

# COURT PERFORMANCE MANAGEMENT AND ANNUAL REPORTING WORKSHOP

Whanganui-a-Tara/Wellington, Aotearoa/New Zealand,  
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## Eight court performance management indicators

During this workshop participants will study court performance through the lens of eight court performance management indicators—from the case management perspective—which are:

1. Clearance rate
2. Pending (to) disposal ratio (PDR)
3. Age distribution of pending cases
4. Average time to disposal
5. Pending cases per stage
6. Number of cases disposed per judge
7. Reserved judgments
8. Attendance rate

These indicators will empower leaders and managers to describe performance, predict future performance and diagnose areas either requiring attention or, to the contrary, where there are 'bright spots' of outstanding performance.

These indicators may be used against agreed goals, targets, or standards. They should be tracked over time so that performance trends can be observed.

They may also be filtered down to investigate the performance of the court in select areas of importance, for example, selected case types, pre-trial detainees, vulnerable groups, gender, family violence and children's matters.

## 1. Clearance rate

**Type of indicator:** Productivity and efficiency.

### Definition

The number of finalised (disposed and closed) cases as a percentage proportion of the number of incoming cases (filed, registered, or opened) cases over the same selected time period.

### What it tells us

1. Whether a court or court system is accumulating cases in excess of the ability to dispose of cases.
2. It identifies similarities and differences between different types of cases and different periods of time.

### Target positive result

100% or more, indicates a balance between incoming demand (filings) and the capacity of the court to meet that demand.

### When to investigate

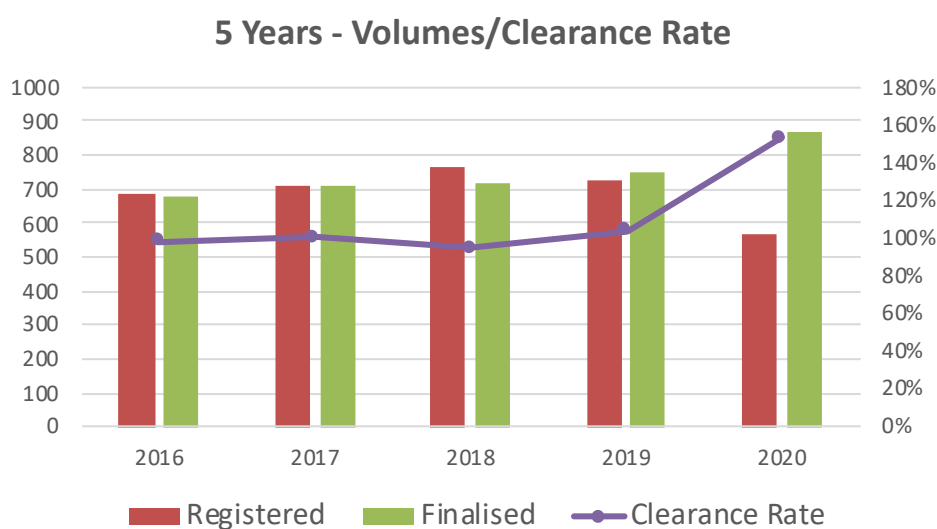
A percentage consistently below 100% will result in the compounding growth of cases and possibly lead to excessive numbers of cases experiencing undue delay. Consistently low clearance rates should be investigated as caseloads can accumulate significantly if left unchecked.

### Example

Filings in January: 100      Disposals in January: 50       $50/100 \times 100 = 50\%$  clearance rate

In the visual below we can see that the court has achieved a very high clearance rate in 2020, with more cases finalised than registered, thus pending caseload would have reduced by the same amount.

Graph 1 Clearance rate yearly comparative graph



## Considerations

A clearance rate of less than 100% can be for many reasons including but not limited to:

- An unusual spike in filings/registrations, for example, a police crack-down on after-hours loitering.
- Absent judicial officers for extended periods of times, for example, on extended leave.
- Unusually high number of more complex matters in jurisdictions where case numbers are lower, thus the impact felt more.
- Shifting resources from one case type to another, to clear back-logs, etc.
- Retiring judicial officers (clearing their reserved decisions) or new judicial officers (learning the craft), thus affecting their own productivity.

