



Pacific Judicial & Court Reform Resource Collection

Volume 4: Procedural Justice





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Keywords: Judicial reform, court reform, judicial orientation, judicial mentoring, judicial decision-making

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.

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Introduction

The Pacific Judicial Strengthening Initiative (PJSI) was launched in June 2016 in support of developing more accessible, just, efficient and responsive court services in Pacific Island Countries (PICs). These activities follow on from the Pacific Judicial Development Program (PJDP) and endeavour to build fairer societies across the Pacific.

The Partner Courts are: Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Republic of Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

PJSI was delivered by the Federal Court of Australia on behalf of the New Zealand Ministry of Foreign Affairs and Trade.

Toolkits

Through their practical, step-by-step guidance these toolkits have supported partner courts to implement their reform and development objectives locally. As the PJSI reaches its conclusion, it is hoped that these resources will continue to be of value to law and justice sectors and development practitioners globally.



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REMOTE COURT PROCEEDINGS TOOLKIT

Revised May 2021





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Toolkits are evolving and changes may be made in future versions. For the latest version of the Toolkits refer to the website - <http://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.

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- Mr Lorenz Metzner, PJSI Team Leader;
- Justice Debbie Mortimer, Federal Court of Australia;
- Magistrate Greg Benn, Magistrates Court of Western Australia;
- Dr Anne Wallace, Adjunct Professor at Latrobe University, Melbourne, Australia; and
- The Chief Justices, Judges, Magistrates and Court Personnel of partner courts who participated in two Regional Webinars.

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PJSI Toolkits

Introduction

The Pacific Judicial Strengthening Initiative (PJSI) was launched in June 2016 in support of developing more accessible, just, efficient and responsive court services in Pacific Island Countries (PICs). These activities follow on from the Pacific Judicial Development Program (PJDP) and endeavour to build fairer societies across the Pacific.

Toolkits

PJSI aims to continue ongoing development of courts in the region beyond the toolkits already launched under PJDP. These toolkits provide support to partner courts to help aid implementation of their development activities at a local level, by providing information and practical guidance.

Toolkits produced to date include:

- Access to Justice Assessment Toolkit
- Annual Court Reporting Toolkit
- Efficiency Toolkit
- Enabling Rights and Unrepresented Litigants Toolkit
- Family Violence/Youth Justice Workshops Toolkit
- Gender and Family Violence Toolkit
- Human Rights Toolkit
- Judges' Orientation Toolkit
- Judicial Complaints Handling Toolkit
- Judicial Conduct Toolkit
- Judicial Decision-making Toolkit
- Judicial Mentoring Toolkit
- Judicial Orientation Session Planning Toolkit
- National Judicial Development Committees Toolkit
- Project Management Toolkit
- Public Information Toolkit
- Reducing Backlog and Delay Toolkit
- Training-of-Trainers Toolkit
- Time Goals Toolkit
- **Remote Court Proceedings Toolkit**

These toolkits are designed to support change by promoting the local use, management, ownership and sustainability of judicial development in PICs across the region. By developing and making available these resources, PJSI aims to build local capacity to enable partner courts to address local needs and reduce reliance on external donor and adviser support.

In response to evolving priorities of partner courts, particularly in light of the COVID-19 pandemic, the PJSI has expanded its areas of activities to include a focus on the delivery of remote court proceedings. The addition of this new toolkit, **Remote Court Proceedings Toolkit**, aims to capture the legal, procedural, practical and technical aspects of remote court proceedings (RCP). It includes guidance on maintaining open justice, procedural fairness and upholding the right to confront doctrine, with recognition that local conditions and capabilities are varied. Accordingly, this toolkit aims to support courts as they develop systems suited to their unique needs and circumstances.

Use and Support

These toolkits are available online for the use of partner courts. We hope that partner courts will use these toolkits as/when required. Should you need any additional assistance, please contact us at: pjsi@fedcourt.gov.au

Your feedback

We also invite partner courts to provide feedback and suggestions for continual improvement.

Dr. Livingston Armytage

Technical Director, Pacific Judicial Strengthening Initiative, May 2021

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1. Preface

COVID-19 was declared a global pandemic by the World Health Organisation on 12 March, 2020, resulting in restrictions being imposed within Pacific Island Countries (PICs), for example: states of emergency, social distancing and border closures.

PJSI partner courts were faced with the challenge of complying with health regulations and requirements to ensure a safe workplace for Judicial Officers, Court Officers and court users whilst at the same time fulfilling their role as essential services. This resulted in Judicial and Court Officers working from home or remotely, and not necessarily physically present in the traditional court room or court precinct. In this way, the pandemic has emerged as a catalyst for dramatic and rapid change away from traditional court proceedings held in a court room, and towards the more widespread use of Remote Court Proceedings (RCP). Until this time the use of RCP was optional. Now, it is a necessity.

The requirement for such a rapid transition in court organisations, which are typically slow to make change, presents many challenges and some obvious advantages. The central challenges have been to maintain the character and respect for the court and to find the right balance in continuing to protect the rights and interest of parties and the public, in addition to accessing and successfully using RCP technology.

Whilst there are challenges, normalising the use of RCP across the Pacific in a post-pandemic environment is expected to bring advantages. Long-lasting positive changes could see the courts save serious amounts of time and money and at the same time, potentially increase access to justice, particularly for citizens of remote islands.

Recognising the increased priority and importance of partner courts to successfully hold and manage remote court proceedings, PJSI is publishing this toolkit. The approach is holistic as opposed to proposing a one-size-fits-all model. We share and provide guidance on what we have gathered from around the region and the world, on a range of technical, procedural, legal and logistical topics associated with RCP. Consequently, this approach provides the flexibility for partner courts to consider and adopt RCP to suit local needs, technical capabilities and preferences across case types, jurisdictions and locations.

We thank everyone who has supported and contributed to the development of the toolkit and the PJSI team who, as always, provided excellent support.

We hope this RCP Toolkit is of enduring benefit to the courts of the Pacific region and beyond.

Ms. Jennifer Akers
PJSI Efficiency Adviser

Mr. Tony Lansdell
PJSI ICT Adviser

2. Abbreviations and Terminologies

CTS/CTM	- Case Tracking System/Case Tracking Management
FCA	- Federal Court of Australia
FSM	- Federated States of Micronesia
HCTEACCM	- The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters
HD	- High Definition
ICT	- Information Communications and Technology
ID	- Identity Document
IP	- Internet Protocol
IT	- Information Technology
LAN	- Local Area Network
MFAT	- New Zealand Ministry of Foreign Affairs and Trade
NCSC	- National Centre for State Courts
OGCIO	- Office of the Government Chief Information Office
PICs	- Pacific Island Countries
PJSI	- Pacific Judicial Strengthening Initiative
RCP	- Remote Court Proceedings: refers to the hearings, appearances and taking of evidence before a Judicial Officer involving two or more locations interacting simultaneously by two-way video and/or audio transmissions. Other terms commonly used to describe RCP are 'video and audio conferencing', 'remote appearance', 'distributed proceeding', or 'video presence' or 'virtual court'.
RCPA	- Remote Court Proceeding Application: the technology to conduct a remote court proceeding (for example, Zoom).
VL	- Video Link: refers to the transmission technology which facilitates the Remote Court Proceeding.

3. Introduction

3.1 About this Toolkit

This Toolkit concerns court proceedings and communications which are conducted over electronic networks that permit interactive data, voice and visual transmissions. For the purpose of this toolkit, these remote court events are called Remote Court Proceedings (RCP) and we limit the means to audio visual and telephone communications.

At the outset of this toolkit we expand upon the varieties of RCP and present the advantages and other matters to consider when contemplating the use of RCP. In chapter five, the requirements in preparing and conducting both video and telephone proceedings are presented, along with the practicalities of managing files and documents in the virtual setting.

In chapter six the technical solutions for hardware, applications, set-up and recording are addressed to assist courts in navigating and choosing an option suitable to local requirements and the range of technical options available. The estimated costs of the technology is discussed in chapter seven, followed by chapter eight which shares lessons learned from experiences in the Supreme Court of the Federates States of Micronesia (FSM). Lastly, in chapter nine, the legal considerations around RCP are presented, including how PICs can address concerns about maintaining a public hearing and upholding the right to confront.

With the information and guidance provided in this toolkit, the intention is that PICs will be empowered with the knowledge and confidence to set-up, conduct, manage and administer RCP in a way that ensures quality justice continues during and after the COVID-19 period.

3.2 Purpose of this Toolkit

The purposes of this toolkit are to:

- Assist PJSI partner courts to maintain and extend access to justice, particularly in times of restrictions on being physically present in the court precinct due to the COVID-19 pandemic;
- Assist judicial leaders, Judicial Officers, Court Officers and technical Court Officers transition to and increase use of remote judicial services, through the promotion of information and knowledge exchange;
- Assist in the selection and use of video and audio technologies;
- Explain some of the policies, procedures and legal considerations required to introduce such technologies; and
- Help and assist partner courts to leverage the advantages of RCP and to overcome some of the challenges that can be experienced in the use of these technologies.

4. About Remote Court Proceedings

4.1 What is RCP?

A RCP is a proceeding before a Judicial Officer(s) which extends beyond the traditional, physical court room. It utilises video and/or audio technology to link two or more locations simultaneously. RCP allows for parties, their representatives and/or witnesses to appear and/or testify before a court from another location. These locations are not bound by traditional territorial, state or national borders, meaning that appearances can even be made from persons abroad.

4.2 Varieties of Remote Court Proceedings

There are several contexts in which court rooms are extended beyond the traditional physical court room. Some of the relevant contexts are:

- **The Remote Judge Context:** The first is where a Judicial Officer is physically and geographically remote from the court room: in chambers, overseas, on circuit or even at home.
- **The Remote Party Context:** This scenario includes where the Judicial Officer is in the court room and the parties and /or witnesses are appearing remotely from a public or private video-conferencing facility, a video-conferencing suite in a law firm, in a correctional facility or even at home.
- **Separate Room Context:** This context is where all parties are in one physical location or but are not all in the one court room together. This constellation is often used for the testimony of children, as a means of protecting them from the formalities and intimidation of the court room where the defendant is present.
- **Remote Mobile Court Context:** This context covers the scenario where a court is on circuit and where there is no court complex to use, for example in remote outer islands where there is no electricity or internet. This scenario is discussed specifically in **Chapter 6.6**.
- **Streaming:** This context is where the court proceedings in the court room are video or audio recorded and replayed in a remote location. For example, a case in Port Vila, Vanuatu, where the judge and parties are present in the court room, is streamed to a courtroom in the island of Santo so that the community can attend. Maintaining open justice in this way is discussed later in this toolkit.

4.2.1 Paper Advocacy

One of the measures used by courts to reduce in person attendance at court is for Judicial Officers to make decisions on the basis of written submissions in chambers. This means the Judicial Officer makes a judicial decision on the basis of written submissions of the parties, without verbal evidence, oral submissions and attendance of any of the parties. This scenario is often called an “*on the papers decision*” and its use is particularly effective for consent orders, interlocutory matters, directions hearings and case management matters.ⁱ “*On the paper decisions*” are not video or audio recorded.

Ex-parte proceedings are differentiated from “*on the papers*” decision making in that ex-parte proceedings are usually conducted in the court room and are brought by one party in the absence of, or notification to the other party.

4.3 Advantages of Remote Court Proceedings

RCP offers many advantages, some of which are:

- The risk of spreading COVID-19 is minimised;
- Court users are more likely to feel less intimidated or marginalised, compared to being present in the physical formalities of a courtroom;
- Greater visibility and public access to justice available world-wide through video access to the court room;
- All cases are given a specific time to connect which eliminates waiting times often experienced at the physical courthouse;
- Reduction of travel cost associated with travelling from remote locations to the physical court;
- Outreach is improved and people can remain within the community to deal with legal matters; and
- Travel time for Judicial Officers, court staff, lawyers, litigants and witnesses is substantially reduced.

For more advantages of RCP, please see **Annex One** in the additional materials to this Toolkit.

4.4 Other Considerations

Whilst there are clear advantages in using RCP, there is some commentary in the research around other considerations to be aware of when contemplating the use of RCP. These include concerns about how to retain judicial authority, uphold the right to confront and how to maintain the open court principle. Throughout this Toolkit we identify and address these considerations.



4.5 Change and Adjustment

The technology and use of RCP is a significant change from the traditional and tested way of conducting proceedings in the physical court room. These changes uproot existing routines, which may pose a threat to the sense of identity, security, stability and purpose of Officers, and can lead to a resistance to change. For example, some Officers may feel insecure and distrust unfamiliar video technologies or feel frustrated as they conduct proceedings from home where the internet frequently drops out, dogs may be barking, or children interrupting. Leaders and managers should understand that these changes may have a negative impact on individuals. To encourage early adaptation to RCP, leaders and managers should:

- Keep the technology as simple and effective as possible;
- Ensure sufficient funding, which includes the engagement of appropriately qualified IT technicians to monitor the ongoing use and update of the RCP technology;
- Communicate, train and keep personnel informed about RCP, including how it can actually improve workflow and productivity;
- Work RCP into the everyday rhythms as quickly as possible to set it as a new standard of operating;
- Encourage the continuance of the formality of the traditional court environment as much as possible, including the use of robes for judges and counsel;
- Encourage RCP users to share suggestions for improvement; and
- Be particularly patient, understanding and supportive.

It should also be noted that working via video link requires increased levels of concentration leading to increased levels of fatigue. This should be factored into RCP scheduling which should allow for an increased number of breaks and shorter session times.

5. The Remote Proceeding

5.1 Preparation

5.1.1 Information about RCP

The court should maximise the use of its website to provide clear, simple instructional materials about RCP procedures. The webpage should provide unrepresented parties with guides on how RCP are conducted and possibly even provide a mock RCP video, in addition to instructions for how to prepare for and access a RCP. A 'help' and/or contact person for queries should also be provided.

The example of the Federal Court of Australia's *National Practitioners/Litigants Guide to Online Hearings and Microsoft Teams* is provided in **Annex Two** of the additional materials to this Toolkit, for guidance.

5.1.2 Deciding when to use audio only or video

The court or the parties can initiate a video or telephone proceeding. The overarching consideration in making a decision to use audio or video is whether it is beneficial to the overall *fair and efficient administration of justice*. Other factors which may also need to be considered include:

- The nature and importance of the case. For example, an audio RCP is usually reserved for case management conferences, interlocutory hearings and judicial review applications. These conferences are preceded by written submissions filed and served in advance;
- Whether testimony is to be taken. In such cases, audio RCP is generally considered inadequate as the witness's demeanour cannot be fully observed and assessed;
- The quality of picture and sound depending on the available equipment and transmission speed or bandwidth;
- The extent of documentation which might need to be viewed; and
- The limited access to video technology and greater access to mobile telephone technologies in remote locations.

***The higher the stakes of the hearing or case,
the better the technology needs to be.ⁱⁱ***

5.1.3 Scheduling the RCP

Procedures for the booking and conduct of RCP will require all applicants to submit their request in writing via email to the court, well in advance of the scheduled proceedings.

If the court initiates the RCP, the court will forward out details and instructions in sufficient time to permit the parties to make technology arrangements.

Due to the additional concentration required for a RCP, which can make participants become more easily fatigued, the times allotted for sessions should not be more than two hours (approximately). Short breaks should also be scheduled in the session, for 10 minutes (approximately) each hour.

Once scheduled, a Court Officer will need to amend the proceeding information and court list to reflect that it will be heard by RCP. For example, the case will appear in the Court List as "*Barkie versus Kuku (via RCP)*". An example of an RCP court list is provided in **Annex Three** of the additional materials of this Toolkit.

5.1.4 Logistics

The court can require legal representatives to submit a joint document outlining the relevant logistical issues that have been agreed, for example:

- The technical platform to be utilised;
- The method to be used for handling documents electronically;
- The identity and location of all:
 - Legal practitioners;
 - Parties; and
 - Witnesses.
- Arrangements to protect integrity of witness evidence (for instance, ensuring that they have access to relevant documents, and ensuring no other person is present while they give their evidence remotely); and
- A proposed hearing schedule (opening, witness schedule, closing submissions).

Based on this joint submission, the court should provide participants with clear instructions on how documents, evidence and exhibits are to be submitted and managed in the RCP. This can include that relevant materials to be relied upon have been made available to the court beforehand.

See **Chapter 5.5** for more in relation to files, documents and exhibits.

5.1.5 Translation

If the RCP is to involve an interpreter, consideration may also need to be given to:

- The qualifications, training and experience of the interpreter in the context of the added difficulties and complexity of the RCP;
- The impact of any interpreting on the need and operation of video recording equipment; and
- The best location at which the interpreting can be provided.

5.1.6 Arrangements for prisons

At the prison, a remote Point Coordinator is responsible for ensuring access to the RCP room and that the equipment is operational prior to the scheduled time for the video conference.

The Coordinator should ensure that the inmate is seated and ready in the RCP room approximately 15 minutes prior to the scheduled time for the RCP.

Even if the video and audio unit is not activated at the remote point, inmates should assume that they will be visible to the court at all times while in the RCP Room.

5.1.7 Other tips

- **Time:** The court and the parties should build anticipated technical difficulty time into the allotted time for each hearing to avoid running over into other hearings.
- **Dress:** Consider visibility when preparing what you will wear, for example: dress in a solid colour (e.g., black robe for judges) and, if a tie is worn, use a solid colour, not one with a pattern.
- **Background:** Choose a solid coloured wall, such as a green, neutral, or white wall, or use one of the videoconferencing platforms generated backgrounds. Keep in mind though, the virtual background will require more bandwidth to support. It is not recommended for remote witness testimony as other persons present cannot be seen.

- **Lighting:** Light from behind might make a participant appear dark and hard to see, while light from the centre of the room might cast a shadow too. Light that points down from in front and above the speaker is recommended.
- **Screens:** Be careful where screens are placed on the bench as they may block the image of the judge from the cameras used for recording the proceedings.
- **Noise:** Find a space where there is little or no background noise, such as traffic, roosters crowing or dogs barking.
- **Distractions or interruptions:** Find a space or room where you cannot be interrupted by children, pets, telephone calls etc.
- **Test:** Set-up equipment well in advance of the hearing and ensure you test the software in advance, including: the videoconferencing software, the Internet connection and equipment.

Important Tip: Do a practice run well in advance of the hearing.

5.2 Conduct of the RCP

It is necessary to adapt traditional protocols in a way that maintains the formality and legal legitimacy of the in-person proceeding in a court room. Here are some suggestions:

5.2.1 Technical Issues

- At the commencement of a videoconference, the Judicial Officer/staff attorney/video co-ordinator must check and establish the link and ensure that it is functioning satisfactorily;
- When adjusting cameras, try to fill the screen as much as possible with people rather than the furniture;
- Once connected to the RCP, parties must mute the audio settings on their device to prevent any unintended interruptions to court proceedings;
- Position the camera to be at eye-level or slightly above eye-level;
- Judicial Officers and the participants should speak to the computer camera, not the screen;
- When participants use videoconferencing software via a phone, their phone number might be displayed. This should be changed to their name; and
- If there is audio echo or feedback during the RCP meeting, troubleshoot by checking that there are not more than one device (phone, computer or tablet) with active “audio”.

5.2.2 Protocols

- Reflect formality by including in the video frame legal symbols such as a coat of arms, flag or local symbols of justice which can be easily setup in such applications as ZOOM and Microsoft’s TEAMS;
- Retain robes for Judicial Officers and counsel;
- Keep the normal court etiquette and protocols where practicable, for example: opening the court by the clerk or associate, and use of “your Honour”;
- Everyone should understand that there are fewer social cues to regulate behaviour. This means more articulation of procedure is required;
- Parties must refrain from speaking over each other, as much as practical;

- Parties when not speaking should be on MUTE, and this typically can also be controlled centrally;
- Judicial Officers should command clearly who and when participants are to talk;
- Parties can “raise a hand”, an “objection” sign or other agreed prompt in lieu of standing and interjecting;
- Before speaking, announce who is speaking;
- Say “over” or indicate clearly when you have finished speaking; and
- Self-represented parties should be expected to conduct themselves to same standard as required in a physical court room.

5.2.3 Outset of proceedings

The Judicial Officer, at the outset of the proceedings should assess the RCP quality by asking key questions and stating clear instructions, such as:

- “Are you able to hear me and can you understand what I am saying?”
- “Are you able to see me and is the picture quality sufficient?”
- “If, at any time, you are not able to see or hear what is happening in court today, you must immediately inform me of the issue.”
- “Please remain in the same place and turn on your mobile phone if the internet drops out. Someone will contact you by phone if this happens. Alternatively, you can phone this number: XXXXXXXX.”
- “Please wait to speak until requested.”
- “When you speak, please do so slowly and please do not interrupt others when they are speaking.”

Important Tips:

- **Speak in a normal voice without shouting. The microphones used are sensitive and are designed for normal speech;**
- **Avoid the tapping of pens on tables and rustling of paper near microphones, as this will disrupt the sound levels and affect court recording equipment;**
- **Use natural gestures when you speak; and**
- **Mute the microphones at your end when you are not speaking for an extended period.**

The Judicial Officer, at the outset of the proceedings, should also address on the record:

- That the parties waive any rights they may have to be present in the courtroom for the proceeding;
- That the parties consent to the proceeding being conducted via videoconference technology;
- That all court rules of evidence and procedure apply during remote hearings or conferences;
- If there are any unmet disability or accessibility needs;
- If there is a need for an interpreter or not;
- If the participants have caretaker responsibilities (e.g. for a baby) or privacy issues (especially for domestic violence matters) at the location where they are participating in the remote hearing;
- What they need to do if they wish to speak;
- Generally, how the RCP hearing will proceed;

- That the witness is alone by asking the witness to scan the camera around the room and under tables; and
- Require legal counsel to provide the court with a general assurance such as: “I confirm that X will be appearing from Y and will not have access to the hearing before giving evidence.”

5.2.4 During the RCP

5.2.4.1 Administering the Oath and Warning Witnesses

Judicial Officers should:

- Swear in witnesses by oath/affirmations in the usual fashion;
- Advise the witness of the operational logistics of the RCP;
- Warn the witness that, although this is a RCP, it is an offence to commit perjury or contempt of court;
- Ask the witness to turn off all electronic devices except for the device enabling participation;
- Warn the witness to refrain from exchanging any electronic messages with anyone while testifying or from recording the event;
- Ask witnesses not use a virtual background as the Judicial Officer needs to be assured that there is no one prompting or interfering in the proceeding;
- Ask the witness to confirm that they are alone in the room from which they are giving evidence; and
- Ask the witness to confirm that they have documents in front of them.

5.2.5 Managing the Proceedings

In managing the proceedings, the Judicial Officer and/or counsel should:

- Keep within view of the video camera and refrain from turning away from the camera too often as this can be unsettling for those making submissions or for a vulnerable witness undergoing sensitive cross examination;
- Judges may wish to have a separate means of communicating directly with their clerk/associate, outside of the video application, and this can easily be achieved through such tools as SMS, Messenger or another video application in parallel;
- Use “waiting room” functions to allow individuals into the “virtual courtroom”;
- Place disruptive participants into the “waiting room” if necessary;
- Use “break-out” rooms or “chat” functions for sidebar conversations that others should not hear (such as bench discussions, attorney-client discussions or where confidentiality is required);¹
- Ensure the means for confidential counsel/client discussions is managed by counsel, not the court;
- Prevent any person, other than those already introduced to the court, from entering the videoconference room whilst a videoconference hearing is in progress; and
- Confirm email addresses, mobile telephone numbers or the preferred means of communication with parties.

¹ These discussions are considered private and not be audio- or video-recorded.

5.2.6 What to say

In **Annex Four** of the Additional Materials is a sample script as to what might be said to help ensure a successful and procedurally correct RCP. The script is divided into three sections:



1. Logistical issues – what is said to help ensure the technology supports the proceeding and the participants know what they need to do
2. Preliminaries – these are the legal and procedural elements which might need to be addressed and placed on the court record
3. Witnesses – what might be said in the management of proceedings where a witness is testifying remotely.

5.2.6.1 Maintaining the security and integrity of witness testimony

In the course of managing the proceedings, the court should to the best of its ability, be satisfied that witness testimony is not influenced or prompted by persons physically or virtually present during the process of giving evidence. Some strategies to maintain the integrity of witness testimony being used are:

- directions that a witness must be alone in the room in which the evidence is given (save for a technical support person);
- directions that the evidence not be recorded;
- have the witness testify on oath that there are no other persons present;
- have the witness testify that they are not using any unauthorised mobile devices;
- simply ask the witness scan to scan the room to check that no unauthorised persons are in the room and/or that there are no additional mobile devices present which could be used to record or transmit messages;
- closely monitor where the eyes and head of the witness are tracking. If for example, a witness is continually turning their eyes downward, they may be being coached by via messaging on a device;
- observe the light levels around the witness. This is because it might indicate that messaging is happening, as many devices light up when a message comes are received; and
- have any support or technical persons present state the purpose for being present on the court record.

5.2.6.2 Microphones

Microphones used in RPC can be very sensitive. Persons appearing before a RPC should assume from the time the video link is activated until the time the link is disconnected that microphones are "live" and that all remarks are audible to the court. The exception here is where, for any reason, the court or the remote site "mute" their microphones.

Where for any reason it is necessary to mute the microphone at the remote site (for example, if counsel need to speak confidentially with client), the court must be advised before the microphones are switched to mute.

5.3 Audio Proceedings

The following paragraphs present practical and technological considerations around the conduct of audio RCP.



5.3.1 Practical Matters

The practical process requires that both the court and the party use a unique, direct telephone number. There must be no call centre or receptionist receiving the call. To ensure security, the court should call the party, not the party call the court.

Any person appearing before a court by audio conference must adhere to normal court protocols, for example, as if they were personally in the courtroom, so far as possible. They must be available at the appointed time and must remain available until the court contacts them.

A failure to answer when the court calls the nominated number may be considered a failure to appear before the court, in which case the matter may proceed ex-parte.

When using a mobile phone, the caller must ensure that they are in an area with good reception with no background noise that may affect the audio quality, such as wind, traffic, machinery.

5.3.2 Technology Requirements

Care and consideration must be given to the court installing and testing a phone (system) with sufficient speaker capacity to ensure all those in the court can hear the remote party. If the court already has a speaker system, the phone can be placed next to existing microphones which can amplify the voice. Similarly, microphones need to be dispersed throughout the courtroom to ensure the remote party can hear all those speaking within the proceeding.

Equipment necessary for conducting an audio call within the courtroom is significantly less expensive than when using videoconference technologies, as there is no requirement for cameras and screens. Costs for audio conferencing equipment ranges from AUD \$200 to AUD \$2,000, depending on the facilities required.

5.4 RCP for Vulnerable Witnesses

Safeguarding accessibility and fairness for vulnerable groups is essential for creating an inclusive justice system which operates remotely. Vulnerable groups include amongst others, persons who: have a disability, experience mental illness, are elderly, children and minority or marginalised groups. A vulnerable witness may also be a victim of crime.

Where a vulnerable witness is required to testify, it may be appropriate for the witness to give evidence from a location remote from the witness box in the court room. This location is usually in a room within the court precinct that is set up with RCP technology.

In such cases the procedure is:

- Arrange for an officer of the court to go to the vulnerable witness room and make sure the computer is ready to connect (via the court's Wi-Fi or Internet);
- Login to the court network, and access the video conferencing application;
- Demonstrate to the witness how the process will work;
- Mute the vulnerable witness room and make sure that they cannot hear the courtroom and vice versa;
- Show a document on the document viewer to see if this can be clearly seen in the vulnerable witness room;
- When ready, instruct the witness to join the proceeding.

It is emerging that RCP increases stress for vulnerable persons because of:

- A lack of familiarity with technology;
- Decreased eye contact and non-verbal cues;

- Technical glitches; and
- Legal counsel being in a separate location, leaving them feel unsupported.

This stress may be reduced through:

- Judicial Officers providing additional support such as explaining the process and introducing more 'sign posting';
- Introducing more breaks;
- Allowing a support person to be present. The decision whether court staff or an appropriately qualified independent support person are to remain physically present with the witness whilst giving evidence is decided by the judge and dependent on such factors as security and the vulnerability of the witness²;
- Using the closed captioning, automatic transcripts and screen reader support (all available on Zoom) for those with hearing impairments or language comprehension difficulties;
- Using an electronic virtual background to alleviate potential embarrassment or discomfort of having participants seeing their home;
- Being aware that for some people RCP causes nausea and feelings of being ill; and
- For the court to provide other support and information as appropriate.

5.5 Managing the Files, Documents and Exhibits

There are a wide range of scenarios to be considered for document handling in RCP depending on where the parties and Judicial Officers are located. The setup for each scenario requires careful consideration, planning and testing, before the start of any RCP.

If we look at a scenario where a Court of Appeal judge(s) may be located remotely in New Zealand, but all parties are based in the courtroom in Tonga, we need to consider the factors set out in the following sections.

5.5.1 How do we transfer files?

5.5.1.1 Judicial Officers and the electronic file

Typically, the Judicial Officer would have had the physical material as filed at court prior to the hearing and would have been able to peruse the file in physical format. In this scenario the material file needs to be both scanned and sent electronically, or the physical file(s) transported to New Zealand.

Sending the file electronically though, is a more expedient and cost-effective solution for a court. However, the receiving Judicial Officer needs to be comfortable to work with an electronic file and have the tools available to easily navigate and prepare from an electronic file.

5.5.1.2 Electronic transfer of large files

Via the court server

The preferred mechanism is for the judge in New Zealand to access the court's main repository/server (for example, the Case Management System) by logging in securely. The Judicial Officer can then access one, any or all documents on the file, electronically. This method is predicated on the fact that a country/court has a well-established Case Management System that can manage documents electronically (similar to those in Palau, Vanuatu, Papua New Guinea and Solomon Islands). Even a Case Tracking System that stores documents, like in the Federated States of

² For example, the *Evidence Act* s106R(4) specifically provides for the court to make orders regarding an appropriately qualified independent support person to remain in the remote witness room with the vulnerable witness.

Micronesia and the Republic of the Marshall Islands, can provide access to the documents in electronic form. It is not appropriate for parties to be granted access to files via this method.

Via 'Cloud' services

If the above option is not available and documents are large, either singularly (greater than 10 megabytes) or collectively (many documents totalling 50 megabytes or more), then serious consideration should be given to using Cloud services such as Dropbox, Google Drive or similar, to load the documents into and to provide remote access for the judge(s).

Whilst these mechanisms allow secure access, it must be recognised that these documents are in the 'cloud'. For many jurisdictions this presents more challenges, such as: the technical operational issues, questions about security and questions about the confidentiality of the file.

Via e-mail

Transferring files via email is possible however, the size will typically exceed file size limits, so the above options should be considered.

For a summary of options and considerations around file and document access, see **Annex Five** in the Additional Materials.

5.5.2 Lawyers

RCP places more onus on lawyers to agree upon documents to be distributed electronically in advance of the proceeding. For an example of how lawyers should prepare for an RCP see the *New South Wales Bar Association Court Protocols on Remote Hearings* in **Annex Six** of the additional materials to this Toolkit.

Lawyers also need even access to files and documents. This can be done by dispatching documents via email or sharing via a Cloud type service (as explored above). Lawyers typically would not have access to any files located on the court's repository server.

5.5.3 Managing files and documents during the RCP

With the growing use of RCP where parties are spread across multiple locations, the management of documents 'inside the courtroom' takes on a whole new dimension, priority and importance. Some of the considerations are:

5.5.3.1 Ensuring everyone works off the same copy

It is important that the parties and the Judicial Officer have certainty that they are operating 'off the same copy'. Operating 'off the same copy' is when the document is shared across the courtroom. Here the Judges' Associate or Court Officer plays a key role in 'turning to the page in question' and ensuring everyone is able to see the document on a large screen that is the 'same page'.

5.5.3.2 Updating the court file

When it comes to a matter where members of a Judicial Panel of an Appellate Court are located in separate locations, we now have to ensure that all Judicial Officers are working from the same version of the electronic file, and that it matches with counsel - whether it be in physical or electronic for them. Where a document is tendered in court, the document should be scanned in court and quickly added to an electronic file.

5.5.3.3 How to tender a document from a remote location

The simplest for handing up documents is for the remote party/counsel to simply scan and email the document to the courtroom. Once received it can be shared via the videoconferencing application and/or made available through the court's CMS/CTS.

5.5.3.4 How to distribute a tendered document to a party in a remote location

If the document is tendered locally in physical form, the court clerk needs to scan and make it available via email and through screen-sharing. A document display projector may also be used to project the image locally, which can also be seen remotely.

5.5.3.5 What happens in RCP using a smart-phone

If the matter is simply a directions or conference, then simple audio facilities are generally enough to progress the matter. If, however, the proceeding requires documents to be viewed or handed up, the court or counsel may need to take action to provide access to a computer or tablet device, or the court may make a suitable order for service of the document.

5.5.4 Documents and RCP equipment

The judge, witnesses and all parties must be able to 'see' the material being presented in court. This can be done via sharing the screen features in the videoconferencing applications. If the witness and exhibit is in the courtroom, then the usual procedures apply, in addition to the exhibit being clearly shown to the video camera.

Experience shows that larger monitors are better for viewing documents, such as a 23 inch monitor. These monitors need careful placement, especially on the Bench where they should not block the Judicial Officer from being seen by the video camera.

5.6 E-Filing & Signatures

As courts move towards RCP many are also considering 'e-filing'.ⁱⁱⁱ Partner courts should note that there are very few courts around the world today operating totally electronically and paperless. What we do see in many instances is the physical and electronic file being used in parallel, for reasons such as personal preference or necessity.

What we are also witnessing in the response to COVID-19, is an increased use of email to file documents. Given the difficulties in obtaining original signatures and sworn affidavits, some courts are accepting electronic signatures and unsworn affidavits, on the understanding that these documents can be sworn or affirmed at a later time. For an example of these special measures, see the Federal Court of Australia's *Information Note* at **Annex Seven** in the additional materials to this Toolkit.

6. Technical Solutions

6.1 Video Conference Applications

There are many products now on the market, from the well-known applications like Zoom, Microsoft Teams and GoTo Meeting, to less well-known applications such as WhereBy. When considering what Remote Court Proceeding Applications (RCPA) to use, the court should consider such aspects as:

- Starting cost
- Ease of set-up and use
- Participant numbers
- Meeting numbers
- Meeting duration
- Screen share
- File sharing
- Messaging
- Audio calls
- Video calls
- Break-out rooms
- Application and browser
- Recording
- Registration required by participants
- Security
- Bandwidth

Annex Eight in the additional materials to this Toolkit, provides a comparative assessment of five major video conferencing applications.^{iv} It is crucial that each country assesses the market and makes the choice specific to their needs, facilities, geographic and budgetary contexts.

It is recommended that the court decide on only one application and equipment for its RCP. This ensures continued familiarity for Judicial and Court Officers and those accessing remotely, especially the legal community. Generally, it is not practical for individual Judicial Officers to decide and use their own preferences.

6.2 Technical Support

Adequate technical support must be in place to help prepare and support RCP, because things do go wrong given the many factors at play, such as equipment within the court room, internet connectivity, remote user setup and the need for general 'how to use and operate' support.

Fortunately, most courts within the Pacific have dedicated IT officers within their compliment of staff, but some courts rely on private IT companies and others on government wide IT offices. Regardless of where IT personnel are positioned, their presence in the setup, testing, and operation of any session is vital. While not necessarily having to be 'in-court' for the entire proceeding (for example, a full day trial), their availability to respond within 10 minutes should be assured.

In addition, the technologies involved, from the applications like Zoom or Microsoft Teams, to the physical equipment (for example, Logitech camera bundles or high-end video cameras/spitters), now requires the IT officers to be well versed in quite a range of different aspects. IT personnel need to have good training, and communication skills and patience, in addition to technical skills, because it is their responsibility to ensure that Judicial and Court Officers are comfortable and confident in the use of RCP technologies.

6.3 Bandwidth

One of the most important aspects of any videoconference proceeding will be the quality of the bandwidth, or Internet connectivity between the various locations. For many countries in the Pacific, the country is now served by undersea fibre optic cables connecting to main communication lines between United States of America (USA), Asia and Australia. For those countries not yet connected

to a submarine cable, they are using satellite technology and all (bar one), have plans to be connected to a submarine cable in 2020-2021.

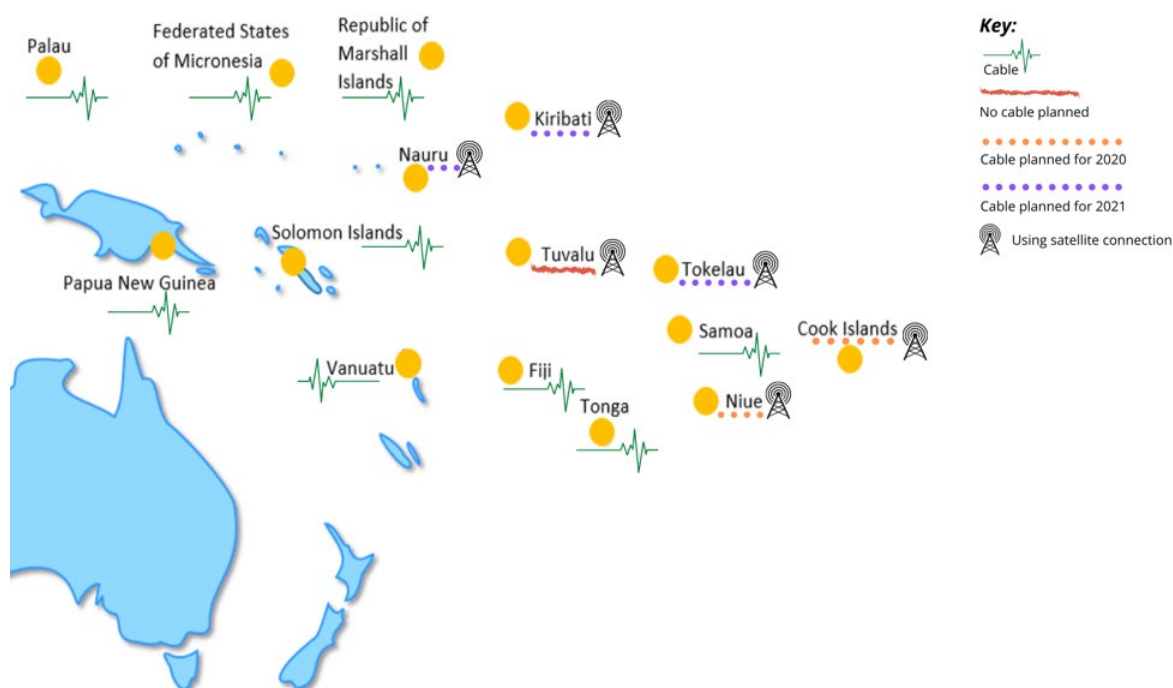


Figure 1: Connectivity Map, Pacific Islands Region

The advantages of submarine cables versus satellite are generally price, performance and reliability. However, just because the country may be connected to a submarine cable, that does not mean the court or those attending, will be guaranteed 'A1' connections. For some countries, the courts are served by government technology providers (for example, the Vanuatu Courts are served and supported by the Office of the Government Chief Information Office (OGCIO), who provides the internet connectivity through their own network). In other countries, specific packages need to be obtained from telco providers such as Vodafone or Digicel.

Generally, government provided connectivity will be of higher performance and less cost than accessing the Internet through a private provider, but it does depend on the 'package' of service paid for. This also means consideration to both upload and download speeds and any data restrictions (volumes) per month. On the other hand, if accessing through a government network, the country's IT policies may restrict access to certain video applications (for example, Skype or Zoom), and stipulate that any videoconferencing must be through the authorised product of the country (for instance, True Conference in Vanuatu). Regardless of the means of connectivity, a court should monitor the speed and connection times from their end, as well as requesting those participating in the RCP to do similar.

Important Tip: Regardless of the means of connectivity, a court should monitor the speed and connection times from their end, as well as requesting those participating in the RCP, to do similar.

6.3.1 Testing bandwidth

One of the easiest tests to undertake is via <http://www.speedtest.net>. Using 'Speedtest' there are three important performance aspects to check and monitor, namely:

1. **The 'ping' time:** which reflects the time between two sites to 'connect' and is measured in milliseconds (mS). The lower the number, the better, and ideally, less than 20 mS is needed for a good quality video session.
2. **The 'upload' speed:** which reflects the data transfer speed from the host, to those who will be receiving/seeing the conference. It is measured in megabits per second (MBPS) and the greater the number, the better for the conference. Ideally, anything over 2 mpbs will ensure a reasonable video conference session.
3. **The 'download' speed:** which reflects the data transfer speed from the internet to the host and is typically greater than the 'upload' speed. Again, this is measured in MBPS, and the greater the number, the better-quality session that will be held. Ideally anything over 5 mpbs will ensure a reasonable videoconference session.

Without all three components, the quality of the session will be at risk, and potentially make the session difficult for all those attending (with participants experiencing jolting, delay, and frozen screens).

In addition, the challenge of bandwidth to the Internet is amplified when considering locations away from the capital or main towns in each country. There may be a fibre optic cabling between major centres (for instance, between Port Vila and Santo in Vanuatu), but often communication is either over the traditional telephone tower arrangements (in 2.5G or 3G) or again, via satellite. This has a direct impact on the three performance aspects mentioned above.

6.3.2 Connectivity snapshot

It is vital that the Internet connectivity in each location is well understood and, where videoconference is likely to be used, that all efforts are made to increase to the minimum standards recommended, at least on a temporary basis. Therefore, it is recommended that each Court/IT Officer undertake a snapshot of the connectivity arrangements within their respective country to ensure the judiciary are aware of the potential performance degradation. For an example of a connectivity snapshot, see **Annex Nine** in the additional materials to this Toolkit, which presents the work of the IT Manager in the Federated States of Micronesia (FSM).

Through this type of analysis, IT Managers can see which locations are well or not well serviced. Where possible, improving connectivity through private telco providers should be undertaken if unsatisfactory performance is identified, however this may have significant cost implications.

6.4 Components

The conduct of a proceeding via videoconference requires the following components/technology:

Component	In the courtroom	For those attending remotely
Software	Product such as Zoom, Microsoft Teams, controlled by the Clerk	Will be provided a URL link to the virtual courtroom in the videoconferencing application There is no cost, and no requirement to sign-in or have an account

Component	In the courtroom	For those attending remotely
Security	Controlled by the Clerk	Those appearing before the Court will be required to login and upon visual identification be allowed to enter the 'VC Room'
Recording	Clerk will control digital recording as per normal, but may also wish to record for the video application for later use/streaming	Will be captured within the courtroom
Camera/microphone	Two cameras will be enabled in the courtroom, along with speakerphone	Via laptop, or desktop computer with audio/video capability
Tablet/Smartphone	Not applicable	Most video application can be activated via an app on either Android or Apple devices

Table 1: RCP Technology Components

6.5 Technical Levels

Courts generally have a three-level RCP setup:

- **Level 1:** Basic arrangement including camera, projector/screen, laptop and desktop;
- **Level 2:** As per Level 1, but projector replaced with Plasma screen (and on a mobile stand), and higher quality camera/microphone equipment; or
- **Level 3:** As per Level 2, but Plasma screen(s) now mounted within room and professional grade cameras installed.

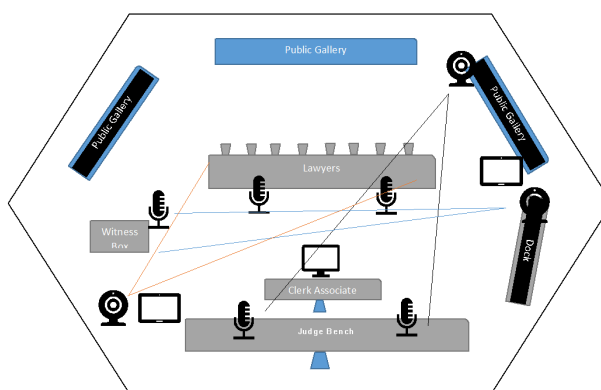


Diagram 1: RCP Setup

Where there are minimal time or funds available, Level 1 can be easily achieved with relatively low-cost equipment.

It is expected that the main courtrooms each have a Level 2 setup, as with any Conference Room or vulnerable witness room.

It is expected that Level 3 be established for the main Supreme Court courtrooms and main Magistrate Court. This might include two plasma screens (minimum size 48 inches), strategically located to allow for an integrated view of the gallery and bar table, and for the witness and the Judicial Officer(s) to be able to see the remote person(s). In addition, Level 3 would have professional grade video cameras (at least three) connected to the videoconferencing application, which is a significantly better image for all to see on a Plasma screen.

As many courtrooms already have digital recording, the current microphones and audio facilities should not need any modification.

6.5.1 Cameras

In Level 3, there are three high end cameras (for instance, PTZOptics PT12X-SDI-GY-G2) strategically located within the courtroom, allowing the person appearing before the court to see the Judicial

Officer and Clerk, and secondly, the bar table and those persons in the gallery of the court. Courts will at all times have the ability to control the camera view within the courtroom.

Those attending remotely will need to ensure that the camera is focused clearly on themselves, and able to show the room in entirety if needed.

For more guidance on how to set up a RCP room see **Annex Ten** of the additional materials to this Toolkit.

6.6 No Available Power or Internet

In many parts of the Pacific, courts need to conduct hearings where there is no power, no infrastructure and no apparent Internet connectivity.

With some planning and infrastructure investment however, there are ways to conduct hearings in remote venues with the support of mobile RCP technologies which include voice, data and video transmission capabilities.

For this to happen, several key pieces of equipment are needed:

1. Portable power generator (AUD \$200-\$400);
2. Portable solar panels (AUD \$200-\$400);
3. Laptop(s) (AUD \$1,000 per unit);
4. Satellite phone (AUD \$500, plus data costs);
5. Additional web cameras (AUD \$400);
6. Portable projector and screen (AUD \$500); and
7. Microphones (AUD \$200).

The total cost of such a package would be in the vicinity of AUD \$5,000.

While this may seem burdensome to setup and transport, the benefits are significant in that it provides connectivity to locations that were once thought to be inaccessible to the modern facilities experienced elsewhere.

Mobile RCP technology is now used in such places such as the remote parts of the Australian outback, where courts like the Federal Court of Australia and Northern Territory Courts travel thousands of kilometres to remote settlements to conduct hearings. Often the court sits successfully out in the open, or under a make-shift shelter, and conducts the proceedings connected to the 'outside' world using the equipment described above.

In the context of the Pacific, mobile RCP technology could be used in a variety of scenarios, such as where the court clerk travels to outer islands whilst the Judicial Officer and counsel remain in a national or regional court room.

6.7 Recording Proceedings

Most, if not all, videoconferencing applications can record the proceedings in both audio and video. This is of particular value if wishing to subsequently replay or post on the court website or, to provide a streaming/replay service via facilities such as YouTube. However, consideration should also be given to video recording in parallel with existing digital court recording that most courts in the Pacific do have (for example, the For The Record (FTR) product).

While many videoconferencing applications have the capacity to record the session (both audio and video), careful consideration should be undertaken to not end up with the recording of proceedings in multiple locations. If a court is using Polycom as well as Zoom, the videoconferencing technology can feed directly into the court's recording system, such that when the court calls into the Zoom

virtual courtroom, the court's recording system will record just like any other use of Polycom. Where a direct feed into the recording system is not possible due to equipment limitations, a microphone should be placed near the speaker.

6.8 Tracking the Use of RCP

The use of RCP to assist with the delivery of justice should be tracked and monitored regularly. This ensures that recordings can be easily located and helps provide data that helps managers monitor usage and trends. It is the responsibility of the Video Coordinator to register all proceedings using RCP, noting the following information:

- Proceeding type (for example, Trial/taking evidence, etc);
- Case type (for example, Criminal or Civil);
- Division (for example, Trial Division);
- Date, time and location;
- Length of proceeding;
- Judge; and
- Reason for videoconferencing (for example, vulnerable witnesses).

Reports should be tabled monthly to the Chief Justice summarising the above information collected and used to guide investment decisions in technology.

7. Costs

The estimated costs for the setup of the various items necessary to conduct RCP can be as little or as much as a court wishes. Costs of high-quality cameras, Plasma screens, etc continue to drop worldwide, and while a Level 3 courtroom may be expensive, over time with improving technology, costs will continue to drop.

Equally important, is that with a minimum of technology, RCP can be done simply with a projector, laptop, desktop computer and additional webcam (if needed for the desktop computer).

The template in **Annex Eleven** in the additional materials to this Toolkit may be of use for courts when considering costs, and how many courtrooms are needed and to what level. In addition to the indicative hardware costs,³ based on Australian Dollars (AUD), there would be transportation, delivery costs and possibly import duties. Therefore, an allowance of 10% should be added to the overall estimate.

³ As at August 2020.

8. Case Study: Lessons Learned in the Federated States of Micronesia

In 2018, the FSM installed and commenced use of RCP. Some important lessons learned from running RCP and experiencing what can go wrong, may be of assistance to PICs using this toolkit.

These lessons include:

- When running RCP, advise those within the court facility to limit their Internet access as much possible (for example, refrain from using Skype, or streaming services during the RCP);
- When establishing Wi-Fi access within a courtroom, endeavour to run a fixed cable from the network server into the courtroom, and then run a Wi-Fi router from that point, rather than relying on accessing a remote Wi-Fi device and/or a Wi-Fi repeater;
- Discuss with the Judicial Officer prior to the RCP session whether exhibits are likely to be called up during the proceeding, and ensure easy access is available for them to be presented on the screen;
- Before commencing the videoconferencing session, provide the opportunity for the Judicial Officer to see the setup and be assured that performance of the Internet and placement of screens is as the Judicial Officer thinks best;
- When the 'remote witness' is being streamed into the courtroom, be sure to sound test the volume not only for those in the courtroom, but also so that the court recording devices can adequately pick up the voice(s); and
- Where there is significant natural light coming into the courtroom, be sure to test how the court looks from the 'eyes' of the person/party not present (for example, the expert witness in Hawaii).

9. Legal Considerations

9.1 Which Proceedings can be Conducted Remotely?

Realising that COVID-19 imposes restrictions on the conduct of in-person court proceedings, courts around the world have generally gravitated toward a default position that all matters, except jury trials can or should, be conducted remotely provided that the fairness of the proceeding is not unduly compromised.

The emerging standards of proof for the decision to use RCP, appears to be if the RCP is on balance, beneficial to the overall fair and efficient administration of justice or, if good cause is demonstrated. To assist in making this decision a 'Justice Test' can be applied.

The Justice Test^v is made up of seven elements, requiring that courts should secure and deliver:

1. Substantive justice (fair decisions);
2. Procedural justice (fair process);
3. Open justice (transparency);
4. Distributive justice (accessibility);
5. Proportionate justice (appropriate balance);
6. Enforceable justice (backing by the state); and
7. Sustainable justice (sufficient resources).

Due to COVID-19, an additional new standard has emerged. This is that the courts' primary consideration must be the health risk posed to practitioners, witnesses, Judicial and Court Officers of contracting the Coronavirus and of spreading it. This view suggests that the orders of the court must not result in a situation where the risks of the virus are increased.^{vi}

Other defining considerations are if the matter relates to essential areas of life, then they should proceed as a priority using RCP. These cases include domestic and family violence, emergency child custody matters and proceedings related to the health and care of persons with the virus.^{vii} Routine matters that allow people to continue their lives, such as uncontested divorce and probate proceedings, are another category of cases considered suitable for RCP.^{viii}

At the same time, partner courts should examine local statutory schemes of evidence for provisions which permit or prohibit RCP being conducted.

For some more guidance on how to identify, triage and manage cases using RCP during the pandemic, see **Annex Twelve** in the additional materials to this Toolkit: *How courts in Australia have responded to COVID-19 health restrictions*.

9.2 Procedural Fairness

Procedural fairness lies at the heart of the right to a fair trial and constitutes the second of the seven elements of the "Justice Test" mentioned above. Central to the procedural fairness doctrine is that parties are given the opportunity to present their arguments in court and to test through cross-examination the truthfulness, demeanour and credibility of a witness.

Crucial to considerations is the quality of the virtual hearing and if that quality compromises procedural fairness. Emerging case law from Australia acknowledges that whilst RCP may not be ideal due to the reduction in formality and diminished chemistry between counsel and witnesses, ultimately this would not result in an unfair trial.^{ix} Indeed, some Judicial Officers have noted that RCP technology enhances the quality of the trial as it allows the Judicial Officer to better focus on the facial expressions of the witness.^x

Judicial Officers might find the *Core Elements of Procedural Fairness* checklist developed by the National Centre for State Courts in the USA, as presented in full in **Annex Eleven** of the additional materials to this Toolkit, useful in their deliberations. The PJSI **Enabling Rights Toolkit** also provides more guidance around the principles of natural justice, procedural fairness and the duty to ensure a fair hearing to both parties.

9.3 Open Justice and Right to a Public Hearing

The concept of an open court is anchored in the principle that *'justice should not only be done but should manifestly and undoubtedly be seen to be done'*.^{xi} Open justice often has constitutional underpinnings which dictate practical rules, including that judicial proceedings should be conducted in public.

In the context of COVID-19 and the restrictions placed on public and press attendance at hearings, there are concerns over whether or not RCP are sufficiently transparent and possibly unfair. The concern is that the vital protections associated with open justice may be unnecessarily denied, and that a practice to exclude the press and the public from virtual proceedings may be difficult to wind back after COVID-19.

In practice however, these concerns are dissipating as courts innovate and adapt and realise that broadcasting or streaming proceedings can ultimately, strengthen the principles of open justice by providing access to court proceedings publicly online. Indeed, some courts such as the High Court of Australia have been doing this prior to the pandemic.

In the following paragraphs we present some of the techniques being used by courts in the region to provide open justice whilst at the same time, maintaining the security and privacy of information.

9.3.1 Ways of ensuring a public hearing

Courts around the world are using a variety of means to ensure an open court and public hearing. These include:

- Providing access to information on the court website, about how the court is providing access to proceedings and listing the proceedings, times and manner of joining the proceedings;
- Providing on the court list information on how to access the proceeding (See **Annex Three** of the additional materials for an example from the *Daily List* of the Federal Court of Australia);
- Streaming proceedings on YouTube (for example, in the Supreme Court of Victoria);
- Making audio-visual recordings of hearings available on the court website (for example, in the High Court of Australia);
- Putting a screen in an open space in the court precinct for the public to view proceedings being streamed from a court room;
- Using iPads or screens in separate rooms, streaming from different court rooms;
- Publication of written transcripts on websites; and
- Providing access to the link of the live proceedings for persons who requests it from the Judges' Associate.

9.3.2 Recording, terms of access & security of streamed proceedings

Whilst courts should make every effort to prevent court proceedings from being recorded and replayed, it is very difficult to police. One deterrent is for the court to make a *Video Link Order* at the

commencement of the proceedings, prohibiting the making of audio or video, such as used by the Federal Court of Australia (available in **Annex Fourteen** of the additional materials to this Toolkit). Another approach is to place warnings prior to viewing and to have the viewer agree to the terms of viewing. One example is the *Terms of Use of Webcast Proceedings* used by the [Supreme Court of Victoria](#) in **Annex Fifteen** of the additional materials to this Toolkit. Another example is the [Supreme Court of New South Wales, Australia](#).

9.4 Privacy

The privacy and personal data of court users' needs to be protected as courts move online. To do so, privacy policies and processes should be reviewed and adapted to apply to the RCP environment. This includes where documents are stored on servers.

To avoid the broadcasting of 'in camera' evidence, streaming should not be done in real time. Rather courts should delay transmission by approximately half an hour to avoid the inadvertent broadcasting of non-public proceedings.

9.5 The Right to Confront

The right to confront an accuser or witness to cross-examine them, is a requirement of a fair trial and in some partner courts across the Pacific, this right is enshrined in the Constitution. Therefore, the right cannot simply be ignored in the context of COVID-19 and RCP.

How each jurisdiction preserves and ensures the right to confront is a matter to be considered and decided by the presiding Judicial Officer in each individual case, informed by the legislation, quality of technological options available to conduct hearings remotely and, the directions of the Chief Justice.

For example, in the Republic of the Marshall Islands, proposed amendments to the Marshall Islands Rules of Criminal Procedure (2005), maintains the right to confront by stating at Rule 26(d):

"Witnesses Appearing by Contemporaneous Transmission.

(1) For good cause and consistent with the confrontation cause, the court may permit testimony in open court by contemporaneous transmission from a different location.

(2) Witnesses appearing by contemporaneous transmission shall be deemed to be "present" in court.

(3) The court may make any proceeding accessible to the public by contemporaneous transmission, which proceeding shall be deemed to be held in "public" and in "open court."

and at Rule 53 (b) about Courtroom Photographing and Broadcasting:

"The court may make any proceeding accessible to the public by contemporaneous transmission, which proceeding shall be deemed to be held in "public" and in "open court."

For an example of emerging caselaw from the Pacific about remote witness testimony, the right to confront and the use of video link in the absence of explicit provisions, see the ruling from the Supreme Court of Tonga in [Rex v. Satini \[2020\] TOSC 62; CR 227 of 2019 \(26 August 2020\)](#) available on PacLii.

9.6 Access to Justice

RCP may pose barriers for access to justice and equality before the law for partner courts in the Pacific. The principal concern is digital exclusion, where court users may not have access to adequate technology or Internet services to support RCP, or they lack the knowledge about how to use it. At the same time, it is observed that mobile telephone technologies are widely and successfully used throughout the Pacific Region.

Self-represented litigants are reported to be particularly vulnerable to digital exclusion. In this regard, the National Centre for State Courts (NCSC) suggests to:

“Offer alternatives for litigants who lack devices or internet access to participate remotely: Courts should suggest community resources (e.g., public schools, libraries, community centers) where litigants can use computers or get access to a stable internet connection, including, if possible, dedicated computer kiosks or Zoom pods at the courthouse”.^{xii}

For more suggestions from the NCSC see **Annex Sixteen** in the additional materials to this Toolkit for advice on the *Conduct Fair and Just Remote Hearings: A Bench Guide for Judges*.

Cost to users may also be a barrier to access. To mitigate costs to users, some courts are providing iPads or RCP facilities in isolated rooms in the court precinct to avoid court users using their personal devices and personal Internet data.

For first-time RCP participants, the court should provide support and information with instructions on ‘how to’ participate and use the technology prior to the proceeding.

9.7 Cross International Border Witness Testimony

Partner courts should consider a complex range of issues when contemplating the taking of evidence in a foreign country using remote video or audio technologies. Some of these issues are discussed below.



