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CIVIL JUSTICE RESEARCH CENTRE
A PROJECT OF THE LAW FOUNDATION OF NEW SOUTH WALES

ECONOMIC EVALUATION OF DIFFERENTIAL CASE MANAGEMENT

Chris Guest
and Tom Murphy

NOVEMBER 1995

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Chris Guest and Tom Murphy

November 1995

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Charter of the Civil Justice Research Centre

The principal purpose of the Centre is to help make the processes for resolving civil disputes more efficient, more cost effective, and more accessible to the public.

The Centre examines the policies that shape the civil justice system, the behaviour of the people who participate in it, the operation of its institutions and its effects on the community's social and economic systems.

The Centre adopts an interdisciplinary approach to the study of public policy issues; widely disseminates the results of its work to Government officials, legislators and judges; the unions; the business, consumer affairs, legal and research communities; and to the general public.

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Foreword

With the introduction of differential case management (DCM) in the New South Wales Supreme Court in January 1994, there was a recognised need to monitor its progress and impact. The CJRC was commissioned to conduct two research projects which would provide information about the new case management system. The first of these was an examination of the implementation of DCM in its first year of operation. The results of this study were released in September 1995, in a report entitled *An Implementation Evaluation of Differential Case Management.*

This current report provides the results of the second research project. The CJRC was asked to conduct a cost/benefit study of DCM, looking at the full range of costs and benefits which might result from the introduction of DCM. Previous reports on legal costs have focussed on the legal fees and expenses incurred by litigants who pursue their claim in court. This study takes a much broader view, and examines not only direct legal fees but also the costs incurred by the court system and the costs borne by plaintiffs, defendants and the rest of society. The study is thus an innovative piece of research.

The aim of the study was to determine if DCM yields increased or decreased costs. The study proceeded by taking a group of cases managed under the two previous case management systems, Practice Notes 59 and 68, and estimating how these cases would have been conducted under DCM. The research found that DCM yielded net benefits for this group of cases by achieving the earlier settlement of those cases.

This study does not only provide information about DCM, however. It also allows us to see the general pattern of costs which exist within the legal system. The report thus makes a significant contribution to building a better understanding of the wider economic impact of changes in the legal system.

Gillian McAllister
Executive Director
Civil Justice Research Centre

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Executive Summary

Background to the study

Differential Case Management (DCM) has been introduced to the Common Law Division of the Supreme Court of New South Wales to reduce the costs and delay in the settlement of cases.

Economic evaluation is the systematic comparison of alternative courses of action in terms of their costs and benefits. Cost Benefit Analysis is the most comprehensive form of economic evaluation and is used for this study.

Objective, scope and methodology of the study

The purpose of the study is to determine if the New South Wales DCM program yields economic benefits for society, compared with the two previous systems of case management, Practice Notes 59 and 68. The study is conducted in relation to 64 finalised professional negligence cases.

The study compares the costs of an actual case managed under Practice Note 59 or 68 with an estimate of the costs that would have been incurred if the case had been managed under DCM.

The framework for the study is that each case gives rise to three sets of costs: the costs the Court system incurs, the costs of solicitors (including their disbursements) and the costs borne by plaintiffs, defendants and the rest of society. The study argues that the most significant cost for this last group is the cost to the plaintiff of waiting for settlement. The research question is then to determine if DCM yields increased or decreased costs. The answer is derived from a model which estimates the net benefit (cost) of DCM for each case by calculating the change in the three sets of costs which arise from implementing DCM.

The study began in July 1994, and at that time only five cases had been finalised under DCM, and these had either been discontinued or struck out. The study has therefore calculated DCM costs by taking cases managed under Practice Note 59 and 68 and estimating what would have

been if these cases had been managed under DCM. Hence, the study is a comparison of the costs of a case managed under Practice Notes 59 or 68 with what the costs of the same case would have been under DCM.

Results and conclusions

The study had comprehensive data for Court costs and settlements, and incomplete data for solicitor costs for 62% of cases, and so three scenarios were constructed for solicitor costs. Each scenario assumed an increase in discounted solicitor costs under DCM, of 15% (scenario 1), 20% (scenario 2) and 40% (scenario 3).

The study found that DCM yields net benefits for the 64 cases in the study population. The net benefits are over $700,000 under scenario 1 and almost $600,000 under scenario 2. In the worst case scenario 3, the net benefit of DCM is $50,000.

These net benefits turn on the *timing* of settlement. The value of the earlier settlement of DCM overwhelms any increase that might occur in the nominal cost of activities.

The findings of the study measure the benefit of reducing delay, and show that the benefit of reducing delay accrues to plaintiffs by way of a reduction in the waiting time for the receipt of settlement compensation.

1

Background to the Study

The New South Wales justice system has experienced increased congestion and delays in the time taken for cases to be heard over the past decade. Since 1988 the New South Wales Government has sought to tackle the problem through a number of initiatives. The court itself has contributed to those efforts by designing rules for the conduct of cases – embodied in Practice Notes. These rules have the Court system take an increasingly active role in the conduct of cases, by managing their progress through the Court system, rather than relying on solicitors to manage them.

The most recent step in this trend has been the introduction of Differential Case Management (DCM) – known as Practice Note 81 – on 31 January 1994 to the Common Law Division of the Supreme Court. It followed Practice Notes 59 and 68. DCM is to run till 1 January 1996, when it is to be reviewed. (The three Practice Notes 59, 68 and 81 are explained in Appendix 1.)

Put simply, there are three elements to the active management role by the Court established by DCM:

(i) Parties need to complete an extensive list of information requirements before their cases can proceed.

(ii) To stay in the Court system, the case has to proceed according to a precise timetable set by the Court.

(iii) If it does not keep to the timetable, the case is subject to further directions being given, including dismissal of the proceedings, loss of priority and cost orders.

DCM was introduced in the face of initial hostility from the Law Society, representing solicitors. Their argument was that DCM would raise costs to the parties, because of its documentation requirements. The debate revolved around issues of direct cost, with no clear idea emerging of how to compare these costs with whatever benefits DCM might have.

The then Attorney-General, the Hon John Hannaford MP

commissioned this economic evaluation to determine whether DCM yields net economic benefits compared with Practice Notes 59 and 68. In other words, is DCM economic, from the viewpoint of society as a whole.

2

An Introduction to Economic Evaluation

2.1 What is economic evaluation?

Economic evaluation is the systematic comparison of alternative courses of action in terms of their costs and benefits. Economic evaluation is used for public projects and services whose provision is not determined by market forces. By undertaking economic evaluation, the policy maker can select the course of action which results in the most economically efficient outcome. The economically efficient outcome is the one which yields the highest net benefits for society.

Economic evaluation is now very widely used by governments to assist in making decisions about resource allocation. In 1988 the NSW Government decided to require an "asset appraisal" using the techniques of economic evaluation for all capital expenditure proposals above $500,000. In the same year the Federal Government required an "evaluation strategy" for all proposals. In practice this has applied for all proposals over $5 million.

Cost Benefit Analysis (CBA) seeks to determine whether a project is economic by valuing and comparing the costs incurred and benefits yielded. Costs are the opportunity costs of the resources used by a project. Opportunity cost is the value of the next best alternative use of the resources which must be given up when they are allocated to the project. Benefits are the gains society derives from a project's output. Benefits can arise from either the supply of new output or from costs avoided. Valuation of new output requires information about consumers' preferences, while valuation of costs avoided requires estimates of the value of the resources saved by a project. If a project yields benefits in excess of costs, it is economic, meaning that it represents an improvement in the efficiency of resource use.

2.2 The steps of economic evaluation

An economic evaluation comprises a series of steps. These steps can usefully be considered as a set of questions to be answered in constructing the evaluation.

- *From whose viewpoint is the study being conducted?*

The usual perspective of economic evaluation is that of the whole society. This means taking the broadest view of the costs and benefits. In the case of DCM, economic evaluation considers the costs and benefits to plaintiffs, defendants, the Court system, potential litigants, lawyers and society at large.

- *What is the study objective?*

This is a matter of specifying what the study wants to find out about. The study objective in this instance is to determine if DCM is economic.

- *What are the alternatives to be considered?*

The alternative programs under consideration need to be identified. The first alternative is always the status quo. This is called the "do nothing" option, meaning the option to continue with existing arrangements. The nature of the alternatives is defined by the study objective. In this study, the do nothing option is Practice Notes 59 and 68. The program under consideration is DCM.

- *What incremental costs and benefits will be imposed by each alternative?*

Economic evaluation is an incremental approach – it seeks to identify the costs imposed by a program that would not otherwise occur, and compare these with the benefits generated by the program that would not otherwise occur. These are the costs and benefits specific to the program.

In this study the costs of DCM are the costs that DCM imposes which would not occur if Practice Notes 59 and 68 had continued. Similarly, the benefits of DCM are the benefits arising from DCM that would not otherwise occur if Practice Notes 59 and 68 had continued.

- *How can these costs and benefits be valued?*

Cost Benefit Analysis requires that all costs and benefits are valued in dollar terms. This enables the direct comparison of all costs and benefits.

• *Do the costs and benefits occur over time?*

If they do, all costs and benefits must be converted to dollars of the same time period. This is because a dollar received today is worth more than a dollar received in a year's time. A dollar received next year has the inconvenience or cost of waiting before it can be spent. People will only wait for a dollar if there is a compensation for waiting. The most direct way of measuring the cost of waiting is the interest rate. The interest rate is the return to waiting. It follows that to compare a dollar to be received in the future with a dollar received now, the future dollar must be reduced in value by the return available for waiting. If the annual interest rate is 8%, then $1 to be received in one year's time is worth around $0.93 today. More formally, $0.93 is the present value of $1.00 paid in one year's time.

Given the cost of waiting, the earlier a given amount of money is received, the greater its value to the recipient. If a plaintiff receives a settlement of $100,000 five years after lodging a claim, with an interest rate of 8%, the settlement is the same as receiving $68,100 at the time of lodging the claim, and avoiding the wait of five years ($68,100 invested now at 8 percent would yield $100,000 in five years time). If the plaintiff had waited only two years to receive settlement, it would have been equal in value to receiving $85,700 at the time of lodging the claim, a gain of $17,600. The same principle applies to Court system and solicitor costs. Suppose this case incurred costs of $20,000 over the five years, comprising costs of $4,000 in the first year, $2,000 in the second and third years, $4,000 in the fourth and $8,000 in the fifth year. This nominal total cost of $20,000 is equal to the sum of the following discounted costs:

Year 1	$4,000 x .926	=	$3,704
Year 2	$2,000 x .857	=	$1,714
Year 3	$2,000 x .794	=	$1,588
Year 4	$4,000 x .735	=	$2,940
Year 5	$8,000 x .681	=	$5,448
Total			**$15,394**

Expenditure of $20,000 over five years is equal to expenditure of $15,394 in the first year. If the duration of the case were reduced to two years, with the same nominal expenditure of $20,000, comprising $8,000 in the first year and $12,000 in the second year, the present value would be:

Year 1	$8,000 x .926	=	$7,408
Year 2	$12,000 x .857	=	$10,284
Total			**$17,692**

So present value costs are higher the more quickly the case is processed, and approach the nominal cost.

