be considered on its merits.

How cases are classified?

Cases listed at the Magistrates Court progress until they are finalised. At any given time, there are cases that have not been finalised and these are known as the pending caseload. The pending caseload is made up of a number of categories of cases:

Active pending	Cases that have a next appearance date scheduled in court
Inactive pending	Cases that do not have a scheduled next appearance date
Minor	Mostly outstanding fines for traffic infringement notices
‘Not minor’	Encompasses all other offences that appear in the Magistrates Court.

Public accountability

The Magistrates Court produces an annual report containing performance information and financial statements. Financial reporting for the Magistrates Court is also included in the annual report of the Department of Justice. Performance statistics are included in the Report on Government Services (ROGS) produced by the Productivity Commission.

Audit objectives

The objectives of this audit were to assess the:

- efficiency and effectiveness of the management of court waiting times
- appropriateness of objectives, strategies, standards and performance indicators established by the Court
- effectiveness of reporting systems.

Audit scope

The scope of the audit was limited to:

- an examination of court processes administered within the Department of Justice at the Hobart, Launceston, Devonport and Burnie registries
- relevant processes within Tasmania Police
- data from July 2003 to June 2007.

The audit concentrated on the Criminal and Youth Justice Divisions of the Magistrates Court. We did not include the Supreme Court.

Audit criteria

We developed audit criteria that allowed us to form an opinion on efficiency, effectiveness and management. In support of the criteria, we framed the following questions:

- Did a strategic or operational plan exist to manage waiting times?
- Were court processes monitored against the strategic/operational plan?
- Was there adequate performance information in the annual report or other publicly available information?
- Had court cases been processed within reasonable time frames?
- Was the number of court attendances required to finalise a case kept to a minimum?
- Was the number of unnecessary adjournments kept to a minimum?
- Was cost per finalisation reasonable?
- Were data recording systems fully functional and appropriate to their tasks?

Audit methodology

The audit was conducted by:

- review of literature and reports available regarding court waiting times
- consultation with judicial officers, senior court staff and other stakeholders involved in the Court process
- review of court statistics from Tasmania and other jurisdictions
- review of case files and other information (including IT systems) and on administrative aspects of the Court
- observation of proceedings in Magistrates Courts.

Timing

Planning of the audit commenced in July 2007. The fieldwork was conducted from November 2007 through to March 2008 with this Report finished in May 2008.

Resources

The total cost of the audit excluding production costs was \$106 000.

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1 Criminal Division

1 Criminal Division

In this Chapter we review waiting times for cases initiated within the Criminal Division of the Magistrates Court which deals with offences by adults. This involves a caseload of approximately 60 000 new case lodgements annually.

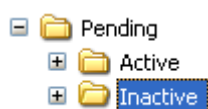
Initially, we discuss two categories of cases for which we consider waiting times to be less important:

- inactive cases (see section 1.1)
- cases involving minor offences (see section 1.2).

Then, we resume our main focus — waiting times for active, ‘not minor’ cases (see section 1.3).

1.1 Inactive cases

1.1.1 Inactive cases — description



Inactive pending cases are those that have not been finalised and do not have a scheduled next appearance date. There are a large number of these cases. They represent around 70% of the pending caseload and have increased substantially over the last four years to total over 65 000 cases in the Criminal Division of the Court.

Cases may become inactive for a variety of reasons, for example:

- There are other matters of a more serious nature that are in progress for the same defendant(s) and the prosecution effort is focused on finalising them. These less serious cases are often kept open as a ‘sword of Damocles’ — to provide an incentive for a defendant to be of good behaviour to avoid the inactive case being reactivated at any time.
- Police prosecutors may be experiencing difficulty preparing a case, securing witnesses or gathering evidence or for other reasons do not wish to proceed.
- The original summons was not served by the prosecutor on the defendant. There are many cases in this situation (especially in the category of minor traffic offences) where the defendants could not be located. Where this happens with a minor matter, police may be reluctant to squander further resources in trying to serve a summons.
- When the defendant fails to appear in court without a valid reason, a warrant is issued for the arrest of the defendant. These cases cannot proceed until the defendant is arrested on the warrant — which is an open-ended matter and beyond the control of the Court.



- The case is adjourned *sine die* by the magistrate for a variety of reasons, mostly related to decisions or actions taken by either prosecution or defence. This means that while the case is not finalised, there is no subsequent date nominated for a next appearance in court.

Cases adjourned *sine die* are effectively suspended and if included in measurements of waiting times would in our opinion have an unfairly negative impact. Despite the large numbers of cases in the inactive pending category, they are not an imposition on the Court system, nor is it the responsibility of the Court to reactivate these cases. This is a matter for the Prosecution.

1.1.2 Inactive cases — reporting

Inactive cases are not reported in the Magistrates Court’s annual reports or in the Productivity Commission’s annual Report on Government Services (ROGS). Whilst we accept that approach, it does lead to distortions in reporting of performance information. Cases that have been inactive for long periods of time, if reactivated, will be measured as long in backlog indicators and durations and yet have involved minimal time actually being processed by the Court.

As an example, the clearance rate indicator is derived by dividing finalisations by initiations for a period; a result of 100% would indicate that a court is keeping up with its case load. However, a steady increase in the number of inactive cases, many of which will never be finalised, results in the appearance of a poorer clearance rate than is actually the case.

Some other states, NSW for example, get around this difficulty by considering inactive pending to be a category of finalisation and require such cases to be re-listed by the prosecution in order for the cases to be re-activated.

Recommendation 1

We recommend that the Magistrates Court treat inactive pending cases as a classification of finalisation and re-list matters upon reactivation. This would enable accurate calculation of the time spent by the Court processing the pending caseload.

1.1.3 Inactive cases — audit testing

We conducted sample testing of inactive pending paper case files across the state’s four registries and found that 31% — almost one in three — of the cases examined had actually been finalised but were incorrectly classified as pending in CRIMES. The effect of this error is to inflate the number of inactive pending cases.

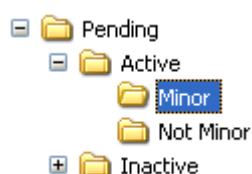
In our view, it would be worthwhile to systematically compare CRIMES data to case files. A project to confirm and finalise cases of this nature in CRIMES would have the following benefits:

- reduction in reported inactive pending cases
- an increase in reported finalisation rates
- improved published clearance rates
- an improvement in data reliability.

Recommendation 2

We recommend that the Court instigate a project to systematically examine case files to ensure the information in CRIMES is accurate. In addition, steps should be taken to ensure accurate input of case finalisation details.

1.2 Active but minor



Active cases are not finalised and have a next appearance date. Active cases are also categorised by seriousness. Minor cases consist mainly of traffic infringements and represent around 74% of the pending caseload. The majority of these cases result from failure to pay traffic infringements before their due date and most result in a guilty plea or result in a guilty finding with the defendant's absence.

In some other jurisdictions, these matters are handled by administrative process outside of the court system. In Tasmania, implementation of the legislation resulting from the Monetary Penalties Enforcement Project in April 2008 is expected to achieve a similar result and should gradually eliminate most of the minor caseload. However, the project is not expected to have a substantial effect on processing of 'not minor' cases since the minor cases are predominately handled by honorary Bench Justices (i.e. justices of the peace) not Magistrates.

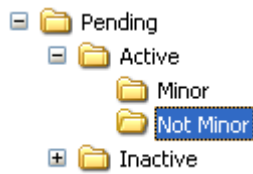
We have not performed detailed analysis of waiting times for these cases because of their simplicity and the fact that most do not cause delays in court processing or consume significant court resources.

Currently, both minor and 'not minor' cases are reported together in the Court's annual report and ROGS. In our view, this results in poor quality performance information because of the lack of commonality between the two categories. It also leads to a lack of comparability with other jurisdictions that do not include traffic infringements and other minor matters in their case loads.

Recommendation 3

We recommend that waiting time statistics be reported separately for minor and 'not minor' cases.

1.3 Active but 'not minor' — our major focus



This classification was the focus of our analysis of waiting times, because the cases were not routine, not waiting on some action external to the Court and had sufficient standing for the community to be concerned at possible delays in administering justice. 'Not minor' cases represent the primary functioning workload of the Court. The number of active 'not minor' cases pending at the end of the 2006–07 year was around 7 300 for the Criminal Division.

Waiting time is defined as the elapsed time between the initiation date and the finalisation date of a case. Our review of waiting times relies on three different measures, each of which captures an important perspective:

- elapsed waiting times for finalised cases
- backlog indicators that measure pending cases
- clearance rates that compare initiations (i.e. lodgements) with finalisations.

These measures are discussed in detail in the following sections of this Report.

1.3.1 Elapsed waiting times for finalised cases

The variation in complexity of cases affects their progress through the Court and makes comparison of actual case durations difficult. We looked at average case duration in months (DurM) for finalised cases to achieve a direct measure. Figure 3 shows the average duration of finalised 'not minor' cases over the period 2003–07.