9.7.1 Can RCPs be held in a foreign country?

In both criminal and civil matters, it is particularly important for partner courts to thoroughly consider relevant legislation, case law, regulations and treaties in both the home jurisdiction and the foreign country, or states within the foreign country, in which the party or witness is located. This is because there is no uniform approach internationally to the taking of evidence across international borders, and because there is a very wide variance in stances with respect to issues such as sovereignty and the legal requirements and processes to be followed. In fact, some States may even have ‘blocking statutes’ which might prevent evidence being taken at all.

In every case it is important that proper procedure be followed and that the parties and the court know what is required. Here a Practice Note of the Chief Justice is helpful. [The Practice Note on Overseas Service and Evidence of the Federal Court of Australia](#) is provided in the additional materials to this Toolkit in **Annex Seventeen** as an example.

In all matters, evidence should be taken in a manner consistent with the procedural and evidentiary rules of both the local jurisdiction and the foreign jurisdiction in which the evidence is to be given.

9.7.1.1 Civil Matters Generally

In civil matters, some countries prioritise *The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970* (The Hague Evidence Convention). The Hague Evidence Convention best covers situations where witnesses are reluctant to voluntarily give evidence in civil and commercial matters, however it also provides for the taking of evidence without compulsion.

The Hague Evidence Convention firstly provides for the taking of evidence abroad by allowing transmission of [Letters of Request](#) from one signatory state to another. This is done through judicial authorities. The second avenue is for the taking of evidence by diplomatic offices, consular agents and commissioners. For more detail on the Hague Evidence Convention and for access to useful explanatory documents go to [The Hague Evidence Convention website](#) and for an outline of The Hague Evidence Convention see **Annex Eighteen**.

Whilst many countries are signatories to The Hague Evidence Convention, including Australia and New Zealand, according to [The Hague Evidence Convention website](#) no PJSI PIC is a signatory. For PICs that are not a signatory to The Hague Evidence Convention, the procedure may still be applied and a [Letter of Request](#) may still be used, although the country receiving a Request is under no obligation to comply with the request. Otherwise, States may rely upon the principles of reciprocity and the comity of courts toward one another, noting though that the rules of procedure in the country of origin may prevail.^{xiii}

In Europe, the [European Judicial Network in Civil and Commercial Matters](#) facilitates the networking of judicial authorities in European Union (EU) countries, and provides country specific resources to help should evidence be taken in a European country.

In civil matters where a witness is willing to give evidence, private arrangements may be able to be made for the taking of evidence. When taken, parties should ensure that evidence is taken in a manner which is consistent with the rules of both the foreign State and local PIC jurisdiction for which the evidence is required. This includes requirements for the taking of testimony using video or audio technologies.

9.7.1.2 Criminal Matters Generally

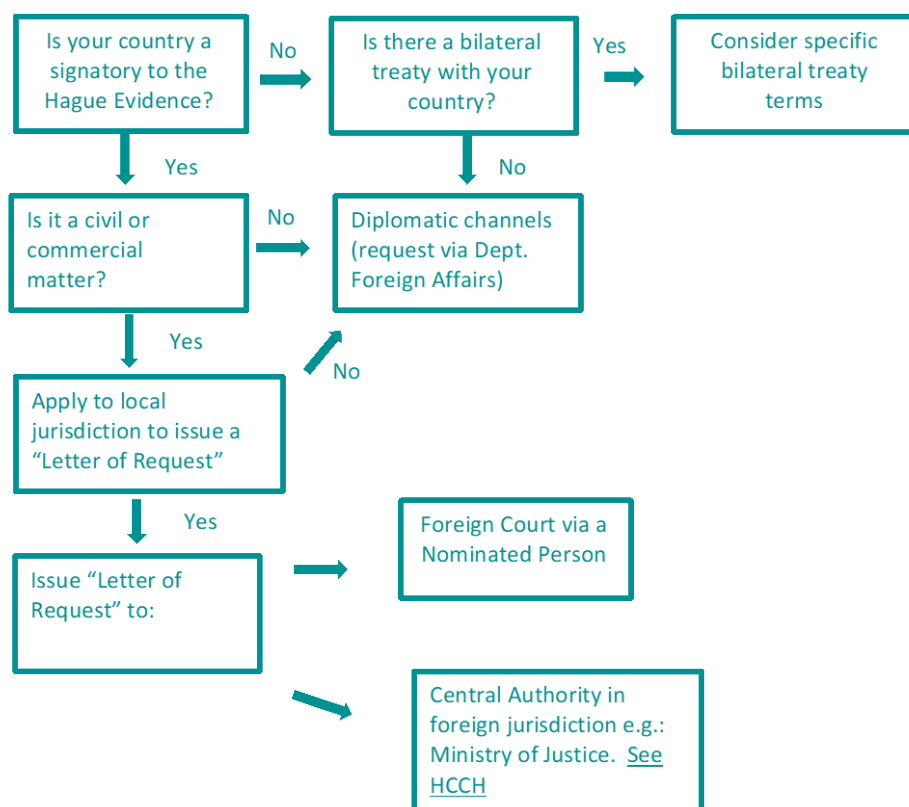
The taking of evidence abroad in criminal matters is often regulated by bilateral or multilateral judicial cooperation treaties which articulate how States agree to cooperate to provide mutual assistance in criminal matters. Therefore, partner courts should, as a first step, check if there is a current treaty with the foreign State regulating cross-international border testimony.

At the same time, partner courts should become familiar with any relevant domestic legislation to be complied with. This might be a specific Foreign Evidence Act that regulates the taking of evidence abroad or laws setting out Mutual Assistance in Criminal Matters. Here, the [Commonwealth Secretariat](#) and the [United Nations Office on Drugs and Crime](#)^{xiv} in recent years have been helping strengthen international cooperation in the administration of criminal justice by focusing on the domestic legislative basis for international cooperation, including the taking of evidence across international borders. To this end, PICs may find the [Model Law on Mutual Assistance in Criminal Matters](#) of assistance.

For a summary of the process to obtain evidence in a foreign jurisdiction, see Diagram 2 below which outlines the process for obtaining evidence across international borders.

Diagram 2: Process for Obtaining Evidence across International Borders

Obtaining Evidence Across International Borders



9.7.2 Can video or audio technology be used in the foreign country?

Among countries that use RCP for cross international border witness testimony, the legal basis for such use can vary substantially between States and states within a foreign country. Generally, the taking of RCP evidence must comply with the procedural and evidentiary rules of both the relevant partner court and the foreign State and, state within that country. This requires the Judicial Officer(s) to consider the legal bases for RCP on a case-by-case and country-by-country basis.

9.7.3 Oaths, perjury and contempt

The administration and enforceability of the oath or affirmation of a witness requires particular consideration by the presiding Judicial Officer in RPC, because the proper administration of the oath is foundational to the establishment of the crimes of perjury⁴ and contempt.

The oath may be administered to a remote witness:

- By the presiding Judicial Officer;
- By a Court Officer present with the witness at the remote end; or
- By a Court Officer remote from the witness.

⁴ Establishing perjury in transnational court proceedings is a complex area of law where there is great variation in perjury statutes from country to country. From the point of view of the country where the evidence is received, there are two main issues to consider: (1) whether a statement made in another country can amount to perjury at all; and (2) whether it is justified for an extra-territorial exercise of the criminal jurisdiction.

When administering an oath to a witness in another country, prior permission may be required, because the swearing of a witness may be seen by some countries as sovereign right. Therefore, the giving of an oath and taking of evidence without permission may be a violation of sovereignty.

Unless privilege or other legal justifications apply, contempt committed in a RCP constitutes direct contempt as it has taken place in the presence of the court, even though the witness is ‘virtually present’. However, as with perjury, finding an effective means to actually prosecute the witness for contempt is of significant practical and legal complexity. In these rare circumstances, the judicial officer should not be distracted by these complexities. Rather, focus should remain on their key role which requires the judicial officer to consider how the perjury or contempt offence may have impacted, or compromised the head case and to then, take this into account in the final judgment.

9.8 Use of RCP Domestically

There may be many reasons to use RCP for a trial where the witnesses are in-country. The COVID-19 pandemic is one of them. Another example would be where a child victim witness in criminal proceedings gives testimony remotely to avoid facing the accused.

In considering the use of RCP, the court should consider firstly if the domestic rules include “the provision for a judge or registrar to make directions for the taking of evidence and receipt of submissions by video link, audio link, electronic communication or other means that the Court considers appropriate”,⁵ in addition to the over-arching interests of justice. Where a jurisdiction does not have legislation which provides for, or is broad enough to encompass RCP, they should consider drafting appropriate legislation or amendments, to address the conduct of RCP.

9.9 Judicial Directions and Orders

All RCP participants in each hearing are to be advised that the RCP is a court of law and that evidentiary laws and rules still apply. Additionally, by order of the court, participants should also be reminded that:

- The proceeding is live and that anything said is recorded;
- That unless the court otherwise orders, no person may make any audio or video recording, or photograph of the hearing or any part of it;
- Members of the public may not participate in, or interrupt, the hearing or make an audio or video recording of the proceeding in part of full; and
- Penalties may apply if there is non-compliance with the RCP order.

An example of the RCP *Court Order* used by the Federal Court of Australia is attached in the additional materials to this Toolkit as **Annex Fourteen**.

9.10 Duties of Legal Representatives

The court should issue a Practice Direction to enable practitioners to know RCP expectations. An example of the *Practice Direction*, issued by the Chief Justice of Vanuatu, is attached as **Annex Nineteen** in the additional materials to this Toolkit.

The duties of the legal profession should also be articulated in a protocol of Bar Associations and Law Societies. A protocol for RCP provides guidance to practitioners and can set out a minimum standard for court hearings, conduct and technical aspects, such as in the protocol of the *New South Wales of Australia Law Society* presented in **Annex Six** of the additional materials to this Toolkit.

⁵ Federal Court of Australia. 2020. Videoconferencing: *Videoconferencing in the Federal Court*. <https://www.fedcourt.gov.au/going-to-court/videoconferencing-guide>

The party or legal representative applying to a court for leave to take testimony in a foreign jurisdiction, should assist the court by providing information about the application of the Hague Evidence Convention or other instrument, along with the domestic provisions and procedures that support the taking of evidence in the foreign jurisdiction. In practice, the party applying for the foreign evidence also prepares the “Letter of Request” under the Hague Evidence Convention. To do this, legal representatives may need to engage a practitioner in the foreign jurisdiction to assist with the preparation of the “Letter of Request”.

9.11 Admissibility of Evidence

Evidence taken following an RCP order may be admitted on any terms the trial judge thinks fit. This may include rendering the evidence inadmissible in its entirety or in part, if it is in the interests of justice to do so. Consideration should also be given to whether the evidence should be rejected if the evidence was unlawfully or improperly obtained.

No adverse implications are drawn from a person's appearance by way of a video link and as such, the evidence does not have any greater or lesser weight.

10. Additional Sources of Information about RCP

Information about RCP is continually emerging as justice systems around the world adapt and publish their experiences, policies and user guides.

For leading sources of further information see **Annex Seventeen** in the additional materials to this Toolkit.

11. End Notes

ⁱ If a court intends to make a decision on written submissions the court usually makes orders for the parties to file written evidence or submission in relation to the decision. Notifications are usually made in writing of the outcome of the decision by order forwarded by email and/or mail.

ⁱⁱ National Centre for State Courts, Civil Justice Initiative. (2020) *Findings and Recommendations on Remote Conferencing*. NCSC Civil Justice Initiative.

<https://www.ncsc.org/~media/Microsites/Files/Civil-Justice/NCSC-CJI-Appendices-G.ashx>

ⁱⁱⁱ Material in electronic form such as applications, affidavits, exhibits, displayed in electronic files and evidence.

^{iv} As at August 2020.

^v Susskind, R, *The Future of Courts*, The Practice, Volume 6, Issue 5, July/August 2020, Harvard University, USA, <https://thepractice.law.harvard.edu/article/the-future-of-courts/>

^{vi} *Capic v Ford Motor Company of Australia* [2020] FCA 486; *McDougall v Nominal Defendant* [2020] NSWDC 194

^{vii} National Centre for State Courts, Civil Justice Initiative. (2020) *Findings and Recommendations on Remote Conferencing*, NCSC Civil Justice Initiative.

<https://www.ncsc.org/~media/Microsites/Files/Civil-Justice/NCSC-CJI-Appendices-G.ashx>

^{viii} Ibid.

^{ix} *Capic v Ford Motor Company of Australia Limited* (Adjournment) (2020) FCA 486 (Perram J)

^x Ibid.

^{xi} *R v Sussex Justices; Ex parte McCarthy* [1924] KB 256

^{xii} National Centre for State Courts. 2020. Conducting Fair and Just Remote Hearings: *A Bench Guide for Judges*. <https://www.ncsc.org/newsroom/public-health-emergency>

^{xiii} *Soci te  Nationale Industrielle Aerospatiale v. United States District Court*, 482 US 522, 107 S. Ct. 2542 (1987)

^{xiv} https://www.unodc.org/res/cld/bibliography/model-law-on-mutual-assistance-in-criminal-matters_html/Model_Law_on_MLA_20071.pdf



REMOTE COURT PROCEEDINGS TOOLKIT ADDITIONAL MATERIALS



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Annex One: Additional Advantages of RCP

RCP offers many advantages, some of which are:

- Increased availability of expert witnesses as their travel times are decreased, which can also decrease delay;
- Increased flexibility in the scheduling of proceedings and accommodation of witnesses;
- A reduced need to transport files;
- Increased thoroughness and preparation by Judicial Officers and lawyers;
- Increased efficiency and cost effectiveness for other justice agencies (for example, Legal Aid, Corrective Services and Public Prosecutions) due to reduced travel and waiting time;
- The technology can be used to educate the broader community on important issues such as domestic and family violence;
- Technology is advancing rapidly which will continually offset some of the disadvantages of RCP; and
- Carbon emissions of cars and aircraft are reduced due to reduced travel, benefiting the environment.

Annex Two: National Practitioners / Litigants Guide to Online Hearings and Microsoft Teams (Federal Court of Australia)

1. Introduction

- 1.1. As per the Federal Court's Special Measures in Response to COVID-19 (SMIN-1) Information Note, to the extent possible, proceedings identified as being suitable will be listed for hearing using remote access technology known as Microsoft Teams (**Teams**).
- 1.2. Proceedings conducted in this manner will be referred to as **Online Hearings**.
- 1.3. Participants are reminded that Online Hearings are real hearings conducted by remote access technology. The expectations of courtroom behaviour and decorum still apply.
- 1.4. This Guide is intended to provide guidance for the legal profession and litigants-in-person appearing in Online Hearings. **Annexure A** contains illustrative instructions on how to use Teams.

2. Initial Steps

- 2.1. The success of an Online Hearing will depend on the facilities available to parties and their willingness to coordinate with each other and adapt quickly.
- 2.2. The Court is currently reviewing all upcoming hearings to determine their suitability for an Online Hearing.
- 2.3. Parties are asked to consider and liaise with the Court whether an Online Hearing is suitable giving consideration to:
 - the appropriate facilities available to relevant participants including practitioners, litigants-in-person, the parties themselves and any witnesses that the parties intend to call;
 - locations and time zones of witnesses;
 - firewall and security issues.
- 2.4. Parties should also consider and liaise with the Court whether a teleconference, in lieu of an Online Hearing, may be suitable.
- 2.5. Parties are expected to seek orders to facilitate an Online Hearing. See **Annexure B** for sample orders.
- 2.6. The Court will identify the manner in which a test run is to be conducted and advise parties accordingly.

3. Establishing an Online Hearing

- 3.1. Online Hearing Invitations
 - 3.1.1. Upon request, parties are to provide the Court with the individual email addresses for each of the Online Hearing participants.
 - 3.1.2. Where the Online Hearing is for a full day duration, parties will receive two Online Hearing invites – one for the morning session and another for the afternoon session. This is to allow the recording time to process over the luncheon adjournment.
 - 3.1.3. Teams invites include a link to join the meeting (see 3.2.1 below). This link is able to be passed on to witnesses or other practitioners who did not receive an invitation.

Note, however, that persons who join an Online Hearing via that Teams link are subject to being admitted or declined by the Court.

3.2 Applications Required

- 3.2.1 Parties can open up the Online Hearing from the [Join Microsoft Teams Meeting](#) link in the Online Hearing invite.
- 3.2.2 The Court recommends using a web browser other than Internet Explorer due to compatibility issues that may arise. The web browser may have limited features but the Court does not believe this is an issue.
- 3.2.3 Participants may also wish to download the Teams Application from the Microsoft product website [here](#) free of charge.
- 3.2.4 The Teams Application for iOS and Android are also available and free of charge however, features are limited. The Court does not believe this is an issue and encourages this option for parties who may not have the facilities, but do have access to a smartphone or tablet.
- 3.2.5 Participants also have the ability to 'dial-in' to Teams using a standard telephone connection. The dial-in details, including the unique conference ID number, can be found in the Online Hearing invite under the Join Microsoft Teams Meeting link.
- 3.2.6 A list of hardware requirements for Teams can be accessed [here](#).

4. Joining an Online Hearing

4.1. What participants can expect

- 4.1.1. When joining the Online Hearing, participants will be asked to enter their name. Be mindful that this name will be displayed for all participants to see. First Name and Surname are to be entered.
- 4.1.2. Parties should give consideration as to whether a participant's name (and/or face) should not be displayed (for example, for their safety) and liaise with the Court accordingly in advance of the Online Hearing.
- 4.1.3. After 'joining' the Online Hearing, participants will enter a virtual lobby and will remain there until admitted into the Online Hearing.
- 4.1.4. Participants are to join the Online Hearing **at least 15 minutes prior to the listing time** to allow sufficient time to address any technical issues.
- 4.1.5. Participants are encouraged to wear headsets during the Online Hearing as this greatly improves the audio quality for the other participants and for the recording made for the purpose of producing the transcript.
- 4.1.6. Online Hearings are being recorded by the Court's recording and transcription services contractor, Auscript, and through Teams directly. Participation in an Online Hearing indicates your consent to being recorded.
- 4.1.7. Transcript will be produced and available through Auscript, in accordance with the usual ordering processes. Some delays may be experienced during this time of transition to Online Hearings.
- 4.1.8. The use of communication and recording devices for the purpose of recording or making a transcript or otherwise is prohibited. Division 6.2 of the *Federal Court Rules 2011* (Cth) still applies.
- 4.1.9. In the event of unforeseen and unavoidable technological issues, the Court will temporarily adjourn to address those issues.
- 4.1.10. Provided [here](#) is a ten-minute portion of an Online Hearing conducted by Teams. That portion shows the end of dealing with objections to evidence, the respondents

calling their first witness, the swearing in of a witness (by the judge), and the beginning of examination and cross-examination.

4.2. What is expected of participants

- 4.2.1. The same formal etiquette and protocol of a physical Court is expected in the Online Court.
- 4.2.2. The matter will be called and the Court will ask for appearances.
- 4.2.3. Judges are to be addressed as 'Your Honour', and registrars are to be addressed as 'Registrar'.
- 4.2.4. Where a judge has elected to robe, counsel must also robe.
- 4.2.5. The Court may elect to dispense with any of the usual formalities, and the parties are expected to act accordingly.
- 4.2.6. Participants are to join an Online Hearing from a quiet, secure location.
- 4.2.7. Participants are expected to ensure that there is sufficient internet coverage in their location and all devices are fully charged.
- 4.2.8. Microphones and cameras are to be tested and working prior to joining an Online Hearing. This can be managed through the Teams Device Settings.
- 4.2.9. Other than practitioners/litigants-in-person appearing, all other participants are to keep their microphones muted and cameras turned off.
- 4.2.10. Where possible, identify and resolve any firewall and security restrictions before the Online Hearing commences.

4.3. Witnesses

- 4.3.1. The same expectations for participants above at 4.2. also applies to witnesses in an Online Hearing.
- 4.3.2. The Court will administer the oath or affirmation of each witness.
- 4.3.3. Where a witness would like to take an oath, note that s 24(1) of the *Evidence Act 1995* (Cth) provides that it is not necessary that a religious text be used in taking an oath: *BZAAG v Minister for Immigration and Citizenship* [2011] FCA 217. However, the party calling the witness should ensure that the relevant religious text is available to that witness in advance of the Online Hearing where the witness prefers to use the religious text in taking an oath.
- 4.3.4. A witness is to be provided in advance with all documents to which they may be referred to. See more below at 6. Document Management.

5. Open Justice

- 5.1. The Court continues to consider its options for preserving the principles of open justice.
- 5.2. Until further notice, Court buildings remain open to the general public. However, all parties and practitioners are required to appear remotely for any Online Hearing that proceeds other than in exceptional circumstances and with the express authorisation of the Chief Justice.
- 5.3. The daily court list for each registry will provide advice for members of the public seeking to view an Online Hearing remotely.
- 5.4. Any member of the public who is permitted by the Court to join an Online Hearing undertakes to:
 - Remain silent (mute their microphone) and hidden (keep their camera turned off); and
 - Not record the proceedings (see 4.1.8. above).

- 5.5. The Court may require a member of the public who wishes to view an Online Hearing to provide an email address. The Court use this information solely for the purpose of providing that member of the public with a link to the Online Hearing, and it is not retained thereafter.

6. Document Management

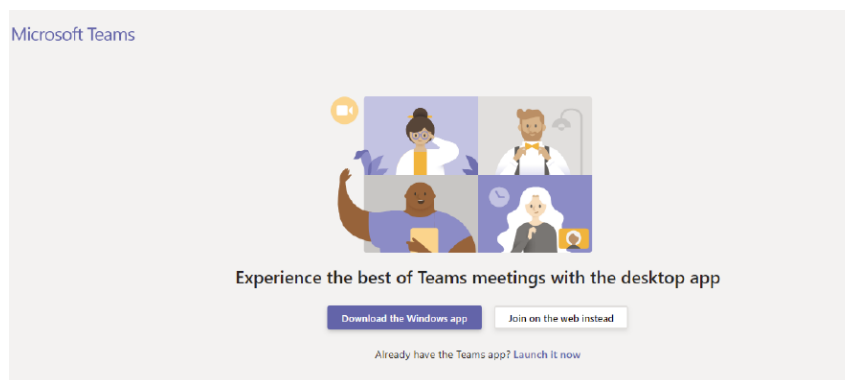
- 6.1. Where possible, a Digital Court Book is to be created for an Online Hearing.
- 6.2. The Digital Court Book is to be provided in accordance with the time and manner as directed by the Court
- 6.3. Arrangements are to be made, in consultation with the Court, regarding the ability to facilitate the 'handing up' of documents. Options may include:
 - by email to the Court;
 - by way of a secure, online file sharing platform, such as OneDrive;
 - by utilising the 'sharing screen' functionality within Teams (parties should liaise with the Court whether this may be appropriate intermittently by counsel or their instructing solicitors, or whether a Digital Court Book may be navigated by Court staff during the course of the Online Hearing).

7. Assistance

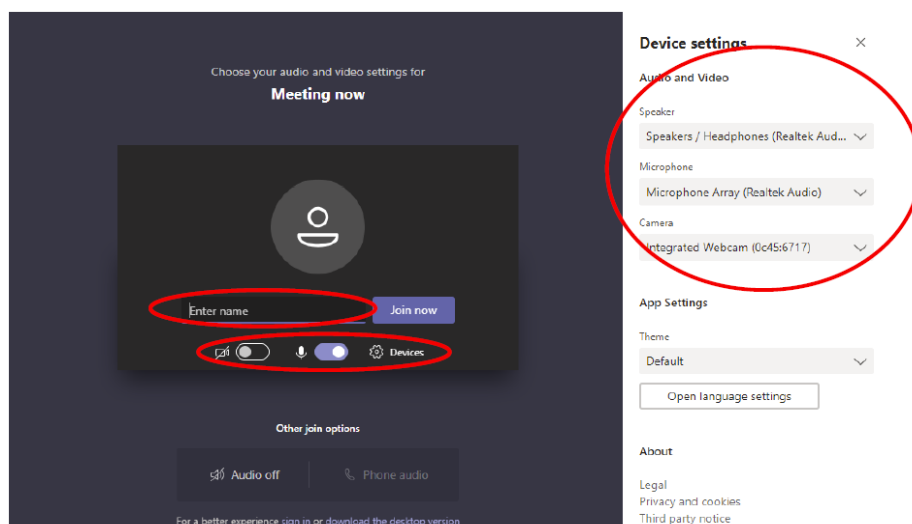
- 7.1. Please direct all questions relating to a specific matter to the chambers of the docket judge or relevant registrar.
- 7.2. Please direct all general questions to Registrar, Digital Practice via email.
- 7.3. The Microsoft Teams website and 'Help' section of the Teams application provides additional tips and advice about how to use the program.

Annexure A: Simple Instructions on using Teams¹

- To join an Online Hearing, click on the [Join Microsoft Teams Meeting](#) link at least 15 minutes prior to the Online Hearing commencing.
- For participants who already have Teams installed on their device, the link above should automatically redirect to the Teams App.
- However, the participant may be redirected to this screen in a web browser.

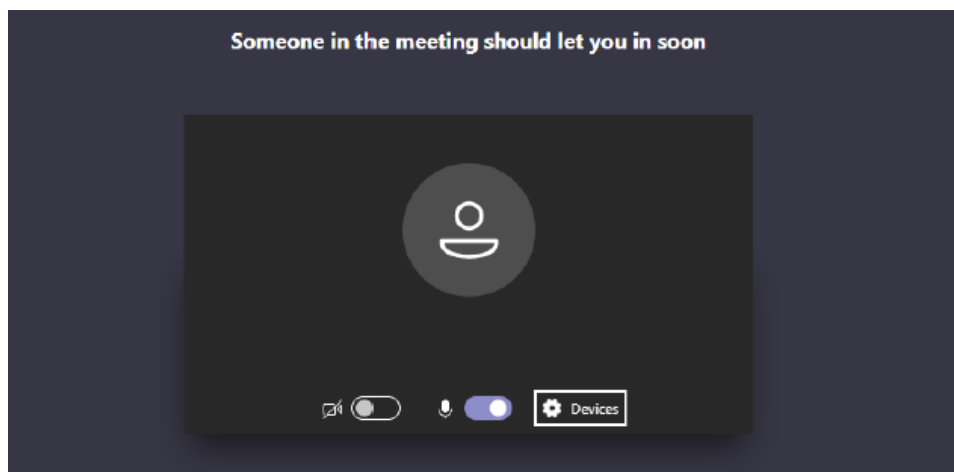


- If so, the participant may elect to Download the Windows App – which is free of charge.
- Alternatively, by selecting Join on the web instead, the participant will be redirected to another webpage. The participant may be asked to give permission for Microsoft to access their device's microphone and camera – select Allow.
- On the next screen, enter your First Name and Surname in the relevant field
- Manage your microphone and camera settings, if required, through the Device Settings Panel
- Select 'Join Now'

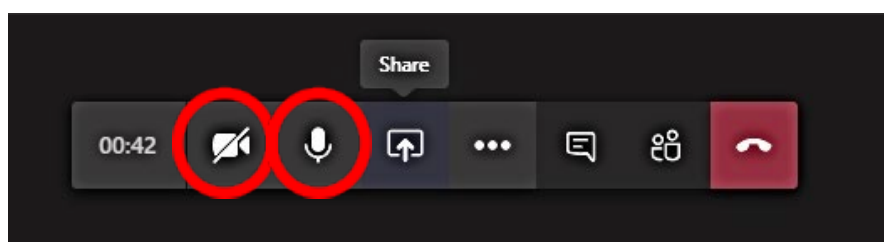


¹ Federal Court of Australia. 2020. Federal Court of Australia National Practitioners Guide to Online Hearings and Microsoft Teams. Federal Court of Australia. <https://www.fedcourt.gov.au/online-services/online-hearings>

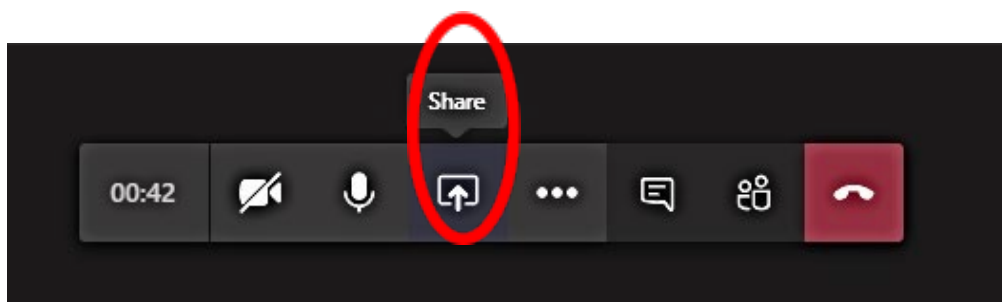
- Patiently wait in the virtual lobby until you have been admitted in to the Online Hearing.



- To mute and unmute your microphone, select the microphone icon on the Teams menu ribbon.
- To turn your camera on and off, select the camera icon on the Teams menu ribbon.



- **Only if directed by the Court**, the 'sharing screen' functionality may be used during an Online Hearing to display and navigate through documents.
- To do this, select the 'Share' button on the Teams menu ribbon.
- Then, choose to present either Desktop or Window (i.e. a particular program). The latter option is strongly recommended.



Annex Three: Example of Daily Listings (Federal Court of Australia)

Examples of “open justice” notifications on the Federal Court Daily Listings page:

Justice Moshinsky

By Web Conference COURT 8G (Level 8)

9:30 AM

Part Heard

- 1 VID339/2020 IN THE MATTER OF SIENNA CANCER DIAGNOSTICS LIMITED --- This hearing is for the approval of a scheme of arrangement in respect of the plaintiff company and will be conducted via remote access technology. If a member of the public wishes to observe the hearing through Microsoft Teams they must contact the Associate to Moshinsky J by telephone or by email at least one hour before the scheduled start time. If a member of the public wishes to dial in and hear these proceedings – call (number) and enter the Conference ID #. Members of the public are not to provide their name or phone number when connecting, and are to remain muted. Members of the plaintiff company who wish to object to the scheme of arrangement can join the hearing remotely by one of the mechanisms outlined above. If the person objecting wishes to appear remotely, they must either contact the Associate to Moshinsky J at least one hour before the scheduled start time, or dial in to the proceedings at least 20 minutes before the scheduled start time. Persons who are objecting to the scheme of the arrangement and wish to appear will be asked to provide their name to the Court.

Justice Middleton, Justice McKerracher, Justice Jackson

COURT ONE (Level 8) By Web Conference

Western Australia Registry, Court 1, Level 7

Western Australia Registry, By Web Conference

11:00 AM

Full Court Hearing

- 1 VID150/2020 TRIVAGO N.V. V AUSTRALIAN COMPETITION AND CONSUMER COMMISSION - -- This proceeding will be conducted by remote access technology and is open to the public subject to the judges’ discretion or any order by the Court that may be made pursuant to s 17(4) of the Federal Court of Australia Act 1976 (Cth). If a member of the public wishes to observe the hearing they must contact the Associate to Middleton J via email at least one hour before the scheduled start time

Annex Four: Sample RCP Script

STAGE ONE: LOGISTICAL ISSUES

1. "These proceedings are being conducted remotely and recorded"
2. "Are you able to hear me and can you understand what I am saying?"
3. "Are you able to see me and is the picture quality sufficient?"
4. "If, at any time, you are not able to see or hear what is happening in court today, you must immediately inform me of the issue."
5. "If the internet drops out, please remain in the same place and turn on your mobile phone. Someone will contact you by phone if this happens. Alternatively, you can phone this number: XXXXXXXX."
6. "With respect to the proceedings, please wait to speak until requested."
7. "If you wish to speak, please raise your hand."
8. "When you speak, please do so normally, slowly and please do not interrupt others when they are speaking."
9. "When you are not speaking, please mute your microphone."
10. "Please do not move out of the frame and keep your faces and focus on the camera, as opposed to the screen."
11. "If you need to have confidential communications, please ensure your microphone is muted and use the chat room or other device if required."
12. "As we are still adjusting to the use of RCP, we ask everyone to be patient and mindful of the need to uphold the decorum and formality of the court."

STAGE TWO: PRELIMINARIES

13. "It is placed on the record that the parties consent to the proceeding being conducted via video conference technology."
14. "You are advised that these proceedings are public proceedings and that the public may have access to these remote proceedings, however they cannot participate."
15. "It is also placed on the record that the parties waive any rights they may have to be present in the courtroom for the proceeding."
16. "The parties are advised that all court rules of evidence and procedure apply during remote hearings or conferences."
17. "Are there any unmet disability or accessibility needs?"
18. "I confirm there is/is not a need for any interpreters?"
19. "Do the parties have any caretaker responsibilities (e.g., for a baby) or privacy issues (especially for domestic violence matters)?"

STAGE THREE: WITNESSES

20. "Legal Counsel, please confirm that X will be appearing from Y and will not have access to the hearing before giving evidence."
21. Swear in witnesses by oath/affirmations in the usual fashion
22. "Do you swear that you are alone?"
23. "Please scan your camera around the room and under tables, to confirm there is no one else present in the room."
24. Advise the witness of the operational logistics of the RCP in Stage One above.
25. "Do you swear that you do not have any other electronic devices present in the room?"

26. “You are directed to refrain from exchanging any electronic messages with anyone while testifying.”
27. “You are directed that you are not to make any video or audio recordings of these proceedings.”
28. “You are also warned that penalties may apply if you do not comply with these directions.”
29. “You are warned that, although this is a RCP, it is an offence to commit perjury or contempt of court.”
30. “Which documents do you have in front of you?” etc....

Annex Five: File Transfer Options and Considerations

Transfer of files

It is of a practical necessity to discuss how to transfer files and create access to documents for the proceedings, principally from the file, from remote locations.

Mechanism	Overview	Benefits	Considerations	Other aspects
Email	To allow transfer of one or many files between parties and court judiciary/staff independent of internal/external access to formal systems	<ul style="list-style-type: none"> • Most common ‘application’ i.e. everybody is used to sending/receiving emails • People feel comfortable sending emails 	<ul style="list-style-type: none"> • Emails can easily be sent to wrong person • Can easily be forwarded on to persons, not a party to the proceedings • Generally no ‘receipt’ • May or may not be attached to the court file in CMS • Version control difficult to manage • Size of files often large, and may not ‘fit’ with email file size limits • Court documents remain on Mail Servers e.g. Gmail server 	<ul style="list-style-type: none"> • Wherever possible, avoid this mechanism in favour of other mechanisms • Only use as last resort for quick transfer of a document
Case Management System (CMS) or	Documents (scanned or e-filed) attached to the case file in system, and then internal users	<ul style="list-style-type: none"> • Provides secure access to documents for internal users of the CMS/CTS 	<ul style="list-style-type: none"> • For those accessing remotely, e.g. judge in Australia, needs access to system through secure weblink or 	<ul style="list-style-type: none"> • Being put to good use by Republic of Marshall Islands with their PJSI Case Tracking System (CTS) which stores case documents in addition to case information. This allows

Mechanism	Overview	Benefits	Considerations	Other aspects
Case Tracking System (CTS)	accessing system and thus documents	<ul style="list-style-type: none"> Accessing the Source of Truth i.e. the court file in CMS/CTS Ensures version control No concern over ‘copies laying around’ Seeing the complete list/history of documents associated with the file Can provide user with categorisation of documents e.g. affidavits, or applications – which assists the judiciary 	<ul style="list-style-type: none"> vehicles like Citrix (support is crucial in the early use of this mechanism) Generally not available to external parties e.g. Counsel 	<ul style="list-style-type: none"> for Appeal judges not in-country easy and secure access (and can easily print selected parts of any document) Longer-term, CMS being extended in its access to external parties e.g. the Commonwealth Courts Portal (Australia) which allows parties to the case secure and direct access to the system/access Preferred mechanism for access by internal users e.g. a judge in another country
Portal (external access to CTS/CMS)	Provides external access for parties to a case, to the CTS/CMS securely	<ul style="list-style-type: none"> Secure access to the case details, including documents, allowing parties to view and load (file) their documents 	<ul style="list-style-type: none"> Generally requires significant investment (\$s) to ensure appropriate levels of security and functionality Requires a significant level of user support to the increased user base of the ‘system’ 	<ul style="list-style-type: none"> Many leading CMS providers now provide such facilities as ‘add-ons’ to their CMS, or locally built (bespoke) systems have introduced with significant effort and cost An example of note is the Commonwealth Courts Portal which integrates filing, viewing and communicating facilities for external parties
Cloud Services	Such services as DropBox, Google Drive and OneDrive	<ul style="list-style-type: none"> Requires at least one party to have an account Can send link to a file, or folder, or share access to same 	<ul style="list-style-type: none"> Requires setup to allow access to ‘folder’ securely i.e. cannot be shared 	<ul style="list-style-type: none"> Other mechanisms such as CMS/CTS and Secure Transfer applications preferred over generic Cloud Service applications

Mechanism	Overview	Benefits	Considerations	Other aspects
		<ul style="list-style-type: none"> Growing popularity and comfort levels in storing documents in the 'unknown' location of the Cloud. 	<ul style="list-style-type: none"> Court staff must 'choose' which documents to share, which is additional effort for judicial staff Simple links to documents can be forwarded to persons, not a party to the proceedings Version control – files are not synched to CMS/CTS and must be copied across to the Cloud Service application Documents can often 'remain in the cloud' unless consciously removed 	
Transfer applications	Purpose built applications that are built specifically for secure file sharing with increased protective features e.g. SafeDrop	<ul style="list-style-type: none"> Highly secure transfer mechanism – can limit downloads, time to access etc. No permanent storing of the file(s) – moves like traditional mail – doesn't stay at the Post Office Full audit trail to the person who sends files – can see who/when/where file has been access/downloaded 	<ul style="list-style-type: none"> Typically have a fee associated with using the application Court staff must 'choose' which documents to share, which is additional effort for judicial staff 	<ul style="list-style-type: none"> Preferred use for external transfer to lawyers etc., when access to actual CMS/CTS is not possible

Mechanism	Overview	Benefits	Considerations	Other aspects
Video application	Transfer mechanism via the video conference application itself, i.e. share screen or transfer file	<ul style="list-style-type: none"> • Can easily 'share' document for parties to see during the proceeding • While not a 'storage facility' can at least provide quick and ready access to ensure all parties are on the 'same page' • If a document is tendered at the last moment, or during the proceeding itself, then sharing via application greatly assists the proceeding 	<ul style="list-style-type: none"> • Only applicable at the time of the proceeding • Not 'saved' unless other mechanisms adopted e.g. save to CMS • Not a storage mechanism, nor a formal transfer mechanism 	<ul style="list-style-type: none"> • Some video conferencing applications only have 'share' screen • Only applicable for ensuring that parties who for whatever reason may not have access to documents prior to proceeding to 'see' the documents.

Preferred Mechanism by Case category of document, and whether sending/receiving to Internal (I) users i.e. other judicial officers or External (E) users i.e. lawyers/parties

Notes:

- If cell is shaded, then the ‘mechanism’ is not seen as appropriate or applicable
- Ratings:
 - 4 – highly recommended
 - 3 – suitable
 - 2 – suitable but prefer other mechanisms
 - 1 – as a last option
 - 0 – not suitable/recommended

Mechanism	Court Notices		Evidentiary Material		Judgments Reasons		Orders		Applications		Warrants Summons		Email General Corro	
	I	E	I	E	I	E	I	E	I	E	I	E	I	E
Email	4	4	0	0	4	4	4	4	3	1	2	2	4	4
Case Management System (CMS) or Case Tracking System (CTS)	4		4		4		4		4		4		4	
Portal (external access to CTS/CMS)		4		4		4		4		4		4		4
Cloud Services	3	3	2	2	3	3	3	3	3	3	2	2		
Transfer applications			4	4							4	4		
Video application			1	1										

Annex Six: Court Protocols on Remote Hearings (New South Wales Bar Association)

New South Wales Bar Association Court Protocols

Protocol for Remote Hearings

Introduction

1. The purpose of this protocol is to provide guidance to practitioners, particularly counsel, appearing at remote hearings - described in various publications and practice notes as a 'virtual hearing' and described herein as a 'remote hearing'.
2. The protocol addresses minimum standards for such remote hearings, divided into three categories: General aspects of court hearings, Conduct and Technical. Practitioners should have regard in addition to this protocol to relevant court websites, practice directions and guidelines.
3. This document is likely to evolve over time as required and to take account of recent developments. The protocol has particular relevance to the current COVID-19 pandemic, while social distancing requirements are in force. However, the Protocol may well remain relevant beyond the current pandemic, in circumstances where it is considered necessary or appropriate in the interests of justice for a hearing to be held remotely.
4. It is not the purpose of this protocol to address the functional aspects of particular online platforms which might be utilised to conduct remote hearings (eg, Microsoft Teams, WebEx, Zoom) by the different jurisdictions, nor the particular procedural circumstances of each jurisdiction. Rather, the protocol is aimed at providing guidance for the standards to be adopted and applied, whichever platform is being utilised, or whatever jurisdiction counsel is appearing in.
5. The use of remote hearings has the potential to aid in the provision of access to justice. It may also improve efficiency in the delivery of justice in limited circumstances. At the same time, it is necessary to ensure that the features of the Australian judicial system, which embrace the rule of law and open justice, are not unreasonably compromised. In this context, the use of remote hearings might form part of various additional procedural innovations in the context of courts and tribunals to gradually adapt their processes.
6. It is not to be suggested by this protocol that it is anticipated or expected that criminal jury trials will be conducted by audio visual link or other than with the presence of the accused in person.

Court hearings: general

Judicial Authority

7. In Wallace and Rowden 'Remote Judging: the impact of videolinks on the image and role of the judge', *International Journal of Law in Context* (2018), 14, 504-524, the authors observe that the work undertaken by a judge in a courtroom is the most publicly visible aspect of their role. Furthermore, the place of justice, 'the court', has traditionally been synonymous with the location of the judge. The presence of the judge reinforces their role, emphasising their authority and neutrality, thus supporting the legitimacy of the court as an institution.
8. For these reasons, fundamental judicial tasks such as monitoring participant behaviour, exercising control of proceedings, ensuring a fair trial, and facilitating witness testimony are

affected when performed via video-link. Accordingly, in an online hearing, there are a number of aspects of the conduct of participants (addressed below) that bear upon the extent to which judicial authority is promoted and maintained. The judicial officer will also be alert to the factors affecting judicial authority in an online hearing.

9. A court hearing is ordinarily conducted with all participants attending in person, although over the last two decades there has been increasing use of audio-visual technology to conduct directions hearings, call-overs, bail hearings, and to take evidence from vulnerable or physically remote witnesses.
10. With the onset of the COVID-19 pandemic, the legislature has empowered courts to order that all participants (including parties, legal practitioners and witnesses) attend using online/virtual technology (see eg s.22C of the *Evidence (Audio and Audio Visual Links) Act 1998 (NSW)*). In keeping with these powers, practice directions emanating from courts and tribunals of NSW have for the most part directed that only in exceptional circumstances are proceedings to be conducted in person.
11. All practitioners persons who work within the court system are encouraged to be alive to the limitations that may arise with online hearings and that can affect the interests of justice. Such limitations may include:
 - a) the capability and capacity of participants to utilise technology;
 - b) equal access to technology - including the remote appearance of an accused/witness;
 - c) adducing of oral and documentary evidence;
 - d) cross-examination of certain witnesses, such as vulnerable witnesses; complex and lengthy cross examinations; and cross examination on credit.

These limitations may give rise to the need for counsel to apply to vacate/adjourn the online hearing, and counsel should not hesitate to make such an application where the interests of justice require it.

12. Practitioners are reminded that a matter which has been identified as being of particular concern is the appearance of an accused or offender via remote means for any final hearing, as studies have shown they may frame the individual in the context of their detention, intruding on legal process, and affecting their comprehension and participation (see McKay C “Video links from prison: Permeability and the carceral world”, *International Journal for Crime, Justice and Social Democracy*, 2016, 5(1): 21- 37. DOI: 10.5204/ijcjsd.v5i1.283). Similar considerations may apply to individual litigants.
13. The following general considerations may be apposite to a court’s determination as to whether or not it should conduct an online hearing:
 - a) the reason(s) to depart from in-person hearing (eg social-distancing restrictions);
 - b) the implications of (further) delay in the matter;
 - c) open justice principles;
 - d) procedural fairness;
 - e) suitable arrangements for witnesses and the testing of evidence.
14. There may also be considerations which are applicable to particular types of proceedings, such as
 - a) in a criminal trial, the overarching consideration that the accused receives a fair trial;
 - b) in Family Law proceedings, the interests of any child or children;
 - c) in civil proceedings more generally, a just determination of the issues in dispute in the most efficient, timely and cost-effective manner.
15. A number of these considerations are addressed in further detail below.

Open Justice

16. Safeguarding the public interest in open justice is a primary objective of the administration of justice (see eg *Court Suppression and Non-Publication Orders Act 2010* (NSW), s 6).
17. Accordingly, and subject to the *Court Security Act 2005* (NSW) (referred to below), appropriate steps may be taken to permit members of the public and the media to attend remote hearings (subject to cases which would, in any event, be the subject of suppression orders). If this cannot occur, it may constitute a powerful consideration weighing against the remote hearing proceeding.
18. However, there may be circumstances where the interests of justice favour limiting remote non-party attendance if there are capability or capacity issues in relation to the technology - particularly in criminal matters where the accused is in custody. This may mean that no, or limited, access is available for those not directly concerned in the litigation, for example, one member of the media nominated to act as the 'in court' hub for others and similarly for family members or support persons.
19. Practitioners are reminded that members of the media or public who attend a remote hearing separately need to comply with all directions by the court to ensure they are not audible and their presence is not distracting (eg using the mute function and turning off their video).

Procedural Fairness

20. Issues of procedural fairness can arise in all hearings and remote hearings are no different. However, the ability to perceive and manage fairness issues in a remote hearing may not always be possible. One reason for this is the loss of the traditional physical proximity of parties and the limited way in which all parties might participate in a remote hearing.
21. Appropriate arrangements should be in place for practitioners to take instructions, and to convey instructions and comments to counsel. This is likely to require both a separate online method of communicating (eg virtual private rooms, Whatsapp or email) and sufficient breaks in proceedings to allow counsel to confirm instructions. Particular considerations arise in relation to taking instructions from an accused in custody, and persons with limited technological access.
22. Appropriate arrangements should also be in place for each participant (in particular the parties, their legal representatives and the witnesses), to have access to reliable internet access and appropriate technology (eg computer and/or tablet to access the remote hearing), and (without limiting this requirement), access to documents.
23. Practitioners should make inquiries as to whether their clients and witnesses have appropriate facilities available to enable them to participate remotely in the hearing and provide instructions. If a party or a witness does not have sufficient technical (or cognitive), ability to fully participate using the appropriate technology, and alternate arrangements/assistance cannot be achieved, the case may not be able to proceed as a remote hearing.

Witnesses

24. Particular difficulties may obtain to the taking of evidence from lay witnesses who may be unfamiliar with the court environment and may not appreciate the need for formality, respect to the court and court procedure. Many of these issues can be overcome when a witness is required to appear in-person. Furthermore, when a witness appears in-person the

- court can exercise its authority to require the attendance of the witness and protect the integrity of the witness's evidence while in the witness box.
25. Practitioners need to be aware of the risks that attend remote hearings using online technology, in particular involving assessment of witness evidence, such as evaluating witness credit and perception of their demeanour. Matters of concern in that regard may include a decreased ability to detect non-verbal cues during video-conferencing; the difficulty of picking up nuances and emotions; and the potential for eye contact to feel artificial across technology (which can make a witness appear evasive or dishonest).
 26. Having regard to the limitations with remote hearings, in a case which turns on the evidence of a critical witness (eg the plaintiff in a common law dispute giving oral evidence in chief), this may be a strong factor against that part (or all) of the hearing being conducted as a remote hearing. An AVL link may not capture the subtlety of human discourse and will always carry the risk of misunderstanding or a failure by a participant to be able to communicate normally. That will be particularly so for parties who are not familiar with technology.
 27. When a witness is to appear in a remote hearing from their home or other external premises, a number of challenges may arise. For example, the witness:
 - a) may have difficulties with the technology;
 - b) may not appreciate or follow the relevant procedure;
 - c) may struggle with managing electronic documents;
 - d) may be influenced by others who are present (affecting the integrity of their evidence);may present poorly on camera, for example not looking at the camera, or being poorly placed on the screen etc., if adequate training is not provided to them.
- Accordingly, practitioners should, as far as possible, ensure that the witness
- a) is familiar and capable with the technology;
 - b) is informed about and will follow the procedure;
 - c) gives his or her evidence from a location that is quiet and not subject to interruptions;
 - d) does not give his or her evidence in the presence of persons who may unduly influence the witness;
 - e) is provided with access to appropriate support persons, eg, a parent, guardian or support person who is not also a witness in the proceedings; an interpreter; and where feasible a person to assist handling documents; and
 - f) is given an opportunity to test the online platform in conference beforehand.
28. It may be appropriate for a practitioner to request the court to seek confirmation from the witness as to who else is present in the room with them, and to remind witnesses that even though they are appearing remotely:
 - a) they are required to comply with the court's directions, answer questions unless there is a proper basis for them not to do so and not leave unless and until they are permitted to do so;
 - b) they may not speak with any person about their evidence while court is adjourned and they remain under cross-examination;
 - c) they understand the provisions of sections 9 and 9A of the *Court Security Act 2005*.
29. In this context, it is noted that:
 - a) when a witness is giving evidence, no communication is to occur between the witness and persons external to the proceedings (unless it is with an approved support person or witness intermediary); and
 - b) no person (including witnesses, party, media or members of the public) is to record the evidence by capturing an audio or video recording of proceedings - ss 9 and 9A of the *Court Security Act 2005* (NSW), respectively refer to

the ‘Use of recording devices in court premises’ and the ‘Prohibition on unauthorised transmission of court proceedings from courtroom’.

Conduct

30. Court etiquette and procedure must be adhered to as far as reasonably practicable, at all times. This is necessary for ensuring that the authority and gravitas of the court is preserved, and includes:
 - a) bowing to the judicial officer at the commencement and conclusion of proceedings (whether standing or seated, as the Court may direct);
 - b) addressing the court and court staff with the same level of professionalism and courtesy as if appearing in-person;
 - c) not interrupting the judicial officer or opponent;
 - d) signalling an objection to evidence appropriately (this may also include non- verbal means, eg the word ‘OBJECTION’ on a white piece of paper).
31. Experience suggests that remote hearings can often take longer and be more taxing than in-person hearings because of technical connectivity problems, difficulties communicating with an instructing solicitor, leading or junior counsel, taking instructions from clients, all the while appearing remotely and with interruptions that would not otherwise be experienced if the matter were being heard in-person. These difficulties are exacerbated when the client is remote from his/her/their legal representatives and even further exacerbated when an accused is appearing by AVL from custody.
32. Practitioners should be prepared for these eventualities, consider those issues when matters are listed for hearing, and raise them with the court as necessary. As a general matter, flexibility will be required to accommodate the interest of justice and the needs of those involved. Participants (including counsel), may be grappling with competing priorities as a result of social-distancing restrictions (eg home schooling).
33. Prior to the commencement of the hearing, and having regard to any applicable court procedure or practice direction, practitioners should consider preparing a summary of the relevant arrangements, which is reduced to writing and provided to the court as a joint document, suggesting:
 - a) the technical platform to be utilised;
 - b) the method to be used for handling documents electronically;
 - c) the identity and location of:
 - i. all legal practitioners; ii. parties; and iii. witnesses;
 - d) arrangements to protect integrity of witness evidence (eg ensuring that they have access to relevant documents, ensuring no other person is present while they give their evidence remotely); and
 - e) a proposed hearing schedule (opening, witness schedule, closing submissions).

Practical observations

34. The chosen technical platform to conduct the online hearing ought be tested to ensure it has sufficient functionality, is functioning smoothly, and that all participants can access, and develop familiarity with its functionality (in particular the ‘mute’ button, see below).
35. The parties should, in conjunction with the court’s own procedures, identify the appropriate method to be adopted for handling documents:
 - a) if an online document portal is to be utilised, this should be appropriately arranged into folders, eg court documents (ie pleadings and motions), submissions, and

- evidence (ie affidavits, exhibits), and ‘access’ permission managed appropriately (ie limiting the access provided to witnesses).
 - b) if documents are to be made available through more ad hoc means (eg email) there ought be appropriate adherence to protocol regarding court communications.
36. The legal representatives and witnesses should ensure that for the duration of the hearing, they utilise a quiet, well-illuminated space.
 37. If counsel are concerned about interruptions when appearing from home, they should consider appearing from chambers. If this is not possible, it would be prudent to advise the court and the other participants about the potential for interruptions.
 38. In chambers, counsel should put in place arrangements to ensure no interruptions (eg telephone diverted, closed door with a sign indicating hearing in progress).
 39. Participants should ensure that when not speaking, their microphone is muted – this prevents background noise which is distracting and renders it harder for all participants to hear the person speaking.
 40. All participants with a ‘speaking role’ ought have their video ‘on’ and be visible at all times, ie:
 - a. the court; b. counsel; c. witness.
 41. Parties should liaise with the court as to whether participants without a speaking role ought have their video ‘off’ such that they are not visible. The court’s position may differ depending on the participant eg:
 - a) parties;
 - b) solicitors;
 - c) transcript providers;
 - d) members of the public;
 - e) members of the media.

Technical

42. Technology must adapt to and serve the interests of justice rather than the interests of justice be limited by the functionality of technology. The variety of technological solutions cannot be used to trump the basic requirements of a hearing, which recognise the expectation of participants in relation to:
 - a) consistency and appropriateness of the technology;
 - b) continuous improvement of the use of technology;
 - c) feedback by all participants.
43. As far as possible, hearings should be held by way of audio-visual facility rather than telephone. This is because the limitations of audio-visual hearings which are set out in this document are exacerbated when visual cues are not present.

Practical observations

44. Participants attending a remote hearing using an audio-visual facility will require a computer/laptop which is connected to the internet with a working internal camera and microphone. Other mechanisms which may be helpful, albeit not essential, include:
 - a) a second screen set up to look at documents etc.;
 - b) a portable tablet or other device which can be held while looking at the camera; and
 - c) a second device linked to the mobile network and not connected by Wi-Fi can assist when a connection disappears.
45. Participants should expect that connectivity will not always be available and plans should be made to protect against that possibility. Participants should also make contingencies as to the

- means by which to communicate with the relevant court or tribunal, with their clients and with their opponents in the event of technical or other failures.
46. The *Evidence (Audio and Audio Visual Links) Act 1998* (NSW) enables the giving of evidence by audio and audio visual links (including, for instance, that the oath or affirmation be administered by means of audio-visual link: s 5D(1)(a)). Where a witness is located overseas, it is necessary to confirm that the laws of the witnesses' own jurisdiction do not prevent an oath or affirmation being administered.
 47. Witnesses ought not be able to view the evidence given by other witnesses before they give their evidence.
 48. If the court does not have a pre-existing protocol as to how documents should be shown to witnesses, then the parties should liaise with the court about an appropriate mechanism which ensures the integrity of cross examination is not undermined, and appropriate confidentiality in documents is maintained.
 49. Notwithstanding test run(s) and the best of intentions, technical issues during the course of a remote hearing are almost inevitable. In those instances, the court may need to adjourn so that the issue can be attended to. The sensible cooperation of all participants is necessary.

Annex Seven: Special Measures Information Note (Federal Court of Australia)

SPECIAL MEASURES IN RESPONSE TO COVID-19 (SMIN-1)

Special Measures Information Note

Updated 31 March 2020

1. Introduction

- 1.1. This Special Measures Information Note (SMIN-1) sets out arrangements for the continued operation of the Federal Court during the COVID-19 outbreak in Australia.
- 1.2. Due to the COVID-19 pandemic, where appropriate and necessary, the Federal Court is modifying its practices in order to minimise in person attendance on Court premises, with the Court's priority being the health and safety of the community, and in particular, parties, practitioners, judges and staff, and the families of all of these groups.
- 1.3. The cooperation of all court users and court staff is required in this regard.
- 1.4. This special measures information note takes effect from the date it is issued and, to the extent practicable, applies to all proceedings filed before, or after, the date of issuing.
- 1.5. This special measures information note remains in effect until and unless superseded or revoked.

2. Registry Operations

- 2.1. The health and safety of the community, judges and court staff is our priority, and therefore changes have been made to our registry operations. Registry services will be provided remotely, by telephone and through other online services. In urgent circumstance, face-to-face services in a registry may be provided, but only after initial assessment via telephone.

3. Electronic Filing of All Documents

- 3.1. To the extent possible, all documents must be lodged for filing using the Court's electronic filing facility, eLodgment.
- 3.2. Documents that are not able to be lodged through eLodgment may be faxed or emailed to the relevant registry (at the registry email address available on the Court's website) for filing.
- 3.3. Court users who do not have access to the necessary electronic equipment, including self-represented litigants, should contact the registry by telephone for assistance. Public scanning facilities can be made available in each registry to facilitate the electronic filing of all documents.
- 3.4. Registry staff have been asked to minimise hard copy document handling. To the extent possible, hard copy documents should not be posted or hand delivered to registries.

4. Signatures on Documents and Affidavits

- 4.1. To facilitate the electronic filing of all documents, if access to scanning technology is limited, the Court will temporarily allow documents to be signed electronically, including by having

the person signing the document type their name in the relevant space in the signature block in lieu of physically signing the relevant document.

- 4.2. The Court also acknowledges that remote working arrangements may pose significant challenges to having affidavits sworn or affirmed. The Court will accept the filing of unsworn affidavits on the understanding that, if required, these will later be sworn or affirmed when circumstances allow.

5. Subpoenas and Inspection of Documents

- 5.1. Inspection of documents at all registries of the Court is to be by appointment only. Requests for an appointment should be made by emailing the relevant registry.
- 5.2. Legal practitioners and parties should only request an appointment to view subpoenaed materials if this is truly necessary for the conduct of the proceeding at the time. As a general guide, the Court will consider whether an appointment is necessary by reference to whether a matter is scheduled for hearing in the subsequent 4 weeks, or is otherwise urgent.

6. Triage Process for Newly Filed Judge Matters

- 6.1. A triage process has been introduced for newly filed judge matters. Newly filed judge matters, other than urgent duty matters and Full Court and appellate matters, will first be provisionally allocated to the docket of the National Operations Registrar to be considered for allocation and a first return date.
- 6.2. As the Court has successfully begun to operate using remote means, allocations will now be made with a view to moving the Court to operating at about 50-60% of normal capacity. The success of this will of course depend upon the continued functionality and reliability of IT systems.
- 6.3. To assist in this process of triaging, parties will be contacted by the Court and asked to answer a number of questions relating to the proposed management of the matter.

