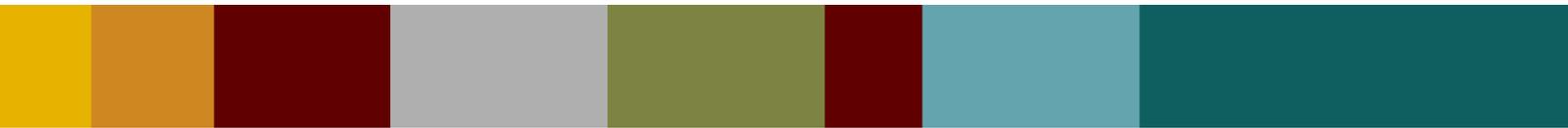


***REDUCING BACKLOG AND DELAY TOOLKIT –  
ADDITIONAL DOCUMENTATION***

Available at: <https://www.fedcourt.gov.au/pjsi/resources/toolkits>





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## Resource 1      Additional Sources of Delay

### **More System specific causes of delay:**

- no general sense of urgency
- no recognition and definition of problems
- lack of vision
- inadequate or insufficient court resources
- difficulty in locating and serving parties and witnesses
- difficulty and expense in bringing parties and witnesses to court
- a lack of transparency in how cases are prioritized
- judges and court staff lack training in sound docket, caseload and case management techniques
- inadequate communications between and among judges, lawyers and court staff
- inadequate judicial knowledge or commitment to active case management
- overly complicated or unclear rules of procedure
- all cases are treated alike and there is no early differentiation of cases on the basis of complexity and other factors that can affect pre-trial management
- a local legal culture that is unaccustomed to, or discourages management by the court of the trial and pretrial process
- problems with the management of court resources
- a general increase in the caseload

### **More Case Specific sources of delay:**

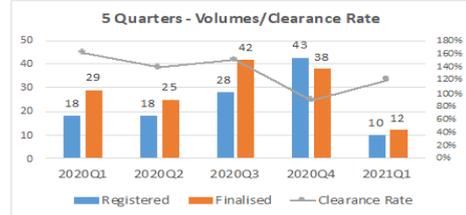
- lack of limits on time allowed for lawyers to prepare their case or move to the next stage
- lawyer tactics designed to lengthen proceedings and increase costs
- cases commenced without being sufficiently prepared
- inexperienced and poorly prepared lawyers
- unrepresented litigant

## Resource 2 Sample Quarterly Report

### ALL SUPREME COURT QUARTERLY PERFORMANCE REPORT

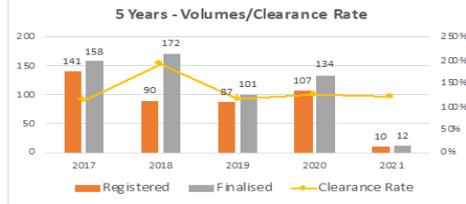
#### Case Volumes and Clearance Rate

| Previous 5 Quarters         | Registered | Finalised  | Clearance Rate |
|-----------------------------|------------|------------|----------------|
| 2020Q1                      | 18         | 29         | 161%           |
| 2020Q2                      | 18         | 25         | 139%           |
| 2020Q3                      | 28         | 42         | 150%           |
| 2020Q4                      | 43         | 38         | 88%            |
| <b>2021Q1</b>               | 10         | 12         | 120%           |
| <b>Total/clearance rate</b> | <b>117</b> | <b>146</b> | <b>125%</b>    |



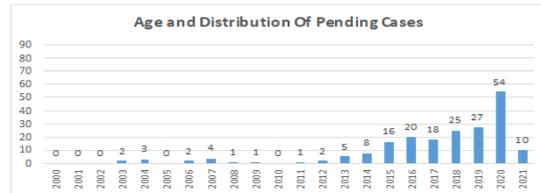
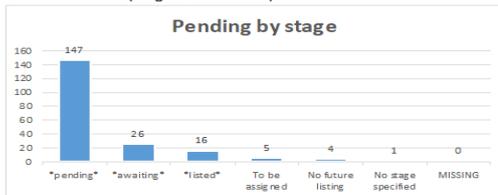
#### Calendar

| Previous 5 Calendar Years   | Registered | Finalised  | Clearance Rate |
|-----------------------------|------------|------------|----------------|
| 2017                        | 141        | 158        | 112%           |
| 2018                        | 90         | 172        | 191%           |
| 2019                        | 87         | 101        | 116%           |
| 2020                        | 107        | 134        | 125%           |
| <b>2021</b>                 | 10         | 12         | 120%           |
| <b>Total/clearance rate</b> | <b>435</b> | <b>577</b> | <b>133%</b>    |



#### Pending Workload

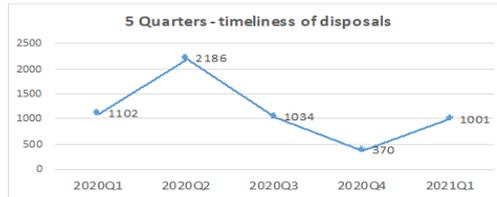
|                                 |      |                        |
|---------------------------------|------|------------------------|
| Current Pending                 | 199  | CASES                  |
| Average Age of Pending          | 1276 | DAYS                   |
| Pending to Disposal Ratio (PDR) | 1.7  | (target - less than 1) |



#### Timeliness of Disposals

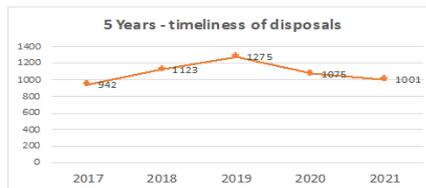
Average Age to dispose cases (days)

| Previous 5 Quarters             | Average of the 5 periods |
|---------------------------------|--------------------------|
| 2020Q1                          | 1102                     |
| 2020Q2                          | 2186                     |
| 2020Q3                          | 1034                     |
| 2020Q4                          | 370                      |
| <b>2021Q1</b>                   | <b>1001</b>              |
| <b>Average of the 5 periods</b> | <b>1069</b>              |



#### Previous 5 Calendar Years

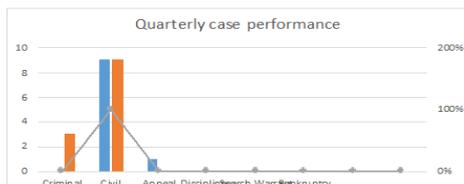
|                               |             |
|-------------------------------|-------------|
| 2017                          | 942         |
| 2018                          | 1123        |
| 2019                          | 1275        |
| 2020                          | 1075        |
| <b>2021</b>                   | <b>1001</b> |
| <b>Average of the 5 years</b> | <b>1086</b> |



#### Commentary

#### Quarterly Volumes

|                | QTR 1 2021 |           | Clearance Rate |
|----------------|------------|-----------|----------------|
|                | Registered | Finalised |                |
| Criminal       | 0          | 3         |                |
| Civil          | 9          | 9         | 100%           |
| Appeal         | 1          | 0         | 0%             |
| Disciplinary   | 0          | 0         |                |
| Search Warrant | 0          | 0         |                |
| Bankruptcy     | 0          | 0         |                |



## Resource 3 Top 8 Core Pacific Island Court Performance Indicators

PIC Top 8 Performance Indicators 

**TOP EIGHT COURT PERFORMANCE INDICATORS**

1. Clearance Rate
2. Reserved Judgments
3. Age Distribution Pending
4. Average Age to Disposal
5. Pending cases per Stage
6. Number of cases disposed per Judge
7. Pending (to) Disposal Ratio
8. Attendance Rate

1

1. Clearance Rate 

- Used to identify if the court is accumulating cases in excess of disposal levels
- Calculated:  

$$\frac{\text{Cases Disposed}}{\text{Cases Filed}} \times 100 = \%$$
- Target
  - Greater than 100%
- Outcome in Key Performance Area:
  - Overall manageability of the workload



2

2. Reserved Judgments 

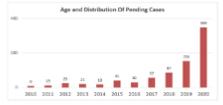
- Used to identify number and age of reserved judgments per judge and overall.
- Assists in planning targeted approach assist judge to reduce reserve judgments.
- Target
  - Low, and no delay
- Outcome in Key Performance Area:
  - Minimal delay in final adjudication.