Figure 3: Duration of finalised 'not minor' cases

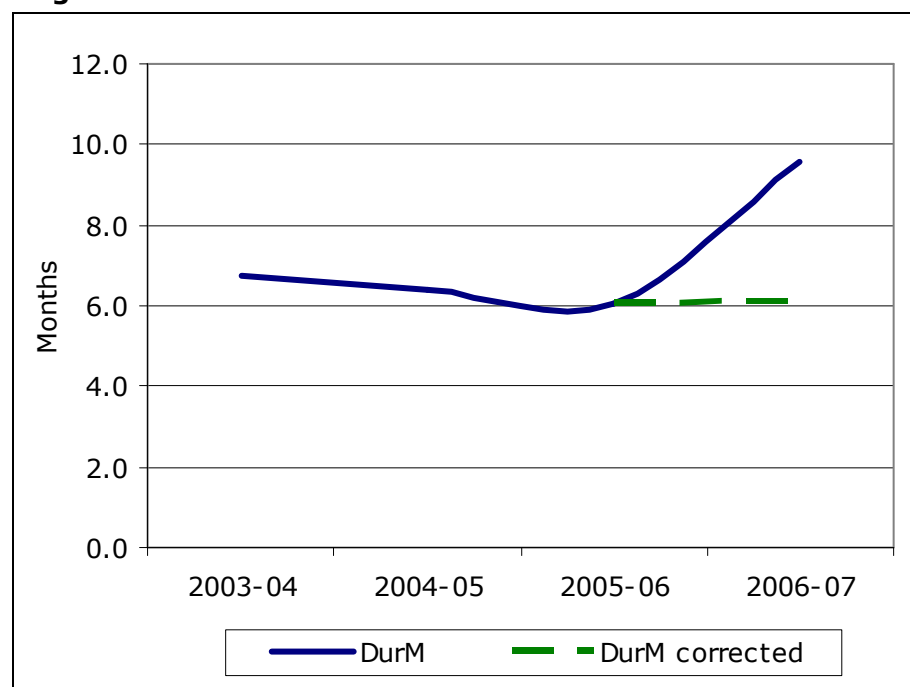


Figure 3 shows that the duration of ‘not minor’ cases had increased by 30% from 2003 to 2007 on the basis of the reported ROGS finalisation figures.

However, closer examination of the data revealed that in the Hobart registry, July and October 2006 had extremely large values of average DurM (26.3 and 57.2 months respectively). Those abnormal months saw the finalisation of some very old inactive cases that Tasmania Police had decided not to proceed with. As an example, October 2006 saw the finalisation of 240 cases of over 520 weeks (10 years) in elapsed time by the Prosecution tendering no evidence. Although clearing the cases took only minimal court time, the durations of the old cases had a severe impact on average durations.

In our view, inclusion of cases that had been reactivated after long periods of time substantially distorted the average DurM. Accordingly, we calculated a corrected DurM — excluding the statistical outliers — which is shown as the dotted line in Figure 3. The corrected statistic showed a small but consistent reduction in the DurM of finalised cases over the last four years.

Our analysis, which shows the distorting effect of inactive cases on duration statistics, supports Recommendation 1:

We recommend that the Magistrates Court treat inactive pending cases as a classification of finalisation and re-list matters upon reactivation. This would enable accurate calculation of the time spent by the Court processing the pending caseload.

1.3.2 Backlog indicators that highlight slow cases

The backlog indicator measures the Court’s pending caseload against national standards of timeliness and has two parts, namely active pending cases that:

- exceed six months duration
- exceed 12 months duration.

We focussed on the first group, the percentage of pending cases exceeding six months. Nationally, the standard backlog indicator stipulates that there should be no more than 10% of cases over six months duration. Work continues on refining these national benchmarks.

Figure 4 shows the backlog indicator, the percentage of active, ‘not minor’ cases exceeding six month duration, and compares it to the national standard.

Figure 4: Backlog indicator for active ‘not minor’ cases

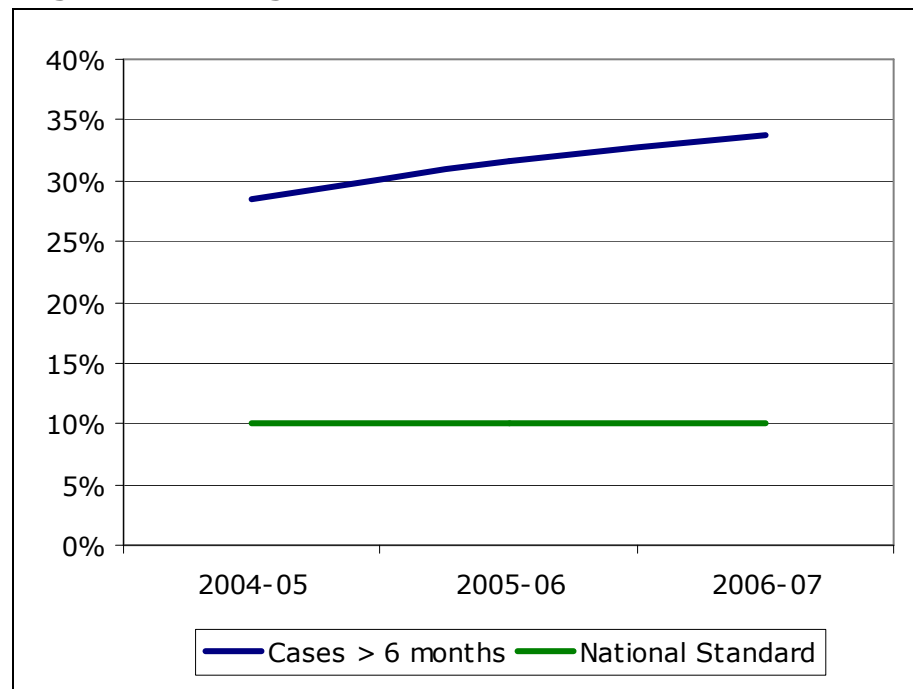


Figure 4 shows a steady rise in the percentage of cases exceeding six months. Compared with the national standard, these backlog indicator figures are unsatisfactory with 34% exceeding the benchmark in 2007. We also observed that the backlog indicator score had increased by 5% from 2005 to 2007.

As mentioned in the Introduction (see Figure 2), a six-month case duration is far from being an exception and suggests that the benchmark may be unrealistic and depends more on the defendant’s choice of plea than court processes.

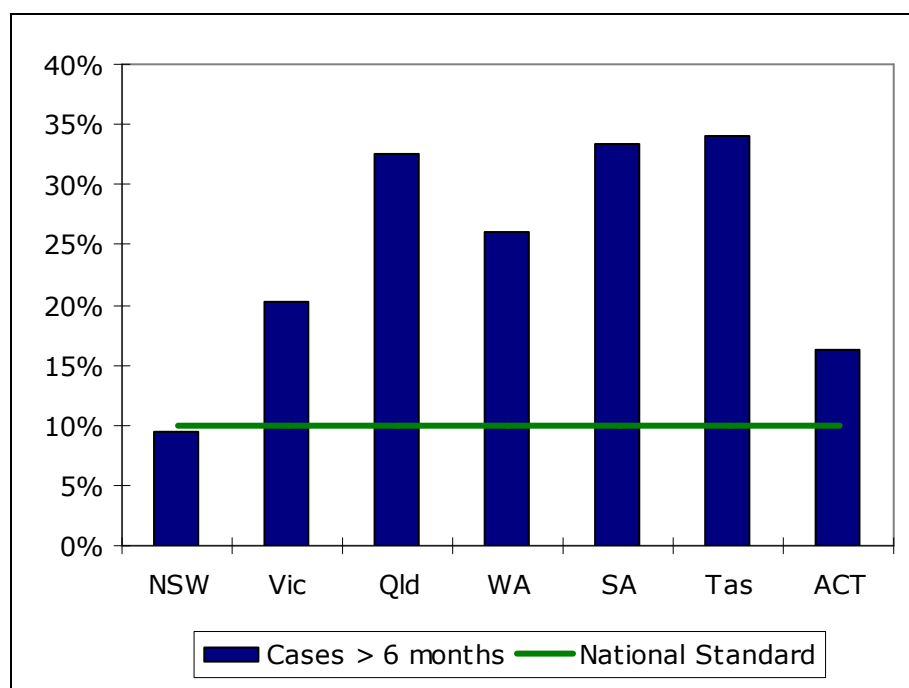
The re-activation of old inactive pending cases also has a detrimental impact on backlog indicators (see section 1.3.1). The backlog indicator would better reflect percentage of cases that exceed the national standard if Recommendation 1 were implemented:

We recommend that the Magistrates Court treat inactive pending cases as a classification of finalisation and re-list matters upon reactivation. This would enable accurate calculation of the time spent by the Court processing the pending caseload.