7. All Court Listings and Events, including Hearings and Mediations

- 7.1 In order to remain open and operational, whilst protecting health, safety and wellbeing, the Court must work to limit in person attendance on Court premises.
- 7.2 To the extent possible, alternative arrangements will be put in place for all listings and events that would ordinarily require in person attendance. In particular, the Court will contact legal practitioners and parties to determine whether listings and events may be able to be conducted on the papers, by telephone or by other remote access technology.
- 7.3 If alternative arrangements are not able to be put in place for listings and events that would ordinarily require in person attendance, such listings and events will need to be vacated or adjourned other than in exceptional circumstances and with the express authorisation of the Chief Justice.
- 7.4 If you have an upcoming listing or event, wherever possible the Court will endeavour to contact you at least two weeks prior in relation to any alternative arrangements. If you have not been contacted by the Court or if you remain unsure of what is happening in relation to a particular listing or event please email, with the matter number and title in the subject line.

8. Communications with the Court and Among Parties

- 8.1. The Court is continuing to conduct its business on the docket system so communications with the specific docket judge remain important as always
- 8.2. In these extraordinary times it is necessary to remember certain fundamental aspects of court communication etiquette. There should be no ex-parte communication with chambers unless of course the matter concerns an ex-parte application. Practitioners and parties should continue to maintain all usual communication practices with the Court.
- 8.3. The Court expects that practitioners and the parties will exhibit real co-operation in dealing with each other and with the Court in order to avoid any unnecessary delay or misunderstanding in how matters are being dealt with.

9. Short Listings and Events, Half Day or Less

- 9.1. The Court will seek to accommodate any listings or events that would ordinarily require in person attendance for half a day or less without requiring in person attendance, either:
 - i. on the papers;
 - ii. by telephone; or
 - iii. by a combination of both of the above.
- 9.2. In some circumstances, short listings may also be able to be accommodated by other remote access technology, including video conferencing technology such as Microsoft Teams.
- 9.3. The preferred means of accommodating any short listings and events will be determined by the relevant judge or registrar, in consultation with legal practitioners and parties where appropriate.
- 9.4. Ahead of being contacted by the Court, legal practitioners and parties are encouraged to consider which aspects of their listings may be able to be dealt with by consent and/or on the papers, and to communicate with each other to seek to reach agreement on such matters.

10. Longer Listings and Events, Over Half a Day

- 10.1. Longer listings and events that would ordinarily require in person attendance for half a day or more will undergo a triage and prioritisation process. Legal practitioners and parties should work cooperatively with the Court, and with each other, to identify how and when longer listings and events may be able to proceed.
- 10.2. The Court has already been able to accommodate some longer listings and events, including contested hearings, through the use of remote access and file sharing technology, including Microsoft Teams.
- 10.3. Issues requiring consideration include reliability of the proposed technology, document security, availability and timing of transcripts, and the ability to live stream hearings so as to facilitate open and accessible courts.

11. Remote Technology

- 11.1. All hearings before the Court (other than in truly exceptional circumstances) are currently proceeding using remote access technology.
- 11.2. Currently, the Court is using Microsoft Teams and telephone conferencing in order to hear matters. It is anticipated that the number of available court rooms will shortly be adequate to enable wide spread access to remote technology for hearing purposes.

- 11.3. A National Practitioners/Litigants Guide to virtual hearings and Microsoft Teams will be available on the Court's website at: <https://www.fedcourt.gov.au/online-services/virtual-hearings>.
- 11.4. The Court is also considering streaming and other methods of ensuring the requisite degree of public access to hearings conformable with the open justice and open court principles.
- 11.5. The Court will amend this note of special measures when other methods and functions become operational.

12. Self-Represented Litigants

- 12.1. The Court acknowledges the impact these special measures and the conduct of electronic hearings may have on self-represented litigants, and persons unfamiliar with the Court process.
- 12.2. Where appropriate, the Court will consider the needs of unrepresented litigants and other persons who may not have access to suitable technology to conduct or participate in hearings conducted by the Court using remote access technology.

13. Urgent Matters

- 13.1. Duty judge and registrar contacts for urgent matters are available on the Court's website and will continue to be updated daily. Any requisite modifications to the published application process for urgent duty matters will be notified by the relevant duty judge or registrar.
- 13.2. If a matter has been allocated to a judge's docket, ordinarily any communication or application regarding carriage or conduct of the matter (including urgent communications or applications) should be made to him or her. However, if it is a new matter not yet allocated, or if for some reason it is not practicable or appropriate to approach the docket judge or if the inquiry specifically concerns the Court's response to the COVID-19 outbreak in Australia, queries should be addressed by email to the National Operations Registry at NORTeam@fedcourt.gov.au, or you can contact the NOR Team duty contact for the day, as published on the Court's website. Such queries will be prioritised, allocated to a senior member of the NOR Team and attended to as a matter of urgency.









J L B ALLSOP

Chief Justice 31 March 2020

Annex Eight: Video Conference Applications: Comparison

The following assessment considers software platforms that can be used to host audio-visual meetings and enable remote conferencing proceedings. Of those platforms compared (*Footnote 1* outlines additional platforms found unsuitable for PJSI's purposes), where users are already utilising Microsoft Office 365 platforms (through email accounts, SharePoint and cloud storage), the recommendation would be to utilise the free video/audio conferencing software associated with Microsoft Teams for internal communications, meetings and trainings. Where recording of content is required, or extensive engagement of external participants is expected, either Zoom or WebEx (depending on the available bandwidth and ability to download software, with WebEx requiring pre-download and registration) would be suitable.

This research was undertaken to assist PJSI's programmatic activities. It was conducted internally and is not a comprehensive assessment. PJSI recommends that you use this information as a guide only, and undertake further research to determine which program/s best suits your individual needs.

Platform	Microsoft Teams		Zoom		WebEx		Google Meet ²	Skype ³
Link	https://www.microsoft.com/en-au/microsoft-365/microsoft-teams/group-chat-software		https://zoom.us/signup		https://cart.webex.com/sign-up		https://gsuite.google.com.au/intl/en_au/pricing.html	https://www.skype.com/
Starting Cost ⁴	Free ⁵	\$6.90	Free	\$20.99	Free	\$18.95	\$8.40 ⁶	Free ⁷
Ease of Set-up and Use ⁸								
Participant Numbers	Up to 250	250+	Up to 100	Up to 100	Up to 100	Up to 100	100+	Up to 50
Meeting Numbers	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited

² Note: this is formerly Google Hangout. Google Hangout is being phased out, but is still [currently available online](#) for immediate, free video calls with up to 10 people.

³ Please note: [Skype for Business](#) will be retired and replaced by Microsoft Teams by July 31, 2021. Other platforms considered and determined unsuitable for PJSI's purpose include: [Whereby](#); [True Conference](#); [GoToMeeting](#); [ClickMeeting](#); [UMeeting](#); and [BigBlueButton](#).

⁴ All costs are in Australian Dollars (AUD), are calculated monthly, and are per subscription/user.

⁵ For any organisation already using Microsoft Office 365 emails and platforms.

⁶ This price includes the full suite of GSuite products, including: video conferencing, web chat, email address, online cloud storage and website builders.

⁷ When calling another Skype account.

⁸ These ratings have been applied by the PJSI team based upon PJSI's experience with set-up and use of these platforms.

Platform	Microsoft Teams		Zoom		WebEx		Google Meet	Skype
Meeting duration	Unlimited	Unlimited	40 minutes	24 hours	50 minutes	24 hours	24 hours	24 hours
Screen Share	✓	✓	✓	✓	✓	✓	✓	✓
File Sharing	✓	✓	✓	✓	✓	✓	✓	✓
Messaging	✓	✓	✓	✓	✓	✓	✓	✓
Audio Calls	✓	✓	✓	✓	✓	✓	✓	✓
Video Calls	✓	✓	✓	✓	✓	✓	✓	✓
Break-out Rooms	✓	✓	✓	✓	✓	✓	✗	✗
Application and Browser	✓	✓	✓	✓	✓	✓	✓	✓
Recording	✗	✓	✓	✓	✓	✓	✓	✗
Registration required by participants	✗	✗	✗	✗	✓	✓	✗	✓
Security	It is recommended that Partner Courts explore the various security considerations of each platform, in order to identify which is most suitable to their needs. This may include considerations of: encryption; manual security settings; two-factor authentication for access to accounts; level of security and protection from accidental and deliberate security breaches; and security of data stored on the platform, among others.							
Bandwidth ⁹	1.2 mbps	1.2 mbps	600 kbps	600 kbps	500 kbps	500 kbps	1.5 mbps	128 kbps

⁹ The bandwidths listed are the minimum required in order to run the software effectively for audio/video calls. Bandwidth is the range of frequencies required to transmit a signal (the amount of data that can flow in a given time). *Mbps* stands for megabits per second, and *kbps* stands for kilobits per second. 1,000 kbps equals 1 mbps.

Annex Nine: Connectivity Snapshot

Below is an example of a connectivity snapshot as produced by the IT Manager for Pohnpei, FSM.

LOCATION	BUILDING ROOM	COURT	USERS SHARING CONNECTION	CURRENT PLAN	ACTUAL PERFORMANCE (Ping, download & upload speed)
Pohnpei	Separate to State – 1 room	National Supreme Court	20	8mb Fibre Optic	Ping – 25mS Download – 3mB Upload – 1mB

Annex Ten: How to Set up an RCP Room

The basic steps to set up a RCP Room is:

1. Bring into the courtroom:
 - a) Laptop;
 - b) Projector;
 - c) Drop-screen ;
 - d) Logitech camera/speakerphone; and
 - e) Logitech mini web-cam.
2. Connect laptop to Wi-Fi;
3. Connect projector to laptop, and ensure display maximises on the screen;
4. Connect Logitech Camera/speakerphone to laptop:
 - a) Test to make sure audio/video is working clearly; and
 - b) Ensure camera is pointing/focussed on the Judicial Officer/clerk.
5. Connect Logitech mini web-cam to clerk's desktop:
 - a) Test to make sure video is clear;
 - b) Ensure camera is pointing towards bar tables and gallery; and
 - c) Ensure desktop audio is on mute.
6. Connect from laptop to VCA;
7. Connect from desktop VCA;
8. Check on the big screen – two active windows – one showing the Judicial Officer/clerk and the other showing the bar tables/gallery:
 - a) Check the sharing of an exhibit on the big screen.
9. Depending on where the person is attending via VC, await them joining;
10. Ensure digital recording – if available - is ready – and prior to proceeding – do a sound check to ensure all audio is recorded clearly;
11. Other considerations:
 - a) Depending on the size of the 'second room', additional audio/video facilities maybe required, e.g. a large audience. In this case it may be necessary to supplement the 'second room' with additional speakers, monitors, and microphones.

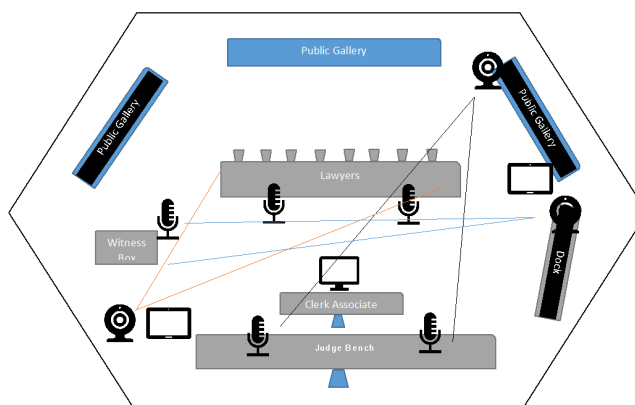


Diagram 1 RCP Setup

Annex Eleven: Cost Estimate Template

Table 1 Cost Estimate Table

Item	Cost AUD	Level 3	Level 2	Level 1	TOTAL	TOTAL Cost
		#s	#s	#s	#s	
Setups						
Plasma Screen	\$1,000					
Portable/mobile stand	\$500					
Projector	\$500					
Screen	\$200					
Cabling equipment	\$100					
PTZ Optic camera (or similar)	\$4,000					
Logitech Group camera (or similar)	\$2,000					
Logitech c920 for laptop (or similar)	\$100					
Laptop	\$1,000					
Desktop	\$800					
TOTAL per setup						
TOTAL COST						

Annex Twelve: Examples of Court Responses to COVID-19 Health Restrictions¹⁰

EXAMPLES OF COURT RESPONSES TO COVID-19 HEALTH RESTRICTIONS

	Federal Court of Australia	Family Court and Federal Circuit Court	Supreme Court of NSW	District Court of NSW	NSW Local Court	NSW Civil and Administrative Tribunal
New Matters and Filing	New matters undergo triage process. Filing by eLodgment or otherwise email.	Assigned first available date. Filing by eLodgment or otherwise email.	By Online Registry, Online Court, or otherwise email/post.	By Online Registry, Online Court, or otherwise email/post.	By Online Registry, Online Court, or otherwise email.	Consumer and Commercial applications lodged online. Other applications by post/ Service NSW, or otherwise email.
Lists – Directions and Motions	By AVL or phone, depending on Judge and party availability.	By AVL or phone.	Registrars' and Judges' Lists by Online Court, phone, or AVL on staggered basis. Some Judges' lists on the papers.	General and Motions List moved to Online Court. Certain lists managed by interval sittings.	Online Court/ phone, or otherwise vacated.	Interlocutory hearings by phone or AVL. Most group Lists suspended, some Lists by phone.
Urgent Applications	Initial assessment by phone for applicability of in person services.	If urgent/ remotely impracticable, in person services provided at Registry's discretion.	Urgent/ remotely impracticable matters by phone. Only cases of compelling urgency in person.	Parties to email application for arrangements.	Email Magistrate. Conducted by phone, submissions restricted to 10 minutes.	No in person hearings without prior approval of the President.
Trials	By Microsoft Teams, phone or on the papers. In person only in exceptional circumstances or with prior approval of Chief Justice. Some chambers dispense with formalities, knocking in, robes, etc. Dropbox used as virtual court-book.	By Microsoft Teams, phone or on the papers. In-person hearings at discretion of Judge based on urgency. Low priority Family Matters sent to ADR, Registrar Conference or Family Consultant. Tendered documents to be emailed.	By Virtual Courtroom as default. External tech providers such as Microsoft Teams allowed if funded by parties. New jury trials suspended, current trials continue.	No new trials. Existing trials proceeding by Virtual Courtroom. Parties seeking to vacate hearing still require application to List Judge by way of notice of motion and supporting affidavit.	No new trials. Existing trials until 30 September 2020 vacated. New hearing dates to be allocated and reviewed in October 2020. Small claims by phone.	All hearings by phone, AVL, or on the papers. Capacity reduced, priority given to urgent cases e.g. Guardianship, Tenancy, Administrative and Equal Opportunity and Occupational.
Appeals	By Microsoft Teams.	By Microsoft Teams or where necessary in person.	By Virtual Court. Authorities received over email.	By Virtual Court or phone.	By AVL for Annulment Applications.	By AVL, phone, on the papers or adjourned.

¹⁰ Legg, M., Song, A. (2020) The Courts and the Pandemic: *the role and limits of technology*. Law Society of New South Wales Journal. <https://lsj.com.au/articles/the-courts-and-the-pandemic-the-role-and-limits-of-technology/>

Annex Thirteen: Bench Guide for Judges (NCSC)

CONDUCTING FAIR AND JUST REMOTE HEARINGS:¹¹

A BENCH GUIDE FOR JUDGES

Many courts have embraced innovative communication technologies, especially videoconferencing platforms, to conduct routine hearings during the COVID-19 pandemic. Although these technologies provide an effective solution for managing cases until the pandemic abates, interpersonal communication in a remote platform differs considerably from the in-person experience. These differences can affect whether litigants and other hearing participants believe they have been treated fairly. Courts must make procedural fairness (also called procedural justice) for litigants the highest priority, regardless of where proceedings take place, as litigant perceptions of how they are treated have a greater impact on their acceptance of and compliance with court orders than the actual outcome of hearings. This bench guide offers practical tips for adapting judicial techniques to ensure procedural fairness in remote hearings.

CORE ELEMENTS OF PROCEDURAL FAIRNESS

- **VOICE:** the ability of litigants to participate in the case by expressing their own viewpoints;
- **NEUTRALITY:** the consistent application of legal principles by unbiased decision makers who are transparent about how decisions are made;
- **RESPECT:** individuals are treated with courtesy and respect, including respect for people's rights;
- **TRUST:** decision makers are perceived as sincere and caring, trying to do the right thing;
- **HELPLESSNESS:** litigants perceive court actors as interested in their personal situation to the extent that the law allows.

PREHEARING PREPARATION

Adjust calendaring practices to ensure sufficient time to give each case your full attention.

Preliminary reports suggest that remote hearings take longer than in-person hearings. Litigants who are unfamiliar with the technology platform or who have poor internet connectivity may need extra time to logon, present evidence, or make arguments. Litigant appearance rates also tend to be higher for hearings conducted remotely, eliminating the cushion of time that judges have come to expect by entering default judgments or orders to dismiss for failure to prosecute. "Zoom fatigue" is real; do not schedule more cases than you can realistically manage.

Review case files before hearings.

Making direct eye contact shows litigants that you are attentive and engaged, but this is difficult to do this while simultaneously reviewing motions, briefs, and other documents during the hearing. Advance preparation shows respect by demonstrating your familiarity with litigants' individual circumstances.

Ensure that litigants have access to information and resources to participate effectively in the hearing.

Providing a URL to the videoconferencing platform does not necessarily ensure that litigants can participate effectively. Hearing notifications should be written in plain language and include information not only about how to connect and participate on the platform, but also how to access additional information to prepare for the hearing (e.g., gathering documents to present as evidence, potential claims and defenses, etc.).

¹¹ National Centre for State Courts. 2020. Conducting Fair and Just Remote Hearings: A Bench Guide for Judges. <https://www.ncsc.org/newsroom/public-health-emergency>

The notification should also communicate the court's expectations about litigant preparation for the hearing (e.g., timeliness, formality of the hearing). Finally, some litigants may require a foreign language interpreter or an accommodation under the Americans with Disabilities Act to participate in a remote hearing. Ensure that the hearing notification includes information on how to request such assistance.

Offer alternatives for litigants who lack devices or internet access to participate remotely.

Courts should suggest community resources (e.g., public schools, libraries, community centers) where litigants can use computers or get access to a stable internet connection, including, if possible, dedicated computer kiosks or Zoom pods at the courthouse.

FAIR AND EFFECTIVE USE OF VIDEOCONFERENCING PLATFORMS

Use a “technical bailiff” to help litigants logon and troubleshoot on technical problems.

The bailiff should rename litigants to indicate their full name, especially litigants using devices with default names (e.g., “Mom’s iPad”) or litigants who have called in on a telephone connection. The bailiff can also move litigants to waiting areas or breakout rooms staffed by ADR professionals, pro bono attorneys, or court staff who can provide legal information or assistance while waiting for hearings to begin.

Pay close attention to videoconference dashboards.

Many default platform settings require participants to raise hands virtually or require the host to permit entrance from a virtual waiting room. Also be alert for hackers (Zoom bombing) disrupting the hearing.

Unmute litigants and check that they can hear and be heard.

Before starting the hearing, identify all participants to ensure that everyone is present on the record. Provide a brief explanation to litigants on how to participate, including raising hands for permission to speak. If litigants are represented by counsel, explain how they can communicate privately using breakout rooms or separate text communications. Before entering a final judgment, check that all participants are still present on the platform, have heard everything that was said, and had an opportunity to express their viewpoint.

Be careful not to overlook litigants who appear on the screen as black boxes due to lack of webcams or unstable connectivity or who have called into the hearing on a telephone line.

It is easier to engage with people whose faces you can see. Similarly, some viewing options on videoconference platforms do not permit users to see all participants simultaneously. Make it practice to call on each person to ensure that they are still present on the platform, have heard everything that was said, and ask them if they have anything else to add before closing the hearing.

Speak to the camera, not to the screen, and wait for litigants to finish speaking before responding.

Looking directly at the webcam makes it appear that you are looking directly at the trial participants, rather than off to the side. In addition, looking through multiple screens or databases during the hearing can make judges look distracted or disengaged. Finally, the delay in audio transmission sometimes causes people to speak over each other. Wait for litigants to finish speaking before responding.

Ensure that litigants participating by telephone are fully informed and have the opportunity to speak during hearings.

Litigants participating by telephone lack the visual cues on which other participants rely to

understand what is happening during the hearing. For example, they may not know who is present for the hearing and they will not be able to view documents or other evidence displayed on a shared screen. Litigants participating by telephone also do not have access to platform dashboard tools (e.g., to raise hands to indicate their interest in speaking).

Take time to explain the hearing’s purpose and procedures, and the basis for any decisions.

Judges should avoid the urge to rush through cases by cutting off litigants or skipping explanations about the basis for their decisions in an effort to clear calendars. Consider using a form or checklist judgment to explain the legal reasoning for decisions. Use status conferences as an opportunity to advise litigants about upcoming procedures and to connect them to other community resources. Always ask whether litigants have had an opportunity to get legal assistance before entering final judgments.

Ask litigants about the location from which they are participating.

Not all litigants have a private, quiet place in which to participate in the hearing. If they are participating from a public area, they may not have the confidence or ability to provide candid information. In addition, background conversations or activities, including some that should be private, may be audible during the hearing and might even be captured on the videoconference recording.

If this occurs, alert the litigant that you can hear the background conversations and ask them to move to a more private location, if possible, or to tell the other group that they can be overheard. Also ask whether litigants have had an opportunity to get legal assistance before entering final judgments.

JUDGES’ CONDUCT DURING HEARINGS

Take time to explain the hearing’s purpose and procedures, and the basis for any decisions.

Judges should avoid the urge to rush through cases by cutting off litigants or skipping explanations about the basis for their decisions in an effort to clear calendars. Consider using a form or checklist judgment to explain the legal reasoning for decisions. Use status conferences as an opportunity to advise litigants about upcoming procedures and to connect them to other community resources. Always ask whether litigants have had an opportunity to get legal assistance before entering final judgments.

Ask litigants about the location from which they are participating.

Not all litigants have a private, quiet place in which to participate in the hearing. If they are participating from a public area, they may not have the confidence or ability to provide candid information. In addition, background conversations or activities, including some that should be private, may be audible during the hearing and might even be captured on the videoconference recording.

If this occurs, alert the litigant that you can hear the background conversations and ask them to move to a more private location, if possible, or to tell the other group that they can be overheard. Also ask whether litigants have had an opportunity to get legal assistance before entering final judgments.

Annex Fourteen: Draft Video Link Order (Federal Court of Australia)

Appeal from:

File number(s): <FileNo>

Judge(s): JUDGE

Date of judgment:

Catchwords:

Legislation:

Cases Cited:

ORDERS:

<FileNo>

BETWEEN:

AND:

JUDGE: JUDGE

DATE OF ORDER:

THE COURT ORDERS THAT:

1. Pursuant to s 17(4) of the *Federal Court of Australia Act 1976* (Cth), to the extent and for so long as public health regulations and statutes operate to limit or exclude members of the public from being able to attend the court during the hearing of the proceeding, the sitting of the Court continue, notwithstanding the inability of members of the public to be present who have not applied to the Registry or an associate to observe the hearing by video or audio link, while submissions are being given pursuant to ss 47A, 47B, 47D and 47E of the *Federal Court of Australia Act 1976* (Cth).
2. Unless the Court otherwise orders, no person, being a member of the public, who is observing the hearing of the proceeding by accessing any audio or video link including by link to the platform Microsoft Teams may:
 - (a) Make any audio or video recording or photograph of the hearing or any part of it; and
 - (b) Participate in, or interrupt, the hearing,
3. Provided that nothing in this order shall prevent any person, based on what he or she has seen or heard during the hearing:
 - (c) Making his or her own notes or record of the proceeding; or
 - (d) Publishing a fair report of the proceeding.
4. The Court notes that a contravention of Order 2 may constitute a contempt of court which is punishable by imprisonment, fine and/or sequestration of property.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

Annex Fifteen: Terms of Use of Footage of Judicial Proceedings (Supreme Court of Victoria)

**Sentence – R v XXXX – 10.30am, Friday,
10 July – Court 11 – Justice XXX**

TERMS OF USE

- The Supreme Court of Victoria retains copyright in this footage.
- This footage is provided for the following reasons:
 - To enable litigants and interested persons to view the proceedings.
 - To assist media who are unable to personally attend judicial proceedings to fairly and accurately report on those proceedings.
 - To allow schools, universities and legal training bodies to show judicial proceedings for educational purposes.
- By watching this footage you are agreeing:
 - That you are not a prospective witness giving evidence in this trial.
 - That if you are a witness giving evidence in this trial, your evidence is completed.
 - Not to copy, store, edit, modify, broadcast, post or redistribute this footage without the prior written approval of the Supreme Court of Victoria.
 - To include the attribution 'Supreme Court of Victoria with any link to this footage.
 - To abide by any orders or directions made relating to the confidentiality and/or non-publication of the proceedings shown in this footage. If you do not, you should be aware that you may be subject to a legal action including for breach of copyright, or defamation or, potentially, contempt of court.

Annex Sixteen: Overseas Service and Evidence Practice Note (Federal Court of Australia)

J L B Allsop, Chief Justice

25 October 2016¹²

General Practice Note

1. Introduction

- 1.1. This practice note provides guidance on service of originating process and other documents outside Australia, as well as on evidence taken abroad. Subject to paragraph 2.3 below, this practice note applies to all proceedings in the Federal Court.
- 1.2. This practice note takes effect from the date it is issued and, to the extent practicable, applies to proceedings whether filed before, or after, the date of issuing.

2. Service of Process Overseas

- 2.1. The kinds of proceedings in which an originating application may be served outside Australia are described in r 10.42 of the Federal Court Rules 2011 (Cth) ("Federal Court Rules"), and include proceedings that are based on a cause of action arising in Australia and proceedings in which the person to be served has submitted to the jurisdiction of the Court.
- 2.2. Leave of the Court should ordinarily be obtained prior to serving an originating application or other court document outside Australia, although if there is a sufficient explanation for the failure to seek leave beforehand, the Court can subsequently confirm service made without leave (see rr 10.43 and 10.44 of the Federal Court Rules). Leave to serve an originating application outside Australia will only be granted if the Court has jurisdiction in the proceeding and the party has a *prima facie* case for the relief that is claimed (see r 10.43(4) of the Federal Court Rules).
- 2.3. The Trans-Tasman Proceedings Act 2010 (Cth) provides for service in New Zealand of initiating documents in civil proceedings started in Australian courts. An applicant in a proceeding in this Court may proceed under that Act rather than under Division 10.4 of the Federal Court Rules.
- 2.4. A party applying for leave to serve an originating process or other court documents on a person in a country other than Australia under Division 10.4 of the Federal Court Rules, or for an order confirming service already undertaken, should support the application with an affidavit (as required by rr 10.43(3) and 10.44(2) of the Federal Court Rules) and include information obtained from the Australian Government Attorney-General's Department in relation to the appropriate method of transmitting documents for service in that country, including whether documents:
 - (a) should be transmitted in accordance with an international agreement or arrangement, and the details of that agreement or arrangement (see Division 10.6 of the Federal Court Rules with respect to service under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters;
 - (b) should be transmitted for service via the diplomatic channel (see Division 10.5 of the Federal Court Rules); or

¹² J L B Allsop, Chief Justice. 2016. Overseas Service and Evidence Practice Note (GPN-OSE). Federal Court of Australia, 25 October 2016. <https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-ose>

(c) may be transmitted for service by a private agent within the territory of that country.

Such information may be obtained from the Private International Law Section of the website of the Attorney-General's Department.

3. Taking of Evidence Overseas

- 3.1. Parties and their legal representatives should be aware of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. There are two fundamental methods of taking evidence abroad under the Convention: Chapter 1 – Letters of Request; and Chapter 2 – Taking of evidence by Diplomatic Officers, Consular Agents and Commissioners. The Convention and useful working and explanatory documents can be found on the website of the Hague Conference on Private International Law.

Applying for an Order to Examine a Witness outside Australia

- 3.2 A party may apply under Division 29.2 of the Federal Court Rules for an order for the examination of a witness before a Judge outside Australia. A draft of the order sought must be lodged with the application (see r 29.11(2) of the Federal Court Rules). The application should also be accompanied by an affidavit or other evidence relied on in support.
- 3.3 In deciding whether to make the order, the Court will consider whether the examinee is willing or able to come to Australia to give evidence, whether the evidence is expected to be material and whether, having regard to the interests of the parties to the proceeding, justice will be better served by granting or refusing the order.^[3]
- 3.4 If an order is made parties should expect that, in the ordinary course, the order will:
- (a) provide that the examination will be conducted before a Judge in a specified place outside Australia;
 - (b) provide for witnesses (usually named) to be examined on oath or affirmation; and
 - (c) be expressly conditional upon the payment into Court of an amount, to be subsequently determined, as provision for expenses of the Judge and Court staff in relation to the examination.
- 3.5 The parties (if appropriate) should arrange suitable accommodation for the conduct of each examination and for transcription facilities.
- 3.6 The costs and expenses of, and incidental to, the examinations will be borne in the first instance equally by the parties to the proceedings and, subject to any order to the contrary, be treated as part of the general costs of the proceeding.
- 3.7 Evidence should be adduced of whether or not each witness proposed to be examined is an Australian citizen and whether or not each witness is expected to give evidence voluntarily.
- 3.8 Under Government policy, all official overseas travel by judges of the Court must be approved by the Chief Justice. The hearing of any application should be timed to allow the judge hearing it to consult with the Chief Justice and ascertain whether, should an order to appoint a judge to take evidence outside Australia be made in the proceeding, approval to travel will be given.

Notification

- 3.9 Following the making of any order appointing a judge to take evidence outside Australia, the following letters are sent by the Court. Further letters may be necessary to confirm dates and other arrangements.

Sender	Recipient	Reason
		To obtain permission for the judicial officer to examine witnesses in that jurisdiction
Chief Justice	Counterpart in overseas jurisdiction Attorney-General	To comply with Government policy requiring notification, at least three weeks in advance, of any proposed official overseas travel by federal judges
District Registrar of relevant registry	Department of Foreign Affairs and Trade	To ensure that the relevant government authorities are informed and all approvals are sought, including approval for the examiner to administer an oath or affirmation
District Registrar of relevant registry	Relevant court administrator in overseas jurisdiction	To obtain courtroom or chambers accommodation, if required.

Calculation of Travel Expenses

- 3.10 Travel expenses of a judge are determined according to the determination in force from time to time of the Remuneration Tribunal under the Remuneration Tribunal Act 1973 (Cth). Further information is available on the Remuneration Tribunal website.
- 3.11 Travel expenses for Court staff are determined by the Chief Executive Officer and Principal Registrar of the Court or delegate. This normally includes accommodation at a standard reasonably equivalent to that provided to Court staff in Australia and meal and incidental allowances at the rates determined annually by the Australian Taxation Office in its taxation ruling dealing with reasonable travelling allowance amounts. Further information is available from the District Registrar of the relevant registry.

Travel Proposal and Projection of Costs

- 3.12 As soon as possible after any order is made for the taking of evidence outside Australia, the parties should prepare and lodge with the District Registrar of the relevant registry a travel proposal for the Judge and any Court staff, together with a projection of costs including:
- (a) proposed dates, route, flights, class, carrier and ticketing (fully flexible return tickets must be provided) for travel;
 - (b) proposed arrangements for ground travel;
 - (c) three options (if possible) for hotel accommodation;
 - (d) daily allowance for meals and incidentals; and
 - (e) any other anticipated expenses.
- 3.13 The parties will also provide to the District Registrar details of what arrangements are proposed for accommodation for the conduct of each examination and for transcription.

Payment into Court

- 3.14 On receiving the travel proposal and the projection of costs, the District Registrar will liaise with the Judge to identify whether the proposal is satisfactory and consider whether the cost projection made is sufficient to provide for the likely expenses of the examination. The District Registrar will, if necessary, liaise with the parties about any possible modifications. If required the District Registrar may seek directions from a judge. Once the amount for the provision for the Court's expenses of the examination

is determined and before the commencement of the examination, the parties will pay that amount in equal shares into Court.

Reconciling Expenses

- 3.15 As soon as possible after the examination, the District Registrar will reconcile and account to the parties for the costs actually incurred by the Court of and incidental to the examination. If the amount paid as a provision for those expenses exceeds those costs, the excess will be refunded to the parties in equal shares. If there is a shortfall in the amount paid as a provision for those expenses against those costs, the parties will pay the amount of the shortfall into Court in equal shares within 7 days of receiving written notification.

Evidence from Overseas by Video Link

- 3.16 Refer to the Technology and the Court Practice Note (GPN-TECH) and the Court's website for further information on arrangements for the use of a video link in a hearing.

JLB ALLSOP
Chief Justice
25 October 2016

^[1] See: www.hcch.net/en/home. A Practice Handbook on the operation of the Convention can be purchased from this website.

^[2] Although the examiner will usually be a judge, a registrar of the Court or other person may also be appointed for the purpose of an examination (see r 29.11 and the definition of "Examiner" in Schedule 1 of the Federal Court Rules).

^[3] See s 7(2) of the Foreign Evidence Act 1994 (Cth).

Annex Seventeen: Outline of the Hague Evidence Convention

OUTLINE EVIDENCE CONVENTION



HCCH Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters

Purpose of the Convention

The Evidence Convention establishes methods of co-operation for the taking of evidence abroad in civil or commercial matters, between States Parties.¹ The Convention provides an effective means of overcoming the differences between civil law and common law systems with respect to the taking of evidence, via (i) *Letters of Request*, and (ii) *diplomatic or consular agents and Commissioners*.²

Letters of Request (Chapter I)

A judicial authority of one State Party (Requesting State) may request, by means of a Letter of Request, a competent authority of another State Party (Requested State) to obtain evidence which is intended for use in judicial proceedings in the Requesting State. The judicial authority of the Requesting State transmits the Letter of Request to the *Central Authority* of the Requested State (see also Arts. 24(2) and 25). The latter then forwards the Letter of Request to the competent authority in its country for execution. The law of the Requested State applies to the execution of the Letter of Request. In order to expedite and facilitate execution, the Convention provides an option to allow the presence of members of the judicial personnel of the requesting authority, the parties, and/or their representatives, at the execution of the Letter of Request. The requesting authority may also request the use of a special method or procedure in the execution of the Letter of Request, provided this is not incompatible with the law of the Requested State or impossible to perform. Certain States have even amended their domestic law in order to permit techniques for the execution of requests that are customarily used in other States (e.g., the drafting of verbatim transcripts of testimony, the possibility of cross-examination, the use of video-link).

A requested authority unable to execute the Letter of Request itself may appoint a suitable person to do so (this applies particularly where execution is sought in common law countries; the court addressed may be unable to perform the Letter of Request itself because its procedural rules leave the collection of evidence to the parties). The person to be questioned or requested to produce evidence is entitled to assert a privilege or duty to refuse to give evidence under either the law of the Requesting State or the law of the Requested State.

A Letter of Request shall be executed "expeditiously" and may be refused only in specific cases. Lastly, the execution of the Letter of Request may not give rise to any reimbursement of taxes or costs; however, the Requested State may require the Requesting State to reimburse fees paid to experts and interpreters, as well as costs occasioned by the use of a special procedure requested by the Requesting State.

Diplomatic or Consular agents, Commissioners (Chapter II)

Chapter II of the Convention allows diplomatic or consular agents and Commissioners to take evidence, which may be subject to the prior permission of the appropriate authority of the

¹ For a comprehensive and updated list of Contracting States to the Convention, follow the link entitled "Updated list of Contracting States (status table)" on the "Evidence Section" of the HCCH website at < www.hcch.net >. An explanation of the status table is also available by following the link entitled "How to read the status table" on the Evidence Section.

² Art. 33, however, provides an option for any State Party to exclude, in whole or in part, the application of the provisions of Chapter II relating to diplomatic and consular agents and commissioners.

State in which the evidence is to be taken. States may exclude, in whole or in part, the application of Chapter II. It is therefore critical to check whether a State has made a reservation in this respect.³ Subject to the relevant permission, the representative or Commissioner may take evidence, insofar as their proposed actions are compatible with the law of the State of execution, and may also have power to administer an oath or affirmation. The consular or diplomatic agent or Commissioner may not compel the person requested to give evidence. The Convention provides, however, that States may, by declaration, authorise diplomatic or consular agents or Commissioners to apply to the competent authority for appropriate assistance to obtain the evidence by compulsion. Unlike Letters of Request, the taking of evidence pursuant to Chapter II is, as a rule, performed in accordance with the manner required by the law of the Court before which the action is initiated. Cross-examination, during which the witness is questioned by counsel for both parties, is also permitted. However, if the manner in which the evidence is taken is forbidden by the law of the State of execution, it may not be used. Lastly, the person required to give evidence may, in the same way as pursuant to a Letter of Request, assert a privilege or duty to refuse to give evidence.

Pre-trial discovery (Art. 23)

Pre-trial discovery is a procedure known to common law countries, which covers requests for evidence submitted *after the filing of a claim but before the final hearing on the merits*. The Convention permits States Parties to ensure, by way of declaration, that Letters of Request for the purpose of obtaining pre-trial discovery of documents are sufficiently substantiated so as to avoid requests whereby a party is merely seeking to find out what documents might be in the possession of the other party to the proceedings.

Due to existing misunderstandings of the nature of pre-trial discovery, the 2003, 2009 and 2014 meetings of the Special Commission clarified the nature and purpose of this procedure and invited States that have made a general, non-particularised declaration to revisit their declarations.⁴

Practical Handbook on the Operation of the Evidence Convention (3rd Edition, 2016)

The Practical Handbook offers detailed explanations on the general operation of the Evidence Convention as well as authoritative commentaries on the major issues raised by practice over the past forty-five years. This edition of the Handbook marks a substantial change in concept and content as compared with previous editions. To order the Handbook, see the "[Evidence Section](#)" of the HCCH website.

Monitoring of the Convention

The practical operation of the Convention has been reviewed by several Special Commissions (in 1978, 1985, 1989, 2003, 2009 and 2014). The Special Commissions have confirmed the continuing global interest in this Convention and reaffirmed its practical utility. A model Letter of Request was adopted at the 1978 Special Commission and amended in 1985. The latest version of the Model Form is available on the "Evidence Section" of the HCCH website.

For additional information, please visit the "[Evidence Section](#)" of the HCCH website at <www.hcch.net> or contact the Permanent Bureau of the HCCH.

³ A list of States that have excluded in whole or in part the application of Chapter II is available on the "Evidence Section" of the HCCH website.

⁴ See Nos 29-34 of the Conclusions and Recommendations of the 2003 Special Commission, Nos 51 and 52 of the Conclusions and Recommendations of the 2009 Special Commission, and Nos 18 and 19 of the Conclusions and Recommendations of the 2014 Special Commission; a list of States that have made a declaration pursuant to Art. 23 of the Convention is available on the "Evidence Section" of the HCCH website.

Annex Eighteen: Guidance Note (Chief Justice of Vanuatu)

REPUBLIC OF VANUATU



CHIEF JUSTICE'S CHAMBERS

GUIDANCE NOTE FOR REMOTE HEARINGS - VANUATU COURT OF APPEAL – SECOND SESSION MAY 2020 (VIDEO-CONFERENCING FACILITIES) DUE TO COVID – 19. ADDITIONAL TO COURT ARRANGEMENTS PROTOCOL ISSUED ON 9 APRIL 2020

INTRODUCTION

1. This Guidance Note for Remote Hearing for the Court of Appeal of Vanuatu is an additional part to the Court Arrangements, the Chief Justice has issued on 9th of April 2020.
2. Because of the Covid-19 pandemic, two (2) Oversees Panel Members of the Vanuatu Court of Appeal Judges could not participate in the May 2020 session as they normally do due to the closing of International Borders in Vanuatu and in their own respective countries (Australia and New Zealand).
3. The unprecedented challenge to the operation of the court in the current Covid-19 pandemic, with serious public health concerns, does not allow the court to operate in the usual manner. This requires the use of alternative modes of hearing so as to maximize the continued and safe operation of the justice system while maintaining social distancing and reducing the risk of Covid-19 spreading in the community as far as possible. It is of paramount importance that

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justice is duly administered continuously and effectively without compromising public health and safety.

COURT OF APPEAL REMOTE HEARINGS: RATIONALES

4. In the exceptional circumstances of the current public health crisis, the Vanuatu Court of Appeal shall conduct its proceedings and hearings by way of remote hearings through Video Conferencing Facilities ("VCF") in its 2020 Second Session in May so that the two (2) overseas Appeal Panel members could participate actively and fully.
5. This Guidance Note is issued to set out the practice for remote hearings by electronic means by Videoconferencing of appeal cases during this session.
6. The Vanuatu Court of Appeal's VCF installed for the purpose uses the Government's technology arrangement that is set up by the Office of the Government Chief Information Officer (OGCIO) within the Government networks; it is logistically feasible and appropriately secure and it will allow applicable court rules and procedures. The OGCIO will technically assist the Court of Appeal during its remote hearings in this session.
7. Whatever technology is employed for remote hearings will require the flexible application of the guidance.
8. The essence is to replicate as closely as practically possible the core requirements of court hearings. The ultimate question is one of fairness, it being understood that standards of fairness are not immutable and the requirements of fairness are flexible and closely conditioned by the legal and administrative context.
9. Remote hearings using video technology preserve most of the benefits of an oral hearing, allowing parties and their legal representatives and

the court to interact with each other on a real-time basis. Parties and their legal representatives will be expected to focus their submissions (and evidence, if applicable) so as to promote the efficient use of the technology within the shortest possible appropriate time. As even remote hearings may require some persons to be physically present in the same place, the duration of hearings should be limited to reduce public health risk to those present. All participants should keep in mind the wider public interest of maintaining social distancing as a strategy to combat the pandemic spreading.

10. Insofar as the conduct of remote hearings might impact the open justice principle, it is settled law that different balances may be struck with regard to different aspects of open justice being subject to restrictions when other competing fundamental rights are engaged. The court will be astute to ensure the appropriate balance is struck, for example by the continued public dissemination of reasoned decisions as it is always the practice of the Vanuatu Court of Appeal.
11. All participants in remote hearings will need to be sympathetic to the technological and other difficulties which might be experienced by other participants, in the setting up of and in the conduct of remote hearings.
12. As the hearing will be listed to be heard in open court, even though conducted as a remote hearing, robes should be worn by the barristers and/or solicitor advocates appearing, as well as by the Judges. All court rules and practice on court etiquette will continue to apply (save that standing at the beginning and end of hearings will not be necessary or standing when making submissions not required except if the microphones at the Bar Table are set for standing only).
13. Subject to the direction of the Judges, a remote hearing will be conducted openly where public and media can attend physically. However, in the exceptional circumstances of the threat to public health caused by the current pandemic, the impossibility of public or media access to a hearing should not ordinarily prevent the remote

hearing taking place. The decision whether, how, and to what extent, to permit public or media access to a remote hearing rests with the Judges conducting the hearing.

14. The costs of the use of VCF and any other services and/or materials used in conjunction with them will form part of the costs of the proceedings (if any), and will be subject to such costs orders as the court thinks fit.

PRACTICAL CONSIDERATIONS

BEFORE STARTING A VIDEO CONFERENCE, PLEASE NOTE THE FOLLOWING:

- The parties and their representatives shall attend the remote hearing by way of the Court's video-conferencing facilities.
- No person may take any form of recording of the remote hearing, other than the Court if required (through the TrueConf Feature).
- The remote hearing shall take place at [time] on [date] with a time estimate of [length].
- The remote hearing shall be conducted by the Court from Supreme Court Room No.1 at Dumbea, Port Vila, Vanuatu.
- The Court of Appeal usually begins proceedings at 9:00 a.m. in the morning and again 2.00p.m in the afternoon. A call over of appeal cases is to be on Monday 4 May 2020 at 9.00 am. However, there is a need to adapt or adjust the starting time of hearing considering the time difference between South Australia (Adelaide) and New Zealand. Technical staff at the court of appeal room must be available to assist at this hour.

- If there is a real time difference, it has to be considered and taken into account for the starting time of the hearings of the Court of Appeal in this session.
- The court generally requires at least time in advance for videoconferencing for testing purposes before a hearing begins.
- The test must be conducted in the Court room and with the system that will be used for the scheduled hearing and checked with the remote judges' location sites in Adelaide and Auckland if everything is alright. It is recommended that technical staff and someone from the court be present for the test.
- To ensure a seamless experience on each day of court sitting, it is important that the court room and judges' rooms or locations in Adelaide and Auckland are free of clutter and noise.

ON THE DAY(S) OF THE VIDEOCONFERENCE, PLEASE NOTE THE FOLLOWING:

- The court will connect the videoconference at least 15 minutes before the start of the scheduled hearing to allow time to work through any unexpected connection problems. The court will also test all microphones and camera angles. It is important that technical staff at the court room site be present at this time.
- While the proceeding is in progress, technical staff at the court room site must remain available by telephone in case of a problem.
- As the Court of Appeal session is scheduled for 2 weeks (multiples days), the court will connect at least 15 minutes early each day or each time required.

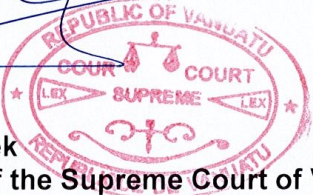
FINAL NOTE

- A telephone conference link is also set up as a stand-by or backup system in the Courtroom (if necessary).
- Another video conference link is set up in the Supreme Court conference room at the Supreme Court Registry Office with a telephone conference link set up as its backup for the judges' communications and discussions during the appeal period.

15. This Guidance Note will take effect on 4 May 2020. It may be subject to amendment and will continue until further notice.

Dated this 28th of April 2020.


Vincent Lunabek
Chief Justice of the Supreme Court of Vanuatu



Annex Nineteen: Additional Sources of Information

Coronavirus & the Courts. National Centre for State Courts. (2020) Coronavirus and the Courts: Links to State Courts COVID-19 Websites¹³

<https://public.tableau.com/profile/ncscviz#!/vizhome/StateCourtResponsestoCOVID-19/CovidTheCourts>

Law Society of New South Wales Journal¹⁴ at <https://lsj.com.au/articles/the-courts-and-the-pandemic-the-role-and-limits-of-technology/>

National Center for State Courts has a site, Coronavirus and the courts¹⁵ at <https://www.ncsc.org/pandemic>

Remote Hearings Guide; Californian Commission on Access to Justice as adapted for Conference of Chief Justices, Conference of State Court Administrators, National Centre for State Courts¹⁶ at https://www.ncsc.org/_data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf

Remote Courts Worldwide website, hosted by the Society for Computers and Law, funded by the UK LawTech Delivery Panel, and supported by Her Majesty's Courts & Tribunals Service, United Kingdom. The site was developed in response to the Covid-19 pandemic to provide the court community internationally with a systematic way to exchange and deposit news of operational systems, plans, ideas, policies, protocols, techniques, and safeguards around RCP's. <https://remotecourts.org>

The Courts of the State of Michigan¹⁷ at <https://courts.michigan.gov/news-events/covid19-resources/pages/default.aspx>

The Hague Convention has produced a Good Practice Guide on Use of Video-Link under Evidence under the HCCH 1070 Evidence Convention. <https://www.hcch.net/en/news-archive/details/?varevent=728>

The American Bar Association has put together resources from the Standing Committee on Legal Aid and Indigent Defense against the COVID-19¹⁸: https://www.americanbar.org/groups/legal_aid_indigent_defense/?_cpx_camp_rule_id=3565

The Texas Judicial Branch maintains a site on Zoom Information and YouTube Support¹⁹ at <https://www.txcourts.net/electronic-hearings-zoom>

¹³ National Centre for State Courts. 2020. Coronavirus and the Courts: *National Centre for State Courts Data Visualisations*. <https://public.tableau.com/profile/ncscviz#!/vizhome/StateCourtResponsestoCOVID-19/CovidTheCourts>

¹⁴ Legg, M., and Song, A. 2020. The Courts and the Pandemic: *the role and limits of technology*. LSJ Online, Law Society of New South Wales Journal. <https://lsj.com.au/articles/the-courts-and-the-pandemic-the-role-and-limits-of-technology/>

¹⁵ National Center for State Courts. (2020) Coronavirus and the Courts. NCSC and Thomson Reuters. <https://www.ncsc.org/pandemic>

¹⁶ California Access to Justice Commission. 2020. Remote Hearings and Access to Justice: *During COVID-19 and Beyond*. National Center for State Courts. https://www.ncsc.org/_data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf

¹⁷ Courts of the State of Michigan. 2020. COVID-19 News and Resources. Michigan Judiciary. <https://courts.michigan.gov/news-events/covid19-resources/pages/default.aspx>

¹⁸ American Bar Association. (2020) Standing Committee on Legal Aid and Indigent Defense. (American Bar Association) https://www.americanbar.org/groups/legal_aid_indigent_defense/?_cpx_camp_rule_id=3565

¹⁹ The Texas Judicial Branch. 2020. Court Coronavirus Information: *Zoom Information and Youtube Support*. <https://www.txcourts.net/electronic-hearings-zoom>



REMOTE COURT PROCEEDINGS TOOLKIT

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





EFFICIENCY TOOLKIT

Revised May 2021





The information in this publication may be reproduced with suitable acknowledgement.

Toolkits are evolving and changes may be made in future versions. For the latest version of the Toolkits refer to the website - <http://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.

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PJSI Toolkits

Introduction

The Pacific Judicial Strengthening Initiative (PJSI) was launched in June 2016 in support of developing more accessible, just, efficient and responsive court services in Pacific Island Countries (PICs). These activities follow on from the Pacific Judicial Development Program (PJDP) and endeavour to build fairer societies across the Pacific.

Toolkits

PJSI aims to continue ongoing development of courts in the region beyond the toolkits already launched under PJDP. These toolkits provide support to partner courts to help aid implementation of their development activities at a local level, by providing information and practical guidance. Toolkits produced to date include:

- [Access to Justice Assessment Toolkit](#)
- [Annual Court Reporting Toolkit](#)
- [Enabling Rights and Unrepresented Litigants Toolkit](#)
- [Family Violence/Youth Justice Workshops Toolkit](#)
- [Gender and Family Violence Toolkit](#)
- [Human Rights Toolkit](#)
- [Judges' Orientation Toolkit](#)
- [Judicial Complaints Handling Toolkit](#)
- [Judicial Conduct Toolkit](#)
- [Judicial Decision-making Toolkit](#)
- [Judicial Mentoring Toolkit](#)
- [Judicial Orientation Session Planning Toolkit](#)
- [National Judicial Development Committees Toolkit](#)
- [Project Management Toolkit](#)
- [Public Information Toolkit](#)
- [Reducing Backlog and Delay Toolkit](#)
- [Remote Court Proceedings Toolkit](#)
- [Training of Trainers](#)
- [Time Goals Toolkit](#)
- [Efficiency Toolkit](#)

These toolkits are designed to support change by promoting the local use, management, ownership and sustainability of judicial development in PICs across the region. By developing and making available these resources, PJSI aims to build local capacity to enable partner courts to address local needs and reduce reliance on external donor and adviser support.

This updated **Efficiency Toolkit** aims to provide support and guidance to courts in how to be efficient in the delivery of justice services.

Use and Support

These toolkits are available online for the use of partner courts. We hope that partner courts will use these toolkits as/when required. Should you need any additional assistance, please contact us at: pjsi@fedcourt.gov.au

Your feedback

We also invite partner courts to provide feedback and suggestions for continual improvement.

Dr. Livingston Armytage

Technical Director, Pacific Judicial Strengthening Initiative, April 2021

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Abbreviations

ADR	Alternative Dispute Resolution
CEPEJ	European Commission on the Efficiency of Justice
CRoC	Convention on the Rights of the Child
FCA	Federal Court of Australia
JSC	Judicial Settlement Conferencing
IFCE	International Framework for Court Excellence
NZ MFAT	New Zealand Ministry of Foreign Affairs and Trade
MOU	Memorandum of Understanding
PC	Partner Court/s
PIC	Pacific Island Country
PJDP	Pacific Judicial Development Programme
PJSI	Pacific Judicial Strengthening Initiative

1 Introduction

1.1 Purpose of this Efficiency Toolkit

The purpose of this Toolkit is to increase the ability of the court to efficiently manage the disposal of cases in a way that is just, timely and fair. This is consistent with the principle of procedural justice that is concerned with fairness in the administration of justice and legal proceedings.



To achieve this purpose, the Efficiency Toolkit helps your court achieve the following efficiency outcomes:

- ✓ *Consistently meet obligations to conduct a fair trial in a reasonable time;*
- ✓ *Mitigate against injustice that may be caused by delay;*
- ✓ *Allocate and use resources more cost effectively;*
- ✓ *Define consistent processes and procedures that assure procedural justice;*
- ✓ *Ensure immediate and continuous control of its cases;*
- ✓ *Use performance reports to help manage the caseload and allocate resources; and*
- ✓ *Strengthen public trust and confidence in the court.*

The Efficiency Toolkit introduces and emphasises effective caseload management as being key to court efficiency and the prevention of delay. In this context, *caseload management* is concerned with *how* the court manages the progress of *all cases* in the courtⁱ. This is linked with *case management* that is concerned with how the judge manages the resolution process of *individual cases*ⁱⁱ.

Experiences in the courts of Palau in Micronesia were used to inform the content and approach of this Toolkit to ensure it is of regional relevance. The author is grateful to the Honourable Chief Justice of Palau and all the judges and court personnel who participated in Efficiency Workshops and who continue to make improvements identified in their Efficiency Improvement Plan.



Photo 1: Land Court Palau

Case Study:

The elderly are often particularly affected by delay in land cases. Here an elderly widow appears to finalise her land ownership application in a five-minute hearing in the Land Court of Palau after over twenty years of waiting. Although the cause of the profound delay was not in the Land Court, user perceptions sometimes do not differentiate. In developing an Improvement Plan, the Land Court of Palau and related agencies agreed to establish a Task Force under an MOU to sustainably address inefficiency and delay across the land registration and land dispute resolution process.

1.2 Who should read this toolkit

The Toolkit is written for court leaders, judges and court personnel who all play a role in efficient court performance and timely case disposal. Stakeholders such as the local legal profession may also benefit from reading these materials and participating in workshops to develop improvement plans.



This Toolkit is broadly applicable across all jurisdictions and case types. It is acknowledged however, that there is a large diversity of legal and situational factors affecting efficiency between Partner Courts (PC). Appreciating these differences, users are encouraged to customise and use the methods and tools in this Toolkit according to their local needs, jurisdictions and business of the court.

1.3 How to use this toolkit

The Toolkit consists of:

- a) Information on 7 Efficiency Areas designed to help you understand what systems, processes and procedures you should have in place to achieve efficient performance;
- b) An 'Efficiency Review Kit' with a self-assessment tool that helps you:
 - Understand the current situation in your court;
 - Develop a baseline of data from which improvements can be measured;
 - Assess processes and procedures around key areas of caseload to improve efficiency; and
 - Identify strengths and weaknesses to feed into an Efficiency Improvement Plan.
- c) Guidance for the completion of an Improvement Plan;
- d) 8 Pacific Island Core Court Performance Indicators that you can use at any point in time to review efficiency, delay and performance; and
- e) Help to prepare an Improvement Plan; and
- f) Additional Materials including a Powerpoint Training Presentation.



This Toolkit can be used as an independent learning resource, as workshop material or as a practical guidebook or manual.

This Toolkit should be used along with relevant law, rules and court procedures for your court that define the legal framework within which you are required to operate.

You should also take advantage of other relevant toolkits available at the [PJSI website](#) which include:

- [Reducing Backlog and Delay](#)
- [Time Goals](#)
- [Enabling Rights and Unrepresented Litigants](#)
- [Human Rights](#)
- [Family Violence and Youth Justice Project](#)
- [Annual Court Reporting](#)
- [Project Management](#)
- [Gender and Family Violence Toolkit](#)

2 Exploring Efficiency

2.1 Why is court efficiency important?



The judicial system is a public resource that needs to be managed efficiently to ensure the rights of citizens to access a court that is open, timely, fair and affordable are realised.

Inefficient courts can obstruct or deter users from accessing justice because the court process is too slow, too expensive, too unpredictable and too complicated.

Inefficient courts are also susceptible to undue influence and can mask unacceptable levels of underperformance and even corruption.

An efficient court therefore, acts as an enabler for citizens and businesses to seek remedies for injustice or to resolve disputes. This is a fundamental pre-requisite for a democratic society and for communities to live peacefully and prosperously.

In the context of the Pacific, efficiency becomes increasingly important as courts often operate with limited resources and cover large geographic areas that are expensive and complicated to service. In turn, PIC citizens, like the elderly woman in the case study above in Photo 1, are often reluctant to assertively seek their rights when faced with institutional inefficiency and delay.

The relationship of efficiency to other key and important management concepts are presented in Diagram 1 below.

Effectiveness	How well we achieve goals that matter to court users and citizens
Productivity	How much court work is done in a certain amount of time
Procedural Satisfaction	The extent to which court users perceive the court as being fair and accessible
Efficiency	How well we use our resources

Diagram 1 Important Management Concepts

2.2 Defining efficiency

Commonly, efficiency is defined as the ability to avoid waste in achieving a desired result or, how well we use our resources. From this perspective, resources can be materials, human efforts, finances, opportunity or time. For the purpose of this Toolkit, we are concerned with efficiency in the case disposition pathway and at the same time, view adjudication as a precious public resource not to be wasted.

Keeping in mind the context of our PC, this Toolkit does not explore efficiency in terms of financial efficiency that attempts to improve efficiency through cost reductions, measured through indicators such as cost per case.

Rather, this Toolkit explores efficiency in the context of caseflow management, which is about the number and types of cases flowing into the system, how and when they progress in the system and how and when they are disposed of. Conceptually, the premise is that if we manage the case flow and judges manage individual cases efficiently and effectively, we will achieve optimal levels of productivity and procedural satisfactionⁱⁱⁱ.

2.3 Efficiency obligations

2.31 Key International laws and conventions

Obligations to be efficient are inherent in the principles of fairness and timeliness that appear in various international treaties, covenants and instruments.



Examples include:

Article 14 of the International Covenant on Civil and Political Rights provides for:

- The right to a fair trial
- The right to trial without undue delay.

Value 6 about Competence and Diligence in the *Bangalore Principles of Judicial Conduct 2002* sets out clear obligations at 6.5:

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

2.32 Domestic Law

Obligations to be efficient are usually reaffirmed in Constitutions of PICs and are reinforced in contemporary criminal and civil procedures. For example, the domestic laws of Palau provide for the conduct of a fair trial without delay and the conduct of a speedy trial.

2.33 Efficiency is best practice

General principles of court administration establish obligations on courts to orient their operations around meeting public expectations with utmost efficiency.