3

3. Age Distribution Pending 

- Identifies the age of active pending cases in relation to their filing dates, to highlight areas of congestion and scale of delay
- Target
  - No LONG tail
- Outcome in Key Performance Area:
  - Delay prevention in delivery of timely justice



4

4. Average age to disposal 

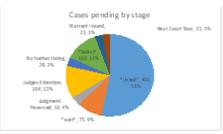
- The average time it takes to dispose of a case in days
- Target
  - Within time standards or within expectations
- Outcome in Key Performance Area:
  - Productivity, efficiency and delay management.



5

5. Pending cases per stage 

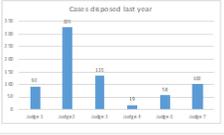
- Used to identify what stage the cases have progressed to, to highlight where delay might be
- Target
  - Significant % with Future Listing
- Outcome in Key Performance Area:
  - Continuous case progression in delivery of timely justice



6

### 6. Number cases disposed per judge

- The number and percentage of disposed cases per Judicial Officer in a year
- Target
  - Consistency
  - Within expectations
- Outcome in Key Performance Area:
  - Efficient use of resources to maintain consistent levels of judicial services.



| Judge   | Cases Disposed |
|---------|----------------|
| Judge 1 | 80             |
| Judge 2 | 200            |
| Judge 3 | 120            |
| Judge 4 | 70             |
| Judge 5 | 50             |
| Judge 7 | 80             |

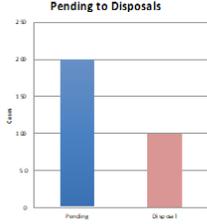


| Judge   | Percentage |
|---------|------------|
| Judge 1 | 10%        |
| Judge 2 | 25%        |
| Judge 3 | 15%        |
| Judge 4 | 9%         |
| Judge 5 | 6%         |
| Judge 7 | 10%        |

7

### 7. Pending (to) Disposal Ratio

- The Pending to Disposal (PDR) ratio tells us approximately how long it will take us to deal with the current pending caseload based on recent performance
- Target
  - Aim for our PDR to be as low as possible
    - 1 or below for a higher court
    - 0.5 or below for a lower court
- Outcome in Key Performance Area:
  - Effective forecasting to ensure timely delivery of justice.
- In this case the
  - Pending to disposal ratio is:  $200/100 = 2$
  - This equates to approx. 2 years worth of work.



| Category | Count |
|----------|-------|
| Pending  | 200   |
| Disposed | 100   |

8

### 8. Attendance Rate

- How many times parties attend a court proceeding, on average, prior to disposal
  - Sometimes called continuance rate or adjournment rate
- Target
  - Lower is better
  - BUT
  - Sometimes greater is good
- Outcome in Key Performance Area:
  - Efficiency and delay prevention



| Metric                          | Value    |
|---------------------------------|----------|
| Number of Closed Cases for Year | 646      |
| Average Number of Days          | 3.0      |
| Number of Days                  | 175 days |

9

## Resource 4      Internal and External Stakeholder Roles

### Roles Inside the Courts

- Chief Justice- to lead, guide, authorize, direct, delegate and otherwise oversee the backlog reduction project. To report the results internally and in the courts' Annual Report.
- Deputy Chief Justice and other judiciary leaders – to commit to goals, inform, train, monitor and report on progress
- Judiciary members (law trained and lay) - to actively manage their dockets and individual cases in keeping with backlog targets and time goals. To report on the progress of individual dockets towards goals.
- Registry managers and supervisors - to develop and oversee systems that assure quality and accurate processing and data management. To efficiently produce reports and work pro-actively with the judiciary to achieve time goals.
- Court staff - to provide quality, timely and accurate data input orientated toward achieving time goals
- Information technologists – to provide services to judges and court personnel to assist in the collection and reporting of backlog information.

### Roles of External Stakeholders

- Lawyers –have a high sense of obligation to the court in its duty to resolve cases fairly, promptly and economically. This includes the early preparation of cases and with minimal adjournments.
- Ministry personnel - to contribute to the development of time goals and to use resulting information about progress as one tool to manage the allocation of resources
- Prosecutors - to contribute to the promulgation of time goals and collectively commit to the achievement of time goals as being in the paramount interests of justice. To ensure early preparation of cases and a minimal number of adjournments.

## Resource 5 Facilitator Package

### About this Facilitator Package

The goal of this facilitator package is to inspire and support trainers to conduct workshops on Backlog and Delay Reduction.

The Package contains suggested content and format for a three- day workshop:

- Trainers Guide
- Model Workshop Agenda
- Template to record names of workshop participants
- Model Backlog and Delay Reduction Power Point presentation for a three day workshop
- Pre and post workshop evaluation

### Trainers Guide

#### Background

This workshop plan is designed for PJDP National Co-ordinators, trained trainers and court leaders to assist in the conduct of workshops relating to the *Reducing Backlog and Delay Toolkit*.

#### Training Aims

The aim of the workshops and training is to inform, educate, problem solve and strategize with respect to reducing backlog and delay. With this information the participants will have an increased knowledge and ability to devise a backlog reduction plan using this toolkit and to generally address delay.

#### Timing

Three days should be set aside for the:

- Introduction of the project
- Learning about timeliness, delay and backlog
- Technical training required for the backlog reduction plan
- Development of an implementation plan
- Development of monitoring and reporting

Participant time is valuable. Workshops should be conducted with maximized efficiency and the session schedule times adhered to.

#### Session Programmes

A suggested agenda and materials for the three days of workshops are attached.

#### Training Methods

Methods used are:

- Informative sessions presented by the facilitator using power point presentations as a training aid.
- Group based learning methods and discussion to elicit the current situation, experiences and consensus for planning
- Self-directed and facilitated group methods to develop the plan.

## **Training Requirements and Materials**

- The **venue** should provide sufficient room for participants to move about freely, with a large table with sufficient space to accommodate all members of the Case Management Team. The Bar Table in the courtroom may be suitable if it is available. The room should be well ventilated and if possible, air-conditioned.
- Water, tea, coffee, sweets and biscuits can be provided if funds are available.

Workshops require, where available, the following **training aids**:

- a PowerPoint projector
- projection screen
- laptop computer
- a whiteboard & whiteboard markers
- flip charts on easels
- flip chart markers in different colours
- masking tape
- extension cord
- power board
- pens and paper

## **Assistance and Organization**

As the plan is produced it needs to be recorded. This can be done on paper or using a laptop. General notes should also be kept of important outcomes.

## **Budget**

Optional costs are:

- Refreshments
- Venue hire if using an outside venue
- Hire of training aids if necessary

Judicial Officer participation should be scheduled in advance so that court commitments can be accommodated.

## **Training Evaluation**

An evaluation of training and workshop sessions should be completed by participants. The results should be sent out to court managers to help the continuous improvement of your court's training and development capacity. A draft evaluation is in this package.

## **Accompanying Materials**

- Session agenda with learning goals
- PowerPoint slides
- The Backlog and Delay Reduction Toolkit and Additional Materials.

**PACIFIC JUDICIAL DEVELOPMENT PROGRAMME**  
**REDUCING BACKLOG AND DELAY WORKSHOP AGENDA**

The workshop objective is to help the court meet its obligation to conduct of a *fair trial in a reasonable time* and to use this knowledge to reduce delay and improve the timeliness of court services.

The intention is to strengthen systems and processes to reduce delay by ensuring all judges and staff have the knowledge and understanding of delay and how to reduce backlogs.

The output will be a backlog reduction plan which aims to assist the court reduce the number of cases unnecessarily delayed and to help eliminate delay in caseflow.

After this workshop participants will be able to:

- ✓ Successfully employ delay reduction principles and methods in their court roles
- ✓ Use the toolkit to find information and use as a practical reference in their backlog reduction activities
- ✓ Use their delay reduction plan to manage backlog reduction activities and resource.