So, a low clearance rate needs to be well understood before drawing too many negative conclusions.

Similarly, on the face of it, a clearance rate of greater than 100% is a good thing as it automatically reduces pending case numbers. It may in fact be greater than 100% for reasons such as:

- Lower than expected filings, while still maintaining the same judicial resources.
- Additional judicial resources in place but the same demand (filings). Thus output will be increased (that is, judicial officers assigned to a specific cohort of cases, or new judicial officers appointed).
- Increased productivity of the judicial officers, that is, they are able to dispose of more cases per judicial officer due to improved case management techniques.

So, a high clearance rate also needs to be well-understood before simply drawing a 'doing better' conclusion as it may be hiding some underlying concerns such as lower productivity.

## 2. Pending (to) disposal ratio (PDR)

**Type of indicator:** Forecasting and predicting.

### Definition

The number of cases disposed (as an indicator of capacity) across the past year compared to the pending caseload, expressed as a ratio.

### What it tells us

How long it may take to deal with the current pending caseload based on current performance. PDR is often regarded as a lead indicator, that is, looking forward, whereas all other seven indicators are referred to as lag indicators, that is, reflect what HAS happened.

### Target positive result

A PDR of 1 or below for a higher court is desirable. Expressed broadly as YEARS – in effect a year’s worth of pending workload.

A PDR of 0.5 for a lower court is desirable – in effect six months of pending workload.

### When to investigate

When the ratio is consistently above 1 or higher for a higher court, as it is likely to lead to a backlog situation over time, or when PDR begins to shift (trend upwards).

### Example

Pending as at end January: 200

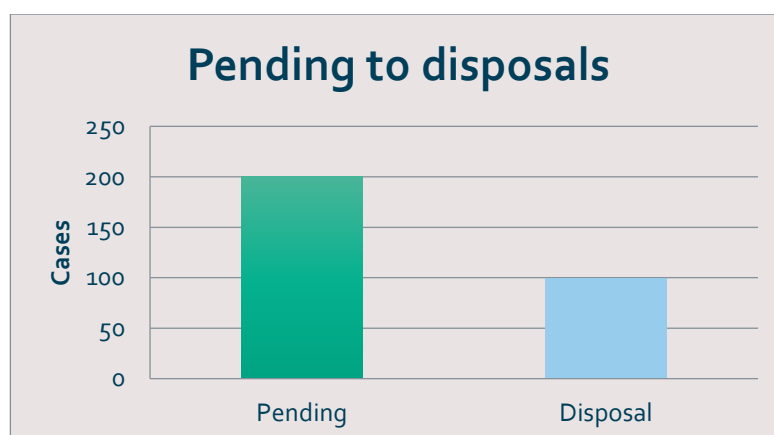
Disposals in last 12 months: 100

200 divided by 100 = PDR 2

In this case the PDR of 2 equates to two years of work pending.

In the example below, the court would be seeing approximately two years’ worth of pending workload based on an annual disposal # of 100.

Graph 2 Pending to disposal graph



## Considerations

A higher or lower PDR than the expected norm can be for many reasons, including but not limited to:

- An increasing PDR could be due to either a pending number that has grown due to a lower clearance rate for reasons cited above, and/or disposal rate has reduced due to a reduction in the number of judicial officers disposing of cases.
- A decreasing PDR, naturally a good thing, can occur with the reverse, a lower pending, or higher productivity/disposal rate.
- PDR is regarded as a “lead” indicator as it provides an estimate of how much future work is still on hand, for example, 3 = 3 years, but recognising that it is just an estimate.
- PDR can be applied at any level, that is, looking at the court overall, or a specific case type and/or location, and by individual judicial officer.
- The target PDR should align to the court’s time standard for that particular case type and/or jurisdiction. For example, if the High Court has a target of 1 year for its civil cases, then the target PDR should be 1. Anything over that would be suggesting they will have trouble achieving the time standard in the coming period/year.