This is an important issue in this study because of the length of time most cases take. A dollar of expenditure in relation to the case at the time of the lodging of the statement of claim is not the same as a dollar of expenditure at the time of a hearing seven years later. Similarly, the value of a given settlement received ten years after the lodging of the statement of claim is less than receiving that settlement two years after the lodging of the statement of claim.

The appropriate base year for the present values is the date on which the plaintiff initiates proceedings with a statement of claim. All costs and benefits in the study are discounted back to dollar equivalents at that point of time. The study adopts a real discount rate of 8% as recommended by the Commonwealth Department of Finance.[1]

Note that present values are not determined by the rate of inflation. Inflation is unrelated to the inconvenience of waiting. Even with zero price inflation there would still be a need to discount future dollars to make them comparable with current dollars.

- *How is a result derived?*

Once the costs and benefits are identified and a means of valuing them established, data must be collected so that the costs and benefits can be estimated. The data must be adjusted by the discount rate so that all costs and benefits are expressed in a consistent unit of measurement. Essentially all costs are then added and compared with the sum of all benefits to determine if the program yields net benefits or costs.

1 Department of Finance, 1991, *Handbook of Cost-Benefit Analysis*, AGPS, Canberra.

3

A Review of Australian Research

There do not appear to be any Australian economic evaluations of systems of court administration. So an economic evaluation of DCM requires an innovative research effort. There are, however, some Australian studies which look at costs and delays of the legal system. These studies are of two kinds; studies of the duration of cases and solicitors' fees and disbursements, and studies of legal costs which compare DCM and Practice Note 68.

Worthington [2] sought to identify the factors that determine the duration of cases. The study examined "common law tail" matters arising from the former Motor Vehicles (Third Party Insurance) Act 1942. It found that the typical tail matter took "47 months from the date of the accident and 38 months from the commencement of the claim." [3] The study concluded that "The lack of effective enforcement of pre-hearing procedure, and the waiting period caused by the current backlog of matters, has left the pace of litigation in the hands of the parties themselves." [4] The finding of the study was that the principal explanation for delay was the time taken by the parties to exchange information.

Studies by Williams and Williams [5] and Worthington and Baker [6] tried to identify what determines lawyers' costs. Both came to similar conclusions. Williams and Williams examined the following explanatory variables: type of case, stage of disposition, total time taken, whether the firm was acting for the defendant or plaintiff, the experience of the firm, and disbursements, comprising the cost of barristers, payments to expert witnesses, and other (largely administrative) outlays. The principal finding was that the "major influence on cost is the stage of settlement." [7] The earlier the settlement the lower the cost.

Worthington and Baker surveyed New South Wales and Victorian law firms which "frequently" appeared in the District Court or Supreme Court in NSW and the County Court or Supreme Court in Victoria, to identify the factors which determined the costs of cases as billed to clients. The

findings of the study were that "costs were lower for matters that reached settlement than costs for matters that went to verdict" and "costs were not related to the duration of matters" [8].

The studies by Mahlab [9] and Pattison Hardman [10] specifically addressed the question of whether DCM leads to higher or lower lawyers' costs. The Pattison Hardman study compared the costs of "three typical cases" in accordance with Practice Note 68 and DCM procedures. Pattison Hardman found that DCM would increase professional costs and disbursements due inter alia to "additional procedures and the need to back-track over work".[11]

Mahlab proceeded by examining the steps required by DCM and comparing these with the steps required under Practice Note 68. The Report noted that most of what is required for DCM would have been undertaken for the previous system, and concluded that DCM imposes limited additional costs and that these "will be outweighed by the cost savings gained from a significantly shorter pre-trial period under DCM." [12] However, these cost savings were not estimated.

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2 Worthington, D, 1991, *The Pace of Litigation in New South Wales*, Civil Justice Research Centre, Sydney.
3 Worthington, D, p. *vi*, see note 2.
4 Worthington, D, p. *viii*, see note 2.
5 Williams, PL and Williams, RA, 1994, "The Cost of Civil Litigation: An Empirical Study", *International Review of Law and Economics*, Vol. 14, No. 1.
6 Worthington, D and Baker, J, 1993, *The Costs of Civil Litigation: Current Charging Practices New South Wales and Victoria*, Civil Justice Research Centre, Sydney.
7 Williams, PL and Williams, RA, p 18, see note 5.
8 Worthington, D and Baker, J, p. 65, see note 6.
9 Mahlab Costing Pty Ltd, 1994, *Differential Case Management, Legal Costs Analysis*, Report for the Supreme Court of New South Wales, Sydney, unpublished.
10 The Law Society of New South Wales, 1994, "Differential Case Management", *Caveat, A Law Society Bulletin*, No. 193, 6 January, p. 4.
11 The Law Society of New South Wales, p. 4, see note 10.
12 Mahlab, p. 1, see note 9.

4

The Methodology and Scope of the Study

The Cost Benefit Analysis of DCM faces two issues:

(i) What are the costs and benefits of DCM, and how can they be valued in dollar terms? The approach the study has taken is presented in sections 4.1 and 4.2.

(ii) At the time the study was undertaken only five cases had finalised under DCM, and these had been either discontinued or struck out. So there was almost no record of experience with DCM. The approach of the study in relation to this issue is outlined in section 4.3.

4.1 The costs and benefits of DCM

The framework for the study is that each case gives rise to three sets of costs:

- the costs the Court system incurs in providing its legal resolution services;
- the costs of solicitors (including their disbursements) in advising and representing parties; and
- the costs borne by plaintiffs and defendants (other than their solicitors' costs), and any costs borne by the rest of society.

Evaluating the impact of DCM on the Court, solicitors, plaintiffs and defendants, and the rest of society requires the identification and valuation of the incremental costs and benefits of DCM for each group, as compared with Practice Notes 59 and 68. The following outlines the cost and benefit consequences of DCM for each group.

The court system

DCM leads to changes in Court system costs due to changes in Court resources required to manage cases. These comprise changes in staff costs and overhead costs due to differences in the kinds of activities performed by the Court system, the frequency of these activities, and their timing.

Solicitors

Solicitors incur changes in costs due to changes in the requirements of DCM, and changes in the timing of their work. These changes comprise: the costs of preparing DCM documents compared with the cost of preparing documentation under Practice Notes 59 and 68; changes in legal fees due to changes in the amount of other work undertaken; and changes in the timing of work, as DCM requires more work to be done earlier in the case.

Plaintiffs, defendants and the rest of society

The objective of DCM is to achieve earlier outcomes to cases. As discussed in section 2.2, the value of an earlier outcome is the difference between the present value of a settlement received under Practice Notes 59 and 68, and the present value of that same settlement under DCM. If DCM yields earlier settlement, the present value of the settlement will be greater, and the difference is the benefit of DCM for the plaintiff. (Note that the term settlement refers to both negotiated settlements and verdicts in favour of the plaintiff.)

The gain to the plaintiff from earlier settlement is a loss to the defendant. This study takes the view that where a defendant settles or judgement is against the defendant, then the compensation to the plaintiff is a benefit to society. It may be argued that the increased benefit to the plaintiff is offset by the increased cost to the defendant. This is equivalent to arguing that the loss to a person from a robbery is offset by the gain to the robber. This argument does not distinguish between benefits to which a person is legally entitled and benefits to which a person is not legally entitled. The benefits to which a person is legally entitled constitute the benefits to society, because they represent the enforcement of rights defined by the legal system. In this study social benefits of legal proceedings of each case are the benefits as determined by the Court. Therefore, the measure of social benefit should only take account of the

increased benefit of the earlier settlement to the plaintiff and not the increased cost to the defendant of making that payment earlier.

There are two other consequences of DCM for plaintiffs and defendants. Firstly, there will be changes to the parties' indirect costs. These are the incremental costs borne by the parties in addition to the solicitor costs. They will comprise the opportunity cost of the time their involvement in the matter requires (measured, for instance, by the parties' earnings), and the money cost of attending any meetings. The former cost consequence is often omitted because it is small due to the limited production losses of short absences from work by plaintiffs – in any event, in this study few of the plaintiffs were employed. The latter is omitted because the changes in costs will be small and the data difficult to obtain. Second, settlement delay causes anxiety, or what are called "psychic costs". These are intangible, and cannot be quantified in monetary terms. However, they can be taken account of by estimating whether they are consistent with the result in relation to the quantified costs and benefits. Finally, for the rest of society, high costs and delays may discourage people from seeking legal resolution of matters and this may reduce the probity of private and commercial relations. This also is an intangible, and so can only be incorporated into the analysis qualitatively.

So the approach of the study is that the major benefit of DCM to plaintiffs, defendants and the rest of society is the benefit received by a plaintiff from earlier settlement under DCM.

4.2 A model for the economic evaluation of DCM

The identification of the quantifiable cost and benefit consequences of DCM yields the model for the economic evaluation. The consequences of DCM for each case are a:

- change in Court costs (which is equal to DCM Court costs minus Practice Notes 59 or 68 Court costs)
- change in solicitor costs (which is equal to DCM solicitor costs minus Practice Notes 59 or 68 solicitor costs)
- change in the value of settlement (which is equal to the value of settlement of DCM minus the value of settlement of Practice Notes 59 or 68)

These consequences can be expressed in the following model, which takes

account of the timing of events and the relationship between the Court costs, solicitor costs and settlement values. The model then shows the net benefits or costs of DCM for each case:

Net Benefits (Costs) of DCM = (Present value of settlement of DCM minus present value of settlement of Practice Notes 59 or 68)
– (Present value of Court costs of DCM minus present value of Court costs of Practice Notes 59 or 68)
– (Present value of solicitor costs of DCM minus present value of solicitor costs of Practice Notes 59 or 68)

This expression means that, for example, if DCM imposes higher solicitor costs than were incurred under Practice Notes 59 or 68, then solicitor costs would be a negative term in the expression, because solicitor costs would constitute a cost of DCM. If Court costs are lower under DCM than what they would have been under Practice Notes 59 or 68, then that would be a positive term in the expression, because the savings are a benefit. Finally, if the value of the DCM settlement was greater, then, if the sum of this benefit plus the savings on Court costs exceeded the additional solicitor costs, DCM would show a net benefit.