Photo 2: Trial Court Koror, Palau

Courts internationally recognise that the efficient administration of justice is a necessity and that it needs to be balanced with quality performance. In order to achieve this, courts are continually developing benchmarks, measuring performance and developing new tools and techniques to assure quality justice is delivered in due time.

Several international organisations observe and encourage courts around the world to be efficient:

European Commission on the Efficiency of Justice (CEPEJ)

The CEPEJ is tasked with improving the efficiency and functioning of justice across its 47 member States in Europe. It publishes standards and prepares reports as Europe seeks to harmonise the quality and efficiency of domestic and regional justice.



International Framework for Court Excellence^{iv} (IFCE)

The IFCE is an important authority on quality court management in the Pacific region, with some PICs undergoing the IFCE assessment process. The IFCE is designed to assist courts to identify areas of court performance capable of improvement, including the identification of procedures that detract from court quality and efficiency.

This Toolkit is consistent with IFCE standards and can be used to help increase chances of achieving Court Excellence.

World Bank Doing Business



The World Bank Doing Business^v publishes data on 190 countries^{vi} across ten categories, two of which assess the efficiency and quality of the court in enforcing contracts and resolving insolvency. The data collected about courts is extensive and not necessarily validated by the court itself. Therefore, it is important that courts have systems and processes in place that can provide accurate data on its own efficiency levels for third party agencies like the World Bank Doing Business.

In choosing to conduct the Efficiency Review and implementing the Improvement Plan in this Toolkit, your court will also address assessment criteria of the World Bank Doing Business that may help your nation rank more highly on the Doing Business Index.

2.34 Principles of procedural justice and substantive justice

Procedural justice can be described as the principle of fairness in the processes that resolve disputes^{vii}. The rationale of the procedural justice principle is that a fair outcome is more likely if cases progress and are decided in ways that apply fair practice and consistency.

Procedural justice is exercised in the actions of the court and the personal attitudes and beliefs that judges and court personnel bring to their work. This mind-set establishes the general tone of the court culture and ultimately, what determines acceptable court performance^{viii}.

The rationale of the procedural justice principle is that a fair outcome is more likely if cases progress and are decided in ways that apply fair practice and consistency.

Procedural justice is sometimes referred to as the “thin” side of judicial administration. This is compared with *substantive justice* that is sometimes referred to as the “thick” side of judicial

administration. In comparison, substantive justice is concerned with the quality and validity of the outcome itself achieved through the application of the law and the upholding of rights.

In essence, *procedural justice* is related to the fairness of the *process* and *substantive justice* is related to the fairness of the *outcome* as depicted in Diagram 2 below. Courts operate on the basis that fair procedural justice and substantive justice leads to a just outcome in individual cases.

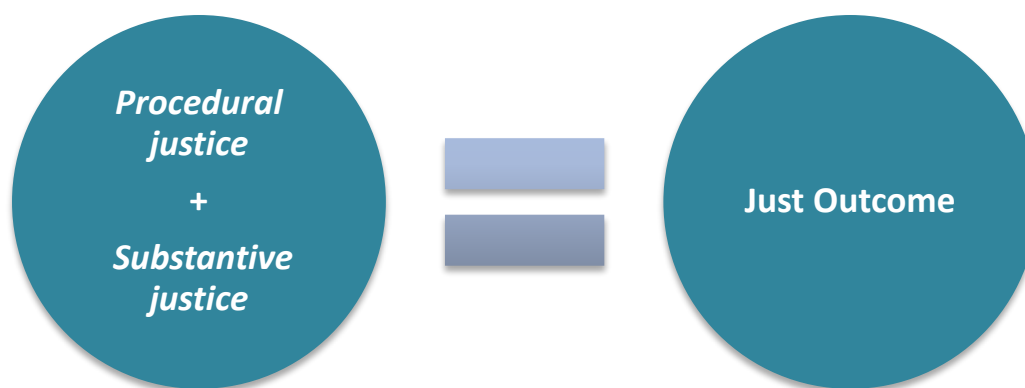
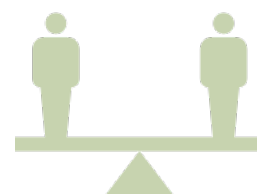


Diagram 2: Procedural Justice

At the heart of both concepts is the *natural justice doctrine* that describes the common law rule against bias and the right to a fair trial. The elements of the natural justice doctrine afford a person three fundamental rights:

1. The right to be notified of the claim or charge against them
2. The right to be heard in response to the claim or charge
3. The right to be heard before an independent decision-maker



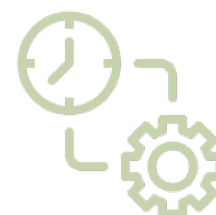
In addition, courts operate according to some common administrative principles about how the process should work to be fair and just, and appear to be fair and just. They are to^{ix}:

- ✓ *Give every case individual attention;*
- ✓ *Treat cases proportionately;*
- ✓ *Demonstrate procedural justice; and*
- ✓ *Exercise judicial control over legal process.*

These administrative principles are of fundamental importance to the institutional legitimacy of courts and the degree of trust placed in it by citizens. Section 3 of this Toolkit will outline caseflow methods, tools and processes to help your court uphold these obligations.

2.4 Efficiency and Caseflow Management

Case management and caseflow management are both concerned with how the court manages pre-trial, trial and enforcement procedures to ensure cases are disposed of promptly, with court attention proportional to the nature and complexity of the individual case.



Caseflow management is a term used to describe the management, monitoring and controlling of **the caseload** of the court.

Case management is about the procedural decisions that judicial officers make in individual cases e.g.: whether to grant an adjournment/continuance. The combination of case management and caseflow management helps your court provide efficient procedural justice as depicted in Diagram 3 below.

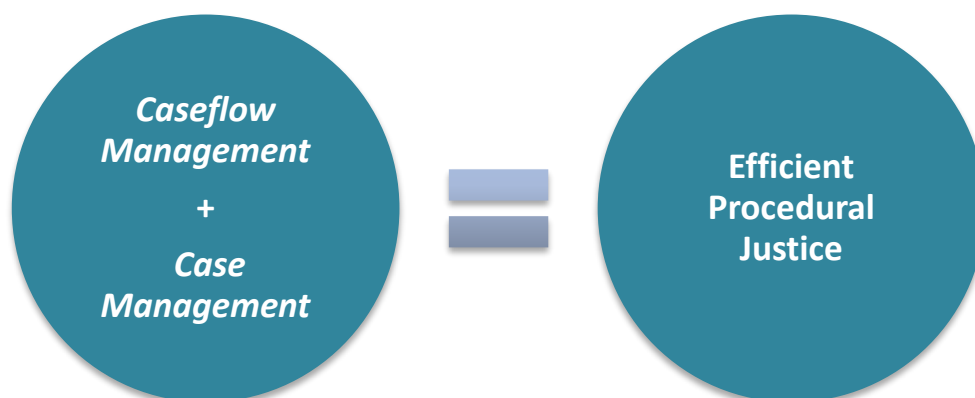


Diagram 3: Caseflow Management

Central requirements of efficient case management and caseflow systems are that the court:

- ✓ Is in control;
- ✓ Monitors and controls the behaviour of all participants;
- ✓ Ensures the parties prepare their cases early;
- ✓ Recognises early that cases are different and require different degrees of management intervention;
- ✓ Realises that most matters do not end up requiring a full trial and final adjudication; and
- ✓ Brings non-trial cases to an early resolution/settlement.

An important ingredient in a successful system is the common commitment of judges and administrators to manage, monitor and control the movement of cases to final disposition as a team as depicted in Diagram 4 below.

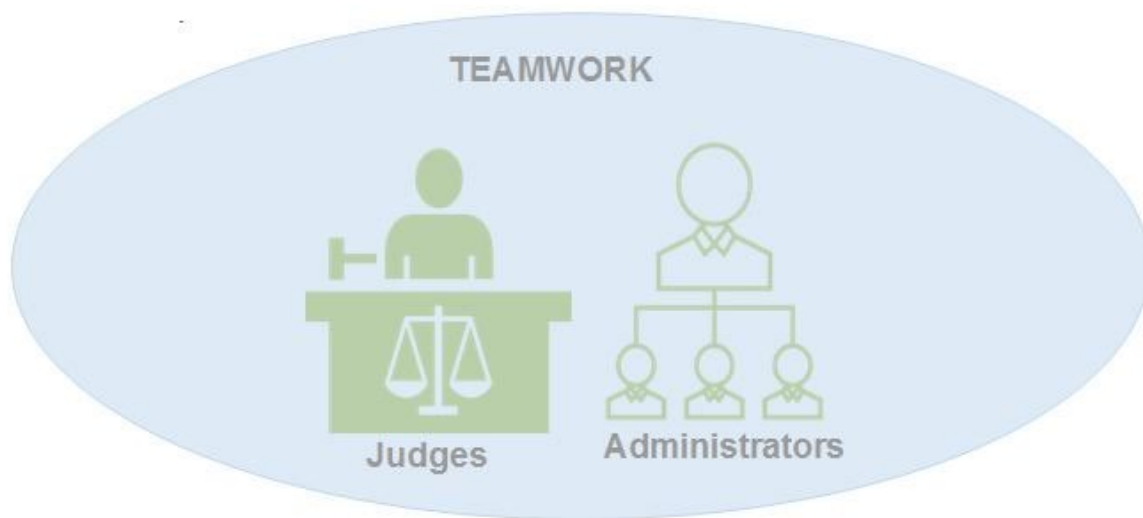


Diagram 4: Team Work

The provision of accurate data and case related information to judicial officers and court officers, preferably using electronic case tracking or management systems, is also of central importance in efficient caseload management systems.

3 Efficiency Review

The Efficiency Review is a systematic health-check of caseload and case management processes across 7 Efficiency Areas. By using the Efficiency Review you will easily see



how efficiently your court is performing.

In this section of the Toolkit you will be provided information and guidance about each of the 7 Efficiency Areas.

In the Additional Materials to this Toolkit you will find an Efficiency Review Kit that steps you through a process that enables you to reflect on and measure your progress in each of the 7 Areas as Annex A-1. More guidance on how to conduct the Efficiency Review is provided in Section 4 of this Toolkit.

3.1 Step 1 - Analyse current situation

An efficient court needs to know at any point in time how it is performing and tracking against its performance goals. These goals are usually set out in a court performance framework and measured through quantitative and qualitative data around current, present and past performance.

Qualitative data includes key statements and commentary about the strengths and weakness in performance and objective reasons to support conclusions. This data can be collected from within and outside the court. Through the use of quantitative data the court can assess its inputs (e.g.: filings) and outputs, dispositions and the timeliness of case progression.

A suite of 8 Efficiency PIC Core Performance Indicators are introduced in Section 5 of this Toolkit and presented in Annex A-2 of the Additional Materials. These indicators were agreed at a regional level to be core indicators and they are used in Section 1 of the Efficiency Review to provide baseline information on performance.

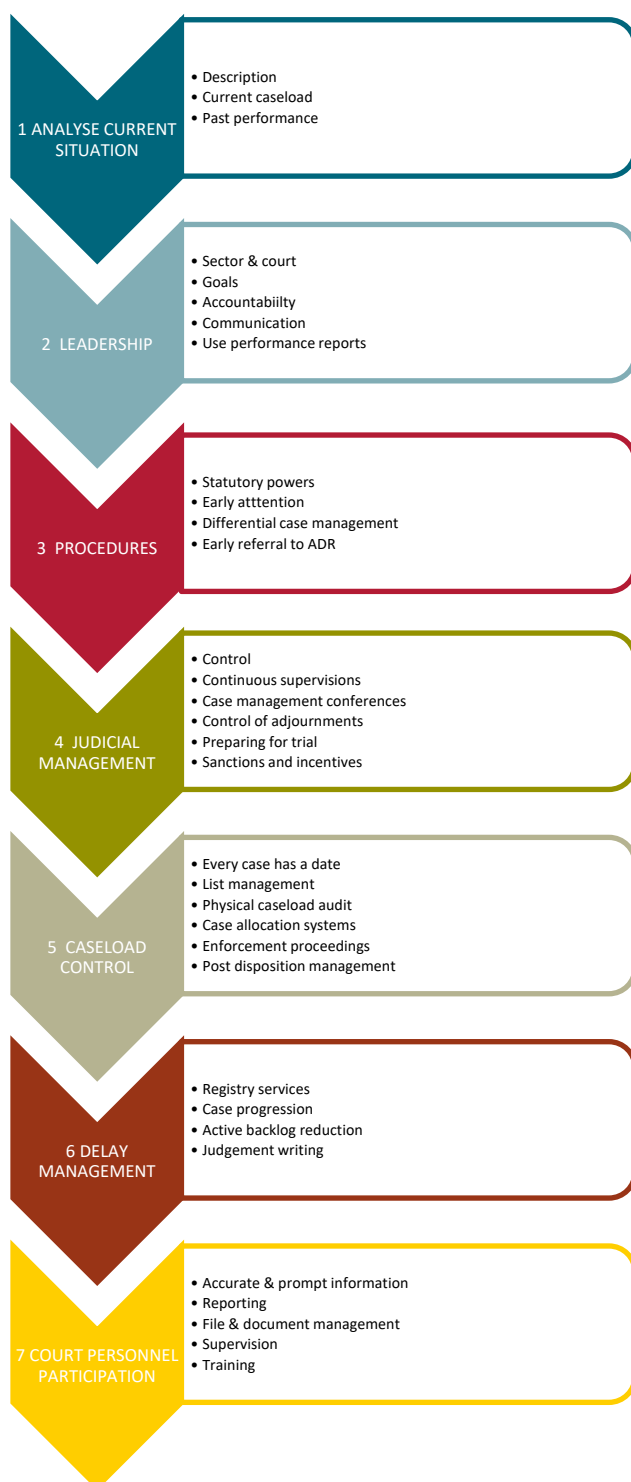


Diagram 5: 7 Efficiency Areas

3.2 Step 2 - Leadership

3.2.1 Leadership areas

All levels of the court organisation

Committed leadership at all levels of the court is required if citizens are to realise their rights to quality and efficient court services. This includes non-judicial court leaders and supervisors who play a crucial role in maintaining registry operations and supporting judges in the organisation of their cases.

Across the justice sector

Recognising that courts do not operate in isolation, improving efficiency involves a broad coalition across the justice sector to achieve sustainable improvements.



Photo 3: Chief Justice Ingram leads the court in the Constitution Day Parade, RMI

This coalition includes a strong relationship between judicial leaders and non-judicial court leaders, who need to work together on a continuous basis to sustain efficient caseflow. As the reliability and sophistication of court systems and processes vary across PICs, some leaders may need to be particularly 'hands-on' and pro-active in their leadership role to achieve efficiency improvements.

*"Every change needs a champion, but every champion needs a coalition"*ⁱ

The litigation process

As a neutral agency that serves the public as a whole, and not just the parties to a dispute, the court is the logical point from which the pace of litigation^x is led. This important concept underpins caseflow management and case management.

"In the past it has been left largely to the parties to prepare for trial and to seek the courts' assistance as required. Those times are long gone." (High Court of Australia^{xi})

The court is responsible for the pace of litigation, not the parties.

The litigation process is especially important for the PC that still operate under the 'lawyer domination' system that sees cases progress at the request of the parties. This system is fraught with problems because often, it is in the interests of a party to promote deliberate inactivity and delay. For the court,

this system usually results in a growing pending caseload where it is difficult to distinguish between active and inactive cases and to independently prioritise listings.

3.2.2 Goals

Through the use of court performance goals and case time goals, leaders can objectively monitor performance and manage, prioritise and allocate resources. Time goals are also a powerful tool to help the local legal culture be more conscious and committed to timeliness.

Time goals, sometimes called time standards, are developed locally and published by the court. They take into consideration the case type and local circumstances and specify:

- a) Maximum time intervals between filing and disposition; and
- b) A specified percentage of cases to be concluded within a stated interval after filing.

Below is an example of the time goals developed by the Land Court of Palau:

LAND COURT PALAU TIME GOALS	
Uncontested Land Matters	100% in 30 days
Contested Complex Land Matters	100% in 24 months

Annex A-3 in the Additional Materials to this Toolkit additionally presents time goals from the Trial Court of Palau. The PJSI has assisted several PC develop time goals for every jurisdiction and case type in their court. The courts without time goals are encouraged to develop their own by using the [Time Goals Toolkit](#) available for download on the PJSI website.

3.2.3 Accountability

Leaders need to ensure individuals are accountable for their caseload management role. Leaders should define clear roles and lines of responsibility and include them in job descriptions and performance management systems so staff can act independently with confidence. Documented expectations also permits leaders to acknowledge good performance and if necessary, to correct inadequate individual performance.

3.2.4 Communication

Sector consultation & co-operation

Courts which experience significant and sustainable improvements are likely to consult widely and have a dedicated team consisting of a number of lawyers, judges, administrators and prosecutors on a task force responsible for developing, monitoring and evaluating caseload reforms.

Judge & court staff meetings

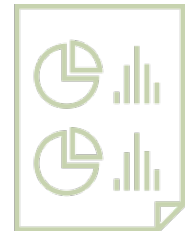
Leaders should not underestimate the power of open communication across all levels as a means to invoke an organisation-wide commitment to efficiency. Leaders should ensure that meetings at all levels of the organisation are held regularly and that discussions about caseload are on the agenda.

This should be supported by current performance data. In turn, this reinforces to court personnel the importance of recording and reporting accurately on case progress.

Particularly important are judge meetings where performance data and dockets are reviewed. These are not generally considered a breach of the principles of judicial independence as the merits of individual cases are not touched upon.

3.2.5 Performance reports

Efficient court leaders put a high premium on timely and accurate information at the case-level and overall system level. Leaders should make themselves familiar with the 8 Core Court Performance Indicators and consider using Quarterly Reports for greatest effect. An example of a Quarterly Report is presented in Annex A-4 in the Additional Materials.



3.3 Step 3 - Procedures

3.3.1 Powers and policies

Progressive courts have statutory reinforcement of case management powers embedded in rules of practice and procedure. These rules operate in ways which bind the parties and which are event and time oriented (e.g. pre-trial conferencing, mandatory settlement conferences and time standards for case disposition and interim events). These powers are additional to the inherent power of the judge to do what is necessary to ensure a fair and just trial.

A good example of a statutory framework is the Federal Court Act 1976, which makes provision for the just resolution of disputes as quickly, inexpensively and efficiently as possible. The relevant sections are available in the Additional Materials to [Backlog and Delay Reduction Toolkit](#) or from the [Federal Court of Australia](#) website.

Chief Justices may also set out the details and requirements of caseflow systems in directives. For example, the Chief Justice Caseflow Direction of the [Supreme Court of Queensland](#) provides particular detail about how the system should work from a practical perspective.

Courts should also include caseflow management in manuals of procedure, bench books and training materials and consistently review and update these materials to ensure they are current.

3.3.2 Early judicial attention

Early and thorough judicial attention brings issues to the attention of the court that may impact the rights of parties and helps to streamline case progression.

Early judicial attention is characterised by the early delivery of cases to judges for screening and triage. Screening involves:

- ✓ *Ensuring the new file meets filing requirements;*
- ✓ *Differentiating the matter (see below); and*
- ✓ *Allocating the case to a judge.*

Triage involves:

- ✓ *Assessing the characteristics of the case;*
- ✓ *Assigning a track; and*
- ✓ *Developing a timetable.*

Early judicial attention is also characterised by case management conferences as discussed below.

3.3.3 Differential case management

Differential case management recognises that not all cases are alike and is concerned with how the court addresses these differences. The pre-requisite of a differential case management system is a set of agreed criteria that sets out the reasons why cases should be accelerated or not. An example of criteria is set out in the Additional Materials Annex A-5. Once differentiated, the cases are assigned to a suitable track e.g., a fast track if an accused is in custody.



Photo 4 Court personnel of Palau exploring case differentiation and technology

“Case information sheets” filed by parties with initial pleadings are an effective way to bring to the court’s attention basic information about the nature of the case and the recommended track.

Courts are encouraged to require the use of case information sheets and to use colour coding systems on files and electronic records for the quick identification of case types and tracks.



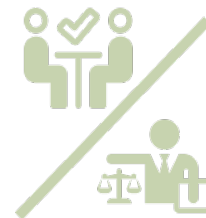
3.3.4 Early referral to ADR

Alternative dispute resolution (ADR) refers to the variety of ways disputes can be brought to conclusion without trial. Examples of ADR in civil cases include mediation, arbitration and judicial settlement conferencing. ADR can be court annexed i.e.: funded and operated by courts. The mediation unit of the court in Samoa is an example of court annexed mediation. This unit reports an effective settlement rate of approximately 60% of matters referred to it. ADR may also be administered independently by other organisations.

In criminal cases or family violence matters, ADR may include options to refer a defendant for therapy and rehabilitation e.g.: drug counselling or anger management counselling as a form of therapeutic justice.

Judicial settlement conferences

Based on the inherent jurisdiction of the court, Judicial Settlement Conferencing (JSC's), such as used in Samoa and New Zealand, provides for a judge to assist in negotiating settlement or to resolve any disputed issues. Conferencing is done in chambers by a judge who is not presiding over the trial, unless all parties consent and the trial judge is satisfied it is appropriate to do so. Judicial settlement conferences can be conducted prior to, or during the trial.



A JSC is effectively a dummy, without-prejudice run of the case. Based on the experience of the Supreme Court of Samoa, JSC's have proved very effective in resolving matters with up to two-thirds of cases being completed through the JSC process.

Follow this link for the guidelines of the High Court of New Zealand on the conduct of [Judicial Settlement Conferences](#).

3.4 Step 4 – Judicial management

3.4.1 Continuous supervision

Each judge must actively supervise individual cases and all cases in the docket, from filing to disposition and through to enforcement. Only through active and continuous oversight by each judge can the courts realise and meet its overall obligation to be timely, efficient and fair.

The result of early and continuous supervision is that matters are disclosed and prepared for trial around issues that are genuinely in dispute.

Whilst time intensive in the preparatory phase, continuous supervision results in savings of cost and time for the court and parties at trial because counsel has had sufficient time to prepare and organise the case.

Ensuring each file has a date for a future event and the conduct of regular audits of the docket (discussed below) are key to maintaining close and continuous case supervision.

Only through active and continuous oversight by each judge can the courts realise and meet its overall obligation to be timely, efficient and fair.

3.4.2 Case management conferences



Photo 5: Judge Workshop about caseflow in Nonouti, Kiribati

Most courts have general powers to order case management conferences. The case management conference can be in court or less formal, where the judge and the parties sit around a table and seek to deal with the procedural management of the case.

Procedural management includes setting a timetable for the progressive and systematic preparation of the case against time goals.

Each case management conference should have a purpose. For example, to emphasize early disposition, monitor timetable deadlines, attempt to define the real issues in dispute, explore ADR and to generally encourage settlement.

To maximise efficiency and reduce costs, partner courts should consider conducting case management conferences remotely. For assistance see the PJSI [Remote Court Proceedings Toolkit](#) for guidance about the legal, technical and operational issues associated with the conduct of a remote court proceeding using audio or video technologies.

Assessing the parties and recusal

Case management conferences provide the judge an opportunity to assess the parties, to confirm the legal representatives and if they have had recent contact with their client. Confirmation that the prosecuting party wishes to proceed and the respondent still wishes to defend the matter, should also be obtained.



The judge can also assess if there is a conflict of interest that justifies recusal. Given the generally high recusal rates in PICs, courts should consider issuing guidelines about what circumstances might justify the recusal of a judge.

Issues conferences

Some jurisdictions have provisions in case management rules for the parties to request an Issues Conference. An Issues Conference can be directed by a judge, and has the principal purpose of identifying and refining issues with both counsel and the parties. It is a longer style case management conference and can be particularly helpful in complex litigation because it makes the parties identify what needs to be proved to succeed and in turn, can limit the discovery process.

Managing complexity

Cases of complexity or volume are often of considerable societal importance and require a large amount of the court's attention to prepare and finalise. Intensive pre-trial and trial case management of these cases helps assure predictable and transparent progress.

Across the Pacific, complex case types often involve disputes over customary land and these are prone to delay and involve unrepresented litigants. In so far as the procedures and processes of caseflow and case management are consistent with customary values, Customary Courts are encouraged to participate in the Efficiency Review and refer to the [Backlog and Delay Reduction Toolkit](#) for guidance if affected by delay. Guidance on dealing with unrepresented litigants can be found in the PJSI [Enabling Rights and Unrepresented Litigants Toolkit](#).

3.4.3 Control of adjournments

One feature of an efficient court is strict control of adjournments (also called continuances in some jurisdictions). Excessive adjournments creates additional work for the court, loss of court sitting time on the day, inconvenience and expense for those parties who attend court.



There are **four main ways** courts can control adjournment rates. These are:

1. Create targets for the number of pre-trial appearances e.g.: no more than three prior to trial in a superior jurisdiction;
2. Create a court culture which is intolerant of unnecessary adjournment applications;
3. Have a written adjournment policy to ensure all judges, the parties and the public are aware of the presumptions upon which adjournments may be granted or refused; and
4. Use sanctions and/or incentives to encourage compliance with the court's standards and policies.

For an example of an adjournment policy please refer to the Additional Resources of the [Backlog and Delay Reduction Toolkit](#).

An important court-wide practice to prevent delay is that no case should be 'adjourned generally' or 'adjourned sine die' or placed back in the active list awaiting a motion of a party to have it relisted.

3.4.4 Preparing for trial

Logistical matters

If the judge is satisfied that all avenues to settle the matter have been explored and the matter is ready for trial, the judge together with the parties need to discuss the practical and logistical requirements of the trial. This includes:

- ✓ The structure of the presentation of evidence i.e., whether testimony is to be given by way of affidavit, orally, or otherwise;
- ✓ Exploring options for the taking of remote testimony by video link, Zoom or even Skype, to alleviate the high costs and efforts of travel for court appearances (See the PJSI [Remote Court Proceedings Toolkit](#) for assistance);
- ✓ Setting time limits for how long each party will be allowed to examine in chief or cross examine or make oral submissions;
- ✓ Determining if the trial has special needs such as extra security; and
- ✓ Identifying if witnesses or victims have special rights as outlined in the [Human Rights Toolkit](#).

Sometimes cases take years because the court keeps on adjourning the case if the perpetrator or witness hasn't come... Courts just wait and wait and adjourn without proper follow up.

Source: PJSI Functional Reviews 2017

Setting trial dates

There are two primary ways PICs set trial dates:

1. To set the trial date at the first preliminary hearing and plan the case management timetable backwards from the date of trial. This method has the advantage that the parties know well in advance how long they have to prepare and that the countdown to trial is on. The disadvantages are that in most jurisdictions there is a likelihood the dispute will settle prior to trial. Secondly, the estimated duration may not be accurate, as case discovery and pre-trial procedures have not been completed.
2. To set the trial date when the preliminary procedures and discovery process is complete. The advantages of this method is that the parties are aware of the real issues in dispute and which evidence is required. The parties are also in a better position at this point to estimate how much court time the trial will require. As settlement options should have been explored during the preliminary phases, settlement is theoretically less likely to cause a vacation of the trial date. The disadvantage is that the psychological impact of a looming trial date is not realised until the final stages of case progression.



Back up trials

If there is some doubt whether the main trial will proceed on a particular day, the court may consider listing a back-up trial. Back-up trials are usually not complex, do not involve many witnesses and involve local witnesses and counsel who can easily travel to and from court on short notice.



Trial date and starting time certainty



It is vital that parties believe that matters set for trial will go ahead on the date set and that applications to adjourn will generally not be granted.

This is particularly important as vacating a trial date wastes court resources and increases the litigation costs of the parties. Equally important is that continual adjournments discourage victims, witnesses, lawyers and defendants from appearing.

Applications to vacate a trial date should be made as soon as possible and in writing to the trial judge with compelling reasons. Depending on the circumstances, an application to vacate may require a hearing in court.

Likewise, the court must always be ready to proceed. A court that is consistently not ready to proceed because of scheduling conflicts or absenteeism breeds doubt in the minds of the parties whether their case will proceed when listed. In turn, this encourages a lack of preparation, last minute adjournment applications and last-minute settlement efforts.

Not only should the parties be ready to proceed on the trial date allocated, but they must also be ready to proceed at the time scheduled. Lawyers and parties must be punctual and discouraged from the habit of commencing serious efforts to settle a matter on the day of the trial.

3.4.5 Sanctions

In recognition that lawyers in the Pacific region and justice agencies struggle with capacity and other barriers that affect their ability to prepare thoroughly and on time, the use of formal sanctions in PICs is generally rare.

Instead, courts tend to use a range of options that start with the continual encouragement of order and education as a first line of recourse for poor lawyering.

Beyond the educative approach, judges have available statutory and inherent powers to enforce orders in circumstances considered appropriate by the judge.



For a wider range of options to help judges deal with the inadequate performance of lawyers please see Annex A-6 in the Additional Materials to this Toolkit.

3.5 Step 5 – Caseload control



3.5.1 Every case has a date

Each and every case requires a date for a future action to prompt consistent activity. This technique is successful in removing unnecessary delay because it leverages the human tendency to react and prepare for deadlines. This applies equally to the court and the parties.

The action need not be a trial date. It can be a motion deadline, case management conference, expiry date for the filing of a defence or other meaningful event. All of these events can be diarised and checked as a part of the daily duties of court personnel and brought to the attention of judges.

By scheduling dates for future actions, judges and court personnel must physically find and read the file. In doing so, the court ensures events are completed on time; cases do not become inactive, lost or delayed. This is a simple, yet very effective way of ensuring individual cases and the entire caseload keeps moving toward disposition.

The setting of future events in every pending case recognises the human tendency to prepare for deadlines.



List management

As the primary focus of the court is to resolve disputes, the court must know at any point in time which cases are still disputed and requiring attention. In this regard, it is vital that the court distinguishes between active and inactive cases as it manages caseload.

For this reason, courts generally manage a variety of lists such as:

- Active Pending List - cases progressing with a date for a future action;
- Inactive List - referred to the 'inactive list' by way of motion and court order;
- Deemed Completed List - through inactivity, the judge orders removal from the Active Pending List to be restored on motion without prejudice;
- Enforcement List - civil;
- Enforcement List - criminal;

- Bench Warrant List; and
- Completed Matters - those resolved to finality through judgement, settlement, and discontinuance.



3.5.2 Physical caseload audit

Efficient judges and registrars, together with their staff, regularly (at least yearly) conduct an audit of the current caseload. The caseload is sometimes called the inventory which consists of cases in individual judge dockets and those in central dockets (discussed below).

In the audit process every file in the Active Pending List is found, checked against the court record and its progress examined. In the Additional Resources to this Toolkit in Annex A-7, is an example checklist of audit criteria.

By conducting regular and thorough audits, the reliability and accuracy of information systems is assured, which in turn builds confidence in the reliability of the performance reports generated from the data captured. The importance of conducting a regular physical audit of all the pending cases files cannot be overstated.

The importance of conducting a regular physical audit of all the pending case files cannot be overstated.

3.5.3 Case allocation systems

Transparent

Case allocation (or assignment) refers to the system of assigning cases to judges. This process should be published and clearly state how the system is to operate and who is responsible for its management.

Random

Individual cases must be allocated to judges randomly to avoid actual or perceived impropriety, especially 'judge shopping'. 'Judge shopping' is the seeking of a specific judge to make a judicial decision in favour of that party. In PICs, 'judge shopping' may take the form of a simple request of a family member for a particular Magistrate to hear a matter.

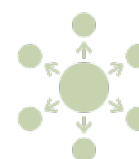
One exception to the randomness principle is that the Chief Justice or presiding judge may decide to directly allocate a matter to a judge.

Specialisation

If a judge has a widely accepted expertise in a particular area of law, the Chief Justice or presiding judge may allocate appropriate case types to that specialist judge e.g., a judge experienced in maritime law. Specialisation assures quality consistent justice is administered consistently.

Distribution

To avoid demotivated and overburdened judges, the distribution of case numbers, case types and complex cases requires active oversight and correction. This should be done periodically, including at the same time as the caseload audit.



Centralized dockets

A centralised docket system (sometimes called a Master Calendar or Docket System) means that all cases go into a pool of cases managed by the Chief Justice, Chief Magistrate and/or Chief Registrar.

In this system, the manager usually controls all pre-trial stages up to the allocation of a trial date. Once allocated a trial date, an individual judge assumes the carriage of the matter. Examples of a centralised docket system are the Supreme Court of Samoa and the Magistrates Court in Honiara, Solomon Islands.

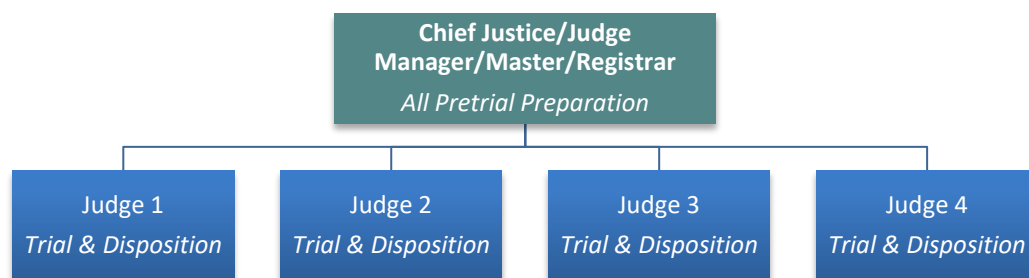


Diagram 6: Centralised Docket System

The centralised docket system is generally an efficient system as it frees the judge to focus on the substantive issues of the case. Additionally, it allows for the flexible movement of cases between judges, which avoids cases accumulating in individual judge dockets.

The disadvantage of the centralised docket system is that it requires experienced and competent managing judges, registrars and listing clerks for the system to work well.



Individual dockets

The individual docket system operates in most PICs. In this system, the registrar or presiding judge allocates each new matter to a judge randomly in strict rotation unless otherwise indicated by the presiding judge.

The intention is that, once allocated to a particular judge, the case remains with that judge from commencement to disposition. Active management from beginning to end means that the judge can get to the real issues faster and acquire greater familiarity with the matter.

The disadvantage of the individual docket system is that the judge must manage all the cases in their docket, the calendar, deadlines, filings etc. In this regard, judges are encouraged to train assistants to help them manage the caseload systematically using the principles and tools in this Toolkit.

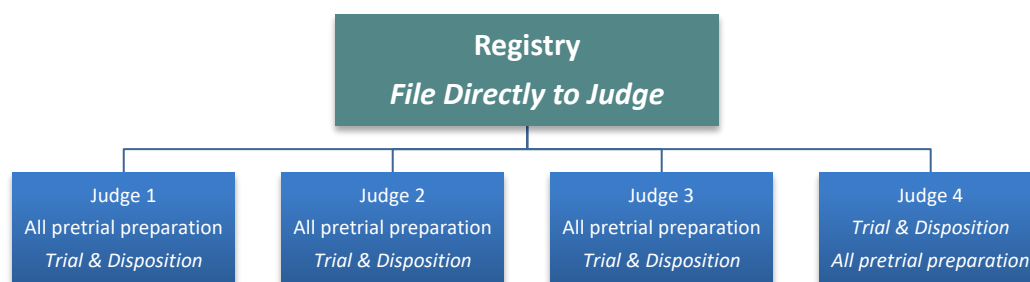


Diagram 7: Individual Judge Docket Systems

Where the matter is urgent it is referred initially to the duty judge if the docket judge is not available to deal with it. Afterwards, it is allocated to the docket of the judge who would have normally received it. The Individual Judge Docket System is the predominate system used across PJSI partner courts.

3.5.4 Enforcement proceedings

Justice is founded on a notion that it can only be realised if a court has the capacity to enforce its decisions. Recognising this, courts need to attend to the management of enforcement proceedings with similar intensity as other matters.



Enforcement cases need to be distinguished from the original proceedings where the dispute was finalised and placed in a separate “Enforcement List”. These cases are allocated a unique identifier number cross-referenced with registry records of the original proceedings. For statistical purposes, the date of commencement is the date of filing of the enforcement application and the date of completion, the date of the enforcement order.

3.5.5 Post-disposition management

It is important that discipline and accuracy be maintained through every stage, including the archive. Courts should have standard operating procedures that set out how files are checked upon completion, including:

- ✓ computer updates;
- ✓ file notations;
- ✓ list management;
- ✓ which documents, exhibits and evidence are kept and for how long;
- ✓ who is responsible for which part of the process;
- ✓ which statistics are to be recorded and how they are obtained; and
- ✓ the archiving process.

The need to record accurate and timely statistical data is to be considered a legitimate priority in the case closure process.

The accurate and timely recording of statistical data is absolutely essential, whether in a manual or electronic case management system as this data supports the production of court performance reports. A particular priority should be given to ensuring completed cases are actually closed on any system.

3.6 Step 6 – Delay management

3.6.1 Registry services

Efficient courts have well managed registries and support services. To measure efficiency in the delivery of services, courts can use benchmarks. For example, a registry might set a benchmark for maximum waiting times for service. Another benchmark might measure the reliability of finding a file in its correct place with the correct information recorded. A bench-mark for the number of adjournments in particular case types, may help reduce delay. These are simple yet very effective ways of building efficiency into the court culture.



3.6.2 Case progression

Judicial and administrative leaders need to be constantly aware of the size and nature of the pending caseload and, in particular, the nature and levels of delay. In Section 5 of this Toolkit we explore indicators to monitor case progression in the caseload and introduce the Top 8 Core Court Performance Indicators for use in partner courts. These indicators can be presented in graphical form such as in Annex A-8 of the Additional Resources to this Toolkit, which shows the pending caseload by 'case stage' which helps courts identify delay and ensure continual case progression. Courts should use these indicators and reports, along with the Physical Caseload Audit as a way to thoroughly monitor and manage case progression.

3.6.3 Active backlog reduction

A court is at risk of being backlogged when it has consistently low clearance rates i.e.: there are more cases being filed in the court than are being disposed; and there are a significant number of cases pending that exceed time goals. If court leaders are of the view that the build-up of cases is increasing and cannot be dealt with in normal operations, a targeted backlog reduction project should be commenced as soon as possible. The [Backlog and Delay Reduction Toolkit](#) will show you how to approach and manage a backlog reduction project.



Photo 6: Staff of the Land Court Palau interacting with members of other agencies to resolve delay

3.6.4 Judgment writing

Some PICs experience delay in judgment writing. In determining what is a reasonable time for the completion of the final written judgment, judges are to be guided by the time goals set for this event.

In the Annex A-4 of the Additional Resources to this Toolkit, is an example of interim time goals for a criminal case progression in the Trial Court of Palau. As in many other PIC jurisdictions, the judges of the Trial Court in Palau estimate that 60 days is the upper limit of time needed to prepare and deliver a written judgment.

To meet time goals, the early writing of judgments at the completion of the trial is encouraged whilst the momentum is there and the evidence is fresh. Judges should calculate judgment writing days into their diary when they set the trial for this purpose. Judges are also encouraged to discuss potential delays with their Presiding Judge should they arise.



Whether a court uses an electronic case tracking system or manual system, the timeliness of reserve judgments should be monitored. Care should be taken to measure from either the date of the decision to reserve judgment, or the date final submissions are received.

3.7 Step 7 – Court personnel participation

Court personnel play a pivotal role in maintaining an efficient caseload system. Key tasks that court personnel in PICs can undertake to maintain efficiency include:

- ✓ Accurate recording of information in manual and electronic registers;
- ✓ Prompt registration of case files and allocation to judges;
- ✓ Prompt placement of documents on files;
- ✓ Maintenance of tidy and orderly filing;
- ✓ Monitoring of time goals and case progression;
- ✓ Development of accurate reports;
- ✓ Reduction of duplication in the entry of information and keeping of ledgers;
- ✓ Competence in operating electronic case management systems;
- ✓ Maintenance of an orderly and efficient archive;
- ✓ Regular discussions of the caseload with judges;
- ✓ Checking of the diary entries;
- ✓ Participation in the Efficiency Review and planning processes;
- ✓ Monitoring of benchmarks;
- ✓ Incorporating caseload activities into individual performance and development plans;



Photo 7: Court personnel in Palau mapping time goals

- ✓ Conducting a thorough annual audit of the pending caseload;
- ✓ Reading the law and procedures;
- ✓ Creating a procedures manual if there is no manual;
- ✓ Continual learning on the job;
- ✓ Mentoring new personnel; and
- ✓ Undertaking on-going training and education.

There are opportunities to further involve court personnel in caseload management such as in the Land Court in Palau where the registrar actively screens new filings to ensure they are complete and compliant prior to presenting the file to the presiding judge. In some jurisdictions registrars also conduct call-overs and pre-trial conferences and act as mediators.



Photo 8: Court personnel and judges discussing efficiency issues in Palau

3.7.1 Technology

Courts in the Pacific are quickly moving away from the old Log Books and MS Excel to management of their case details electronically. These electronic systems are either on a Case Tracking Systems (CTS) or more functional Case Management Systems (CMS)



Regardless of where a Court is positioned in respect to Log Books, MS Excel, CTS or CMS, the importance of data quality, ensuring case details are correct is absolutely essential.

Courts who are utilising Log Books or MS Excel or are not happy with their existing CTS are encouraged to reach out to PJSI for assistance to move to a functionally proven CTS now in operation in the Federated States of Micronesia, the Republic of the Marshall Islands and Nauru.

A CMS has the potential to achieve significant efficiency gains as it has the platform to eventually deliver e-Services, provide in-court facilities for judges and the information to assess performance and the workload of the court. Figure 1 below sets out elements of a Court Case Management System.



Diagram 8: Court Case Management System

For those courts contemplating moving from CTS to CMS, this is invariably a long and costly journey, and needs significant commitment, funding and expertise to ensure a smooth transition. Several larger courts within the Pacific have made this journey, and are now benefitting from the advanced features that CMS provides.

4 Conducting the Efficiency Review and Developing an Improvement Plan

4.1 Efficiency review

Having examined the 7 Efficiency Areas, we can now undertake a review of efficiency in your court.

The stages of the Efficiency Review are:

1. Creation of an efficiency review team;
2. Conduct of a self-assessment around the 7 Efficiency Areas;
3. Analysis of results;
4. Development of an improvement plan;
5. Implementation of the improvement plan; and
6. Continuous review.



1. Creation of an efficiency team

In consultation with the Chief Justice or presiding judge, a team of judges, administrators and other employees involved in the caseload process should form a team and appoint a leader. The active involvement of the legal profession, public prosecutors and other agencies in the sector may also be sought for all or part of the process.

To assist you in managing, please refer to the [Project Management Toolkit](#) that sets out a clear methodology to help you manage the review successfully and to ensure implementation of the plan.



Photo 9: Stakeholder participation in Marshall Islands

2. Conduct of a self-assessment around the 7 Efficiency Areas

The self-assessment review is made in a workshop setting. It requires each team member to consider a statement and rank responses against a 1-5 scoring system that sees 5 as the highest, most favourable response. The team can decide if the team members should fill it out individually, in consultation with colleagues or together as a team.

3. Analysis of results

The team should meet to agree on an overall ranking to represent the court and record the final scores and results. Once the team has completed scoring the responses, you will be guided to calculate the results and use them as a baseline. By recording a baseline, you can track and see progress towards becoming a very efficient court. Your final results will appear as in the example graph below.

Efficiency Area	Efficiency Self-Assessment Results %
1. Current Situation	50
2. Leadership	70
3. Procedures	45
4. Judicial Management	60
5. Caseload Control	40
6 Delay Management	55
7 Court Personnel Participation	70
OVERALL AVERAGE %	56%



Diagram 9: Example Efficiency Result

4. Improvement plan

After completing the self-assessment, you will know the areas where your court is performing efficiently, where it should improve and how. The court can then include these areas for improvement into an actionable Improvement Plan. An example of an Improvement Plan can be found at the end of the Efficiency Review Kit.

The most important requirements are that:

- ✓ Improvement activities are recorded;
- ✓ Personnel know what is expected of them;
- ✓ The plan is communicated widely;
- ✓ Progress is measured; and
- ✓ Personnel are held accountable for completing their tasks.

Some courts may prefer to incorporate the efficiency improvement planning into an overarching Performance and Strategic Planning process or the Court Excellence Framework assessment process.

5. Continuous improvement

The Efficiency Toolkit and other PJSI Toolkits propose a continuous improvement methodology which means improvement plans and actions are not a one-off exercise. Periodic self-assessments allow a court to assess, plan, implement and evaluate progress as a continuous cycle. In this process the court can systematically review, modify or remove processes.

In the Efficiency Review Kit you can find a photo which demonstrates the never-ending efficiency improvement process.



Photo 10: Cook Island and Kiribati personnel sharing caseflow management experiences in the Cook Islands

5 Efficiency indicators

This Toolkit recommends that partner courts use the Top 8 PIC Core Court Performance Indicators to examine performance outcomes active caseload and the disposed caseload as set out in Table 1 below.

DESIRED OUTCOMES	
Current performance <i>Active Cases</i>	Past Performance <i>Disposed Cases</i>
1. Manageable overall caseload	7. Productivity, efficiency & delay management
2. Delay prevention in delivery of timely justice	8. Reliability of court events
3. Prevention of delay in pending caseload	9. Efficient use of resources to maintain consistent levels of judicial services
4. Continuous case progression	10. Effective forecasting to ensure timely delivery of justice
5. Minimal delay in final adjudication	

Table 1 Desired Performance Outcomes

Whilst there are many indicators to use to measure court performance and court services the Top 8 PIC Core Court Performance Indicators at least, are recommended.

The Top 8 PIC Core Court Performance Indicators are listed in Table 2 below and explained in Annex A-2 of the Additional Materials.

TOP EIGHT PACIFIC CORE 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

Table 2 Top 8 PIC Core Court Performance Indicators

These indicators can be used for the Quarterly Court Performance Report, as presented in Annex A-3 and indicators 1 and 4 can be used in the Court Annual Report (See the PJSI [Annual Report Toolkit](#)).

Whether the results are made public in part or in entirety is a matter for each individual court, as they balance the need for courts to be transparent and accountable and for the judiciary to be independent. It is most common for information about the performance of an individual judicial officer not to be made public.

How to collect the data

Courts with PJSI case tracking systems of a CMS, should be able to extract most of the data through various searches. For those courts without computerised support, data can be extracted from registers, docket information and from case files during the Physical Caseload Audit.

Qualitative efficiency information can be obtained through court user surveys, complaint processes, ad hoc discussions, staff meetings, Annual Court Reports, and reports of external international bodies such as Transparency International, World Bank, the United Nations and local NGOs.

You now have all the information you need to undertake the Efficiency Review and to ensure your court is performing efficiently.

ⁱ *Caseflow management* is concerned with the processes, procedures, guidelines and general oversight of the *entire caseload* from filing to final disposition. This may include how cases are screened, tracked, allocated, listed and benchmarked. Both judges and court personnel are responsible for the management of the caseflow to ensure it is predictable, transparent and timely. *Caseflow management* is not concerned with the adjudication of substantive or procedural questions in the litigation. It is concerned strictly with the way in which cases are processed and never subverts the role of the court to resolve each case on its legal merits.

ⁱⁱ *Case management* is concerned primarily with how judges (and sometimes Registrars) decide to *manage individual cases*. This may include setting out timetables to ensure early preparation, decisions to grant an adjournment or not to, or decisions to refer a matter to mediation. Case management requires a judge to be the leader and active manager of the procedure and pace at which cases are resolved. In practice, the two concepts mesh and can be extremely effective in reducing case-processing times and pending caseloads.

ⁱⁱⁱ Ostrom B. 2010 p.36.

^{iv} <http://www.courtexcellence.com>

^v www.doingbusiness.org

^{vi} The lack of an effective and efficient court system is linked to increased costs that hamper economic growth. Such costs derive from three main sources: the loss in property-right value due to the lack of predictable enforcement of legal rules; the added transactional costs of contracting in an environment with dysfunctional third party adjudications and corruption. » quoted from Fix-Fierro p 19 quoting Buscaglia/Dakolias (1996:1)

^{vii} Procedural justice is connected to *due process* (terminology of the USA and some PICs), *procedural fairness* (widely used in Australia) and *natural justice* (used in other common law jurisdictions including PICs) or the contrary view of *substantive unfairness* (UK & New Zealand).

^{viii} Ostrom B. 2010 p.12.(adapted).

^{ix} Ostrom B. 2010 p.12.

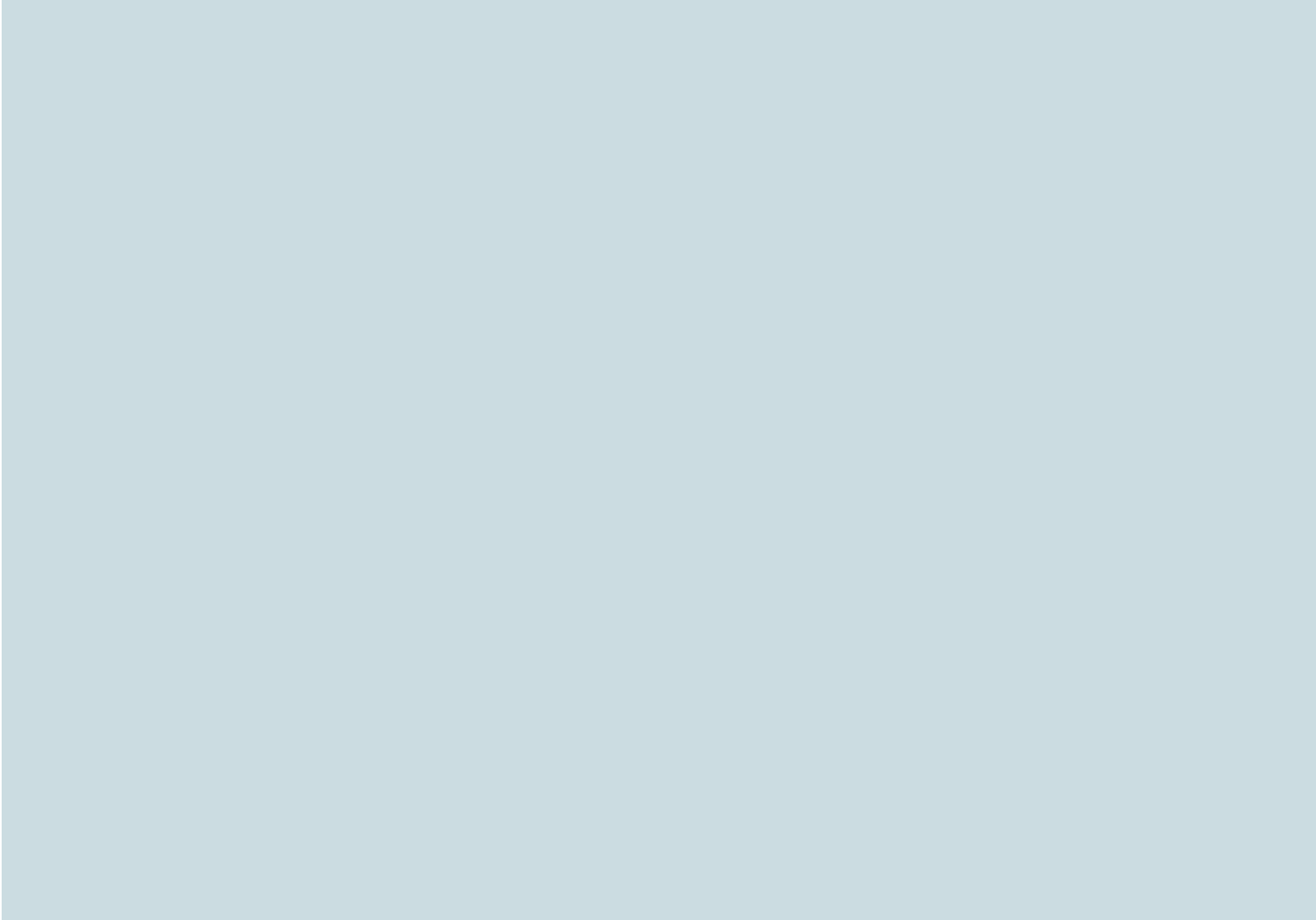
^x Solomon M., Somerlot D., p.13.

^{xi} *Aon Risk Services Australia Ltd v Australian National University* High Court Justices Gummow, Hayne, Crennan, Kiefel and Bell JJ affirmed the Court's power to control civil litigation rather than what may have been customary in former times.



EFFICIENCY TOOLKIT

ADDITIONAL MATERIALS



Additional Materials

Annex 1	Efficiency Review	A-2
Annex 2	Top 8 Pacific Core Court Performance Indicators.....	A-3
Annex 3	Time Goals Palau Trial Court.....	A-5
Annex 4	Sample Quarterly Report	A-6
Annex 5	Differential Case Management Criteria	A-7
Annex 6	Lawyers and Sanctions.....	A-8
Annex 7	Physical Caseload Audit Checklist.....	A-9
Annex 8	Case Stage Graphic	A-10
Annex 9	Efficiency Workshop PowerPoint Presentation.....	A-11
Annex 10	Bibliography	A-12



Efficiency Review

Court caseload management

The purpose of this Efficiency Review is to provide a framework for partner courts to examine efficiency in the case resolution process and to strengthen procedural justice. This Review helps ensure court users are granted with rights to a just, timely and fair trial and that costs are minimized.

The aim of the *Efficiency Review* is to:

- ✓ Understand the current situation in your court and to provide a baseline from which improvements can be measured;
- ✓ Provide a self-assessment of the 7 Areas of Court Efficiency;
- ✓ Help identify and eliminate delay;
- ✓ Identify strengths and weaknesses for improvement; and
- ✓ Help continuously improve efficiency through the development of an *Improvement Plan*.

The review comprises the following stages:

1. A self-assessment around 7 Efficiency Areas;
2. Analysis of results;
3. Development of an Improvement Plan;
4. Implementation of the improvement plan; and
5. Continuous yearly review and improvement.

The 7 Efficiency Areas Self-Assessment is effectively a health-check of caseload and case management in your court.

This framework is to be used in conjunction with the [PJSI Efficiency Toolkit](#) and [Additional Materials](#).

7 EFFICIENCY AREAS

1. Current situation
2. Leadership
3. Procedures
4. Judicial management
5. Caseload control
6. Delay management
7. Effective court personnel



EFFICIENCY AREA 1: CURRENT SITUATION

Name of Court: _____

Division/department if not entire court: _____

Date Conducted: _____

Team: _____

Team Leader: _____

Case types under review: _____

Number of Judges: _____

Comment: _____

Number of Court Personnel: _____

Comment: _____

Total Number of Active Pending Caseload: _____

Comment: _____

Current pending caseload data

Period measured: _____

Number of Active Pending Caseload per case type: _____

Comment: _____

Disposed caseload data

Total number of cases disposed: _____

Comment: _____

Number of cases disposed per case type: _____

Comment: _____


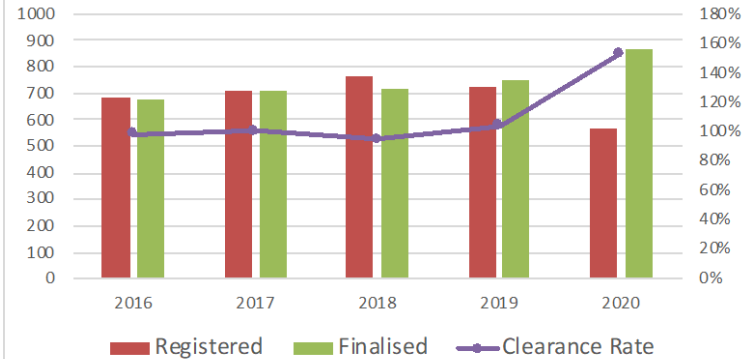

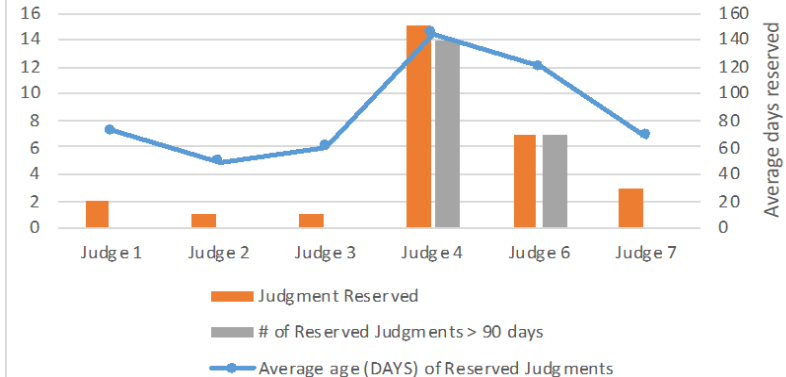
Other Information: _____

Now refer to the following *Top 8 Pacific Island Core Court Performance Indicators*, calculate and analysis them to complete your assessment of the current situation. It is helpful to present the results in a Report, such as the example presented later in this review.