So, whilst PDR is a very good and quick indicator to gauge the position of the court, it also needs to be tracked closely especially, for example, where one judicial officer is experiencing a higher PDR than his or her colleagues. In that situation, the Chief Justice/Chief Magistrate may wish to re-assign cases so the judicial officer can work closer to the time standards expected.

### 3. Age distribution of the pending active caseload

**Type of indicator:** Timeliness, delay, congestion.

#### Definition

The age of active cases that are pending and awaiting final resolution shown by year (of opening). It can also be expressed as an average number of days 'open'.

#### What it tells us

1. The presence and extent of delay and backlog.
2. It could be an indicator of excessive adjournments.

#### Target positive result

1. The bulk of cases are within time goals set for case types.
2. No long 'tail'.

#### When to investigate

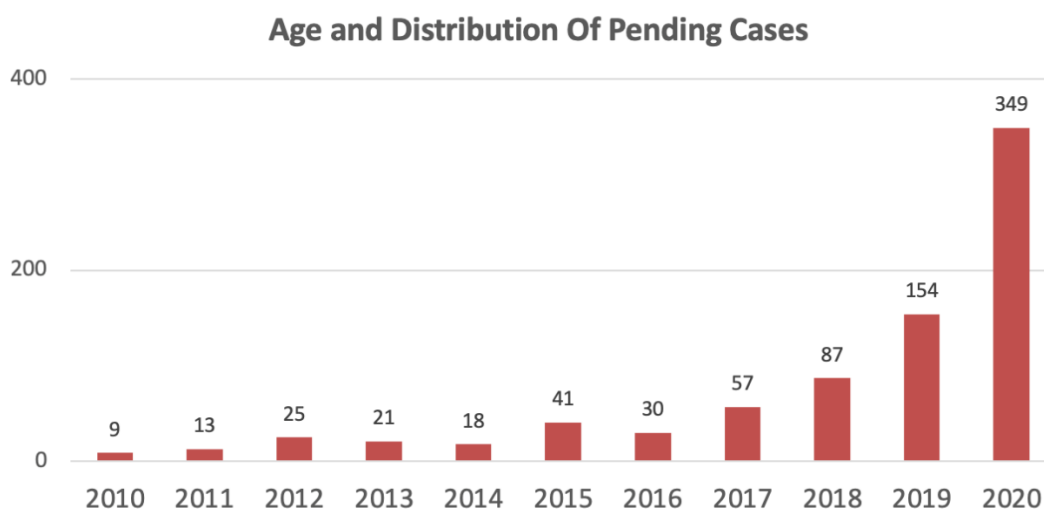
When cases exceed time goals.

When there is a long 'tail' over many years.

#### Example:

The example below in Graph 3 shows a significantly long 'tail' and would warrant detailed examination of those aged cases.

Graph 3 Age distribution of pending caseload graph



**Considerations:**

Age of pending, and the length of the 'tail' is very much dependent on the level of jurisdiction and case type. For example, it is generally acknowledged that higher courts will have a greater PDR, a longer tail and overall age of pending cases higher than the lower court(s). Similarly, land cases inherently take longer to resolve than criminal matters, and their age profile will be quite different.

Regardless, regular monitoring of the 'tail' is essential, to ensure no aged cases get forgotten. It is also effective in ensuring that all completed cases have been recorded as such.

## 4. Time to disposal

**Type of indicator:** Timeliness, productivity, efficiency, prediction, forecasting.

### Definition

The average number of days it takes from the date the case is filed to the date the case is disposed (or can be expressed as a percentile, for example, 90% of cases were completed within 160 days).

### What it tells us

1. The time it took to dispose of case types.
2. Whether the resources of the court are sufficient or being deployed effectively, to meet time standards for case disposal.
3. It could be an indicator of excessive adjournments when used with Indicator 8 (Reserve judgments).

### Target positive result

The bulk of cases are disposed within established and agreed time goals for case types.