4.3 The choice of cases for the study

There are two possible ways in which the cases for the study could be selected. One is to compare two sets of cases – one for DCM and the other for Practice Notes 59 and 68. These would need to be large enough so that the laws of statistical inference could be appropriately used. However, this option is not viable. The study began in July 1994, and at that time only five cases had been finalised under DCM.[13] The other option is to select cases managed under Practice Notes 59 and 68 and estimate what would have occurred if these cases had been managed under DCM. This is the option the study had to take. Hence, the study is a comparison of the costs of a case managed under Practice Notes 59 or 68 with what the costs of the same case would have been under DCM.

There are two ways in which cases for the study could be selected. One is to randomly select cases from among the population of cases finalised

under Practice Notes 59 and 68. The other is to select one case type and study the population of the cases in this case type. The study has adopted the latter option. Given the need to estimate DCM costs, these can be better estimated if the study is confined to one case type. By considering the population of a case type, the findings of the study will be reliable for that case type.

The study has selected professional negligence as the case type because it is an increasingly important area of litigation; there are a manageable number of cases for the study; and the cases are of sufficient complexity to be of interest.

4.4 The number of cases to be studied

Professional negligence cases were drawn from those commenced in the years 1977 - 1993, 1977 being the start of computer records. In any event, few (if any cases) commenced before 1977 would have been subject to Practice Notes 59 or 68. Cases were confined to the Court's list of finalised matters.

Supreme Court computer records showed that 492 cases in professional negligence were commenced during 1977 - 1993 and have been finalised. However, a large portion of the professional negligence cases commenced during this period were not subject to Practice Notes 59 or 68. These were:

- cases processed at the Broken Hill sittings
- cases processed at Special Sittings
- cases that either settled or were discontinued while still on the General List
- "long matters"
- matters referred to arbitration.

Cases falling into these categories have been excluded from the study. This reduced the study population to 56 cases under Practice Note 59 and 34 cases under Practice Note 68. However, after examining the Supreme Court files for each of these cases, it emerged that a number of cases were wrongly classified. Excluding the wrongly classified cases leaves 75 finalised professional negligence cases managed under Practice Notes 59 and 68. Of these, 64 fall into three categories, medical negligence (49), negligence by lawyers (9), and paramedical negligence – dental, chiropractic and veterinary (6). The remaining 11 cases are a diverse

group, including holiday misadventures, a dissatisfied PhD student, a gun accident, and five for which a computer summary was available but Court files could not be located. These 11 cases were discarded to confine the study to a cohesive group of cases about which sufficient Court information was available. This left a study population of 64 finalised cases in professional negligence managed under Practice Notes 59 and 68.

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13 CJRC DCM database, unpublished statistics.

5

Data Collection and Analysis

5.1 Activity sheets

The major source of data for cases is the Supreme Court records. These records are essentially narratives of each case history. They are rich in descriptive legal detail, but are not usable in quantitative analysis. A tool was required which would enable the conversion of these case records to a framework which would enable consistent costing. The tool adopted was an "activity sheet".

The activity sheets were constructed from the Court records and show in summary form for each case, the Court and registry activities that occurred, the date on which each activity occurred and, in the case of Court activities, the class of presiding judicial officer. There were two activity sheets constructed for each case. The first summarised the actual progress of the case under Practice Note 59 or 68, while the second summarised the hypothetical progress of the case had it been managed under DCM. They show, among other things, the difference DCM makes to the duration of cases.

The hypothetical DCM activity sheets were constructed by a Court Registrar of the Supreme Court. The DCM activity sheets were reviewed by three plaintiff solicitors and three defendant solicitors, selected on the basis of being specialists in professional negligence. Where they suggested a change to the DCM activity sheets, their suggestion was adopted for the study. The most common comment by the solicitors was that they expected that some of the cases would take between three and nine months longer than shown on the Registrar's activity sheets. To accommodate these comments, the study has added one year to the duration of the DCM track, so that the study's estimate of the difference DCM makes to the duration of cases is conservative. Nonetheless, for cases in this study, the average duration of cases under DCM is still shorter than under Practice Notes 59 and 68 by just under four years.

In terms of the model for the economic evaluation of DCM (see section

4.2), the two activity sheets, and cost information supplied by the Department of Courts Administration,[14] provided a basis for estimating the change in the present value of Court and registry costs, and the change in the present value of settlement for each case. However, the activity sheets cannot be used to estimate the present value of legal costs. Consequently it was necessary to survey the solicitors who acted in these cases. The survey is discussed in section 5.3 below.

5.2 Department of Courts Administration data

The Department of Courts Administration supplied data on Registry service volume, by type of service, the average time taken per service, the average salary cost per service and Court and Registry budgets for 1993.

TABLE 5.1. Supreme Court Registry Common Law Division data for 1993

	Total annual output n	Time taken per item mins	Average salary cost per item $
Originating process	9,750	25	6.50
Other documents	46,800	5	1.35
Listing – hearings	5,278	20	7.75
Listing – arbitrations	5,604	10	3.60
Listing – other	12,408	15	4.95
Subpoena documents (evidence)	6,614	5	1.35
Subpoena documents (production)	17,110	20	5.75
Enquiries (listing, correspondence and telephone)	73,000	5	1.70
File retrieval	116,790	5	1.05
Default procedures	1,840	45	16.35
Entry of orders	2,300	10	3.60

Table 5.1 yields a total salary cost for the Supreme Court Registry of $641,458 (calculated by summing the product of total annual output per item by average salary cost per item, for all items). Registry expenditure for 1993 was $5.5 million. The Department of Courts Administration

attributed 25% of the expenditure to the Common Law Division, giving a Common Law Division/Registry expenditure of $1.4 million. This gives a ratio of total budget to salary cost of 2.14. Using this ratio to allocate overheads to each item of Registry output, yields the total cost per item (equal to salary cost plus allocated overhead cost) shown in Table 5.2.

TABLE 5.2. Total cost per item

Item	Total cost $
Originating process	13.93
Other documents	2.89
DCM documents	2.89
Listing – hearings	16.61
Listing – arbitrations	7.72
Listing – other	10.61
Subpoena documents (evidence)	2.89
Subpoena documents (production)	12.33
Enquiries (listings, correspondence and telephone)	3.64
File retrieval	2.25
Default procedures	35.05
Entry of orders	7.72

The Department of Courts Administration also supplied data on judicial officer salary costs for the Supreme Court, shown in Table 5.3 (over the page).

TABLE 5.3. Salary costs for Supreme Court (1993)

Judicial officer	Salary $	Insurance $	FBT $	Payroll tax $	Super $	Long service $	Total $
Judge	165,000	1,000	660	11,550	66,330	7,425	251,965
Support	64,000	1,500	0	4,480	7,680	2,240	79,900
Master	140,000	1,000	560	9,800	56,280	6,300	213,940
Support	37,000	750	0	2,590	4,440	1,295	46,075
Prothonotary	70,000	1,000	280	4,900	8,400	2,450	87,030
Support	32,000	750	0	2,240	3,840	1,120	39,950
Registrar	57,000	1,000	228	3,990	6,840	1,995	71,053

Note: The superannuation figure is based on 40.2% of salary for Judges and Masters

Combining judicial officer and support costs yields the following annual total salary costs per judicial officer:

Judge	$331,865
Master	$260,015
Prothonotary	$126,980
Registrar	$71,053

Assuming a 50 hour week and 42 weeks per year sitting time, these annual costs yield per minute costs of:

Judge	$2.63
Master	$2.06
Prothonotary	$1.01
Registrar	$0.56

The Department of Courts Administration estimated the Supreme Court's overheads to be:

Corporate overheads	$1.10 million
Library	$1.20 million
Court reporting	$3.20 million
Sheriff's office	$1.00 million
Depreciation	$0.35 million
Total	**$6.85 million**

Total sitting times for judicial officers in the Common Law Division in 1993 were:

Judge	276 weeks
Master	84 weeks
Prothonotary	42 weeks
Registrar	96 weeks

This gives a total sitting time for all judicial officers of 1,494,000 minutes. The ratio of Common Law Division sitting time to total Supreme Court sitting time is 15%. Therefore 15% of overheads are attributed to the Common Law Division, which is $1,027,500. Allocating these overheads on a per minute basis gives 69 cents per minute overheads to all judicial officers (i.e. $1,027,500 divided by 1,494,000 minutes) . This gives a total per minute cost including overheads of:

Judge	$3.32
Master	$2.75
Prothonotary	$1.70
Registrar	$1.25

The Department gave in and out of Court times for each activity (shown in Table 5.4 over the page).

TABLE 5.4. Average time per activity

Activity	Court time mins	Out of Court time mins	Total mins
Callover	5	2.5	7.5
Issues and Listing conference	60	20	80
Directions Hearing	10	3	13
Readiness Hearing	5	2	7
Notice of Motion	65	150	215
Hearing of Causes	900	1800	2700
Interlocutory Hearing	180	400	580
Call-up	3	1	4
Status Conference	20	20	40
Final Conference	60	60	120
Default Conference	20	5	25

The above information was used to estimate Court system costs (both Court and Registry) in the following way:

(i) Two activity sheets were constructed for each case, one for Practice Note 59 or 68 and one for DCM.

(ii) The number of each activity type in each case was counted.

(iii) For Registry activities the total nominal cost for each case was estimated by summing the products of the number of each activity type and the average cost of the respective activity type.

(iv) For Court activity costs the total nominal cost for each case was estimated by summing the products of each Court activity, the average duration in minutes of both in and out of Court time by the judicial officer for that activity and the per minute cost of the judicial officer involved.

(v) The total nominal Court system cost for each case was calculated by summing (iii) and (iv).

(vi) The dates on the activity sheets were used to calculate discounted Court system costs, with the base year for each case being the year in which the plaintiff lodged a statement of claim.

It should be noted that in the analysis of this study the above costs were inflated to 1994 dollars using the Consumer Price Index.

5.3 Solicitor survey

Solicitor cost data is not available from the Court, and had to be obtained by a survey of the plaintiff and defendant solicitors, who appeared for the parties in the 64 finalised professional negligence cases managed under Practice Notes 59 and 68. The survey sought information in relation to solicitors' costs and disbursements classified by type of activity and the stage of the case. A copy of the Plaintiff Solicitor Survey appears at Appendix 7, and a copy of the Defendant Solicitor Survey appears at Appendix 8.

There were two major difficulties in this survey. First, costs and disbursements information is understandably very sensitive information for solicitors as indeed it is for anyone. Second, the information sought was very specific and required solicitors to spend considerable time searching their files. This was particularly onerous for plaintiff solicitors, who typically have a relatively small number of support staff. It was also onerous for some defendant solicitors, who appeared in as many as 21 cases. Given these difficulties, it is not surprising that obtaining responses to the survey was a slow, laborious task and a considerable amount of follow up contact was required.

The 64 cases involved 64 plaintiff solicitors and 76 defendant solicitors. The higher number of defendant solicitors is mostly due to the presence of more than one defendant in some cases. One hundred and forty questionnaires were sent out. Data responses were received in relation to 52 questionnaires, a response rate of 37%. Replies were also received in relation to an additional ten questionnaires where the file had either been destroyed or lost, or there had been no charge by the solicitor.