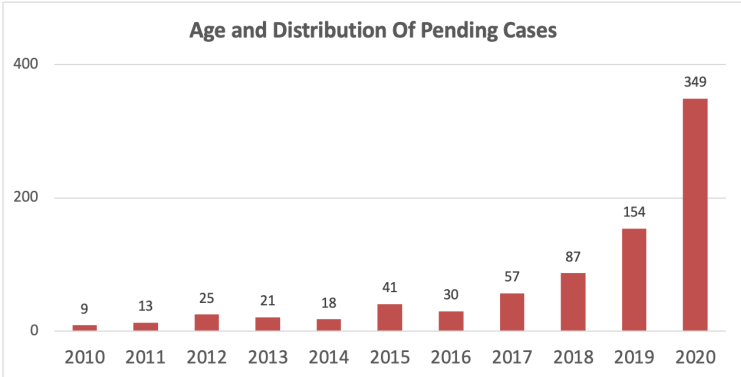

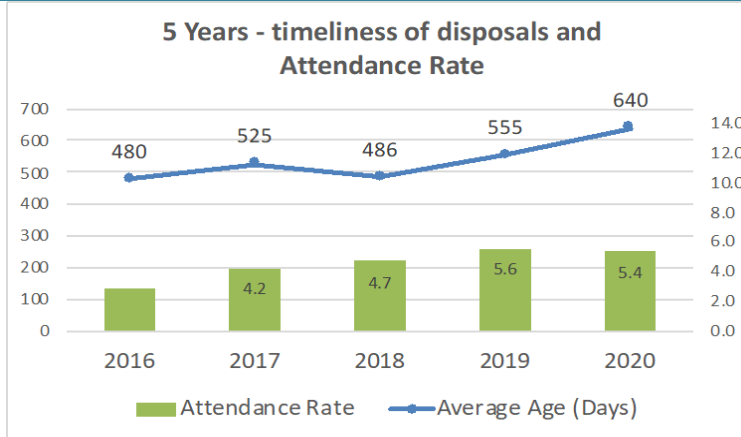
TOP 8 PACIFIC ISLAND CORE COURT PERFORMANCE INDICATORS

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
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8. Attendance Rate


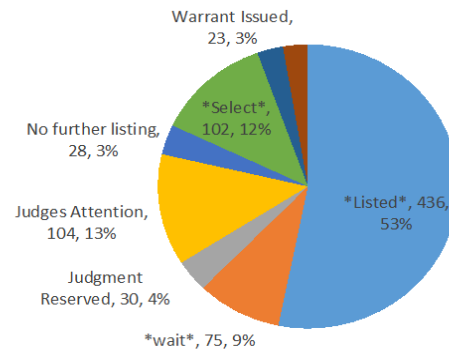

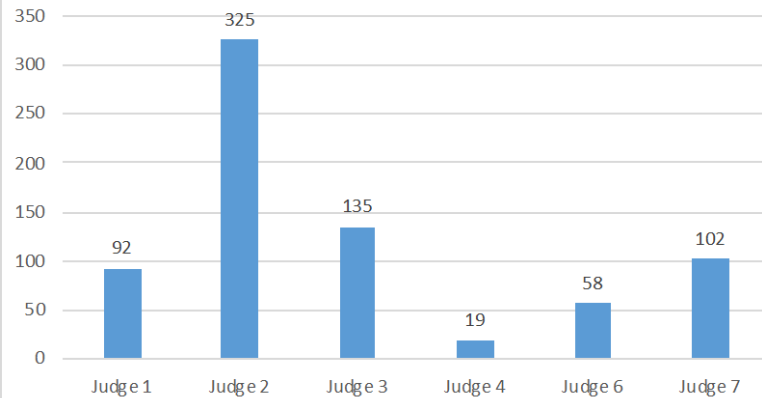


Performance Area Outcome	Indicators/Measures	Graphic																												
<div>Manageable overall caseload</div> <div></div>	<div>1. Clearance rate – the number of outgoing cases as a percentage of the number of incoming cases.</div> <div><ul style="list-style-type: none">Used to identify if the court is accumulating cases in excess of disposal levelsCalculated: $\frac{\text{Cases Disposed}}{\text{Cases Filed}} \times 100 = \%$Target - Greater than 100%</div>	<div>5 Years - Volumes/Clearance Rate</div> <div><table border="1"><thead><tr><th>Year</th><th>Registered</th><th>Finalised</th><th>Clearance Rate</th></tr></thead><tbody><tr><td>2016</td><td>680</td><td>680</td><td>100%</td></tr><tr><td>2017</td><td>710</td><td>710</td><td>100%</td></tr><tr><td>2018</td><td>760</td><td>710</td><td>93%</td></tr><tr><td>2019</td><td>730</td><td>750</td><td>103%</td></tr><tr><td>2020</td><td>570</td><td>870</td><td>153%</td></tr></tbody></table></div>	Year	Registered	Finalised	Clearance Rate	2016	680	680	100%	2017	710	710	100%	2018	760	710	93%	2019	730	750	103%	2020	570	870	153%				
Year	Registered	Finalised	Clearance Rate																											
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<div>Minimal delay in final adjudication</div> <div></div>	<div>2. Reserve Judgments - Number, age and percentage of reserved judgments outstanding in relation to time goals</div> <div><ul style="list-style-type: none">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</div>	<div>Reserved Judgments</div> <div><table border="1"><thead><tr><th>Judge</th><th>Judgment Reserved</th><th># of Reserved Judgments > 90 days</th><th>Average age (DAYS) of Reserved Judgments</th></tr></thead><tbody><tr><td>Judge 1</td><td>2</td><td>0</td><td>75</td></tr><tr><td>Judge 2</td><td>1</td><td>0</td><td>50</td></tr><tr><td>Judge 3</td><td>1</td><td>0</td><td>60</td></tr><tr><td>Judge 4</td><td>15</td><td>14</td><td>145</td></tr><tr><td>Judge 6</td><td>7</td><td>7</td><td>120</td></tr><tr><td>Judge 7</td><td>3</td><td>0</td><td>65</td></tr></tbody></table></div>	Judge	Judgment Reserved	# of Reserved Judgments > 90 days	Average age (DAYS) of Reserved Judgments	Judge 1	2	0	75	Judge 2	1	0	50	Judge 3	1	0	60	Judge 4	15	14	145	Judge 6	7	7	120	Judge 7	3	0	65
Judge	Judgment Reserved	# of Reserved Judgments > 90 days	Average age (DAYS) of Reserved Judgments																											
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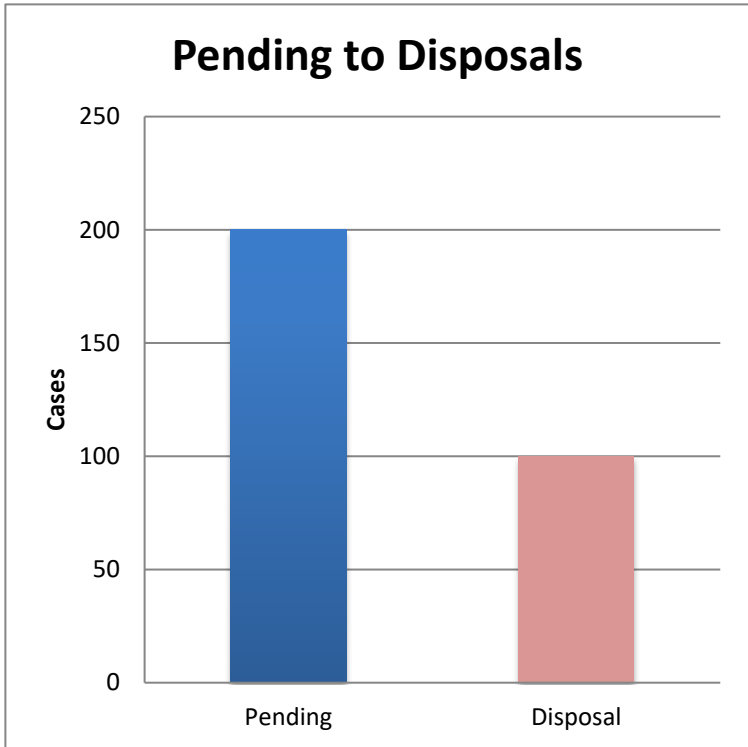


Performance Area Outcome	Indicators/Measures	Graphic																								
<p>Delay prevention in delivery of timely justice</p> 	<p>4. <i>Age distribution of the pending caseload</i> - the age of active cases that are pending before the court measured as the number of days/months/years from filing until the time.</p> <ul style="list-style-type: none">Identifies the age of active pending cases in relation to their filing dates, to highlight areas of congestion and scale of delayTarget - No LONG tail, meeting of time goals	<p>Age and Distribution Of Pending Cases</p>  <table><thead><tr><th>Year</th><th>Number of Pending Cases</th></tr></thead><tbody><tr><td>2010</td><td>9</td></tr><tr><td>2011</td><td>13</td></tr><tr><td>2012</td><td>25</td></tr><tr><td>2013</td><td>21</td></tr><tr><td>2014</td><td>18</td></tr><tr><td>2015</td><td>41</td></tr><tr><td>2016</td><td>30</td></tr><tr><td>2017</td><td>57</td></tr><tr><td>2018</td><td>87</td></tr><tr><td>2019</td><td>154</td></tr><tr><td>2020</td><td>349</td></tr></tbody></table>	Year	Number of Pending Cases	2010	9	2011	13	2012	25	2013	21	2014	18	2015	41	2016	30	2017	57	2018	87	2019	154	2020	349
Year	Number of Pending Cases																									
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2019	154																									
2020	349																									
<p>Productivity, efficiency & delay management</p> 	<p>3. <i>Average age to disposal</i> - the average time it takes to dispose of a case in days</p> <ul style="list-style-type: none">Target - within time goals or within expectations	<p>5 Years - timeliness of disposals and Attendance Rate</p>  <table><thead><tr><th>Year</th><th>Attendance Rate</th><th>Average Age (Days)</th></tr></thead><tbody><tr><td>2016</td><td>130</td><td>480</td></tr><tr><td>2017</td><td>200</td><td>525</td></tr><tr><td>2018</td><td>220</td><td>486</td></tr><tr><td>2019</td><td>250</td><td>555</td></tr><tr><td>2020</td><td>240</td><td>640</td></tr></tbody></table>	Year	Attendance Rate	Average Age (Days)	2016	130	480	2017	200	525	2018	220	486	2019	250	555	2020	240	640						
Year	Attendance Rate	Average Age (Days)																								
2016	130	480																								
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2018	220	486																								
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2020	240	640																								


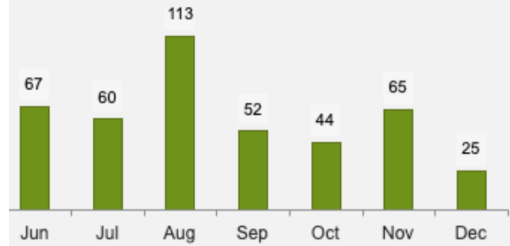


Performance Area Outcome	Indicators/Measures	Graphic																											
<p>Continuous case progression in delivery of timely justice</p> 	<p>5. Number and percentage per cases stage</p> <ul style="list-style-type: none">Used to identify what stage the cases have progressed to, to highlight where delay might beTarget - Significant % with Future Listing, few cases not moving toward disposition.	 <table><thead><tr><th>Stage</th><th>Count</th><th>Percentage</th></tr></thead><tbody><tr><td>*Listed*</td><td>436</td><td>53%</td></tr><tr><td>*wait*</td><td>75</td><td>9%</td></tr><tr><td>Judges Attention</td><td>104</td><td>13%</td></tr><tr><td>Judgment Reserved</td><td>30</td><td>4%</td></tr><tr><td>No further listing</td><td>28</td><td>3%</td></tr><tr><td>Warrant Issued</td><td>23</td><td>3%</td></tr><tr><td>Next Court Tour</td><td>22</td><td>3%</td></tr><tr><td>*Select*</td><td>102</td><td>12%</td></tr></tbody></table>	Stage	Count	Percentage	*Listed*	436	53%	*wait*	75	9%	Judges Attention	104	13%	Judgment Reserved	30	4%	No further listing	28	3%	Warrant Issued	23	3%	Next Court Tour	22	3%	*Select*	102	12%
Stage	Count	Percentage																											
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Select	102	12%																											
<p>Efficient use of resources to maintain consistent levels of judicial services</p> 	<p>6. Number of cases disposed per judge</p> <p>The number and percentage of disposed cases per Judicial Officer in a year</p> <ul style="list-style-type: none">Target – Consistency/Within expectations	 <table><thead><tr><th>Judge</th><th>Cases Disposed</th></tr></thead><tbody><tr><td>Judge 1</td><td>92</td></tr><tr><td>Judge 2</td><td>325</td></tr><tr><td>Judge 3</td><td>135</td></tr><tr><td>Judge 4</td><td>19</td></tr><tr><td>Judge 6</td><td>58</td></tr><tr><td>Judge 7</td><td>102</td></tr></tbody></table>	Judge	Cases Disposed	Judge 1	92	Judge 2	325	Judge 3	135	Judge 4	19	Judge 6	58	Judge 7	102													
Judge	Cases Disposed																												
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Performance Area Outcome	Indicators/Measures	Graphic						
<p>Effective forecasting to ensure timely delivery of justice</p> 	<p>7. Pending to Disposal Ratio - The number of cases pending (demand) in relation to the number of cases disposed, usually over a year (current productivity capacity).</p> <ul style="list-style-type: none">• 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<ul style="list-style-type: none">○ Aim for our PDR to be as low as possible<ul style="list-style-type: none">▪ 1 or below for a higher court▪ 0.5 or below for a lower court• In this case the<ul style="list-style-type: none">○ Pending to disposal ratio is: $200/100 = 2$○ This equates to approx. 2 years worth of work.	 <table><caption>Pending to Disposals</caption><tr><th>Category</th><th>Cases</th></tr><tr><td>Pending</td><td>200</td></tr><tr><td>Disposal</td><td>100</td></tr></table>	Category	Cases	Pending	200	Disposal	100
Category	Cases							
Pending	200							
Disposal	100							



Performance Area Outcome	Indicators/Measures	Graphic
Efficiency and delay prevention 	<p>8. Attendance rate - How many times parties attend a court proceeding, on average, prior to disposal. (Sometimes called continuance rate or adjournment rate.)</p> <ul style="list-style-type: none"> Target - Lower is better BUT sometimes greater is good. 	<div> <h3>Closed Cases</h3> <p>Refreshed 14/09/2020</p> <div> Select Location: All Select Judicial Officer: All Select Jurisdiction: Magistrates Court </div> <div> View Outcomes View Detail </div> <div> Reset </div>  <p>Number of Criminal Cases Per Year</p> <div> Average Case Duration 175 days Average Attendance Rate 3.0 Number of Closed Cases 646 </div> </div>



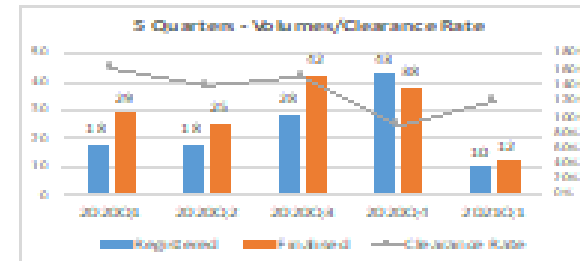
SAMPLE COURT PERFORMANCE REPORT

ALL

SUPREME COURT QUARTERLY PERFORMANCE REPORT

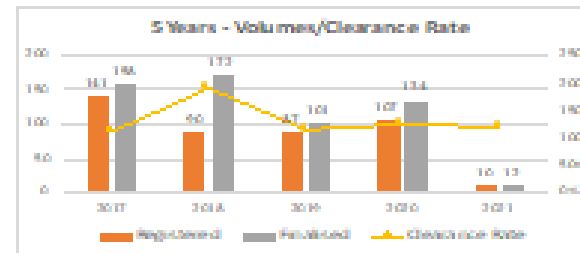
Case Volumes and Clearance Rate

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



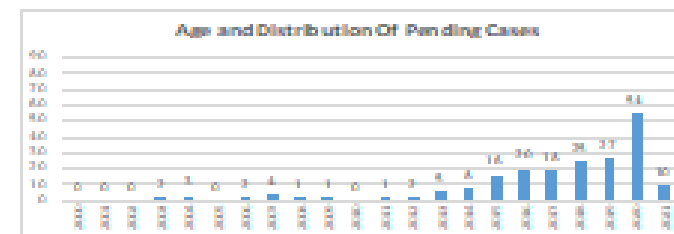
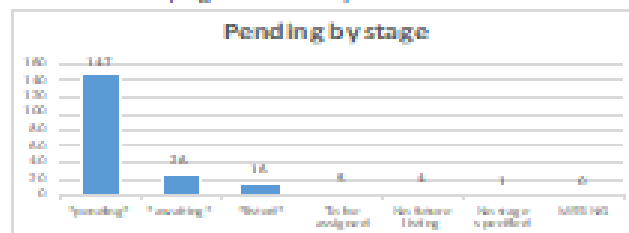
Calendar

Previous 5 Calendar Years	Registered	Finalized	Clearance Rate
2017	141	158	112%
2018	90	172	190%
2019	87	101	116%
2020	107	114	125%
2021	10	12	120%
Total/clearance rate	435	557	130%



Pending Workload

Current Pending	199	cases
Average Age of Pending	1276	days
Pending to Disposal Ratio (PDR)	1.7	
(target - less than 1)		





SAMPLE COURT PERFORMANCE REPORT cont'd

Timeliness of Disposals

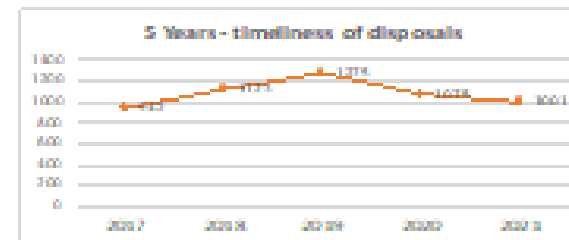
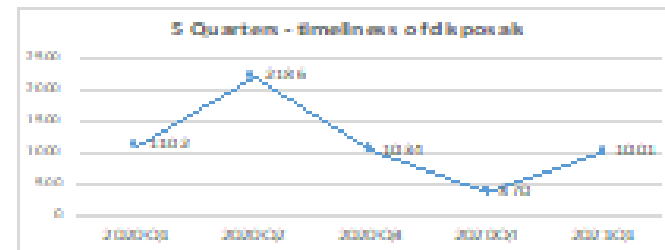
Average Age to dispose cases (days)

Previous 5 Quarters

2020Q1	1303
2020Q2	2385
2020Q3	1014
2020Q4	370
2021Q1	1001
Average of the 5 periods	1059

Previous 5 Calendar Years

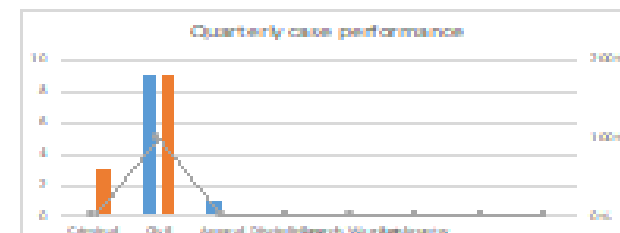
2017	943
2018	1123
2019	1275
2020	1075
2021	1001
Average of the 5 years	1085



Commentary

Quarterly Volumes

	Q1	2021
Registered	Finalized	Cleanance Rate
Criminal	0	3
Civil	9	9
Appeal	1	0
Disciplinary	0	0
Search Warrant	0	0
Bankruptcy	0	0





Comments and observations about the current situation. You may refer to the above indicators, user survey results, reports, feedback and other sources.

EFFICIENCY AREA 1: CURRENT SITUATION SELF RATING RESULT

Based on the information and indicators in Area 1, how would you rate the overall efficiency of your court on a scale of 1 – 100 where 100 is the best?

Answer %



EFFICIENCY AREA 2: LEADERSHIP

Consider each statement and provide a response using the following rating scale: 1 | We don't do that yet. 2 | Needs a lot of improvement. 3 | Needs some improvement. 4 | We need a little improvement. 5 | Yes, we do that really well 😊 NB: if you don't need to do the action either replace it with another action relevant to you or, give yourself a 5 to neutralise the scorecard mark.

Leadership Actions		Rating	Comment	In Plan?
1	There is a team comprising of actors <i>across the sector</i> , including lawyers, who are responsible for improving justice services			
2	The court takes a leadership role across the sector to improve efficiency in caseload			
3	Judges and court leaders work together to ensure cases are not delayed			
4	Presiding judges and court personnel in leadership positions are skilled in leadership and management			
5	Leaders are held accountable for their performance			
6	Leading judges and court staff court performance reports to monitor timeliness and productivity			
7	Leaders use time goals and other targets to measure delay and create a commitment to timeliness			
8	Judges and court personnel understand their role in the caseload process and this role is written into position descriptions or policy			
9	Judges hold judge meetings regularly and discuss caseload, delay and progress in preparing reserve judgments			
10	The court controls the pace of litigation, not the parties			
11	Judges are provided and use personalized reports each month about active cases in their dockets that includes case progress against time goals and the number and age of reserve judgments			
12	The court is continually seeking to improve its case management systems whether manual or computerized.			
Total				
Maximum score		60		
Divide total score by maximum score x 100 to find your % result				



EFFICIENCY AREA 3: PROCEDURES

Consider each statement and provide a response using the following rating scale: 1 | We don't do that yet. 2 | Needs a lot of improvement. 3 | Needs some improvement. 4 | We need a little improvement. 5 | Yes, we do that really well 😊 NB: if you don't need to do the action either replace it with another action relevant to you or, give yourself a 5 to neutralise the scorecard mark.

Procedural Actions		Rating	Comment	In Plan?
1	The court has a framework of case management powers in statutes with rules, procedures and practice directions which are regularly reviewed			
2	Judges and court staff are knowledgeable about the case management framework and comply with them in their daily work			
3	Every case is screened early by a judge (no more than 48 hours from filing) for its compliance with filing requirements and to determine case characteristics for case differentiation			
4	The court has a policy regarding differential case management			
5	Cases involving children as defendants or victims are automatically differentiated and prioritised			
6	Family violence matters are prioritised			
7	Cases where the defendant is remanded in custody are differentiated and prioritised			
8	The court uses colour coding on files and documents for differentiated cases			
9	The court has alternative dispute resolution options such as mediation, judicial settlement conferencing and uses them			
10	The court recognises that most disputes do not end in a trial and therefore, stimulates the parties toward alternative dispute resolution options and settlement			
Total				
Maximum score		50		
Divide total score by maximum score x 100 to find your % result				



EFFICIENCY AREA 4: JUDICIAL MANAGEMENT

Consider each statement and provide a response using the following rating scale: 1 | We don't do that yet. 2 | Needs a lot of improvement. 3 | Needs some improvement. 4 | We need a little improvement. 5 | Yes, we do that really well 😊 NB: if you don't need to do the action either replace it with another action relevant to you or, give yourself a 5 to neutralise the scorecard mark.

Judicial Management Actions		Rating	Comment	In Plan?
1	Court users understand that the court controls the pace of litigation			
2	Judges supervise cases continually and there are few cases without a future listing date			
3	The court has published guidelines regarding recusal and conflicts of interest			
4	Judges hold case management conferences and set timetables to assure the thorough and timely preparation of cases			
5	Trials are prepared in detail and in advance considering the structure, length and presentation of testimony i.e.: affidavit evidence, oral evidence, special needs of witnesses and victims			
6	The court has an agreed and published adjournment (continuance) policy that is complied with			
8	It is very unlikely that trials will be adjourned on the day of trial commencement			
9	Trials are never adjourned because the court is not ready or doesn't have resources			
10	The court monitors trial date and important event vacation rates			
7	The court has a reliable capacity to take remote testimony using video technologies			
11	Judges know how to deal with poor performance by lawyers			
	Total			
	Maximum score	55		
	Divide total score by maximum score x 100 to find your % result			



EFFICIENCY AREA 5: CASELOAD CONTROL

Consider each statement and provide a response using the following rating scale: 1 | We don't do that yet. 2 | Needs a lot of improvement. 3 | Needs some improvement. 4 | We need a little improvement. 5 | Yes, we do that really well 😊 NB: if you don't need to do the action either replace it with another action relevant to you or, give yourself a 5 to neutralise the scorecard mark.

Caseload Control Actions		Rating	Comment	In Plan?
1	The court divides the current caseload into an "active pending list", "inactive pending list" and separates out enforcement and bench warrant cases from these lists			
2	Every case in the "active pending list" has a date diarised for a future court, administrative event or other action			
3	Cases are assigned to judges using a random allocation system			
4	Judges with a recognized specialised expertise in an area of law are generally allocated those cases			
5	Cases are distributed evenly amongst judge dockets			
6	Judges are satisfied with their (centralized or individual) docket system			
7	The number of cases in individual judge is fair and equalized from time to time			
8	The court has a manual of instructions for caseload management, and all staff and judges have access to it and are knowledgeable of its contents and put it into practice			
9	There is continual oversight of enforcement proceedings			
10	The court completes a thorough Caseload Audit annually			
	Total			
	Maximum score	50		
	Divide total score by maximum score x 100 to find your % result			



EFFICIENCY AREA 6: DELAY MANAGEMENT

Consider each statement and provide a response using the following rating scale: 1 | We don't do that yet. 2 | Needs a lot of improvement. 3 | Needs some improvement. 4 | We need a little improvement. 5 | Yes, we do that really well 😊 NB: if you don't need to do the action either replace it with another action relevant to you or, give yourself a 5 to neutralise the scorecard mark.

Delay Management Actions		Rating	Comment	In Plan?
1	Registry services are efficient and timely and there are benchmarks times for service			
2	Judicial and administrative leaders are constantly aware of the size and nature of the pending caseload and in particular, the nature and levels of delay			
3	Leaders know if and at which stage, cases are delayed, and the number of cases delayed			
4	Leaders take active backlog reduction action as soon as a backlog is detected			
5	There is no delay in the writing and delivery of reserve judgments			
6	There is no delay in the disposition of cases			
	Total			
	Maximum score	30		
	Divide total score by maximum score x 100 to find your % result			



EFFICIENCY AREA 7: COURT PERSONNEL PARTICIPATION

Consider each statement and provide a response using the following rating scale: 1 | We don't do that yet. 2 | Needs a lot of improvement. 3 | Needs some improvement. 4 | We need a little improvement. 5 | Yes we do that really well 😊 NB: if you don't need to do the action either replace it with another action relevant to you or, give yourself a 5 to neutralise the scorecard mark.

Court Personnel Participation Actions		Rating	Comment	In Plan
1	Court personnel are confident in their roles and believe they provide excellent service (internally and externally)			
2	Court personnel produce accurate performance reports for court leaders each quarter			
3	Registry personnel screen filings to ensure they are compliant and complete			
4	Court personnel are competent and maintain accurate, tidy and up-to-date records including the Case Tracking System			
5	All files and documents are found without delay in the place they should be			
6	Court personnel are effective at dealing with and resolving complaints			
7	Court personnel are involved in innovation and improvement plans and processes			
8	There is a protocol on how to make courts more accessible for people living with a disability			
9	Court personnel have training and education opportunities to help them build their knowledge and improve			
10	Court personnel are complimented and rewarded for efficient performance			
	Total			
	Maximum score	50		
	Divide total score by maximum score x 100 to find your % result			



Place each Efficiency Area score from the above 7 Areas into the table below. Now you can see at a glance the overall view of the performance of your court in each Area. You can use Excel to create a simple graphic result. This is useful for reporting purposes. Seeing your strengths and weaknesses can then help you determine which area the court needs to focus on to improve efficiency.

Calculating your Efficiency Rating

– insert your results here

Efficiency Area	Efficiency Self - Assessment Results %
1. Current Situation	
2. Leadership	
3. Procedures	
4. Judicial Management	
5. Caseload Control	
6 Delay Management	
7 Court Personnel Participation	
OVERALL AVERAGE %	



Diagram 1 Example Efficiency Result



1ST INSTANCE COURT IMPROVEMENT PLAN	
AIM	•To conduct a fair trial efficiently within a reasonable time
OBJECTIVE	•To remove unacceptable delay in services and increase the predictability of time to disposition using time goals.
CURRENT SITUATION	• Little delay is reported, however there is a desire for improvements in JIS data collection and reporting to increase efficiency.

Strategy	Action	Location	Timing	Responsible	Indicator
1. Enhance & use internal performance reports	1.1 Develop and use report for the Court and Individual Judge Dockets including the tracking of time goals and priority cases eg: FPA and matters involving children. 1.2 Administrative Director to review with COC and MIS and Chief Justice to review/ approve 1.3 Training and Introduction 1.4 Monthly Use at Justice Meetings	Remote	30-Jul-17 30-Jul-17 28-Aug-17 Ongoing	PJSI AD & COC AD & MIS SJ & AD	Report used on a monthly basis
2. Improve information capture on files	2.1 Use Colour Coding to distinguish case types 2.2 File Covers to contain vital information - at a glance 2.3 Number documents 2.4 Colour code for urgent/sensitive matters 2.5 Notate when & who updates JIS	Central	End 2017	COC & CC COC & CC	Reduction in time taken to find files and information
3. Improve Reliability information & Data Reliability	3.1 Conduct an Inventory and ensure JIS is completely up-to-date & accurate.	Central	16-Oct-17	SJ & COC & CC	Low incidence of errors and
4. Enhance MIS	4.1 Capture information for annual report incl. gender & age disaggregation for petitioners, victims, offenders and include automatic calculation of ages 4.2 Give permissions to Judge and Chamber Clerk to pull up reports 4.3 Include an "Inactive List" and drop downs for "off island" and "bench warrant" 4.4 Drop down for minors as victims 4.5 Explore linkages to Probation Office for core dates and tasks and reminders 4.6 Update & upgrade report for Next Scheduled Event 4.7 Enhancement required to link fines paid to files - generation of electronic report & noting of payments.	Central	end 2017	AD & MIS	Increased usage, reliability & reporting using JIS.
5. Reduce waiting times for juveniles issued with a citation	5.1 Provide another return date on Fridays for Citations.	Central	5-Jul-17	SJ & CCI	Two return dates per week for juvenile citations

Outcome	Systemised monitoring, identification and removal of delay. Time Goals are monitored and met. Improved systems & processes & case load management Juvenile justice services are improved
Output	More cases disposed of within time goals Performance reports which are used by leaders to manage the case progress and monitor delay Improved JIS system Reduced waiting time for juvenile citation cases

Legend:	SJ Senior Judge
	AD Administrative Director
	COC Clerk of the Court
	CC Chamber Clerk
	MIS Manager Information
Systems	PJSI Efficiency Adviser

Inventory Checklist

- JIS Check List for accuracy and completion
- Parties are correct
- Lot number is entered and correct in land matters
- Name of land is correct
- Worksheet number is correct
- Status is entered
- Next scheduled event is entered (EVERY CASE IS TO HAVE A NEXT SCHEDULED EVENT)
- File location - for file logistic tracking - this must be filled out each time the file is moved to another person/location.
- Check scanning is completed

EFFICIENCY IMPROVEMENT PLAN

Your last step in completing the Efficiency Review is to create an Improvement Plan. In the review process you have already identified the items to be included in your plan. Based on those items and the views of the team you can determine the strategies and actions needed to realise improvements and allocate responsibilities for completion.

As a guide, here is a sample plan used in a PIC. The plan is easily created in Excel or in MS Word using a table.

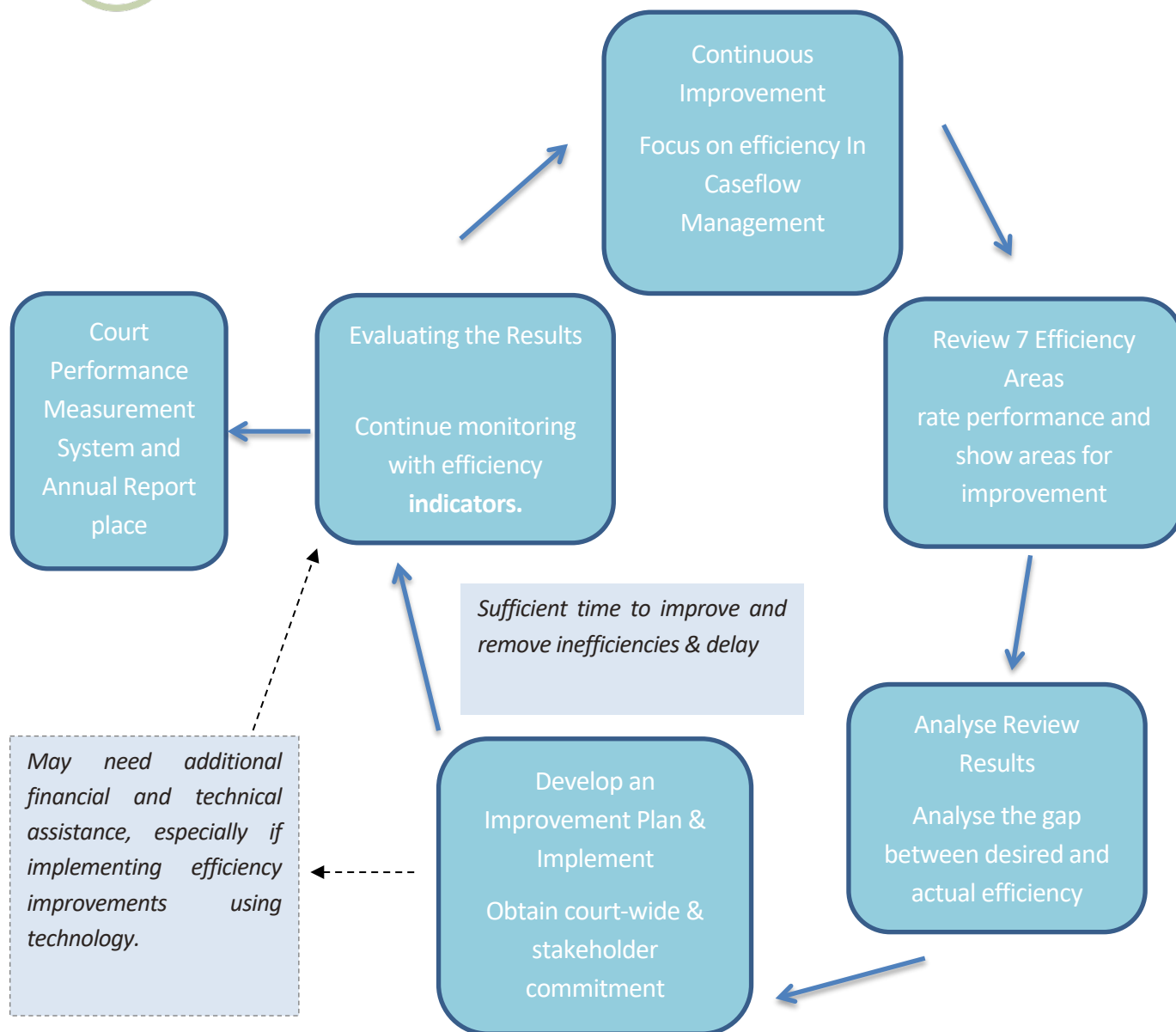
To ensure success your Chief Justice/presiding judge who will review it and consider questions of resources must approve the plan.

This Review and planning process is not a one-off event. It is a part of a continuous cycle of improvement, as represented on the following page.



IMPROVING EFFICIENCY IS A CONTINUOUS CYCLE

Achieving sustainable improvement requires a sustained effort. By conducting this review annually, you can measure your progress and can see and be proud of your achievements.



**CONGRATULATIONS
ON COMPLETING YOUR
EFFICIENCY REVIEW**

Annex 2 Top 8 Pacific Core Court Performance Indicators

PIC Top 8 Performance Indicators



TOP EIGHT COURT PERFORMANCE INDICATORS

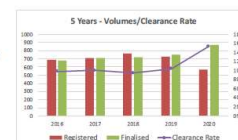
1. Clearance Rate
2. Reserved Judgments
3. Age Distribution Pending
4. Average Age to Disposal
5. Pending cases per Stage
6. Number of cases disposed per Judge
7. Pending (to) Disposal Ratio
8. Attendance Rate

1. 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. Reserved Judgments



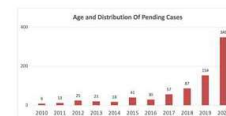
- Used to identify number and age of reserved judgments per judge and overall.
- Assists in planning targeted approach assist judge to reduce reserve judgments.
- Target
 - Low, and no delay
- Outcome in Key Performance Area:
 - Minimal delay in final adjudication.



3. Age Distribution Pending



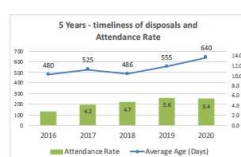
- Identifies the age of active pending cases in relation to their filing dates, to highlight areas of congestion and scale of delay
- Target
 - No LONG tail
- Outcome in Key Performance Area:
 - Delay prevention in delivery of timely justice



4. Average age to disposal



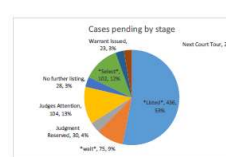
- The average time it takes to dispose of a case in days
- Target
 - Within time standards or within expectations
- Outcome in Key Performance Area:
 - Productivity, efficiency and delay management.



5. Pending cases per stage

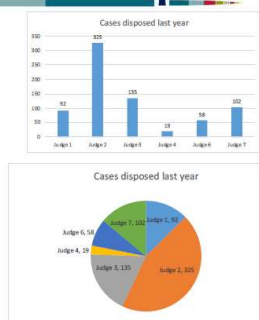


- Used to identify what stage the cases have progressed to, to highlight where delay might be
- Target
 - Significant % with Future Listing
- Outcome in Key Performance Area:
 - Continuous case progression in delivery of timely justice



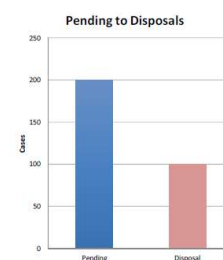
6. Number cases disposed per judge

- 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.



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.



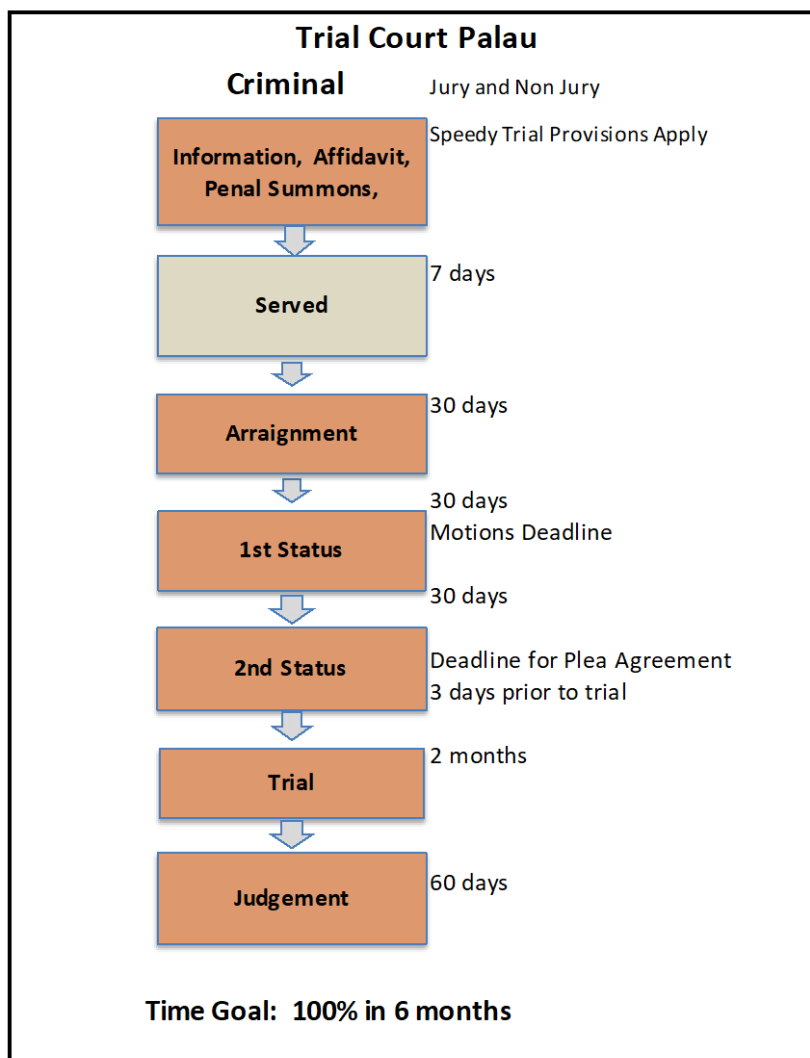
8. Attendance Rate

- 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



Annex 3 Time Goals Palau Trial Court

TRIAL COURT	
Criminal Cases	100% in 6 months
Debt	90% in 3 months
Constitutional & Election	100% in 3 weeks
Estate	100% in 3 months
Contract, Chiefly Titles, Ejectment, Torts, Land	50% in 12 months, 100% in 24 months

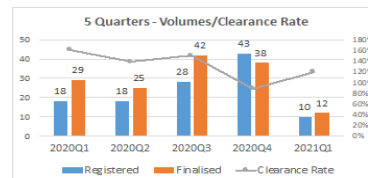


Annex 4 Sample Quarterly Report

ALL SUPREME COURT QUARTERLY PERFORMANCE REPORT

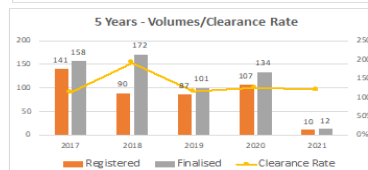
Case Volumes and Clearance Rate

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



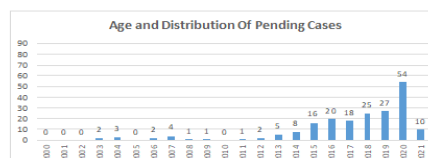
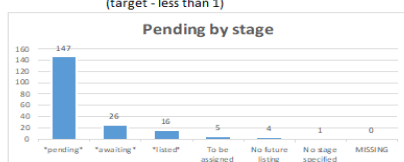
Calendar

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



Pending Workload

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

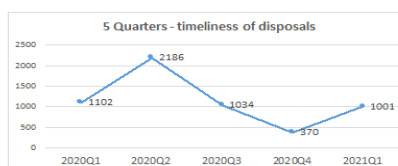


Timeliness of Disposals

Average Age to dispose cases (days)

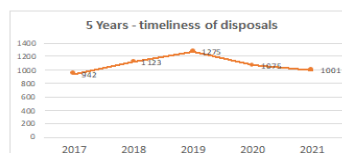
Previous 5 Quarters

2020Q1	1102
2020Q2	2186
2020Q3	1034
2020Q4	370
2021Q1	1001
Average of the 5 periods	1069



Previous 5 Calendar Years

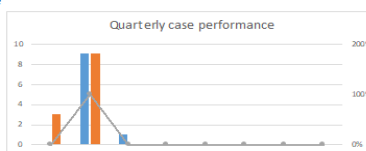
2017	942
2018	1123
2019	1275
2020	1075
2021	1001
Average of the 5 years	1086



Commentary

Quarterly Volumes

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



Annex 5 Differential Case Management Criteria

For a transparent and consistent approach to prioritising and differentiating cases, the court should set out decision-making criteria.

Criteria and considerations are:

- If there are pre-trial detainees;
- Cases involving youth or children;
- Nature of restraining orders and injunctive applications;
- Denial of human rights;
- Need to protect victims of family violence;
- Provision of access to justice for minority groups and women;
- Age of the case;
- The degree of public interest;
- Need to stop conflict and keep the peace;
- Significance of the proposed future activity;
- Whether the resolution has a precedent value or direct impact on other cases;
- The attitudes of parties that might cause the speedier resolution of other cases;
- The views, needs and hardship of the parties;
- The level of preparedness, exhaustion of settlement options and investment of resources;
- The high potential benefit for claimants or respondents e.g.: amount of royalties involved;
- Concern that knowledgeable elders or important parties might pass away;
- Related to needy housing or public infrastructure development;
- The merits to prioritise amongst all pending cases; and
- The interests of justice.

Annex 6 Lawyers and Sanctions

General approach to improving the quality of lawyering

1. The Chief Justice and President of the Law Society on behalf of the profession meet quarterly to talk about matters that require particular attention and strategies to improve;
2. The court hosts regular discussions around particular areas of practice e.g.: the drafting of pleadings;
3. The court organises presentations by high level legal educational specialists to present on a particular area of law;
4. Where relations are strained between the court and lawyers, consider engaging an external facilitator to help with communication and co-operation;
5. Lawyers need to know the probable actions in response to lawyer non-compliance with deadlines or other requirements;
6. Lawyers need to be treated consistently in their requests e.g.: for adjournments. Here policy statements are helpful; and
7. Gear rules and procedures to require the full preparation of cases prior to filing.



Case specific approaches for non-compliance on application

A judge on the application of a party or at the judge's own initiative may:

1. Reject incomplete or non-compliant filings;
2. List the matter for trial despite non-compliance;
3. Express annoyance on the court record;
4. Seek an apology;
5. Make an "unless" order, for example: "Unless the statement is filed by the XXX costs will be payable in the amount of XXX to be paid forthwith";
6. Move the case to a special 'non-compliance list' overseen by the Chief Justice;
7. Deem the matter resolved and move to completed matters;
8. Drop the case to the bottom of the list;
9. Caution the lawyer in open court in front of the client;
10. Threaten costs against the party;
11. Threaten costs against the lawyer personally;
12. Threaten contempt of court proceedings;
13. Impose costs against the party;
14. Impost costs against the lawyer personally;
15. Complain to the law society and request action; and
16. Only after other approaches have been tried and in the most exceptional of circumstances, take action for contempt of court.

Annex 7 Physical Caseload Audit Checklist

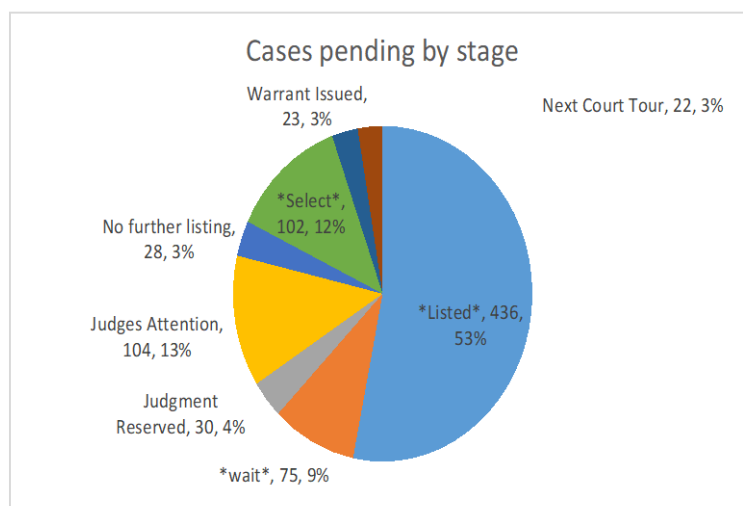
PHYSICAL FILE AUDIT CHECKLIST	Yes <input checked="" type="checkbox"/>	No <input checked="" type="checkbox"/>
• Is the file in the right place?	<input type="checkbox"/>	<input type="checkbox"/>
• Is the status correct?	<input type="checkbox"/>	<input type="checkbox"/>
• Are there are any urgent or important matters that require attention?	<input type="checkbox"/>	<input type="checkbox"/>
• Should the case be differentiated e.g.: family violence?	<input type="checkbox"/>	<input type="checkbox"/>
• Is the age of the offender recorded and if a juvenile are special processes to be invoked?	<input type="checkbox"/>	<input type="checkbox"/>
• Is the offender in custody and if so, should it be prioritised?	<input type="checkbox"/>	<input type="checkbox"/>
• Is the timetable being complied with?	<input type="checkbox"/>	<input type="checkbox"/>
• Are manual or computer records correct and up to date?	<input type="checkbox"/>	<input type="checkbox"/>
• Are all filings on the court file?	<input type="checkbox"/>	<input type="checkbox"/>
• Have all notices for the next event date been issued?	<input type="checkbox"/>	<input type="checkbox"/>
• Are affidavits of service on file where required?	<input type="checkbox"/>	<input type="checkbox"/>
• Are legal representatives recorded on the file?	<input type="checkbox"/>	<input type="checkbox"/>
• Do the filings comply with rules and procedures?	<input type="checkbox"/>	<input type="checkbox"/>
• The court date or event is entered in the diary and on the electronic case tracking system?	<input type="checkbox"/>	<input type="checkbox"/>
• Special needs and rights of the parties or their witnesses have been noted and action taken e.g.: if translators are required?	<input type="checkbox"/>	<input type="checkbox"/>
• Should the matter be dismissed for want of prosecution or without prejudice or deemed resolved?	<input type="checkbox"/>	<input type="checkbox"/>
• Should the matter be closed or archived?	<input type="checkbox"/>	<input type="checkbox"/>
• Is the matter in the correct List?	<input type="checkbox"/>	<input type="checkbox"/>

Annex 8 Case Stage Graphic


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




Annex 9 Efficiency Workshop PowerPoint Presentation



PACIFIC JUDICIAL STRENGTHENING INITIATIVE



Efficiency in the Delivery of Justice



The Initiative




PJSI is funded by the New Zealand Government and implemented by the Federal Court of Australia





2

Session One



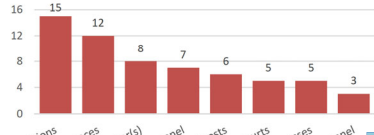
INTRODUCTION

Why focus on efficiency?



PJSI Assessment 2016

Negative User Perceptions (number of responses received)



Area	Number of responses received
Delays / delayed decisions	15
Too many adjournments / continuances	12
Bias on the part of decision maker(s)	8
Inefficient processes / personnel	7
High fees / costs	6
Limited capacity within the courts	5
Inconsistent in decisions / processes	5
Insufficient resources / personnel	3



5 out of 8 areas of negative perception relate to efficiency

This workshop




- Aim – to continue to promote efficiency in the delivery of justice in _____
- Goal is to achieve sustainable improvements in efficient caseload and case management

Outcomes

- Guarantee a fair trial in a reasonable time through the delivery of quality procedural justice
- Reinforced understanding of caseload and case management
- Increased consistency and uniformity in caseload and case management systems across PIC's
- Continuous efficiency improvements

Outputs



1. An Efficiency Review
1. An Efficiency Improvement Plan

Structure



1. Progressively complete the Efficiency Review during each session
2. Potentially, arrive at solutions to redress current delays
3. Complete an improvement plan

Materials



The Efficiency Toolkit

Efficiency Toolkit



What is in the Toolkit?

- Efficiency Toolkit
- Efficiency Additional Materials
- Efficiency Review Kit

Efficiency Toolkit



Who should use the toolkit?

1. Court leaders, managers and supervisors
2. All judges
3. All court personnel
4. Key stakeholders e.g: legal profession, public prosecutions

Efficiency Toolkit



How do we use the Toolkit?

1. As workshop material, practical guidebook or manual
2. Customise according to local needs and jurisdictions
3. [Use with companion Toolkits](#)

Session Two



EXPLORING EFFICIENCY

Defining efficiency



The ability to avoid waste
in achieving a desired result
or,
how well we use our resources

Why is efficiency important?



Case Study:

The elderly are often particularly affected by delay in land cases.

This elderly woman waited over 20 years for the finalisation of her land ownership application.

The primary cause of delay was systemic involving other government agencies.

User perceptions however, don't necessarily differentiate.

Fair and timely justice requires an **efficiency mindset** throughout the sector.

Why is efficiency important?



1. Efficient courts are an enabler for citizens and businesses to prosper
2. Inefficient courts obstruct or deter users from accessing justice
3. Inefficiency can lead to a lack of transparency that can hide unacceptable levels of underperformance and even corruption
4. The judicial system has limited resources in most PIC's
5. Legal obligations

Efficiency legal obligations



Key laws and conventions

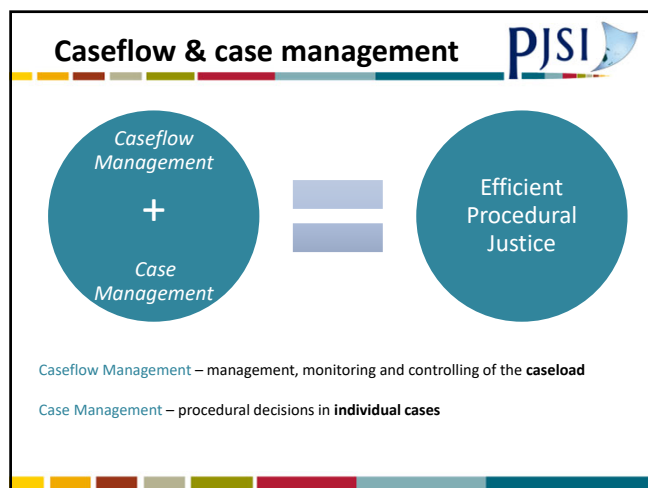
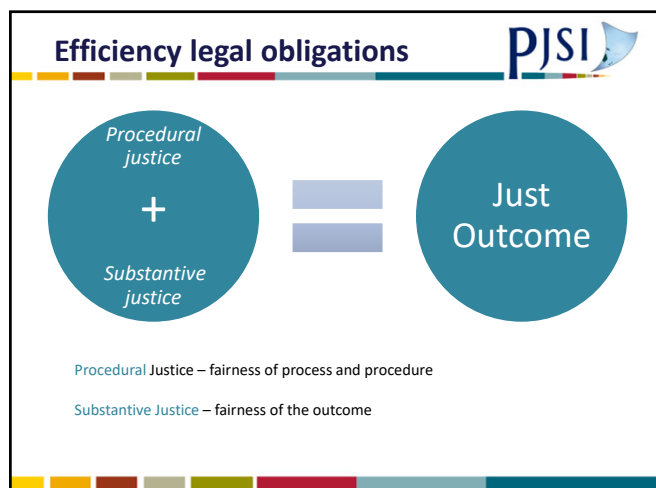
1. International Covenant on Civil and Political Rights Article 14
2. Bangalore Principles of Judicial Conduct 2002
3. Domestic laws and procedures

Efficiency legal obligations



Key laws and conventions

1. European Commission on the Efficiency of Justice
2. International Framework for Court Excellence
3. [World Bank Doing Business](#)
4. International Association for Court Administration (IACA)



- ### Case and caseflow management
- #### Features
1. The court is in control
 2. Every case has individual attention & management
 3. Judges consciously monitor the behaviour of participants
 4. Early differentiation and proportionate treatment
 5. Ensures parties prepare cases early
 6. Realises that most matters do not end up requiring a full trial
 7. Brings non-trial cases to an early resolution/settlement
 8. The philosophy can be adapted across all jurisdictions
 9. Judges and administrators operate as a team

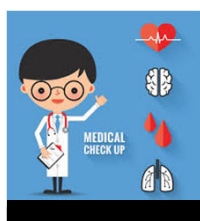
- ### Court user expectations
- #### Users expect court to:
- ✓ Give every case individual attention
 - ✓ Treated cases proportionately
 - ✓ Demonstrates and appear to demonstrate procedural justice
 - ✓ Court controls case progression
- Administrative principles (pg. 6 Toolkit)

Session Three

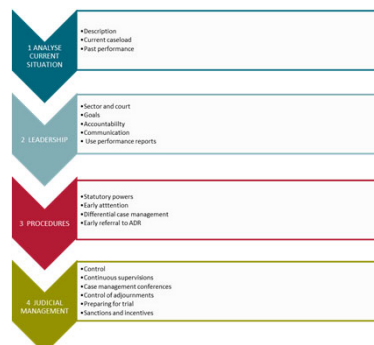
EFFICIENCY REVIEW

- ### Efficiency Review
-
- #### Why conduct an Efficiency Review?
- #### HEALTH CHECK
1. Understand the current situation and provide a baseline
 2. Provide an annual efficiency self-assessment in your court to provide a baseline and compare progress
 3. Identify strengths and weaknesses for improvement
 4. Help continuously improve

Measurement – Evidence Based



7 Efficiency Areas



7 Efficiency Areas



Efficiency Review Results



1. Current Situation	50
2. Leadership	70
3. Procedures	45
4. Judicial Management	60
5. Caseload Control	40
6 Delay Management	55
7 Court Personnel Participation	70
OVERALL AVERAGE %	56%

Efficiency review results



Improvement plan



1ST INSTANCE COURT IMPROVEMENT PLAN					
AIM	To conduct a fair trial efficiently within a reasonable time				
OBJECTIVE	To remove unacceptable delay in services and increase the predictability of time to disposition using time goals.				
CURRENT SITUATION	Little delay is reported, however there is a desire for improvements in JIS data collection and reporting to increase efficiency.				
Strategy	Action	Location	Timing	Responsible	Indicator
1. Enhance & use internal performance reports	1.1 Develop and use report for the Court and individual Judge Dockets including the tracking of time goals and priority 1.2 Administrative Director to review with CDC and MIS and Chief Justice to review/ approve 1.3 Training and introduction 1.4 Monthly Use at Justice Meetings	Central	30-Jul-17	AD & CDC	Report used on a monthly basis
2. Improve information capture on files	2.1 Use Colour Coding to distinguish case types 2.2 File Covers to contain vital information - at a glance 2.3 Number documents 2.4 Colour code for urgent/sensitive matters 2.5 Notate when & who updates JIS	Central	End 2017	CDC & CC	Reduction in time taken to find files and information on
3. Improve Reliability Information & Data	3.1 Conduct an inventory and ensure JIS is completely up-to-date & accurate.	Central	16-Oct-17	SJ & CC	Low Incidence
4. Reduce waiting times for juveniles issued with a citation	4.1 Provide another return date on Fridays for Citations.	Central	5-Jul-17	SJ & CC	Two return dates per week for juvenile citations

Session Three



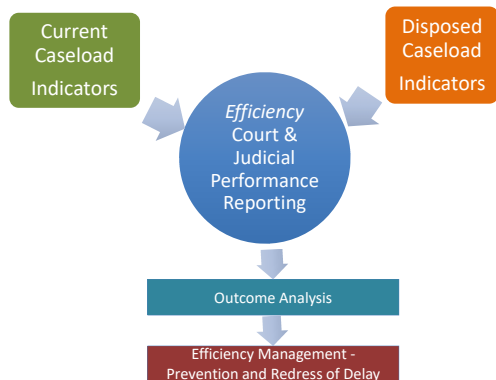
EFFICIENCY REVIEW

1 Analyse the Current Situation

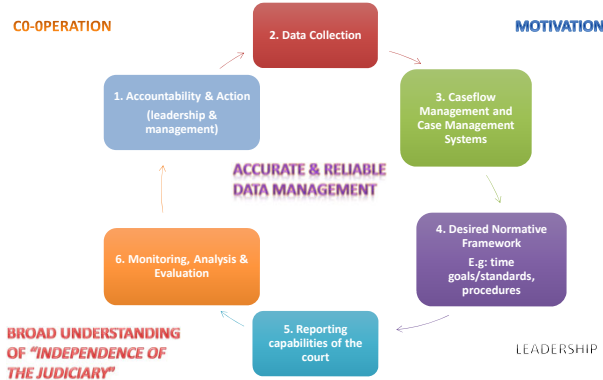


- A. Description
- B. Current caseload
- C. Past performance

1 Analyse the Current Situation



Performance Management Cycle



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. Clearance Rate

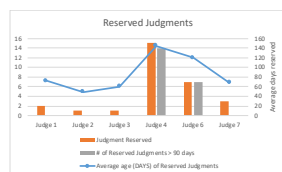


- Used to identify if the court is accumulating cases in excess of disposal levels
- Calculated:
$$\frac{\text{Cases Disposed}}{\text{Cases Filed}} \times 100 = \%$$
- Target
 - Greater than 100%
- Outcome in Key Performance Area:
 - Overall manageability of the workload



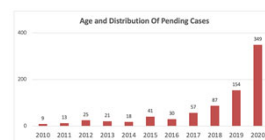
2. Reserved Judgments

- 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.



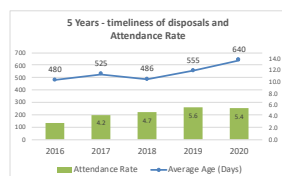
3. Age Distribution Pending

- 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



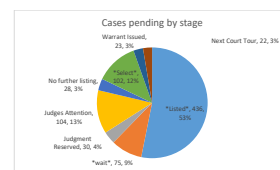
4. Average age to disposal

- 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.



