

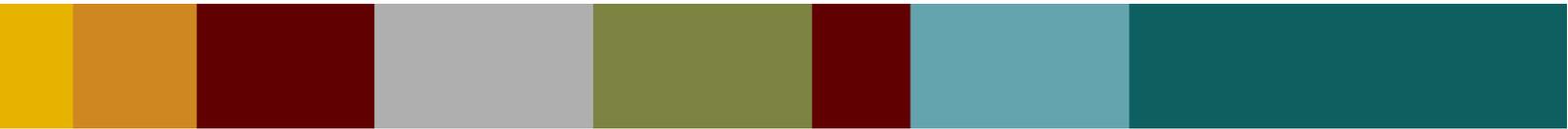


Pacific Judicial Development Programme

REDUCING BACKLOG AND DELAY 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 - <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).

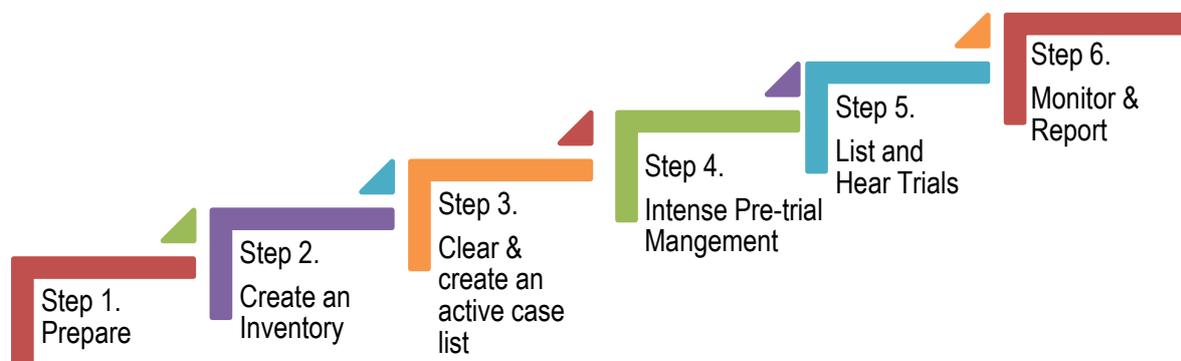
It is acknowledged that court delay in the Pacific context, is an issue made particularly complex because of geographic, logistical, resourcing and the variety of approaches used to resolving land disputes. Recognising this, the Toolkit places particular focus on delay reduction methods that do not necessarily 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 caseflow 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.

Tip: Ensure all cases have a date for a court event. This will keep all cases moving towards disposition.

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.

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, Strem 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.

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

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



Pacific Judicial Development Programme

REDUCING BACKLOG AND DELAY TOOLKIT

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