

Judicial Research Project

Time for Judgment Writing

Final Report

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INTRODUCTION

The need for judgment writing as part of judicial work will vary depending on a range of factors, particularly the level of court and the nature of the court's jurisdiction, whether trial, appellate or both, and the mix of civil and criminal matters. The overall caseload of a court, the way work is organised and allocated within a court, and the time demands of other judicial work will impact on the capacity of the judiciary to produce timely written judgments of sufficient breadth and depth. Unwarranted delay in producing judgments can be perceived as a reflection on individual judicial officers and on the efficiency of the court as a whole. Court delay raises concerns about access to justice, while methods to improve efficiency may be perceived as infringing judicial independence.

In late 2008, the Judicial Research Project of Flinders University¹ provided the Judicial Conference of Australia (JCA) with a brief report based on the 2007 National Survey of Australian Judges and the 2007 National Survey of Australian Magistrates. This further report expands on that earlier material, incorporating further analysis of survey data as well as material from the courts and a literature review. It will consider the entire judiciary as well as distinguishing the views or experiences of judges and magistrates or judges in different types of courts, where appropriate.

¹ The Magistrates Research Project and the Judicial Research Project were initially funded by a University-Industry Research Collaborative Grant in 2001 with Flinders University and the Association of Australian Magistrates (AAM) as the partners and also received financial support from the Australian Institute of Judicial Administration. From 2002 until 2005 it was funded by an Australian Research Council Linkage Project Grant (LP210306) with AAM and all Chief Magistrates and their courts as industry partners with support from Flinders University as the host institution. From 2006 the Project has been funded by an Australian Research Council Discovery Project Grant (DP 0665198) and a Linkage Project Grant (LP0669168). All phases of Project research involving human subjects have been approved by the Social and Behavioural Research Ethics Committee of Flinders University. We are grateful to Leigh Kennedy, Rae Wood, Lisa Kennedy, David Wootton, Ruth Harris, Julie Henderson, Mary McKenna, Russell Brewer, Elizabeth Edwards, Rose Polkinghorne, Wendy Reimens, Carolyn Corkindale, Lilian Jacobs, Mavis Sansom and Anne Wallace for research and administrative assistance in connection with this project.

EXECUTIVE SUMMARY

Judgment writing is one aspect of judicial work, embedded in a complex pattern of in-court and out-of-court judicial duties. Data from the 2007 National Survey of Australian Judges and the 2007 National Survey of Australian Magistrates provide a detailed description of the working patterns and attitudes of magistrates and judges, including the time spent on judgment writing.

- Two thirds of magistrates (64%) report they work outside regular working hours at least a few days a week as do nearly nine in ten judges (86%).
- The average workday for judges is 10.1 hours; for magistrates 9.7 hours.

The tasks that take the most time, on days when they occur, are in-court work.

- Presiding at trial occurs on 60% of all typical days described by magistrates and takes, on average nearly 4 hours on those days [233 minutes]. For judges, this task occurs on 53% of typical days and takes, on average, slightly longer, about 4 ½ hours [274 minutes]²
- Hearing appeals occurs on only 23% of all days described by judges averaging about 3 ½ hours on days when it is done. This data includes judges who do not regularly hear appeals. When only responses from the Supreme Courts and the High Court/Federal Court are considered, 33% of described days for respondents from those courts involve hearing appeals.
- The criminal list ('non-trial, non-appeal criminal proceedings') is an important part of magistrates' work, occurring on two-thirds (65%) of their typical days, averaging nearly 3 hours per day on those days (177 minutes). In contrast, only 21% of judges' days involve this work, and when it is done, takes an average of just under two hours (111 minutes).

In-court work, especially hearing appeals and civil trials, generates a need for writing or preparing decisions, judgments or orders. Most of the typical days described by judges and magistrates include some time spent 'writing/preparing decisions, judgments, orders', with judges undertaking this task on a higher proportion of their typical days and for longer times, compared with magistrates.

² Using averages can be somewhat misleading. These average times do NOT mean that every magistrate spends 4 hours a day or each judge spends 4 ½ hours a day every day presiding at trial. These times are based on aggregating all the typical days described, in which the activity was undertaken, across all the magistrates or all judges. Not all tasks are undertaken every day, not all tasks take the average time every time they are undertaken, and not all judges or magistrates undertake all tasks. On any given day, a longer time taken for one task, such as presiding at trial, will be offset by a little or no time taken for another task on that day.

- For judges, 80% of the typical days described in the survey involve some time spent 'writing/preparing decisions, judgments, orders'. On these days, the time spent averages 175 minutes.
 - The judges of different courts vary in the frequency and amount of time spent on judgment writing. Respondents from the High Court and/or Federal Court³ and State/Territory Supreme Courts report that only 15% of their typical days involve no time spent writing/preparing decisions, while those from the Family Court, Federal Magistrates Court and County/District courts report about one quarter of such days.
- For magistrates, 'writing/preparing decisions, judgments, orders' took place on 65% of typical days, averaging 78 minutes on those days.
- Longer judgment writing hours may lead to longer overall days. While a large number of long days occur without long hours of judgment writing, a day that involves three or more hours of judgment writing is very likely to be a ten plus hour day.

These average times indicate that magistrates do spend some considerable amount of their working hours on preparation of decisions, judgments, or orders, though judges, on average, spend more time. This difference is expected, in light of judges' greater obligation to prepare written judgments after trials and appeals, contrasted with magistrates' greater in-court obligations, in which many decisions are given orally, immediately after brief oral submissions.

In response to open-ended questions asking for further/additional comments, concerns about time for judgment writing were specifically mentioned by relatively few respondents. However, it is possible that there might have been more comments in response to a direct question asking for concerns about judgment writing. The comments which were made about judgment writing appear to reflect more widely shared concerns about volume of work or lack of control over work. For some magistrates, the lack of specifically allocated time seems to be paramount. For some judges, the demands of judgment writing appear to be experienced as an ongoing obligation which is never fully discharged.

To understand the significance of these concerns about judgment writing, it is important to consider the overall attitudes of magistrates and judges to their everyday work. Magistrates and judges express considerable satisfaction with many aspects of their everyday work, especially

³ The response categories to the question in the National Survey of Australian Judges which asked 'In which court do you mainly sit?' are 'High Court/Federal Court', 'District/County Court (including industrial, youth, environment etc.)', 'Family Court (including WA Family Court)', 'State/Territory Supreme Court (including Court of Appeal/CCA, environment, industrial, planning etc)' and 'Federal Magistrates Court'.

the nature of the work itself, which they find varied and interesting. Legal values, especially impartiality and integrity, are regarded as essential qualities by all judges and magistrates; magistrates value interpersonal skills slightly more than judges, who regard legal skills more highly, perhaps reflecting the differences in their work, especially in court.

Magistrates and judges express less satisfaction with control over the amount of work, control over the manner of work, court facilities, and policies and administration. These aspects of work may have some connection with judgment writing, where that is part of the respondent's everyday work.

Findings from the surveys suggest that judicial caseloads, in volume and complexity, are experienced as increasing. The literature and public statistics do not clearly confirm the increase in volume and do not address any increase in complexity. There is relatively little consistent, publicly available data reporting the numbers of written judgements and the time from hearing to judgment. Research does indicate that the length of judgments has increased, which may in part account for an increase in perceived workload.

Judges who report the most time judgment writing, describing only typical days with at least three hours judgment writing, are more likely to sit in the High Court/Federal Court or a Supreme Court, to hear civil cases and appeals, and to value qualities associated with judgment writing as essential skills, for example diligence, legal research, intellectual skills, legal analysis and legal knowledge. This is the cohort with the lowest proportion who regard capacity to make quick decisions as essential. They have longer overall days, and a higher proportion regard the volume of cases as unrelenting and find decision making very stressful. They are the least satisfied with their hours of work.

These findings suggest that those who are spending more time on judgment writing in their work are not doing so because they choose it, but because they feel it is necessary to complete their work and would prefer to complete this work in fewer hours. Nonetheless, they report greater satisfaction with the intellectual challenge of their work compared with other judges.

The judges who report only working days with less than three hours judgment writing do more trial work and less appeal work, less civil and more criminal. They value several skills associated with judgment writing slightly less, they express more satisfaction with current hours, they are the smallest proportion kept awake by difficult decisions or who find making decisions stressful. This group is mainly composed of district/county court judges, with some supreme court judges

who spend the bulk of their time presiding over criminal jury trials, where written judgments are rarely required, though preparation of sentencing remarks may require considerable reflection.

Given the link between the nature of a court's work and the need for and availability of time to write judgments, it might be expected that patterns of time allocation might be similar for courts of the same type. However, it appears from the information provided⁴ that there is no express standard or benchmark as to the amount of time that should be allocated for judgment writing which is consistent across courts generally, or across courts with similar jurisdictions. There is also no consistent pattern in the way time is provided or the amount of time provided. There appear to be a variety of structures, including a fixed number of days per judicial officer, a fixed number of days after a trial or appeal hearing, an expectation that judgments will be written during 'gaps' created by the settlement of scheduled cases or in the judicial officer's own time, including after hours or during time otherwise designated as leave. Any or all of these can be supplemented by informal arrangements, usually by request to the head of jurisdiction or the judicial officer or senior court staff member responsible for case allocation.

Sometimes delay in producing a judgment may arise from difficulty in actually making the decision. As indicated in the survey findings, about one-third of judges agree that decision making is very stressful. In other circumstances, the decision may be made, but the judgment writing process itself is delayed, perhaps because of the press of other urgent scheduled work or inefficient work practices or a commitment by a judge to lengthy or detailed opinions.

Judicial officers at all levels need some time for judgment writing and associated out of court tasks, though the actual time needed will not necessarily be the same. Even within one court, different work allocations (eg civil or criminal, trial or appeal) will entail different judgment writing demands. The challenge is to provide a reasonable amount of time for judgment writing to those judicial officers whose work requires it, when it can be most efficiently used. This will usually entail at least some time immediately after the trial/appeal has been heard.

The research presented in this report provides independent empirical evidence about the experiences and attitudes of magistrates and judges from all courts in Australia in relation to the

⁴ The analysis in this section is drawn from a table provided by the JCA and from research the Judicial Research Project has conducted as part of a larger project into the Australian judiciary. The material provided by the JCA was requested by the JCA from each court for use in a presentation to the heads of jurisdictions. This request was made and the material was provided by the courts to the JCA without the involvement of the Project. As the material was not collected by the Project, it is being included in this report on a confidential basis, similar to the use of the Project's own unpublished research data. Therefore, the discussion below is couched in general terms, without reference to any specific court or individual, with the exception of the discussion of the individual docket system (IDS), which is based on publicly available sources.

demands of writing and preparing judgments or orders and making decisions more generally. This question of how much time should be spent on judgment writing or how much time needs to be formally allocated in order for that amount of time to be available is one of policy, driven by the demands of a particular court, in light of its own resources, caseload and case mix, and court culture. It is also a question of the kind of judgments delivered, and the level of detail and complexity needed. While the research cannot directly answer these questions, it has identified several aspects of judgment writing which courts might wish to address:

- The informal practices of time allocation and judgment writing methods currently in use in Australian courts may no longer be appropriate. More transparent methods of managing and allocating workload may be needed. For some courts, different workload allocation methods, such as individual docket systems, may be appropriate.
- Clearer time standards may also be helpful. Few courts have express standards for when reserved judgments should be finalised, or clear practices for reporting or oversight of outstanding judgments. There appears to be little consistent data across courts tracking time between hearing and decision and the number of written judgments delivered.
- Explicit encouragement of more efficient judgment writing practices, supported by appropriate professional development, is also a potentially useful direction. As argued by some leading judicial writers, judgments which take longer to produce or are lengthier are not necessarily of higher quality, and action can be taken by judges themselves to reduce the burdens of judgment writing. Currently, length and detail of judgment appear to be matters for independent individual judicial choice, but these issues may benefit from being addressed collectively among the judiciary within a particular court.

Courts and judicial officers experiencing caseload pressure and excessive judgment writing time demands may wish to seek more time for writing and/or more judges to write. They may also be able to develop improved workload and time allocation structures and improved judgment writing practices that will support the production of high quality judgments within a reasonable time frame.