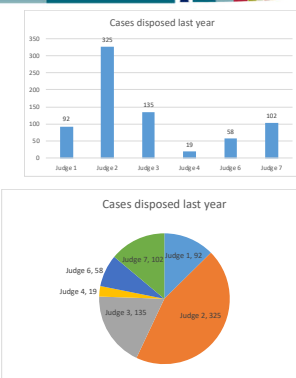
5. Pending cases per stage

- 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



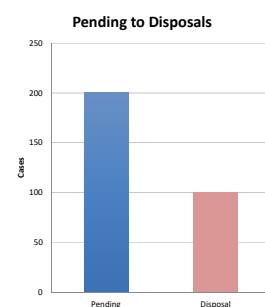
6. Number cases disposed per judge

- 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.



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.



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



EFFICIENCY REVIEW

STEP TWO – LEADERSHIP



Leadership



- Sector and court
- Goals
- Accountability
- Communication
- Use performance reports

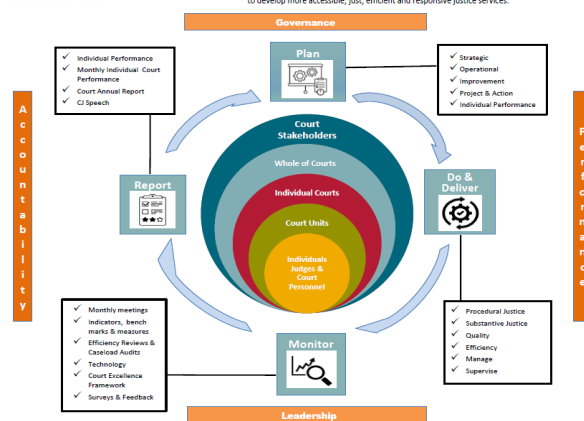


Chief Justice Ingram leads the court in the Constitution Day Parade, RMI



Leadership: Leading Courts: Planning, Monitoring and Reporting

The Goal of the Pacific Judicial Strengthening Initiative is to build fairer societies by supporting the Court in 14 Pacific Island Countries to develop more accessible, just, efficient and responsive justice services.



Session Five



EFFICIENCY REVIEW


STEP THREE – PROCEDURES



Procedures




1. Statutory powers
2. Early attention
3. Differential case management
4. Early referral to ADR
 - ◊ Judicial Settlement Conferences




EFFICIENCY REVIEW

STEP FOUR – JUDICIAL MANAGEMENT




4 Judicial Management



1. Control
2. Continuous supervision
3. Case management conferences
✦ Assessing the parties & recusal
4. Control of adjournments
5. Preparing for trial
6. Sanctions and incentives

Session Seven



EFFICIENCY REVIEW


STEP FIVE – CASELOAD CONTROL



5 Caseload Control




1. Every case has a date
2. List management
3. Physical caseload audit
✦ Audit Checklist in Additional Materials A - 5
4. Case allocation systems
5. Enforcement proceedings
6. Post disposition management



EFFICIENCY REVIEW

STEP SIX – DELAY MANAGEMENT



6 Delay Management

1. Registry services
✦ Benchmarking
2. Case progression
3. Active backlog reduction
✦ Delay and Backlog Reduction Toolkit
4. Judgment writing

EFFICIENCY REVIEW

STEP SEVEN – COURT PERSONNEL PARTICIPATION



Court personnel participation

1. Accurate and prompt information
2. Reporting
3. File and document management
4. Supervision
5. Training



Court personnel and judges discussing efficiency issues in Palau

IMPROVEMENT PLANNING

Improvement plan

1ST INSTANCE COURT IMPROVEMENT PLAN					
AIM	To conduct a fair trial efficiently within a reasonable time				
OBJECTIVE	To remove unacceptable delay in services and increase the predictability of time to disposition using time goals.				
CURRENT SITUATION	Little delay is reported, however there is a desire for improvements in JS data collection and reporting to increase efficiency.				
Strategy	Action	Location	Timing	Responsibility	Indicator
1. Enhance & use internal performance reports	1.1 Develop and use report for the Court and individual Judge Dockets including the tracking of time goals and priority 1.2 Administrative Director to review with COC and MIS and Chief Justice to review/ approve 1.3 Training and introduction 1.4 Monthly use at Justice Meetings	Remote	30-Jul-17 30-Jul-17	AD & COC AD & MIS, SI & AD	Report used on a monthly basis
2. Improve information capture on files	2.1 Use Colour Coding to distinguish case types 2.2 File Covers to contain vital information - at a glance 2.3 Number documents 2.4 Colour code for urgent/relative matters 2.5 Notate when & who updates JS	Central	End 2017	COC & CC COC & CC	Reduction in time taken to find files and information
3. Improve Reliability Information & Data	3.1 Conduct an inventory and ensure JS is completely up-to-date & accurate	Central	16-Oct-17	SI & COC SI & CC	Low incidence
4. Reduce waiting times for juveniles issued with a citation	5.1 Provide another return date on Fridays for Citations	Central	5-Jul-17	SI & CC	Two return dates per week for juvenile citations

WORKSHOP CLOSE

GOOD LUCK & THANKYOU

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EFFICIENCY TOOLKIT

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






Pacific Judicial Development Programme

TIME GOALS TOOLKIT

April 2015



PJDP is funded by the Government of New Zealand and managed by the Federal Court of Australia



The information in this publication may be reproduced with suitable acknowledgement.

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

Published in April 2015. © New Zealand Ministry of Foreign Affairs and Trade.

Prepared by Jennifer Ehmann for the Federal Court of Australia.

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Web <http://www.fedcourt.gov.au/pjdp>

PJDP TOOLKITS

Introduction

For over a decade, the Pacific Judicial Development Programme (PJDP) has supported a range of judicial and court development activities in partner courts across the Pacific. These activities have focused on regional judicial leadership meetings and networks, capacity-building and training, and pilot projects to address the local needs of courts in Pacific Island Countries (PICs).

Toolkits

Since mid-2013, PJDP has launched a collection of toolkits for the ongoing development of courts in the region. These toolkits aim to support partner courts to implement their development activities at the local level by providing information and practical guidance on what to do. These toolkits include:

- **Time Goals Toolkit**
- Judges' Orientation Toolkit
- Annual Court Reporting Toolkit
- Toolkit for Review of Guidance on Judicial Conduct
- National Judicial Development Committee Toolkit
- Family Violence and Youth Justice Project Workshop Toolkit
- Access to Justice Assessment Toolkit
- Trainer's Toolkit: Designing, Delivering and Evaluating Training Programs
- Judicial Decision-making Toolkit
- Reducing Backlog and Delay Toolkit
- Toolkit for Public Information Projects
- Toolkit for Handling Complaints about Judicial Conduct
- Enabling Rights & Unrepresented Litigants

These toolkits are designed to support change by promoting the local use, management, ownership and sustainability of judicial development in PICs across the region. By developing and making available these resources, PJDP aims to build local capacity to enable partner courts to address local needs and reduce reliance on external donor and adviser support.

Use and support

These toolkits are available on-line for the use of partner courts at: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>. We hope that partner courts will use these toolkits as / when required. Should you need any additional assistance, please contact us at: pjdp@fedcourt.gov.au

Your feedback

We also invite partner courts to provide feedback and suggestions for continual improvement.

Dr. Livingston Armytage
Team Leader,
Pacific Judicial Development Programme

April 2015

FOREWORD

It is the obligation of courts to conduct a fair trial without undue delay. For this right to be effective and delay to be prevented, a common concept of what is a reasonable time for case disposition is required.

With this in mind, I am delighted to commend this Time Goals Toolkit to courts of the Pacific Region as an educational resource and guide for the development of goals for the timely completion of cases.

As lawyers play a pivotal role in preventing and reducing delay in the administration of justice, I encourage the participation of the legal profession in the development of time goals to ensure their early contribution and commitment is obtained to meeting the courts obligations to provide justice without undue delay.

It is my sincere hope that you use this toolkit to establish time standards for your courts, and for the ultimate benefit of citizens who deserve a system of timely justice.

Sir John Baptista Muria
Chief Justice of Kiribati
22 April 2015

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ABBREVIATIONS

IT	- Information Technology
JAA	- Judicial Administration Adviser
JAP	- Judicial Administration Project
MFAT	- New Zealand Ministry of Foreign Affairs and Trade
MSC	- Managing Services Contractor – Federal Court of Australia
NC	- National Coordinator
NJDC	- National Judicial Development Committee
PIC	- Pacific Island Country
PJDP	- Pacific Judicial Development Programme ('Programme')

1 INTRODUCTION

1.1 Objective

Citizens expect courts to deliver justice fairly and in a predictable, reasonable time.

Through the use of time goals, citizens will know what the court aims to accomplish because there are clearly foreseeable time frames from the filing of a case, through interim events, to final disposal.

Using time goals as a benchmark, managers are able to measure timeliness in case processing and of the age structure of the entire caseload. These benchmarks are a vital feature of court performance management systems to help identify and prevent unacceptable delay.

1.2 Purpose

This Toolkit is designed to assist your court meet obligations to ensure a fair trial is conducted in a reasonable time by guiding you through the process of developing and implementing time goals.

It provides practical assistance, a methodology and additional resources to help you conduct workshops to develop time goals and to assist in their implementation and monitoring.

By using the Toolkit you will create two key performance standards:

- First tier time goals for case events and for final case disposition
- Second tier median time goals that will guide and help you manage the age structure of the caseload.

As time goals are one of a range of measures that can be used to prevent delay, you may wish to use this Toolkit in conjunction with other case management measures to ensure quality and timely performance. Some of these measures are discussed in the companion Toolkit on *Reducing Backlog and Delay*.

- ✓ The court is obliged to conduct a fair trial in a reasonable time
 - ✓ The court should have immediate and continuous control of its cases
 - ✓ Parties need to know what to expect

1.3 The Importance of Delay Prevention

Citizens lose confidence in justice if they see that courts function too slowly. For example, in criminal law it is important that society sees that perpetrators are sentenced within a reasonable time and conversely, that innocent suspects have a speedy determination of their innocence. Failure to do so can undermine the confidence citizens have in the peaceful settlement of criminal acts, which can lead to social unrest and conflict.

To make financial investments, business people need to receive legal certainty within a reasonable period of time, or it can affect the willingness of business people to invest and for countries to prosper. In family law and land cases there is a great personal interest in a timely outcome of the proceedings because a lapse of time may sustain unjust, unsafe or hardship situations.

Courts and judges have a range of obligations to meet around timeliness. These can be pursuant to domestic laws or through international instruments and doctrines. Some of these are outlined in the table below.

Example 1: Obligations to Prevent Delay

International Covenant on Civil and Political Rights

Article 14 of the *International Covenant on Civil and Political Rights* establishes three important norms for the conduct of civil and criminal trialsⁱ:

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

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**.

Constitution of the Independent State of Samoa, 1960

Article 9. Right to a fair trial - (1) In the determination of his civil rights and obligations or of any charge against him for any offence, every person is entitled to a fair and public hearing **within a reasonable time** by an independent and impartial tribunal established under the law.

The Supreme Court of Samoa Rules of Civil Procedure:

Article 4. Construction - These rules shall be so construed as to secure the just, **speedy** and inexpensive determination of any proceedings.

The International Framework for Court Excellence

*The International Framework for Court Excellence*ⁱⁱ (IFCE) is emerging as an important authority in quality management. The IFCE places emphasis on timeliness in its excellence indicators for court proceedings:

"The standard operating procedures of an excellent court comprise important elements such as agreed upon time standards, establishment of case schedules in individual cases, the active role of the judge with respect to time management, limitations in the postponement of court sessions, effective scheduling methods for court sessions, and the use of differentiated case management and, if applicable, alternative dispute resolution techniques. iii"

In addition, there is an increasingly important link between timeliness and case management, being the way judges manage an individual case. For example, in the High Court of Australia *Aon* case^{iv}, the court stated that 'the concerns of case management' and delay are factors that the trial judge must take into account when considering pre-trial applications such as the amendment of pleadings. The *Aon* case highlights the requirement for litigants and judges to closely consider the balance between timeliness, case management and substantive justice in the context of the whole of the proceedings.

In a similar fashion, the effect of delay on individual pending cases has been recognized in another Australian High Court case^v:

"the conduct of litigation is not merely a matter for the parties but is also one for the court and the need to avoid disruptions in the court's lists with consequent inconvenience to the court and prejudice to the interests of other litigants waiting to be heard.vi"

1.4 Expected Outcomes

With time goals the court can:

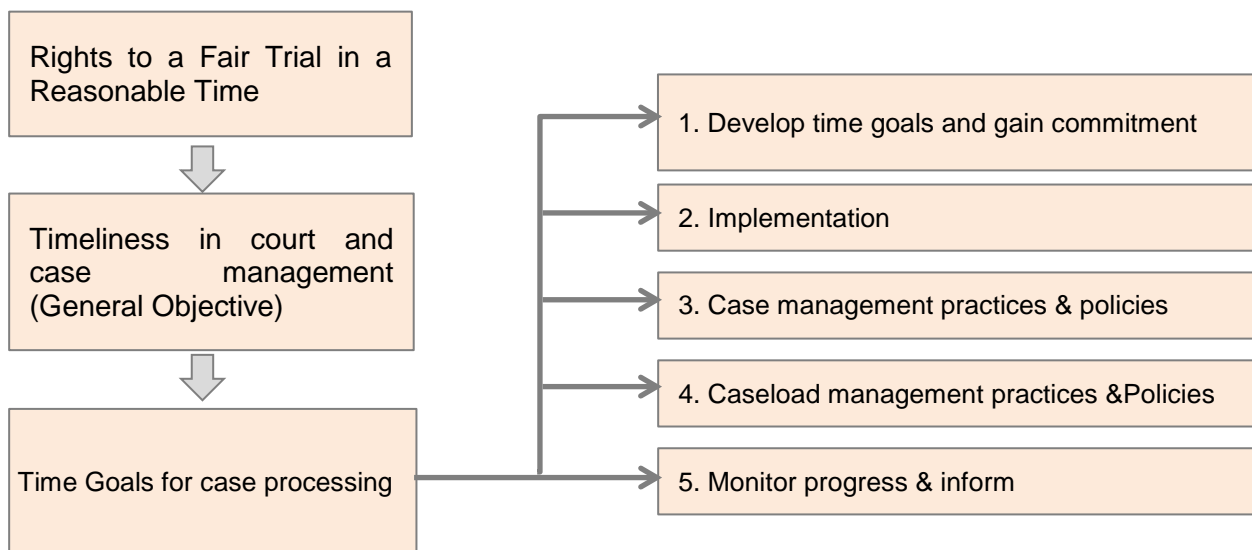
- Increase timeliness by defining an acceptable pace of litigation

- Define a consistent process and expectation
- Motivate quality and efficiency in case processing
- Produce performance reports
- Identify idle cases
- Stop cases getting "lost in the system"
- Build teamwork between judges and court personnel
- Demonstrate transparency and predictability
- Be accountable for its performance
- Support the meeting of obligations relating to timeliness.

1.5 Methodology and Approach

The overall methodology used in this Toolkit to achieve a fair trial in a reasonable time is reflected in Diagram 1 below. This diagram demonstrates the connectedness of time goals with other aspects of court and performance management.

Diagram 1 - Realising Timeliness Obligations through Time Goals



The approach used to arrive at time goals suitable for your court is to:

- Design - Design standards for your court.
- Build - Working together collaboratively to reach agreement about what is a reasonable time.
- Analysis - Review what happens in reality - does the time goal fit?
- Embed - When we have reviewed appropriateness we promulgate formal standards and goals.
- Impact - Ongoing monitoring of effects: have time goals led to improved time flow?

1.6 How to Use this Toolkit?

This Toolkit is designed specifically for PJDP PIC's after being piloted in the courts of Kiribati and may be used with or without international technical assistance.

The Toolkit contains:

- Introductory information about time goals
- Steps and guides to developing time goals
- Comparative international examples, including from the Pacific Region

- Samples of time lines
- Model rules and policies
- Checklists and Tips
- Places to acquire further information
- A facilitator package.

To assist you in the development and implementation of time goals, you may find it helpful to refer to companion Toolkits that the PJDP has on the [PJDP website](#).

- *Project Management Toolkit* - this Toolkit enables courts to plan and manage projects and initiatives toward successful completion.
- [Trainer's Toolkit: Designing, Delivering and Evaluating Training Programs](#) - this Toolkit could provide additional assistance in the preparation, facilitation and evaluation of a Time Goals Workshop.
- [Establishing and Running National Judicial Development Committees Toolkit](#) - this Toolkit provides support for the NJDC's professional development and may include controlling the timeliness of case disposals as a topic for the NJDC.
- *Writing Judgments Toolkit* - this Toolkit assists judicial officers in all aspects of judgment writing. This includes providing methods to support the timely production of judgements to avoid delay in the production of reserve judgements.
- [Annual Court Reporting](#) - Annual reports generally include data and information that relates to timeliness and efficiency. This Toolkit provides guidance on two related performance indicators: clearance rates and the average time to disposal of cases.
- [Enabling Rights and Unrepresented Litigants](#) – knowing the rights of litigants and enabling citizens to access meet their unmet legal rights in court, is the focus of this toolkit. These rights include the right to a fair hearing in a reasonable time.

1.7 Involvement and Roles

The development of time goals requires the contribution of various members of your court and its stakeholders. To start the process, a project leader is required to introduce and lead the process of developing time goals using this Toolkit, and to conduct related workshops.

It is suggested that a PJDP trained trainer carry out the role of organising and facilitating the workshops. A *Time Goals Facilitator Package* is annexed to this Toolkit to support the conduct of these workshops. The package provides a training plan, a session programme and introductory materials in PowerPoint form.

After you complete the workshops and have developed your time goals, the time goals will require implementation and monitoring. This will be an ongoing process that takes time to implement and streamline into caseload^{vii} management routines.

1.7.1 Roles Internal to the Court

- *Chief Justice* - to lead, guide, authorise, direct, delegate and otherwise oversee the development, institution and compliance with the goals. To report the results toward achieving time goals in the Annual Report and internally for court and individual performance management.
- *Deputy Chief Justice and other judiciary leaders* - to participate in promulgation, inform, train, monitor and report on progress toward goals.
- *Judiciary members (law trained and lay)* - to contribute to time goal development, to apply the goals consistently and encourage all involved in courts to achieve the 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 proactively with the judiciary to achieve time goals.
- *Court staff* - to provide quality, accurate clerical data input and file management services that are orientated toward achieving time goals.

1.7.2 Roles external to the Court

Although the Toolkit targets court practices involving court personnel, stakeholders will be impacted by these practices and should be included in implementation processes. Stakeholders are:

- *Lawyers* - to contribute to the promulgation of time goals and commit to the achievement of time goals in the interests of justice.
- *Ministry personnel* - to contribute to the development of time goals and to use related information about progress as a tool to manage the allocation of resources.
- *Prosecutors* - to contribute to the promulgation of time goals and commit to the achievement of time goals in the interests of justice. To ensure early and thorough preparation of cases, to ensure minimal adjournments and carefully manage time periods in relation to persons in pre-trial custody and youth matters.
- *Prisons* - to work with the courts to help achieve time goals and reduce the length of time detainees spend in pre-trial detention.
- *Women and Children's / Youth groups* - to be aware of time goals, work with the courts to help achieve them and to raise appropriate concerns with the court about delay.
- *The public* - to be informed and raise appropriate concerns with the court about delay.
- *Court users* - to be informed, prepare matters early and thoroughly, and to raise appropriate concerns with the court about delay.
- *Other government agencies* - to assist the court in meeting goals and using resources efficiently, including third party actors such as surveyors and agencies e.g. those involved in the registration of land.
- *Other supporting bodies* - to assist the court in meeting goals, raising concerns and using resources efficiently e.g. Transparency International.

1.7.3 Leadership and Teamwork

Strong leadership and a shared vision for improvement are essential in ensuring the full and continuous commitment of judges, court staff, local lawyers and other stakeholders.

Court leadership consists not only of the Chief Justice. Leadership includes all judges who lead jurisdictions or divisions, registrars who lead court staff, and can include members of the Executive branch.

Good communication and broad consultation is essential for success. Successful leaders ensure accurate and timely information is available for managers, paying particular attention to ensuring the information is used in managing the caseload.

The Chief Justice should not do everything alone. Sharing responsibility and accountability through teamwork is the key. A core team to drive the initiative forward is recommended.

The involvement of court staff members at all levels, from the court administrator through to the secretaries and courtroom clerks who handle day-to-day administrative duties for the judges, is essential. Consequently, administrative staff should be directly involved.

1.7.4 Lawyers

The extent to which delay can be avoided is reliant upon both the activities of court and the relationships and attitudes of lawyers and disputants. This relationship is shaped primarily by legislations, rules, protocols and concepts of judicial independence.

It is important that this relationship also be shaped by shared goals, including timeframes for the length of judicial proceedings.^{viii}

Efficient court proceedings also benefit lawyers because the fair, timely and reliable attention of the court to their cases is important to attract business. This has a flow-on benefit of attracting private entrepreneurs who prefer to do business in a legal environment that is capable of easily and efficiently supporting the resolution of disputes. Therefore, lawyers should maintain a vested interest in quality justice and be continually involved and informed about case management developments such as time goals.

Participation of lawyers may take the form of being involved in the workshops to develop the time goals. Alternatively, you may prefer to develop time goals first and then present the draft goals for the review of the legal profession in a separate presentation. The draft goals may also be forwarded to the President of the Law Society for general circulation to members for feedback.

Tips About Lawyers

- Lawyers settle cases, not judges.
- Lawyers settle cases when prepared.
- Lawyers prepare for significant events.
- Give lawyers reasonable notice about new procedures by involving them in workshops or by providing a special information session on time goals and the negative impact of adjournments on timeliness.
- Lawyers need to know the probable action in response to lawyer non-compliance with deadlines or other requirements.
- Lawyers need to be treated consistently in their requests e.g. for adjournments. Here policy statements are helpful.
- Gear rules and procedures to require the full preparation of cases prior to filing.

1.7.5 What Investment is Needed?

- Judicial Commitment and Leadership - the Chief Justice sets the tone
- A committed implementation team
- Minimal initial financial costs or resourcing
- Investment of time
- Collaboration with the whole of the court
- Involvement and collaboration with stakeholders
- Training and communication
- Monitoring and evaluation
- A willingness to be accountable.

Tips About Resources

Improving timeliness does not necessarily require an increase in budgetary resources. It requires “working smart”. Here are some tips:

- We cannot improve systemic problems all at once. Chip away, by identifying discrete areas for improvement and targeting them one by one to the best of your ability.
- Creating the ideas and goals is the easiest part of delay reduction. Implementation and monitoring are the most challenging, require the most effort and provide the greatest results.
- By using teams we can unleash individual initiative and commitment beyond the norm.
- Limit the non-judicial tasks of judges as much as possible.
- Communication, sharing information and progress amongst stakeholders is a very powerful tool.
- Instilling in the judiciary that they have a right to actively monitor ‘reasonable time’ requirements in the judicial proceedings before them.

2 TIME GOALS

2.1 What are Time Goals?

Time Goals are effectively: 'Operational tools ... (as) ... targets to measure to what extent each court, and more generally the administration of justice, meets the timeliness of case processing, fulfilling the principle of fair trial within a reasonable time, endorsed by the European Convention on Human Rights.'^{ix}

European Commission for the Efficiency of Justice

Time goals tell us:

- how long a case should take to complete
- how long should be allowed between major case events
- how many cases should be dealt with over a year.

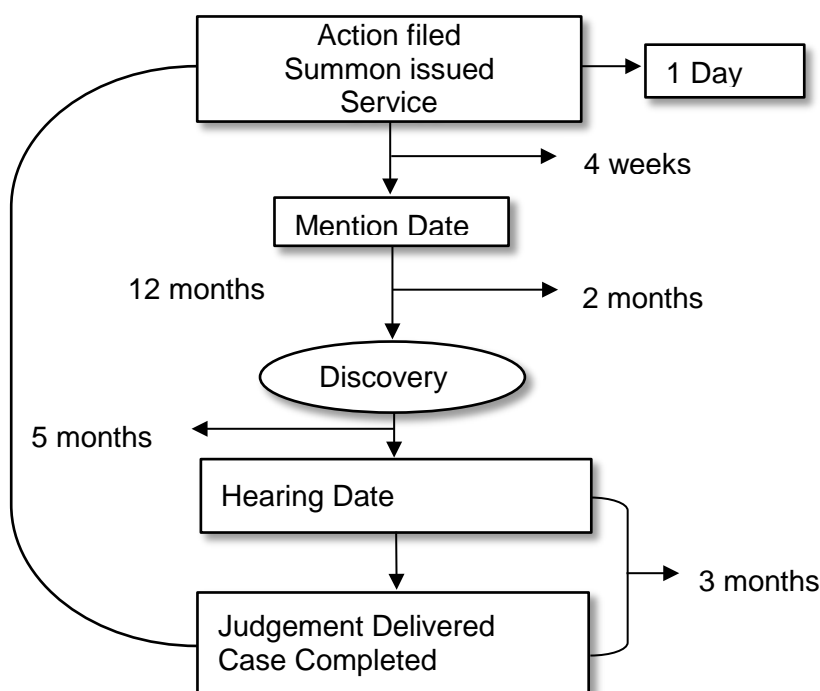
With reports on these goals the court can compare the flow of cases and plan, organize and allocate resources to help each case meet its goal.

Using these well-defined time limits, the court can ensure it is in control of the pace of the litigation and not lawyers. By committing to these measures, there will be increased certainty that events occur when scheduled. This in turn, helps ensure that cases are prepared.

- The aim is for the court to deal with as many cases as it can in the time available, without over-scheduling.

We arrive at time goals by mapping out the procedures involved in each case type. Below is an example of how the Kiribati Magistrate Court mapped out a timeline to determine an appropriate goal for the processing of land cases..

Time Goal Map 1: Land Case – Kiribati



Time to Disposition Goal: 12 months

Case load time Goal: 80% in 12 months. 100% in 18 months

With these goals the court will be able to calculate what the delay is, and if individual cases or groups of cases are approaching or exceeding the point of delay. From here the resources of the court can be allocated and managed according to objective priorities.

It is important to acknowledge that there are many factors that impact upon the timely flow of cases and business before the court. The process of developing time goals is effective in helping define these issues and ensuring that where the controlling of delay is within the court's capacity, then action is taken to reduce it.

2.2 Time Goals or Standards?

You may see time goals referred to as 'time standards', 'timeframes' or 'benchmarks'. Generally, these terms refer to the same notion of setting a gauge from which expectations can be set and measured.

During the Time Goals pilot project in Kiribati, the team preferred the use of the term 'time goals' over, 'time standards' as it was felt that the word 'goal' was motivating and inspired teamwork.

In the State Court of Yap in the Federated States of Micronesia, the court has developed and uses the term "Advisory Time Standards".

You should discuss this issue in your workshop and select the terminology you are most comfortable using.

2.3 A Reasonable Time

There is a growing body of human rights and jurisprudence from around the world that sets some guiding principles about what a 'reasonable time' is. The commonality amongst these interpretations is that there is no set time and that the calculation of a 'reasonable time' must be consistent with the principles of fairness specific to *individual cases* and the specific rules and statutes that apply.

A 'reasonable time' is therefore case specific and determined by the amount of time needed to fairly, necessarily and conveniently complete a case or case event. This can be determined by factors such as the:

- complexity of the case
- behaviour of the application
- behaviour of authorities that may be involved
- existence of reasons for special diligence.

A 'reasonable time' starts running upon the institution of proceedings. In criminal matters this may be a point in time prior to the matter coming to court. For the purpose of time goals however, the time will start to be counted from the time of the initial filing in the court of the criminal charges.

A 'reasonable time' ends when, the matter is finally determined by the highest judicial authority. For the purpose of time goals however, there will be time goals for each court in the hierarchy and the time will start to run from the point of initial filing to final disposition in each particular court.

A 'reasonable time' principle also applies to interim court events. For example, European Community law requires the prompt determination of judicial proceedings (The Promptitude Principle) and has found that a judgment given 22 months after the close of the oral procedure was negated by the loss of any recollection of it on the part of the Judges^x. It is therefore important to monitor and avoid unreasonable delay in interim events, including reserved judgments.

It is important to distinguish here that not all delay is 'unreasonable' or 'unacceptable' delay. To ensure a just outcome, some delay can be considered acceptable e.g. as the court and parties await the outcomes of a related case.

One **definition of delay** that recognises acceptable delay and unacceptable delay is: “Any elapsed time between filing and disposition which is not reasonably necessary for pleadings, discovery and court events.”^{xi} ”

With respect to delay caused by systemic weaknesses, jurisprudence has clearly placed the burden on the courts themselves to overcome unacceptable delay, having stated that:

- Where there is delay, the court must show it has taken proper steps to expedite proceedings
- A State cannot shelter behind procedural or other defects in its judicial machinery to avoid responsibility for delays; and
- The fact that parties are responsible for the conduct of proceedings does not absolve judicial authorities from ensuring expeditious trials.^{xii}

2.4 International Approaches

Although you will be developing time goals that are specific to your jurisdiction, it is useful to know what time standards have been adopted in other jurisdictions.

ABA Standards

Perhaps the most well-known standards have emerged from the USA where the *American Bar Association* and Judiciary worked together to promulgate national standards for time to disposition and caseload disposal. Individual states in the USA have in turn, developed their own standards.^{xiii}

Table 1: American Bar Association Time Standards

Time Standard to Disposition & Caseload Model Standards USA		
Case Type	Time to Disposition Standard	Caseload Time Standards
Criminal ^{**xiv}		
Felony (Indictable Criminal Offence)	180 days	90% in 120 days 98% in 180 days 100% in 12 months
Misdemeanour (Summary Offences)	90 days	90% in 30 days 100% in 90 days
Civil ^{***}		
Jury trials	18 months	
Nonjury trials	12 months	
General civil		90% in 12 months 98% in 18 months 100% in 24 months
Summary proceedings: small claims, Landlord/tenant		100% in 30 days
Domestic relations ^{***}		
Uncontested	3 months	
Contested	6 months	
All Cases		90% in 3 months 98% in 6 months 100% in 12 months
Juvenile ^{****}		
Detention/shelter hearings	24 hours	24 hours
Adjudicatory/transfer hearings		
1. In a detention facility	15 days	15 days
2. Not in a detention facility	30 days	30 days
Disposition hearings	15 days	15 days

2.5 Time Goals in the Pacific Region Context

Many courts of the Pacific Region operate in environments that experience similar challenges due to limited resources, geographic expansiveness of island nations and their stage as developing nations. On the following pages are the time goals developed by the Pacific Island Country of Kiribati in October 2012. These goals take into careful consideration the unique local context and domestic legal frameworks. These time goals apply nationally and are adjusted for outer islands, taking into account such matters as the frequency of court circuits.

“The idea of setting time goals is good. Before, we relied on our own individual interpretation as to what was a reasonable time for a case. Now we all know what a reasonable time is.”

Tetiro M. Semilota
Chief Registrar, Republic of Kiribati
4th October 2012

Table 2: Time Goals – Kiribati

High Court Of Kiribati		
Case Type	Time Goal	Caseload Time Goal
Criminal Cases	6 mths	100% in 18ths ^{xv}
Civil	15mths	100% in 24mths ^{xvi}
Land Appeals	8 mths	100% in 18ths
Criminal Appeal	6mths	100% in 12mths
Judicial Review	6mths	100% in 12mths
Family Law	6mths	100% in 6mths
Matrimonial Property Claims	12mths	100% in 12mths
Magistrates Court Of Kiribati		
Case Type	Time Goal	Caseload Time Goal
Serious Crime - Adult not in custody	6mths	90% in 4mths 100% in 6mths
Serious Crime - Adult in custody	3mths	100% in 4mths
Summary Crimes - Adult in custody	2mths	100% in 2mth
Summary Crimes - Adult not in custody	4mths	10% in 4mths 90% in 3mths
Serious Crime - Children in custody	4 weeks	100% in 4 weeks
Summary Crime - Children in custody	3 weeks	100% in 3 weeks
Violence Against Women	2mths	100% in 2mth
Domestic Violence	2mths	100% in 2mths ^{xvii}
Civil	6mths	100% in 6mths
Paternity	4mths	20% in 5 weeks 90% in 4mths 100% in 5mths
Land	12mths	80% in 12mths 100% in 18mths
Boundary Determinations	8mths	80% in 8mths 100% in 14mths
Distribution of Monetary Estate	5 weeks	100% in 5 weeks

2.5.1 Your Baseline

To help your court manage timeliness and delay there is a checklist of timeliness indicators in the Additional Resources to this Toolkit. This checklist is designed to provide you with a list of required knowledge, processes, reports and information that is desirable to help you manage the timeliness of the case flow in your court.

Please complete these questions, individually or in a group, before you progress further. You should examine the framework and answers to determine where the strengths and weaknesses of your court are with respect to timeliness systems and processes.

This list should be reviewed as a yearly activity and action taken to implement or improve where identified.

3 DEVELOPMENT OF TIME GOALS

3.1 Setting Goals

Time goals should reflect what is reasonable for citizens to expect for the prompt and fair conclusion of most cases. For the courts, the goals should provide an achievable challenge and, at the same time, not be set at a level that can be easily accomplished.

Your time goals should firstly, take into account the mandatory procedural time periods required according to law. These time periods are generally for interim events such as the service of documents or the filing of a defence. Where there is no time period prescribed by law, you should use a time period that allows for due process and is generally reflective of an efficient service.

Time goals should not be based solely on what transpires in the most difficult and complex cases. Using two tiers of time goals will allow you to account for the small percentage of cases that are particularly complex or time consuming. Depending on the case type, the percentage of cases that courts estimate fall into this category is usually between 2% to 10%. In other words, between 90% to 98% flow through a normal track. Here, your first tier time goal can reflect what you believe should be the median time for the majority of cases.

3.2 How to Calculate Times?

The time for proceedings is the period that covers the whole of the proceedings with a separate time goal for appeal proceedings.

Courts in the Pacific are encouraged to start counting time from the point upon which the court has initial control of the case. This is usually from the point when the action is instituted or registered at the court. The calculation of time goals can also provide for the conclusion of preliminary events such as mediation.

Depending on your ability to record and manage data, you may wish to have the case starting time as from the point of service on the defendant in civil cases or from the first appearance of the defendant in court in criminal matters.

3.2.1 Intermediate Events

We need time goals for intermediate stages because it gives the court criteria for monitoring the progress of cases from the time of case initiation through to judgment and ultimately, the conclusion of all post-judgment work.

Using this information means we can identify cases where progress has stopped or is simply too slow. These are the cases that need more attention of the court to reach a fair outcome.

Whilst each country has unique laws with milestone events, there are some intermediate events that common: These are presented in list 1 below.

List 1 - Guide to Common "Milestone" Events

Guide To Common "Milestone" Events	
Jurisdiction	Intermediate Events
General Civil or Domestic Relations Cases	Time from filing to: <ol style="list-style-type: none"> Completion of pleadings Completion of discovery Trial start Non-trial disposition
Indictable (felony) Criminal Cases	From time of arrest to: <ol style="list-style-type: none"> Bail hearing Arraignment/plea Call-over Trial start Non-trial disposition
Children's Court Criminal Cases	From time of arrest to: <ol style="list-style-type: none"> Detention & preparatory hearing Adjudication hearing
Family Court	From time of filing to: <ol style="list-style-type: none"> Directions hearing Call-over Final hearing Decision

On the following pages are more examples of how time goals can be mapped for intermediate or 'milestone' events as developed by the Kiribati judiciary.

3.2.2 Suspension of Time

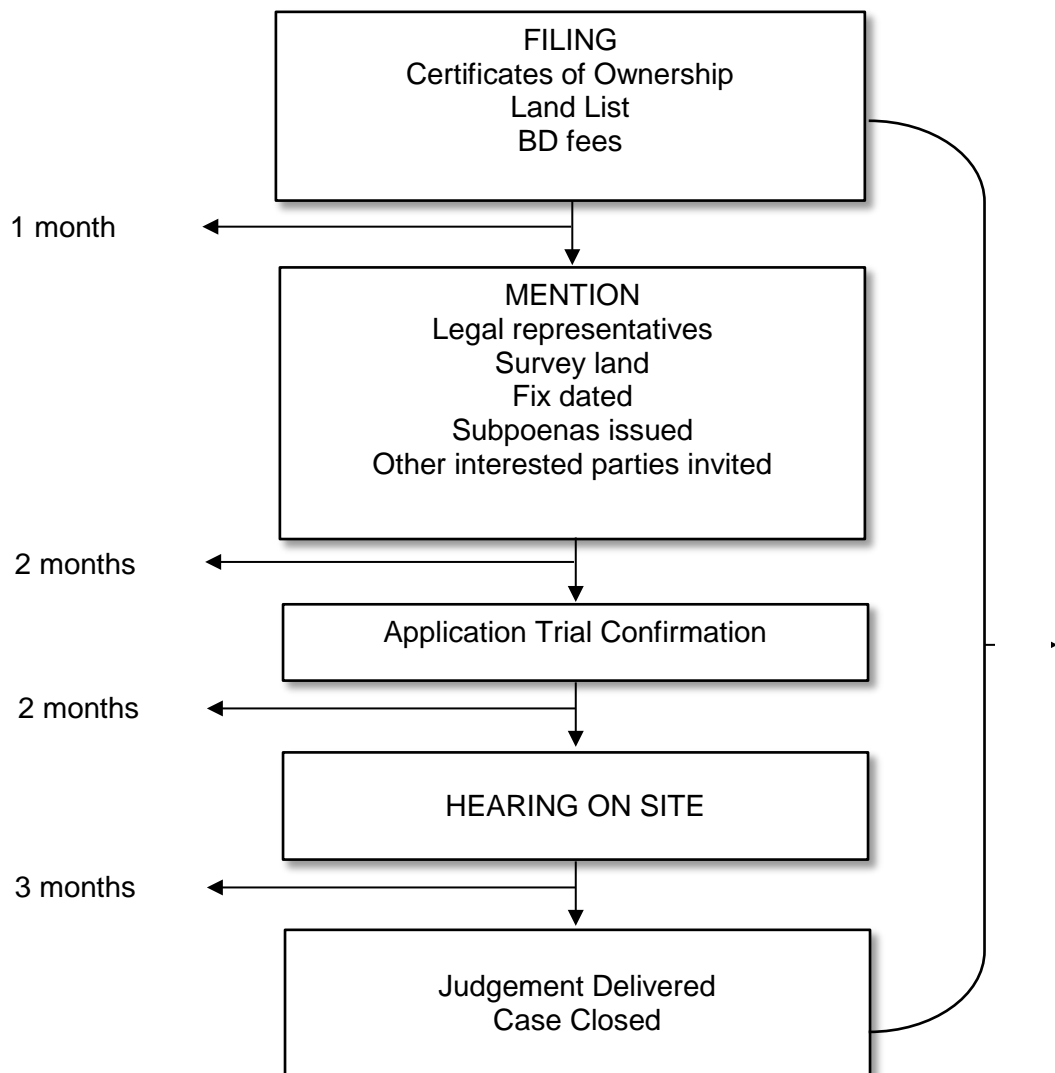
Case time should be suspended when certain events prohibit the case progressing in court. For example, in criminal matters, time should be suspended where a defendant has failed to appear and a bench warrant has issued, or there is a pre-sentencing diversion programme running.

In civil matters, case time should be suspended for interlocutory appeals, arbitration and bankruptcy. When these events are complete and the matter is once again "active", the time is restarted. For a *Caseflow Time Standards Calculation* schedule, please refer to the Additional Resources to this Toolkit.

Calculating the suspension of time with manual and Excel-based administrative systems is a very intensive activity. It is suggested that these courts transfer suspended cases to a list separate from the "current active pending caseload" list.

Courts that have an automated case management system should have the facility for automatic suspension and re-starting of time calculations.

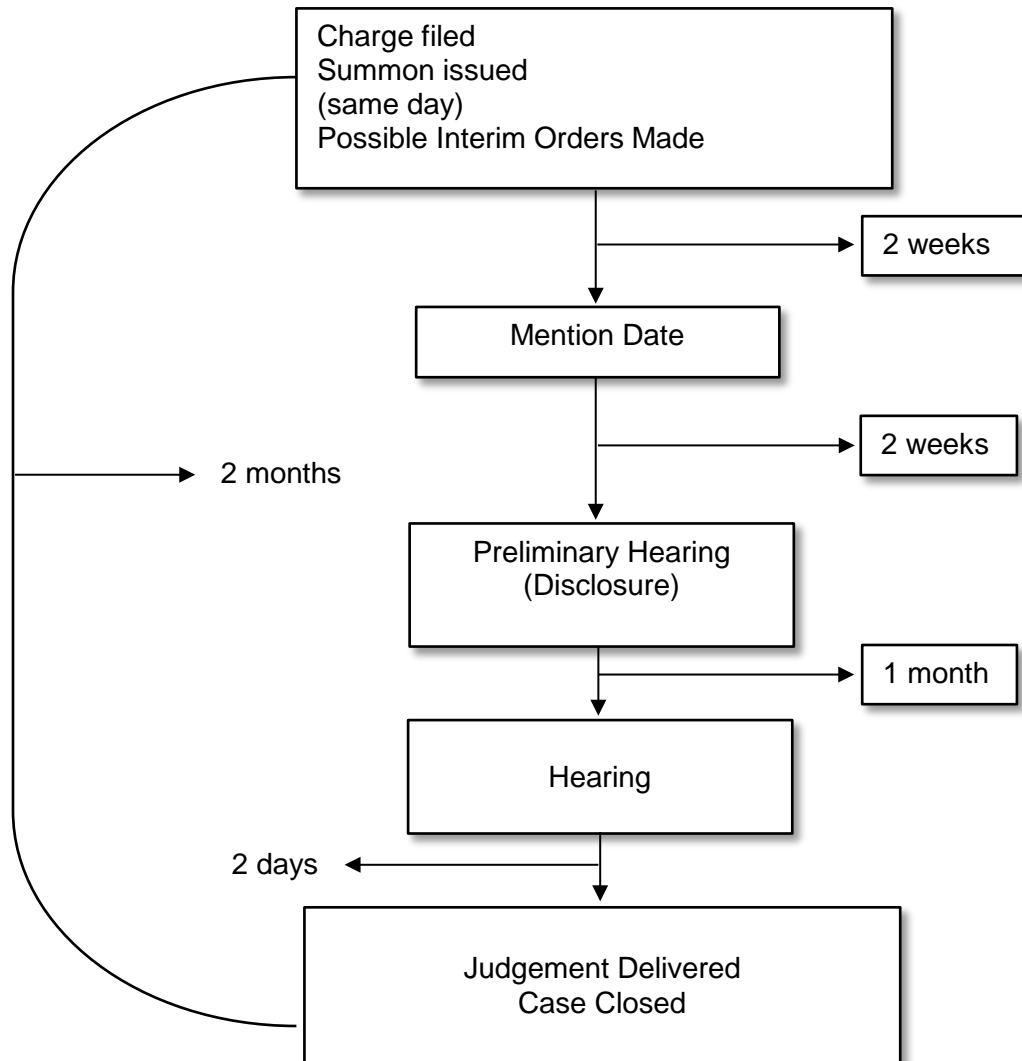
Time Goal Map 2: Example of Boundary Determination Case - Kiribati



Time to Disposition Goal: 8 months

Case load time Goal: 80% in 8 months, 100% in 14 months

Time Goal Map 3: Example Violence against Women Case - Kiribati



Time to Disposition Goal: 2 months
 Case load time Goal: 100% in 2 months
 Uncontested Cases: 2 weeks

3.3 Mapping Out Time Lines

As you start to map out your time goals you can use the checklist below to guide you through the process.

Checklist for Mapping out Time Lines

1. List out each jurisdiction your court administers.
2. For each jurisdiction, list out the principal case types.
3. Note the time provided by rule or directive for the period between key events.
4. Refer to the sample mapping in this Toolkit and prepare a procedure map indicating the key intermediate events for the flow of cases for the principal types you have selected.
5. Where there is no mandatory period you should agree on a challenging time goal for the completion of that procedure.
6. Factor in local conditions.
7. Compare International and Pacific examples.
8. Don't get "stuck" on these goals if agreement cannot be reached. Go on to the next map and complete what you can first.
9. Remember we may not get it perfect the first time and that the time goals will be reviewed annually and adjusted where necessary.
10. Set yourself a realistic goal and add a degree of "stretch" for the challenge.

3.3.1 Relationship to Case Tracking

All cases are not alike with respect to their individual characteristics. Some need prioritising in order to ensure the right cases are dealt with in the right order. This acceleration of cases needs to be **appropriate** and **transparent**.

This requires cases to be divided into categories dependent upon objective and subjective characteristics. That is, we need to determine the case typology. In most PICs a judge does this, however a Registrar or Master may also assume this responsibility.

In some jurisdictions this is known as placing the case on an appropriate "track". Below is a list of criteria that might be considered in the placement of cases in a simple "two track" system.

List 2: Potential Criteria for Prioritising Cases

Potential Criteria For Prioritising Cases	
<p>Track A: Fast Track</p> <ul style="list-style-type: none"> • With predominately urgent features • National significance • Involving children • Involving a particular hardship • Denial of human rights • Significance to other cases e.g.: precedent value • Involving a high level interest for the community or notoriety • Significant public importance • There is a significant amount of money involved • The age of the case - a backlog of cases • As might be determined by the Case Manager' • Health of parties • As might be determined by a Judge 	<p>Track B: Normal Track</p> <ul style="list-style-type: none"> • There are no compelling reasons to accelerate the case • Where the interests of justice are served by proceeding normally • As might be determined by the Judge or Case Manger

A case on the fast track will be given a target time for processing which is earlier than those that are placed on the Normal Track. For example, if the case is a criminal children's court matter and the child is in custody, instead of a normal processing time of say 3 months, the Fast Track may require the matter to be disposed of in say, 1 month.

Criteria applied for the acceleration and prioritization of cases need to be consistent and transparent.

4 IMPLEMENTATION, MONITORING AND REPORTING

4.1 Administrative Support and Technology

Efficient case flow demands considerable discipline and transparency in the systems and processes that support it. These systems and processes need not be sophisticated or electronic. Depending upon the jurisdiction and number of cases to be handled, methods of tracking the age of cases and progress toward time goals can include:

- Scanning registers to create lists of cases each month from the oldest to the latest, that are approaching or exceeding the time standard
- Using a Microsoft Excel spread sheet that captures the date of registration of cases (and other data) and is programmed to calculate the reports (see the section ahead on Monitoring)
- Using cards for each case that are stored in order of case age, with each card recording case progress and activities
- Colour coding of case types using a marking pen along the file spine
- Inserting the goal date on the front file cover for all to see
- Use of time goals to help organise case flow management software and information management.

Clearly and accurately noting the date of commencement of the actions and other events is particularly important. This requires the registry and judiciary personnel to work closely as a team.

4.2 Formalizing Time Goals

Time goals should be formally instituted via rules, Chief Justices' directions, standing orders, practice notes, procedural guides, policy documents, forms and training instruments.

In the Additional Resources to this Toolkit, there is a sample of an *Interim Rule* to facilitate the introduction of time goals. You may modify this sample to suit your needs and adapt it for other jurisdictions.

4.3 Reporting

Good reporting routines are essential for courts to be accountable internally and externally. Court leaders should have available reports that provide an overview of the cases pending and workloads of courts and judges.

Ministries should have reports that give an overview of the workload and performance to be able to properly review funding and staffing levels.

Stakeholders should have ready access to certain types of information which can be provided in an Annual Report or on the court's website. Individual judges should have reports with which they can manage their dockets and priorities.

A framework of reports to monitor timeliness is recommended in the following section.

Tips for Reports

- Reports should be as uniform as possible between jurisdictions.
- Internal reports can be more frequent and informal to ensure court leaders have a sufficient overview of work, including an individual breakdown by judge.
- The Chief Justice should have a total oversight report. This provides an objective status assessment, which can help in discussions with judges, personnel and stakeholders.
- Data should be detailed to match the performance indicators for the annual report
- Reports should allow for a comparison of data to depict the percentage change in the number of cases on hand from one reporting period to the other. This helps indicate trends and if the court is regressing into backlog.
- There should be a clearance rate measure, which indicates the court's ability to cope with the inflow of cases. This is a simple calculation of the number of cases resolved within a certain period divided by the inflow of cases in that same period. A number higher than 100% indicates that the caseload is decreasing, whereas as a number lower than 100% indicates the caseload is increasing and could progress into backlog.
- The reports could include an analysis of: which types of cases are the ones that are disposed? How they were disposed of? Were they trials? Were they pleas or settled? In either case the effort and commitment of resources differ immensely. Capturing this type of information provides a vastly different picture of performance and ensures that comparisons are fairer.

4.4 Monitoring Framework

The following is a monitoring framework designed to provide managers with the basic information necessary to oversee the caseload and monitor progress toward time goals.

Table 3: Time Goal Monitoring Frameworks

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.

Each month reports should be generated that list cases approaching the time goal or exceeding it. This report should have key information that provides a rapid oversight of the case, the reasons for delay and action being taken to remedy it.

The report is a useful tool for court leaders, judges and registry personnel to help draw attention to and give priority to these matters. The lists may be used in meetings to assist in making decisions about resources.

For examples and more details of reporting please see the [Additional Resources to this Toolkit](#) and the website [CourTools](#).¹

4.5 Adjournments

Adjournments (also called continuances) delay a case's resolution. Excessive numbers of adjournments can create delay and therefore minimising them is crucial in ensuring that courts reach their time goals. It is recommended that courts have a written adjournment policy to ensure that all judges and parties are aware of the presumptions upon which adjournments may be granted or refused.

One way to manage adjournments is to track the number of adjournments to see who adjourned and the reasons for the adjournment. With this information you can calculate adjournment ratios, rates and reasons. These measures are discussed in the Additional Documentation to this Toolkit.

¹ <http://www.courtools.org/Trial-Court-Performance-Measures.aspx>

5 CHECKLIST

This Toolkit has provided you with an overview of time goals and their development. Alongside this Toolkit the [Additional Resources](#) has provided you with resources and tools to use when implementing time goals and related information.

To summarise, you may find the following checklist a helpful guide for the tasks you need to undertake to develop and implement time goals.

Checklist

1. Put Time Goals on “PROJECT STATUS”
2. Delegate one person to lead and manage the Time Goals Project
3. Establish a team of judges and registry personnel
4. Consider including local lawyers, police and other stakeholders
5. Scope the terms of reference of the team i.e. set terms of reference, accountabilities, responsibilities and time frames and allocate resources
6. Continuously communicate the teams activities and progress
7. Conduct workshops to provide information on timeliness and to promulgate the time goals using the Workshop Facilitators Package in the Additional Resources to this Toolkit and:
 - i. Start the promulgation process by differentiating selected categories of cases
 - ii. Map out the intermediate steps
 - iii. Identify mandatory time periods
 - iv. Set time goals for events which have no time period
 - v. Consider case complexity and other factors affecting time and the percentage of these cases
 - vi. Determine optimum time frames for each case type
 - vii. Assess the percentage of cases that are normal flow cases and complex flow cases
 - viii. Reflect and discuss the sample time goals contained in this Toolkit
8. Decide upon the first tier goal for the ‘normal flow of case’ e.g. 90% in 12 months for general civil matters
9. Decide upon the second tier goal for the more complex or time intensive cases. Using the above example, this might be 98% in 2 years (i.e.: 90% in 12 months, 98% in 2 years)
10. Consult, train and inform stakeholders
11. Develop a Chief Justice practice direction or general order to implement
12. Promote and disseminate the practice direction and related information
13. Train and educate staff (using information from this Toolkit & other resources)
14. Create administrative systems to oversee the goals
15. Develop and implement the monitoring framework
16. Co-ordinate information technology system development
17. Disseminate and use the results of the monitoring framework to manage the caseload
18. Monitor and evaluate periodically and share selected results with stakeholders
19. Use the Timeliness Checklist annually to assess time related systems and processes
20. Celebrate successes.

5.1 Where to find more information

There are excellent resources available on the Internet with respect to timeliness and case management such as:

- [Australian Centre for Justice Innovation, Timeliness Project,
http://www.law.monash.edu.au/centres/acji/research/timeliness/index.html](http://www.law.monash.edu.au/centres/acji/research/timeliness/index.html)
- [Australian Institute for Judicial Administration,
http://www.aija.org.au/](http://www.aija.org.au/)
- [CourTools, Trial Court Performance Measures,
http://www.courttools.org/Trial-Court-Performance-Measures.aspx](http://www.courttools.org/Trial-Court-Performance-Measures.aspx)
- [National Centre for State Courts USA, Model Time Standards for State Trial Courts,
http://www.courttools.org/Trial-Court-Performance-Measures.aspx](http://www.courttools.org/Trial-Court-Performance-Measures.aspx)
- [European Commission for the Efficiency of Justice,
http://www.coe.int/T/dghl/cooperation/cepej/default_en.asp](http://www.coe.int/T/dghl/cooperation/cepej/default_en.asp)
- [International Consortium for Court Excellence,
http://www.courtexcellence.com/](http://www.courtexcellence.com/)
- [National Centre for State Courts, USA,
http://www.ncsc.org/Information-and-Resources.aspx](http://www.ncsc.org/Information-and-Resources.aspx)
- [Pacific Judicial Development Programme Toolkits ,
http://www.paclii.org/pjdp/pjdp-toolkits.html](http://www.paclii.org/pjdp/pjdp-toolkits.html)
- [Saturn Guidelines for Judicial Time Management,
www.coe.int/cepej, file](http://www.coe.int/cepej)

Otherwise, use your search engine using key words such as "court case management", "court time standards" "court delay reduction", "court caseload management".

5.2 References

- Ehmann, J. *Court Management and Administration Assessment Report*, Pacific Judicial Development Programme, Solomon Islands, Republic of Vanuatu, Kingdom of Tonga (2012).
- Federal Judicial Center, *The Elements of Case Management*, 1520 H Street, N.W Washington DC 2005.
- *International Framework for Court Excellence*, <http://www.courtexcellence.com> accessed 17 July, 2014.
- Steelman D, *Caseload Management - The Heart of Court Management in the New Millennium*, 2000, Court Management Library Series, National Center for State Courts, Williamsburg USA.

[illegible]

[illegible]

Endnotes

ⁱ Source: *International Covenant on Civil and Political Rights*, UN General Assembly resolution 2200A(XXI), December 16, 1966 entered into force March 23, 1976

ⁱⁱ <http://www.courtexcellence.com>

ⁱⁱⁱ www.ncsc.org/Resources/~media/.../Files/.../IFCE-Framework-v12.ashx

^{iv} *Aon Risk Services Australia Ltd v ANU* [2009] HCA 27; (2009) 239 CLR

^v *Sali v SPC Ltd* [1993] HCA 47; (1993) 67 ALJR 841

^{vi} *Sali v SPC Ltd* [1993] HCA 47; (1993) 67 ALJR 841 at 849, as cited in *Aon* at [93] per Gumow, Hayne, Crennan, Kiefel and Bell JJ.

^{vii} Caseflow is the coordination of court processes and resources so that cases can progress efficiently and on time, from filing to disposition.

^{viii} European Commission for the Efficiency of Justice, *Compendium of 'best practices' on time management of judicial proceedings* (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&BackColorInterne](https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ(2006)13&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInterne)

^{ix} European Commission for the Efficiency of Justice, *Compendium of 'best practices' on time management of judicial proceedings* (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) (accessed 15 August, 2014).

^x *Baustahlgewebe v Commission* (Appeal against the judgment of the Court of First Instance of 6 April 1995) [1995] Case C-185/95 P, <http://curia.europa.eu/en/actu/communiqués/cp98/cp9881en.htm> accessed 20 July, 2014

^{xi} *ABA Standards Relating to Court Delay Reduction*, Standard 2.50 Caseflow Management and Delay Reduction, General Principle quoted in B. Mahoney, *Sources of Delay in Case Processing and How to Address Them*, 2008 Conference of the International Association for Court Administration, Dublin, Ireland.

^{xii} *Kurt Nielsen v. Denmark* (Application no. 33488/96) Strasbourg, 15 February 2000 [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58590#{"itemid":\["001-58590"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58590#{) accessed 20 July, 2014

^{xiii} <http://www.ncsc.org/Information-and-Resources/High-Performance-Courts/Case-Processing-Time-Standards/CPTS-States/Florida.aspx>

^{xiv} American Bar Association (ABA), *Standards Relating to Trial Courts*, 1992 Edition, Section 2.50,

^{**} Criminal cases: time from arrest to trial or disposition.

^{***} Civil and domestic relations cases: time from filing to trial or disposition;

^{****} Juvenile detention and adjudication or transfer hearings: time from arrest to hearing; juvenile disposition hearings: time from adjudicatory hearing to disposition hearing.