Figure 5 shows the statistics published in ROGS for percentages of cases longer than 6 months for the other states and territories.

To enable direct comparison with other states and territories, the percentage shown for Tasmania does not include minor cases.

Figure 5: Comparison of active, 'not minor' backlog indicator between states and territories in 2006–07⁴



We note that only NSW achieved the national benchmark. When it comes to measuring Tasmania's performance nationally, comparison is of limited value because:

- Tasmania has the Magistrates Courts and the Supreme Court while most other jurisdictions have a three-tier court system that includes district courts⁵.
- Other jurisdictions exclude minor matters (e.g. traffic infringements) from the jurisdiction of the Magistrates Court.
- NSW treats 'inactive' cases as finalised.

1.3.3 Clearance rate

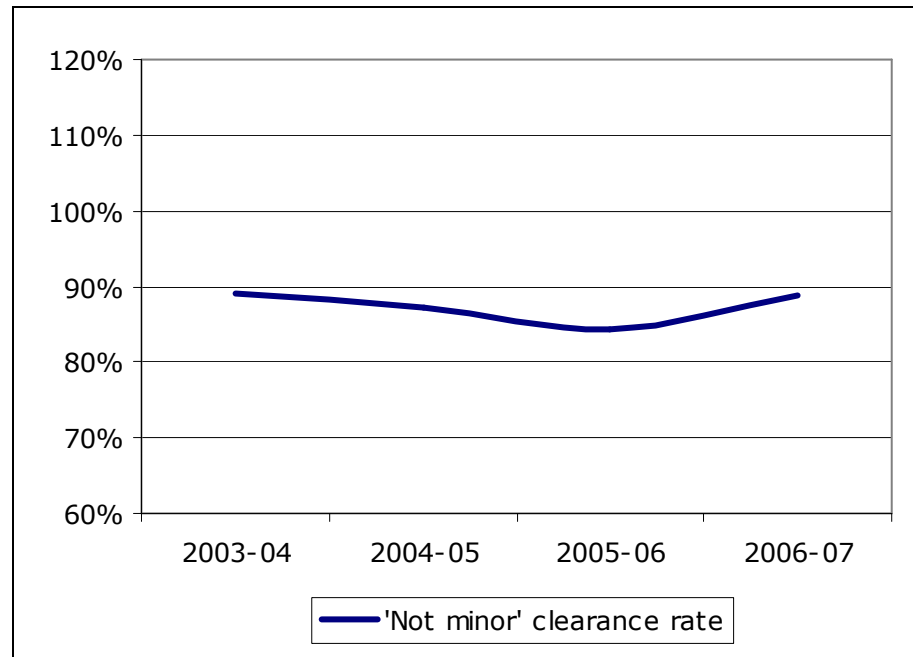
As noted in section 1.3, the clearance rate is an efficiency measure that sets finalisations against lodgements for a particular time period. The result is expressed as a percentage. Clearance rates below 100% suggest that the Court is not keeping up with its flow of cases. The reported clearance rate for 'not minor' cases of the Criminal Division for 2006–07 was 89%.

⁴ Report on Government Services 2008, Table 17A.7

⁵ All jurisdictions with the exception of Tasmania, ACT and NT have a three-tiered system.

Figure 6 shows the movement in clearance rates over time for ‘not minor’ cases.

Figure 6: Clearance rates for ‘not minor’ cases in 2003–07



The clearance rates have been consistently below 100%, indicating that more cases are being added to the waiting list than being finalised. On the face of it, that suggests that the pending caseload is increasing and waiting times deteriorating.

However, our view is that the indicator should be treated with caution because of the growth of inactive cases. Many of the cases being added to the Court list have been classified as inactive and as such there is no basis for the Court to proceed with those cases. Consequently, the capacity of the Court to cope with its case load cannot be reliably determined from the clearance rate.

For example, during 2006–07 the total pending caseload increased by 2 349 cases. The active pending caseload, in contrast, only increased by 567 cases in that year. Therefore a net figure of 1 782 cases became inactive. If these are counted as finalised the clearance rate at the end of 2006–07 becomes 97%, instead of the reported figure of 89%.

Again, if Recommendation 1 were to be implemented, it has the ability to make the clearance rate indicator a more meaningful measure of the Court’s performance.

1.4 Conclusion

Backlog indicators have increased and are unsatisfactory when compared to the national benchmark. However, there are indications that the national benchmark may be unrealistic with other jurisdictions similarly failing to meet it. The inclusion of cases that have been inactive for some time also contributes to a misleading impression. The clearance rate is similarly affected by cases that are de-activated without being finalised.

The average waiting times of cases have not increased over the period 2003–07.

2 Youth Justice Division

2 Youth Justice Division

We examined statistics for the Youth Justice Division of the Court and noted several contrasts with the Criminal Division.

2.1 Overview

Established under section 159 of the *Youth Justice Act 1997*, the Youth Justice Division is responsible for offences by persons under the age of 18 years. The Act makes provision for diversionary practices and conferencing to encourage youths to take personal responsibility for their actions.

The minor caseload in Youth Justice is only around 10% of cases, far less than that in the Criminal Division. Over the period 2003–07, the total number of cases initiated annually in the Youth Justice Division rose by 9% to around 1 700. Incidentally, the rate of cases delayed due to non-appearance by the defendant is almost three times higher in the Youth Justice Division at around 17%.

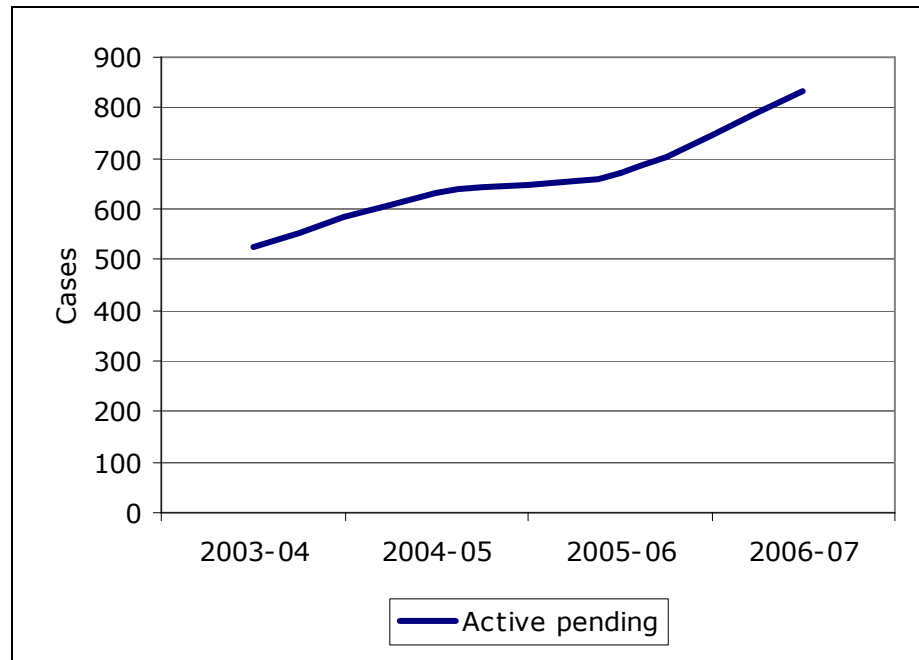
It is noted that the caseload of the Youth Justice Division has greater numbers of offenders facing multiple charges. Examination of a sample of long case files revealed that 30% of these cases involved other matters compared to 10% of the sample cases in the Criminal Division.

It is also important to note that diversion programs such as cautioning and community conferences are utilised to a greater degree with young people and the caseload initiated with the Magistrates Court are generally of a more serious nature compared with the Criminal Division.

Figure 7 shows that the total active pending caseload has increased for the Youth Justice Division by a factor of some 58%⁶. Figure 7 includes minor cases.

⁶ *Report on Government Services 2008*, Table 17A.7

Figure 7: Active pending, all cases – Youth Justice Division



2.2 *Active but 'not minor'*

We focussed on active, 'not minor' cases for measurement of durations because those cases were not routine, not waiting on some action external to the Court and had sufficient standing for the community to be concerned at possible delays in administering justice. 'Not minor' cases represent the substantive functioning workload of the Court.