Facilitator Name:

Resources:

- Backlog and Delay Reduction Toolkit
- Backlog and Delay Reduction Additional Materials
- PowerPoint Presentation: Backlog and Delay Reduction
- Resources and reference on the website of the [Pacific Judicial Development Programme](#)

TK = Toolkit

| Session      | Time              | Topic  | Topics and Activities  |
|--------------|-------------------|--|--|
| <b>DAY 1</b> |                   |  |  |
| 1            | 9am - 10.30am     | <b>Session One – Opening &amp; Introduction</b> <ul style="list-style-type: none"> <li>• Introduction of facilitators and participants</li> <li>• Organizational Issues</li> <li>• Pre-workshop evaluations</li> <li>• Assumptions and Expectations Overall</li> <li>• Questions and answers</li> <li>• The overall goal of session one is to convey the importance of efficient and timely justice</li> </ul> <p>Ref: Toolkit Chapter One</p> | <ul style="list-style-type: none"> <li>• Know what to expect and the outcomes sought</li> <li>• Understand the workshop objectives</li> <li>• Introduce and familiarize participants with the Toolkit</li> <li>• Know the Importance of delay reduction (TK page 1)</li> <li>• Understand how delay and case management are related</li> <li>• Assess timeliness in your court – a group exercise using the Timeliness indicator checklist in the additional materials to the toolkit page A-14</li> </ul> |
|              | 10.30am - 11.00am | Morning Tea  |  |
| 1            | 11am - 12.30am    | <b>Session One – continued</b>   | Session One - continued  |
|              | 12.30pm - 1.30pm  | Lunch  |  |
| 2            | 1.30pm - 3.00pm   | <b>Session Two</b> <ul style="list-style-type: none"> <li>• The overall goal of session 2 is to convey the importance of</li> </ul>  | <ul style="list-style-type: none"> <li>• Learn definitions of delay</li> <li>• Understand timeliness obligations</li> </ul>  |

|              |                   |  |  |
|--------------|-------------------|--|--|
|              |                   | <p>understanding the critical role and challenges of measuring performance to identify delay</p> <p>Ref: TK Chapter Two p 4</p>  | <ul style="list-style-type: none"> <li>• Identify sources of delay in your court (TK page 5)</li> <li>• Know interacting measures to address delay and roles</li> <li>• Be able to achieve success</li> <li>• Discover timeliness indicators and the monitoring framework</li> </ul>   |
|              | 3pm to 3.30pm     | Afternoon Tea  |  |
| 2            | 3.30pm – 4.45pm   | <b>Session Two Continued</b>   | Session Two - continued  |
|              | 4.45 – 5pm        | Close of Day One   |  |
| <b>DAY 2</b> |                   |  |  |
| 3            | 9am - 10.30am     | <p><b>House Keeping Questions and Answers</b></p> <p><b>Session Three</b></p> <ul style="list-style-type: none"> <li>• The overall goal of session 3 is to help participants understand that backlog reduction requires coordinated activities and to introduce the six step model in the toolkit.</li> </ul> <p>Ref: TK Chapter Two p 7</p> | <ul style="list-style-type: none"> <li>• Mastering the <i>Six Steps to Backlog Reduction</i> <ol style="list-style-type: none"> <li>1. Preparation</li> <li>2. Create an inventory</li> <li>3. Clear &amp; create an active case list</li> <li>4. Intense pre-trial management</li> <li>5. List and hear trials</li> <li>6. Monitor &amp; report</li> </ol> </li> </ul> <p>Using the toolkit, small groups investigate each step and report back</p> |
|              | 10.30am - 11.00am | Morning Tea  |  |
| 3            | 11am – 12.30pm    | <p><b>House Keeping Questions and Answers</b></p> <p><b>Session Three Continued</b></p>  | <ul style="list-style-type: none"> <li>• Mastering the <i>Six Steps to Backlog Reduction continued</i></li> </ul>  |
|              | 12.30pm - 1.30pm  | Lunch  |  |
| 3            | 1.30pm – 3.30pm   | <b>Session Three Continued</b>   | <p>Session Three – continued</p> <ul style="list-style-type: none"> <li>• Additional Delay Reduction Measures <ul style="list-style-type: none"> <li>▪ Ending the cycle of adjournments</li> <li>▪ Quality of Lawyering</li> <li>▪ Time Goals</li> <li>▪ Policy and Procedure</li> <li>▪ Equitable Case Assignment</li> <li>▪ Filing Systems</li> <li>▪ Technology</li> </ul> </li> </ul>  |
|              | 3pm to 3.30pm     | Afternoon Tea  |  |
| 3            | 3.30pm – 4.45pm   | <b>Session Three Continued</b>   | Session Three – continued  |
|              | 4.45 – 5pm        | Close of Day Two   |  |

| <b>DAY 3</b>                           |                   |   |  |
|--|-------------------|---|--|
| 4                                      | 9am - 10.30am     | <p><b>House Keeping Questions and Answers</b></p> <p><b>Session Four</b></p> <ul style="list-style-type: none"> <li>The overall goal of session 4 is to provide participants with an opportunity to identify problems or challenges affecting the timeliness of dispositions and services and to develop a plan of action to help address these problems and reduce backlogs.</li> </ul> <p>PPT Slide 49 &amp; 50</p> | <ul style="list-style-type: none"> <li>Identification of the timeliness problem or challenges (Facilitated group work)</li> <li>Identification of the data that defines the problem (Facilitated group work)</li> <li>Development of a goal (Facilitated group work)</li> <li>Development of a backlog reduction plan for your court (Facilitated group work)</li> </ul> |
|  | 10.30am - 11.00am | Morning Tea   |  |
| 4                                      | 11am – 12.30pm    | <p><b>House Keeping Questions and Answers</b></p> <p><b>Session Four</b></p>  | <ul style="list-style-type: none"> <li>Development of a backlog reduction plan for your court continued.</li> </ul>  |
|  | 12.30pm - 1.30pm  | Lunch   |  |
| 4                                      | 1.30pm – 3.30pm   | <b>Session Four Continued</b>   | <p>Session Four– continued</p> <ul style="list-style-type: none"> <li>Development of a backlog reduction plan for your court (Group work)</li> </ul>   |
|  | 3pm to 3.30pm     | Afternoon Tea   |  |
| 5                                      | 3.30pm – 4.45pm   | <b>Closing Session</b>  | <ul style="list-style-type: none"> <li>Review of workshop objectives</li> <li>Questions and answers</li> <li>Next steps</li> <li>Post workshop evaluation</li> </ul>   |
|  | 4.45 – 5pm        | Workshop Close  |  |
| <b>THANKYOU FOR YOUR PARTICIPATION</b> |                   |   |  |

## Reducing Backlog and Delay List of Workshop Participants

**Date:**

**Venue:**

| Title        | Name | PIC/State | Position | Email |
|--------------|------|-----------|----------|-------|
|              |      |           |          |       |
|              |      |           |          |       |
|              |      |           |          |       |
|              |      |           |          |       |
|              |      |           |          |       |
|              |      |           |          |       |
|              |      |           |          |       |
|              |      |           |          |       |
|              |      |           |          |       |
|              |      |           |          |       |
| Facilitators |      |           |          |       |
|              |      |           |          |       |
|              |      |           |          |       |

## PJDP – BACKLOG & DELAY REDUCTION Pre & Post Training Questionnaire

### Pre-training Questionnaire

Please answer the following questions. This questionnaire will help the adviser understand your particular training needs during this time goals workshop. It will also help us to assess what you have learned from the training at the end of the course.

**Question 1:** Why is it important for courts to avoid delay?

---

---

---

**Question 2:** What causes delay?

---

---

---

**Question 3:** What is 'a backlog'?

1.

---

2.

---

3.

---

**Question 4:** List two indicators that you might use to monitor timeliness in your court:

1.

---

2.