JUDICIAL WORKING PATTERNS

The work of magistrates and judges involves many different tasks and in varied combinations. Effective provision of time for judgment writing needs to take into account the variety of tasks and activities which the judiciary must undertake to get through their work and the time these many different activities require. Recognition of work undertaken outside court sitting and outside regular work days/times is also important for individual management of workload and for the court's management of workload and staff and for public understanding of the everyday work of courts. Measuring outputs only in terms of judgments written or efficiency only in terms of time lapse between hearing and judgment is insufficient.

Length of work days

Length of judicial work days is a factor in public perception of the judiciary. Ryan et al (1980: 26) note that time of work has become 'a surrogate measure for judicial performance'. They point out that, while it 'is not a very good measure of productivity, either in judging or in other professions', it can be a useful description of one aspect of a judge's working day.

The National Survey of Australian Magistrates 2007 and the National Survey of Australian Judges 2007 provide two sources of data about the length of working days for Australian judges and magistrates.⁵ One question asked how often work is undertaken outside regular hours and

⁵The two surveys were essentially identical, but conducted separately in order to maintain clarity of terminology and to recognise some differences in the nature of the work – e.g. questions about juries for the judges, not for the magistrates. The surveys were conducted as mail-back questionnaires. Participation was entirely voluntary. The research was approved by the Social and Behavioural Research Ethics Committee of Flinders University. Because of very strong concerns from the judiciary about confidentiality of the data, no tracking or identification was used on the surveys, so that the identity of those who returned the surveys and those who did not is unknown. All completed surveys are anonymous.

The 2007 National Survey of Australian Magistrates was sent to all 457 magistrates throughout Australia in late May 2007. The survey was printed as a booklet with a heavy bright orange cover to distinguish it from an earlier magistrates survey in 2002 and the judges survey. 242 surveys have been returned, giving a response rate of 52.9%. The magistrates who responded are generally representative of the magistracy as a whole, in terms of gender, age and time on the bench. There is some variation in terms of jurisdiction, with a slight overrepresentation of magistrates from New South Wales, compared with magistrates from other jurisdictions.

The National Survey of Australian Judges was sent to all 566 judges throughout Australia in March 2007. The survey was printed a booklet with a heavy bright blue cover to distinguish it from the magistrates surveys. Responses were received into June 2007; 309 surveys were returned, giving a national response rate of 54.5%. The judges who responded are generally representative of the judges as a whole, in terms of gender, time on the bench and level of court and appear generally representative in terms of age, though that cannot be calculated fully, as baseline date of birth data for the entire judiciary is not available.

The surveys included several open-ended questions which gave respondents the opportunity to comment generally about their judicial career or about other issues raised in the survey. The quotations in this report

another question asked respondents to indicate the time spent on various activities during one or more typical days.

One-third (34%) of magistrates indicate that every day they work outside regular hours (defined as before 9:00 am and after 5:00 pm, Monday to Friday). Just under one-third (30%) report they do so a few times a week. This means that nearly two thirds (64%) of magistrates report that they undertake work outside regular hours at least a few times a week. There are no differences in this pattern of work for male and female magistrates. In spite of the frequency of after hours work, eight in ten magistrates (81%) report they are very satisfied or satisfied with their hours. The gender difference is relatively slight; 84% of men and 77% of women are satisfied with their hours.

A higher proportion of judges, six in ten (62%), indicate that every day they work outside regular hours (defined as 9:00 am to 5:00 pm Monday to Friday), and over two in ten (24%) report they do so a few times a week. Of district/county court judges, about half (48%) report out of hours work every day, and 30% do so a few times a week, compared with those in the supreme courts, where over two-thirds (68%) indicate out of hours work every day, and 23% a few days a week. Considering all judges together, over eight in ten (86%) judges report that they undertake work outside regular hours at least a few times a week, compared with nearly two thirds of magistrates. There are no differences in this pattern of work for male and female judges.

In spite of the frequency of after hours work, seven in ten (71%) judges report they are satisfied with their hours, with a slightly higher proportion of district/county court judges expressing this view (77%) compared with members of supreme courts (66%). This compares with eight in ten magistrates who are satisfied. There is a much sharper gender split among judges on this point: 77% of male judges are satisfied (including very satisfied) with their hours compared with only 53% of female judges.

More detailed data about tasks and times in typical work days is drawn from a survey question which asks respondents to indicate the time spent on various tasks during one, two or three typical working days. (See Appendix for the full text of Question 16.) This question was drawn from a survey of US state trial court judges conducted by Ryan et al (1980) and some comparisons can be made with their findings.

are given verbatim, as written in the survey booklets, though any information which might identify a respondent has been removed.

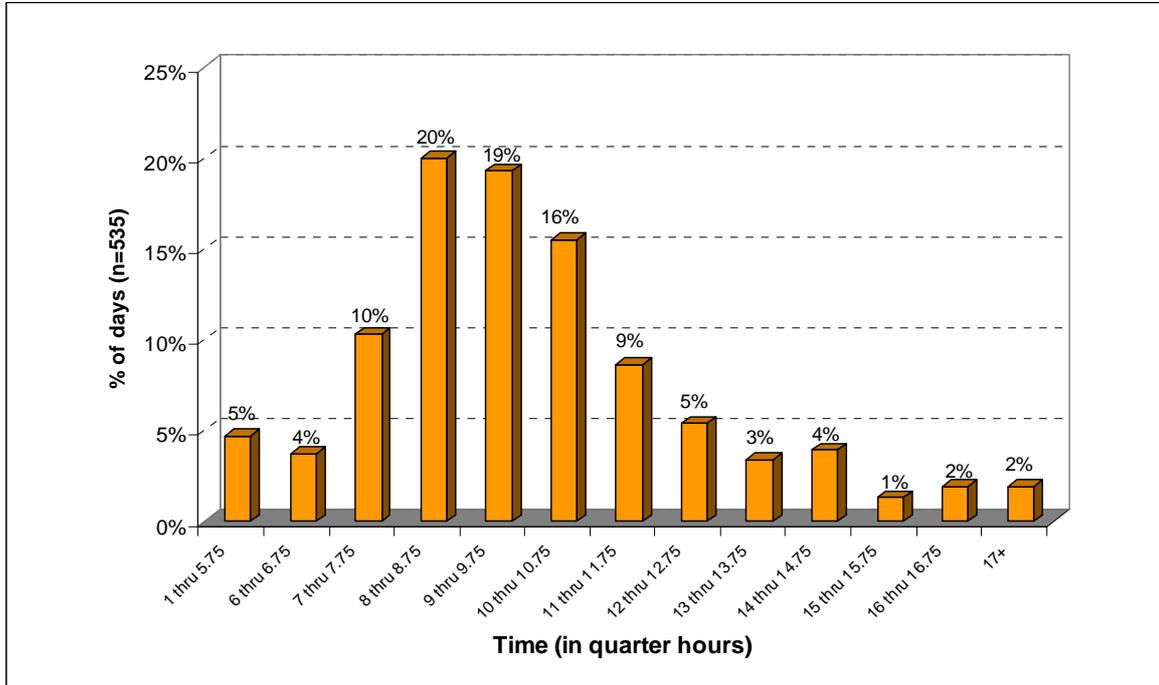
Magistrates and judges took a great deal of trouble in answering this question and provided rich data about their daily work. The 243 magistrates who responded to the survey describe 535 typical days. The 309 judges who responded to the survey describe 619 typical days, giving a total of 1,154 days, though not every magistrate or judge described three days as suggested in the question. Because this question asks about ‘... perceptions of work patterns’, respondents may vary in how distinctive a work day needed to be in order to be recorded as a different type of day (Ryan et al 1980: 25, emphasis in original).

Note that, for many of the figures and tables in this report, the unit of analysis is a typical day, rather than a judicial officer. That is, percentages are a proportion of the total typical days described, not a percentage of the magistrates or judges who responded to the surveys. This is necessary to reflect the variety of different days described by individual respondents.

Some care needs to be taken in interpreting these charts and times. Some activities, especially those undertaken out of court, may be undertaken simultaneously and the times include activities which may not appear directly related to work tasks. For example, conferring with other judges or magistrates might be undertaken during lunch or morning or afternoon tea. These 'breaks' are also essential for court staff as well as the judiciary. Preparing decisions in the sense of reflecting on submissions may also include checking on the law and may occur as part of conferring with colleagues.

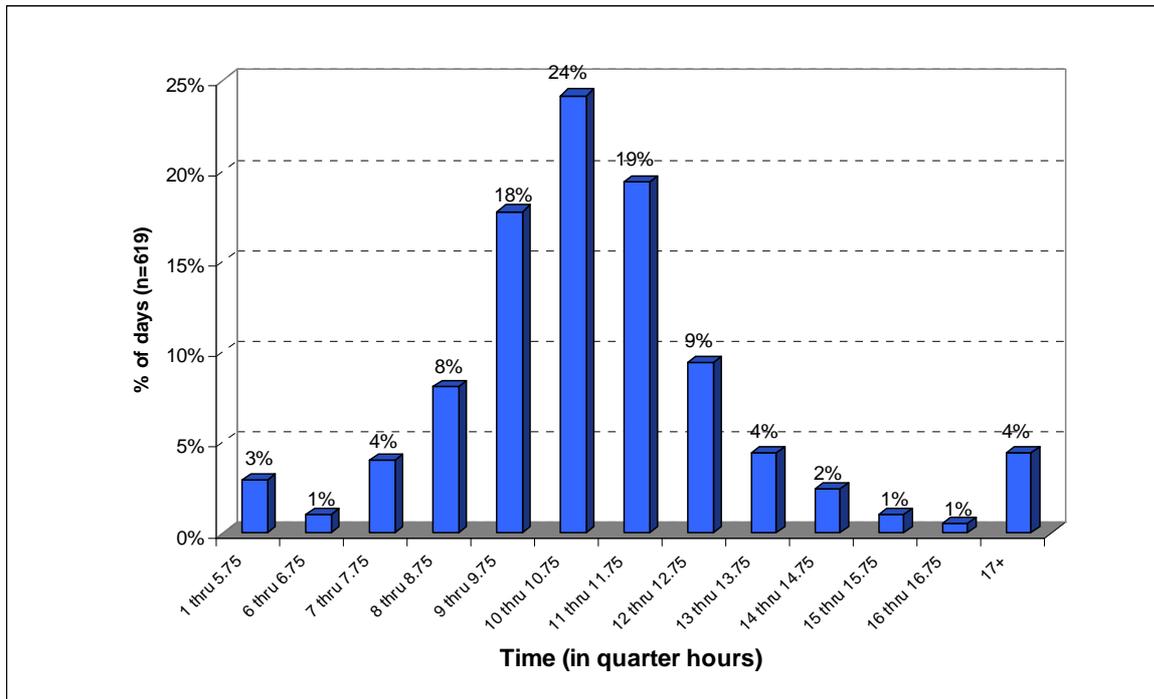
The length of typical work days for magistrates varied as shown in Figure 1 below. Over one quarter of typical days (26%) add up to 11 hours or more; over half of typical days (55%) last 8 to 10¾ hours, and 19% of typical days are less than 8 hours. Another way to describe the length of typical days is to indicate that the average hours per day for magistrates is 9.7 hours and the median is 9.5 hours. This average is calculated by totalling hours for all tasks across all days and dividing this by total days described. The average includes a few typical days of less than 4 hours. These may include weekend days where work is undertaken for a short while, or days where a trial or other scheduled activity ends unexpectedly and there is no other work on that day. (Note that these estimates of length of day include lunch and many include travel time.)

Figure 1: Magistrates: Distribution of hours across all days



Judges indicate somewhat longer working days than magistrates, with just under one quarter (22%) indicating 12+ hours in a typical day, 61% indicating 9 to 11¼ hours and 16% indicating working days of less than 9 hours (Figure 2). Average and median hours per day for judges is 10.1 and 10, respectively. These results are consistent with the earlier survey question, where higher percentage of judges indicate work after hours.

Figure 2: Judges: Distribution of hours across all days



Findings for US state trial courts showed an average of 9.2 hours per day for the most typical day, dropping to 8.7 hours for the fifth most typical day (Ryan et al 1980: 26).