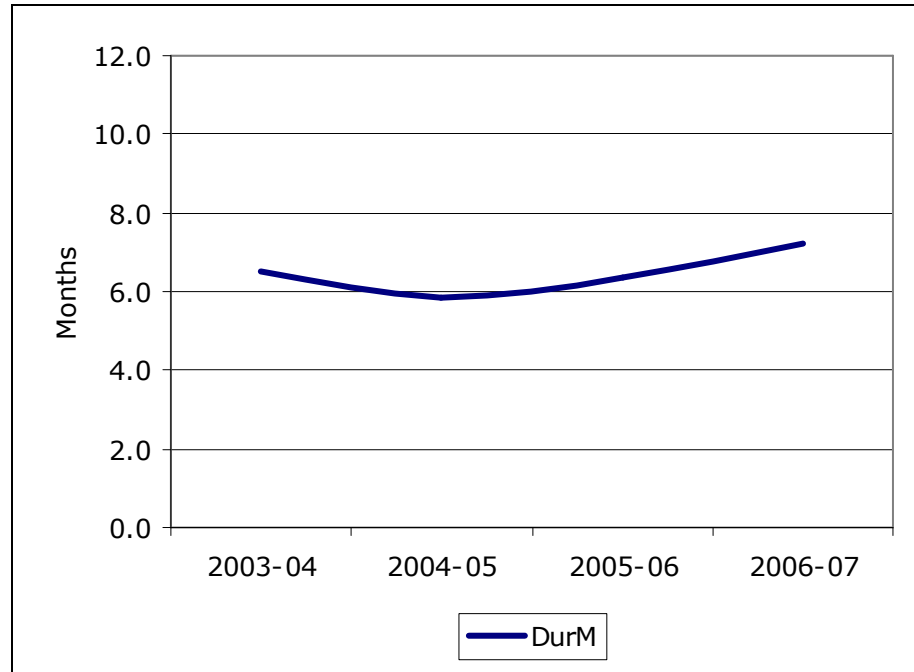
In examining the performance of the Youth Justice Division, we have mirrored the structure used in Section 1. Again, our review of waiting times focused on:

- elapsed waiting times for finalised cases
- backlog indicators that measure pending cases
- clearance rates that compare initiations (i.e. lodgements) with finalisations.

2.2.1 Elapsed waiting times for finalised cases

The duration of finalised ‘not minor’ cases (i.e. waiting time), taken on annual averages, has trended upward since 2004–05 as shown in Figure 8.

Figure 8: Case durations – Youth Justice Division

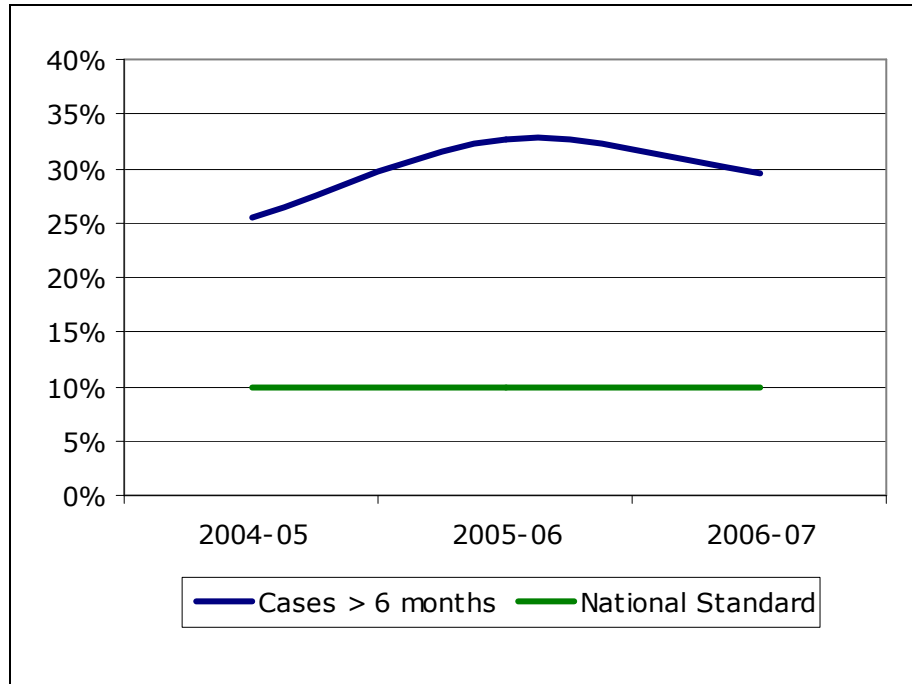


This upward trend of case durations contrasts the finding in the Criminal Division and reflects the increased active pending caseload. It must also be noted that, as with the Criminal Division, the reactivation of inactive pending cases impacts negatively on these figures. The counting of inactive cases as finalised as specified in Recommendation 1 (Section 1.1.2) would give more confidence in the measurement of duration times.

2.2.2 Backlog indicators that highlight long cases

Figure 9 shows the progression over time of the backlog indicator for active ‘not minor’ cases in the Youth Justice Division.

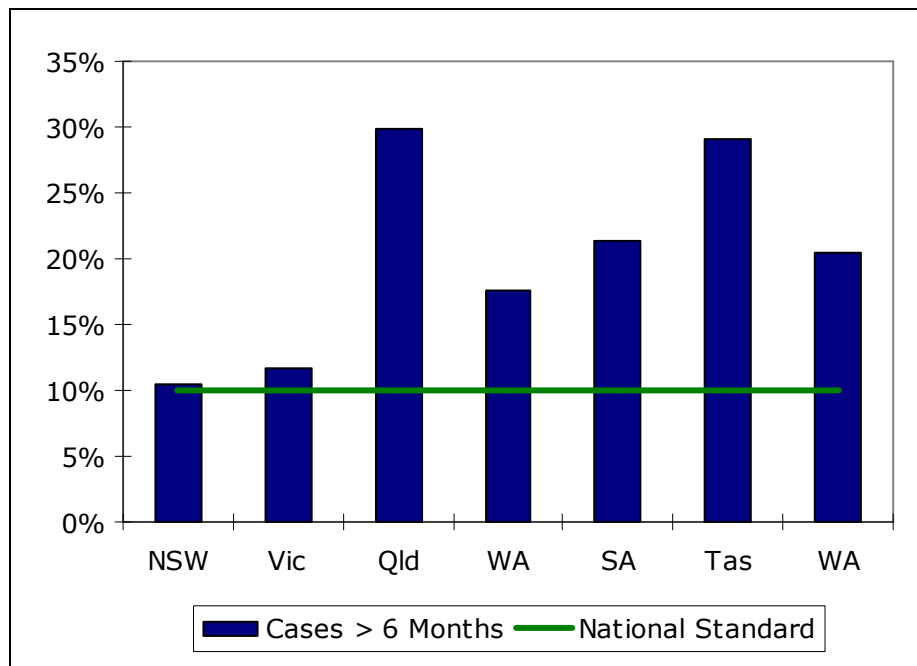
Figure 9: Backlog indicator – Youth Justice Division



The backlog indicator was similar to that for the Criminal Division and well above the national benchmark of 10% for cases exceeding six months duration. As can be seen in Figure 9, the backlog indicator varied between 25% and 35% during 2004–07.

Figure 10 shows the comparison with other states.

Figure 10: State comparison backlog indicator Youth Justice Division in 2006–07⁷



The Tasmanian figure (29.1%) was only surpassed by Queensland

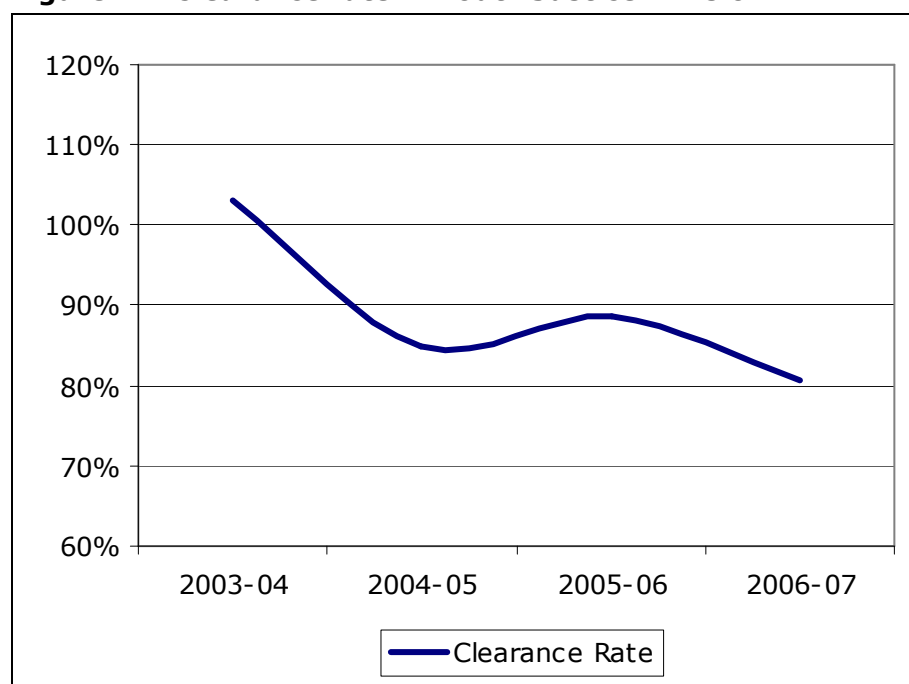
⁷ Report on Government Services 2008, Table 17A.7

(29.9%) at June 2007⁸. No states reached the national benchmark in 2006–07 and this further indicates that the benchmark may be unrealistic.

