

Criminal Practice Committee

Annual Report

For the year ended 31 December 2011

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ABOUT THE CRIMINAL PRACTICE COMMITTEE

The Criminal Practice Committee (CPC) was established in 1988. It brings together all those professionally involved in the criminal justice system at a senior level to progress matters of importance to the operation of the criminal justice system and to inform the Executive. The Committee has two primary functions:

- to monitor and progress action of issues relevant to the operation of the criminal justice system; and
- to provide a forum for discussion and comment on legislative and policy developments.

MEMBERSHIP

Members of CPC include legal practitioners, Ministry of Justice policy and registry advisers, police, the New Zealand Law Commission, Crown Law, judges and Law Society representatives (see Appendix 1 for a list of current members).

OPERATIONAL MATTERS PROGRESSED

In 2011, the Committee monitored and progressed actions on a number of operational issues, relating primarily to:

- ***Management of intellectually disabled persons in the Courts/Corrections System:*** The Committee remained concerned with how those with intellectual disabilities and other functional disabilities (eg, head injuries) were managed in the Courts and by the Department of Corrections (Corrections). The Committee also became concerned about the prevalence of head injuries in the prison population and how these people are dealt with in terms of sentence management. As a result, the Committee wrote to the Accident Compensation Corporation (ACC) to raise concerns about head injuries in the prison population with an aim to getting ACC to conduct research in this area. Corrections advised the Committee that a research project would be undertaken on cognitively impaired prisoners. Ministry of Justice and Corrections continue to discuss the processes that they will follow to ensure that information regarding prisoner's disabilities/functional issues can be delivered to, and dealt with by, Corrections in a practicable and confidential manner.
- ***Implementation of Corrections (Mothers with Babies) Amendment Act 2008:*** The Committee discussed the implementation of the Corrections (Mothers with Babies) Amendment Act 2008. The Committee wrote to Community Probation Services seeking better co-ordination of information about mothers with babies (including those not yet born) to ensure when the mother is sentenced, consideration is given to the fact that the baby may be required to stay in prison with the mother.
- ***Procedural issues arising from the application of the Criminal Procedure (Mentally Impaired Persons) Act 2003:*** The Committee discussed means to obtain more clarity in this area in terms of procedural issues that arise when applying the Criminal Procedure (Mentally Impaired Persons) Act 2003. In particular the Committee was concerned with a number of problematic interfaces the Act presented. As a result of discussion regarding the inadequacies of the current statute, the Committee authorised the Chairperson to see the Minister to

advocate for a review of this part of the Act. The Chairman did so and the Minister agreed to instruct the Ministry of Justice to develop an issues paper in this area. Further guidance on this was to be included in an update to the Bench Book that was to be put on the Courts of New Zealand website for informational purposes.

- **Legal Aid Fixed Fees:** The Committee discussed concerns about proposed payment levels of fixed fees on the supply of legal aid counsel and therefore the operation of the courts. Mr White from the Ministry of Justice was invited to attend the February 2012 meeting to discuss the Committee's concerns and to provide further background to the reforms. Members were encouraged to provide feedback on the Legal Aid Fixed Fees Framework consultation document, released in April 2011.
- **Committal proceedings:** Some members of the Committee remained concerned about the volume of police applications for extensions of time to file witness statements, low levels of applications for oral evidence orders, delays in the process and the implications of a standard committal process. Extensions of time were investigated further by the Committee and Police presentations on this topic clarified that extensions are primarily due to forensic delays.
- **Cultural information at sentencing:** The Committee raised a concern that training on the use of cultural information at sentencing information should be available to the legal profession. The Committee wrote to the New Zealand Law Society in this respect and the Law Society responded that it proposed to conduct a "webinar" on this topic.
- **Criminal conferencing:** The Committee discussed the call over regime in the Auckland District Court and Auckland High Court noting that the idea behind criminal conferencing was to dispense with multiple call overs. The Committee agreed that given the current busy workload of the District Court, it would be difficult to undertake work on this. It was agreed that it would be desirable to raise this topic again at a later date.
- **Questioning of young people and Section 222 of the Children, Young Persons and their Families Act 1989:** The concern of the Committee was that independent nominated persons may be undermining the legal rights of young people who are being interviewed by the Police as suspects of a crime. This follows a New Zealand case of *R v Z* [2008] 3 NZLR 342. A concern was that independent nominated persons may be inappropriately passive, failing to ensure the young person's rights are protected, and thus providing no assistance or the independent nominated persons may be pressuring young people into admitting the alleged offence. The Committee wrote to the New Zealand Law Society in relation to the standardisation of training for INPs; and also wrote to the New Zealand Police regarding communication with young persons and the updating of the advice sheet. The Police advised that they were to conduct a review of the questioning of young people.
- **Review of bail:** Ministry of Justice representatives briefed the Committee on the review of bail. The Committee raised a number of issues with Ministry of Justice representatives regarding the review including the procedures in relation to minor bail breaches and the ability for these to be recorded in the Case Management System. The Committee advised the Ministry of Justice that they were generally supportive of the review's proposals regarding electronic bail. Police suggested that they needed to change their behaviour so that minor bail breaches did not