Frequency of tasks and time spent

Another way to consider the daily workload of magistrates and judges is to look at how often certain tasks are performed and how long tasks take, on average, on days they are performed. The frequency of many tasks is similar for judges and magistrates, though the amount of time spent may vary. For example, 60% of all typical days for magistrates⁶ involve presiding at trial,

⁶ The percentage was obtained by summing the number of times an activity occurred across all days and then dividing this number by the total number of days. (Note: an activity could not be reported as occurring more than once for one day, so percentages never exceed 100%.) Thus, if respondents describe a total of 500 typical days, and 250 of those days involve some amount of time preparing for a case, or the next day, that would be expressed as 50%.

with an average of nearly 4 hours per day.⁷ In comparison, 53% of judges' reported days involve presiding at trial, but the time spent was an average of about 4 ½ hours (274 minutes).

Days with civil non-trial proceedings are relatively rare for judges and magistrates, occurring on around one third of all typical days described, taking on average about an hour and a quarter (73 minutes for judges and 81 minutes for magistrates). This reflects the fact that, in many courts, these tasks are performed by masters, registrars or other court staff.

For all judges, hearing appeals, on those days where this is done occurs on 23% of all described days and entailed about 3 ½ hours (204 minutes), on average. (This question was not asked of magistrates, as their appeal jurisdiction is very limited.) This percentage increased to 33% when only high court/federal court and supreme court responses are considered.

On the other hand, two thirds (65%) of all typical days for magistrates involve criminal non-trial, non-appeal court work in court, averaging nearly 3 hours per day (177 minutes), on those days. In contrast, only 21% of judges' days involved criminal non-trial work, averaging just under two hours (111 minutes). This comparison emphasizes the very high frequency of in-court work in the criminal list undertaken by magistrates in comparison with judges of the higher courts (Mack & Roach Anleu 2007).

Another frequent activity for magistrates is waiting: 61% of magistrates' typical days involved waiting, taking just over a half an hour (35 minutes). In contrast, judges report waiting on only 31% of typical days, for 31 minutes, on average. Waiting could occur in court, such as waiting for parties or lawyers or witnesses during the course of a proceeding while nothing further can be done, or out of court, if it appears that a delay is best handled by an adjournment or short recess.

While work in court, particularly presiding at trial, is the most publicly visible part of a judicial officer's work, there are many tasks and activities which take place out of court which are necessary or related to core judicial work. Keeping up with law and general correspondence all

⁷ Using averages can be somewhat misleading. These average times do NOT mean that every magistrate spends four hours in hour a day presiding at trial. These times are based on aggregating all the typical days described, in which the activity was undertaken, across all the magistrates or all judges. Not all tasks are undertaken every day, not all tasks take the average time every time they are undertaken, and not all judges or magistrates undertake all tasks. On any given day, a longer time taken for one task, such as presiding at trial, will be offset by a little or no time taken for another task on that day.

occur on about three-quarters of typical days for judges and magistrates, taking between 45 and 55 minutes, on average on those days. Conferring with other judges/magistrates, court staff/meetings occurs on just over half of typical days for judges and magistrates, taking on average 43 minutes for judges and 34 minutes for magistrates.

Interestingly, only half of typical days for magistrates (51%) specifically indicate time preparing for a case/next day, compared with 69% of judges' typical days. On average, judges spend an hour and a quarter (74 minutes) on this task, while magistrates spend less than an hour (51 minutes). This may reflect the nature of work in those courts where magistrates may not know exactly what their allocated work will be until late the day before or even on the morning they arrive for work. Alternatively, the nature of the work itself may be such that preparation is not possible or practical. Especially in the criminal list, a magistrate may not know what will happen in relation to a particular matter until it is called. It may be a plea or request for adjournment or setting for a trial, and many defendants do not appear at all. This unpredictability makes effective time management challenging for magistrates and court staff (Mack & Roach Anleu 2007).

AMOUNT OF TIME SPENT JUDGMENT WRITING

This section summarises survey findings in relation to the amount of time magistrates and judges indicate spending on 'writing/preparing decisions, judgments, orders'. This report uses the term 'judgment writing' as shorthand, but it is important to recognise that the actual phrase in the survey question is 'writing/preparing decisions, judgments, orders' which includes tasks in addition to specifically judgment writing. Other out-of-court tasks discussed above, such as keeping up with the law, preparing for a case and conferring with judicial colleagues may sometimes be aspects of judgment writing, though these tasks may also be undertaken as part of the work of all judicial officers, unrelated to judgment writing.

Of magistrates' typical days, 65% include time spent on 'writing/preparing decisions, judgments, orders'. The average time spent on this task, on those days, is 78 minutes. If the days where no time was spent on writing/preparing decisions are included, the average time over all of the magistrates' days is 51 minutes. (The median time for both groups of days is 50 minutes.)

Of judges' typical days, 80% include time spent on this task. The average time for this task, on those days, is 175 minutes. If the days where no time was spent on writing/preparing decisions are included, the average time over all of the days is 140 minutes. (The median time for both groups of days is 120 minutes.)

Ryan et al's (1980:29-35) research on US state court trial judges found that 56% of these judges' most common work day involved some time spent writing/preparing decisions. The average amount of time spent on this task was one hour on the most common typical day, rising to two hours or more on the least common typical days, on days where the task was undertaken at all. This suggests that judgment writing is part of the regular work of US state trial court judges, but it is not undertaken frequently or for long periods on the most typical days.

These average times indicate that magistrates do spend some considerable amount of their working hours on preparation of decisions, judgments, or orders, though judges, on average, spend more time. This difference makes sense, in light of judges' greater obligation to prepare written judgments after trials and appeals, contrasted with magistrates' greater in-court obligations, in which many decisions are given orally, immediately after brief oral submissions.

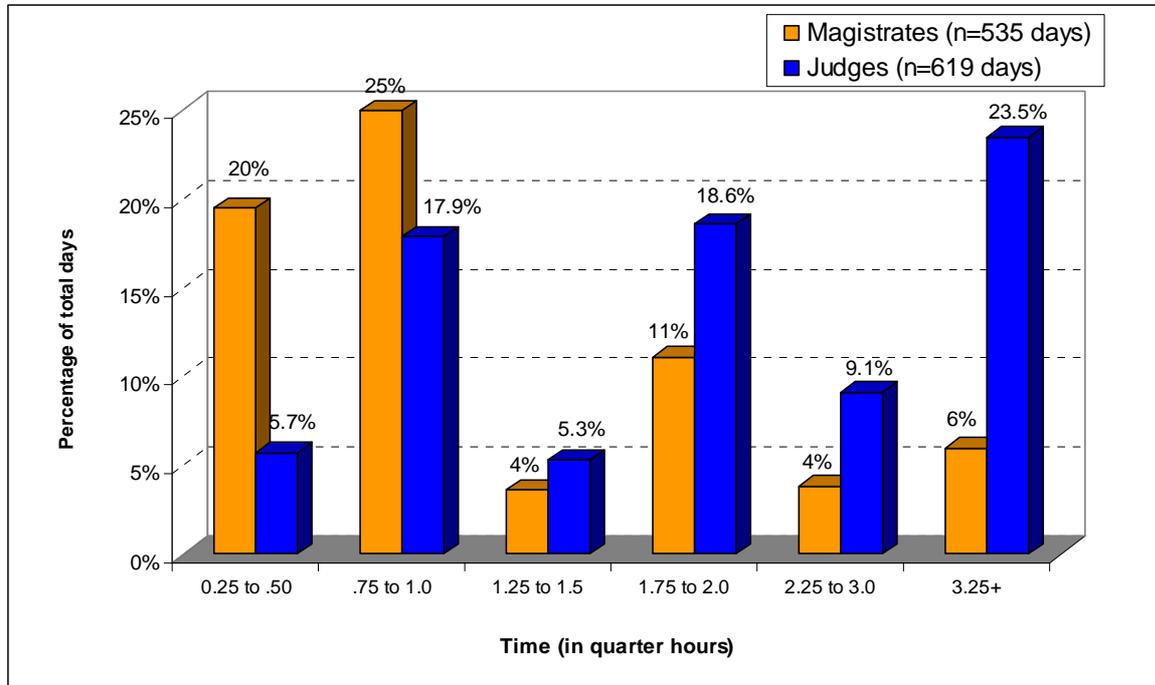
Another way to depict the time magistrates and judges spend preparing judgments, and to show how the time varies on different days, is shown in Figure 3 below. The first pair of bars indicates that 20% of the 535 typical days described in the survey by magistrates involve one quarter to one half an hour on writing/preparing decisions, judgments, orders, while the second pair of bars

shows that 25% of magistrates' typical days involve three quarters to one hour on these tasks. Looking at the fourth and fifth bars, 11% of magistrates' typical days involve one and three quarters to two hours, and 4% involve two and one-quarter to three hours.

The pattern for judges in the higher courts also shows considerable variation in the amount of time spent on different days, but the distribution is somewhat different than for magistrates. Only 5.7% of the 619 typical days described by judges involve one quarter to one half an hour on these tasks, and 17.9% involve three quarters to one hour, while 18.6% of typical days involve one and three quarters to two hours and 9.1% of typical days involve two and one quarter to three hours. Nearly one quarter (23.5%) of judges' typical days involve three and one quarter hours or more on judgment writing.

To sum up, most of the typical days described by judges and magistrates include some time spent 'writing/preparing decisions, judgments, orders', with judges undertaking this task on a higher proportion of their typical days and for longer times, compared with magistrates.

Figure 3: Magistrates and Judges: Time allocated to writing/preparing decisions



There are notable differences among judges in different courts in the frequency and amount of time spent on judgment writing, as shown in Figures 4 to 8 below. The courts which indicate the largest percentages of days with three or more hours of judgment writing are the High Court/Federal Court (45%) and the State/Territory Supreme Courts (40%)⁸ (Figure 4 and Figure 5). This presumably reflects their substantial appellate caseload.

The court with the next highest percentage of days with three hours or more spent writing/preparing decisions/orders/judgments is the Family Court (29%), which is matched by the Federal Magistrates Court, whose jurisdiction is largely family law cases, though with no appellate jurisdiction (Figure 6 and Figure 7). The courts with the least proportion of these kinds of days are the District/County Courts, reflecting the extent to which their jurisdiction involves presiding over criminal jury trials (Figure 8).

Another way to describe the different frequency of judgment writing on different courts is to ask what proportion of typical days has no time spent on judgment writing. Both the High

⁸ The response categories to the question in the National Survey of Australian Judges which asked 'In which court do you mainly sit?' are 'High Court/Federal Court', 'District/County Court (including industrial, youth, environment etc.)', 'Family Court (including WA Family Court)', 'State/Territory Supreme Court (including Court of Appeal/CCA, environment, industrial, planning etc)' and 'Federal Magistrates Court'.

Court/Federal Court and State/Territory Supreme Courts report that only 15% of their typical days involve no time spent writing/preparing decisions, while all other courts report about one quarter of such days.