2.2.3 Clearance rates

Clearance rates for the Youth Justice Division trended down during 2003–07 as shown in Figure 11.

Figure 11: Clearance rate – Youth Justice Division



The clearance rate indicated that the Court is finalising only 80% of the lodgements it receives. The cases not dealt with are being added to the pending caseload. With a difference between lodgements and finalisations for 2006–07 of 380 cases, the active pending caseload increased by 162 cases in that year. Therefore 218 cases went inactive in 2006–07. It can be seen that the clearance rate is severely affected by the number of cases that become inactive. By recalculating, including these cases as finalised, the clearance rate for the Youth Justice Division would have been 94%.

As was the case for the Criminal Division, the implementation of Recommendation 1 would give a truer reading of the performance of the Court for the Youth Justice Division.

⁸ Report on Government Services 2008, Table 17A.7

2.3 Conclusion

While the backlog indicator has shown signs of improvement, case duration and clearance rates deteriorated over 2003–07 for the Youth Justice Division of the Magistrates Court.

The increase in the active pending caseload and durations of finalised cases are indicative of a deteriorating situation within Youth Justice. Factors contributing to this include higher recidivism amongst young offenders and the greater number of court-ordered reports required in Youth Justice (see Section 3.2.2)

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3 Waiting time factors

3 Waiting time factors

There are a number of factors that can contribute to an increase in court waiting times but that are not in the Court's power to control. The following section of the Report examines those factors that the Court can manage such as court location, court processes and resource allocation, all of which influence the timeliness of proceedings.

3.1 Location

Details of the state's four court registries are shown in Table 1.

Table 1: Tasmanian Magistrates Courts

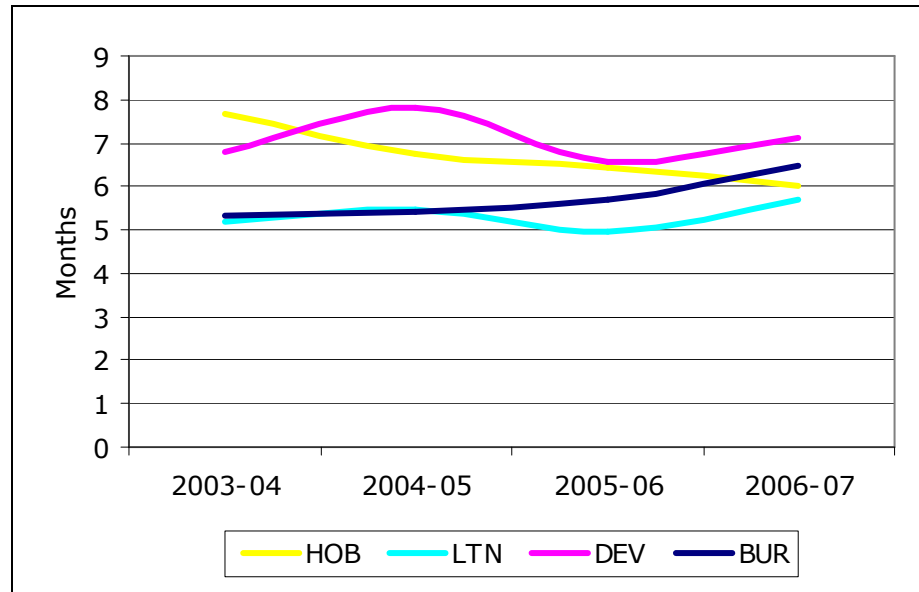
Location	No of magistrates	Proportion of magistrates	Proportion of total Criminal caseload ⁹
Hobart	7	58%	52%
Launceston	3	25%	30%
Burnie	1	8%	10%
Devonport	1	8%	8%

Table 1 indicates a reasonable mix between magistrates and caseload in the Criminal Division. These figures do not take into account civil, coronial or tribunal activities exercised by magistrates.

⁹ Estimate based on Criminal Division caseload 2003–07.

Figure 12 shows the average waiting time, duration in months, over the four-year measuring period for each registry.

Figure 12: Duration of criminal 'not minor' cases at registries



Data for Hobart has long cases for July and October 2006 removed. (see Section 1.3.1)

The above statistics do not tell the whole story because each registry has its own local conditions and considerations. Furthermore, for reasons of scale, the single-magistrate registries in Burnie and Devonport use different listing practices and do not benefit from the flexibility offered within larger registries.

Figure 12 indicates a small upward trend in average waiting times for Launceston, Burnie and Devonport. This may be a reflection of the higher magistrate to caseload ratio in Hobart as seen in Table 1.

When measuring duration of cases directly it is also possible that the reactivation of inactive cases had some negative effect. Direct measurement of average waiting times can only be useful if the time cases spend inactive is excluded from the measurement.

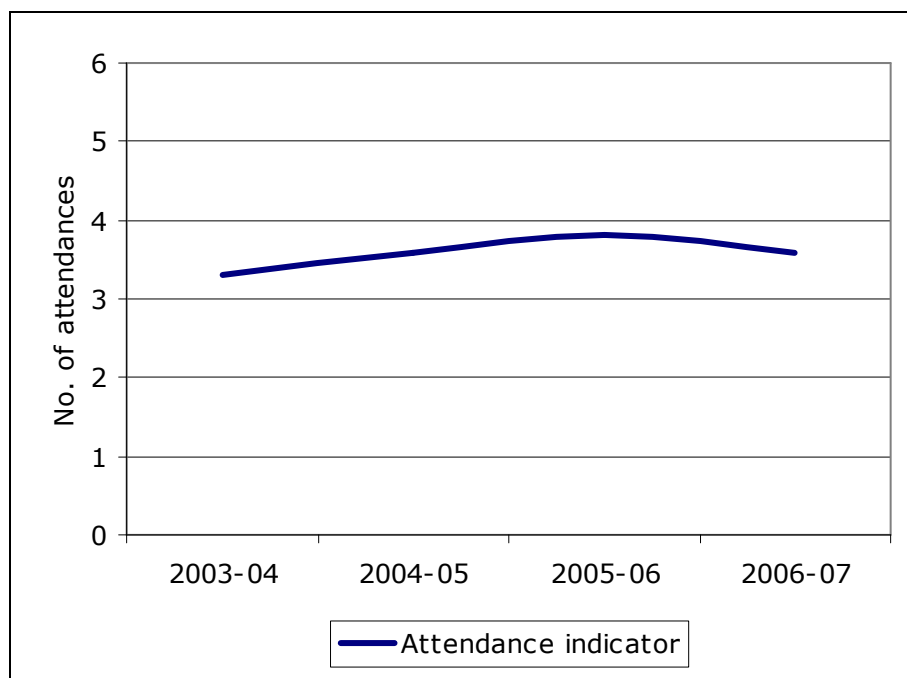
3.2 *Number of court attendances*

The number of times a defendant must appear before the Court in order to see a matter through to finality is an important contributing factor to the length of court cases. As mentioned in Figure 2, at his or her first appearance, a defendant is entitled as a matter of law to an initial adjournment. After that, complex cases may require a significant number of appearances and subsequent adjournments in order to prepare a case for trial or sentencing. The attendance indicator, as the name suggests, measures the number of court attendances needed to bring a case to finalisation.

3.2.1 Criminal Division

The attendance indicator is calculated by dividing the total number of court attendances for finalised cases in a year by the total number of finalisations¹⁰. It is described as a measure of the Court's efficiency. The attendance indicator in Figure 13 shows the performance for the period 2003–07 for the Criminal Division for 'not minor' cases.

Figure 13: Attendance indicator, 'not minor' cases – Criminal Division



As can be seen from the Figure 13, the attendance indicator for 'not minor' cases in the Criminal Division has not varied greatly over the last four years. We were advised that the Court has been focusing on reducing the number of attendances and there is some evidence in Figure 13 of recent success.