### When to investigate

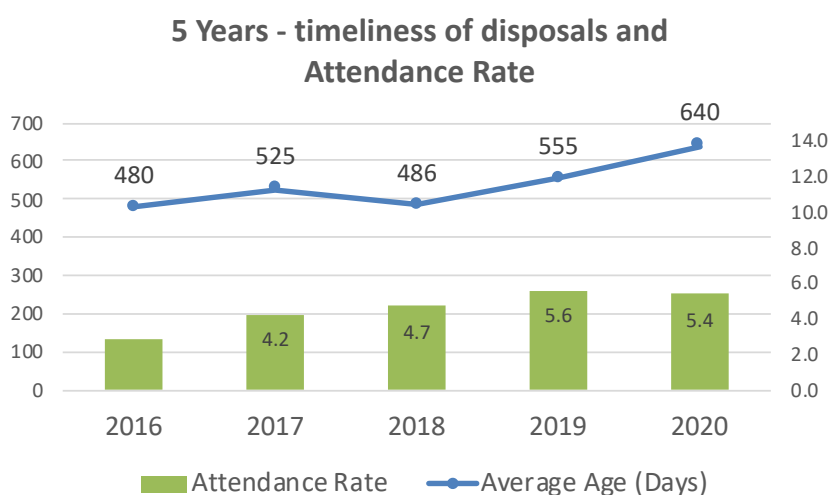
When the average age of the time it takes to dispose of cases exceed established and agreed time goals.

Note: if using this indicator for case types that have low volumes, an average may well be distorted by one or several cases that took a substantial amount of time to complete. In this situation, using the 'percentiles' would reflect a better representation of this indicator.

### Example

In this example, we can see an increasing time to dispose of cases, which may not be a bad thing if the court has undertaken a backlog reduction program and has been slowly getting rid of very aged cases. But it also may represent other reasons for delay creeping in.

Graph 4 Time to dispose yearly comparative graph





## Considerations

Time to dispose cases, one of the most visible and high-profile indicators of performance, is one where 'lower' the better. However, there are sometimes very valid reasons when timeliness may increase:

- Addressing a backlog of old cases that when finalised will impact on the average time to dispose cases quite significantly in lower volume jurisdictions.
- This is less of a concern in high volume jurisdictions, for example, more than 1,000 cases in a specific case type, so if 10 cases were closed and had taken a significantly long time, the impact on the remaining 990 would be minimal.

## 5. Pending cases per stage

**Type of indicator:** Expedition, delay.

### Definition

A profile of the stages (where an active case is 'at') of the active pending caseload.

### What it tells us

1. Highlights where delay might be.
2. Whether the resources of the court are sufficient or being deployed effectively, to meet time standards for case disposal.

### Target positive result

A significant percentage of cases are listed for a future court event, or under active case management, that is, have a future date for progressing the case.

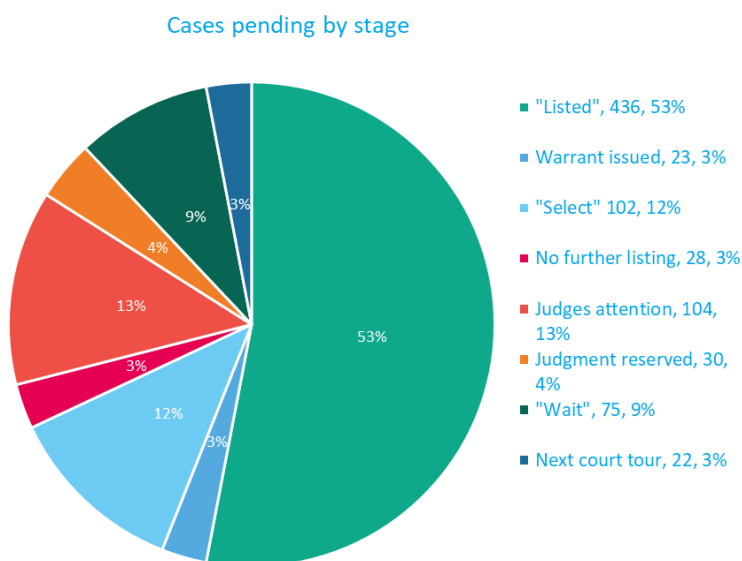
### When to investigate

Investigate all matters without a "no further listing" or future action/event.