Figure 4: High Court/Federal Court: Time allocated to writing/preparing decisions as percentage of described days

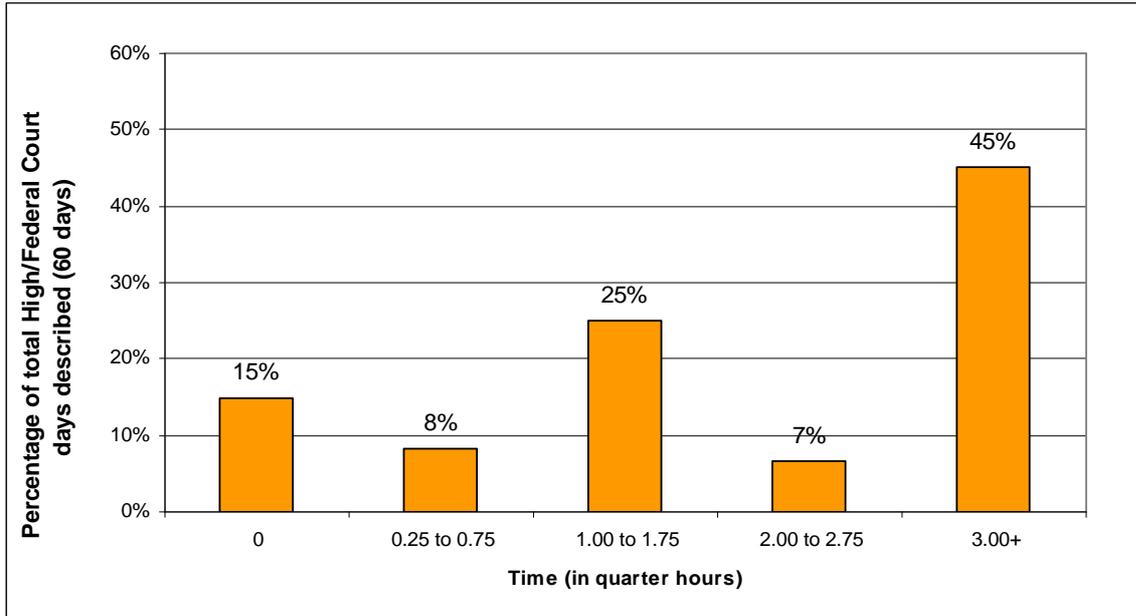


Figure 5: State/Territory Supreme Courts: Time allocated to writing/preparing decisions as percentage of described days

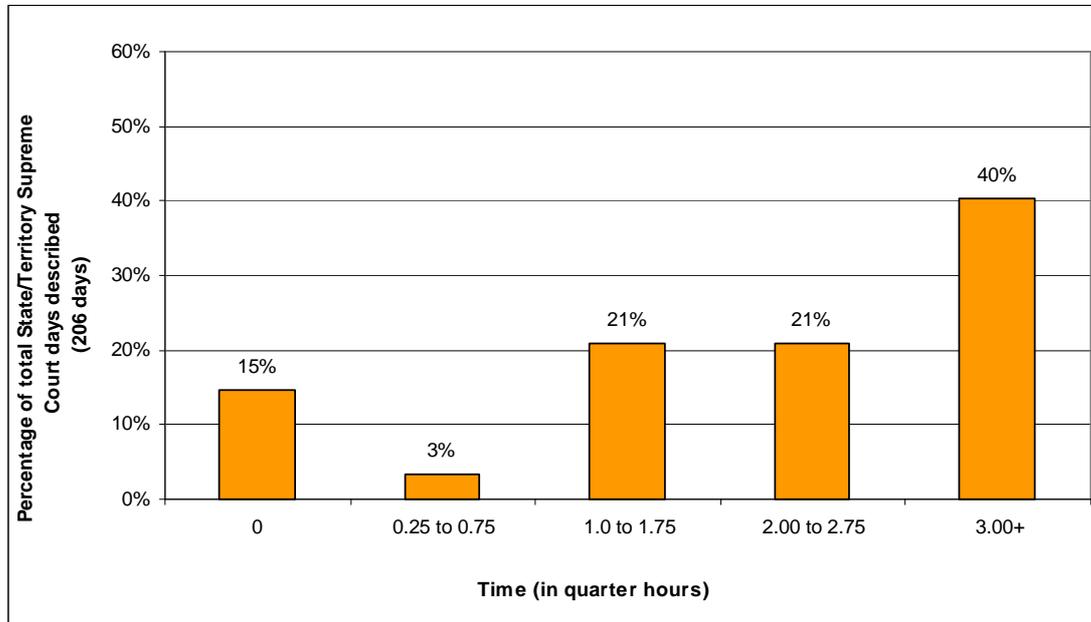


Figure 6: Family Court: Time allocated to writing/preparing decisions as percentage of described days

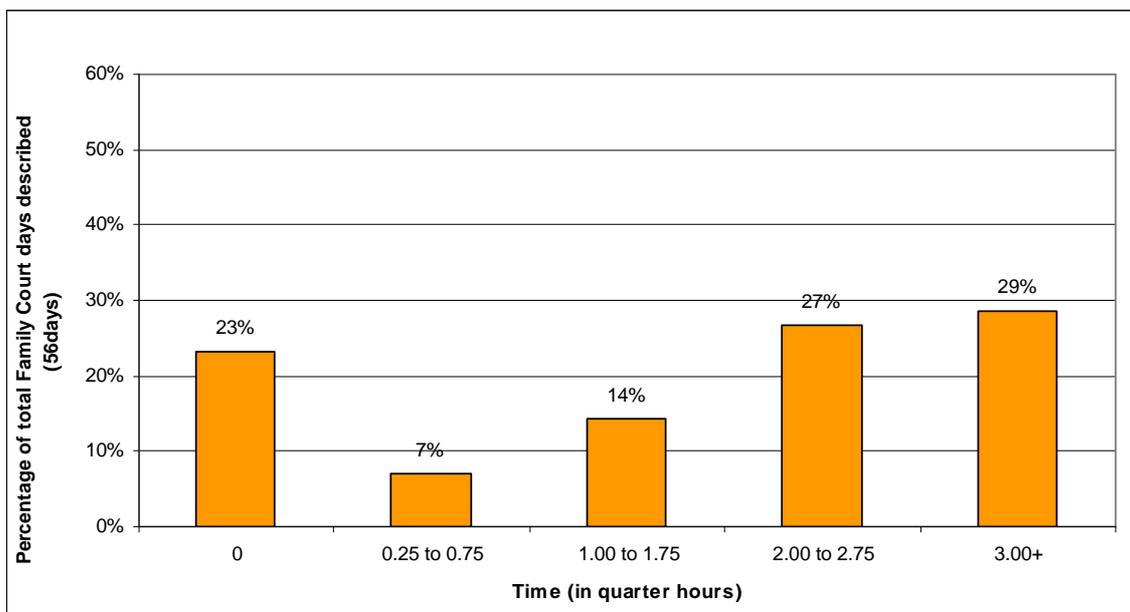


Figure 7: Federal Magistrates Court: Time allocated to writing/preparing decisions as percentage of described days

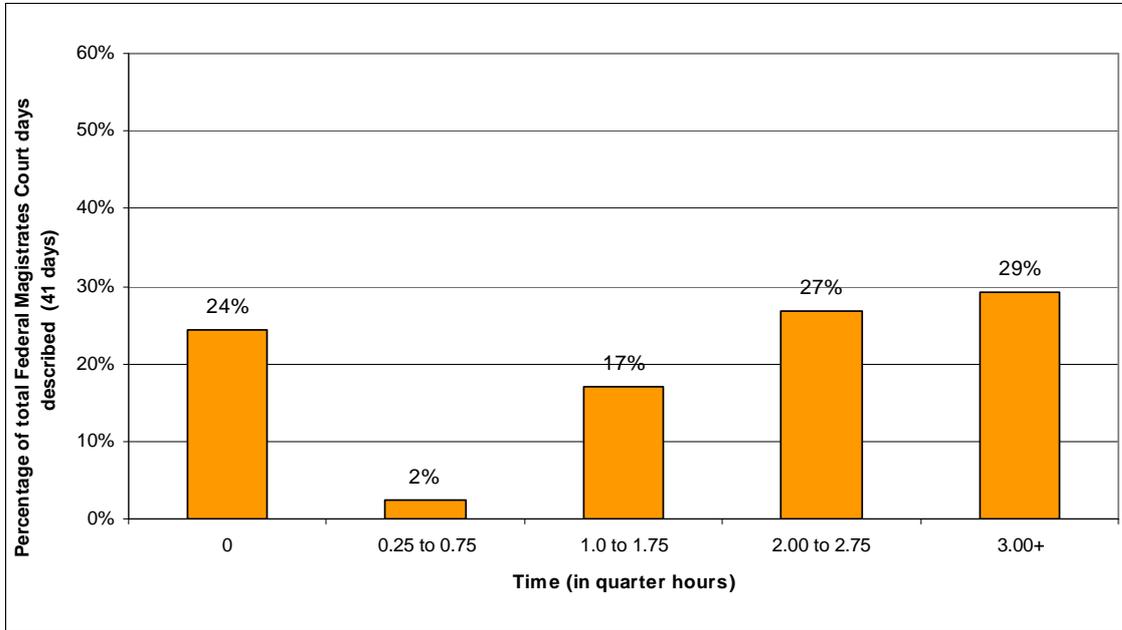
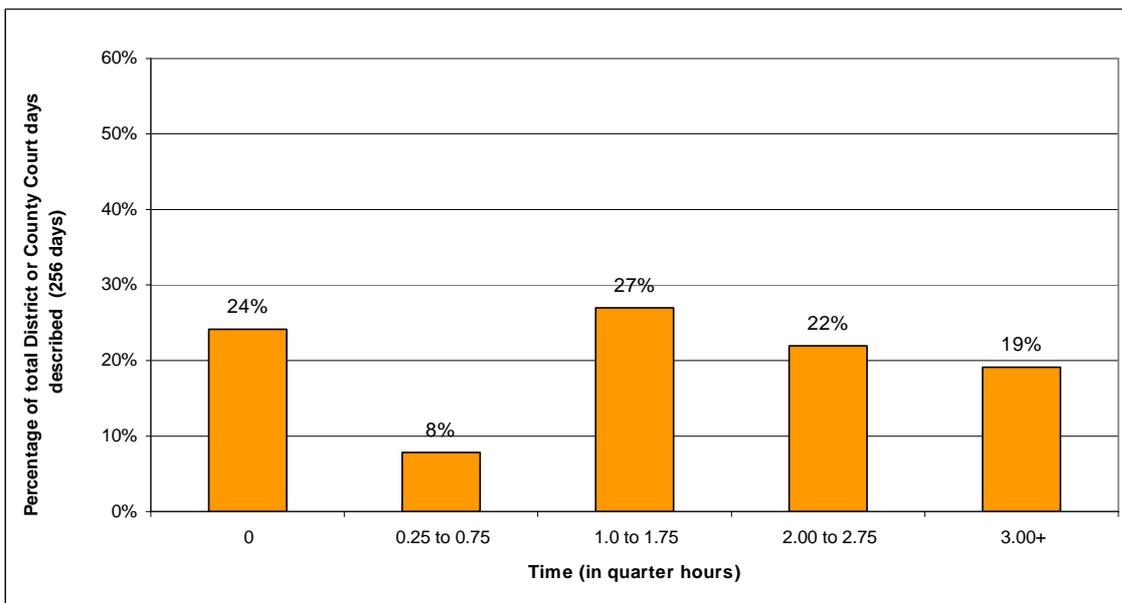


Figure 8: District/County Courts: Time allocated to writing/preparing decisions as percentage of described days



These figures make clear that the demands for judgment writing, and the frequency with which this task is undertaken, varies considerably from court to court, reflecting the differences in the kinds of cases heard by each court. A fuller understanding of how the demands of judgment writing are experienced is shown by magistrates and judges responses to open-ended questions in the survey.

COMMENTS ABOUT JUDGMENT WRITING AND TIME DEMANDS

In response to two open-ended questions asking for further/additional comments, twenty three judges and eight magistrates specifically identified aspects of judgment writing as an area of concern (out of a total of 552 survey respondents). [These do not include a few responses indicating a change in role, eg move to a different court, leading to more or less judgment writing responsibility.] Considering these lengthier comments, in conjunction with the overall survey responses, gives greater depth and detail about the views and experiences of some judicial officers.

Several themes appear in these comments. Perhaps the main point is that there is insufficient time available for judgment writing during the working day, so that this task must be done after hours including at home. This issue is especially emphasised by magistrates, as shown in the seven comments below:

I do as much judicial work writing j/gts at home as at work as there's no time for them at work.

Longer sitting hours - until 5 pm very often + no time in chambers for decision writing therefore writing decisions on weekends + nights

We have NO time out of court to prepare judgments - there is too much reliance on us doing things in our own time.

I love it. However it needs more time out of court to do it justice : not just holidays / annual leave, but also conference leave which is very stimulating & time to be in chambers in order to do filing & writing judgments.

No time is provided or built into the systems which allows for judgments to be written except outside court hours.

No time rostered out of court for preparation of reasons, continuing legal education.

Failure to roster any out of court time for doing reasons + significant stress caused by consequent delays in decisionmaking. We need to beg/constantly ask for day out of court

Some judges also commented on the need to undertake judgment writing after hours or at home. All three of these comments come from judges who describe at least one typical day as involving three or more hours spent on judgment writing:

I enjoy the work but wish I had more control over the volume & judgment writing time. A lot of the stress is due to not being given time to write judgments - Bye Bye weekends & evenings

The downsides are the constant need to prepare reasons and the invasion that makes into 'private' time.