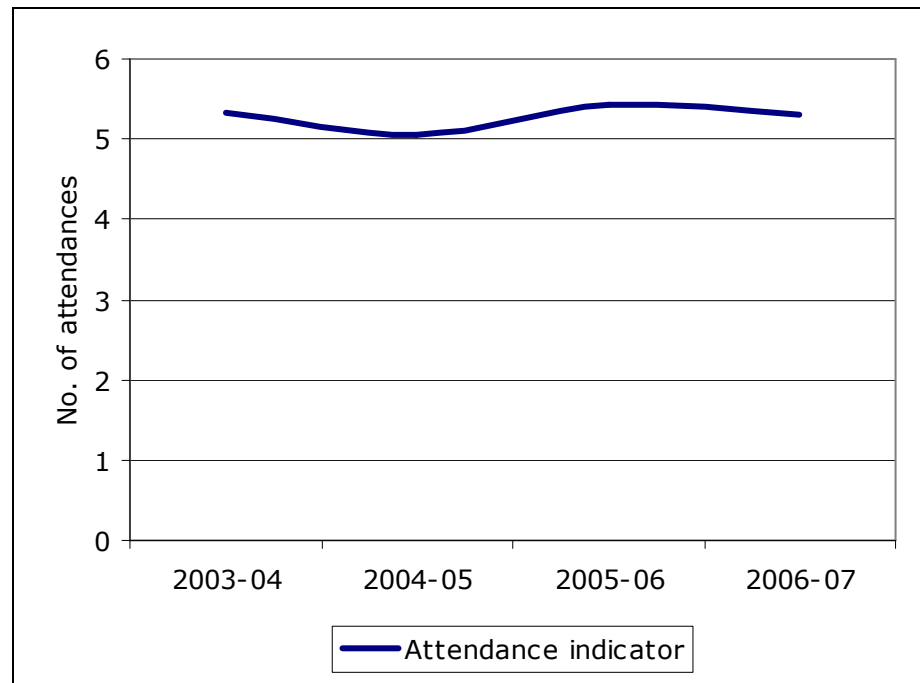
It is noted that the typical defended case profile shown in Figure 2 involves at least six appearances. The large numbers of cases that are finalised with an early guilty plea reduce the attendance indicator significantly.

¹⁰ 2007 Data Collection Manual, Court Administration Group, pp 6–27

3.2.2 Youth Justice Division

Figure 14 illustrates the average number of attendances required to finalise a case in respect of the Youth Justice Division.

Figure 14: Attendance indicator, 'not minor' cases – Youth Justice Division



Compared to the Criminal Division the attendance indicator for the Youth Justice Division was higher, with the average value over the measurement period being 5.3 appearances per 'not minor' case compared with 3.6 for the Criminal Division.

Some of the contributing factors are that:

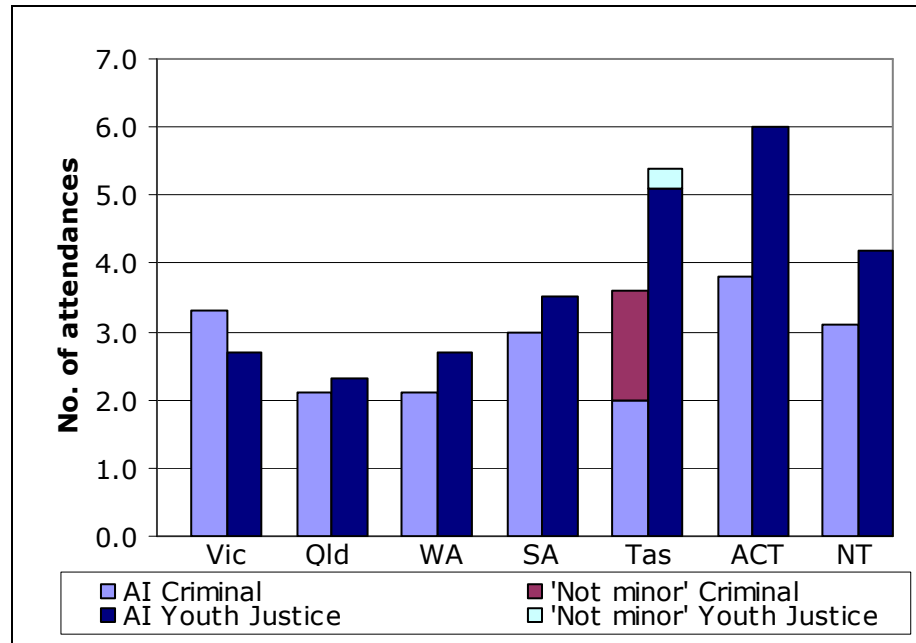
- The profile of cases in the Youth Justice division is more serious as mentioned in section 2.1. These cases are more likely to be defended because of the more serious consequences
- Cases in the Youth Justice Division require more court-ordered reports (i.e. social workers, probation officers, psychologists etc.). Examination of Youth Justice case files showed 48% of the sample had reports ordered with the resulting impact on the number of attendances compared with 12% of the Criminal Division sample.

These factors would also contribute to average case durations being found to be longer in the Youth Justice Division at around seven months compared with six months in the Criminal Division.

3.2.3 Comparison with other jurisdictions

Figure 15 shows the comparison between attendance indicators across the other states and territories for both the Criminal and Youth Justice Divisions.

Figure 15 State comparisons of attendance indicator in 2006–07



Based on data in ROGS, the attendance indicator for Tasmania in the Criminal Division is shown as 2.0. That figure includes the minor cases, most of which require fewer attendances. To improve the comparison we have extended the column to 3.6 for Tasmania to show the attendance indicator for the 'not minor' caseload. The same rationale can also be applied to the Youth Justice Division where the attendance indicator of 5.1 increases to 5.4 when only 'not minor cases' are considered.

It must be remembered that comparisons with other states and territories are difficult, as discussed in section 1.3.2.

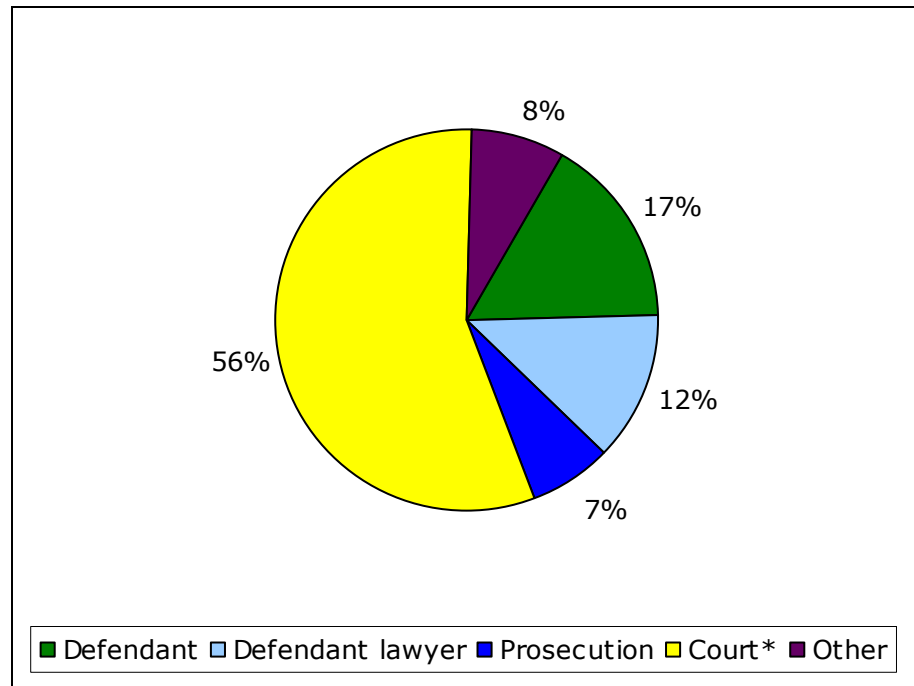
3.3 Reasons for adjournments

Reducing the number of unnecessary adjournments would result in improvements in the efficiency and economy of the Court. There are a variety of reasons why adjournments occur. As stated in Figure 2, the first adjournment is almost always given to allow the defendant to get legal advice or representation. After that, adjournments ultimately result from the required components of the litigation process not being available on the day or are a necessary part of the process.

We reviewed approximately 200 lengthy current cases and consistently found high numbers of appearances typically involving multiple non-appearances by the defendant.

Additionally, we asked the Court to conduct a survey over a one-month sample period, involving all registries, to determine the frequency of and reasons for adjournments. The survey results, indicating the source of the adjournment, are shown in Figure 16.

Figure 16: Adjournments by source



*Court adjournments exclude court intake adjournments

The following sub-sections discuss some of the more frequently noted reasons for adjournments.

3.3.1 Prosecution adjournments

The survey indicated that only 7% of adjournments were due to prosecution-initiated delays. Most often, disclosure requirements had not yet been complied with or prosecution witnesses had failed to appear. In our view, the relatively low numbers of these adjournments made it unlikely that any significant efficiency gains would result from attempts to reduce the frequency of these delays.

Although not listed under prosecution-initiated adjournments, many cases were also adjourned *sine die* at the request of the prosecution. In the majority of these cases the prosecution does not intend to proceed but would like the option to reinstate the matter in the future. In other cases, the reason was that the defendant was appearing before the Court on other matters. As an example, a defendant may have been charged with burglary on one occasion and

later be charged with car theft. The prosecution may decide that one of these matters will take precedence.

Where cases are adjourned *sine die*, they are not listed for a future hearing and are then flagged as inactive in CRIMES.

3.3.2 Defendant adjournments

The survey indicated that 17% of adjournments were caused by the defendant and the two major reasons were:

- failed to appear (78% of this group)
- failed to arrange a lawyer during an adjournment for that purpose (15% of this group).