The survey of solicitors yielded the following information:

- For 40 cases (62% of the study population) the survey obtained *at least* a total cost for at least one plaintiff or one defendant.

- For 14 of these cases, the survey obtained sufficiently detailed cost information to enable the present value of the costs of at least one party to be estimated.

- For six of these cases, the survey obtained cost information from both the plaintiff and defendant. For two of these the information was sufficiently detailed for present value estimates for both parties.

Whereas the study has complete information in relation to Court costs and almost complete information about settlements, information about solicitor costs is not as comprehensive. As a consequence, it has been necessary to make assumptions to fill the gaps in the solicitor data.

The survey results for each case are set out in Appendix 2. The Plaintiff and Defendant cost columns were constructed by converting plaintiff and defendant costs obtained from the survey to 1994 dollars. Where there was more than one defendant and the information was available from the survey, the defendant costs were summed. The Discounted (that is, present value) columns were constructed for those cases for which solicitors filled out the questionnaire in detail so that it was possible to discount the cost.

The Total Nominal cost column was constructed by summing the Plaintiff Nominal and Defendant Nominal columns where the information was available. For the remaining cases the available cost information was doubled. This was felt to be the simplest reasonable assumption. For example, in case 1 the defendant's nominal cost was $5,755 and there is no information about the plaintiff's costs. For this case it was assumed that Total Nominal Solicitor costs are double $5,755, which is $11,510.

The Total Discounted column was constructed by:

- Summing the Plaintiff and Defendant Discounted columns whenever possible.

- Doubling the Discounted column for cases for which there was present value information for only one party.

- Estimating a present value for all the cases for which only nominal cost information was obtained by the survey. This was done by multiplying the nominal cost by the average ratio of present values to nominal costs for the 16 detailed survey responses received, which is 0.75.

For example, for case 18 the Total Discounted entry was obtained by adding $30,896 to 0.75 of $35,679.

The results for the 40 cases with costs and/or cost estimates are summarised in Table 5.5 (opposite). It shows the average nominal total (plaintiff plus defendant) solicitor cost to be $70,919 per case and the average present value of total solicitor cost to be $53,035 per case. (Note that solicitor costs in Table 5.5 are overestimates to some extent, because for those cases for which only total costs were known, costs were inflated by the price index of the year in which proceedings were initiated, even

TABLE 5.5. Solicitors' costs (1994 prices)

	Plaintiff		Defendant		Total	
	Nominal $	Discounted $	Nominal $	Discounted $	Nominal $	Discounted $
Average	38,822	18,869	34,419	16,485	70,919	53,035
Standard deviation	32,822	7,159	32,870	11,318	64,654	48,115

though many of those costs would have been incurred at a later date.)

The survey of solicitors provided solicitor cost information about the actual cases managed under Practice Notes 59 and 68. It could not provide information about solicitor costs for these cases under hypothetical DCM management. Therefore, the next task was to estimate by how much the present value of solicitor costs could increase as a consequence of DCM.

The present value of solicitor costs under DCM will be increased as a result of the shorter duration of cases and an earlier schedule of work. For cases in this study, DCM is estimated to reduce case duration by 70% on average. This means that under DCM the difference between nominal solicitor costs and discounted solicitor costs is also reduced by around 70%.

For those cases for which detailed information was obtained by the survey, the discounted solicitor cost is 25% less than the nominal cost. It is assumed for this study that DCM will reduce the difference from 25% to 5%. This is a reduction of 83%, larger than necessary, and conservative. It means that the present value of solicitor costs increases by 20% due to reduced delay.

Advice from the Law Society suggests that DCM could increase nominal solicitor costs for some solicitors and for some cases, but could also reduce nominal solicitor costs for other solicitors and other cases. The Law Society also sought advice from plaintiff and defendant solicitors on a sample of ten cases. The comments by these solicitors were that DCM would usually result in only relatively small changes in nominal solicitor costs, and that reductions would be more likely than increases.

Given this response from the Law Society, three scenarios have been constructed for the effect of DCM on nominal solicitor costs. These are:

Scenario 1
DCM results in a small reduction in nominal solicitor costs.

Scenario 2
DCM results in no change in nominal solicitor costs.

Scenario 3
DCM results in a substantial increase in nominal solicitor costs.

5.4 Settlement data

Settlement amounts were obtained from Court records. In 16 cases either judgement was in favour of the defendant or proceedings were discontinued without any payment from the defendant. In another three cases the terms of the settlement are not available. For these 19 cases, there is no benefit from earlier settlement, because there is no settlement. In the 45 cases in which there was a settlement, the benefit of DCM is the increase in the present value of the settlement because it is received earlier. Of these 45 cases, 16 went to a hearing and 29 did not.

If settlements took account of delay, so that the actual dollar value of settlement increased as the duration of the case increased, then there would be no settlement benefit under DCM. Discussions with barristers and solicitors about the use of discount rates in determining settlement amounts suggested that, although discount rates play a role in setting the ambit of claims, a settlement is a negotiated outcome in which discount rates play no formal part. Settlements are the result of a bargaining process, shaped by the relative strengths of the two sides. Interest rates may play a part in setting the initial claims, but play no systematic part in determining the size of the settlement.

Cases where a verdict is determined by a judge are different. Evidence on this is more difficult to gather, but it would appear that even here the account taken of interest costs is unsystematic, often not clearly distinguished from the inflation rate, and usually too low, using interest rates of 3-5%.

Based on these considerations, the study assumes that for the 29 cases that had a settlement, but did not go to hearing, the actual size of the settlement would be the same under DCM as it was under Practice Notes 59 and 68. This means that the present value of the settlement will increase under DCM and the size of the increase will be determined by the discount rate, which is 8% in this study. For the 16 cases that did go to hearing, it is assumed conservatively that there was some compensation

for the interest cost of delay, but that it was 5%. Therefore, for these cases the interest rate used to obtain present values is 3% (3% plus the Court's 5% makes 8%).

The study uses a discounting period of one year and assumes that all settlements are made at the beginning of the year. For example, a DCM activity sheet for a case starting in June 1994 and concluding in December 1995 would be discounted for one year. For this same case, the Practice Note 59 or 68 activity sheet may start in June 1988 and conclude in October 1991, and would be discounted for three years. In both activity sheets the discount period is slightly understated, but the difference between them is reasonably accurate.

The 64 professional negligence cases managed under Practice Notes 59 and 68 were all finalised in the years 1990 to 1994. To take account of inflation, all settlements were adjusted to 1994 prices using the Consumer Price Index.

The above assumptions and procedures were used to calculate, for each case, the actual value of settlement as recorded in Court records, the number of years by which DCM is estimated to reduce the duration of each case, the present value of settlements under Practice Notes 59 and 68 and under DCM, both in 1994 prices, and the difference between the two present values. The results for each case are shown in Appendix 3 with the difference column measuring the dollar benefit of earlier settlement as a consequence of DCM.

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14 On coming to government following the State election on 25 March 1995, the Premier of New South Wales, the Hon. Bob Carr MP, announced that the Department of Courts Administration (DOCA) would be amalgamated with the Attorney General's Department. Thus, functions exercised by DOCA at the time the research was conducted are now the responsibility of the Attorney General's Department.

6

Results

6.1 Utilising the model

The model in section 4.2 is utilised as the framework for presenting the results of this study. Specifically, the estimates of Court costs, solicitor costs and the value of settlements are each presented separately. These estimates are then substituted into the model to provide estimates of the overall net benefit of managing the 64 cases under DCM rather than under Practice Notes 59 and 68.

6.2 Court system costs

The discounted Court and Registry cost estimates for DCM and Practice Notes 59 and 68 were derived from the method used in section 5.2 and the results for each case are shown in Appendix 4. Appendix 4 also includes a column showing the difference between the discounted Court plus Registry costs of the two systems of case management. A positive value in this column indicates that DCM discounted costs are higher, while a negative value indicates that Practice Notes 59 and 68 discounted costs are higher.

TABLE 6.1. Discounted Court and Registry costs (1994 prices)

	Practice Notes 59 and 68			DCM			
	Court $	Registry $	Total $	Court $	Registry $	Total $	Difference $
Total	60,025	8,313	68,338	67,541	7,779	75,320	6,982
Average	938	130	1,068	1,055	122	1,177	109
Standard deviation	1,894	72	1,932	1,678	86	1,710	1,113

In 50 of the 64 cases DCM had the higher discounted costs. However, in most instances the difference is small and Table 6.1 shows the average difference per case to be only $109. The higher cost of DCM is entirely due to the shorter duration of cases under DCM, so that discounting has a relatively smaller effect. Comparison of the undiscounted costs shows total Court and Registry costs for all 64 cases under DCM would be $78,081, while it was $91,903 under Practice Notes 59 and 68. This difference reflects the smaller number of occasions at which the parties appear in Court under DCM.

6.3 Settlement costs

The results of using the data and procedures outlined in section 5.4 are summarised in Table 6.2, which shows that the cases in this study had settlements totalling $6.8 million ($7 million in 1994 dollars). By shortening the duration of these cases, by on average just under four years, DCM would increase the settlement present value by $1.15 million in 1994 dollars. Under Practice Notes 59 and 68, the average present value of settlements was reduced to 72% of their undiscounted value because of the length of time plaintiffs had to wait for settlement. Under DCM that average would be increased to 89% due to the shorter duration of the cases.

TABLE 6.2. Settlements for DCM and Practice Notes 59 and 68

	Actual settlements $	Years difference n	Present value under DCM $	Present value under Practice Notes 59/68 $	Difference in present values $
Total	6,805,573	250	6,246,697	5,095,958	1,150,739
Average	151,235	4	138,815	113,244	25,572
Standard deviation	295,238	3	268,547	229,369	44,138

6.4 Solicitor costs

To quantify the impact of the New South Wales Supreme Court DCM program on solicitor costs, it is necessary to make assumptions about the average size of the impact that DCM has on nominal solicitor costs under the three scenarios discussed in section 5.3. These assumptions are:

Scenario 1
DCM results in a small reduction in nominal solicitor costs. The reduction in part offsets the 20% increase in the discounted cost due to reduced delay. It is therefore assumed in this scenario that DCM increases discounted solicitor costs by 15%. This scenario is consistent with the advice from the Law Society and the solicitors consulted by the Society.

Scenario 2
DCM does not change nominal solicitor costs. Rather DCM only changes the timing of costs. It is therefore assumed in this scenario that DCM increases discounted solicitor costs by 20%. This scenario reflects an agnostic view on the impact of DCM on nominal solicitor costs.