### Example

In the example below, only 53% of pending cases have a future listing, with many other reasons used to describe the stage of the case. The court would need to take action on such stages as 'Judges Attention' and better understand where the case really stands.

Graph 5 Cases pending by case stage graph



## Considerations

For many countries in the Pacific, tracking the stage of case for each open/pending matter is an onerous task and, unless supported by some automation within a CTS/CMS, there is too much pressure to be constantly updating the stage of a case, for example, in MS XLS.

Some countries when making a future listing can simply 'tick' to make this the new stage of the case, while some CMSs automatically record the stage as now listed for a specific date.

It is desirable that a target of 80% or more cases should have a future listing. Those that do not have a date should have a valid stage like 'waiting on a related case' or 'judgment reserved'. Some countries also place great emphasis on a future 'action/task' which also allocates a date for a future event. In one country, the 80% target includes either future-listed, or future 'action/task' – a great example of active case management.

## 6. Number of cases disposed per judge

**Type of indicator:** Productivity.

### Definition

A number and percentage of disposed cases per judicial officer.

### What it tells us

Whether there is an efficient use of resources to maintain judicial services.

### Target positive result

1. Consistency
2. Within expectations.

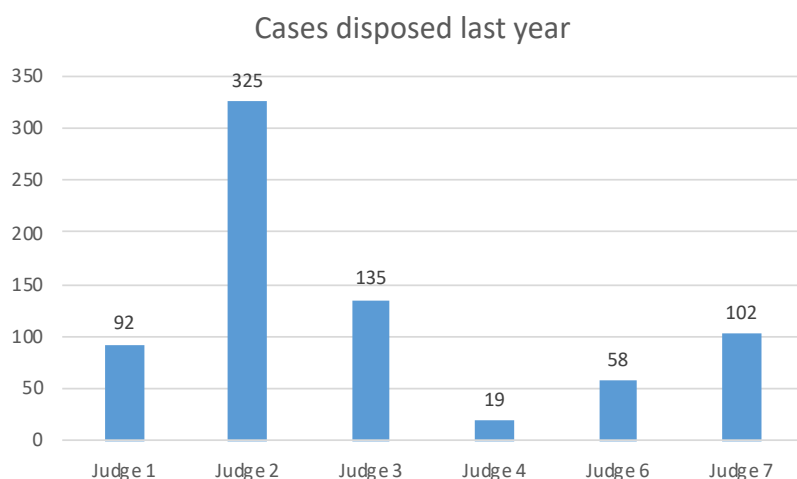
### When to investigate

Where there is a large divergence in disposal numbers between judicial officers adjudicating the same case types, or when there is a trend downwards in productivity.

### Example

In the example below, there may be many reasons for such a variance in judicial productivity. In such cases individual productivity needs to be analysed carefully.

Graph 6 Cases disposed by individual judicial officers last year comparison graph



### Considerations

Determining productivity requires very careful consideration to the ACTUAL number of resources engaged throughout the period being assessed. For example, in a High Court that has two judges who disposed of 200 cases in the year, productivity would simplistically be shown as 100 cases per judge. However, throughout the year, one judge was absent for 25% of the year due to family/illness reasons, and the other

judge (the Chief Justice) can only be regarded as 50% due to other commitments – the total judicial officers to dispose of the 200 cases needs to be considered as now only 1.25 judicial officers (75% one judge and 50% the Chief Justice). Thus, the true productivity should be represented as  $200/1.25 = 160$  cases per judicial officer. This is a much truer reflection of their productivity and not just for past performance review, but also monitoring over time.

It is crucial that realistic numbers of resources are applied when calculating productivity.