^{xv} Serious Crime

² Time to trial goal is 12 months

³ Uncontested final orders: 100% in 2 weeks



TIME GOALS TOOLKIT - ADDITIONAL DOCUMENTATION

Available at: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>



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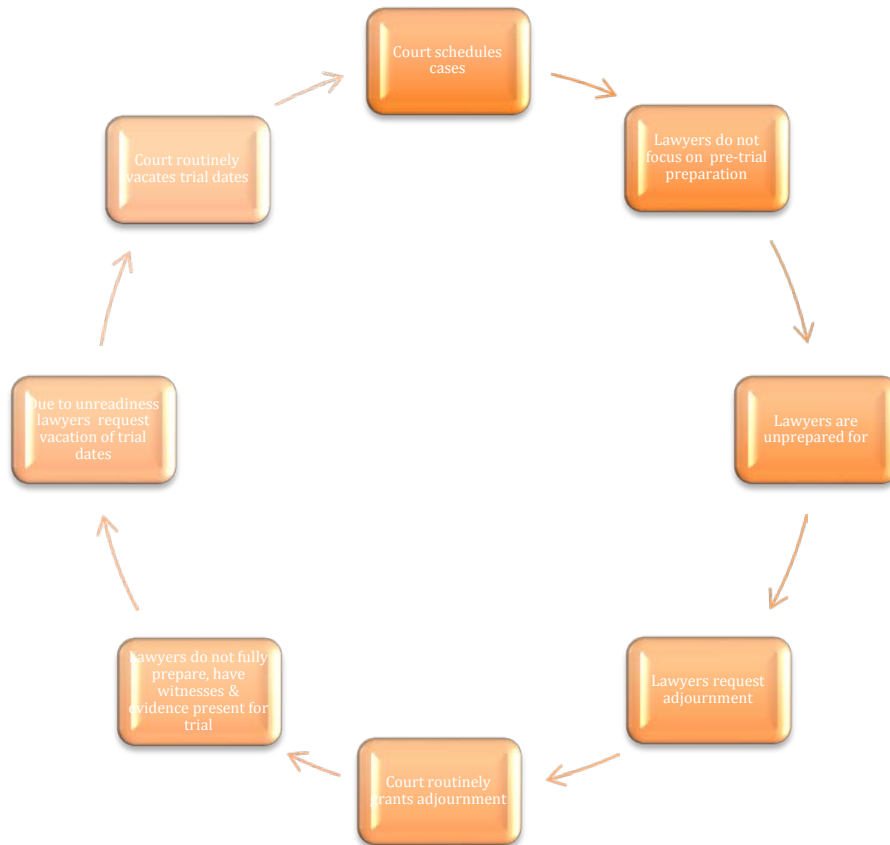
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ANNEX 1: SAMPLE CASEFLOW TIME MANAGEMENT SCHEDULE

CASE TYPE	DEFINITION OF TERMS				TIME STANDARDS
	Case Start	CASE TIME SUSPENSION		Case Stop	
		Suspend	Re-Start		
Criminal	<ul style="list-style-type: none">• Receipt of Complaint or First Appearance of defendant• Entry of appearance by counsel	<ul style="list-style-type: none">• Bench Warrant, Failure to Appear• Pre-sentencing treatment program, *interlocutory appeal	<ul style="list-style-type: none">• Reappearance• Completion of pre-sentencing program,• Appellate decision	<div>Disposition</div> <ul style="list-style-type: none">• Verdict / ordered• Plea Guilty• Sentencing• Found not guilty• Sentencing	6 months (98%)
Civil	<ul style="list-style-type: none">• Date of Filing• Or Service on First Defendant	<ul style="list-style-type: none">• Bankruptcy court stay,• Interlocutory appeal.• Demand for arbitration	<ul style="list-style-type: none">• Discharge of bankruptcy• Reinstatement• Appellate decision• Reappearance	<ul style="list-style-type: none">• Disposition• Dismissal• Judgment	12 months (90%) 18 months (98%)
Domestic Relations (Including Child Access)	<ul style="list-style-type: none">• Service on Defendant• First Answer, whichever comes first	<ul style="list-style-type: none">• Interlocutory appeal	<ul style="list-style-type: none">• Appellate decision	<ul style="list-style-type: none">• Disposition• Dismissal Judgment	6 months (90%) 12 months (98%)

ANNEX 2: ADJOURNMENTS (CONTINUANCES)

The Cycle of Adjudgments 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 adjournment policy and to monitor trends.

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.

ANNEX 3: SAMPLE ADJOURNMENT POLICY - LAND COURT

Sample Adjournment Policy - Land Court¹

Values

It is the policy of this Court to provide justice for citizens:

- Without unnecessary delay
- Without undue waste of time
- Without undue waste of resources of the court, the litigants and other participants.

Favour

The Court looks with strong disfavour on motions or requests to continue court events.

The Court especially strongly disfavours adjournments of matters scheduled for trial.

Method

Motions or requests for adjournment in superior courts must be in writing. The request must be signed by both attorneys/parties and state a reason.

In inferior and island courts, requests may be made orally or in writing to the Island Court Clerk not later than 48 hours in non-trial matters.

In scheduled trial matters the application is not to be made later than two weeks prior to the scheduled trial. This will permit the court to consider scheduling other cases and ways to save precious resources.

The grant of an adjournment 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 an adjournment where good cause is shown.

As a guide, the following will generally NOT be considered sufficient cause to grant a adjournment:

- Lawyers or the other party agree
- The case has not previously been continued
- The case probably will settle if a adjournment 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 adjournment of a trial beyond a second trial date setting.

The following will generally be considered sufficient cause to grant for adjournment:

¹ Based on the work of Steeleman et al.

- 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 and other judges of the court shall ensure the consistent application of this policy and report on adjournments as a part of its performance reporting requirements.

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

Goals

A strict adjournment policy is pivotal as the court endeavours to reach its Time Goals.

The court expects the co-operation and commitment of the legal profession and parties as it seeks to prevent delay and provide timely justice for citizens.

Signed: Chief Justice

Date:

ANNEX 4: TIMELINESS INDICATORS 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?			
INDICATOR THREE: CLEAR RESPONSIBILITY FOR MONITORING TIMELINESS			
i. Is there a registrar or chief clerk responsible and accountable for monitoring regularly the attainment of time goals and reporting of delay?			
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 averages age of disposed cases?			
iii. Are reports used by judges to manage individual docket?			
iv. Are reports used by the Chief Justice and court leaders to help 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?			

ANNEX 5: EXCEL CASELOAD MANAGEMENT SYSTEM

PIC's are strongly encouraged to use this workbook to manage their caseload and reporting. This will help produce performance reports around timeliness and also, for your annual report.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
1	Case Register - Senior Magistrate's Court (Tuvalu)														Age of adult n
2	Reg. Year	Reg. Month	File ID No.	Date Filed	Court Filed In	Case Type	Case Level	Case Class	Case Name	Case Identification / Description	Applicant / Accused / Petitioner	Defendant / Crown / Respondent	Natural Parents (Adoption only)	Child's Name (Adoption only)	DoB: Child / Accused / Applicant
3															
23															
24															
25															
26															
27															

	P	Q	R	S	T	U	V	W	X	Y	Z
	responsibility: 18										
/	Age: Child / Accused / Applicant	Minor / Juvenile	In Remand Custody	Gender Child / Accused / Applicant	Judge	Counsel - Applicant / Accused	Counsel - Defendant / Crown	No. Counts / Actions in Case	Defendant-Victim Relationship (ONLY if Domestic Violence Case)	Fee Waiver	Legal Aid

	Next action for PARTY	Date for Next Action for Party	Status for Next Action for Party	Status for Next Action for Party	Next Action for COURT	Date for Next Action for Court	Next Court Date	Status for Next Action for Court	Status for Next Action for Court	Next Court Date (by Month)

	No. of Adjournments	Date Decided / Disposed	Decision of the Court	Appealed	Cross-reference to Appeal ID	Appeal Successful?	Case Status	Case Duration - Days taken for Disposal	Case Status Check (Over Due = >90days)

Please contact the [Pacific Judicial Development Programme](#) or the [author](#) at if you wish to obtain a copy of this electronic spreadsheets

ANNEX 6: LIST OF DATA REQUIRED TO GENERATE REPORTS

The workbook and spreadsheets in Annex Five will help you capture this important reporting data.

= number

1. # cases completed by location (including circuit courts)
2. # clearance rates by location and national
3. # cases commenced and completed by case type
4. # of days to completion
5. # completed cases by means of disposal
6. # cases commenced and completed by location and case type
7. # cases commenced by month, location and case type
8. clearance rate by location and national
9. age of cases completed by location
10. # disposals of completed cases by judge
11. # reserved judgments
12. # reserved judgments by age
13. # pending cases by age
14. # pending cases by judge and age
15. # pending cases by case type
16. # pending cases by stage
17. # pending civil cases by stage
18. # pending criminal cases by stage
19. # pending cases by case type progressively monthly
20. # male, female and entity applicants for new cases per case type
21. # male, female and entity applicants cases completed per case type



ANNEX 7: SAMPLE LIST OF CASES EXCEEDING THE TIME GOAL

Overdue Case List


_____ Court

Date: _____ Judge: _____ Overdue Cases as of (date): _____

Case Number	Case Type	Commencement Date	Time Goal for Completion Date	# Days over time goal	Last Activity/date	Case Stage	Next scheduled activity/date	Action to be taken	Reason for the length of proceedings - problem	Loose estimate of time of conclusion of case

ANNEX 8: COURT PERFORMANCE MEASUREMENT - TIME TO DISPOSITION REPORT

To access the full website and for downloads of the worksheets please follow this link to [CourTools](http://www.courttools.org).²



Measure 3

Time to Disposition

Worksheet Instructions

a. Use this spreadsheet to enter data: Time to Disposition data and have the results automatically plotted.

b. Data may only be entered in the gray cells. An acceptable input will change the cell color from gray to white and the input text color will turn to maroon.

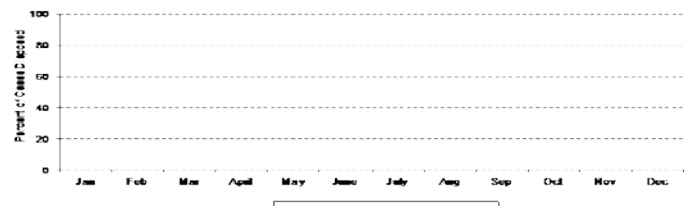
c. All white colored cells with black text are locked.

Graph Interpretation

a. The graphs below automatically update as the inputs are completed in this worksheet.

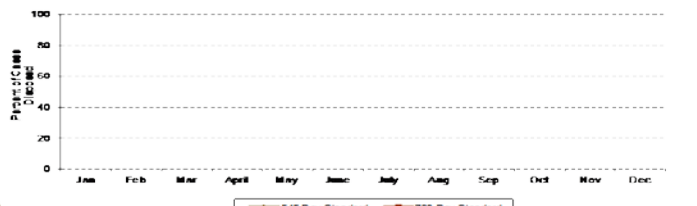
Felony

Month	N Size	Percentage of Cases Disposed		Number of Days	
		180 Days	365 Days	Mean	Median
Jan					
Feb					
Mar					
April					
May					
June					
July					
Aug					
Sep					
Oct					
Nov					
Dec					



Civil


Month	N Size	Percentage of Cases Disposed		Number of Days	
		545 Days	730 Days	Mean	Median
Jan					
Feb					
Mar					
April					
May					
June					
July					
Aug					
Sep					
Oct					
Nov					
Dec					



² <http://www.courttools.org/Trial-Court-Performance-Measures.aspx>

ANNEX 9: COURT PERFORMANCE MEASUREMENT - CLEARANCE RATES

For more on the analysis and interpretation of clearance rates please follow this link to [CourTools](http://www.courttools.org/Trial-Court-Performance-Measures.aspx).³



CourTools

National Center for State Courts
300 Newport Avenue
Williamsburg, Virginia 23185
800-466-3063

Copies and updates at
www.courttools.org

CourTools
Trial Court Performance Measures

Clearance Rates
Measure 2

Definition: The number of outgoing cases as a percentage of the number of incoming cases.

Purpose: Clearance rate measures whether the court is keeping up with its incoming caseload. If cases are not disposed in a timely manner, a backlog of cases awaiting disposition will grow. This measure is a single number that can be compared within the court for any and all case types, from month to month and year to year, or between one court and another. Knowledge of clearance rates by case type can help a court pinpoint emerging problems and indicate where improvements may be made. Courts should aspire to clear (i.e., dispose of) at least as many cases as have been filed/reopened/reactivated in a period by having a clearance rate of 100 percent or higher.

Method: Computing a clearance rate requires a count of incoming cases and outgoing cases during a given time period (e.g., year, quarter, or month).

Step 1 Incoming cases are summed using three kinds of cases: *New Filings*, *Reopened cases*, and *Reactivated cases*. If *Reopened* and *Reactivated* cases cannot be counted, just use *New Filings*.

Sum incoming cases	New Filings	812
	Reopened Cases	+ 162
	Reactivated Cases	+ 109
	Total Incoming Cases	= 1,083

Step 2 Outgoing cases are summed by using three kinds of dispositions: *Entry of Judgment*, *Reopened Dispositions*, and *Placed on Inactive Status*. If *Reopened Dispositions* and *Placed on Inactive Status* cases cannot be counted, just use *Entry of Judgment* cases.

Sum outgoing cases	Entry of Judgment	684
	Reopened Disposition	+ 137
	Placed on Inactive Status	+ 92
	Total Outgoing Cases	= 913

Step 3 The clearance rate is calculated by dividing the result of Step 2 by the result of Step 1.

Calculate clearance rate	$913 \div 1,083 = 84\%$
---------------------------------	---

³ <http://www.courttools.org/Trial-Court-Performance-Measures.aspx>

ANNEX 10: SAMPLE CHIEF JUSTICE DIRECTION INTRODUCING THE TIME GOALS

It is the obligation of this court to conduct a fair trial in a reasonable time. For this right to be effective our court needs to monitor the timeliness of case progression and disposal to enable disputes both civil and criminal, to receive proper attention. I therefore, direct the court to implement time goals as listed below.

These time goals are benchmarks against which the court can measure individual case progression, delay and the overall age structure of the caseload. These goals do not infringe upon the duty of judges to ensure that case time schedules are unique to individual cases and that proceedings are in compliance with time periods provided for in rules and statutes. Nor, do the time goals create rights for individual litigants. The goals are benchmarks to assist the court in providing the timely resolution of disputes, which is ultimately for the benefit of the public as a whole.

Expeditious disposals require actions to be thoroughly and expeditiously prepared by the parties. The court expects that actions are not commenced until they are ready to meet the requirements of timetables that take into account these time goals.

Minimising adjournments is crucial in helping the courts reach time goals, and in the prevention of delay. Parties should anticipate that the court expects matters to proceed on the date allocated and that adjournments will only be granted with good cause. This is especially applicable for trial dates.

I look forward to the commitment of all stakeholders to these time goals that help guarantee cases proceed to conclusion, fairly and without undue delay.

Hon. Chief Justice
Date:

(Attach the list of time goals)

ANNEX 11: FACILITATOR PACKAGE

About this Facilitator Package

The goal of this facilitator package is to inspire and support trainers to conduct workshops to develop and implement time goals.

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

1. Time Goals Workshop Training Plan
2. Time Goals Workshop Agenda
3. Pre and Post Workshop Evaluation
4. Evaluation Report Template
5. List of Participants Template
6. Time Goals Toolkit
7. Time Goals Toolkit Additional Resources
8. PowerPoint Slide Presentation – Introduction to Time Goals

1. Training Plan

Background

This training plan is designed for PJDP National Co-ordinators, Team Leaders or selected personnel to assist with the facilitation of workshops that is required to support the *Time Goals for Case Processing & Disposition Toolkit*.

Training Aims

The aims of the workshop and training is to inform and develop Team Members (see Toolkit) by transferring information and tips to support the use of the Toolkit. With this information participants will have increased conceptual knowledge to help them feel confident to use the Toolkit and the development of time goals.

Timing

Three days should be set aside for the:

- Introduction of time goals
- Development of time goals
- Development of an implementation plan
- Development of reports supporting time goals monitoring

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

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

Session Programmes

Sessions Programmes for the three days of workshops are attached.

Training Methods

Methods used are:

- Pre-Workshop assessment to test knowledge levels and expectations.
- Informative sessions presented by the facilitator using PowerPoint presentations as a training aid.

- Group completion of a baseline to help identify gaps in current systems and processes to support timeliness
- Self directed group methods to facilitate the development of time goals.

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 participants. 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, fruits and biscuits can be provided if funds are available.
- Workshops require, where available the following **training aids**:
 - a PowerPoint projector
 - laptop computer
 - a whiteboard & whiteboard markers
 - flip chart paper
 - pens and paper
 - power board

Assistance and Organization

As time goals are produced they need to be recorded. This can be done on paper or using a laptop. Special notations might accompany each time goal to record the reasons why the time frames were agreed.

Budget

Optional costs are:

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

It should be kept in mind that participant time should be managed economically and efficiently.

Training Evaluation

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

Accompanying Materials

1. Time Goals Workshop Agenda and Session Plan
2. Time Goals Toolkit
3. Time Goals Toolkit Additional Resources
4. PowerPoint Slide Presentation – Introduction to Time Goals
 - Section 1 - Introduction
 - Section 2 - Time Goals
 - Section 3 - Development of Time Goals
 - Section 4 - Implementation, Monitoring & Evaluation
 - Section 5 - Checklist
5. Time Goals Workshop Agenda and Session Plan

Workshop Agenda

DAY 1				
Session	Time	Topic/Activity	Learning & Session Outcomes	Participants
1	9am - 10.30am	Opening of Workshop & Project • Introduction from facilitators and participants • Organisational Issues • Expectations • Q & A • Workshop Commence • Review of Chapter 1 of Toolkit <i>Facilitator:</i> PJDP National Co-ordinator <i>Materials:</i> Toolkit, Additional Resources, PowerPoint Presentation 1	• Participants know each other and build rapport • Introductory Session • Introduce PJDP • Outline the Background • Understand Objectives & Purpose, Intent • Understand delay & importance of delay prevention • Understand Toolkit Chapter 1 - background, purpose, roles, leadership, investment, methodology	• As selected • Time Goals team
	10.30am - 11.00am	Morning Tea		
1	11am - 12.30am	Continuation of Session1 Session 1 End	1 As above	As above
	12.30pm - 1.30pm	Lunch		
2	1.30pm - 3.00pm	Toolkit Chapter 2 Time Goals <i>Facilitator:</i> PJDP National Co-ordinator <i>Materials:</i> Toolkit, Additional Materials, PowerPoint Presentation 2	• Know the meaning and context of Time Goals • Sample of time goals and maps • Understand the concept of "a reasonable time" • Know & understand the courts obligations related to timeliness	As above
	3.00pm - 3.30pm	Afternoon Tea		
2	3.30pm - 5pm	Baseline Self Assessment <i>Facilitator:</i> PJDP National Co-ordinator <i>Materials:</i> Toolkit, Additional Materials, PowerPoint Presentation 2	• Complete a Timeliness Self Assessment for baseline purposes • Report on Baseline Assessment	As Above

DAY 2				
Session	Time	Topic/Activity	Learning & Session Outcomes	Participants
3	9am - 10.30am	Time Goals and Standards • Breakout Groups • Structured Discussion <i>Facilitator:</i> National Co-ordinator or Case Management Team Leader <i>Materials:</i> Toolkit Chapter 2	• Knowledge & skill is built around: - a reasonable time - International principles & approaches - Constitution of time goals	• As above •
	10.30am - 11.00am	Morning Tea		
3	11.30am - 12.30pm	Session Continued Session 3 End	• As above	• As above
	12.30pm - 1.30pm	Lunch		
4	1.30pm - 3.00pm	Development of Time Goals • Breakout Groups • Structured Discussion <i>Facilitator:</i> National Co-ordinator or Case Management Team Leader <i>Materials:</i> Toolkit Chapter 3 and Additional Materials	• Know what is taken into account • Know how to calculate time • Understand about suspension of time • Prioritisation & differentiation • Discuss stakeholder workshops • First Time Goals will be developed • First Overall Time Goals developed	• Relevant members • Other selected stakeholders
	3.00pm - 3.30pm	• Afternoon Tea		
4	3.30pm - 5pm	Sessions 4 Continued • Continued Review of Day • Forward Planning • Close of Day	• Goal development continues • Mapping continued • Learning reviewed • Forward sessions organised	• As above

DAY 3				
Session	Time	Topic/Activity	Learning & Session Outcomes	Participants
4	9am - 10.30am	<ul style="list-style-type: none"> •Revision of Time •Continuation of Developing Standards 	<ul style="list-style-type: none"> •Goals developed •Goals mapped 	<ul style="list-style-type: none"> •As above
	10.30am - 11.00am	Morning Tea		
4	11.30am - 12.30pm	<ul style="list-style-type: none"> •Implementation of Time Goals <p>•</p> <p><i>Facilitator:</i> National Co-ordinator or Case Management Team Leader <i>Materials:</i> Toolkit Chapter 4</p>	<ul style="list-style-type: none"> •Know what administrative support is required •Understand the role of technology •CJ Direction or other instrument to implement Time Goals is drafted •Adjournment policy is drafted if agreed •Reporting systems are developed 	<ul style="list-style-type: none"> •As above
	12.30pm - 1.30pm	Lunch		
4	1.30pm - 3.00pm	<ul style="list-style-type: none"> •Implementation of Time Goals •Monitoring & Reporting <p><i>Facilitator:</i> National Co-ordinator or Case Management Team Leader <i>Materials:</i> Toolkit Chapter 4</p>	<ul style="list-style-type: none"> •Case type goals agreed •Case load goals agreed •Implementation Plan agreed •Monitoring and Reporting Framework is discussed & understood <p>2</p>	<ul style="list-style-type: none"> • As above
	3.00pm - 3.30pm	Afternoon Tea		
4	3.30pm - 5pm	<ul style="list-style-type: none"> •Goals finalised •Implementation Plan finalised •Final Presentation to Chief Justice •Discussion & Review •Workshop Evaluation •Close of Workshops <p><i>Facilitator:</i> National Co-ordinator or Case Management Team Leader <i>Materials:</i> Toolkit Chapter 5</p>	<ul style="list-style-type: none"> •Case type time goals agreed •Caseload time goals agreed •Implementation Plan completed <p>3 4</p>	<p>As above</p> <p>Hon Chief Justice & Judiciary & Court Staff (Together or separately - Lawyers)</p>

ANNEX 12: WORKSHOP ATTENDEES REGISTRATION SHEET

Time Goals Workshop

Date:

Venue:

Title	Name	PIC/State	Position	Email
Facilitators				

ANNEX 13: TIME GOALS PRE AND POST ASSESSMENT

PACIFIC JUDICIAL DEVELOPMENT PROGRAMME
Judicial Administration - Time Goals



PJDP - TIME GOALS 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: What obligations apply to courts with regard to the timeliness of case processing?

Question 2: What are time goals?

Question 3: Who is responsible for ensuring timeliness in case processing?

Question 4: List three ways to prevent delay:

1.

2.

3.

Question 5: 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 before this time goals workshop regarding the following matters by ticking/checking ONE square per question only:

Question 6: Your understanding of the doctrine of "a fair trial in a "reasonable time":

☐☐☐☐

No Understanding

Limited Understanding

Good Understanding

Excellent Understanding

Question 7: Your knowledge of what causes delays in case processing:

☐☐☐☐

No Knowledge

Limited Knowledge

Good Knowledge

Excellent Knowledge

Question 8: Your understanding of how cases are prioritised:

☐☐☐☐

No Understanding

Limited Understanding

Good Understanding

Excellent Understanding

Question 9: Your knowledge of the indicators used for measuring and monitoring delays within your court:

☐☐☐☐

No Knowledge

Limited Knowledge

Good Knowledge

Excellent Knowledge

THANK YOU VERY MUCH



PJDP - TIME GOALS

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: What obligations apply to courts with regard to timeliness of case processing?

Question 2: What are time goals?

Question 3: Why might we need time goals?

Question 4: Who is responsible for ensuring timeliness in case processing?

Question 5: How would you calculate a "reasonable time" for the processing and disposal of a case?



Question 6: List three criteria for determining the priority of cases?

1. _____
2. _____
3. _____

Question 7: List three ways to prevent delay:

1. _____
2. _____
3. _____

Question 8: List two time related indicators or reports that you might use to monitor timeliness in your court

1. _____
2. _____

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 9: Your understanding of the doctrine of "a fair trial in a "reasonable time":

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Understanding	Limited Understanding	Good Understanding	Excellent Understanding

Question 10: Your knowledge of what causes delays in case processing:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Knowledge	Limited Knowledge	Good Knowledge	Excellent Knowledge

Question 11: Your understanding of how cases are prioritised:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Understanding	Limited Understanding	Good Understanding	Excellent Understanding

Question 12: Your knowledge of the indicators used for measuring and monitoring delays within your court

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Knowledge	Limited Knowledge	Good Knowledge	Excellent Knowledge

Question 13: Having completed this Workshop, overall how confident do you feel in your understanding of the time goals, and the related principles and practices?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
← Less Confident	Same Confidence	More Confident	Much More Confident →



Question 14: Were the *aims* of the Workshop and sessions clear, and were they achieved?

☐ ☐ ☐ ☐

← Not Achieved Reasonably Achieved Substantially Achieved Fully Achieved →

Question 15: Was the information presented practical and *useful* to you in your role?

☐ ☐ ☐ ☐

← Not Useful Limited Usefulness Quite Useful Extremely Useful →

Question 16: 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 17: Overall, were you *satisfied* with this Workshop?

☐ ☐ ☐ ☐

← Not Satisfied Reasonably Satisfied Quite Satisfied Extremely Satisfied →

Question 18: Briefly describe the most useful experience(s) of the Workshop:

.....

.....

.....

Question 19: Briefly describe the least useful experience(s) of the Workshop:

.....

.....

.....

Question 20: Do you wish to offer any other comments or suggestions for improvements for the time goals toolkit or workshops?

.....

.....

.....

THANK YOU VERY MUCH

Pre-Post Long Answers

Pre-training Questionnaire

Question 1: What obligations apply to courts with regard to the timelines of case processing?		CORRECT:
Question 2: What are time goals?		
Question 3: Who is responsible for ensuring timeliness in case processing?		
Question 4: List three ways to prevent delay:		
Question 5: List two indicators that you might use to monitor timeliness in your court:		

Post-training Questionnaire

Question 1: What obligations apply to courts with regard to the timeliness of case processing?	CORRECT:
Question 2: What are time goals?	
Question 3: Why might we need time goals?	
Question 4: Who is responsible for ensuring timeliness in case processing?	
Question 5: How would you calculate a "reasonable time" for the processing and disposal of a case?	
Question 6: List three criteria for determining the priority of cases?	
Question 7: List three ways to prevent delay?	
Question 8: List two time related indicators or reports that you might use to monitor timeliness in your court:	

ANNEX 14: TIME GOALS QUESTIONNAIRE RESPONSES (PRE AND POST - COMPARE SHORT ANSWERS)

QU 6 & 9: Understanding of the doctrine of "a fair trial in a 'reasonable time'":					
	No answer	No Understanding	Limited Understanding	Good Understanding	Excellent Understanding
Post	0	0	1	2	6
Pre	0	0	4	5	0

QU 7 & 10: Knowledge of what causes delay in case processing:					
	No answer	No Knowledge	Limited Knowledge	Good Knowledge	Excellent Knowledge
Post	0	0	1	2	6
Pre	0	0	4	5	0

QU 8 & 11: Understanding of how cases are prioritised:					
	No answer	No Understanding	Limited Understanding	Good Understanding	Excellent Understanding
Post	0	0	1	2	6
Pre	0	0	4	5	0

QU 9 & 12: Knowledge of the indicators used for measuring and monitoring delays within your court:					
	No answer	No Knowledge	Limited Knowledge	Good Knowledge	Excellent Knowledge
Post	0	0	1	2	6
Pre	0	0	4	5	0

Weighting	0	1	2	3	Total
Post	0	1	4	18	85.19%
Pre	0	4	10	0	51.85%
Difference					33.33%

Weighting	0	1	2	3	Total
Post	0	1	4	18	85.19%
Pre	0	4	10	0	51.85%
Difference					33.33%

Weighting	0	1	2	3	Total
Post	0	1	4	18	85.19%
Pre	0	4	10	0	51.85%
Difference					33.33%

Weighting	0	1	2	3	Total
Post	0	1	4	18	85.19%
Pre	0	4	10	0	51.85%
Difference					33.33%

Post Quality Assessment

Post-training Assessment: Quality and Satisfaction Answers

Question 13	Having completed this Workshop, overall how confident do you feel in your understanding of the time goals, and the related principles and practices?			
No Answer	Less Confident	Same Confidence	More Confident	Much More Confident
0	0	0	10	8

Question 13	Were the aims of the Workshop and sessions clear, and were they achieved?			
No answer	Not Achieved	Reasonably Achieved	Substantially Achieved	Fully Achieved
0	0	0	7	11

Question 15	Was the information presented practical and useful to you in your role?			
No answer	Not Useful	Limited Usefulness	Quite Useful	Extremely Useful
0	0	0	7	11

Question 16	Did you find that the facilitator and the presentations were effective and allowed for adequate participation, discussion, practical presentations, and interaction?			
No answer	Not Effective	Limited Effectiveness	Quite Effective	Extremely Effective
0	0	0	7	11

Question 24	Overall, were you satisfied with the Workshop?			
No answer	Not Satisfied	Reasonably Satisfied	Quite Satisfied	Extremely Satisfied
0	0	0	5	12

Weighting	0	1	2	3	Total
Post	0	0	20	24	81.48%

Weighting	0	1	2	3	Total
Post	0	0	14	33	87.04%

Weighting	0	1	2	3	Total
Post	0	0	14	33	87.04%

Weighting	0	1	2	3	Total
Post	0	0	14	33	87.04%

Weighting	0	1	2	3	Total
Post	0	0	10	36	90.20%

ANNEX 15: POWERPOINT PRESENTATION ON TIME GOALS




**PACIFIC JUDICIAL
DEVELOPMENT PROGRAMME**

Time Goals Workshop

Presenter:
Date:


1



Time Goals

Section 1: Introduction

2




Time Goals

Objective

The **objective** of this workshop is to:

1. Strengthen the **consistent application of international laws** that guarantee a fair trial in a **reasonable time**
2. Ensure the **predictable** and **timely resolution** of cases in your court
3. Assist you to **promulgate time goals** for your court

3




Time Goals

Purpose

1. The purpose of time goals is to **establish a benchmark** to enable the timeliness of case processing can be measured
2. To provide a measure for **identifying unacceptable delay**
3. To **identify backlogged cases**

4



Time Goals


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

5



Time Goals

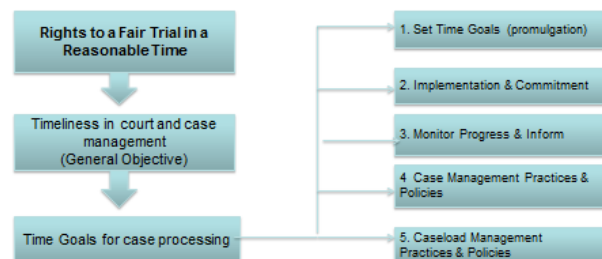
Intent

Time Goals are intended to encourage the fair disposition of cases at the earliest possible time.

6

Time Goals

Methodology



7

Time Goals

Roles - internal

- Chief Justice - to lead, guide, motivate, monitor
- Judges - to agree to goals, monitor individual cases and dockets
- Registry - to develop and oversee information management systems and assure quality caseload
- Court Staff - to assure up-to-date accurate information

8

Time Goals

Involvement



9

Time Goals

Roles - Internal



10

Time Goals

Roles - external

- Lawyers (public & private) - consult, contribute and commit
- Ministry personnel - contribute and manage resources
- The public - to be informed & able to foresee length of cases
- Other government agencies - to work together to meet time goals

11

Time Goals

Section 2: Time Goals

12

Time Goals

What are time goals?

Time Goals tell us:

1. How long a case should take to complete
2. How long should be allowed between major events
3. How many cases should be dealt with over a year

13

Time Goals

What are time goals?

> Sample Time Goal

For example for individual cases:

Time Goal for Land Cases – 6 months

Can be further broken down accommodate cases that are more complex and require more time:

90% in 6 months
100% in 12 months

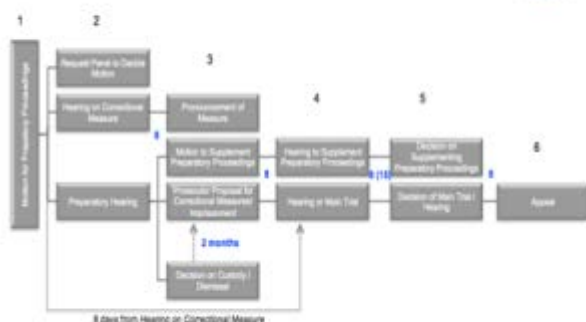
For example for the court's caseload:

No more than 10% of active cases should exceed 6 months

14

Time Goals

What are time goal maps?



15

Time Goals

Goals or Standards?

- > A **standard** implies that there will be a punishment if it is not reached
- > **Time Goals** are a (team) **target**
- > Time goals are **not punitive** - **Achievement** is rewarded
- > What do you think?

16

Time Goals

Reasonable Time

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

17

Time Goals

Reasonable Time

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

- > complexity of the case
- > behaviour of the application
- > behaviour of authorities that may be involved
- > existence of reasons for special diligence.

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Time Goals

Reasonable Time

The objective of the court can be described as:

“... 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



19

Time Goals

Additional Themes

The court is obliged to conduct a fair trial in a reasonable time

The court should have immediate and continuous control of its cases

Parties need to know what to expect



20

Time Goals

Obligations Regarding Timeliness



Concept 1:

Justice delayed is justice denied



21

Time Goals

Obligations Regarding Timeliness



Concept 2:

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



22

Time Goals

What is delay?

*“Any elapsed time between filing and disposition which is **not reasonably necessary** for pleadings, discovery and court events.”*

Concept:

➤ acceptable delay and unacceptable delay



23

Time Goals

Obligations to Prevent Delay

Universal Declaration of Human Rights Article 10

Everyone is entitled in full equality to a **fair** and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.



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Time Goals

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.

26

Time Goals

Obligations to Prevent Delay



International Covenant on Civil and Political Rights

Article 14

Establishes 3 important norms for the conduct of civil and criminal trials:

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

25

Time Goals

Legal Obligations



Sample of Constitutional Provisions from Samoa

9. Right to a fair trial - (1) In the determination of his civil rights and obligations or of any charge against him for any offence, every person is entitled to **a fair and public hearing within a reasonable time** by an independent and impartial tribunal established under the law.

28

Time Goals

Legal Obligations



European Convention on Human Rights

7. Article 6, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 provides, inter alia, that:

- In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing **within a reasonable time** by an independent and impartial tribunal established by law.

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Time Goals

Legal Obligations



Sample of provisions in the Supreme Court Civil Rules of Procedure 1980, Samoa

4. Construction - These **rules** shall be so construed as to secure the just, speedy and inexpensive determination of any proceedings.

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Time Goals

Balance



There needs to be a **careful balance** between procedural **safeguards** that can be **lengthy**, and **excessive speed**.

30



Time Goals

Relationship to Court Excellence



One of Ten Values: **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**

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Time Goals

Relationship to PJDP Cook Island Indicators



Indicators developed in the Cook Islands in 2011 by PJDP Chief Justices and National Coordinators:

1. Case finalisation or clearance rate.
2. Average duration of a case from filing to finalisation.
3. The percentage of appeals.
4. Overturn rate on appeal.
5. Etc..

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Time Goals

Baseline



Break out group:

To provide a **baseline** of how your court is managing timeliness form groups to complete the timeliness checklist in the Additional Resources to this toolkit.

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Time Goals

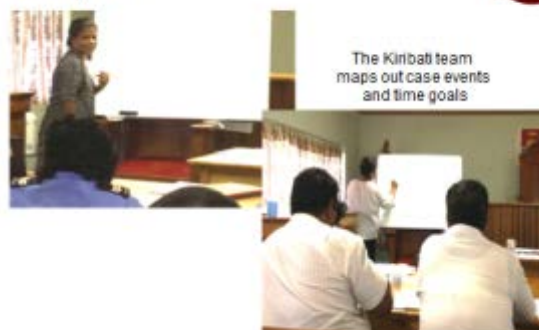


Section 3: Development of Time Goals

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Time Goals

Development



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Time Goals Considerations

- Time goals should take into account procedures, statutory time periods, jurisdictional conditions, demographic and geographic factors and resources.

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Time Goals Calculating

- Time goals run from the point the court has control of the case to the date of disposition by entry of judgement

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Time Goals Intermediate Events

- Intermediate stages or “Milestone Events” provide the court criteria to measure progress

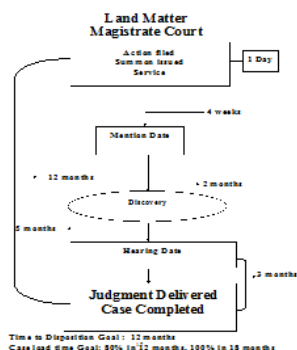
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Time Goals Suspension of Time

- Time is suspended when:
 - An interlocutory appeal is filed
 - A bench warrant has issued
 - Cases are moved to an inactive list

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Time Goals Mapping of Procedure



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Time Goals Balance

The objective of the court can be described as:

“.... 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

42

Time Goals Prioritising & Tracking

POTENTIAL CRITERIA FOR PRIORITISING CASES	
Track A: Fast Track <ol style="list-style-type: none"> 1. With predominantly urgent features 2. National significance 3. Involving children 4. Involving a particular hardship 5. Denial of human rights 6. Involving a high level interest for the community or notoriety 7. Significant public importance 8. There are high level obligations that the court must uphold 9. There is a significant amount of money involved 10. The age of the case - a backlog cases 11. As might be determined by the Case Manager 12. As might be determined by a Judge 	Track B: Normal Track <ol style="list-style-type: none"> 1. There are no compelling reasons to accelerate the case 2. Where the interests of justice according are served in proceeding in the normal time period 3. As might be determined by the Judge or Case Manager

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Time Goals Stakeholder Consultations & Commitment



The Kiribati Team consult with stakeholders e.g.: Police Prosecutors



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Time Goals Stakeholder Consultations & Commitment



The Kiribati team consult Local Lawyers

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Time Goals

Section 4 – Implementation, Monitoring & Reporting

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Time Goals Support & Technology

- Court should use technology & innovation to improve and support caseflow and reporting
- There are a variety of way in which administrative processes can support time goal reporting
- Accuracy, completeness and promptness in recording data is essential
- An efficient division of labour & teamwork between judges and court staff is crucial

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Time Goals Support

Review internal procedures to support monitoring of cases:

- ensure manual and electronic systems record the date of registration and date of disposition and time goal dates
- Note time goal dates on file covers of incoming cases
- Create routine to count time to disposition for all cases: each month, each year

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Time Goals Implementing



Senior Court Clerk Temooa of Kiribati explains changes to case flow to help meet time goals.

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Time Goals Institution

Time Goals can be instituted through:

- Rules of court
- Chief Justice Direction - *see the additional resources*
- Standing orders
- Caseflow policy

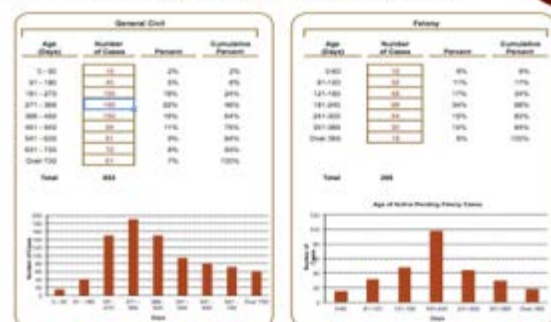
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Time Goals Monitoring Framework

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.

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Time Goals Reporting the age of the pending caseload



Time Goals



Section 5 – Checklist

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Time Goals

Checklist



For a summary checklist of steps to promulgate and implement time goal:

➤ see Chapter 5 of the Time Goals Toolkit

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Time Goals

Timeliness Checklist



PDF TIMELINESS INDICATORS CHECKLIST			
INDICATOR ONE: ESTABLISHED GOALS FOR DURATION OF PROCEEDINGS			
	Yes	No	Notes
1. 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 hearings)?			
2. Is there a commonly shared commitment to the goals?			
3. Do all cases have a date for next action?			
4. 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			
1. 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)			
2. Can your court identify cases exceeding time goals?			
3. Is case information accurate and up-to-date on the file and in the indexes?			
4. Is there a system for personnel to account if case information is not accurate and reports not completed?			
5. Is caseload and docket information available to court personnel and judges electronically and on a network, or through monthly reports?			

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Time Goals

Timeliness Checklist



INDICATOR THREE: CLEAR RESPONSIBILITY FOR MONITORING TIMELINESS			
1. Is there a registrar or chief clerk responsible and accountable for monitoring regularly the attainment of time goals and reporting of delay?			
2. 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?			
3. Are the reports used by judges to manage their individual docket?			
4. Are reports used by the Chief Justice and court leaders to help judges meet time goals?			
5. Does the court have few or no cases pending for more than the maximum length of time established by its own time goals?			
6. Are action plans developed and implemented when delay is identified?			
INDICATOR FOUR: MAINTAINING RELEVANCE			
1. Are time goals reviewed annually to ensure they are relevant?			
2. Does the court present information in Annual Reports about achieving time goals?			
3. Are stakeholders informed about the attainment of time goals and areas that require attention?			
4. Is the contributions of individuals who help reach time goals acknowledged?			

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Time Goals

Time Goals Toolkit Pilot



TEAMWORK

Time Goals Team Leader & Chief Registrar Semilota of Kiribati, presents 21 Time Goals to the Honourable Chief Justice of Kiribati, Sir John Muria before court staff.

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Time Goals



"The idea of setting time goals is good.

Before we relied on our own individual interpretation as to what was a reasonable time for a case.

Now we all know what a reasonable time is."

Tetiro M. Semilota
Chief Registrar, Republic of Kiribati
4th October 2012

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Time Goals

Kiribati Results – Pilot Project Kiribati

HIGH COURT		
Case Type	Time to Disposition Goal	Completed Time Goal
Criminal Cases	6 mths	100% in 10mths ¹
Civil	12mths	100% in 20mths ²
Land Appeals	6 mths	100% in 18mths
Criminal Appeals	6mths	100% in 12mths
Judicial Review	6mths	100% in 12mths
Family Law	6mths	100% in 6mths
MAGISTRATES COURT		
Serious Crime – Adult not in custody	6mths	80% in 4mths
Serious Crime – Adult in custody	3mths	100% in 6mths
Summary Crime – Adult not in custody	4mths	100% in 4mths
Serious Crime – Children in custody	6 weeks	80% in 2mths
Summary Crime – Children in custody	2 weeks	100% in 8 weeks
Violence Against Women	3mths	100% in 2 months
Domestic Violence	3mths	100% in 2mths ³
Civil	6mths	20% in 3 weeks
Paternity	4mths	80% in 6mths
Land	12mths	80% in 10mths
Boundary Determinations	6mths	80% in 6mths
Distribution of Monetary Estate	6 weeks	100% in 6 weeks

¹ New Time
² 100% to time goal in 12 months
³ Uncontested final orders 100% in 2 weeks



Time Goals

Success Factors from Kiribati

1. Motivation through teamwork and a common focus
 2. Court took control of listings
 3. Control of adjournments – max. 3
 4. Improved caseload monitoring
1. Cleansing of caseload – stale matters are moved along
 1. Judicial leaders manage using data
 2. Common understanding about a “reasonable time”⁴²



Time Goals

The Results

“... we feel we are taking a hundred steps forward compared to our previous system.”

Chief Registrar & Case Management Team Leader, Tetiro Mate



Time Goals

**END
THANKYOU**





Pacific Judicial Development Programme

TIME GOALS TOOLKIT

PJDP toolkits are available on: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>





Pacific Judicial Development Programme

REDUCING BACKLOG AND DELAY TOOLKIT

Revised May 2021





The information in this publication may be reproduced with suitable acknowledgement.

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.

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PJDP TOOLKITS

Introduction

The Pacific Judicial Strengthening Initiative (PJSI) was launched in June 2016 in support of developing more accessible, just, efficient and responsive court services in Pacific Island Countries (PICs). These activities follow on from the Pacific Judicial Development Program (PJDP) and endeavour to build fairer societies across the Pacific.

Toolkits

PJSI aims to continue ongoing development of courts in the region beyond the Toolkits already launched under PJDP. These Toolkits provide support to partner courts to help aid implementation of their development activities at a local level, by providing information and practical guidance. Toolkits produced to date include:

- [Access to Justice Assessment Toolkit](#)
- [Annual Court Reporting Toolkit](#)
- [Enabling Rights and Unrepresented Litigants Toolkit](#)
- [Family Violence/Youth Justice Workshops Toolkit](#)
- [Gender and Family Violence Toolkit](#)
- [Human Rights Toolkit](#)
- [Judges' Orientation Toolkit](#)
- [Judicial Complaints Handling Toolkit](#)
- [Judicial Conduct Toolkit](#)
- [Judicial Decision-making Toolkit](#)
- [Judicial Mentoring Toolkit](#)
- [Judicial Orientation Session Planning Toolkit](#)
- [National Judicial Development Committees Toolkit](#)
- [Project Management Toolkit](#)
- [Public Information Toolkit](#)
- [**Reducing Backlog and Delay Toolkit**](#)
- [Remote Court Proceedings Toolkit](#)
- [Training of Trainers](#)
- [Time Goals Toolkit](#)
- [Efficiency Toolkit](#)

These Toolkits are designed to support change by promoting the local use, management, ownership and sustainability of judicial development in PICs across the region. By developing and making available these resources, PJSI aims to build local capacity to enable partner courts to address local needs and reduce reliance on external donor and adviser support.

This updated **Reducing Backlog and Delay Toolkit** aims to provide support and guidance to courts in how to be efficient in the delivery of justice services.

Use and Support

These Toolkits are available online for the use of partner courts. We hope that partner courts will use these Toolkits as/when required. Should you need any additional assistance, please contact us at: pjsi@fedcourt.gov.au

Your feedback

We also invite partner courts to provide feedback and suggestions for continual improvement.

Dr. Livingston Armytage

Technical Director, Pacific Judicial Strengthening Initiative, May 2021

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ADDITIONAL DOCUMENTATION - <https://www.fedcourt.gov.au/pjsi/resources/toolkits/reducing-backlog-and-delay/Reducing-Backlog-and-Delay-Toolkit-AD.pdf>

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ABBREVIATIONS

IT	Information Technology
JAA	Judicial Administration Adviser
JAP	Judicial Administration Project
NJDC	National Judicial Development Committee
NC	National Co-ordinator
PIC	Pacific Island Country
PJDP	Pacific Judicial Development Programme
PJSI	Pacific Judicial Strengthening Initiative

FOREWORD BY THE CHIEF JUSTICE OF VANUATU

To ensure courts meet their fundamental obligations to administer justice in a reasonable time, I am very pleased to commend this *Reducing Backlog and Delay Toolkit*.

For courts across the Pacific meeting this obligation can be especially challenging. It is therefore with the judiciaries of the broader Pacific region in mind, that this Toolkit has been piloted in Vanuatu.

The Toolkit benefits from the input of our judges, court personnel and partners in development who had practical experience in the Vanuatu Supreme Court in backlog reduction. This experience shows us that tackling a backlog is easy to plan but, demanding to manage and acquire the necessary resources. To be successful however, backlog reduction is ultimately reliant upon a 100% focus on delayed cases by judges supported by committed and organised court personnel. All our attention must be addressed to reducing the backlog, otherwise we will not break through the cycle of circumstances that creates and sustains delay.

It is my sincere hope that this Toolkit will give you the knowledge and tools to be able to take action to address circumstances where delay might be experienced in your court and to prevent it recurring.

Vincent Lunabek
Chief Justice of Vanuatu
Member of the Programme Executive Committee of the PJDP
22 October, 2014

SECTION 1: INTRODUCTION

1.1 Objective

The objective of this Toolkit is to assist you to deliver justice in a reasonable time by providing the knowledge and tools to help with the reduction of backlog and delay.

1.2 Why is Delay a Concern?

Courts are expected and obliged to dispose of cases in a reasonable time and to conduct a fair trial in those cases that proceed to hearing. These obligations apply to the pre-trial and trial stages and up to and including, the delivery of the final written judgement.

Failure of courts to dispose of cases in a reasonable time can affect the public perception of the courts and cause citizens to lose trust if they see a court is functioning too slowly or unpredictably. This loss of trust can have significant consequences. It can lead to unrest in the community if disputes remain unresolved because the public may perceive the courts as blocking and impeding justice. For example, in some Pacific Island Countries (PIC), lengthy delay in the disposition of disputes related to land have been cited as the cause of broader community tensions that in some cases has led to violence.

In criminal law matters it is important that society sees that perpetrators are sentenced within a reasonable time and that a speedy determination of their innocence or guilt is arrived at. Otherwise, communities may be tempted to take the law into their own hands.

Additionally, prompt legal certainty is required for an economy to prosper. Delay in the ability of the court to resolve business disputes can therefore, have a negative impact on the degree to which business people are prepared to invest and carry out business. This is recognized in the World Bank [Doing Business](#) rankings, which measure the ease of doing business in regulatory environments globally, including Pacific Island Countries. Two out of ten indicators in the World Bank [Doing Business](#) rankings relate to the time it takes court to resolve contractual disputes and insolvency matters.

“Inefficient court systems illustrated by possible extended court litigation act as a disincentive for large investments to stream in. More importantly, the nexus between an effective judiciary and genuine development is recognized. It has been cited that inconsistencies in the decision making, along with courts saddled with large case backlogs, contribute to the erosion of individual and property rights, stifling private sector growth, and, in some cases, even violating human rights.”ⁱ

From these perspectives, avoiding excessive time for court proceedings is of central concern to citizens of PICs, especially if those whose courts are experiencing significant delays and backlogs in case processing.

“It is recognized by the courts that the resolution of disputes serves the public as a whole, not merely the parties to the proceedings.”ⁱⁱ

1.3 Methodology

Combining knowledge from a pilot project in the Supreme Court of Vanuatu and internationally accepted concepts of caseloadⁱⁱⁱ and case management, the methodology used in this Toolkit is specifically tailored for the courts of the Pacific Judicial Development Programme (PJDP).

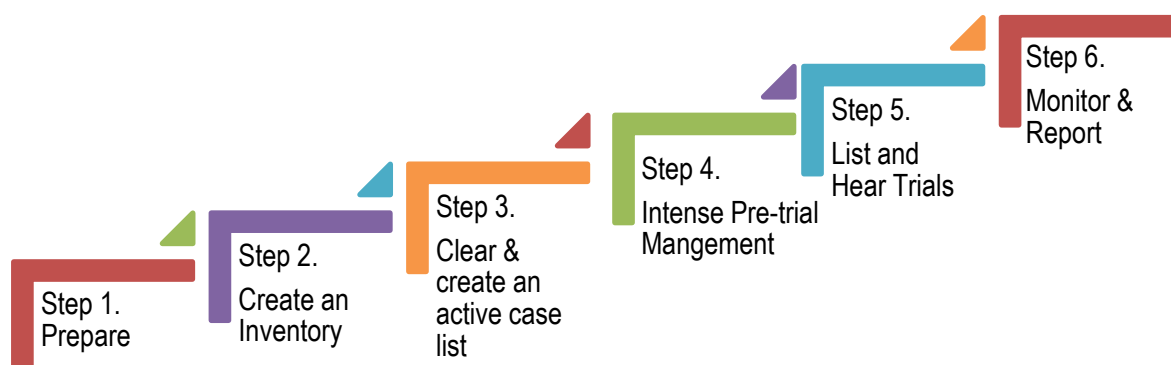
It is acknowledged that court delay in the Pacific context, is an issue made particularly complex because of geographic, logistical, resourcing and the variety of approaches used to resolving land disputes. Recognising this, the Toolkit places particular focus on delay reduction methods that do not necessarily seek the use of additional resource and that are suitable for small multiple jurisdiction courts.

The methodology aims to address two issues.

1. *Backlog reduction – a special effort to bring to completion cases older than a selected age. This is the focus of Section 4 of this Toolkit.*
2. *Delay prevention – to eliminate unacceptable delay in the flow of casework and to prevent a backlog from recurring. Section 5 presents additional methods for reducing delay to be used in combination with the tools and techniques presented in Section 4.*

The backlog and delay reduction method presented in the Section 4 of this Toolkit present a straightforward six -phase methodology as represented in Tool 1 below.

Tool 1: Six-Step Backlog Reduction Methodology



1.4 The Toolkit

This *Backlog and Delay Reduction Toolkit* comprises of two parts. Firstly this handbook presents the Six-Phase Strategy for Backlog Reduction. It is accompanied by an Additional Resources Toolkit, which contains examples, precedents, templates and checklists to be used in combination with the principal Toolkit.

The Toolkit is designed as a stand-alone resource or it can be used in combination with other PJDP Toolkits and resources. The companion Toolkits available on the PJSI website are:

1. [Efficiency Toolkit](#) – *this Toolkit enables courts to thoroughly assess their efficiency in the management and disposal of cases in keeping with their obligation to ensure justice is timely and fair.*
2. [Time Goals](#) – *time goals (or standards) are the cornerstone of effective caseload management and delay prevention. This Toolkit is highly recommended, as it will enable*

your court to develop and communicate time goals and to monitor and report on time related performance and help prevent delay.

3. [Managing Projects Toolkit](#) – *this Toolkit enable courts to plan, organise and manage projects toward successful completion, including backlog reduction projects.*
4. [Trainer's Toolkit: Designing, Delivering and Evaluating Training Programs](#) – *this Toolkit could provide additional assistance in the preparation, facilitation and evaluation of a Backlog and Delay Reduction Workshop.*

SECTION 2: DELAY

2.1 Defining Delay

When considering delay reduction in this Toolkit, it is concerned with reducing unacceptable delay in the *processing* of cases in the active pending caseload.

A definition of “unacceptable delay” in this context can be:

“The time, other than that required to properly obtain, present and weigh the evidence, law and arguments^{iv}”.

2.2 Timeliness Obligations

The speed at which courts process cases requires the balancing of two concepts. The first concept is:

Justice delayed is justice denied

This adage reflects the perception that if a dispute takes too long, that the outcome may be unjust. To address this, it is common that modern rules of procedure and practice build in a commitment to timely case disposition. For example, the Rules of Civil Procedure in the Supreme Court of Samoa include provisions that: “*These rules shall be so construed as to secure the just, **speedy** and inexpensive determination of any proceedings.*”^v

The second concept is:

The court is required to ensure the protection of individual legal rights.

Court rules and procedures are generally structured to ensure the protection of individual rights that guarantee due process and equal protection to all those who have business before the courts. For these reasons court processes are sometimes lengthy. This can be called “necessary delay” or “acceptable delay”.

In balancing these concepts and in recognizing that each case is individual, the objective of the court can be described as ensuring:

“... The timeliness of judicial proceedings, which means cases are managed and then disposed in due time, without undue delays.”^{vi}

The Right to a Fair Trial Without Undue Delay

Article 14 of the *International Covenant on Civil and Political Rights*^{vii} establishes three important norms for the conduct of both civil and criminal trials to which signatory countries are bound to comply. These norms are:

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

The [*Bangalore Principles of Judicial Conduct 2002*](#)^{viii} sets out core principles and values for judicial conduct applicable for all cultures and legal systems. Value 6 concerns the Competence and Diligence of judicial officers and states:

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

Some constitutions, legislation and [modern case management procedures](#) preserve the concept of a speedy trial and other rights that support a fair trial without delay.

Experience demonstrates however, it is not only the law or rules themselves that determine if cases can be processed without delay. Ultimately the ability of the court to manage time, resources and people^{ix} in a disciplined and consistent way determines how efficiently a case can be completed. Therefore, both judiciary leaders and court managers are obliged to work together to ensure cases in the court keep moving toward finalisation.

2.3 Common Sources of Delay

The pilot project in the Vanuatu Supreme Court and prior research conducted in PICs^x identified multiple causes of delay. These can be loosely categorized as *case specific* and *system specific*^{xi}. Some of these sources are within the court's direct control and should be addressed by the court. Other sources of delay are external to the court e.g.: an undisciplined legal profession where the court has limitations in the way it can influence performance.

Some of the *system specific* sources of delay are:

1. *Absence of time standards or goals in case management practices*
2. *Lawyers have a low sense of obligation to the court and do not adequately prepare*
3. *Lawyers have too much influence over scheduling*
4. *Absence of a policy that every case must always have a date assigned for a certain court, chamber or administrative purpose.*
5. *A lack of quality information upon which to monitor and manage the caseload*
6. *See Resource One in the Additional Resources to this Toolkit for more system specific sources of delay.*

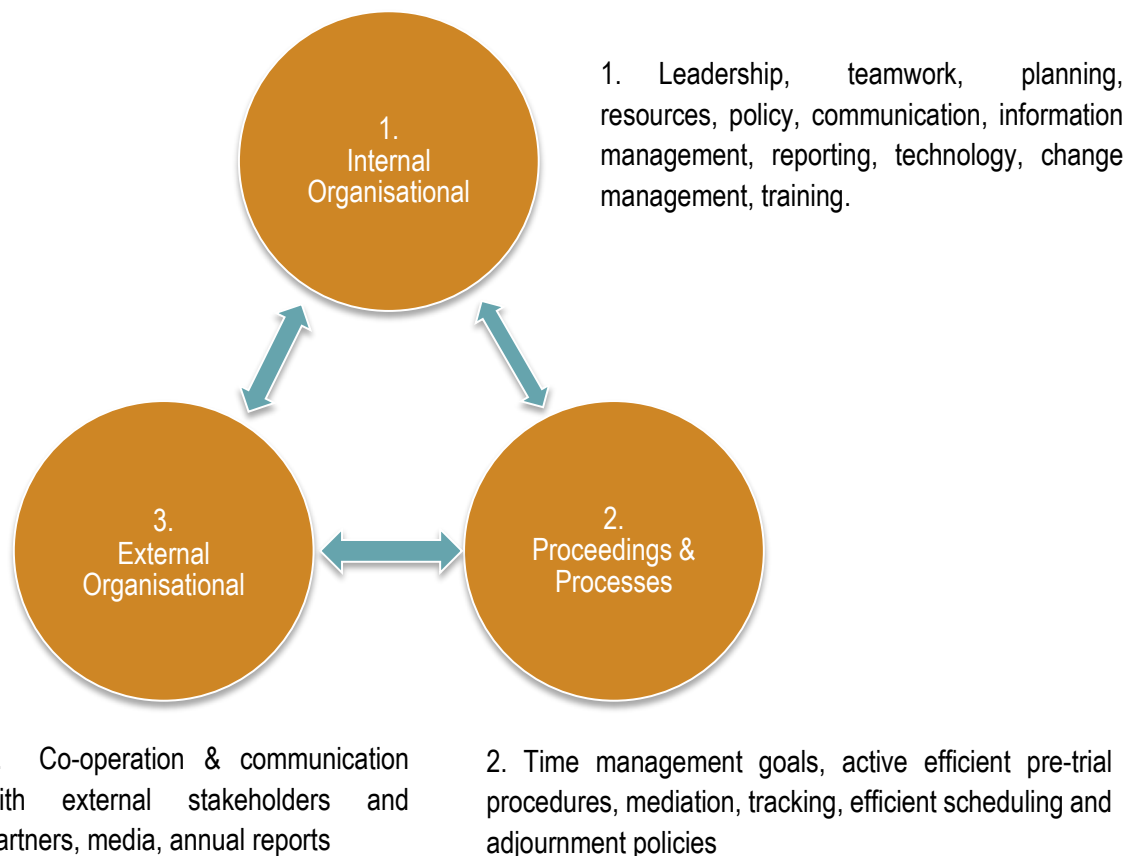
Some *case specific* sources of delay:

1. *Insufficient active pre-trial management by judges*
2. *Late or absent parties or witnesses*
3. *Excessive adjournments (continuances)*
4. *Lawyer scheduling conflicts*
5. *See Resource One in the Additional Resources to this Toolkit for more case specific sources of delay.*

2.4 Addressing Backlog & Delay

Delay can occur at any point in the case-flow and adjudicative process. Therefore, both judges and court personnel need to work together to identify delay and keep cases moving. Maintaining timeliness and reducing backlog calls also involves stakeholders external to the court e.g.: lawyers, police, prosecutors and defenders. Therefore, the Six Steps to Backlog Reduction call for measures to be taken in three areas of court operation^{xii}: as depicted in Diagram 1 below.