---

Please rate your level of knowledge and understanding before this time goals workshop regarding the following matters by ticking/checking ONE square per question only:

**Question 5:** Your understanding of the steps in backlog reduction.

*No Understanding*

*Limited Understanding*

*Good Understanding*

*Excellent Understanding*

---

**Question 6:** Your knowledge of how to conduct an inventory:

*No Knowledge*

*Limited Knowledge*

*Good Knowledge*

*Excellent Knowledge*

---

**Question 7:** Your understanding of how to clear a backlog:

*No Understanding*

*Limited Understanding*

*Good Understanding*

*Excellent Understanding*

---

**Question 8:** Your knowledge of the indicators used for monitoring delays:

*No Knowledge*

*Limited Knowledge*

*Good Knowledge*

*Excellent Knowledge*

---

**Question 9:** Your knowledge of measures to prevent delay:

*No Knowledge*

*Limited Knowledge*

*Good Knowledge*

*Excellent Knowledge*

---

**THANK YOU VERY MUCH**

## **PJDP - BACKLOG & DELAY REDUCTION**

### **Post-training Questionnaire**

Please answer the following questions. This questionnaire will help the adviser assess what you have learned from the Time Goals workshop.

**Question 1:** Why is it important for courts to avoid delay?

.....

.....

.....

**Question 2:** What causes delay?

.....

.....

.....

**Question 3:** What is 'a backlog'?

1.

.....

2.

.....

3.

.....

**Question 4:** List two indicators that you might use to monitor timeliness in your court:

1.

.....

2.

.....

**See over**

Please rate your level of knowledge and understanding after this time goals workshop regarding the following matters by ticking/checking ONE square per question only:

**Question 1:** Your understanding of the steps in backlog reduction.

No Understanding

Limited Understanding

Good Understanding

Excellent Understanding

**Question 2:** Your knowledge of how to conduct an inventory:

No Knowledge

Limited Knowledge

Good Knowledge

Excellent Knowledge

**Question 3:** Your understanding of how to clear a backlog:

No Understanding

Limited Understanding

Good Understanding

Excellent Understanding

**Question 4:** Your knowledge of the indicators used for monitoring delays:

No Knowledge

Limited Knowledge

Good Knowledge

Excellent Knowledge

**Question 5:** Your knowledge of measures to prevent delay:

No Knowledge

Limited Knowledge

Good Knowledge

Excellent Knowledge

**Question 6:** Having completed this Workshop, overall how confident do you feel in your understanding of how to reduce backlog & delay?

← | | | | →  
Less Confident Same Confidence More Confident Much More Confident

**Question 7:** Were the aims of the Workshop and sessions clear, and were they achieved?

← | | | | →  
Not Achieved Reasonably Achieved Substantially Achieved Fully Achieved

**Question 8:** Was the information presented practical and *useful* to you in your role?

←-----|-----|-----|----->

*Not Useful*                      *Limited Usefulness*                      *Quite Useful*                      *Extremely Useful*

**Question 9:** Did you find that the facilitator and the presentations were effective and allowed for adequate participation, discussion, practical presentations, and interaction?

←-----|-----|-----|----->

*Not Effective*                      *Limited Effectiveness*                      *Quite Effective*                      *Extremely Effective*

**Question 10:** Overall, were you *satisfied* with this Workshop?

←-----|-----|-----|----->

*Not Satisfied*                      *Reasonably Satisfied*                      *Quite Satisfied*                      *Extremely Satisfied*

**Question 11:** Briefly describe the most useful experience(s) of the Workshop:

.....

.....

**Question 12:** Briefly describe the least useful experience(s) of the Workshop:

.....

.....

**Question 13:** Do you wish to offer any other comments or suggestions for improvements for the time goals toolkit or workshops?

.....

.....

**THANK YOU VERY MUCH**

## Resource 6 Slide Presentation of Backlog & Delay Reduction

**PACIFIC JUDICIAL DEVELOPMENT PROGRAMME**

Welcome to the  
**Delay and Backlog Reduction Workshop**

Facilitator:

**The Programme**

Pacific Judicial Development Programme (PJDP):

- PJDP Phase 2:
  - Started: July 2010
  - Ends: June 2015
- Funded by the New Zealand Aid Programme



**The Programme**

The PJDP:

- Works with partner courts in 14 Pacific Island Countries
- Implementing 12 projects and over 80 activities from July 2013 to June 2015
- After July 2015: likely further support → *Pacific Judicial Support Programme*

**Backlog & Delay Reduction**

Workshop Objectives

1. To the conduct of a fair trial in a **fair reasonable time time**
2. To identify **acceptable & unacceptable delay**
3. To **develop an action plan** for your court to reduce backlogs and address delay

**Backlog & Delay Reduction**

Background to Workshop

General observations in some courts:

1. **Little predictability** about how long a case might take
2. **Serious delay**, particularly related to land disputes
3. **Little transparency** in prioritising cases
4. **Too many adjournments**, in some jurisdictions
5. **Committed judges and court staff**

**Backlog & Delay Reduction**



The Backlog and Delay Reduction Toolkit was developed with the generous support of the Supreme Court of Vanuatu

### Backlog & Delay Reduction

#### Importance of Delay Prevention

Citizens lose confidence in justice if they see that courts function too slowly.

This can lead to:

- civil unrest
- decline in investment
- unnecessary hardship

### Backlog & Delay Reduction

#### Vision for Case Management

1. Transparent
2. Consistent
3. Reliable
4. Accountable
5. Timely
6. Fair

### Backlog & Delay Reduction

#### Assessing timeliness in your court

Group work exercise:

*Discuss and complete the checklist for timeliness*

*You will find the checklist in the additional materials to the toolkit – Annex 13*

*Prepare to report back on one of the indicators*

### Backlog & Delay Reduction

#### Timeliness Checklist

PJDP TIMELINESS INDICATORS CHECKLIST

| INDICATOR ONE: ESTABLISHED GOALS FOR DURATION OF PROCEEDINGS        |   | Yes | No | Notes |
|---|---|-----|----|-------|
| i.  | Does your court have time goals that cover most case types (e.g. civil, commercial, children's, domestic violence, criminal, urgent matters, land ownership, land heirship)?    |     |    |       |
| ii.   | Is there a commonly shared commitment to the goals?   |     |    |       |
| iii.  | Do all cases have a date for next action?   |     |    |       |
| iv.   | Are court users (parties, lawyers, others) able to predict the length of proceedings in your court?   |     |    |       |
| INDICATOR TWO: INFORMATION AND DATA ABOUT THE LENGTH OF PROCEEDINGS |   |     |    |       |
| i.  | Does your court know the average duration of cases in the pending caseload? (either through random sampling of case files, or from an electronic information management system) |     |    |       |
| ii.   | Can your court identify cases exceeding time goals?   |     |    |       |
| iii.  | Is case information accurate and up to date on the file and in the indexes?   |     |    |       |
| iv.   | Is there a system for personnel to account if case information is not accurate and reports not completed?   |     |    |       |
| v.  | Is caseload and docket information available to court personnel and judges electronically and on a network, or through monthly reports?   |     |    |       |

### Backlog & Delay Reduction

#### Timeliness Checklist

| INDICATOR THREE: CLEAR RESPONSIBILITY FOR MONITORING TIMELINESS |   | Yes | No | Notes |
|---|---|-----|----|-------|
| i.  | Is there a registrar or chief clerk responsible and accountable for monitoring regularly the attainment of time goals and reporting of delays?  |     |    |       |
| ii.   | Do Chief Justices and judges regularly receive reports that present: the number of pending cases, the stage of each case, the age of pending cases, those exceeding time goals and the average age of disposed cases? |     |    |       |
| iii.  | Are the reports used by judges to manage their individual docket?   |     |    |       |
| iv.   | Are reports used by the Chief Justice and court leaders to help judges meet time goals?   |     |    |       |
| v.  | Does the court have few or no cases pending for more than the maximum length of time established by its own time goals?   |     |    |       |
| vi.   | Are action plans developed and implemented when delay is identified?  |     |    |       |
| INDICATOR FOUR: MAINTAINING RELEVANCE                           |   |     |    |       |
| i.  | Are time goals reviewed annually to ensure they are relevant?   |     |    |       |
| ii.   | Does the court present information in Annual Reports about achieving time goals?  |     |    |       |
| iii.  | Are stakeholders informed about the attainment of time goals and areas that require attention?  |     |    |       |
| iv.   | Is the contributions of individuals who help reach time goals acknowledged?   |     |    |       |

### Backlog & Delay Reduction

#### Defining Delay

*"The time, other than that required to properly obtain, present and weigh the evidence, law and arguments".*

Concept:

- acceptable delay and unacceptable delay

### Backlog & Delay Reduction

#### Defining Backlog



A **backlog** can be defined as those cases pending that exceed (are older than):

- *the time goals applicable to that category of case or,*
- *the age of cases considered to be exceeding an acceptable age.*

### Backlog & Delay Reduction

#### Obligations Regarding Timeliness



Concept 1:

*Justice delayed is justice denied*

### Backlog & Delay Reduction

#### Obligations Regarding Timeliness



Concept 2:

*The court is required to ensure the protection of individual's legal rights*

### Backlog & Delay Reduction



Avoiding delay is particularly important for people in custody.