Scenario 3
DCM results in a substantial increase in nominal solicitor costs. The increase in nominal costs augments the increase in discounted cost due to reduced delay. It is therefore assumed in this scenario that DCM increases discounted solicitor costs by 40%. This represents an average increase of $14,142 per case in nominal terms. An increase of this magnitude was chosen because it substantially exceeds the increase in solicitor cost suggested by any solicitor for any of the sample of cases sent to them. So this is a worst case scenario for DCM.

Table 6.3 shows that on average DCM increases discounted solicitor costs by $7,955, $10,607 and $21,214 per case respectively under the three scenarios.

TABLE 6.3. Solicitor costs under DCM – three scenarios

	Scenario 1 $	Scenario 2 $	Scenario 3 $
Total	318,211	424,282	848,563
Average	7,955	10,607	21,214
Standard deviation	7,217	9,623	19,246

The increases in discounted solicitor costs resulting from DCM under the three scenarios for each of the 40 cases are shown in Appendix 5.

6.5 Net benefits (costs) of DCM

For the 40 cases for which solicitor data is available, DCM yields net benefits. For these cases the net benefit of DCM is $568,992 under scenario 1, $462,922 under scenario 2, and $38,641 under scenario 3. These results represent an average per case of $14,244, $11,573 and $966 respectively. The results are estimated by substituting values from the analysis of sections 6.2, 6.3 and 6.4 into the model in section 4.2. The aggregate results are shown in Table 6.4, and Appendix 6 shows the results for each of the 40 cases under the three scenarios.

The Net Settlement Benefits column in Table 6.4 is derived from Appendix 3, the Net Court Costs column is derived from Appendix 4 and the Solicitor Costs for the three scenarios is derived from Appendix 5. The Net Benefit columns are derived by subtracting Net Court and Solicitor Costs from Net Settlements respectively for the three scenarios. For example, the net benefit of DCM under scenario 1 is Net Settlement Benefits ($897,175) minus Net Court Costs ($9,972) minus Net Solicitor Costs ($318,211) which equals Scenario 1 Net Benefit of $568,992. The DCM margin is simply the difference between Net Settlement and Net Court Costs and gives an indication of how much DCM would need to increase solicitor costs before the benefits of earlier settlement are eliminated.

TABLE 6.4. Net DCM benefits for 40 cases

	Total $	Average $	Standard deviation $
Net settlement benefits	897,175	22,429	46,607
Net increase in Court costs	9,972	249	1,062
Scenario 1 increase in solicitor costs 15%	318,211	7,955	7,217
Scenario 2 increase in solicitor costs 20%	424,281	10,607	9,623
Scenario 3 increase in solicitor costs 40%	848,563	21,214	19,246
Scenario 1 net benefit	568,992	14,244	42,221
Scenario 2 net benefit	462,922	11,573	40,871
Scenario 3 net benefit	38,641	966	36,575
DCM margin	887,203	22,180	46,780

The ratio of the net benefit of the 40 cases to the DCM margin of the 40 cases can be used to extrapolate the net benefit of DCM for all 64 cases. The results are that the net benefit of DCM is over $700,000 under scenario 1, almost $600,000 under scenario 2, and around $50,000 under the worst case scenario 3. These results are shown in Table 6.5.

TABLE 6.5. Net DCM benefits for 64 cases

	Scenario 1		Scenario 2		Scenario 3	
	Total $	Average $	Total $	Average $	Total $	Average $
Net DCM benefit for 40 cases	568,992	14,224	462,992	11,573	38,641	966
DCM margin for 40 cases	887,203	22,180	887,203	22,180	887,203	22,180
Ratio net benefit/ DCM margin	0.6413		0.5218		0.0436	
Net DCM benefit for 64 cases	733,529	11,461	596,786	9,325	49,814	778

6.6 Indirect and intangible costs

As discussed in section 4.1, there are three consequences of DCM for society, which have not been included in the quantitative analysis of the study. These consequences are the intangible psychic and probity costs of waiting, and the quantifiable indirect costs borne by the parties. The psychic and probity costs would clearly be reduced if the wait for settlement were reduced by DCM, as the study estimates it is. The indirect costs of the parties are also likely to be reduced due to the smaller number of activities DCM would entail for the parties. However, these activities would occur earlier, which would increase their discounted cost. Overall, the impact of DCM on the indirect costs of the parties is likely to be similar to the impact it has on solicitors' costs: if there is a change in costs it is likely to be small, and in some cases it will be an increase, and in others a decrease in costs.

6.7 Limitations of the study

There are a number of limitations to the findings of this study. These are:

(i) Some of the delay in cases managed under Practice Notes 59 and 68 was due to congestion in the Court system rather than being directly due to the type of case management provided by these Practice Notes. To the extent that congestion caused the delay, this study would overstate the reduction in the duration of cases as a result of the use of DCM. However, the assumptions made by the study in relation to the duration of cases under DCM (adding an additional year to the duration estimated by the Registrar) and the increase in solicitor costs due to the shorter duration of cases under DCM (an increase of 83%, rather than the necessary 70%) are conservative for estimating the benefits of DCM.

(ii) A related limitation is that the comparison is made between actual cases under Practice Notes 59 and 68 and these same cases under hypothetical DCM management. While every effort was made to chart accurately how these cases would have proceeded under DCM, it could be argued that the comparison is between actual case management with all the associated inefficiences, problems and surprises, and an idealized case management. This means

that, to the extent DCM does not perform to the ideal, then the net benefits outlined above will not be realised.

(iii) It may be argued that professional negligence cases are sufficiently different to other types of cases so as to preclude generalising the findings of this study. However, the size of the benefits of DCM under scenarios 1 and 2, and the extreme assumptions of scenario 3, all suggest that DCM may also provide net benefits to other case types.

(iv) While data for the Court system and settlements are comprehensive the data for solicitors is incomplete. This means a number of assumptions had to be made for the solicitor cost estimates. The use of scenarios for solicitor costs allows the study to examine a plausible range of assumptions.

7

Conclusions

- The study has estimated that for the study population DCM yields net benefits, from over $700,000 to $50,000 under the worst case scenario. The net benefits turn on the timing of settlement. The earlier settlement of DCM overwhelms any increases that might occur in the nominal cost of activities.

- Court system costs are not significant in the costs and benefits of case management. Court system costs comprise 2% of an average case, and DCM increases Court costs by only $109 per average case.

The findings of the study measure the benefit of reducing delay. The means of reducing delay considered by this study is DCM. Some of the delays to settlements under Practice Notes 59 and 68 were undoubtedly due to congestion in the Court, while progress has been assumed by the study not to be affected by congestion under DCM. In practice, DCM may become subject to delay as more cases are managed under it. The meaning of the results of the study is that if DCM is effectively implemented, then it will yield benefits by reducing delay. Equally, any other measure which reduces delay to the same extent would yield similar benefits, depending on their cost of implementation.

Appendix 1

Systems of case management

Practice Note 59

The essence of Practice Note 59 was the use of the Callover to manage the case. At a Callover, a Registrar was to determine whether the case should go to arbitration or to trial. If the case was to go to trial, and was ready to proceed, the Registrar was to list the case for an Issues and Listing Conference (ILC). If the case was not ready, the case was to be stood over for another Callover up to two months later, and if not ready on that occasion, the Notice to Set Down was liable to be struck out. In general, there was no timetable for when the ILC would be held. If at the ILC proceedings were found to be ready, they were to be set down for trial, and a hearing date "not later than six to eight weeks later" was to be allocated "if possible" (Practice Note 59, Part 2, clause 10).

A case was divided into four phases, as shown in Figure A1.

FIGURE A1. Practice Note 59

Phase 1:	**Statement of Claim**	*Time elapsed: 6 months to 2 years*
Phase 2:	**Notice to Set Down for Trial**	*Time elapsed: 2 years*
Phase 3:	**Removed from General List** (i) Callover (ii) ILC	*Time elapsed: open-ended*
Phase 4:	**Hearing**	

Practice Note 68

Practice Note 68 replaced the Callover with a system of case management based on Directions Hearings. The purpose of the Practice Note was to ensure that "all cases, not otherwise disposed of, are heard within the range of dates nominated for hearing in the Notice of Hearing and Appointment for Directions" (Practice Note 68, clause 3). Once a case was removed from the General List it was to be allocated a hearing date

six months hence. A registrar was to be responsible for the management of a case over this period, from the first Directions Hearing until the conclusion of the ILC. The sanction of the Practice Note was that if a party failed to comply with directions, the registrar could strike the case out of the list, or refer the case to the List Judge.

A case was still divided into four phases, with the changes introduced by Practice Note 68 occurring in phase 3, as shown in Figure A2.

FIGURE A2. Practice Note 68

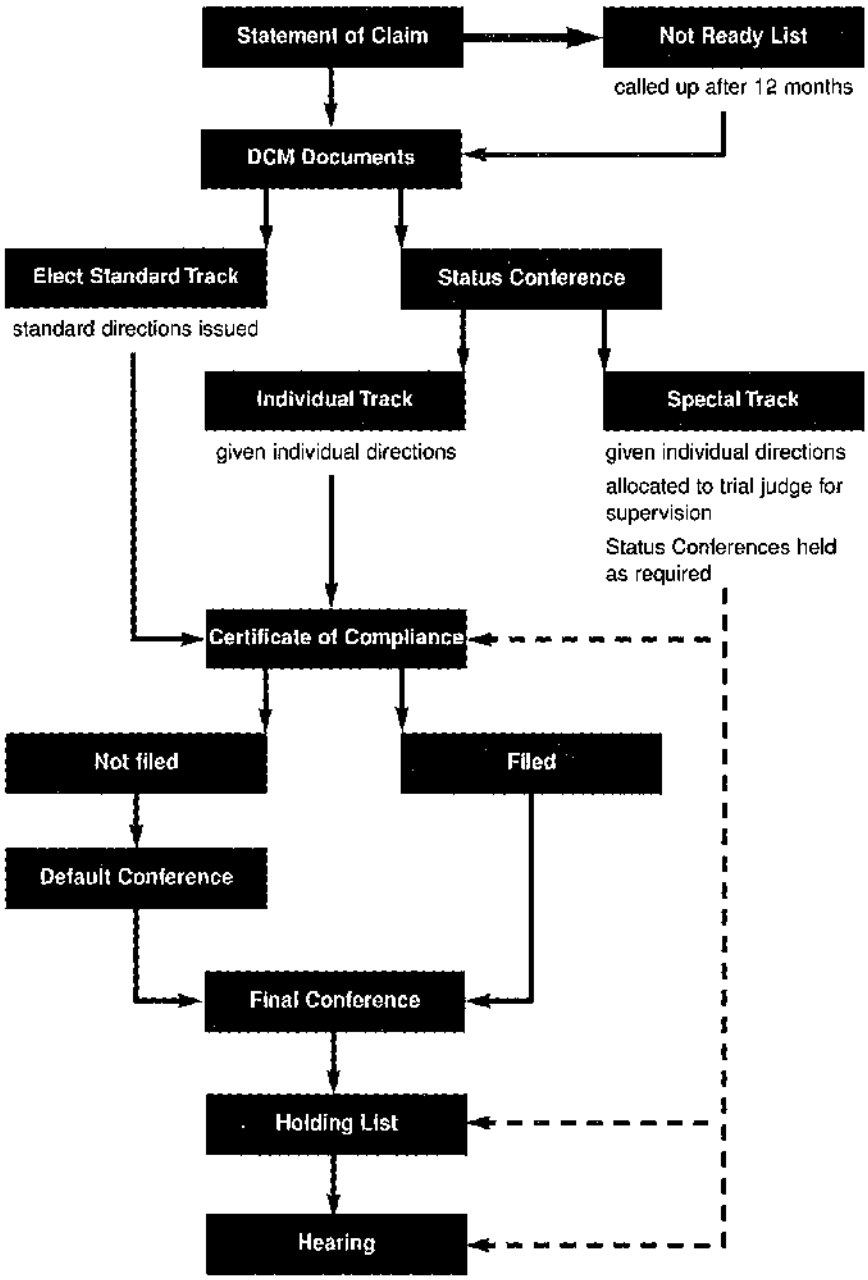
Phase 1:	**Statement of Claim**	*Time elapsed: 6 months to 2 years*
Phase 2:	**Notice to Set Down for Trial**	*Time elapsed: 2 years*
Phase 3:	**Removed from General List** (Allocated to hearings period 6 months hence) (i) Directions Hearing (up to 4 before a Registrar) (ii) ILC	*Time elapsed: 6 months*
Phase 4:	**Hearing**	