The Court is in the process of introducing an SMS text messaging system to remind defendants of forthcoming court appearances and hopefully reduce the volume of defendant adjournments. In our view, non-appearance of defendants was the type of adjournment that offered the best possibility of reduction. Our concern, as discussed in section 4.2.2, is that CRIMES offers insufficient information to enable Court management to gauge the success of such initiatives.

The movement of cases from being active to inactive and vice versa will not make explicit the positive effects of initiatives taken, such as reducing unnecessary adjournments. The Court, as has been noted in the Introduction, will always be burdened with defendants that will wish to delay justice at every stage of the process.

Recommendation 4

We recommend that the Court continue to develop processes aimed at reducing the level of adjournments caused by non-appearance of defendants. An example might be to investigate further methods of reminding defendants of impending appearances.

3.3.3 Defendant lawyer adjournments

Other reasons for adjournment arose from the legal representative for the defendant. The Court survey, as noted in Figure 16, indicated that 12% of adjournments were caused by factors within the control of the defendant's lawyers, the most common of these being the need for the lawyer to take instructions (19% of this group) or to negotiate (41% of this group).

Lawyers requiring time to take instructions usually resulted from delays by defendants in obtaining legal defence.

Adjournments resulting from lawyers entering into negotiations were usually positive and resulted in the case moving to a resolution, often with a guilty plea to a lesser charge.

Our examination of lengthy case files revealed a consistent pattern of not-guilty pleas that were eventually changed to guilty after many appearances. From our sample, 46% involved an eventual plea of guilty. Of those cases, the average number of appearances before the change of plea was 5.2 in the Criminal Division. Measures to achieve a reduction in this figure include early case management, early discussions of pleas and the use of contest mentions as discussed in Section 3.4.

3.3.4 Court adjournments

The reasons for adjournments survey that the Court conducted indicated that 56% of adjournments were at the Court's initiative (see Figure 16) with the most frequent adjournments being for:

- trials or hearings (16% of this group)
- Court-requested report (17% of this group)
- sentencing (18% of this group).

The above adjournments are necessary steps in the process and there is no likely benefit from attempting to reduce the number of these adjournments.

Recommendation 5

We recommend that the Court record appropriate data regarding the reasons for adjournment. This retrieved data should be entered into the CRIMES system.

Recommendation 6

We recommend that the Court develop key performance indicators focussed on the types of adjournments where improvement can be made. An example would be the defendant attendance rate for cases where the SMS reminders are applied.

3.4 Contest mention system

In Hobart, the contest mention system is used as means of potentially speeding up the progress of a case by narrowing the issues in dispute, reducing the number of witnesses required and gaining an indication of the likely sentence. Of the case sample examined, 13% involved a contest mention process.

A contest mention can be used if the estimated hearing time required for a case exceeds two hours. At a contest mention, the facts and issues of a case are examined and, if appropriate, an indication of the likely sentence can be given. The defendant may then choose to change his or her plea to guilty, proceed to a hearing (trial) or the prosecution may choose to withdraw. That truncated process can save further sitting time and the requirement for witnesses to attend.

From the Court's point of view, the main saving is reduced sitting time and, because the witnesses are not required to give evidence, a shorter process is possible. The Court annually estimates savings of the contest mention process against normal hearing process as per Table 2.

Table 2: Contest mention statistics, Hobart only¹¹

Year	Referrals	% trial avoided	Sitting hours saved	Sitting time saved per referral (minutes)
2001–02 ¹²	1104	64%	1116	61
2002–03 ¹²	1343	79%	541	24
2003–04	1330	72%	706	32
2004–05	953	70%	460	29
2005–06	1222	80%	457	22
2006–07	1065	79%	897	50

We noted that the observed sitting times saved per contest mention varied substantially, which tended to reduce the credibility of the estimated savings. A clear disadvantage of contest mentions was that of the approximately 30% of cases where there was no change of plea or prosecution withdrawal, the contest mention session was an additional burden to the Court. Hearing times tend to be shorter after a contest mention, but this additional time is not included in Table 2. The savings shown in Table 2 are estimates and the true worth of using contest mentions as a means of improving timeliness

¹¹ *Magistrates Court Annual Report 2006–07*, p 53

¹² While strictly outside the audit scope, this earlier data is included for completeness.

was difficult to verify. The effectiveness of the contest mention needs to be carefully analysed, particularly as indicated by the variability in sitting times saved.

When compared across the four registries, there was no discernable improvement in waiting times evident from the use of the contest mention system.

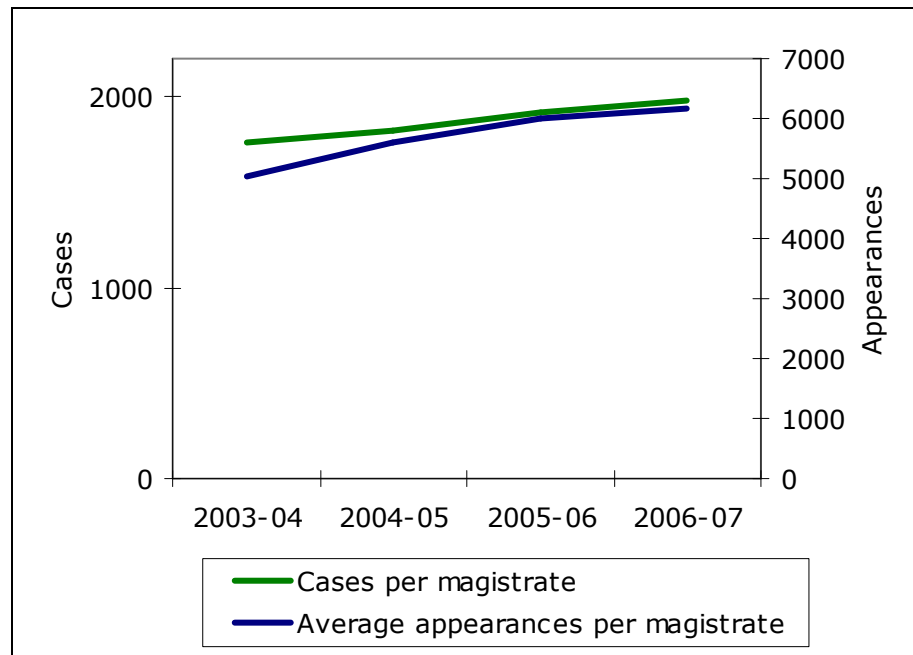
Recommendation 7

We recommend further analysis by the Court to determine whether the contest mention process provides net benefits and in which situations it should be used.

3.5 Magistrate caseloads

For the period covered by the audit, there have been twelve magistrates sitting at the Magistrates Court. The ratio of magistrates per 100 000 of population was adequate when compared to other jurisdictions. Figure 17 shows the average number of cases initiated per magistrate for ‘not minor’ cases in the Criminal Division.

Figure 17: Annual caseload per magistrate



This chart also shows the average number of appearances per year per magistrate in the Criminal Division. As is evident from Figure 17, the numbers were increasing.

3.6 Conclusion

The main determining factor affecting court waiting times was the number of attendances. Improving the attendance rate of defendants had the greatest potential to reduce unnecessary adjournments. While defendants will not always be cooperative in regard to appearing in Court, even modest increases in attendance rates would reduce waiting times.

The contest mention process is a potentially useful means of reducing waiting times. However, effective monitoring and assessment of the process is required to properly determine benefits from its use.

4 Management of court processes

4 Management of court processes

Our expectation was that the Magistrates Court would have a current strategic or operational plan in place. Such a plan should include objectives, targets, performance indicators and strategies. It should also be the basis for monitoring and reporting.

4.1 *Strategic planning*

The Magistrates Court had a Strategic Plan for 2003–06. However, it had not been updated and we were advised that this plan was still considered to be current.

The timeliness of court processes is addressed in the strategic plan's vision statement:

the achievement of professionalism and excellence in the timely, effective and efficient access to, and administration of, a cohesive system of justice for the benefit of the community; and to maintain the rule of law.¹³

Timeliness is not so directly included in the objectives and strategies which require the Court to:

- Monitor, evaluate and implement changes to listing practices and procedures to ensure that the Court remains responsive to community expectations and needs
- Provide time certainty in case listing.⁹

While the first objective includes reference to meeting community expectations, there was no specific reference to timeliness. The second objective aimed at providing time certainty in case listing rather than meeting identified timeliness targets for finalising cases.

Specific targets were not set in the goals or objectives in the strategic plan.

Recommendation 8

We recommend that the Magistrates Court update its strategic plan.

Recommendation 9

We recommend that the Court develop more measurable objectives which explicitly include timeliness.

¹³ Magistrates Court Strategic Plan 2003–06

4.2 *Monitoring and reporting*

We were concerned whether:

- The public is adequately informed about court waiting times in annual reports or other public sources of information.
- Sufficient information related to waiting times was available to Court management to facilitate internal monitoring of court processes.