### Backlog & Delay Reduction

#### Objective of the Court



*"... the timeliness of judicial proceedings, which means cases are managed and then disposed in due time, without undue delays."*

European Commission for the Efficiency of Justice, Compendium of 'best practices' on time management of judicial proceedings

### Backlog & Delay Reduction

#### Obligations to Prevent Delay



#### International Covenant on Civil and Political Rights

#### Article 14

1. the right to a fair trial
2. the right to trial **without undue delay**
3. the right to an independent and impartial tribunal.

## Backlog & Delay Reduction

### Legal Obligations



#### Bangalore Principles of Judicial Conduct 2002

##### Value 6 Competence and Diligence

6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with **reasonable promptness**.

!!

## Backlog & Delay Reduction

### Legal Obligations



#### European Convention on Human Rights

##### 7. Article 6, paragraph 1

.. everyone is entitled to a fair and public hearing **within a reasonable time** by an independent and impartial tribunal established by law.

!!

## Time Goals

### International Framework for Court Excellence



INTERNATIONAL FRAMEWORK FOR COURT EXCELLENCE

**THINKING OF IMPLEMENTING  
THE INTERNATIONAL FRAMEWORK  
FOR COURT EXCELLENCE?** 2nd Edition, March 2013

!!

## Backlog & Delay Reduction

### Relationship to "Court Excellence"



#### Timeliness

##### 4. Efficient and Effective Court Proceedings and Processes (4.1, 4.2, 4.3) assess the courts' ability to:

- Manage cases against established benchmarks of **timely case processing**
- Enable people to get their business with the court done in a **reasonable time**

!!

## Backlog & Delay Reduction

### Reasonable Time



A 'reasonable time' is determined by the amount of time needed to fairly, necessarily and conveniently complete a case or case event.

!!

## Backlog & Delay Reduction

### Reasonable Time



A 'reasonable time' can be determined by factors such as the:

1. complexity of the case
2. behaviour of the parties
3. existence of reasons for special diligence
4. others?

!!

### Backlog & Delay Reduction

#### Common Sources of Delay

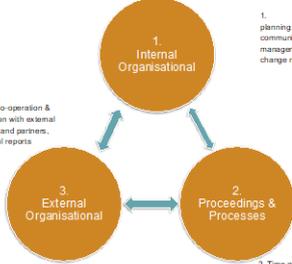


Discuss and make a list of common sources of delay in your court?

!!

### Backlog & Delay Reduction

#### Interacting Measures

1. Leadership, teamwork, planning, resources, policy, communication, information management, reporting, technology, change management, training.

2. Time management goals, active efficient pre-trial procedures, mediation, tracking, efficient scheduling and adjournment policies

3. Co-operation & communication with external stakeholders and partners, media, annual reports

!!

### Backlog & Delay Reduction

#### Roles - internal



- ✈ **Chief Justice** - to lead, guide, motivate, monitor
- ✈ **Judges** – to intensely manage pre-trial stages, clear out stale matters, efficiently manage lists, vigorous implementation of adjournment policies
- ✈ **Registrar** – accountable for all registry services assure quality caseload, hear some preliminary applications, identify delays, manage information (inc. computers), provide accurate and timely report, guarantee service, court excellence
- ✈ **Registry & Court Staff** - to assure up-to-date accurate information, quality services to judges & public, records & archive management and filing

!!

### Backlog & Delay Reduction

#### Roles - external



- ✈ **Lawyers** (public & private) - consult, prepare, contribute and commit
- ✈ **Ministry** – support, provide and manage resources
- ✈ **The Public** - to be informed of progress and report
- ✈ **Other government agencies** - to work together to reduce backlogs and prevent delay

!!

### Backlog & Delay Reduction

#### Focus for Success



1. **Committed leadership** at all levels
2. **Teamwork**, co-ordination and communication
3. **Using information** about the age structure of the caseload
4. **Controlling** case progression, the listings and adjournments
5. **Effective caseload management**: the coordination of court processes and resources to move cases towards disposition
6. **Effective case management**: pre-trial, scheduling, trial and judicial decision-making
7. **Continually** identifying backlogged cases

!!

### Backlog & Delay Reduction

#### Timeliness Indicators



Refer to page 13 of the Toolkit:

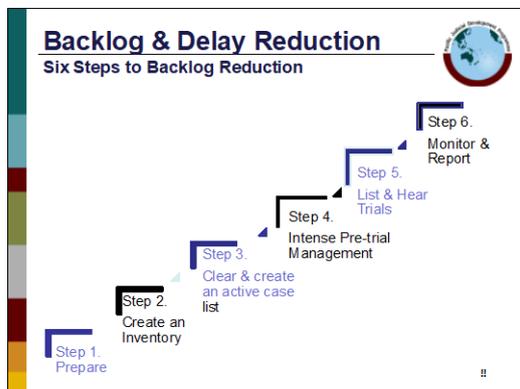
1. Clearance rate
2. Age distribution of pending caseload
3. Average age of pending caseload
4. Number & age of reserve judgments
5. Total number and percentage within & exceeding time goals (overall and per judge)
6. Number and how disposed cases were completed
7. Average age of disposed cases

!!

### Backlog & Delay Reduction Monitoring Framework

| Outcome  | Indicator   |
|--|---|
| Low level of aged cases in pending case profile            | i. Clearance rate – the number of outgoing cases as a percentage of the number of incoming cases  |
|  | ii. Age distribution of the pending caseload – the age of active cases that are pending before the court measured as the number of days from filing until the time of measurement (see annex) per case type |
| Timely Judgments   | iii. Number of reserve judgments outstanding, noting especially those over three months.  |
| Prevention of delay in pending caseload                    | iv. Total list of cases exceeding time goals in pending caseload - for Chief Justice.   |
|  | v. List of cases exceeding time goals in pending caseload in the docket of each judge - for each judge only.  |
| Delay prevention through monitoring of timely dispositions | vi. The number of disposed cases per case type.   |
|  | vii. Average age of disposed cases.   |
| Achievement of Time Goals                                  | viii. The percentage of cases disposed or otherwise resolved within established time frames.  |
|  | ix. Comparisons of above over time to provide a trend report.   |

- ### Backlog & Delay Reduction Other indicators
1. International Organisations Report e.g.: Transparency International, United Nations
  2. An absence of reports about the number and age of cases
  3. A sense there are aged cases but no one talks about it
  4. Written and oral complaints from parties and lawyers
  5. Malicious damage to court property
  6. Negative media attention
  7. Others?