Differential Case Management

DCM was introduced by Practice Note 81, and took effect from 31 January 1994. The main thrust of DCM is the pro-active involvement of the Court in the administration of the litigation process in the pre-trial period. The objective of DCM is to move the bulk of evidence gathering to the beginning and middle of a much shorter pre-trial period, and obviate the need to fix hearing dates for the large number of cases that will be settled out of court.

There are two means by which the objective is to be achieved. Firstly, the Court requires the plaintiff to provide detailed information about the case at an early stage in the form of DCM documents. The DCM documents are to provide full disclosure of the plaintiff's claim. The plaintiffs are to serve defendants with their DCM documents and the defendants are to prepare their own DCM documents. Cases are placed in the Not Ready List until the DCM documents are filed.[15] If the plaintiff does not file the DCM documents within 12 months of filing the

FIGURE A3. Differential Case Management



Source: CJRC DCM Implementation Study.

Statement of Claim, the case is called up before the List Judge.

Second, the Court then holds a Status Conference, unless the plaintiff elects to proceed along the Standard Case Management Track. At the Status Conference, the matters at issue are reviewed and the most appropriate means of resolving the case are explored, including allocating the case to one of the two remaining management tracks. These comprise the Individual Track, in which cases are managed according to directions appropriate to the specific case, and the Special Track, for cases of "intrinsic complexity or unusual urgency that warrant management in a particularly fast and cost effective way" (Practice Note 81, clause 16.1).

DCM is summarised in Figure A3 on the previous page.

A comparison of three systems of case management

The major respects in which DCM differs from Practice Notes 59 and 68 are:

(i) Under Practice Notes 59 and 68, the pre-trial period from filing of the Statement of Claim to hearing was on average three years and six months,[16] with case management not commencing until many months after a party filed a Notice to Set Down for trial.

Under DCM, the maximum pre-trial period should be 18 months and case management begins on day 66, the 65th sitting day after the filing of the DCM documents.

(ii) Under Practice Notes 59 and 68, all cases received the same management through Callover or Directions Hearings to ILC.

Under DCM, case management procedures differentiate between various types of cases so that depending on their complexity and urgency, some cases receive more intensive management than others.

(iii) Under Practice Notes 59 and 68, informal proceedings, conducted largely at the initiative of the parties, determined the timing of any formal stages. There was no penalty or opportunity to impose penalty to a party who used or abused informal proceedings, which may have caused delay in the occurrence of formal stages and ultimately the hearing.

Under DCM, the case management track determines the formal stages of litigation and sets a time limit between the formal stages in which all interlocutory or informal proceedings must be completed subject to, and so as not to interfere with, the formal

stages. Intermediate deadlines, however, can vary by consent provided the compliance date and date of the Final Conference is not affected.

(iv) Under Practice Notes 59 and 68, plaintiffs filed a Notice to Set Down to reserve their place in the listing queue. Subsequently the plaintiff and solicitor would investigate their claim to specify its detail and could then alter the claim, necessitating an amended Statement of Claim, which also required amendment of the defence. Issues in dispute were usually only named and identified close to the hearing date.

Under DCM, the plaintiff commences in a management track towards a hearing date only after the filing of DCM documents. The filing of DCM documents early in proceedings is designed to provide a greater level of information to the defendant and the Court and at an earlier stage, and is a substitute for, and hence eliminates the need to request and supply particulars of the claim. There should also be less need for other interlocutory procedures such as Mentions and Motions of Expedition. In addition, the need to prepare DCM documents early should encourage the practitioner to start preparation as soon as instructions are received.

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15 This applies to ordinary proceedings only.
16 From discussions with a Supreme Court officer.

APPENDIX 2
Solicitors' costs (1994 prices)

	Plaintiff		Defendant		Total	
	Nominal $	Discounted $	Nominal $	Discounted $	Nominal $	Discounted $
Case						
1	•	•	5755	5170	11,510	10,340
2	•	•	•	•	•	•
3	•	•	16,765	•	33,529	25,147
4	•	•	24,043	•	48,086	36,065
5	•	•	67,001	•	134,002	100,502
6	•	•	14,308	•	28,617	21,463
7	•	•	17,955	15,612	35,910	31,224
8	•	•	19,610	19,507	39,220	39,014
9	•	•	30,360	22,956	60,720	45,916
10	•	•	16,970	13,948	33,940	27,896
11	•	•	•	•	•	•
12	•	•	•	•	•	•
13	•	•	13,579	•	27,158	20,369
14	•	•	71,775	46,897	143,550	93,794
15	•	•	•	•	•	•
16	•	•	26,995	•	53,990	40,492
17	•	•	7,765	•	15,530	11,648
18	35,679	•	38,095	30,896	73,774	57,655
19	•	•	27,970	19,775	55,940	39,550
20	29,200	•	70,413	0	99,613	74,709
21	17,790	10,920	17,755	12,679	35,545	23,599
22	•	•	26,928	•	53,856	40,392
23	22,812	17,414	13,750	10,531	36,562	27,945
24	15,655	•	21,465	13,517	37,120	25,258
25	•	•	10,450	5,194	20,900	10,388
26	•	•	20,396	0	40,791	30,593
27	•	•	•	•	•	•
28	•	•	18,165	14,111	36,330	28,222
29	•	•	•	•	•	•
30	•	•	•	•	•	•
31	•	•	•	•	•	•
32	•	•	•	•	•	•
33	25,669	•	•	•	51,339	38,504
34	•	•	•	•	•	•
35	•	•	•	•	•	•
36	•	•	158,885	•	317,771	238,328
37	•	•	•	•	•	•
38	•	•	•	•	•	•
39	27,777	•	41,222	•	68,999	51,750
40	•	•	42,880	•	85,759	64,319
41	•	•	•	•	•	•
42	98,371	•	•	•	196,742	147,557
43	25,079	•	•	•	50,158	37,618
44	132,495	•	•	•	264,989	198,742
45	•	•	•	•	•	•
46	38,490	28,274	•	•	76,980	56,548
47	•	•	•	•	•	•
48	•	•	•	•	•	•

	Plaintiff		Defendant		Total	
	Nominal	Discounted	Nominal	Discounted	Nominal	Discounted
Case						
49	•	•	27,546	•	55,092	41,319
50	•	•	•	•	•	•
51	•	•	•	•	•	•
52	•	•	•	•	•	•
53	•	•	17,511	•	35,022	26,266
54	•	•	•	•	•	•
55	10,958	•	•	•	21,916	16,437
56	•	•	44,926	•	89,853	67,390
57	•	•	•	•	•	•
58	•	•	•	•	•	•
59	37,413	•	132,882	•	170,296	127,722
60	26,118	•	•	•	52,236	39,177
61	•	•	•	•	•	•
62	•	•	15,309	•	30,619	22,964
63	•	•	24,039	•	48,078	36,059
64	•	•	32,351	•	64,703	48,527

Note: Where no information was available, • appears.

APPENDIX 3

Value of settlements

	Actual Settlement $	Years Difference n	Present Value DCM $	Present Value 59/68 $	Difference $
Case					
1	60,000	3	58,802	46,679	12,123
2 d		2	0	0	0
3	40,000	1	36,298	33,609	2,689
4 na		9	0	0	0
5 d		6	0	0	0
6 d		6	0	0	0
7 d		3	0	0	0
8	152,000	4	141,610	104,087	37,522
9	87,500	2	77,391	66,350	11,041
10	80,000	2	76,418	65,516	10,902
11	90,000	4	83,333	61,252	22,081
12	120,000	0	117,605	117,605	0
13	30,000	3	28,657	22,749	5,908
14 d		5	0	0	0
15	65,000	3	63,703	50,569	13,133
16	175,000	6	163,037	102,741	60,296
17 na		2	0	0	0
18	43,000	0	41,651	41,651	0
19	60,000	3	53,068	42,127	10,941
20 d		6	0	0	0
21	62,500	0	62,600	62,600	0
22 d		4	0	0	0
23	30,000	6	27,949	17,613	10,336
24	87,500	5	69,460	47,274	22,187
25	30,000	11	27,949	11,987	15,962
26	55,000	4	52,538	38,617	13,921
27	60,000	3	53,068	42,127	10,941
28	72,500	4	69,254	50,904	18,350
29	265,000	5	234,384	159,518	74,866
30 d		2	0	0	0
31 d		3	0	0	0
32	42,000	3	36,231	28,761	7,470
33	100,000	5	93,164	63,406	29,758
34	20,000	3	17,253	13,696	3,557
35 na		3	0	0	0
36	1,900,000	2	1,724,142	1,478,174	245,968
37	213,073	1	205,894	199,897	5,997
38	22,500	5	19,901	13,544	6,357
39	50,000	6	46,582	29,355	17,227
40	40,000	15	37,266	11,748	25,518
41	400,000	5	388,970	335,529	53,441
42	50,000	3	47,130	43,130	3,999
43	150,000	4	129,395	95,109	34,286
44	620,000	3	584,409	534,817	49,592
45 d		3	0	0	0
46 d		2	0	0	0
47	35,000	4	33,044	29,359	3,685

	Actual Settlement $	Years Difference n	Present Value DCM $	Present Value 59/68 $	Difference $
Case					
48 d		3	0	0	0
49	130,000	3	112,142	89,022	23,120
50	175,000	4	169,104	150,247	18,857
51 d		5	0	0	0
52 d		6	0	0	0
53 d		6	0	0	0
54	115,000	2	96,626	82,841	13,785
55	40,000	2	32,758	28,085	4,673
56	205,000	4	180,176	132,435	47,741
57	20,000	3	19,601	15,560	4,041
58	40,000	3	38,209	30,332	7,877
59	625,000	5	552,794	376,222	176,572
60	94,000	0	90,833	90,833	0
61	37,000	3	36,261	28,785	7,476
62	12,000	10	11,463	5,309	6,153
63 d		4	0	0	0
64	5,000	3	4,576	4,187	388
Total	**6,805,573**	**250**	**6,246,697**	**5,095,958**	**1,150,739**

Note: "d" indicates either case discontinued or a verdict in favour of the defendant.
"na" indicates the terms of settlement are not disclosed in the Court files.