When reviewing individual productivity as per the chart above, due care and consideration needs to be given to whether a judicial officer was:

- Absent for an extended period of time.
- Undertaking a caseload of more complicated matters (for example, land) or simpler matters (for example, minor criminal matters).
- Attempting to clear their reserved decisions and were not sitting as much.
- Has other responsibilities, for example, a Chief Justice.

Great care needs to be applied when looking at productivity at the individual level, especially not to expose personal performance details outside of the court unless sanctioned by the Chief Justice.

At the jurisdictional level, tracking productivity provides great insight into whether improvements in the case management pathway are effective, for example, active case management and/or differential case management.

## 7. Attendance rate

**Type of indicator:** Efficiency, delay, cost.

### Definition

The average number of times parties attend a court proceeding, prior to disposal. Sometimes this indicator is called the continuance rate or adjournment rate.

### What it tells us

A high number of average adjournments may indicate:

- A judicial culture that easily grants adjournments,
- Low quality lawyering as they seek adjournments when not ready to proceed,
- That parties are expending too much money in legal fees,
- That court resources are being invested in proceedings that are not productive,
- Delay and/or backlog in the caseload,
- That there are rehabilitation and diversionary programs in place that require frequent court appearances,
- That there are intensive case management practices being used to maximise the prospects of settlement and/or narrow the issues for trial.

### Target positive result

Lower is generally better and suggests a more effective process. However, in certain case types or when adopting therapeutic practices, a higher rate may be needed/acceptable.

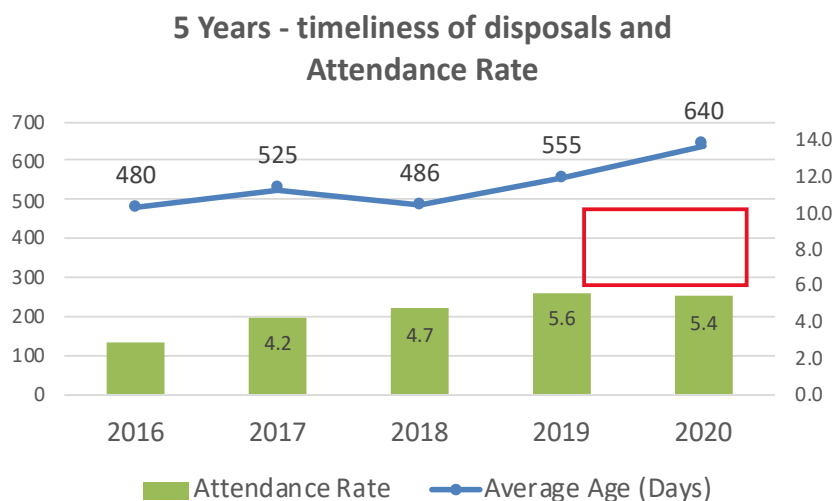
### When to investigate

- Where the rate in a lower court is 3 or more
- Where the rate in a superior court is 5 or more
- Or when there is trend upwards over time.

### Example

In the example on the next page, an increasing attendance rate, coupled with an increasing timeliness to dispose, needs closer investigation, that is, what types of appearances may be occurring more, and for what reasons.

Image 1 Dashboard screenshot showing average attendance rate



### Considerations

A true picture of the attendance rate needs a very strong/historical base of court listings in a CTS/CMS. Without such a base, attendance rates will look very low. Some countries have been tracking/recording their court appearances/listings for years, so when we look at the number of attendances for those cases that have finalised in the year being assessed, each case has a complete history of these appearances.

Attendance rates provide great insight into the efficiency of the process in addition to the flow-on impact to parties attending (inconvenience and cost). Attendance rates should be monitored at the jurisdiction/case type level, for example, land matters in the higher court would naturally expect to have a higher attendance rate than traffic matters in the lower court. Tracking over time enables the impacts of case management reform to be seen.

It is quite appropriate that attendance rates increase due to a more therapeutic approach, for example, specialist family courts or taking on a greater mediation/resolution approach in civil matters where settlement is encouraged. In both of those scenarios, it would be reasonable to see attendance rates increase.