Diagram 1: Interacting Measures for Backlog & Delay Reduction



Resolving a backlog situation needs to be led from the highest levels of the judiciary and resolved with a concentrated project team effort. Recognising and accepting that there is a problem with delay is an important first step to improving. This acceptance permits change to happen within and outside the court.

Whilst the court does not have direct control over the work of other agencies, the setting and reaching of high levels of performance by the courts is a powerful role model and often a lever for change across the sector.

Courts are generally capable of addressing delay by focusing on the following measures:

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

There is a perception in some courts of the Pacific that appears to generally accept the existence of a backlog as inevitable, normal or impossible to address. Whilst there are intractable problems that prevent some cases progressing, e.g.: respondents removing themselves from the jurisdiction, all or some of these measures can be employed to ensure the bulk of cases progress as promptly as possible. Experience is that these measures have been successful in helping move very old and complex cases, including land matters in the Island Court of Vanuatu.

SECTION 3: IDENTIFYING BACKLOG

3.1 What does Backlog Mean

A **backlog** can be defined as:

Those cases pending that exceed (are older than) the time goals applicable to that category of case

Where a court does not have stated time goals, court leaders should nominate the age of cases considered to be exceeding an acceptable age. These cases will be actively targeted to determine their status and for movement toward completion.

“Backlog is a general term. We need to ensure we can identify the different kinds of backlogs. We have now information and data and we have questions to answer and plans to make.”

Chief Justice Lunabek, Vanuatu. 12 June 2014

3.2 Framework of Timeliness Indicators

Courts require indicators and standards through which delay and backlog can be identified and performance measured. These indicators include clear time frames and standards and are the subject of the PJDP [Time Goals](#) Toolkit.

For partner courts there are the Top 8 Pacific Core Court Indicators which provides a performance management framework which can help you identify backlog and measure and monitor delay. These are presented in Table 1 below.

The use of this framework in a Quarterly Report format is a useful tool for court leaders, judges and registry personnel to help consistently draw attention to and give priority to these outcome and delay prevention. An example of a Quarterly Report is presented in the Additional Materials to this Toolkit at Resource Two.



Table 1: Monitoring Framework with Top 8 Pacific Core Court Indicators

Outcome	Indicator
Overall manageability of the workload	1. Clearance Rate - Used to identify if the court is accumulating cases in excess of disposal capacity the number of outgoing cases as a percentage of the number of incoming cases. Rates over 100% are usually desirable.
Timely judgments	2. Reserve Judgments - Number of reserve judgments outstanding, noting especially those over three months
Age Distribution of pending caseload	3. 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 per case type. The target is within TIME GOALS or other expectations. A report which list of cases exceeding time goals in pending caseload should be made for the Chief Justice and individual judges
Productivity, efficiency and delay management	4. Average Age to Disposal - The average time it takes to dispose of a case in days.
Continuous case progression in delivery of timely justice	5. Pending Cases Per Stage - To identify what stage the cases have progressed to, to highlight where delay might be
Efficient use of resources to maintain consistent levels of judicial services	6. Number of Cases Disposed per Judge - The number and percentage of disposed cases per Judicial Officer in a year. Target is consistency and within expectations
Effective forecasting to ensure timely delivery of justice	7. Pending (to) Disposal Ration – To help approximate how long it will take the court to deal with the current pending caseload based on recent performance
Efficiency and delay prevention	8. Attendance rate (sometimes called adjournment rate) – How many times parties attend a court proceeding, on average, prior to disposal. The target is usually the lower the better.

For a more detailed explanation of some of these indicators, please see Additional Resources to this Toolkit at Resource Three.

3.3 Other Indicators

Local and international organisations often report on the performance of judiciaries, or on issues that relate to it. These reports are secondary sources of information that can be used to identify priorities and assess the public's perception of the court.



Reports from organizations like [Transparency International](#) who publish a global corruption index, Amnesty International, Human Rights Watch or the ombudsman should be monitored so that you are informed about matters of public interest relating to your court. For example, the Supreme Court of Vanuatu used a Transparency International report that made commentary about the performance of its court as one of the levers to help acquire more resources to address backlog issues.

Other important reports include the World Bank's [Doing Business](#) reports, or publications of the [United Nations Office on Drugs and Crime](#) and country reports of the [United Nations Development Programme](#).

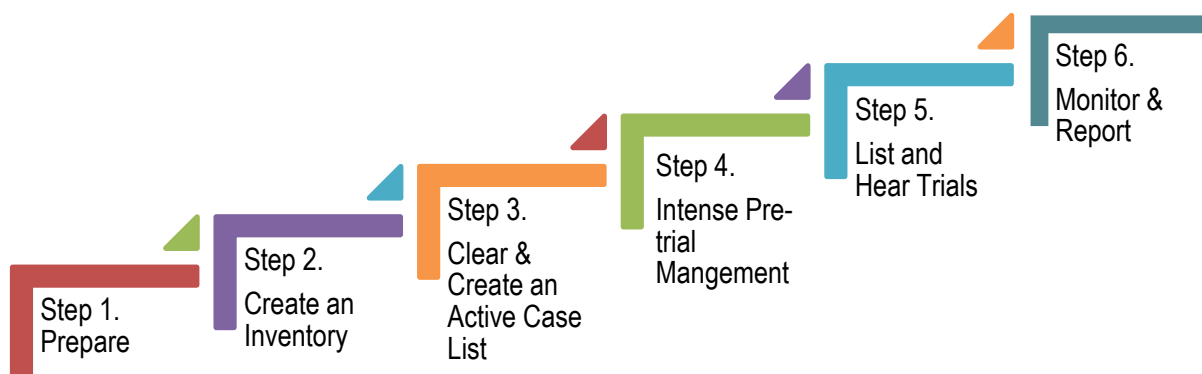
Apart from statistical data and written reports, court leaders should be aware of 'soft' indicators of performance or delay problems such as:

1. *An absence of reports about the number and age of cases*
2. *Reluctance of judges to allow access to case files and information*
3. *A sense there are aged cases but no one talks about it*
4. *Written and oral complaints from parties and lawyers*
5. *Demotivated judges and court personnel*
6. *A low level of public trust and confidence*
7. *Malicious damage to court property*
8. *Negative media attention.*

SECTION 4: HOW TO REDUCE A BACKLOG

There are common elements of successful backlog reduction programs. Building on these common elements, this section provides you with the practical knowledge and strategies to reduce backlogged cases in six-steps that are designed especially for courts in the Pacific. Additional strategies to reduce delay will be discussed in Section 5.

Diagram 2: Implementing the Six-Step Backlog Reduction Methodology



Step 1. Prepare

1.1 Leadership

The capacity of the court to improve its performance and be accountable is dependent upon the ability of its leaders to define concrete, measureable goals and plans for pursuing them. Merely aiming to improve performance or reduce delay without defining specific targets is unlikely to accomplish real change.

The role of the Chief Justice is therefore, pivotal in terms of leadership, goal setting, planning and role modelling by personally helping to reduce the backlog. To do this, it is important that quality staff support the Chief Justice.

Empowering personnel to take action is particularly important, especially in the cultural contexts of the Pacific where court personnel sometimes feel they must have the direction of a judge or leader before they take independent action. This means court leaders need to be particularly energetic in overseeing plans, training and enabling team members and stakeholders to do what is necessary to reduce delay.

Guidelines for the general roles of stakeholders are included in Additional Resources Toolkit at Resource Four.

Action: Leaders set goals and make plans

1.2 Planning, Teamwork and Management

Courts with a problematic backlog should approach the situation systematically. This includes establishing a team and preparing a Backlog Reduction Plan. Using this plan, court leaders and the team can follow and

monitor implementation and progress and possibly use it to procure additional resources. General features of the written backlog reduction plan are presented below.

Features of a Backlog Reduction Plan:

1. *Goals and Objectives*
2. *Description of the backlog (using statistics and charts)*
3. *Causes of the backlog and proposals to address them*
4. *Priorities for reduction*
5. *Targets for reduction*
6. *Strategies for achieving targets: internal and external*
7. *Resourcing*
8. *Reporting and Monitoring.*

The plan should integrate strategies from this Toolkit that are relevant to your circumstances and be distributed throughout the court for feedback.

Tackling a backlog can involve addressing problems and constraints that have faced a court for years. The problems can be legislative, resource based, technology, skilled based and often involve multiple agencies. A structured project management approach is therefore helpful in executing the plan. This team should include personnel responsible for information technology. The PJDP *Project Management Toolkit* can guide court leaders in the practical aspects of managing projects.

Action: Establish a backlog reduction team, create a plan and project manage

1.3 Consultation

Stakeholder consultations are necessary to find out what problems stakeholders experience in doing business with the court. These consultations should be internal with judges and court personnel and external with lawyers and representatives of participating agencies. This is fundamental to achieving sustainable improvements.

Depending on what is appropriate for your court, stakeholders can be consulted either separately or together into a focus group. This will allow for a more targeted and thoughtful discussion to occur on topics that can be sometimes sensitive. It is important in focus groups to discuss objectively delay related issues. It is not appropriate to discuss the performance of individuals, or individual cases.

During the Vanuatu Pilot Project the court received valuable input from judges and lawyers during consultation workshops. Using an external facilitator, the workshop's constructive dialogue set the tone for continued co-operation and dialogue about delay reduction between the court and the law society.

The court may also consider conducting a survey to gather objective information about user experiences and satisfaction with the court around issues of timeliness.

Action: Consult stakeholders

1.4 Communication

All stakeholders need to know what is happening and feel part of the team effort. Judges need to receive information about the age profiles of cases in their dockets and those that are exceeding time goals. Likewise all judges should receive information about the overall performance of the court on a regular basis. With this information judges can discuss progress with each other and with the Chief Justice.

During the Pilot Project judges continued to meet once per week over lunch at the invitation of the Chief Justice, to discuss the backlog project and other management matters of the court. Regular staff meetings with court personnel were held to discuss progress, problems and solutions. These meetings helped motivate and educate personnel to ensure they understood new concepts and permitted problems to be discussed and resolved swiftly.

A structured and regular meeting schedule with lawyers is encouraged to ensure the views of the legal profession are heard. The *PJDP Public Information Toolkit* can guide court leaders in relation to managing and disseminating court information to the public and legal profession.

Action: Communicate consistently

1.5 Electronic Case-flow Management

Technology supports case-flow by providing court management with information and statistics about performance. This enables the effective allocation of resources to maximise the quality of justice and court services. In addition, technology supports efficient case processing and administrative accuracy through the provision of instant information, document production, sound recording and the increasing use of on-line functions such as electronic filing and electronic payment of fees.

It is emphasised however, that automated or electronic case management systems are not a necessary prerequisite to backlog reduction. Backlog reduction can commence and be managed successfully without using technology at all. In fact, there are advantages to reducing backlogs prior to the introduction of automated systems. For example, clearing cases that should have been closed already means that the court will not expend its resources on entering data about cases that will ultimately be closed.

Where courts do use technology, such as the PJSI Case Tracker, Excel or a more comprehensive automated information management systems they are encouraged to use them to the fullest.

It is extremely important therefore, that courts place a high priority on ensuring that data is captured accurately and kept up to date so that the reports produced are accurate and reliable. This may involve providing additional training and support to court and registry personnel.

Action: Maximise the use of existing technology

1.6 Training

Training and education is required to ensure everyone understands the requirements for timeliness, processes of delay and backlog reduction and their individual roles in the project. With knowledge staff will have more confidence and be motivated to commit and support activities.

Use this Toolkit and the Facilitator Package in Resource Five of the Additional Resources for assistance with conducting training and workshops about Reducing Backlog and Delay.

Action: Educate and train judges and court personnel

Step 2. Create an Inventory and Conduct an Audit

2.1 What is an inventory?

An inventory is simply a list of every case that is recorded as open and not yet closed. An inventory is carried out to bring order and insight into the caseload by providing a profile of the case types, age, status and next actions required amongst other data. Using the same data, the inventory can be arranged to show the 'active list' the 'inactive list' and those cases that should be closed. (See 3.1 for more explanation about the 'active list'.) With these lists, an audit of pending cases can be conducted.

It may seem a mundane task, however conducting an inventory and audit is fundamental to good caseload management and is essential 'house-keeping'. Everyone needs to know which cases are open and require attention in the court and, be aware of the systems for monitoring and managing them.

Tool 2: Steps for Conducting an Inventory and Audit

STEPS FOR CONDUCTING AN INVENTORY	
1. Select Case Types	<ul style="list-style-type: none"> It is suggested to include all cases
2. Make a master inventory according to case type and age and record:	<ul style="list-style-type: none"> i. docket judge ii. case number iii. parties (note gender where possible) iv. case title v. date filed vi. stage of case vii. last event viii. next scheduled event and date ix. reason for delay (if easily ascertainable) x. contact information for the parties
3. Estimate and record the complexity of the case ~ simple, standard, complex	
4. Classify if active or inactive ~ if inactive why?	
5. Determine action needed to resolve the case if ascertainable	
6. Identify the personnel to conduct the inventory analysis. For most PIC's it is recommended that each judge and secretary conduct the inventory.	
7. Where docket judges are not involved, personnel will need to be trained and supervised and seek agreement of the docket judge before examining files	
8. Review indexes/registers starting with the oldest open case and identify all undisposed cases for entry on the master inventory list	
9. Systematically find each pending case file and cross-reference it to the list and update records where necessary.	
10. Analyse the results	

Completing an inventory and audit can be time consuming and disruptive to normal operations and some judges may be uncomfortable with court personnel inspecting their files. It is important therefore, to inform all judges and court personnel of the reason for the inventory, what information is being captured and what will be done with the results of the inventory. Care is required to ensure files remain intact and properly returned to their original place.

An example of a Backlog Reduction Case Inventory list in the Additional Resource Materials to this Toolkit at Resource Six. There is a simple inventory template for smaller courts and a more elaborate template for courts with a larger and more complex caseload.

Tip: Review the inventory against each case file each year as a quality and delay check.

Completing an inventory provides an opportunity for the court to carry out a quality check of its files, processes and records because each file must be accounted for. By auditing each pending file against the court indexes, the court can be confident that its records are accurate and reliable. It also helps to keep the files in an orderly fashion, reducing the time spent on locating 'lost' files.

Action: Conduct an inventory

2.2 Analyse the Results

The results of the inventory and audit will show you clearly the age structure of the caseload according to case types. Using this information you will clearly see which cases are backlog cases and their stage of completion and those cases, which should be prioritised.

These physical case files should be marked with a sticker or marking to permit the immediate identification of them as backlog cases.

A paramount principle of case-flow management is that every case must have a date for a future activity or procedural event. Importantly, the audit will quickly show those cases that have no date for a future procedural event. These cases should be examined closely and a future event decided and set.

Tip: *Ensure all cases have a date for a court event. This will keep all cases moving towards disposition.*

Action: Analyse inventory results, determine priorities and ensure each case has a date for a future event

Step 3. Clear & Create an Active Case List

Clearing the caseload refers to a process of removing those cases which have procedural events warranting dismissal or otherwise warranting removal from the 'active pending' caseload.

Clearing the caseload is sometimes referred to as 'decongestion', 'purging', achieving 'quick wins' or described as "picking low hanging fruit".

The objective is to identify those cases that may be:

- *Dismissed with or without prejudice*
- *Dealt with by affidavit evidence*
- *Closed and archived*
- *Suitable for referral to mediation*
- *Suitable for plea*
- *That should be moved out of the 'active' list*

These cases can present as 'in abeyance', 'stale', 'dead', 'in suspension', 'hibernating', or 'inactive' cases and be: adjourned sine die, warrants of arrest, no defence filed and have no future date for listing.

Clearing cases results in the court achieving a swift reduction in the number of pending cases for those that require little effort to complete or that require movement out of the 'active pending' caseload (see later for

more discussion about the ‘active pending’ caseload). By “cleaning” these case from the caseload the court is able to concentrate more on those cases that do require adjudication.

There are common questions that can be reviewed to determine if the case can be cleared such as:

1. *Does the court have jurisdiction?*
2. *Are the summonses served in compliance with procedure?*
3. *Do pleadings comply with the technical rules on the form and substance of initial pleadings?*
4. *Do filings comply with the prescriptive period for filing a case?*
5. *Is there compliance with speedy trial or other time related rules?*
6. *Can the case be resolved on the basis of affidavits?*
7. *Is the case suitable for referral to mediation?*
8. *Is the matter suitable for plea bargain?*
9. *Have pre-trial procedures been complied with e.g.: filing of pre-trial briefs?*
10. *Is there a failure to prosecute by the plaintiff?*

By examining the answers to these types of questions, the court can decide an appropriate course for each individual case.

Non-compliance with procedural requirements may justify the court to issue an order for dismissal of its own volition. In others cases there may still be a need to file a motion to dismiss. Where a judge is contemplating the dismissal of a case, in most circumstances a letter to the parties informing them of the court’s intention to dismiss should be sent. Draft letters are attached in the Additional Resources to this Toolkit at Resource Seven.

Through the process of decongestion the court can expect to clear a significant number of cases from its caseload. In the Vanuatu Pilot Project over 20% of pending cases were cleared.

Action: Clean up and clear the ‘active pending’ caseload

3.1 “Active” Pending Caseload

At the end of the decongestion process the current pending caseload should consist of *active* cases only. These will be current cases and those that comprise the backlog. *Sine Die* adjournment, adjourned generally, warrant and enforcement matters should not usually form part of the current caseload of cases awaiting adjudication. For cases that are unable to progress yet not appropriate to close and archive, you can create an “inactive list”.

Tip: *The ‘active’ caseload should consist only of those cases that are being prosecuted and capable of progressing.*

Enforcement matters in the current pending caseload can distort statistics if the case is identified as ‘re-opened’ upon receipt of an application for enforcement. To avoid this, civil and criminal enforcement applications can be recorded and managed as ‘new’ proceedings under a special case category of enforcements. For more on how to record enforcement proceedings, please see the Resources at Resource Eight to this Toolkit.

Action: Create an active and inactive pending caseload list

3.2 Reserved Judgments

It is not uncommon for courts to experience delays in the writing of reserved judgments. It is important that the completion of reserved judgments be given a high priority in backlog reduction, as they are commonly the cases that are sensitive, complex and difficult. Delay in judgment writing therefore, tends to exacerbate tensions and can demoralise not only the trial judge, but also all judges and personnel as they feel unable to assist.

Once delayed judgments are identified in the inventory, the Chief Justice should discuss with the individual judge involved the reasons for the delay and together, prepare a plan to ensure that the reserved judgment is completed as soon as possible. Solutions may be to schedule out of court time, to reduce case allocations, allocate a law clerk to assist.

Judges may also call status conferences, as it may be that the parties no longer require the judgment or only require part of the judgment or an abridged judgment. Through a status conference the judge is able to better allocate their efforts and priorities for the clearing of reserved judgments.

To ensure the principles of impartiality and judicial independence are upheld, the merits of the case and aspects related to the decision must not be discussed.

To prevent an accumulation of reserved judgments recurring, time tolerances and time goals should be agreed for the production of reserved judgments and in addition, include an agreement on the consequences of not producing judgments on time.

Using the Indicators and Quarterly Reporting system mentioned in Section 3 above, court leaders can monitor overdue reserve judgments systematically and regularly.

Tip: Early writing is essential. Set aside days at the end of the trial for judgment writing and remember that the appeal mechanism is there to assure quality.

Judge of the Vanuatu
Supreme Court

Action: Give priority to the completion of reserved judgments

Step 4. Intense Pre-trial Management

Ensuring timeliness and preventing delay requires consequent case management and case flow management practices, especially in pre-trial phases. Experience in the pilot project and other PIC's suggests that courts could generally increase timeliness and efficiency by:

1. *Placing a greater focus on pre-trial procedures to identify and narrow issues in dispute as early as possible through status conferences (see below)*
2. *Ascertaining as early as possible the degree of difficult or complexity of the issues in dispute*
3. *Transparently and consistently differentiating cases based upon their urgency, complexity, simplicity and other factors. Differentiation permits cases to be tracked or streamed through different processes. For example, simple cases for resolution on the basis of affidavits might be channeled separately to those that are matters for full trial.*
4. *Setting time tables that ensure cases are brought to trial as swiftly as possible*
5. *Ensuring each case in the active pending caseload has a date for a future event or procedure*

6. *Assigning a managing judge to manage and co-ordinate the caseload. For example, this may be a role for a Deputy Chief Justice in larger courts*
7. *Expanding the use of registrars and masters to 'triage' or 'screen' cases to determine their priority and level of compliance. Their role could also be to monitor timeliness, hear Taxation of Costs and to close cases that the parties are no longer interested in pursuing*
8. *Shifting burden to the parties to determine areas in dispute in the taxation of costs.*

These suggestions should be considered alongside for example, the comprehensive case management guidelines in the [Case Management Handbook](#) of the Federal Court of Australia and the following.



4.1 Status Conferences

Where the current status of a case is uncertain the case can be listed for a status conference (sometimes called a case evaluation conference) before a judge (or registrar) to determine whether the case is proceeding and what is required for the case to be ready for trial, or if the case is suitable for referral to Alternative Dispute Resolution.

At the status conference the judge should require the parties to provide information in relation to the following:

1. *Has the legal representative been in direct contact with their client recently?*
2. *Does the prosecuting party wish to proceed?*
3. *Does the opposing party wish to defend the action?*
4. *Has a party breaching procedure shown good cause why the matter should not be dismissed?*
5. *What issues remain in dispute?*
6. *Are the pleadings and particulars complete?*
7. *Are all the parties joined?*
8. *Is discovery and inspection complete?*
9. *Are all outstanding applications complete and is the matter ready for trial?*
10. *Is mediation needed?*
11. *A plan or schedule to bring the matter to an expeditious resolution*

The calendaring of status conferences can be done in bulk on one or more days dedicated to calling over backlog cases. It is effective to list all cases belonging to each lawyer together so the lawyer does not have to return multiple times to court or wait around too long.

During status conferences, judges and Registrars should require parties to confer in relation to the above matters and to explore settlement.

For those cases that will be proceeding to pre-trial and trial phases, the judge can make an individual case schedule for completion. This schedule will aid the judge, parties and court in efforts to bring the case to closure and is particularly effective for large and complex cases.

The case should only be listed for trial if the interlocutory steps have been completed and the judge or registrar considers that the matter is ready for trial.

Action: Hold status conferences and create individual case resolution schedules

4.2 Alternative Dispute Resolution

Some courts in the Pacific have systems in place providing opportunities for court supported mediation, judicial conferencing^{xiii}, diversion to rehabilitative services and referral to customary dispute resolution structures. Where these options are available, full use of should be made of these programmes for backlog cases to encourage settlement, withdrawal of the complaint or clarification of the issues in dispute. A time limit should be set for this process so that it does not contribute to more delay.

Action: Maximise the use of alternative dispute resolution

4.3 Specific Measures for Land Proceedings

Courts in the Pacific experience particular and serious problems in relation to backlog and delay in the resolution of land related disputes. This delay compounds the complexity of cases as parties move overseas, logging may occur and other circumstances change. In some cases, senior elders have most sadly passed away without realising the completion of their cases.

Whilst the preparation and prosecution of land cases remains the primary responsibility of the parties, experience of the PJDP judicial administration project reveals that delay in land matters is not inevitable and that the bulk of cases can be concluded promptly. At the same time, it is acknowledged that some cases require more time, particularly where legislative requirements restrict the judge's options to bring cases to resolution and where resourcing does not match demand.

Courts such as the Island Court and Supreme Court in Vanuatu and Traditional Rights Court in the Marshall Islands, have used with success some of the following practices to help ensure the efficient flow of land cases:

1. *Ensuring the court is in control*
2. *Allocating land cases only to national judges knowledgeable in custom*
3. *Early identification and differentiation of simple and complex cases*
4. *Early, consistent and strict pre-trial preparation*
5. *Procedures designed to reduce the size of claims and to refine the range of issues in dispute*
6. *Improved pre-trial notices that clearly list out the courts requirements (see Additional Resources)*
7. *That no cases are dormant i.e.: all cases are kept moving by allocating a date for a future event*
8. *An emphasis on encouraging and providing parties opportunities to settle*
9. *Introduction of an adjournment policy*
10. *The minimal tolerance for the vacation of trial dates*
11. *Selective use of sanctions (discussed in Section 5)*
12. *Greater attention to calendaring to ensure the court is not left idle*
13. *Listing of less complex trials with local parties trials as 'back up' trials so the court is not left idle if the number one trial does not proceed*
14. *Greater use of reporting*
15. *Increased reporting by Land Courts for the information of the Chief Justice.*

See Resource Nine in the Additional Resources to this Toolkit for an example of the reporting, adjournment and dismissal provisions used by the Māori Land Court of New Zealand.

Action: Intensively pre-trial manage land matters

4.4 Specific Approaches for Prioritising Land and Other Proceedings

For citizens to have confidence in the court it must be perceived to be fair not only in terms of how a case is adjudicated, but also as to how cases are prioritised for adjudication. This is particularly important in land matters where it could be easily perceived that some cases are unduly favoured for prioritisation over others. It is therefore, important that there be a transparent and consistent approach for the prioritisation of backlog cases and land cases in particular.

Some of the criteria to be considered include:

1. *Age of the case*
2. *The degree of public interest*
3. *Need to stop conflict and keep the peace*
4. *Significance of the proposed future activity*
5. *Whether the resolution has a precedent value or direct impact on other cases*
6. *The attitudes of parties that might cause the speedier resolution of other cases*
7. *The views, needs and hardship of the parties*
8. *The level of preparedness, exhaustion of settlement options and investment of resources*
9. *The high potential benefit for claimants or respondents e.g.: amount of royalties involved*
10. *Concern that knowledgeable elders or important parties might pass away*
11. *Whether it relates to needy housing and public infrastructure development*
12. *The merits to prioritise amongst all pending cases.*

For cases not related to land, the court might prioritise cases considering:

1. *Pre trial detainees*
2. *Cases involving youth or children*
3. *Nature of restraining orders and injunctive applications*
4. *Denial of human rights.*

These criteria are not presented in any particular order and they do not undermine the role or independence or discretion of the individual docket judge. Once the appropriate criteria for your jurisdiction are agreed as a permanent policy, the court should inform stakeholders and citizens of the prioritisation system and post the criteria publicly.

Action: Develop a transparent and consistent approach for the prioritisation of backlog cases, and land cases in particular

4.5 Resourcing

Having conducted the inventory, cleansed the caseload and undertaken status conferences, you will know with more precision the number, complexity and size of the matters that require judges to hear trials. You will therefore, be better able at this point to estimate the resources required to resolve the remaining matters for adjudication. It is acknowledged that accessing resources and experienced judges is a common challenge for Pacific Island Courts. The active leadership of the Chief Justice in the acquisition and management of judicial and other resources is therefore, vital.

Depending on the profile of the backlog, you might consider using some of the following strategies to organise the disposal of the backlog.

1. *Keep backlog cases with the docket judge. This has the advantage that the docket judge is already familiar with the matter*
2. *Allocate all backlog cases to one judge assigned purely for backlog matters. This has the advantage that new cases do not mix with backlog cases and risking new cases being delayed*
3. *Engage and use a member of the local legal profession to sit as a judge to free a sitting judge to deal with backlog matters. This has the advantage of developing local talent for judicial appointments*
4. *Procure short-term temporary judicial assistance from other jurisdictions of the Pacific. These “flying squads” are generally effective, however care is required to ensure that cases do not become part-heard and judges have to return to complete cases*
5. *Acquire long-term temporary international judicial assistance*
6. *Use retired judges*
7. *Promote temporarily judicial officers from lower courts*
8. *Extend the powers of Registrars and Masters to relieve judges of administrative duties and quasi judicial responsibilities*
9. *Extend court sitting times to include evenings and weekends*
10. *Acquire additional court-rooms by using rooms of other government departments or rent office space*
11. *Dedicate selected court personnel to prepare, manage, organize and monitor backlog cases in teams*
12. *Acquire legal assistance by offering internships for law students.*

Tip: Ensure that newly registered cases do not go to the end of the backlog list. New cases should not become the backlog of tomorrow instead.

Action: Re-organise existing resources or acquire additional resources to focus on backlog cases

Step 5. List and Hear Trials

5.1 Credible Trial Dates

Effective case-flow requires four steps to provide firm and credible trial dates^{xiv}.

1. **Maximise pre-trial dispositions** before cases are set for trial
2. **Maximise court-sitting time.** Realising that a portion of cases usually settle or adjourn, the Court should list a realistic number of trials that avoid too few cases being listed and too many cases being listed and not reached. To do this, some courts aim to have the court sitting on a scheduled sitting day for at least five hours per day.^{xv}

There is no one optimum formula for efficient calendaring as each court is unique. Analysing the outcomes of cases over a period of time will give you a good indication of what is happening in reality with respect to listed trials. This information can be used to inform scheduling policies.

3. **Create some backup judge capacity in larger courts.** *Despite the widespread use of the individual docket system, courts can put in place a contingency plan for when a judge has two trials ready to proceed on one day. This will enable the court to maximise the number of matters listed for trial.*
4. **Publish an adjournment policy** *to limit adjournments without good cause. A published adjournment policy will help break the cycles of adjournments that exist in some PICs. A written policy will also help to eliminate late applications for the vacation of trial dates. As some courts experience high rates of adjournment due to medical illness, the policy could clearly state that the court will require a doctors' certificate and that if necessary, require the doctor to appear with costs against the lawyer.*

For a draft adjournment policy please see Resource Ten to this Toolkit.

For a presentation of how adjournments contribute to the cycle of delay, see Resource Eleven.

Action: Set firm trial dates and have an adjournment policy

5.2 Listing Matters for Trial

The judge (or registrar) can raise with parties the matters set out below to determine if the matter is ready to set for trial.

- *What criteria is met for the prioritization of the case (referred to in the Section 4)*
- *How many witnesses are to be called for trial*
- *Likely length of trial*
- *If experts are required and if so, if there has been compliance with orders relating to expert evidence*
- *If technology can be used to make the trial run more efficiently*
- *If counsel are available on the intended trial date*
- *If there is no attendance of a party, what appropriate order can be made to finalise the matter*
- *Why should this matter not be listed for trial now?*
- *What dates are suitable?*
- *Are there witnesses or parties with special needs e.g.: children, elderly, interpreters.*

Tip: *Vacated trial dates delay not only the case in question; it delays all the cases because court sitting time is lost.*

Setting firm trial dates motivates the parties to seriously explore settlement or to withdraw.

A judge can require the lawyers for the parties to sign a certificate of readiness certifying that all pre-trial matters are complete.

When listed for trial, the dates need to be firm with a high expectation that the trial will proceed. Keep in mind that vacated trial dates delay not only the case in question, it delays all the cases because court-sitting time is lost.

This is important as setting firm trial dates are known to motivate parties and lawyers to seriously explore an out of court settlement or to withdraw complaints. This can be known as the “sweaty palm” syndrome.

Action: Set firm trial dates

Step 6. Monitor & Report

6.1 Use of Reports

We discussed the importance of establishing a monitoring and Quarterly Reporting framework in Section 3.

Using information from the framework, individual judges should oversee the status of their dockets at least monthly and discuss matters of concern with the Chief Justice.

Using all or part of this framework, the Chief Justice and backlog reduction team should meet at least quarterly to review progress toward reducing the backlog. For this meeting Judges should provide to the Chief Justice information as to why a backlog cases might not be progressing in accordance with the individual case disposal plan or as to progress generally. This will help with resource planning and allocations. To preserve impartiality and judicial independence, no aspect of how the case is to be decided should be discussed.

The backlog reduction team should ensure that court personnel are informed of progress, problems and successes. This can be done electronically through emails or during staff meetings.

External stakeholders and citizens usually have an interest in how the court is progressing in its backlog reduction activities. The Chief Justice might consider publishing key data and a general progress report periodically. This could be posted on a Court Website, placed in the Annual Report or otherwise reported.

Action: Use the Quarterly Report in meetings to analyse and manage performance and timeliness

Tool 3: Six Steps with Actions for Backlog Reduction

Six Steps with Actions for Backlog Reduction	
Step 1 Prepare	<ul style="list-style-type: none"> <i>i. Leaders set goals and make plans</i> <i>ii. Establish a backlog reduction team, create a plan and project manage</i> <i>iii. Consult stakeholders</i> <i>iv. Communicate consistently</i> <i>v. Maximise the use of existing technology</i> <i>vi. Educate and train judges and court personnel</i>
Step 2 Create An Inventory	<ul style="list-style-type: none"> <i>i. Conduct an inventory</i> <i>vii. Analyse inventory results, determine priorities and ensure each case has a date for a future event</i>
Step 3 Clear And Create An Active Case List	<ul style="list-style-type: none"> <i>viii. Clean up and clear the 'active pending' caseload</i> <i>ix. Create an active and inactive pending caseload list</i> <i>x. Give priority to the completion of reserved judgments</i>
Step 4 Intense Pre-Trial Management	<ul style="list-style-type: none"> <i>i. Hold status conferences and create individual case resolution schedules</i> <i>xi. Maximise the use of alternative dispute resolution</i> <i>xii. Intensively manage land matters</i> <i>xiii. Develop a transparent and consistent approach for the prioritisation of backlog cases, and land cases in particular</i> <i>xiv. Re-organise existing resources or acquire additional resources to focus on backlog cases</i>
Step 5 List And Hear Trials	<ul style="list-style-type: none"> <i>i. Set firm trial dates and have an adjournment policy</i>
Step 6 Monitor And Report	<ul style="list-style-type: none"> <i>i. Use the Quarterly Report in meetings to analyse and manage performance and timeliness</i>

SECTION 5: ADDITIONAL DELAY PREVENTION MEASURES

5.1 Quality of Lawyering

Non-compliance and tardiness of lawyers is cited as a common source of delay across PIC's^{xvi}. Whilst the court retains a range of discretionary powers to discipline parties and lawyers for breach of both procedural rules and legal ethical obligations, including costs orders that might be made personally, sanctions are used sparingly. Rather, there is an often-expressed preference for the use of incentives as opposed to punitive measures.

Courts seeking to promote compliance are encouraged to follow the methodology recommended in this Toolkit i.e.: to engage and involve the legal profession in identifying the causes of delay and their solutions and to encourage a team approach toward ensuring quality justice for citizens.

Tolerating non-compliance breeds more non-compliance. Therefore, the courts are encouraged to be consequent in relation to each act of non-compliance that is not acceptable. Here a lack of readiness to proceed on set trial dates, being a major contributor to delay and being late for court, should be paid particular attention.

Acknowledging that the harsh sanctions provided for in procedural acts and court rules may not always be appropriate in the Pacific context it should be noted that there are a range of 'soft' sanctions and approaches that judges and Chief Justice's might use to encourage quality, timely lawyering. These soft approaches take into account that continuing legal education systems are not well developed or, in some cases, in existence. Some of these 'soft options' are included in the following list of general and case specific approaches to improving the quality of legal representation to prevent delay.

Tip:

- *Lawyers settle cases, not judges.*
- *Lawyers settle cases when prepared.*
- *Lawyers prepare for significant events.*

Approaches to Improving the Quality of Legal Representation

General

1. *The Chief Justice and President of the Law Society on behalf of the profession, meet quarterly to talk about matters that require particular attention and strategies to improve*
2. *The court hosts regular discussions around particular areas of practice e.g.: the drafting of pleadings*
3. *The court organises presentations by high level legal educational specialists to present on a particular area of law*
4. *Where relations are strained between the court and lawyers, consider engaging an external facilitator to help with communication and co-operation*
5. *Lawyers need to know the probable actions in response to lawyer non-compliance with deadlines or other requirements*
6. *Lawyers need to be treated consistently in their requests e.g.: for adjournments. Here policy statements are helpful*
7. *Gear rules and procedures to require the full preparation of cases prior to filing.*

Case Specific

1. *Reject incomplete or non-compliant filings*
2. *Express annoyance on the court record*
3. *Seek an apology*
4. *Make an “unless” order, for example: “Unless the statement is filed by the XXX costs will be payable in the amount of XXX to be made forthwith.”*
5. *Move the case to a special ‘non-compliance list’ overseen by the Chief Justice.*
6. *Drop the case to the bottom of the list*
7. *Caution the lawyer in open court in front of the client*
8. *Threaten costs against the party*
9. *Threaten costs against the lawyer personally*
10. *Threaten contempt of court proceedings*
11. *Impose costs against the party*
12. *Impost costs against the lawyer personally*
13. *Complain to the law society and request action*
14. *Only after other approaches have been tried and in the most exceptional of circumstances, take action for contempt of court.*

Delay Prevention Measure: Take consequent steps to improve the quality of legal representation

5.2 Time Goals

Timeframes are internationally recognized as a primary instrument to help the court and stakeholders maintain timely judicial proceedings. By determining time goals for each case type you can measure with ease which cases are exceeding the targeted time for the processing of individual cases. If you are contemplating time goals, please see the PJDP [Time Goals](#) Toolkit for more information and assistance regarding the promulgation of time goals.

Delay Prevention Measure: Promulgate time goals

5.3 Procedure, Rules & Policy

Delay is not inevitable. Courts can improve delay by being in control and embedding in procedures, rules and policy modern case management practices. This may include provision for pre-filing mediation, post filing mediation and pre-trial judicial conferencing.

See the Additional Resources at Resource Twelve for a sample of modern case management rules of procedures used by the Federal Court of Australia.

Delay Prevention Measure: Review procedures and policies for timeliness

5.4 Equitable Case Assignment and Balanced Dockets

Most courts across the Pacific use an individual docket system, where files are allocated and continue to be managed by one judges. Overloaded individual dockets however, may lead to backlog which affects morale and productivity. The Vanuatu Pilot Project found that the rebalancing of dockets, the equitable distribution of new cases combined with a process of regular review prevented dockets from becoming overloaded. This helped improve the morale and efficiency of judges as they felt the work allocations were fair.

There can be efficiency advantages gained through the allocation of cases to specialist Judges who possess an expertise in a field of law and volunteer to do cases in their area of specialty e.g.: or example, judges may find it useful to specialise in family law or youth matters.

Given the complexity and relevance to PICs, Admiralty is also another area of specialty that might require case specialisation.

Chief Justices should pay particular attention that their case allocation systems account for the time spent in carrying out their role as Chief Justice and leader accountable for a public institution. This usually requires a reduction in case allocations to the Chief Justice to ensure the overall workload is not excessive.

Delay Prevention Measure: Keep dockets balanced, introduce specialisation and ensure the Chief Justice docket is not excessive

5.5 Filing Systems

Registry systems should support the efficient and timely flow of files and documents. Systems should ensure judges promptly review new filings and documents. For example in the Supreme Court of Vanuatu the court removed the possibility of files stagnating in a central file repository by implementing a procedure where all files are allocated immediately to a judge and that all files are kept in the chambers of the docket judge. The Vanuatu Supreme Court also developed a special roster of judges for urgent matters and immediately allocates the files and documents to that judge to avoid delay. Training and involvement of court staff proved very important in successfully reforming the document and caseflow systems in Vanuatu.

Delay Prevention Measure: Registry systems should support the efficient and timely flow of files and documents to judges

5.6 Technology

Maximising the use of available technology to monitor and report on the caseload is instrumental to effective time management and productivity and therefore, delay prevention. The use of technology should be thoroughly examined to ensure the best use is made of the existing hardware and software.

Delay Prevention Measure: Maximise the use of existing technology.

5.7 Summary

To wrap up, review the Summary of Delay Prevention Measures below in Tool 5.

SUMMARY OF DELAY PREVENTION MEASURES

- ✓ *Take consequent steps to improve the quality of legal representation*
- ✓ *Promulgate time goals*
- ✓ *Review procedures and policies for timeliness*
- ✓ *Keep dockets balanced, introduce specialisation and ensure the Chief Justice docket is not excessive*
- ✓ *Registry systems should support the efficient and timely flow of files and documents to judges*
- ✓ *Maximise the use of existing technology*

Tool 5: Summary of Delay Prevention Measures

To check your over-all progress, complete a Self Assessment Checklist of Timeliness presented in Resource Thirteen in the Additional Materials.

For further information about the topic of backlog and delay reduction, see Resource Fourteen in the Additional Materials to this Toolkit.

This Reducing Backlog and Delay Toolkit was developed by the Pacific Judicial Development Programme and made possible by the support of the New Zealand Ministry of Foreign Affairs and Trade and the Federal Court of Australia. For more information about the Pacific Judicial Development Programme and its follow-on activities, please visit www.paclii.org/pjdp and the website of the [Pacific Judicial Strengthening Initiative](#). The author acknowledges and appreciates the contributions to this Toolkit of the Supreme Court of Vanuatu together with, the Commonwealth Secretariat, Stretem Rod Blong Jastis Partnership (AusAid) and the Vanuatu Judicial Assistance Programme (Federal Court of Australia).

ENDNOTES

- ⁱ Maria Dakolias. “Court Performance Around the World – A Comparative Perspective”. WTP430. July 1999
- ⁱⁱ *Aon Risk Services Australia Ltd v ANU*, High Court of Australia, *Aon Risk Services Australia Ltd v ANU* [2009] HCA 27; (2009) 239 CLR 175.
- ⁱⁱⁱ Caseflow management is the co-ordination of court processes and resources to move cases in a timely way from filing to conclusion. Effective caseflow management aims to minimise delays and make the best use of time and resources. Effective caseflow management practices can help to: ensure the equal treatment of all litigants by the Court; ensure timely conclusion of cases consistent with the circumstances of the case; improve the quality of the litigation process; maintain public confidence in the Court as an institution.
- ^{iv} European Commission for the Efficiency of Justice, Compendium of ‘best practices’ on time management of judicial proceedings
- ^v Article. 4. Construction -
- ^{vi} European Commission for the Efficiency of Justice, Compendium of ‘best practices’ on time management of judicial proceedings
- ^{vii} International Covenant on Civil and Political Rights, UN General Assembly resolution 2200A(XXI), December 16, 1966 entered into force March 23, 1976
- ^{viii} United Nations Office on Drugs and Crime, Commentary on the Bangalore Principles of Judicial Conduct. http://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf (accessed 14 February, 2014)
- ^{ix} Chief Justice Lunabek in the Vanuatu Pilot Project describes the most important element as the *psychology* of the court.
- ^x Ehmann, J. *Court Management and Administration Assessment Report*, Pacific Judicial Development Programme, Solomon Islands, Republic of Vanuatu, Kingdom of Tonga (2012)
- ^{xi} As observed by the author in the Vanuatu pilot project and as observed in research conducted for the Pacific Judicial Development Programme: Ehmann, J. *Court Management and Administration Assessment Report*, Pacific Judicial Development Programme, Solomon Islands, Republic of Vanuatu, Kingdom of Tonga (2011-12).
- ^{xii} Adapted version of United States Agency for International Aid, *Best Practices Guide, Backlog Prevention and Reduction Measures for Courts in Serbia*, p 75, accessed 15 May 2014 at <http://www.ewmispp.org/archive//file/Backlog%20Best%20Practice%20Guide.pdf>
- ^{xiii} Judicial settlement conferencing is a confidential process in which parties meet with a neutral judge (current or retired) to explore options for settling their dispute. The conference is informal and importantly, includes a judicial evaluation as to the likelihood of success of the case.
- ^{xiv} Duizend R., Steelman D. et al, *Model Time Standards for State Trial Courts*, National Centre for State Courts USA, 2011, p. 52
- ^{xv} Condie, B et al., *Client Services in Local Courts*, Centre for Court Policy & Administration, University of Wollongong, September 1996 p.37
- ^{xvi} Based on the experience of the author.



Your Notes

Handwriting practice lines consisting of 25 horizontal dotted lines.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



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:

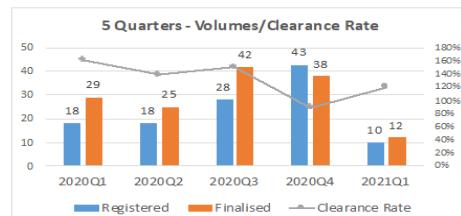
- lack of limits on time allowed for lawyers to prepare their case or move to the next stage
- lawyer tactics designed to lengthen proceedings and increase costs
- cases commenced without being sufficiently prepared
- inexperienced and poorly prepared lawyers
- unrepresented litigant

Resource 2 Sample Quarterly Report

ALL SUPREME COURT QUARTERLY PERFORMANCE REPORT

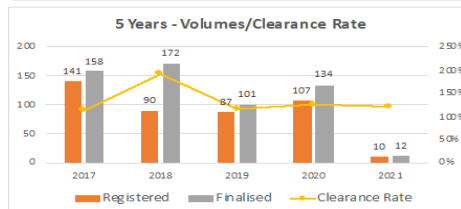
Case Volumes and Clearance Rate

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



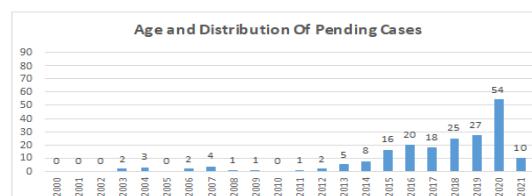
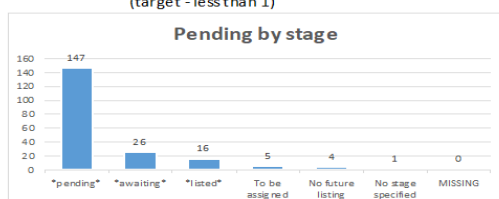
Calendar

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



Pending Workload

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

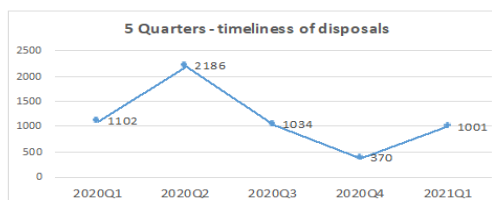


Timeliness of Disposals

Average Age to dispose cases (days)

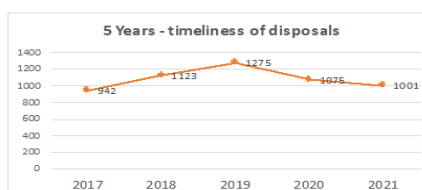
Previous 5 Quarters

2020Q1	1102
2020Q2	2186
2020Q3	1034
2020Q4	370
2021Q1	1001
Average of the 5 periods	1069



Previous 5 Calendar Years

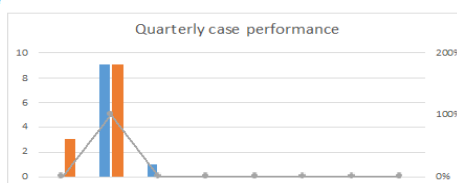
2017	942
2018	1123
2019	1275
2020	1075
2021	1001
Average of the 5 years	1086




Commentary

Quarterly Volumes

	Q1R	1	2021
Registered	Finalised	Clearance Rate	
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**

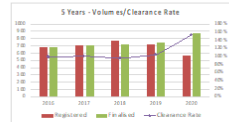
1. Clearance Rate
2. Reserved Judgments
3. Age Distribution Pending
4. Average Age to Disposal
5. Pending cases per Stage
6. Number of cases disposed per Judge
7. Pending (to) Disposal Ratio
8. Attendance Rate

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 

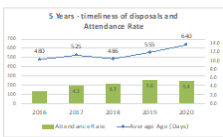
- Identifies the age of active pending cases in relation to their filing dates, to highlight areas of congestion and scale of delay
- Target
 - No LONG tail
- Outcome in Key Performance Area:
 - Delay prevention in delivery of timely justice




4

4. Average age to disposal 

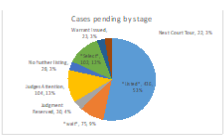
- The average time it takes to dispose of a case in days
- Target
 - Within time standards or within expectations
- Outcome in Key Performance Area:
 - Productivity, efficiency and delay management.



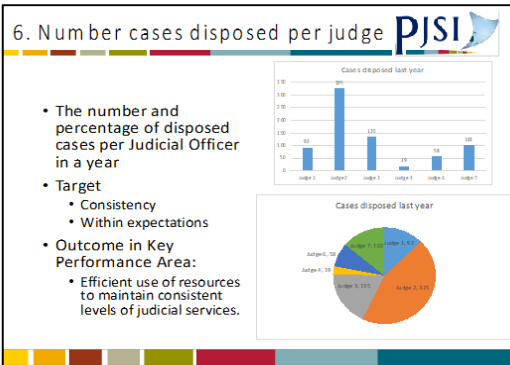
5

5. Pending cases per stage 

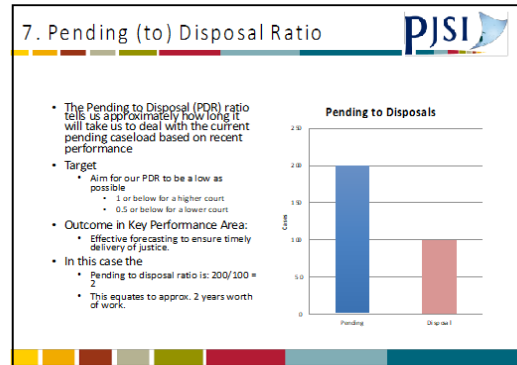
- Used to identify what stage the cases have progressed to, to highlight where delay might be
- Target
 - Significant % with Future Listing
- Outcome in Key Performance Area:
 - Continuous case progression in delivery of timely justice



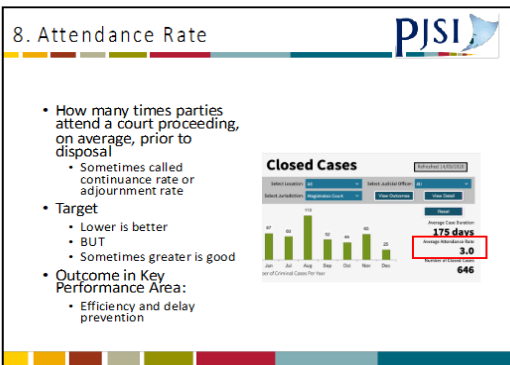
6



7



8



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

		understanding the critical role and challenges of measuring performance to identify delay Ref: TK Chapter Two p 4	<ul style="list-style-type: none">Identify sources of delay in your court (TK page 5)Know interacting measures to address delay and rolesBe able to achieve successDiscover timeliness indicators and the monitoring framework
	3pm to 3.30pm	Afternoon Tea	
2	3.30pm – 4.45pm	Session Two Continued	Session Two - continued
	4.45 – 5pm	Close of Day One	
DAY 2			
3	9am - 10.30am	House Keeping Questions and Answers Session Three <ul style="list-style-type: none">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. Ref: TK Chapter Two p 7	<ul style="list-style-type: none">Mastering the <i>Six Steps to Backlog Reduction</i><ol style="list-style-type: none">PreparationCreate an inventoryClear & create an active case listIntense pre-trial managementList and hear trialsMonitor & report Using the toolkit, small groups investigate each step and report back
	10.30am - 11.00am	Morning Tea	
3	11am – 12.30pm	House Keeping Questions and Answers Session Three Continued	<ul style="list-style-type: none">Mastering the <i>Six Steps to Backlog Reduction continued</i>
	12.30pm - 1.30pm	Lunch	
3	1.30pm – 3.30pm	Session Three Continued	Session Three – continued <ul style="list-style-type: none">Additional Delay Reduction Measures<ul style="list-style-type: none">Ending the cycle of adjournmentsQuality of LawyeringTime GoalsPolicy and ProcedureEquitable Case AssignmentFiling SystemsTechnology
	3pm to 3.30pm	Afternoon Tea	
3	3.30pm – 4.45pm	Session Three Continued	Session Three – continued
	4.45 – 5pm	Close of Day Two	

DAY 3			
4	9am - 10.30am	House Keeping Questions and Answers Session Four <ul style="list-style-type: none">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. PPT Slide 49 & 50	<ul style="list-style-type: none">Identification of the timeliness problem or challenges (Facilitated group work)Identification of the data that defines the problem (Facilitated group work)Development of a goal (Facilitated group work)Development of a backlog reduction plan for your court (Facilitated group work)
	10.30am - 11.00am	Morning Tea	
4	11am – 12.30pm	House Keeping Questions and Answers Session Four	<ul style="list-style-type: none">Development of a backlog reduction plan for your court continued.
	12.30pm - 1.30pm	Lunch	
4	1.30pm – 3.30pm	Session Four Continued	Session Four– continued <ul style="list-style-type: none">Development of a backlog reduction plan for your court (Group work)
	3pm to 3.30pm	Afternoon Tea	
5	3.30pm – 4.45pm	Closing Session	<ul style="list-style-type: none">Review of workshop objectivesQuestions and answersNext stepsPost workshop evaluation
	4.45 – 5pm	Workshop Close	
THANKYOU FOR YOUR PARTICIPATION			

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?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
←					
←	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?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
←				→	
←	Not Effective	Limited Effectiveness	Quite Effective	Extremely Effective	→

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

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
←				→	
←	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				
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.

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Obligations Regarding Timeliness



Concept 1:

Justice delayed is justice denied

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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

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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



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



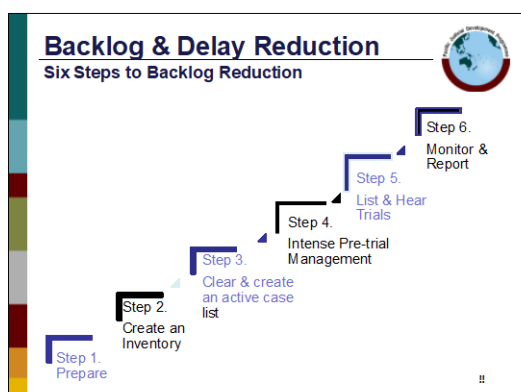
Refer to page 13 of the Toolkit:

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. <i>Strategy</i>	
2. <i>Activity</i>	
3. <i>Responsible</i>	
4. <i>Time – beginning & end</i>	
5. <i>Resources Needed</i>	
6. <i>Success Indicator</i>	
7. <i>Comments</i>	

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

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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**

12


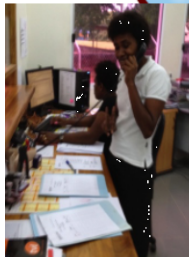
Backlog & Delay Reduction

Check all cupboards and remove opportunities for delay to occur

13

Backlog & Delay Reduction

Account for every file and know their case stage

14

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

15

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 "reconsolidate cases"
- Conduct workshop/training!
- Increased judicial control!
- **Sanc1 ons** imposed for "unnecessary" delay
- Con=nu al "monitoring!"
- Ac=ve "Court" **Clerks!**



• Clerks' ended a Land Case Management Workshop

Backlog & Delay Reduction

Land Disputes – The Island Court of Vanuatu

Justices of the Gaua Island Court during a land visit

Inspection of land boundary at lake Letes



Commitment and focus on delay reduction is essential, especially for land matters

Backlog & Delay Reduction

Step 5 List & Hear Trials

1. Set **firm trial dates**
2. Have an **adjournment policy**

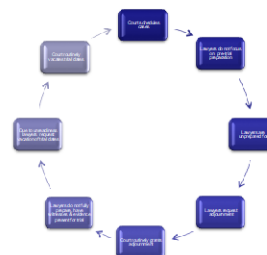
Backlog & Delay Reduction

Step 6 Monitor & Report

1. Provide **reports** to the Chief Justice & judges monthly
2. To the **quarterly meetings** of the Backlog Reduction Team

Backlog & Delay Reduction

The Cycle of Adjournments & Delay



Source: Adaptation of Maureen Solomon, Case flow Management in the Trial Court, ABA, 1973

Backlog & Delay Reduction

Additional Delay Prevention Measures


1. Take consequent steps to **improve** the quality of **legal representation** (see page Toolkit page 30)
2. Promulgate **time goals**
3. Review **procedures and policies** for timeliness

Backlog & Delay Reduction

Additional Delay Prevention Measures

4. Keep **dockets balanced**, introduce **specialisation** and ensure the Chief Justice docket is not excessive
5. Registry systems should support the efficient and **timely flow** of files and documents to judges
6. Maximise the use of existing **technology**

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*

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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**

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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 (1st, 2nd 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 matters¹:

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

¹ 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.

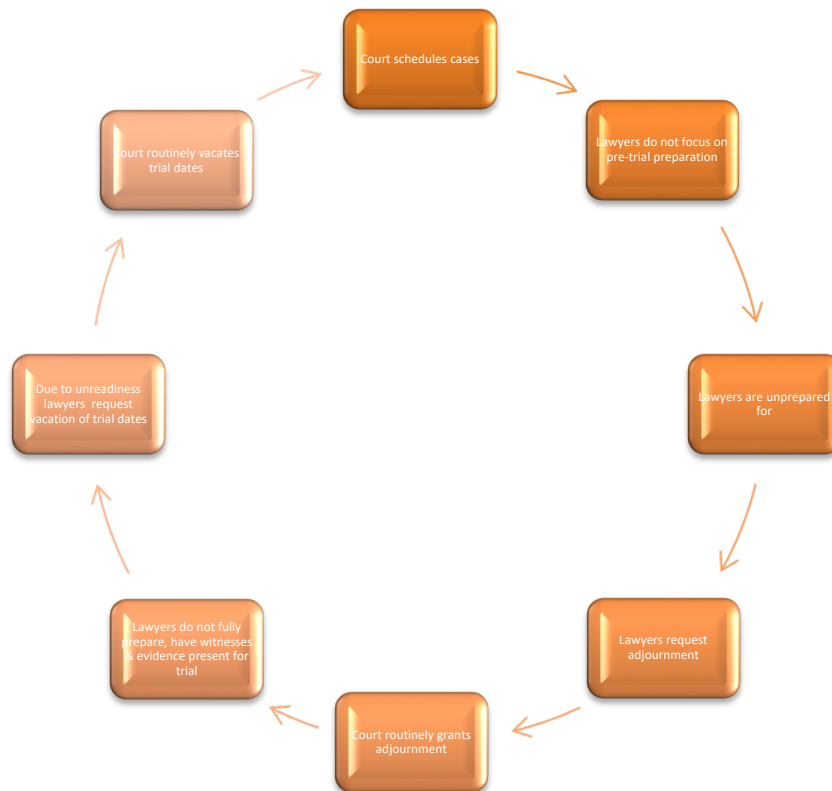
Goals

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	
INDICATOR ONE: ESTABLISHED GOALS FOR DURATION OF PROCEEDINGS	
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	
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?
INDICATOR THREE: CLEAR RESPONSIBILITY FOR MONITORING TIMELINESS	
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?
INDICATOR FOUR: MAINTAINING RELEVANCE	
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

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

[Pacific Judicial Development Programme](#)

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

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



Pacific Judicial Development Programme

REDUCING BACKLOG AND DELAY TOOLKIT

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