come to court in every instance. Progress in this area will be monitored during 2012.

- **Pre-recording of evidence and child witnesses:** The Committee considered the proposed reforms in relation to pre-recording of children's evidence and understood that speedier case progression is the main driver behind these reforms. Concerns were raised by individual members about the logistics of the pre-recording but the Committee agreed that any issues that arose (for example if a child needed to be re-questioned) would be dealt with on a case by case basis in the courts. The Committee will continue to provide input as this work progresses in 2012.
- **Audio visual links facilities:** The availability of audio visual links (AVL) facilities (particularly in women's prisons) and the standard of facilities throughout New Zealand were a concern for the Committee in 2011. The Ministry of Justice undertook to provide updates to the Committee in this area as the rollout of AVL continued across New Zealand. The Ministry of Justice will brief the Committee in 2012 on the "Audio Visual Services Strategy".

LEGISLATION AND POLICY DEVELOPMENT

In addition to progressing operational issues of concern, the Committee comments on policy and legislative developments. In 2011, the Committee discussed the following:

- **Criminal Procedure (Mentally Impaired Persons) Act 2003:** Problems with the workability of this Act were discussed by the Committee throughout the year and members were advised about proposed timeframes for a review of this Act. The Ministry advised that they were expecting an issues paper to be at consultation stage by the end of 2011 and that a report back to Cabinet would occur by May 2012.
- **Evidence Act 2006 Review:** The Committee noted that the Act would be reviewed in 2012, and members were asked to raise any issues with the Evidence Act 2006 so that the Committee could advise the Law Commission of these once it has been referred.
- **Victim Rights Review:** The Committee maintained a watching brief on the Victim Rights Review by the Ministry of Justice including the timeframes for Cabinet decisions (decisions completed in April 2011) and a new Bill – Victims of Crime Reform Bill (introduced to Parliament on 16 August 2011). The Committee expressed concern that the proposed changes to victim rights in any new Bill had the potential to seriously affect the capacity of the courts to keep order in the courtroom.
- **Claim of Right:** The Committee was advised of the legislative options that were considered to reform the claim of right defence. The Committee provided feedback to the Ministry of Justice on the workability of the legislative options.
- **Legal Services Bill:** Members were encouraged to make submissions on the Bill.
- **Criminal Procedure Act:** The Committee monitored the progress of this legislation throughout the year and provided feedback to the Ministry of Justice on its workability. The Committee will continue to monitor implementation of the Act during 2012.

The Committee was also advised throughout the year on the progress of:

- The Search and Surveillance Bill;
- The Juries (Jury Service and Protection of Particulars of Jury List Information) Amendment Bill; and
- Alcohol Reform Bill.

PRESENTATIONS RECEIVED BY THE COMMITTEE

The Committee received the following presentations in 2011:

- **National Juror Satisfaction Survey 2010:** Justice Young presented the National Juror Satisfaction Survey to the Committee. He noted that overall satisfaction of jurors is very high.
- **Alternative processes for child witnesses:** A presentation by Ms H Cameron from Ministry of Justice on the 'Alternative Processes for Child Witnesses' proposals was received by the Committee in November 2011.
- **Police Alternative Resolution and Policing Excellence:** Inspector Erasmuson and Superintendent Searle of the New Zealand Police presented to the Committee on 'Police Alternative Resolutions' and 'Policing Excellence'. The aims and various aspects of these initiatives were outlined. The presentation on 'Police Alternative Resolutions' came in response to concerns raised by the Committee that "pre-charge warnings" may not necessarily be being applied consistently across the country or across racial groups. Superintendent Searle confirmed that the Police were monitoring warning numbers across New Zealand. In addition Police are conducting research through Victoria University to examine both recidivism rates and ethnicity rates across the country.
- **Crime Statistics:** Inspector Erasmuson presented to the Committee on New Zealand crime statistics as the reported rate of crime and prosecution volumes continue to fall.
- **Independent nominated persons under the Children, Young Persons and their Families Act 1989:** His Honour Judge Becroft, Principal Judge of the Youth Court, presented to the Committee on the functioning of independent nominated persons as part of the discussion on questioning of young person (see page 4).
- **Babies in prisons:** The Department of Corrections presented on the position of babies in prisons as part of the discussion on the Corrections (Mothers with Babies) Amendment Act 2008 (see page 3).