At an individual level, where some countries are reviewing at the judicial officer level, care must be taken in comparing like for like docket profiles. A judge with a heavy land case docket would naturally have a higher attendance rate than a colleague undertaking minor criminal matters. When there is similarity in profile of cases dealt with, then it is reasonable to compare across judicial officers, for example, if one judicial officer appears to have a higher attendance rate for finalised matters, this may lead to a discussion around adjournment culture and practices.

## 8. Reserve judgments

**Type of indicator:** Delay in final adjudication/delivery of decision.

### Definition

The age of outstanding reserve judgments - more than an agreed time goal to produce reserve judgments per judicial officer.

### What it tells us

- Delay in the delivery of final adjudication
- Unequal distribution of judicial work

### Target positive result

No or very few reserve judgments more than an agreed time goal.

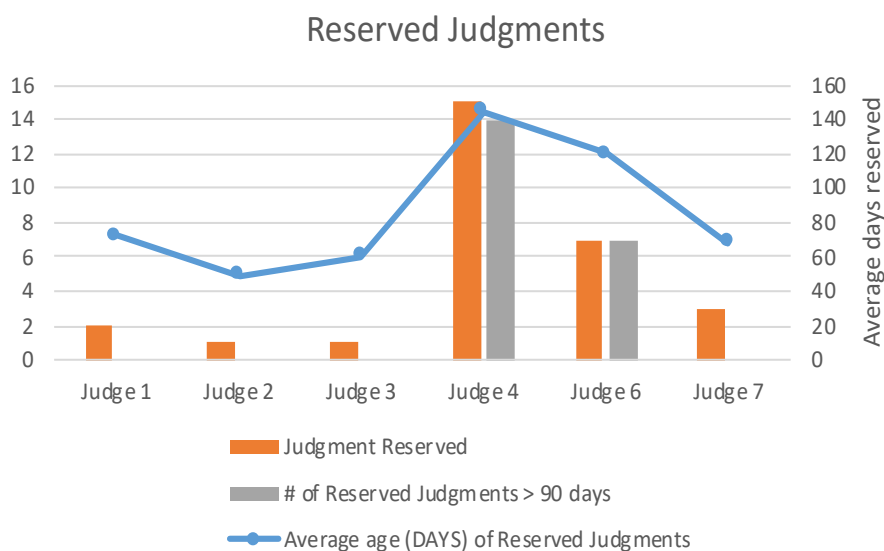
### When to investigate

Every case where there is a reserve judgment more than the agreed time goal for the delivery of reserve judgments.

### Example

In the example below, Judge 4 can be seen to be clearly carrying the highest number of reserved judgments and already beyond the accepted three-month delivery time standard. Judge 6's position should also be monitored carefully, and both Judge 4 and 6 – options may include lightening the case load on each and allowing time out of court, etc.

Graph 7 Judgments reserved and outstanding per judge





## Considerations

Monitoring the number and age of reserved judgments is one of the highest profile indicators world-wide, as reserve judgments attract interest even if it is a relatively low number compared to final disposals.

Reserved judgments need to be monitored on a regular basis. Even a small number of outstanding reserved decisions can generate significant negative 'press' for the court even if other performance indicators are good, for example, clearance rates, timely delivery of the bulk of matters. It is not uncommon that a single outstanding reserved judgment can undo the good will of external parties, the government, legal community and the parties themselves.

Tracking these judgments (due to the relatively low number compared to overall case numbers) can and should be done manually if a CTS/CMS is not in place. Those countries with such systems have the ability to track easily, for example, the Republic of Marshall Islands creates a task and records the start date (when submissions have been received) and estimated delivery date. This is then reported on monthly.

In terms of time to deliver such reserved decisions, it is important to agree on a time goal and publicise when the clock starts, that is, only when all submissions have been received.

As a general rule, the time goal for judgments to be delivered within the lower courts is around two to four weeks after final hearing, and for higher courts within three months. Naturally, there will always be some cases where the time to deliver may be extended appropriately due to complexity or otherwise.