APPENDIX 4

Discounted Court and Registry costs

	Court	PN 59/68 Registry	Total	Court	DCM Registry	Total	Difference
	$	$	$	$	$	$	$
Case							
1	7	58	66	50	47	97	31
2	163	108	271	1,353	116	1,469	1,198
3	8	47	55	50	44	94	39
4	50	48	98	147	47	194	96
5	2,234	172	2,404	4,096	162	4,258	1,854
6	9	68	78	50	61	111	33
7	90	71	162	200	70	270	108
8	442	160	603	1,543	22	1,565	962
9	198	133	331	212	130	342	11
10	94	72	167	200	70	270	103
11	11	73	84	50	72	122	38
12	359	115	475	66	111	177	-298
13	18	74	92	50	71	121	29
14	4,642	202	4,845	6,674	203	6,877	2,032
15	298	159	457	59	143	202	-255
16	161	54	215	328	49	377	162
17	34	122	157	200	106	306	149
18	6,881	145	7,027	6,140	152	6,292	-735
19	163	105	268	272	97	369	101
20	1,619	184	1,804	6,697	176	6,873	5,069
21	615	120	736	447	102	549	-187
22	205	128	334	389	139	528	194
23	2,430	69	2,500	1,528	71	1,599	-901
24	79	108	188	171	105	276	88
25	41	141	183	1,162	134	1,296	1,113
26	187	91	278	200	89	289	11
27	170	95	266	253	93	346	80
28	89	55	144	196	50	246	102
29	76	95	171	177	91	268	97
30	8	87	95	50	82	132	37
31	100	54	154	46	46	92	-62
32	258	262	520	278	281	559	39
33	147	146	293	216	140	356	63
34	11,191	318	11,510	5,771	316	6,087	-5,423
35	456	79	536	1,258	73	1,331	795
36	538	218	757	251	227	478	-279
37	4,463	168	4,632	4,193	166	4,359	-273
38	10	74	85	100	75	175	90
39	707	177	884	696	24	720	-164
40	42	59	101	192	52	244	143
41	854	68	923	1,331	79	1,410	487
42	959	237	1,196	1,397	257	1,654	458
43	24	154	179	232	104	336	157
44	4,462	337	4,799	1,592	326	1,918	-2,881
45	110	217	327	199	221	420	93
46	3,415	151	3,566	4,117	148	4,265	699
47	3,288	173	3,461	2,794	185	2,979	-482

	Court	PN 59/68 Registry	Total	Court	DCM Registry	Total	Difference
	$	$	$	$	$	$	$
Case							
48	15	91	106	200	78	278	172
49	33	113	146	96	125	221	75
50	1,240	136	1,376	1,542	129	1,671	295
51	116	126	243	248	136	384	141
52	165	69	234	208	66	274	40
53	68	73	142	189	61	250	108
54	636	139	776	814	137	951	175
55	101	107	209	969	64	1,033	824
56	82	114	197	239	113	352	155
57	149	82	231	100	74	174	-57
58	154	105	260	200	105	305	45
59	70	126	196	398	77	475	279
60	2,857	168	3,025	2,796	188	2,984	-41
61	10	69	79	50	67	117	38
62	12	64	77	208	73	281	204
63	799	405	1,204	117	392	509	-695
64	1,099	261	1,360	1,494	269	1,763	403
Total	**60,011**	**8,299**	**68,338**	**67,541**	**7,779**	**75,320**	**6,982**

APPENDIX 5

Three scenarios for solicitor costs under DCM

	Scenario 1 $	Scenario 2 $	Scenario 3 $
Case			
1	1,551	2,068	4,136
2	•	•	•
3	3,772	5,029	10,059
4	5,410	7,213	14,426
5	15,075	20,100	40,201
6	3,219	4,293	8,585
7	4,684	6,245	12,490
8	5,852	7,803	15,606
9	6,887	9,183	18,366
10	4,184	5,579	11,158
11	•	•	•
12	•	•	•
13	3,055	4,074	8,147
14	14,069	18,759	37,518
15	•	•	•
16	6,074	8,098	16,197
17	1,747	2,330	4,659
18	8,648	11,531	23,062
19	5,933	7,910	15,820
20	11,206	14,942	29,884
21	3,540	4,720	9,440
22	6,059	8,078	16,157
23	4,192	5,589	11,178
24	3,789	5,052	10,103
25	1,558	2,078	4,155
26	4,589	6,119	12,237
27	•	•	•
28	4,233	5,644	11,289
29	•	•	•
30	•	•	•
31	•	•	•
32	•	•	•
33	5,776	7,701	15,402
34	•	•	•
35	•	•	•
36	35,749	47,666	95,331
37	•	•	•
38	•	•	•
39	7,762	10,350	20,700
40	9,648	12,864	25,728
41	•	•	•
42	22,133	29,511	59,023
43	5,643	7,524	15,047
44	29,811	39,748	79,497
45	•	•	•
46	8,482	11,310	22,619
47	•	•	•
48	•	•	•

	Scenario 1 $	Scenario 2 $	Scenario 3 $
Case			
49	6,198	8,264	16,527
50	•	•	•
51	•	•	•
52	•	•	•
53	3,940	5,253	10,507
54	•	•	•
55	2,466	3,287	6,575
56	10,108	13,478	26,956
57	•	•	•
58	•	•	•
59	19,158	25,544	51,089
60	5,877	7,835	15,671
61	•	•	•
62	3,445	4,593	9,186
63	5,409	7,212	14,423
64	7,279	9,705	19,411
Total	**318,211**	**424,282**	**848,563**

APPENDIX 6

Net benefits of DCM (discounted 1994 dollars)

Case	Net Settlement Benefit	Court Cost Increase	Solicitor Cost Increase Scenario 1	Solicitor Cost Increase Scenario 2	Solicitor Cost Increase Scenario 3	Net Benefit Scenario 1	Net Benefit Scenario 2	Net Benefit Scenario 3	DCM Margin
	$	$	$	$	$	$	$	$	$
1	12,123	31	1,551	2,068	4,136	10,541	10,024	7,956	12,092
2	0	1,198	•	•	•	•	•	•	-1,198
3	2,689	39	3,772	5,029	10,059	-1,122	-2,380	-7,409	2,650
4	0	96	5,410	7,213	14,426	-5,506	-7,309	-14,522	-96
5	0	1,854	15,075	20,100	40,201	-16,929	-21,954	-42,055	-1,854
6	0	33	3,219	4,293	8,585	-3,252	-4,326	-8,618	-33
7	0	108	4,684	6,245	12,490	-4,792	-6,353	-12,598	-108
8	37,522	962	5,852	7,803	15,606	30,708	28,757	20,955	36,560
9	11,041	11	6,887	9,183	18,366	4,142	1,847	-7,337	11,030
10	10,902	103	4,184	5,579	11,158	6,615	5,220	-359	10,799
11	22,081	38	•	•	•	•	•	•	22,043
12	0	-298	•	•	•	•	•	•	298
13	5,908	29	3,055	4,074	8,147	2,824	1,805	-2,268	5,879
14	0	2,032	14,069	18,759	37,518	-16,101	-20,791	-39,550	-2,032
15	13,138	-255	•	•	•	•	•	•	13,388
16	60,296	162	6,074	8,098	16,197	54,060	52,036	43,937	60,134
17	0	149	1,747	2,330	4,659	-1,896	-2,479	-4,808	-149
18	0	-735	8,648	11,531	23,062	-7,913	-10,796	-22,327	735
19	10,941	101	5,933	7,910	15,820	4,907	2,930	-4,980	10,840
20	0	5,069	11,206	14,942	29,884	-16,275	-20,011	-34,953	-5,069
21	0	-187	3,540	4,720	9,440	-3,353	-4,533	-9,253	187
22	0	194	6,059	8,078	16,157	-6,253	-8,272	-16,351	-194
23	10,336	-901	4,192	5,589	11,178	7,046	5,648	59	11,237
24	22,187	88	3,789	5,052	10,103	18,310	17,047	11,996	22,099
25	15,962	1,113	1,558	2,078	4,155	13,291	12,772	10,694	14,849
26	13,921	11	4,589	6,119	12,237	9,321	7,791	1,673	13,910
27	10,941	80	•	•	•	•	•	•	10,861
28	18,350	102	4,233	5,644	11,289	14,015	12,604	6,959	18,248
29	74,866	97	•	•	•	•	•	•	74,769
30	0	37	•	•	•	•	•	•	-37
31	0	-62	•	•	•	•	•	•	62
32	7,470	39	•	•	•	•	•	•	7,431
33	29,758	63	5,776	7,701	15,402	23,920	21,994	14,294	29,695
34	3,557	-5,423	•	•	•	•	•	•	8,980
35	0	795	•	•	•	•	•	•	-795
36	245,968	-279	35,749	47,666	95,331	210,498	198,582	150,916	246,247
37	5,997	-273	•	•	•	•	•	•	6,270
38	6,357	90	•	•	•	•	•	•	6,267
39	17,227	-164	7,762	10,350	20,700	9,629	7,042	-3,308	17,391