- ### Backlog & Delay Reduction Step 1 - Prepare
1. Leaders **set goals** and make **plans**
  2. **Establish** a backlog reduction **team**, create a plan and project manage
  3. **Consult** stakeholders
  4. **Communicate** consistently
  5. Maximise the use of existing **technology**
  6. Educate and **train** judges and court personnel

- ### Time Goals Planning
- #### Basics of a Backlog Reduction Plan
- Vision:** To administer quality justice fairly, efficiently and without undue delay
- Goal:** To clear all unduly delayed cases older than 2012
1. *Strategy*
  2. *Activity*
  3. *Responsible*
  4. *Time – beginning & end*
  5. *Resources Needed*
  6. *Success Indicator*
  7. *Comments*

- ### Backlog & Delay Reduction Step 2. Create an Inventory
1. Conduct an **inventory**
  2. **Analyse** inventory **results**, determine priorities and ensure each case has a date for a future event

### Backlog & Delay Reduction



Accurate and up to date data entry is vital in preventing delay

1

### Backlog & Delay Reduction

#### Step 3 Clear & Create an Active Case List

1. Clean up and **clear** the 'active pending' caseload
2. Create an **active** and **inactive** pending caseload list
3. Give **priority** to the completion of **reserved judgments**

2

### Backlog & Delay Reduction




Check all cupboards and remove opportunities for delay to occur

3

### Backlog & Delay Reduction




Account for every file and know their case stage

4

### Backlog & Delay Reduction

#### Step 4 Intense Pre-Trial Management

1. Hold **status conferences** and create individual case **resolution schedules**
2. Maximise the use of **alternative dispute resolution**
3. Intensively manage **land matters**
4. Develop a **consistent** approach for the **prioritisation** of backlog cases
5. **Re-organise** existing **resources** or acquire additional resources to focus on backlog cases

5

### Backlog & Delay Reduction

#### Land Disputes – The Island Court of Vanuatu

**Strategy!**

- Magistrates appointed to specifically manage and hear land matters
- Full case audit conducted
- Conferences held to resolve 100 cases!
- Conduct workshop/training!
- Increased judicial control!
- Sanctions imposed for unnecessary delay
- Continuous monitoring!
- Active Court Clerks!



• Clerks' ended a Land Case Management Workshop



**Time Goals**  
Next Session - Develop Your Plan



*Define the Problem*

- Step 1. Define the problem in measurable terms
- Step 2. Identify the data that defines the problem
- Step 3. Develop a Backlog Reduction Plan
- Step 4. State a goal that solves the problem

13

**Time Goals**  
Next Session - Develop Your Plan



**Backlog Reduction Plan**

*Vision:*

**Goal: To ....**

1. *Strategy*
2. *Activity*
3. *Responsible*
4. *Time – beginning & end*
5. *Resources Needed*
6. *Success Indicator*
7. *Comments*

14

**Backlog & Delay Reduction**  
Reviewing our workshop objectives



1. To strengthen efforts to dispose of each case **fairly** and in a **reasonable time time**
2. To identify **acceptable and unacceptable delay**
3. To develop an **action plan** for your court to reduce backlogs and address delay

15

**Backlog & Delay Reduction**



**END  
THANKYOU**

16

## Resource 7      Sector Workshop Discussion Topics

The Vanuatu Supreme Court used the following list to guide discussions with judges and lawyers concerning litigation and delay:

- Court resources – judges, masters, recording of proceedings, accommodation etc.
- Rules of Court – effectiveness and deficiencies

Expectations of:

- What should be done before a claim is commenced
- Alternative Dispute Resolution
- What information the court requires when a claim is commenced
- Service of claim
- Urgent claims and relief
- What should be done before any: conference (1<sup>st</sup>, 2<sup>nd</sup> etc.), mention, interlocutory etc.
- What is required in submissions
- Discovery, inspections, interrogatories, answers and requests for reply to further and better particulars
- Communication with the judge/Court
- Punctuality and lawyer attendance for court events
- Dealing with issues without the parties needing to attend court
- Specific proceedings: admiralty and maritime, adoption, bail, civil, civil enforcement, civil appeal, etc.
- Should there be a policy about adjournments
- Should there be a policy about show cause why a matter should not be struck out if no action taken according to the rules
- Should there be time targets
- Should there be a policy about complaints and queries on delayed reserved judgments

Lawyers

- Education
- Senior lawyer mentoring of less experienced
- Professional responsibilities: compliance with orders, wasted and indemnity costs orders, including personal payment, disciplines
- Communication of judge's expectations to profession: practice direction, guide, and manual.

## Resource 8 Case Load Inventory

### Simple Manual Backlog Case Inventory

Court:

Date:

Judge:

Date:

| Case Number | Filing Date | Case Type | Parties | Contact Details | Last Activity/date | Next scheduled activity/date | Case Stage Description: | Action to be taken: | Reason for the length of proceedings - problem | Simple/Standard/Complex | Suitability Dismissal with prejudice/without prejudice - reason | Loose estimate of time of conclusion of case |
|-------------|-------------|-----------|---------|-----------------|--------------------|------------------------------|-------------------------|---------------------|--|-------------------------|---|--|
|             |             |           |         |                 |                    |                              |                         |                     |  |                         |   |  |
|             |             |           |         |                 |                    |                              |                         |                     |  |                         |   |  |
|             |             |           |         |                 |                    |                              |                         |                     |  |                         |   |  |
|             |             |           |         |                 |                    |                              |                         |                     |  |                         |   |  |

## Resource 9      Stale Case Clearance Sample Letters

### Phase One

#### Proposed Draft Letter from the Chief Justice to Lawyers

Dear (Practitioners)

A review of the court files has disclosed there are XXX number of matters where there has been no action taken and that may fall within the provisions of Rule x of the Civil Procedure Code and which may be considered for striking out. These matters are noted on the attached list.

I urge all practitioners to review this list and to examine their own files and to take steps to communicate with the court to show cause why any matter of yours should not be struck out.

Chief Justice

### Phase Two

#### Proposed Draft Letter from Docket Judge to Lawyer

Dear (Practitioner)

In the case of .... v ...

\_\_\_\_\_

A review of the court files has disclosed there has been no action taken with respect to the abovementioned matter for a period of six months or more. The provisions of Rule x of the Civil Procedure Code of the XXXXX may apply.

I list the matter before the court on XXXX day of XXXX , 20 XX for you to show cause why the matter should not be struck out.

If there is no response on this date it will be struck out.

Judge

## Resource 10 Enforcement Proceedings

To ensure that the commencement and recording of enforcement proceedings do not distort the profile and statistics of the active pending caseload, the following procedures were implemented during the Vanuatu Supreme Court Pilot Project in relation to civil and criminal enforcement matters<sup>1</sup>:

### *Civil Proceedings:*

- a. civil cases be treated as finalised on a 'final' judgment or order
- b. cases are not "reopened" if any enforcement application is made;
- c. all new civil enforcement applications filed are recorded and managed as "new" proceedings;
- d. each such new proceeding is allocated a unique identifier (i.e. file number) comprised of:
  - i. the unique numeric identifier (excluding the year) allocated to the original proceeding to which will be added, as required, a capitalised sequential alpha character; and
  - ii. the year allocated as part of the unique identified of the original application;
- e. the commencement date for any such "new" enforcement application or associated application is the date of filing of that application and the date of finalisation will be the date of the making of a final order in that application (for example the issue of an enforcement order).

### *Criminal Proceedings*

- a. criminal cases are treated as finalised on acquittal, sentence or other final action and not be "reopened" if fine enforcement is required;
- b. all fine enforcement and any associated matter are recorded and managed as "new" proceedings;
- c. each new proceeding is allocated a unique identifier (i.e. file number) adopting an identical approach as recommended above for civil enforcement; and
- d. any such fine enforcement or associated matter is the date when the first step in that new "proceeding" is taken and the finalisation date is when a final order is made in that "proceeding" (for example the issue of a warrant or the release of property from attachment

---

<sup>1</sup> Based on a recommendation of the *Vanuatu Judicial Assistance Program* December, 2013.

## Resource 11 Managing Cases in the Māori Land Court

### Māori Land Court Rules 2011

#### *Outstanding Applications*

##### 5.11 Outstanding applications

- (1) The Registrar of the Court in each district must as soon as practicable prepare a quarterly schedule for the last day in February, May, August, and November—
  - (a) listing the applications that were filed in that Court 6 months or more before the date of the schedule and that have not been finally determined; and
  - (b) containing the following information for each of those applications:
    - (i) the date of filing; and
    - (ii) the details of the application specified for inclusion in the Panui under [rule 3.13](#); and
    - (iii) a brief summary of the reason or reasons why the application has not been finally determined.
- (2) On completing the schedule, the Registrar must—
  - (a) send a copy of it to each of the Chief Judge, the Judge of the Court in the district in question, and the Chief Registrar; and
  - (b) arrange for a copy of it to be posted on the Court's official Internet site.
- (3) The Registrar must also forward to the Judge of the Court in the district in question the files for applications that were filed more than 2 years before the date of the schedule and that have not been finally determined, except the files for those applications that have been set down for a fixed date of hearing or are subject to fixed time limits.
- (4) For each file that the Registrar forwards under rule 5.11(3), the Registrar must include as appropriate a report on progress or a submission and recommendation for steps for the final determination of the application.
- (5) Nothing in this rule limits the power of the Registrar at any time to contact and arrange with the parties to an application for the application to be set down for hearing.