...judges seeking different listing arrangements to allow time to write judgments & sentences (other than at night or weekends or during leave) are viewed as less capable and inefficient. this, and the requirement that a judge directly apply for time out-of-court to perform these important judicial functions during court hours, forces many judges to work extraordinary hours & adopt unhealthy work regimes.

Comments from three judges identify the increased caseload as a factor in judgment writing pressure, while three others simply state that there is not enough time available for judgment writing:

Our caseload has increased without allowing time out of court to write judgments or to attend to non-judicial work

more cases, more pressure to hear cases & write the judgments quickly

Longer lists

Less days out of court for judgment writing

No time is allotted to prepare judgments, to reflect or to study the ever growing body of the law.

Too much work/not enough preparation/writing time!

I feel we are inadequately supported within the court eg time out of court to write

Two other judges identify changes in the pattern of cases as affecting the pressure of judgment writing:

Less routine work.

Less settlements.

∴ Less time [to] write judgments

Increased jurisdiction

More hearings

More judgments

Another judge mentioned the impact of case flow management:

Case management has greatly increased length of time in chambers & ct as well as demands of judgment writing

The need for more detailed reasons was mentioned by one judge:

Court of Appeal directives ie detailed reasons for decision in civil cases & refining of directions in criminal cases

A different judge gives greater detail about why time is needed for judgment writing, in relation to in-court work:

Not enough allowance is made in affording judgment writing time. It takes far longer to write a reserved judgment than it does to hear the case. That is, when the hearing finishes the real work of writing the judgment begins. There is a crying need for judges to be given regular court-free time to do this, rather than having to do it in evenings, on weekends & when one is notionally on leave.

Another judge describes the emotional impact of the pressure of judgment writing:

it has had a major effect on my lifestyle in that, unless I am on holidays, any time I am not working (just about) I feel guilty - as I always have judgments outstanding

For some magistrates, the lack of specifically allocated time seems to be paramount. For some judges, the demands of judgment writing appear to be experienced as an ongoing obligation which is never fully discharged.

Concerns about time for judgment writing were specifically mentioned by relatively few respondents in answering the open-ended questions. However, it is possible that there might have been more comments in response to a direct question asking for concerns about judgment writing. To understand the significance of these concerns, it is important to describe the overall attitudes magistrates and judges express about their everyday work. How do magistrates and judges feel about their everyday work, including judgment writing, in light of the relatively long hours and varied demands from different tasks during their working day. The next section of the report identifies areas of satisfaction and dissatisfaction, the important skills for everyday work, especially those distinctly related to judgment writing, and some sources of stress.

ATTITUDES TO EVERYDAY WORK

In general, judges and magistrates express similar views, in that they are satisfied or dissatisfied with similar dimensions of work, value similar skills, and identify similar stressors, though judges express these views with greater intensity, and there are some different views on a few particular facets of work.

Satisfaction

In their survey responses, magistrates express considerable satisfaction with many aspects of their work. Nearly all magistrates (92%) report that they are satisfied with the overall work which they find varied and interesting (always/often, 87%). In particular, the overall level of responsibility (90%) and the intellectual challenge (84%), are satisfying, as is the content of work (84%) and the diversity of work (84%). Nearly all magistrates consider their work important to the community (97%) and are satisfied with the importance to society of their work (78%). Most magistrates (82%) agree/strongly agree their work is a major source of satisfaction in their lives and an overwhelming majority (93%) report that work has lived up to their expectations and most (84%) would become magistrates again, even with the benefit of hindsight. These views are generally shared by women and men in the magistracy.

Like magistrates, nearly all judges (92%) report that they are satisfied with the overall work which they find varied and interesting (always/often, 85%). In particular, the intellectual challenge (89%) and the overall level of responsibility (92%) are satisfying, as is the content of work (86%) and the diversity of work (82%). Nearly all judges consider their work important to the community (97%) and are satisfied with the importance to society of their work (82%). Most judges (80%) agree/strongly agree their work is a major source of satisfaction and an overwhelming majority (91%) report that work has lived up to their expectations and 86% would become judges again. These views are generally shared by female and male judges.

These generally positive views are reflected in the following comments from three judges and two magistrates:

It is a privilege to do such interesting work and to be well paid for it.

In general, satisfactory and of importance, I think, to society and the development of the law.

It is wonderful to have the opportunity to do such responsible, intellectually satisfying work which can make a real difference to the lives of ordinary citizens

It's been the best move I have ever made & the most rewarding job I have ever held.

I enjoy my position and the positive impact it can have on peoples [sic] lives.

Magistrates and judges express less satisfaction with control over the amount of work, control over the manner of work, court facilities, and policies and administration. These are aspects of work which may, in part, relate to judgment writing, where that is a regular part of every day work.

Skills

Judicial work demands many different skills and qualities to carry out the varied tasks and functions described above. Some skills may be more directly related to judgment writing than others. The surveys asked judges and magistrates to indicate, from a pre-defined list, whether a particular skill or quality was essential, very important, important, somewhat important, or not important in the performance of daily tasks. As with overall satisfaction, some attitudes are shared across the Australian judiciary, while some responses appear to reflect differences in the nature of the work, including different demands for judgment writing.

Legal values, including impartiality, integrity and high ethical standards and a sense of fairness are by far the most important kind of qualities for everyday work. Nearly all respondents (judges and magistrates) rate two legal values (impartiality and integrity/high ethical standards) as essential. It may be that, for some in the judiciary, these core values are best expressed through careful and deliberate development of lengthy judgments.

Legal skills are rated as essential by a higher proportion of judges, compared with magistrates, whereas slightly higher proportions of magistrates regard interpersonal skills as essential.

Some of these legal skills may relate to meeting the demands of judgment writing. For judges 'writing skills' are rated as essential or very important (89%) to a much greater degree than for magistrates (66%). Though a large majority of all judicial officers consider intellectual skills as essential or very important in the performance of daily tasks, these are slightly more important to judges (judges: 88%; magistrates: 75%). In contrast, a larger proportion of magistrates (84%) than judges (71%) regard the capacity to make quick decisions as essential or very important. The attitudes of magistrates and judges to other qualities which might relate to judgment writing, such as time management, diligence, legal research, legal analysis or legal knowledge, do not differ substantially.

Stress

There are some significant sources of stress in the work of magistrates and judges, as reported in the 2007 surveys, some of which may be related to the demands of judgment writing identified in the comments. Similar proportions of magistrates and judges agree that the volume of cases is unrelenting (three quarters of magistrates and judges) and sentencing is the most difficult aspect of their work (approximately half of each)(see Table 1 below).

A core element of the judicial function is decision making and the survey asks judges and magistrates whether they find that 'making decisions is very stressful'. For magistrates and judges, views are fairly equally divided. For magistrates, over one third (38%) agree/strongly agree, one quarter (27%) are neutral and just over one third (35%) report that they disagree/strongly disagree. Among judges just under one third (32%) agree/strongly agree, one third (32%) are neutral and just over one third (35%) report that they disagree/strongly disagree (Table 1 below). It may be that those who find decision making stressful, especially among the judges, may also find the demands of judgment writing onerous and express this as a need for more time.

Table 1: Magistrates and Judges: Views on work and stress

		Magistrates (n= 236-240) ¹		Judges (n= 232-305) ²	
The volume of cases is unrelenting	Strongly agree	32%	75%	29%	74%
	Agree	44%		45%	
Sentencing is the most difficult aspect of my work	Strongly agree	25%	54%	28%	54%
	Agree	29%		25%	
Making decisions is very stressful	Strongly agree	10%	38%	7%	32%
	Agree	28%		25%	
My work is emotionally draining	Always	10%	47%	5%	31%
	Often	38%		26%	
	Sometimes	41%		53%	
I am concerned about my health	Rarely	29%	36%	41%	49%
	Never	7%		9%	
	Sometimes	42%		36%	
Difficult decisions keep me awake at night	Rarely	45%	62%	38%	52%
	Never	18%		14%	
	Sometimes	29%		36%	
¹ This total number varies because not all respondents answered every question or every component of a question. ² The very low end of the range here reflects the number of respondents who indicated that sentencing was not part of their work.					

In some dimensions, magistrates report finding their work somewhat more stressful than judges do (Table 1 above). Nearly half (47%) of the magistrates surveyed find their work often or always emotionally draining while less than one third (31%) of the judges surveyed report this. Nearly half of judges indicate that they are rarely or never concerned about their health (49%), compared with only about one third (36%) of magistrates who indicate this.

On the other hand, three in five magistrates (62%) indicate they rarely or never lose sleep over difficult decisions compared with a slightly smaller proportion of judges (52%) who report this. Only around one in ten magistrates (9%) or judges (12%) report that difficult decisions always or often keep them awake at night (Table 1 above).

Comparing the views of magistrates and judges, a lower proportion of judges says judicial work has increased, a higher proportion says it has stayed the same (Table 2). About half of the judges report that judicial and non-judicial functions have increased since their appointment. In contrast, over two thirds of magistrates (67%) indicate that judicial functions have increased and nearly six in ten (59%) report that non-judicial functions have increased.

Table 2: Magistrates and Judges: Changes in judicial and non-judicial functions

	Magistrates¹ (n = 216-219)	Judges¹ (n = 272-289)
Judicial functions increased	67.2%	49.8%
Judicial functions stayed the same	21.0%	34.6%
Non-judicial functions increased	59.3%	50.0%
Non-judicial functions stayed the same	32.4%	33.1%
¹ This total number varies because not all respondents answered every question or every component of a question.		

To sum up, magistrates and judges express considerable satisfaction¹ with many aspects of their everyday work, especially the nature of the work itself, as well as several elements of working conditions. Legal values, especially impartiality and integrity, are regarded as essential qualities by judges and magistrates. They regard the volume of the work as unrelenting and increasing, requiring work out of regular hours at least a few times a week and for many, every day. Most find work emotionally draining at least sometimes, but few report being kept awake by difficult decisions. A significant proportion of magistrates and judges report some specific areas of dissatisfaction. Views are divided about the stressfulness of making decisions. Overall, while some responses show indications of stress, possibly related to the time pressures or other pressures of judgment writing, for most respondents, the demands of being a magistrate or judge are balanced by substantial sources of satisfaction.

The combination of stress and satisfaction in judicial work is shown by these comments from five magistrates and four judges:

Overall, I've enjoyed it. You only find out if you have an aptitude for it when you actually do it. Some of the best lawyers find they can't make decisions, and their life becomes hell. I have found I can make decisions for others, and sleep at night. I'm one of the lucky ones.

It was something I always wanted since I started in law. I love the job. Yes, at times it can be stressful, frustrating, draining, (& I hate doing civil matters!) but it really is a wonderful career.

Very rewarding but stressful at times.

It is a very demanding but challenging job.

Love it - enormous job satisfaction though I work hard & still, at times, worry about decisions/sentences imposed.

The hours are long and the work constant but it is an interesting, challenging and rewarding career. I enjoy the independence and the ability/opportunity to positively impact on the lives of many individuals and to perform an important community service.

I have times of self-doubt, of stress of frustration and general dissatisfaction. Seen in calm perspective, however, I think that these negatives are outweighed by the positives. I think that the work is important, and I hope that I do some of it well. I am temperamentally suited to the role - I think

I have enjoyed the work, but I have found it time consuming and stressful at times

It is a wonderful and gratifying occupation where I feel I can do a great deal of good. I only wish that I had time left over to have a life!!

JUDGMENT WRITING TIME AND ATTITUDES TO EVERYDAY WORK

To get a sense of how a judge's⁹ experience of judgment writing might relate to his or her attitudes to everyday work, respondents to the judges survey were divided into three cohorts, depending on the number of typical days they described as having three or more hours judgment writing:

- Least time judgment writing, defined as judges who only describe typical days involving less than three hours 'writing/preparing decisions, judgments, orders'; (n = 120). That is, whether a respondent described one two or three days, each described day involved less than 3 hours judgment writing.
- Varied time judgment writing, composed of judges who describe one day of more than three hours and one or two days of less than three hours on these activities (n = 107).
- Most time judgment writing, comprising judges who only describe typical days involving three hours or more on these tasks (whether describing one, two or three days in total) (n = 31) and judges who report at least two days with three hours or more judgment writing as well as one day with less time on this task (n = 15). This results in a total number for this cohort of 46.