	Net Settlement Benefit	Court Cost Increase	Solicitor Cost Increase Scenario 1	Solicitor Cost Increase Scenario 2	Solicitor Cost Increase Scenario 3	Net Benefit Scenario 1	Net Benefit Scenario 2	Net Benefit Scenario 3	DCM Margin
	$	$	$	$	$	$	$	$	$
Case									
40	25,518	143	9,648	12,864	25,728	15,727	12,511	-353	25,375
41	53,441	487	•	•	•	•	•	•	52,954
42	3,999	458	22,133	29,511	59,023	-18,592	-25,970	-55,481	3,541
43	34,286	157	5,643	7,524	15,047	28,486	26,605	19,081	34,129
44	49,592	-2,881	29,811	39,748	79,497	22,662	12,725	-27,024	52,473
45	0	93	•	•	•	•	•	•	-93
46	0	699	8,462	11,310	22,619	-9,181	-12,009	-23,318	-699
47	3,685	-482	•	•	•	•	•	•	4,167
48	0	172	•	•	•	•	•	•	-172
49	23,120	75	6,198	8,264	16,527	16,847	14,781	6,518	23,045
50	18,857	295	•	•	•	•	•	•	18,562
51	0	141	•	•	•	•	•	•	-141
52	0	40	•	•	•	•	•	•	-40
53	0	108	3,940	5,253	10,507	-4,048	-5,361	-10,615	-108
54	13,785	175	•	•	•	•	•	•	13,610
55	4,673	824	2,466	3,287	6,575	1,384	562	-2,725	3,849
56	47,741	155	10,108	13,478	26,956	37,478	34,108	20,630	47,586
57	4,041	-57	•	•	•	•	•	•	4,098
58	7,877	45	•	•	•	•	•	•	7,832
59	176,572	279	19,158	25,544	51,089	157,5134	150,748	125,204	176,293
60	0	-41	5,877	7,835	15,671	-5,836	-7,794	-15,630	41
61	7,476	38	•	•	•	•	•	•	7,438
62	6,153	204	3,445	4,593	9,186	2,505	1,356	-3,236	5,949
63	0	-695	5,409	7,212	14,423	-4,714	-6,517	-13,728	695
64	388	403	7,279	9,705	19,411	-7,294	-9,720	-19,426	-15
Total									
	1,150,739	**6,982**	**318,211**	**424,281**	**848,563**	**568,992**	**462,922**	**36,641**	**1,143,757**

APPENDIX 7

Plaintiff solicitor survey

Economic Evaluation of Differential Case Management

Plaintiff Solicitor Survey

This Survey refers to the matter of:

HOW TO COMPLETE THE SURVEY

The Survey breaks the matter up into four phases. Within each phase there are five activities. You are requested to supply information on solicitor fees and disbursements for each activity.

To accommodate differences in financial record systems, we have provided two ways of completing this Survey. You may either supply solicitor fees and disbursements separately for each activity or, alternatively, you may supply a total figure for each activity.

Solicitor fees comprise all charges levied for work done by your firm.

Disbursements comprise payments for all services charged to your firm, and include items such as fees to counsel, payments to experts and agents, and document filing fees.

Your completion of this Survey form is greatly appreciated. All information will be treated in **strict confidence** and will not be divulged to any party. This form will be shredded at the end of the Study.

On completion,
please return in the reply paid envelope included by:
30 September 1994

Study Commissioned by:
Department of Courts Administration

Study Conducted by:
Chris Guest and Tom Murphy,
through the Civil Justice Research Centre

If you have any questions regarding this Survey or the Study, or would like assistance in completing the Survey form, please contact Gillian Mc Allister at the Civil Justice Research Centre on (02) 290 3520.

APPENDIX 7 cont...

Plaintiff solicitor survey

1 Solicitor fees and disbursements incurred up to and including the filing of the statement of claim

Conferences and Attendances
(With Plaintiff, Witnesses/Experts, Barrister, Opposing Party or Representative)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Court Appearances
(Before a Judge, Master, Prothonotary or Registrar)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Preparation, Filing and Serving of Documents
(Such as the Statement of Claim, Briefs to Barrister and Experts, and Proofs of Evidence)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Communications – Letters/Telephone
(Including Plaintiff, Barrister, Witnesses/ Experts and Opposing Party or Representative)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Document Inspection and Perusal

Solicitor Fees	Disbursements		Total
$	$	OR	$

Other
(Please specify)

Solicitor Fees	Disbursements		Total
$	$	OR	$

2 Solicitor fees and disbursements incurred after filing statement of claim up to and including the filing of the notice to set down for trial

Conferences and Attendances
(With Plaintiff, Witnesses/Experts, Barrister and Opposing Solicitor)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Court Appearances
(Before a Judge, Master, Prothonotary or Registrar)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Preparation, Filing and Serving of Documents
(Such as Subpoena, Part 33 R8A Statement, Briefs to Barrister and Experts, and Proofs of Evidence)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Communications – Letters/Telephone
(Including Plaintiff, Barrister, Witnesses/ Experts and Opposing Solicitor)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Document Inspection and Perusal

Solicitor Fees	Disbursements		Total
$	$	OR	$

Other
(Please specify)

Solicitor Fees	Disbursements		Total
$	$	OR	$

APPENDIX 7 cont...

Plaintiff solicitor survey

3 Solicitor fees and disbursements incurred after filing notice to set down for trial up to and including first call-over or first directions hearing

Conferences, Attendances and Mediations
(With Plaintiff, Witnesses/Experts, Barrister, Opposing Solicitor and Court Officers)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Court Appearances
(Before a Judge, Master, Prothonotary or Registrar)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Preparation, Filing and Serving of Documents
(Such as a Subpoena, Part 33 R8A Statement, Interrogatories, Notice of Discovery, List of Documents, Briefs to Barrister and Experts, and Proofs of Evidence)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Communications – Letters/Telephone
(Including Plaintiff, Barrister, Witnesses/ Experts and Opposing Solicitor)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Document Inspection and Perusal

Solicitor Fees	Disbursements		Total
$	$	OR	$

Other
(Please specify)

Solicitor Fees	Disbursements		Total
$	$	OR	$

4 Solicitor fees and disbursements incurred after first call-over or first directions hearing and up to finalisation of matter

Conferences, Attendances and Mediations
(With Plaintiff, Witnesses/Experts, Barrister, Opposing Solicitor and Court Officer)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Court Appearances
(Before a Judge, Master, Prothonotary or Registrar)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Preparation, Filing and Serving of Documents
(Such as a Subpoena, Part 33 R8A Statement, Interrogatories, Notice of Discovery, List of Documents, Briefs to Barrister and Experts, Proofs of Evidence and Bill of Costs)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Communications – Letters/Telephone
(Including Plaintiff, Barrister, Witnesses/ Experts and Opposing Solicitor)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Document Inspection and Perusal

Solicitor Fees	Disbursements		Total
$	$	OR	$

Other
(Please specify)

Solicitor Fees	Disbursements		Total
$	$	OR	$

APPENDIX 8

Defendant solicitor survey

Economic Evaluation of Differential Case Management

Defendant Solicitor Survey

This Survey refers to the matter of:

HOW TO COMPLETE THE SURVEY

The Survey breaks the matter up into three phases. Within each phase there are five activities. You are requested to supply information on solicitor fees and disbursements for each activity.

To accommodate differences in financial record systems, we have provided two ways of completing this Survey. You may either supply solicitor fees and disbursements separately for each activity or, alternatively, you may supply a total figure for each activity.

Solicitor fees comprise all charges levied for work done by your firm.

Disbursements comprise payments for all services charged to your firm, and include items such as fees to counsel, payments to experts and agents, and document filing fees.

Your completion of this Survey form is greatly appreciated. All information will be treated **in strict confidence** and will not be divulged to any party. This form will be shredded at the end of the Study.

On completion,
please return in the reply paid envelope included by:
30 September 1994

Study Commissioned by:
Department of Courts Administration

Study Conducted by:
Chris Guest and Tom Murphy,
through the Civil Justice Research Centre

If you have any questions regarding this Survey or the Study, or would like assistance in completing the Survey form, please contact Gillian Mc Allister at the Civil Justice Research Centre on (02) 290 3520.

APPENDIX 8 cont...

Defendant solicitor survey

1 Solicitor fees and disbursements incurred after the receipt of the statement of claim up to and including the filing of the notice to set down for trial

Conferences and Attendances
(With Defendant and/or Insurance Company, Witnesses/Experts, Barrister and Opposing Solicitor)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Court Appearances
(Before a Judge, Master, Prothonotary or Registrar)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Preparation, Filing and Serving of Documents
(Such as Defence, Subpoena, Briefs to Barrister and Experts, and Proofs of Evidence)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Communications – Letters/Telephone
(Including Defendant, Insurance Company, Barrister, Witnesses/Experts and Opposing Solicitor)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Document Inspection and Perusal

Solicitor Fees	Disbursements		Total
$	$	OR	$

Other
(Please specify)

Solicitor Fees	Disbursements		Total
$	$	OR	$

2 Solicitor fees and disbursements incurred after filing notice to set down for trial up to and including first call-over or first directions hearing

Conferences, Attendances and Mediations
(With Defendant and/or Insurance Company, Witnesses/Experts, Barrister, Opposing Solicitor and Court Officers)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Court Appearances
(Before a Judge, Master, Prothonotary or Registrar)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Preparation, Filing and Serving of Documents
(Such as the Defence, Subpoena, Interrogatories, Briefs to Barrister and Experts, and Proofs of Evidence)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Communications – Letters/Telephone
(Including Defendant, Insurance Company, Barrister, Witnesses/Experts and Opposing Solicitor)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Document Inspection and Perusal

Solicitor Fees	Disbursements		Total
$	$	OR	$

Other
(Please specify)

Solicitor Fees	Disbursements		Total
$	$	OR	$

APPENDIX 8 cont...

Defendant solicitor survey

3 Solicitor fees and disbursements incurred after first call-over or first directions hearing and up to finalisation of matter

Conferences, Attendances and Mediations
(With Defendant and/or Insurance Company, Witnesses/Experts, Barrister, Opposing Solicitor and Court Officers)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Court Appearances
(Before a Judge, Master, Prothonotary or Registrar)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Preparation, Filing and Serving of Documents
(Such as a Subpoena, Interrogatories, Notice of Discovery, List of Documents, Briefs to Barrister and Experts, Proofs of Evidence and Bill of Costs)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Communications – Letters/Telephone
(Including Defendant, Barrister, Witnesses/Experts and Opposing Solicitor)

Solicitor Fees	Disbursements		Total
$	$	OR	$

Document Inspection and Perusal

Solicitor Fees	Disbursements		Total
$	$	OR	$

Other
(Please specify)

Solicitor Fees	Disbursements		Total
$	$	OR	$

References

Department of Finance (1991), *Handbook of Cost-Benefit Analysis*, AGPS, Canberra.

The Law Society of New South Wales, 1994, "Differential Case Management", *Caveat, A Law Society Bulletin*, No. 193, 6 January.

Mahlab Costing Pty. Ltd, 1994, *Differential Case Management, Legal Costs Analysis*, Report for the Supreme Court of New South Wales, Sydney, unpublished.

Williams, PL and Williams, RA, 1994, "The Cost of Civil Litigation: An Empirical Study", *International Review of Law and Economics*, Vol. 14, No. 1.

Worthington, D, 1991, *The Pace of Litigation in New South Wales: Lessons from the Tail*, Civil Justice Research Centre, Sydney.

Worthington, D and Baker, J, 1993, *The Costs of Civil Litigation: Current Charging Practices New South Wales and Victoria*, Civil Justice Research Centre, Sydney.