#### *Dismissal*

##### 6.28 Court may dismiss application

- (1) Without limiting the power of the Court to deal with an application, the Court may dismiss an application if the applicant fails to—
  - (a) appear at a hearing; or
  - (b) properly advance the application; or
  - (c) comply with an order or direction of the Court.
- (2) Dismissal may be considered and determined without notification in the Panui, without notice to any party, and without any appearance by the applicant.
- (3) If the Court dismisses an application under this rule,—
  - (a) the Court may reinstate the application and may make the reinstatement subject to payment of a further fee by the applicant; or
  - (b) the applicant may file a new application in respect of the same matter.
- (4) The Court must not reinstate an application under rule 6.28(3)(a) more than 1 year after the application is dismissed unless there are good grounds for reinstatement.
- (5) If an application has been dismissed without notification in the Panui, it must be notified in the Panui in accordance with rule 6.6.

#### *Adjournments*

##### 6.9 Court may adjourn hearing

- (1) The Court may, on the application of a party or on its own initiative, either before or during a hearing, adjourn an application—
  - (a) to another ordinary sitting of the Court; or

- (b) to a special sitting; or
- (c) if the circumstances require, to a date and place to be fixed.
- (2) A party seeking an adjournment must, if possible, notify the other parties of the intention to seek an adjournment and must attempt to obtain the consent of the other parties to the adjournment.
- (3) An application that has been adjourned to a date and place to be fixed may be brought on for hearing on the application of any party or on the direction of the Court, and may be heard at the time and place and on the notice that the Court may direct.

## Resource 12 Sample Continuance Policy for Land Courts

### Draft Continuance Policy of the Traditional Rights Court

#### Values

Recognising the importance of traditional rights and land matters to the citizens of XXXXXXXX, it is the policy of this Court to effectively and efficiently administer justice without:

- undue waste of time
- undue waste of resources of the court, the litigants and other interested citizens.

#### Favour

The Court looks with strong disfavour on motions or requests to continue court events. The Court especially strongly disfavours continuances of matters scheduled for trial.

#### Method

Motions or requests for continuance prior to the court date must be in writing. The request must be signed by both attorneys/parties and state a reason.

Requests must be made in scheduled trial matters not later than two weeks prior to the scheduled trial. This will permit the court to consider scheduling another trial.

On court dates, the grant of a continuance shall be made on the court record. The record will contain information about who made the application and the reasons for granting it.

#### Grounds

The court will only grant a continuance where good cause is shown. As a guide to practitioners, the following will generally **NOT** be considered sufficient cause to grant a continuance:

- Lawyers or the other party agree
- The case has not previously been continued
- The case probably will settle if a continuance is granted
- There is a substitution of counsel and a new lawyer needs to enter an appearance
- A party wants a new lawyer
- A party or counsel has not prepared the case adequately
- If the prime witness, party or counsel is off island and has had due notice to attend
- If overseas counsel is unavailable
- Any continuance of a trial beyond a second trial date setting.

The following **WILL** generally be considered sufficient cause to grant a continuance:

- Sudden medical emergency (not elective medical treatment) or death of a party, counsel, or material witness who has been subpoenaed. This must be supported by a doctor's certificate directed specifically to the court about the fitness to attend court of that person. The doctor signing the certificate may be required to attend court to answer further questions with respect to the fitness of the party.
- There will be a miscarriage of justice if the trial is required to proceed as scheduled.

#### Monitoring and Review

The Chief Judge of the Traditional Rights Court and other judges of the court shall ensure the consistent application of this policy and report on continuances as a part of its performance reporting requirements.

Special attention and attention to reporting will be given to continuances where cases are listed for trial.

This Court will continually work with lawyers and stakeholders to resolve problems that cause cases to be rescheduled.

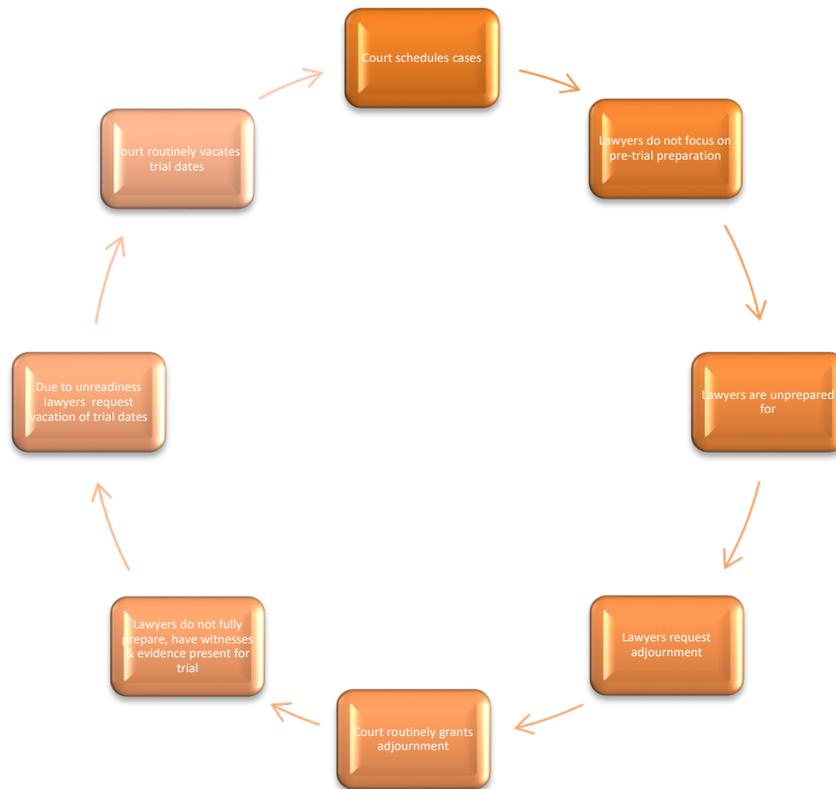
#### Goals

The strict continuance policy is pivotal in the Court's determination to reach the Time Goal of 120 days from filing to disposition in the TRC. The court expects the co-operation and commitment of the legal profession and parties as it seeks to reach this goal for the benefits of justice for all citizens.

Signed: Chief Justice

Date:

## Resource 13 The Cycle of Adjournments and Delay



### Source 1 Maureen Solomon, Case flow Management in the Trial Court, ABA, 1973

The Chief Justice and other judges of the court should review the number of adjournment periodically to ensure the consistent application of this policy.

An adjournment rate may be measured by: adding up the number of adjournments that have occurred in a select sample of cases and dividing the cumulative total by the number of cases to arrive at an average.

To break the cycle of adjournments and change behaviour, it can be helpful to analyse where, when and why applications for adjournment are being made. For example, you could conduct a survey of the case types and reasons for adjournment over a period of time say: one month. These results can be distributed to judges and lawyers to encourage improved pre-trial preparation and compliance.

## Resource 14 Rules of Practice and Procedure

Delay prevention can be preserved through the rules of practice and procedure. For example, the *Federal Court Act 1976* makes specific provision for the quick, inexpensive and efficient resolution of disputes through its rules of practice and procedure. The main provisions are as follows:

### **37M The overarching purpose of civil practice and procedure provisions**

- (1) The overarching purpose of the civil practice and procedure provisions is to facilitate the just resolution of disputes:
  - (a) according to law; and
  - (b) as quickly, inexpensively and efficiently as possible.
- (2) Without limiting the generality of subsection (1), the overarching purpose includes the following objectives:
  - (a) the just determination of all proceedings before the Court;
  - (b) the efficient use of the judicial and administrative resources available for the purposes of the Court;
  - (c) the efficient disposal of the Court's overall caseload;
  - (d) the disposal of all proceedings in a timely manner;
  - (e) the resolution of disputes at a cost that is proportionate to the importance and complexity of the matters in dispute.
- (3) The civil practice and procedure provisions must be interpreted and applied, and any power conferred or duty imposed by them
  - (a) (including the power to make Rules of Court) must be exercised or carried out, in the way that best promotes the overarching purpose.
- (4) The civil practice and procedure provisions are the following, so far as they apply in relation to civil proceedings:
  - (a) the Rules of Court made under this Act;
  - (b) any other provision made by or under this Act or any other Act with respect to the practice and procedure of the Court.