(These cohorts were constructed by including all described days, including those days where no time was reported as including judgment writing.)

Using time spent on judgment writing identifies those judges for whom judgment writing is a very substantial part of their everyday work, more so than for others in the judiciary. Spending three or more hours judgment writing in all or most typical days is not necessarily an exact proxy for those who feel pressured by the demands of judgment writing, nor is it necessarily a proxy for those who struggle with long delays between completing a trial or appeal hearing and producing a judgment. Indeed, it is possible that those who report spending longer times on this task may be those who are provided with longer time and may not feel as pressured as their colleagues or may be among those who are prompt in delivering judgments. In either case, comparing the attitudes of these three groups may provide valuable information about who in the Australian judiciary undertakes extensive judgment writing, how their everyday work is experienced by those who spend more or less time on this work.

⁹ Magistrates were not included in this part of the analysis, as judgment writing takes up relatively little time for most magistrates. Only 28 magistrates, out of 242 respondents, indicated one day with three or more hours judgment writing. These magistrates were all located in CBD courts and sat more often in civil. There are, of course, considerable problems with the availability of time for judgment writing for magistrates when it is needed, as indicated by the comments above, which need to be addressed.

What are the jurisdictions of the different cohorts?

Judges who report at least one day of three or more hours judgment writing (combining the most and the varied cohorts) mainly sit in a state/territory supreme court or the federal court/high court, as would be expected given the substantial appellate caseload of these courts. Less than 10% of respondents sitting in the federal/high court describe no typical day with less than three hours of judgment writing, followed by one quarter of those in state/territory supreme courts and nearly two-thirds of district/county court judges.¹⁰ The remaining judges in these courts report at least one day with three hours or more spent judgment writing. A very slightly greater percentage of women report varied days, with one day of more than three hours judgment writing and at least one day of less than three hours at this task.

Those who report the most judgment writing time are slightly less likely to report having sat “always” as a trial judge: 29% compared with 42% for those who report no typical days with three hours or more judgment writing. Over four in ten of the two cohorts who spend more time judgment writing always or often hear appeals, compared with nearly three in ten of those who spend least time judgment writing.

Civil matters appear to be a much more frequent part of the work of those reporting at least one day with three hours or more judgment writing. More than seven in ten of these judges indicate they always or often sit in civil, compared with only 45% of the judges who do less judgment writing. In comparison, nearly eight in ten judges who report no typical days with three hours of judgment writing indicate they always or often sit in the criminal jurisdiction, while just under six in ten judges with at least one typical day of three hours of judgment writing indicate they always or often sit in criminal. About one quarter of these judges indicate they never sit in criminal cases.

These findings confirm that the nature of judicial work, whether civil or criminal, trial or appeal, perhaps more than simply the level of court, is an important indicator of the need for judgment writing time. This data also tend to confirm the reliability of the time estimates and responses given in different parts of the survey, as they reflect the practical realities of different courts.

¹⁰ These percentages may appear inconsistent with Figures 5-9 above. However, Figures 5-9 are based on a proportion of *days* while the percentages discussed in this section are a proportion of judicial respondents within certain cohorts.

Do these different groups have different attitudes towards their everyday work?

There are relatively few strong specific differences in the views expressed by each of the three cohorts; the cumulative effect of smaller differences creates a pattern of contrasting experiences of judicial work. Essentially, there are no differences among the three cohorts in relation to satisfaction with most aspects of work that might be thought to be influenced by the arrangements for judgment writing: control over manner of work, control over amount of work, and policies and administration. Attitudes toward the importance of writing as a skill for everyday work did not vary across the three cohorts and there is little difference in the views of the three cohorts on whether they always or rarely feel rushed, and only a slight difference in those who sometimes feel rushed.

One difference is satisfaction with intellectual challenge. Nearly half (48%) of those who report most time judgment writing report they are very satisfied with the intellectual challenge of their work compared with 36% of the varied cohort and only 29% of those who report no days with three hours of judgment writing.

On the other hand, over three quarters (77%) of judges with less than three hours of judgment writing for all typical days are satisfied with hours (10% dissatisfied) compared with 68% of those with varied judgment writing days (20% dissatisfied). Only 63% of those whose typical days involve most judgment writing are satisfied with their hours of work, while 26% are dissatisfied or very dissatisfied.

Longer judgment writing hours may lead to longer overall days. About seven in ten of those who report at least one day of three hours or more judgment writing indicate they work outside regular hours, compared with less than six in ten (56%) of those who have no typical days with this much judgment writing. While a large number of long days occur without long hours of judgment writing, a day that involves three or more hours of judgment writing is very likely to be a ten plus hour day. Three quarters of days with three or more hours of judgment writing were also days lasting ten hours or more overall.

These findings suggest that those who are spending more time on judgment writing in their work are not doing so because they choose it, but because they feel it is necessary to complete their work and would prefer to complete this work in fewer hours. Nonetheless, they report greater satisfaction with the intellectual challenge of their work compared with other judges.

Judges who report the most judgment writing time in their typical days express slightly distinctive views about some skills most closely linked with judgment writing: time management, writing, diligence, legal research, intellectual skills, legal analysis, legal knowledge and capacity to make quick decisions. Qualities regarded as essential by larger proportions of this cohort include diligence, legal research, intellectual skills, legal analysis and legal knowledge. This is also the group with the lowest proportion regarding capacity to make quick decisions as essential. These differences show up when comparing views about essential skills. They tend to disappear when the essential and very important response are combined, indicating that this is a difference of emphasis or intensity of views about these qualities..

The proportion of judges who strongly agree that the volume of cases is unrelenting (37%) is slightly higher among judges who report most days as involving three or more hours of judgment writing compared with the response of those in the other two cohorts (28%, 27%). This comparison is slightly clearer when the “strongly agree” and “agree” responses are combined; 85% of the judges who report the most days with three or more hours of judgment writing time indicating that the volume of cases is unrelenting, compared with 71% of those who report the least time on judgment writing.

There is a slight difference in the views of the cohorts regarding whether judicial functions have increased, decreased or stayed the same. The cohort with the highest proportion indicating judicial functions have increased are those who report the most judgment writing time in their typical days.

While very few judges report being kept awake by difficult decisions, the least judgment writing time cohort reports the highest percentage of those who are rarely or never kept awake (58%), compared with about 45% of those who report at least one day of three hour or more judgment writing time. This may suggest that those who spend more time judgment writing also find decision making slightly more difficult.

Judges are generally equally divided on the question of whether making decisions is very stressful, though there is some difference among the three cohorts. Only 21% of those who report the most judgment writing time are neutral on this point, compared with just over one third of the other judges. Similarly 42% of the judges who experience the most three hour or more judgment writing days agree or strongly agree that making decisions is stressful, compared with 33% of the judges who have no days with this much judgment writing, and contrasting most strongly with the judges who report at least one day of each type, where only 27% agree or strongly agree that making decisions is stressful.

To sum up, there are some distinctive views associated with each cohort. While the variations in responses to individual aspects of work are relatively slight, when summarised together, there is a fairly consistent pattern of differences.

The judges who report only days with less than three hours judgment writing express some distinct views compared with the other two cohorts (reporting at least one typical day of three hours or more judgment writing). Judges with the least judgment writing time do more trial work and less appeal work, less civil and more criminal, they value several skills associated with judgment writing slightly less, they express more satisfaction with current hours, they are the smallest proportion kept awake by difficult decisions or who find making decisions stressful. This group is mainly composed of District/County Court judges, with some Supreme Court judges who spend the bulk of their time presiding over criminal jury trials, where written judgments are rarely required, though preparation of sentencing remarks may require considerable reflection.

Judges who report the most time judgment writing express some views that contrast with the other two cohorts. These judges were more likely to sit in the High Court/Federal Court or a Supreme Court, to hear civil cases and appeals, and to value qualities associated with judgment writing as essential skills. They have longer overall days, and a higher proportion regard the volume of cases as unrelenting and find decision making very stressful. They are the least satisfied with their hours of work, but most satisfied with the intellectual challenge provided by their work.

In light of these overall findings about satisfaction, stress, time demands, and the specific patterns of time used for different tasks in typical working days, what are the formal arrangements, if any, to provide judgment writing time?¹¹

¹¹ Although different courts may have different arrangements for time out of court and for judgment writing, the survey responses in relation to matters such as satisfaction or stress cannot be analysed to identify responses from specific courts, as it is not possible to identify survey respondents with this degree of specificity. If there were a pattern for specific levels of court, those could perhaps be linked to a category of responses. That is, if all district courts have similar arrangements, then the views of district court respondents generally will reflect that arrangement. However it appears that there is no clear pattern to judgment writing arrangements at each level of court that would enable such a link with the survey data.

PROVISION FOR JUDGMENT WRITING TIME

It appears from the information provided¹² that there is no express standard or benchmark as to the amount of time that should be allocated for judgment writing which is consistent across courts generally, or even across courts with similar workloads or case loads. There is also no consistent pattern in the way time is provided or the amount of time provided. There appear to be a variety of structures, including a fixed number of days per judicial officer, a fixed number of days after a trial or appeal hearing, an expectation that judgments will be written during 'gaps' created by the settlement of scheduled cases or in the judicial officer's own time, including after hours or during time otherwise designated as leave. Any or all of these can be supplemented by informal arrangements, usually by request to the head of jurisdiction or the judicial officer or senior court staff member responsible for case allocation.

Aspects of provision of judgment writing time which do not appear to be systematically addressed are the questions of the standards for time from hearing the trial/appeal to delivery of judgment, any reporting or oversight of outstanding judgments, the link between calendaring systems and availability of judgment writing time and encouragement of more efficient judgment writing practices.

Current arrangements

It appears that the most common arrangement for judgment writing, including for courts of appeal, district/county courts and magistrate courts, is to have no formal set number of days. The demands of judgment writing are either to be undertaken during gaps created by the early resolution of scheduled matters or are met by flexibility as part of the overall roster pattern in light of the nature and type of cases allocated. These roster patterns can vary widely, in both the time that they allocate and the degree of flexibility or regularity of the judgment time allocations made. At one extreme, it appears to be the practice in one division of one court not to schedule a new trial or appeal hearing until the currently pending judgment is completed. At the other extreme is the expectation that any written judgments that cannot be completed during 'gaps' must be completed in the judicial officer's own time, by working after hours or on

¹² The analysis in this section is drawn from a table provided by the JCA and from research the Judicial Research Project has conducted as part of a larger project into the Australian judiciary. The material provided by the JCA was requested by the JCA from each court for use in a presentation to the heads of jurisdictions. This request was made and the material was provided by the courts to the JCA without the involvement of the Project. As the material was not collected by the Project, it is being included in this report on a confidential basis, similar to the use of the Project's own unpublished research data. Therefore, the discussion below is couched in general terms, without reference to any specific court or individual, with the exception of the discussion of the individual docket system (IDS), which is based on publicly available sources.

weekends, or using time formally designated as leave. More common are roster practices whereby one or more days out of court are provided immediately after a trial or appeal hearing for judgment writing, at least for the judge with the responsibility for the lead judgment. The exact time provided can vary depending on the length of the hearing or the expected length or complexity of the judgment. This will also vary depending on whether a trial is criminal or civil, as it is rare for written judgments to be required in criminal matters, though in a few complex cases, sentencing remarks can require substantial preparation.

Courts which appear to have more explicit practices involve either a set number of days per year, or weeks per year or half year. However, when these are taken may be set as part of the trial or appeal calendar or by negotiation with the person who is in charge of the roster. These days or weeks may need to be scheduled well in advance, or they may be scheduled as needed in relation to the allocation of trial or appeal work. The number of set days varies:

- Forty days.
- Twenty five plus one day after a hearing.
- One day per week.
- One week per month in civil.
- One week per three listing weeks.
- Five weeks per year.
- Three to four weeks per half year.
- One day per month plus five additional days in year.
- One day per fortnight.

In considering the meaning of these numbers, it is also necessary to realise that sitting weeks are not necessarily fully listed. For example, in one appeal court, a listing week means sittings scheduled for three days a week for three weeks, then a week out of court allocated for judgment writing.