APPENDIX – MEMBERSHIP AND ATTENDANCE

The members of the Criminal Practice Committee during 2011 were:

Rt Hon Dame Sian Elias, Chief Justice of New Zealand

Hon Justice Glazebrook, Judge of the Court of Appeal

Hon Justice Winkelmann, Chief High Court Judge

Hon Justice Ronald Young, Judge of the High Court (Chair)

His Honour Judge Johnson, Chief District Court Judge
(Replaced by His Honour Judge J Walker, Acting Chief District Court Judge, and then by Her Honour Judge Doogue, Chief District Court Judge)

His Honour Judge Davidson Judge of the Wellington District Court
(Replaced by His Honour Judge Rea, Judge of the Napier District Court, who is to be replaced in 2012 by His Honour Judge D Barry, Judge of the Wellington District Court)

Mrs Judith Ablett-Kerr QC, New Zealand Law Society, Dunedin

Mr Robert Lithgow QC, New Zealand Law Society, Wellington

Mr Brendan Horsley, Director, Public Defence Service, Wellington and Crown Law, Wellington
(Replaced as Crown Law representative by Mr C Mander)

Mr P Winter, Criminal Bar Association, Wellington
(Replaced by Mr N Sainsbury)

Dr Warren Young, Consultant, New Zealand Law Commission
(Replaced by Sir G Hammond)

Superintendent Craig Tweedie, National Manager, Police Prosecution Service, New Zealand Police

Ms Astrid Kalders, Chief Probation Officer, Department of Corrections

Mr Graeme Astle, National Operations Manager, Higher Courts, Ministry of Justice

Mr Aaron Perkins, Crown Solicitor, Auckland

Mr Malcolm Luey, Manager, Criminal Law, Crime Prevention and Criminal Justice, Ministry of Justice (now Acting General Manager, Crime Prevention and Criminal Justice, Ministry of Justice)

Ms Karen McLean, Manager, Criminal/Youth Jurisdiction, District Courts, Ministry of Justice
(Replaced by Ms Susan Howan, Service Design Manager, District Courts, Ministry of Justice)

Non-member attendees included:

His Honour Judge Becroft, Principal Youth Court Judge

Inspector Erasmuson, Acting National Operations Manager, Police Prosecution Service, New Zealand Police (as alternative to Superintendent Craig Tweedie)

Superintendent B Searle, District Commander, Waitemata, New Zealand Police

Ms S Baigent, Public Defender Southern, Public Defence Service, Wellington (as alternative to Mr B Horsley for the Public Defence Service)

Ms K Casey, General Manager, Community Probation Services, Department of Corrections (as alternative for Ms A Kalders)

Ms Debbie Gell, Clinical Director, Prison Health Services, Department of Corrections

Ms Rachel Leota, Manager, Service Development, Department of Corrections

Mr R Channa, General Manager, Crime Prevention and Criminal Justice, Ministry of Justice

Mr K McCarron, Judicial Administrator to the Chief Justice

Ms D Iversen, Judicial Administrator to the Chief High Court Judge
Mr T Hall, Research Counsel for Principal Youth Court Judge

Mr Ryhn Visser, Secretariat, New Zealand Law Society

Ms J Cornwall, Manager, Crime and Social Policy, Ministry of Justice

Ms F Stirling, Manager, Sentencing and Corrections, Ministry of Justice

Ms H Cameron, Acting Manager, Crime and Social Policy, Ministry of Justice

Secretarial services were provided by:

Mr M Wilkinson, Senior Advisor, Strategic Policy, Ministry of Justice

Ms A Thomson, Advisor II, Criminal Law, Ministry of Justice