### **37N Parties to act consistently with the overarching purpose**

- (1) The parties to a civil proceeding before the Court must conduct the proceeding (including negotiations for settlement of the dispute to which the proceeding relates) in a way that is consistent with the overarching purpose.
- (2) A party's lawyer must, in the conduct of a civil proceeding before the Court (including negotiations for settlement) on the party's behalf:
  - (a) take account of the duty imposed on the party by subsection (1); and
  - (b) assist the party to comply with the duty.
- (3) The Court or a Judge may, for the purpose of enabling a party to comply with the duty imposed by subsection (1), require the party's lawyer to give the party an estimate of:
  - (a) the likely duration of the proceeding or part of the proceeding; and
  - (b) the likely amount of costs that the party will have to pay in connection with the proceeding or part of the proceeding, including:
    - (i) the costs that the lawyer will charge to the party; and

- (ii) any other costs that the party will have to pay in the event that the party is unsuccessful in the proceeding or part of the proceeding.
- (4) In exercising the discretion to award costs in a civil proceeding, the Court or a Judge must take account of any failure to comply with the duty imposed by subsection (1) or (2).
- (5) If the Court or a Judge orders a lawyer to bear costs personally because of a failure to comply with the duty imposed by subsection (2), the lawyer must not recover the costs from his or her client.

### **37P Power of the Court to give directions about practice and procedure in a civil proceeding**

- (1) This section applies in relation to a civil proceeding before the Court.
- (2) The Court or a Judge may give directions about the practice and procedure to be followed in relation to the proceeding, or any part of the proceeding.
- (3) Without limiting the generality of subsection (2), a direction may:
  - (a) require things to be done; or
  - (b) set time limits for the doing of anything, or the completion of any part of the proceeding; or
  - (c) limit the number of witnesses who may be called to give evidence, or the number of documents that may be tendered in evidence; or
  - (d) provide for submissions to be made in writing; or
  - (e) limit the length of submissions (whether written or oral); or
  - (f) waive or vary any provision of the Rules of Court in their application to the proceeding; or
  - (g) revoke or vary an earlier direction.
- (4) In considering whether to give directions under subsection (2), the Court may also consider whether to make an order under subsection 53A(1).
- (5) If a party fails to comply with a direction given by the Court or a Judge under subsection (2), the Court or Judge may make such order or direction as the Court or Judge thinks appropriate.
- (6) In particular, the Court or Judge may do any of the following:
  - (a) dismiss the proceeding in whole or in part;
  - (b) strike out, amend or limit any part of a party's claim or defence;
  - (c) disallow or reject any evidence;
  - (d) award costs against a party;
  - (e) order that costs awarded against a party are to be assessed on an indemnity basis or otherwise.
- (7) Subsections (5) and (6) do not affect any power that the Court or a Judge has apart from those subsections to deal with a party's failure to comply with a direction.

[Note: The reference in subsection 37P(4) to "subsection 53A(1)" is to the Court's power to refer proceedings to arbitration, mediation or other alternative dispute resolution

## Resource 15 Checklist for Timeliness

This checklist will help you assess the efficiency of the caseload systems in your court to support timely case processing.

| PJDP TIMELINESS INDICATORS CHECKLIST                                       |  |
|--|--|
| <b>INDICATOR ONE: ESTABLISHED GOALS FOR DURATION OF PROCEEDINGS</b>        |  |
| i.   | Does your court have time goals that cover most case types (e.g. civil, commercial, children's, domestic violence, criminal, urgent matters, land ownership, land heirship)?   |
| ii.  | Is there a commonly shared commitment to the goals?  |
| iii.   | Do all cases have a date for next action?  |
| iv.  | Are court users (parties, lawyers, others) able to predict the length of proceedings in your court?  |
| <b>INDICATOR TWO: INFORMATION AND DATA ABOUT THE LENGTH OF PROCEEDINGS</b> |  |
| v.   | Does your court know the average duration of cases in the pending caseload? (either through random sampling of case files, or from an electronic information management system)  |
| vi.  | Can your court identify cases exceeding time goals?  |
| vii.   | Is case information accurate and up to date on the file and in the indexes?  |
| viii.  | Is there a system for personnel to account if case information is not accurate and reports not completed?  |
| ix.  | Is caseload and docket information available to court personnel and judges electronically and on a network, or through monthly reports?  |
| <b>INDICATOR THREE: CLEAR RESPONSIBILITY FOR MONITORING TIMELINESS</b>     |  |
| x.   | Is there a registrar or chief clerk responsible and accountable for monitoring regularly the attainment of time goals and reporting of delay?  |
| xi.  | Do Chief Justices and judges regularly receive reports that present: the number of pending cases, the stage of each case, the age of pending cases, those exceeding time goals and the averages age of disposed cases? |
| xii.   | Are reports used by judges to manage individual docket?  |
| xiii.  | Are reports used by the Chief Justice and court leaders to help meet time goals?   |
| xiv.   | Does the court have few or no cases pending for more than the maximum length of time established by its own time goals?  |
| xv.  | Are action plans developed and implemented when delay is identified?   |
| <b>INDICATOR FOUR: MAINTAINING RELEVANCE</b>                               |  |
| xvi.   | Are time goals reviewed annually to ensure they are relevant?  |
| xvii.  | Does the court present information in Annual Reports about achieving time goals?   |
| xviii.   | Are stakeholders informed about the attainment of time goals and areas that require attention?   |
| xix.   | Is the contributions of individuals who help reach time goals acknowledged?  |

## Resource 16 Further Information

For more information on judicial administration, reducing backlog and delay and case management generally, please see generally: [Australian Institute for Judicial Administration](#)

European Commission for the Efficiency of Justice, Time management of justice systems: a Northern Europe study (June 2007), 17, available at [http://www.coe.int/t/dghl/cooperation/cepej/delais/GestionTemps\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/delais/GestionTemps_en.pdf)

European Commission for the Efficiency of Justice, Compendium of 'best practices' on time management of judicial proceedings (note that this Report has been adopted by the CEPEJ at its 8th plenary meeting, Strasbourg, 6–8 December 2006), available at

[https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ\(2006\)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6)

Federal Judicial Center, *The Elements of Case Management*, 1520 H Street, N.W Washington DC 20005

International Consortium for Court Excellence, *International Framework for Court Excellence* National Centre for State Courts, USA 2008), available at (accessed 15 February, 2014) *International Framework for Court Excellence*, <http://www.courtexcellence.com>

*Global Measures of Court Performance*, International Consortium for Court Excellence, available at (accessed 14 February, 2014)

[http://www.courtexcellence.com/~media/microsites/files/icce/global%20measures\\_v3\\_11\\_2012.ashx](http://www.courtexcellence.com/~media/microsites/files/icce/global%20measures_v3_11_2012.ashx)

[Pacific Judicial Development Programme](#)

[National Centre for State Courts, USA](#) -

Stelman D Caseflow Management -*The Heart of Court Management in the New Millennium*, 2000, Court Management Library Series, National Center for State Courts, Williamsburg USA.

Toolkits are evolving and changes may be made in future versions. For the latest version of the Toolkits refer to the website - <https://www.fedcourt.gov.au/pjsi/resources/toolkits>.

Note: While every effort has been made to produce informative and educative tools, the applicability of these may vary depending on country and regional circumstances.



# Pacific Judicial Development Programme

## REDUCING BACKLOG AND DELAY TOOLKIT

PJSI toolkits are available on: <https://www.fedcourt.gov.au/pjsi/resources/toolkits>