Set out-of-court days are not necessarily sufficient as a basis for judgment writing, as these can be filled by other demands. Trials can go longer than estimated or a judge can be requested to take an urgent listing. There are considerable differences in the attitudes of individual judicial officers and in the culture of particular courts in relation to the to the extent to which judges and magistrates are expected to or are willing to pick up work from their colleagues in other courts, or take urgent matters, once their own scheduled court work is completed.

Court specific patterns

Given the link between the nature of a court's work and the need for and availability of time to write judgments, it might be expected that patterns of time allocation might be similar for courts of the same type. That does not, however, appear to be the case.

The issue as to whether magistrates should be expressly allocated time out of court to write judgments, or how judgment writing should be factored into their workload allocation was described as a bone of contention in at least one jurisdiction. There are divergent views as to whether it is necessary or desirable, given the nature of magistrates' work, in which most decisions, in particular sentencing, are delivered orally, immediately after hearing representations. Three magistrates courts have no fixed allocation. At least two Magistrates Courts appear to specifically allocate out-of-court days, either one per fortnight or one per month plus an additional five days a year. These days are not necessarily specifically for judgment writing; they can be used for a range of out of court tasks.

Two District Courts allocate time as weeks: three to four weeks per half year, or one week per month for judges sitting in civil. Another District Court allocates one day per case in civil for judgment writing and in criminal for preparing sentencing reasons.

Supreme Court trial arrangements include some with no fixed or formal allocations, while three others indicate fixed arrangements: one day a week, but not consistent; four weeks per half year while a third indicates three weeks rostered in court and one week out. Supreme Courts where trial and appeal work are rostered somewhat interchangeably appear to have few fixed arrangements, mainly using gaps. If a 'reserve' week is allocated after appeal sittings, these often include non-trial listings. Some appeal court arrangements appear to include no formal commitment of time, though these courts have rostering practices that regularly allocate out of court time. Other courts provide four weeks overall plus one day after the hearing for the judge with the obligation to draft the judgment or one week unlisted after three weeks listed or five weeks overall.

The Federal Court operates on an individual docket system, and appears to be the only higher court to do so. Two Magistrates courts also operate such a system, one in civil cases in a capital city CBD court and another for criminal also in a capital city CBD court. This has

significant implications for the availability of judgment writing time and so is discussed in somewhat greater detail below.

There is also considerable variation in court and individual approaches to trial/appeal preparation and eventual judgment writing. For example in one appeal court, the roster aim is to have one third of judicial time available for preparation, one third for sitting and one third for judgment writing. However, some judges feel that too much preparation in advance of an appeal risks prejudging the case and takes away from the role and obligation of counsel to make their case in submissions. This point was also made in the Auld report, where some counsel perceived a court's familiarity with the facts and law as indicating the court had made up its mind before argument (Auld 2001: 85). Similarly, in a trial court, some judges may only want the files the night before, as their experience is that preparation is often wasted, when trials settle at the last minute, while others may prepare by undertaking - or having staff undertake - legal research in anticipation of issues that may arise at trial.

Standards and oversight

The role of the heads of jurisdiction appears to be the most frequently mentioned aspect of judgment writing time in the information from each court provided by the JCA. The chief judicial officer can adjust allocations and rosters to generate extra judgment writing time when needed, if a judge has an unusually complex matter or multiple demanding matters, or a larger number of outstanding judgments or long delayed matters. There is some risk in this kind of adjustment, if workloads become significantly unequal, or are perceived to be unequal, as a result.

A long delayed judgment can be a denial of the human right to have claims determined within reasonable time (Barrow 2009; *Citco Banking Corp v Pusser*). Such delay can bring the justice system into disrepute (Barrow 2009: 433) and extreme delay could be a form of misconduct or lack of judicial competence leading to discipline (Department of Justice Victoria 2009: 14-15). Some jurisdictions have an expectation that reserved judgments will be provided within three months of the hearing; others do not appear to have an express standard, even an informal one, as a reasonable time needed to complete a judgment can vary considerably in light of the case itself, or the working practices of the individual judicial officer. Such a flexible approach is 'consistent with dignity and self-discipline expected of judges' (Jagannadha Rao: 9-10).

Opeskin points out that, outside of the High Court, few statistics are publicly available tracking the time between hearing and decision (2001: 83). He summarises the available data (at 83-84):

A recent Annual Report of the Federal Court, for example, states only that 'For the reporting period [1998-99], the median time between reserving and delivery of judgments, in single judge matters and Full Court appeals together, was less than 36 days. ...In Full Court matters 65 percent of reserved matters were delivered within 60 days'. In the Family Court's Annual Report no statistics are given on the time taken for delivery of judgment. However, the Family Court's Case Management Guidelines state that 'Except in unusual circumstances, reserved judgments will be delivered no later than three months from the date upon which they are reserved'. In similar vein the Queensland Supreme Court (including the Court of Appeal) has a public protocol that sets a benchmark of three months for the delivery of reserved judgments. While the Court of Appeal meets its obligations in almost all cases, there are exceptional cases where the benchmark is not met.

More recent data is available, but it is reported by only a few courts and in different ways. In South Australia in 2007-2008 the average days from hearing to judgment in the Supreme Court for full court matters is 58, and for Court of Criminal Appeal cases it is 49 days (Courts Administration Authority (SA) 2008: 10). The Federal Court reports that, for 2008-2009, 86% of appeals and 80% of judgments at first instance were delivered within three months (Federal Court of Australia 2009: 23). The median (not average) time for delivering reserved judgments in Court of Appeal Division of the Queensland Supreme Court was 21 days in 2007-2008 (18 days for criminal appeals and 22 days in civil cases) (Supreme Court of Queensland 2008: 19). Other courts do not appear to report this information in their annual reports or in other readily available sources.

Opeskin (2001: 101) goes on to recommend that courts should regularly record:

- the number of judgments delivered ex tempore, by category and outcome;
- time taken for delivery of reserved judgments in civil and criminal matters;
- length of reasons for judgment, per judge and overall;
- data on number of separate opinions, and whether concurring or dissenting

This information could be used to identify structures and practices that support the production of high quality judgments within a reasonable time frame.

A more controversial suggestion made by Barrow (2009: 439) is to list outstanding judgments, with the judge's name and expected date of completion as indicated by the judge. As well as being available to the head of the jurisdiction, it could also be given to other judges, the legal profession, or even made publicly available. An even more extreme practice occurs in California

where all judges are required, by law, to provide a regular sworn affidavit that no decisions are pending for more than 90 days, as a condition of being paid (*California Constitution* art 6 § 19; CAL GOVERNMENT CODE Ch 1.5 § 68210)

Sometimes delay in producing a judgment may be a difficulty actually making the decision; in other circumstances it may be that the judgment writing process itself is delayed, perhaps because of the press of other urgent scheduled work or inefficient work practices or a commitment to a level of detail not shared by others on the court. The calendaring system used in a court may also be a factor in efficient provision and use of judgment writing time.

Calendaring systems and judgment writing

The predominant system used in Australian courts is a master calendar system. All cases go into a common pool, with judges, masters and/or magistrates allocated to particular tasks that arise at different stages such as first appearances, the criminal list, mentions, directions hearings or trials (Friesen et al 1971; Steelman et al 2004). Master calendar systems are said to promote more uniform practices, such as in relation to adjournments and allows for some specialisation, for example, so that judicial officers who are effective at promoting resolution can be given pre-trial tasks (Steeleman et al 2004). Overlisting can ensure that judicial time is used to capacity, and lawyers can consolidate court appearances for several clients on set days or times (Friesen et al 1971: 184-85). As Friesen et al stated 'when consensus is that cases are the property of the lawyers, a master calendar is popular' (1971: 187). Magistrate and judge shopping can be a problem in a master calendaring system (Friesen et al 1971: 185-86). The most efficient utilisation of time depends on the willingness of judges and magistrates to take extra assignments during their 'gaps', and there may be less incentive to promote a rapid resolution of a case (Friesen et al: 185).

The alternative system is an individual docket system (IDS), also known as an individual calendar or personal diary system. Each case is assigned as soon as it is filed, and it remains with that judge/magistrate who has responsibility for all stages of the case until final disposition. One commentator has suggested that the choice of IDS reflects a view about judicial role - that the judge, more than the lawyers, is responsible for the timely disposition of the case (Friesen et al 1971).

Individual docket systems are seen as a way of enabling judicial officers to exercise greater control over their workload and, indeed, are often introduced for that purpose (Sage et al 2002: 134-35, 327). Along with greater control, they also impose more direct responsibility on judicial

officers for case managing the files which are allocated to them (Australian Law Reform Commission 2000: [722]; Sage et al 2002: 41).

Two potential benefits for judgment writing arise from an IDS system. First is that of overall efficiency. If cases are managed more effectively from the beginning, there may be less demand for judgment writing. The second potential benefit is efficiency in allocating time for judgment writing. As the individual judge will be familiar with the case and its schedule, it is likely that judgment writing time can be made available when it can be used most effectively.

Individual docket systems of allocation are also a more transparent system of allocation, particularly when information about the number of matters is shared among the judiciary so each knows how many files their colleagues are holding. Avoidance of judge/magistrate shopping is also a key rationale for using individual docket systems, as the initial allocation is essentially random (Friesen et al 1971; Steelman et al 2004).

Other specific benefits identified in the literature for an IDS system include:

- Judicial knowledge of the case. There is no need to 'explain to a new judge the nature of the case and its history. (Australian Law Reform Commission 2000: [7.7]; Sage et al 2002: 136; Steelman et al 2004).
- Ability to tailor processes for the particular case (Australian Law Reform Commission 2000: [7.7]).
- Pre-trial processes may be more productive and lead to a quicker or better disposition (Australian Law Reform Commission 2000: [7.8]).
- Judicial monitoring creates incentives for practitioners to comply with orders (Australian Law Reform Commission 2000: [7.8]; Sage et al 2002: 138).
- Allows time for reflection on the case and its issues (Friesen et al 1971: 183).

Courts that use an individual docket system may require additional staff resources, or put additional responsibility on staff to do organisational work involved in case management, such as scheduling conferences, and organising hearing lists. It can also be important to even out disparities in workload resulting from 'the luck of the draw'. Allocation may not always be random or equitable or, even if it is random, it may not result in equitable distribution, except perhaps over very long periods. Problems of perceived overwork or delay can arise from a

number of different causes, including very long trials, trials overrunning estimates, the judge being away for various reasons, or differing judicial approaches to management, all potentially resulting in longer lists for some judges.

Sometimes, there is a need for informal mechanisms for judges to adjust caseloads when problems arise. A judicial officer can be taken 'off docket' for a limited time so that no new cases are allocated, in order to equalise workloads, but there are barriers to the availability of other judges and the appropriateness of these methods (Sage et al 2002: 193-208).

Other concerns include:

- The need to avoid delay for short/simple or urgent new matters (Australian Law Reform Commission 1999: [10.69]).
- Judicial officers becoming more isolated and less aware of each other's practices and views, as cases do not get handed back and forth as under a master calendar system (Sage et al 2002: 311, 446-56; Steelman et al 2004).
- Delays which arise from a judge or magistrate having to disqualify themselves from matters they have dealt with in the pre-trial stage if the judicial officer is perceived as having been too active in promoting settlement or has expressed a view on the evidence. This can reduce the effectiveness of pre-trial conferences.
- Limited flexibility in criminal trial matters, especially in the higher volume courts. Scheduling can be a problem for prosecutors and lawyers, if they are expected to appear on different times/days for each case or client before a different magistrate or judge (Friesen et al 1971: 183; Steelman et al 2004).

It appears that an individual docket or personal diary system will work best among a relatively small group of judicial officers and court staff in a particular court location where lawyers are nearby or can attend flexibly, perhaps via telephone or video link. Everyone must be willing to have some flexibility. These conditions may be easier to achieve in appeals and in civil cases which are less high volume, more likely to benefit from pre-trial management and will have continuity of representation for the parties.

EFFICIENT JUDGMENT WRITING

Literature on judgment writing includes discussions of the importance of, need for and purposes of written judgments (Doyle 1999; Gault 2002; Mason 1998; Opeskin 2001: 17); concerns about delay in delivering judgments (Barrow 2009; Department of Justice Victoria 2009; *Citco Banking Corp v Pusser*); concerns about the pressures of judgment writing (e.g. Warren 2007), and some empirical analysis of length of judgments or patterns of publication, where this is a matter of judicial choice (Groves & Smyth 2004; Swenson 2004; Taha 2004).