4.2.1 *External reporting*

We found that annual reports dating back to 2002–03 provided information about timeliness. The introduction of CRIMES had improved the quality of data reporting from 2003–04 and led to the inclusion of the standardised performance indicators, backlog indicator, clearance rate and attendance indicator.

Despite the apparent benefits of standardised indicators for comparability with other jurisdictions, we found a number of weaknesses with the indicators as currently being measured and reported:

- The indicators currently include minor cases, which have little in common with ‘not minor’ cases and are excluded by other jurisdictions.
- Comparability with other jurisdictions was made difficult by the existence of different court structures.
- The existence of inactive cases on the database was negatively impacting the indicators. For example, clearance rates are biased downwards because of the number of cases that become permanently inactive for reasons beyond the Court’s control.

Notwithstanding these concerns, we were satisfied that the performance indicators provided had the capacity to keep the public informed about the timeliness of the Court’s system, provided changes are made to improve comparability between jurisdictions.

Recommendation 10

We recommend that reported indicators only take into account ‘not minor’ cases.

4.2.2 Internal monitoring

The externally reported information is also useful to Court management in evaluating Court performance and highlighting significant changes in waiting times. However, internal monitoring also requires:

- more detailed performance information to review performance by Court registry and category of case
- information about usage of resources and possible bottlenecks.

CRIMES provides reports of performance measures that allow effective monitoring. Such reports are provided on request from the Department of Justice. The figures provided include backlog indicators, attendance indicators and clearance rates for minor and ‘not minor’ caseloads. Reports also gave total active pending caseload, the total inactive pending caseload and total lodgements and finalisations for the 12 months previous to the date on which the report was generated.

The information was provided for the total Court as well as being broken down by registry. Reports can be generated for each division of the Court. A feature of these reports is that percentage variance is included on all indicators. Targets have been set for backlog indicators and attendance indicators based on the best performance recorded by any registry for that indicator.

In our view the information provided and the analysis performed would be much improved by considering inactive cases to be finalised to allow accurate assessment of the Court’s efficiency (see Section 1.1.2, Recommendation 1). This would allow the effects of changes in court processes to be seen directly in clearance rates, backlog indicators and measurements of active durations.

Although internal monitoring was useful in analysing the statistical situation for the Court, it suffered from not being linked to a current strategic plan with current objectives. Targets need to be set and measurement made accordingly.

Recommendation 11

We recommend that internal monitoring be based on the Court’s strategic plan and the objectives and targets therein.

4.3 Cost of court cases

The cost per finalisation is determined by counting rules that the Productivity Commission sets out. Essentially, the cost per finalisation is derived by dividing the Court's real net recurrent expenditure by the number of finalisations in a given year.

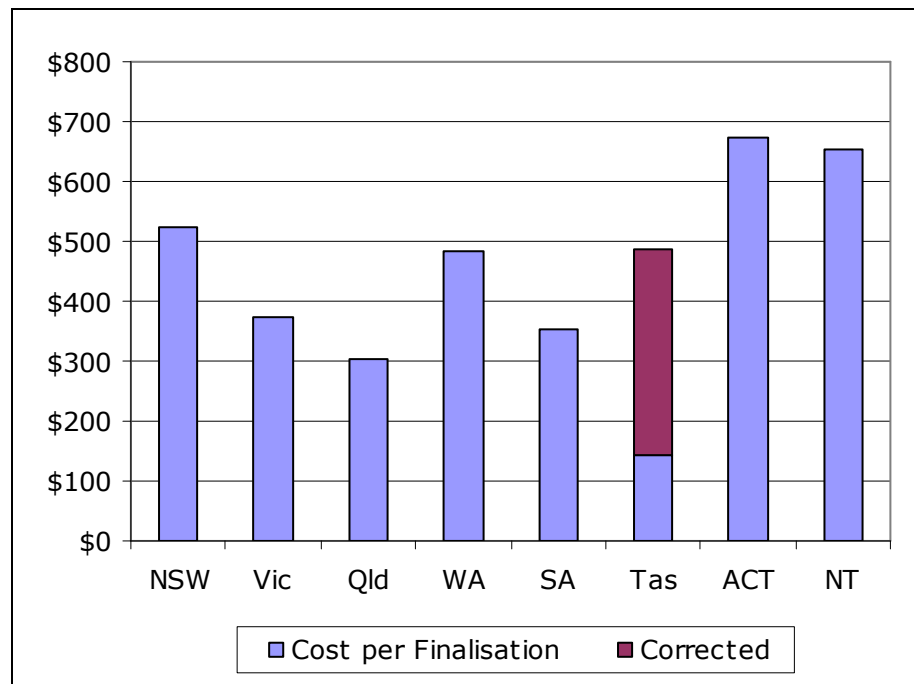
Tasmania's performance reported in ROGS is shown in Table 3.

Table 3: Cost per finalisation

	2003–04	2004–05	2005–06	2006–07
Criminal Division	\$138	\$137	\$155	\$145

Figure 18 shows the values quoted in the 2008 ROGS for cost per finalisation for the Magistrates Court between the states and territories.

Figure 18: Comparison of cost per case between states and territories in 2006–07



In Figure 18, the blue columns indicate that Tasmania has the lowest cost per finalisation figure by a wide margin. The large proportion of minor traffic cases contributes to this and results in a lack of comparability with the other jurisdictions. With the implementation of the results of the Monetary Penalties Enforcement Project in April 2008, the number of finalisations will be reduced, causing the net recurrent cost per case to increase.

Our estimate, based on the 2006–07 'not minor' finalisation figure divided into the 2006–07 net recurrent cost is¹⁴:

¹⁴ Report on Government Services 2008, Table 7A.12

$$\text{Cost per finalisation} = \$7\,541\,000 / 15\,465 = \$488$$

This figure is comparable with the costs in other jurisdictions and is represented in Figure 18 by the magenta correction to the Tasmanian column.

4.4 *Management information systems*

We wanted to ascertain whether the Court's management information systems allowed appropriate data analysis and reporting. We found that the Magistrates Court placed heavy emphasis on its paper-based file system. Court proceedings were recorded by Court clerks in such files at each session.

From the paper record, data was entered into CRIMES from where it could be processed to generate statistics for the annual reports and the Productivity Commission.

The interface of the paper system to electronic system is inefficient as currently implemented in CRIMES. According to the Magistrates Court Annual Report 2005–06, an upgrade is planned to improve the interface with other electronic systems, data extraction and management reporting.

We encourage the further development of CRIMES so that staff can directly enter Court proceedings into the system.

Recommendation 12

We recommend that the Magistrates Court further develop CRIMES to a point where court proceedings can be directly entered from court rooms.

4.4 *Conclusion*

The Magistrates Court needs to update its strategic plan. The plan should have clear and measurable objectives and performance indicators. Monitoring of statistics should be with a view to achieving targets set in the strategic plan. That information would also provide an enhanced basis for external reporting.

Further and ongoing development of technology has the potential to reap benefits for the reduction of waiting times.

5 Recent reports

5 Recent reports

Year	Special Report No.	Title
2004	-	Ex-gratia payment to the former Governor Mr R W Butler AC
2004	51	Special purpose and trust funds: Department of Health and Human Services
2004	52	Internal audit in the public sector
2005	53	Follow-up audits
2005	54	Compliance audits
2005	55	Gun control in Tasmania
2005	56	TT-Line: Governance review
2005	57	Public housing: Meeting the need?
2005	58	FBT Payment of accounts Asset management: Bridges
2006	59	Delegations in government agencies Local government delegations Overseas Travel
2006	60	Building security Contracts appointing Global Value Management
2006	61	Elective surgery in public hospitals
2006	62	Training and development
2006	63	Environmental management and pollution control act by local government
2006	64	Implementation of aspects of the <i>Build Act 2000</i>
2007	65	Management of an award breach Selected allowances and nurses' overtime
2007	66	Follow-up audits
2007	67	Corporate credit cards
2007	68	Risdon Prison: Business case
2007	69	Public building security
2007	70	Procurement in government departments Payment of accounts by government departments
2007	71	Property in police possession Control of assets: Portable and attractive items
2008	72	Public sector performance information

6 Current projects

6 Current projects

Performance and compliance audits that the Auditor-General is currently conducting:

Executive termination payments	Samples termination payments made to exiting senior executive staff across public sector entities.
Management of threatened species	Examines the measures in place to protect native species and biodiversity in Tasmania.
Complaint handling by local government	Examines processes used by local government in handling external complaints.
Hydro hedges	Examines processes for approving currency and interest hedges.
Science teaching in Tasmanian high schools	Examines the quality of science teaching in Tasmanian high schools against national and international standards.
Profitability, and economic benefits to Tasmania, of Forestry Tasmania	Evaluates Forestry Tasmania's financial and economic performance.
Food safety — eggs	Examines the effectiveness of the government's role in food safety with emphasis on egg production, retail of raw eggs and manufacture and sale of egg-related products.