The literature rarely expressly discusses, except briefly or in passing, the arrangements for judgment writing time in particular courts. However, some of the material indirectly addresses the provision of time for judgment writing, especially discussions of how to write judgments well and efficiently (Davies 2002; Dessau & Wodak 2003; Doyle 1999; Mahoney 2003). Several sources criticise unnecessarily long judgments (Barrow 2009; Campbell 2003; Doyle 1999; Gault 2002; Mason 1998). Some writers argue that the demands of judgment writing can be reduced, while still meeting the core obligations for which written judgments are needed, so that the necessarily limited time available for judgment writing can be better managed (e.g. Opeskin 2001: Ch 7).

Written judgments have several goals. They must explain to the losing party why they lost, appropriately addressing all issues raised (Doyle 1999: 737; Mason 1998: 85); they must correct errors and develop the law (Gault 2002: 642; Opeskin 2001: 17) and they are needed to expose judicial reasoning to analysis and critique, whether from higher courts, legal academics or the general public (Doyle 1999: 737). In this sense, written judgments, however inaccessible they may be in practice to a lay audience, are an aspect of public scrutiny of courts and the legal system and of access to justice more broadly.

Judicial commentators have emphasised the pressure created by the need to produce substantial written judgments in what is felt to be inadequate time, partly as a result of increasing numbers and complexity of cases. Chief Justice Marilyn Warren (2007: 10) states that 'one of the worst strains a judge faces is the outstanding judgment'. Chief Justice John Doyle (1999: 738) also acknowledges this pressure as widely shared amongst the judiciary. At the same time, it is difficult to identify this increased pressure from readily available court statistics. Opeskin (2001: 6) points out that not all courts have experienced unmanageable growth in appeals, and concludes that there is 'no crisis' in the courts. More recent Productivity Commission data indicates that, from 2005-2006 through 2007-2008, there was an increase in finalisations in the caseloads of the Federal Court/Supreme Courts (Steering Committee for the

Review of Government Service Provision 2007: 6.19; 2008: 7.19; 2009: 7.20), but that there was also an increase in the number of full time equivalent judicial officers in these courts (2007: 6.31; 2008: 7.31; 2009: 7.32) and delay, measured by cases more than 12 months old as a proportion of total pending caseload, actually declined over this time (2007: 6.29; 2008: 7.29; 2009: 7.30).

Relatively few courts provide data on the number of written judgments delivered. New South Wales reports that in 2008, 209 substantive appeals in non-criminal cases were finalised by judgments, not including *ex tempore* judgments (Supreme Court of New South Wales 2008: 23). The Queensland Supreme Court shows an increase in the actual number of reserved appeal judgments delivered in both civil and criminal cases, from 147 in 2005-2006 to 159 in 2007-2008 (civil) and from 164 to 172 (criminal) in the same period (Supreme Court of Queensland 2008: 18).

Some courts report matters finalised by judgment, without distinguishing oral, *ex tempore* or written/reserved judgments. The Federal Court reports that 1,899 judgments were handed down in 2008-2009, but does not distinguish first instance or appeals (Federal Court of Australia 2009: 24). The Western Australian Court of Appeal reports an overall increase in the percentage of cases finalised by appeal between 2004-2005 and 2007-2008, though the absolute numbers have fallen slightly (Supreme Court of Western Australia 2008: 4).

These statistics do not, of course, measure the complexity of the cases which are heard and finalised by the courts and may not reflect the demands of judgment writing on the courts or on individual judicial officers. Also, the pressures experienced by judges in relation to judgment writing may not be wholly due to external factors.

A number of judges have criticised the judiciary for the unnecessary length and complexity of their judgments. Former Chief Justice of Australia Sir Anthony Mason (1998: 85-86) criticises the 'prolixity and complexity of the modern judgment' and suggests that English, Canadian and Australian judgments are 'written with the object of convincing the reader that the author has read and considered all that could conceivably relevant to the issue at hand'. South Australian Chief Justice John Doyle (1999: 738-39) echoes this with criticisms of unnecessarily elaborate judgments. Chief Justice Doyle also expresses concern about too many multiple judgments (1999: 739) and documents the increasing length of judgments (1999: 740). Justice Barrow of the Eastern Caribbean Supreme Court (2009: 437) points out a need for 'proportionality' in judgment writing, a concept which has been widely emphasised as part of the Woolf reforms of civil procedure in the UK (Woolf 1996).

Writers have also suggested ways to make judgment writing, whether after trials or appeals, more efficient. The opportunity to at least make a start while the case is fresh seems especially important. Allsop (2009: [54]) emphasises writing an outline/structure immediately after hearing, while the case is fresh in the judicial mind, even if this means working after hours. If there is a gap between the hearing and the judgment writing time, this may well increase the time needed for judgment writing, as it will take time to become familiar again with the transcript and the legal arguments, and the value of pre-hearing preparation can be lost.

The suggestions in the literature about more efficient judgment writing also emphasise greater preparation by court and counsel as well as reducing the number or length of judgments in general. Some judges make it a point to write what they regard as non-contentious elements or an outline in advance of the hearing, especially in appeals. For judgment writing after a civil trial, Davies (2002: 133) suggests preparation before trial such as clarifying issues and questions to be decided, and similar preparation before writing the judgment, even if the decision is not yet made, or it changes during writing (138). The Auld Report recommends a greater focus on preparation by judges and writing time as part of wider changes focussing appeal court time and effort on those cases where there is an important or novel question of law, supported by earlier preparation by advocates (2001: 95).

Greater assistance from counsel has also been identified as potentially valuable. This might include better prepared and timely appeal books and outlines of argument. These can assist with the appeal hearing itself as well as the judgment writing process (Auld 2001: 82-5; Opeskin 2001:58-62, 74-7). Both Auld and Opeskin identify substantial problems with late provision of material by counsel, with little or no criticism or sanction. (Auld 2001: 83; Opeskin 2001: 77). In the Australian surveys, 70% of supreme court respondents indicated that legal representatives were always or often well prepared, compared with 47% of district/county court judges and only 38% of magistrates.

Some writers refer to the greater use of written submissions and much shorter oral argument in the United States as providing more effective assistance from advocates (Gault 2002: 638). A significant move in this direction would need considerable cultural change in the Australian courts and in the legal profession.

Simply writing shorter judgments is also urged by some writers. Davies (2002) describes 'a belief that you are writing for posterity or the admiration of your peers' as an error to avoid (137). Opeskin also suggests shorter oral arguments, fewer multiple judgments, and less reproduction of facts in judgments (2001: Ch 7).

Gault (2002: 644-45) and Doyle (1999: 739) suggest that appeal courts should more frequently adopt the reasons of the court below as part of a summary dismissal of appeal. There appear to be no regularly kept statistics, apart from the High Court, on the proportion of appeals which are successful (Opeskin 2001: 38), so that the time saving of this measure is difficult to assess. A technique widely used in other contexts to limit unnecessary overworking of a writing task is to impose word limits, but this does not seem to have been suggested as a way to manage excessive time spent on judgment writing.

In some circumstances, longer judgments may necessarily reflect greater complexity of cases, or they may result from time pressure itself. Allsop (2009: [57]) points out that it can be quicker to copy pleadings into a judgment than to 'distill' them. Similarly, careful rewriting takes up time that could be used on another case. Allsop bluntly suggests: 'don't try to be too elegant' ([58]) and describes this as the need for 'time rationing'.

The question of how long a judgment should be and how long it should take to produce it is not really capable of a precise answer. Some judges will inevitably take more time to complete judgments, while others are very quick and are ready to take on another case. Longer judgments or those which take longer to write are not necessarily better than those which are quicker or shorter, nor do longer hearings necessarily require longer judgments or longer judgment writing time.

CONCLUSION

There is clearly a need for magistrates and judges to have adequate time in which to write judgments. Writing/preparing decisions or judgments is a frequent aspect of the work of all members of the Australian judiciary, though this task is performed less often and takes the least time for the magistracy, and somewhat less time for members of the district or county court compared with judges of the federal or supreme courts. Even within one court, different work allocations (eg civil or criminal, trial or appeal) will entail different judgment writing demands. The challenge is to provide a reasonable amount of time for judgment writing to those judicial officers whose work requires it, when it can be most efficiently used.

While some magistrates identify the lack of specifically allocated time as a serious concern and for some judges, the demands of judgment writing appear to be experienced as an ongoing obligation which is never fully discharged, overall, judges and magistrates express a high degree of satisfaction with their work, including several aspects that appear to relate fairly directly to judgment writing. Areas of satisfaction or dissatisfaction and stress vary only slightly among judges who spend relatively little time judgment writing compared with those who spend most time judgment writing.

The research presented in this report provides independent empirical evidence about the experiences and attitudes of magistrates and judges from all courts in Australia in relation to the demands of writing and preparing judgments or orders and making decisions more generally. This question of how much time should be spent on judgment writing or how much time needs to be formally allocated in order for that amount of time to be available is one of policy, driven by the demands of a particular court, in light of its own resources, caseload and case mix, and court culture. It is also a question of the kind of judgments delivered, and the level of detail and complexity needed. While the research cannot directly answer these questions, it has identified several aspects of judgment writing which courts might wish to address.

- Current informal practices of time and task allocation and judgment writing methods may no longer be appropriate. More explicit and transparent methods of managing and allocating workload may be needed. For some courts, different workload allocation practices, such as individual docket systems, could be considered.
- Clearer time standards could be articulated in some courts. Few courts have express standards for when reserved judgments should be finalised, or clear practices for reporting or oversight of outstanding judgments. There appears to be little consistent

data across courts tracking time between hearing and decision and the number of written judgments delivered.

- Explicit encouragement of more efficient judgment writing practices, supported by suitable professional development may be useful. As argued by some leading judicial writers, judgments which take longer to produce or are lengthier are not necessarily of higher quality, and actions can be taken by judges themselves to reduce the burdens of judgment writing. Currently, length and detail of judgment appear to be matters for independent individual judicial choice, but these issues may benefit from being addressed collectively among the judiciary within a particular court.

Courts and judicial officers experiencing caseload pressure, and excessive judgment writing demands, can seek more time for writing and/or more judges to write them. They may also be able to develop improved workload and time allocation structures and better judgment writing practices to support the production of high quality judgments within a reasonable time frame.

APPENDIX 1: NATIONAL SURVEY OF AUSTRALIAN MAGISTRATES 2007

Q16. While there may be no single typical work day, it is important to get a sense of the pattern of magistrates' work. Please indicate below the time spent (if any) on the following activities for three typical work days (days A, B and C). If all your work days are substantially similar, please only fill in column A.

Please read the list of potential activities before filling in time spent on any particular activity

Using fractions
estimate to nearest ¼ hour



	Work day A	Work day B	Work day C
General keeping up with the law (reading cases, statutes, court rules, journals, books, etc.)	_____ hrs	_____ hrs	_____ hrs
Writing/preparing decisions, judgements, orders	_____ hrs	_____ hrs	_____ hrs
Preparing for a case/the next day	_____ hrs	_____ hrs	_____ hrs
General administrative work and correspondence	_____ hrs	_____ hrs	_____ hrs
Conferring with other magistrates and/or court staff/meetings	_____ hrs	_____ hrs	_____ hrs
Waiting time (for legal representatives, court personnel, parties, witnesses, case assignment, etc.)	_____ hrs	_____ hrs	_____ hrs
Lunch, morning/afternoon tea	_____ hrs	_____ hrs	_____ hrs
Presiding at trial	_____ hrs	_____ hrs	_____ hrs
Civil non-trial proceedings (directions hearings, pre-trial conferences, interlocutory matters, etc.)	_____ hrs	_____ hrs	_____ hrs
Criminal non-trial proceedings (bail, guilty pleas, sentencing, etc.)	_____ hrs	_____ hrs	_____ hrs
Travelling	_____ hrs	_____ hrs	_____ hrs
Other (Please specify)	_____ hrs	_____ hrs	_____ hrs
.....	_____ hrs	_____ hrs	_____ hrs

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