

Criminal Practice Committee

Annual Report

For the year ended 31 December 2012

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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, New Zealand 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 2012, the Committee monitored and progressed actions on a number of operational issues, relating primarily to:

- **Legal Aid Fixed Fees and Changed Eligibility Criteria:** The Committee expressed its concern about the changed funding for criminal legal aid. The concerns expressed included:
 - that a reduction in eligibility meant an increase in self represented litigants. Self represented litigants invariably increased cost to the criminal justice system. The cases take longer because of their lack of familiarity with criminal processes. The Committee were concerned, therefore, that the reduction in eligibility was passing increased costs from the legal aid system to the court system.
 - Additional adjournments. The Committee were concerned that the new legal aid processes would increase the number of adjournments and again increase the costs to the Court system.
 - The Committee saw a likely increase in the appointment of amicus curiae because of the narrowing of eligibility for legal aid thus increasing overall costs.
 - The Committee expressed its concern that if the legal aid fixed fee regime provided inadequate payment to lawyers, then experienced lawyers may in the future refuse to act for legally aided clients. This again would result in the transfer of costs from legal aid to the Court system.
 - The Committee expressed concern about high cost management cases (involving serious or complex criminal charges) where grants are made for each stage of the proceedings. This had the potential to delay criminal trials as lawyers obtain approval for legal aid on a step by step process.
 - The Committee invited the Ministry of Justice to institute measures to monitor and assess the consequences of the introduction of the new legal aid regime.
- **Children, Young Persons and Their Families Act:** Two aspects of that Act were considered by the Committee. Firstly, the Committee considered what changes might be necessary to the Act to accommodate the Criminal Procedure Act. Secondly, the Committee considered the protections available both legal and practical for young people when questioned by the Police. In particular, concern was expressed about the training and abilities of nominated persons present when a young person is questioned by the

Police. The Committee invited the Ministry of Justice to consider whether an appropriate programme for nominated persons, including better identification of their obligations to the young person, and proper training be instituted.

- **Prisoner information:** It came to the Committee's notice that medical and specialist reports which may assist with medical treatment and general rehabilitation of prisoners did not go to the Corrections Department unless the Judge made a specific direction at sentencing. Once advice was received from the Corrections Department that it was able to receive and store the information confidentially, the Chief Judges of the High Court and the District Court wrote to Judges advising them how they could ensure that all relevant information before them at sentencing could be passed on to Corrections to assist with the treatment and rehabilitation of the prisoner.
- **Audiovisual Links (AVL):** The Committee noted the increase use of AVL technology in criminal matters in the New Zealand courts. Concern was expressed about ensuring that counsel for an accused had the time, opportunity and privacy to obtain appropriate instructions from accused appearing by AVL.
- **Pre-Charge Warning Statistics:** The Police have always enjoyed a discretion as to whether to charge an individual suspected of a crime. Recently, Police have focussed on increasing the use of such a discretion and guidelines have been issued to Police officers which would encourage pre-charge warnings. The Committee were provided with regular statistics during the year relating to the pre-charge warning system operated by the Police. A significant percentage of low level alleged criminal offending is now dealt with by pre-charge warnings. As a result the number of charges before the District Court has dropped. The pre-charge warning process has also had the effect of reducing the number of those persons who are subject to diversion. Members expressed their broad support for the pre-charge warning process but expressed particular concern that there appeared to be fewer warnings given to Maori (on a pro-rata basis) compared with Europeans. The Committee urged the Police to consider carefully why this may be so, if it reflected an underlying bias. The Committee strongly recommended that the Police regularly publish statistics relating to the pre-charge warnings.
- **Internet Access During Trials:** The Committee noted concern that had been expressed by Judges and lawyers regarding jurors accessing the internet and obtaining information about a trial on which they were part of the jury. The Committee considered the position in similar overseas jurisdictions including a number of Australian states as well as the United Kingdom. The Committee noted that the Law Commission is considering the law of contempt and included amongst which is consideration of the impact on trials of information access by jurors via the internet.
- **Facial Mapping Protocol:** Identification of an accused person by virtue of facial mapping is a relatively recent development in criminal law. As with other forms of identification, the Committee noted it had the capacity to result in wrongful convictions. The Committee, therefore, noted that as with a number of similar jurisdictions a set of guidelines should be promulgated as to a facial mapping to provide proper protections to avoid wrongful identification. Crown Law is currently engaging in drafting New Zealand Guidelines which will be provided to the Committee for comment when complete. Other matters; the Committee also considered a number of other matters during the course of its work including; new crime scene technologies; Police guidelines on formal written statements; media applications for access to witness statements before trial (referred to the Media In Courts Committee); and a review of how the Police considered bail applications including a focus on conditions of bail matching real risk.

LEGISLATION AND POLICY DEVELOPMENT

In addition to progressing operational issues of concern, the Committee comments on policy and legislative developments. In 2012, the Committee discussed the following:

- **Evidence Act 2006 Review:** Members provided feedback on issues relating to the Act to the Law Commission who are undertaking a review of the Act.
- **Criminal Procedure Rules:** Members provided feedback on the draft rules.
- **Judicature Act 1908:** Members provided feedback on the Law Commission paper on the review of the Act.

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

- The Search and Surveillance Act 2012
- Crimes Amendment Act No 3 2011 (makes changes to protect vulnerable children and adults)
- The Financial Markets Conduct Bill
- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill
- The Prisoners' and Victims' Claims (Redirecting Prisoner Compensation) Amendment Bill.

PRESENTATIONS RECEIVED BY THE COMMITTEE

The Committee received the following presentations in 2012:

- **Legal Aid Fixed Fees Framework:** Mr S White from the Ministry of Justice explained the background to criminal fixed fees to the Committee.
- **Interface between Criminal Procedure Act (CPA) and Children, Young Persons and Their Families Act (CYPFA):** Ms R Jamieson and Ms M Anderson from the Ministry of Justice discussed the interface between Criminal Procedure Act and the Children, Young Persons and their Families Act.
- **New Crime Scene Technologies:** Mr D Sheppard from ESR explained new crime scene technologies, including spherical photography and 3D laser scanning to the Committee.
- **Audiovisual Links (AVL) Update:** Mr K Emery (Ministry of Justice) provided an update on the expansion of AVL technology in New Zealand courts.
- **Questioning of Young People:** Inspector A Fitchett presented the work that has been completed by New Zealand Police in relation to Nominated Persons and the Questioning of Young People.

- APPENDIX – MEMBERSHIP AND ATTENDANCE

The members of the Criminal Practice Committee during 2012 were:

Rt Hon Dame Sian Elias, Chief Justice of New Zealand

Hon Justice Glazebrook, Judge of the Supreme Court

Hon Justice Randerson, Judge of the Court of Appeal

Hon Justice Winkelmann, Chief High Court Judge

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

Her Honour Judge Doogue, Chief District Court Judge

His Honour Judge D Barry, Judge of the Wellington District Court

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

Mr Robert Lithgow QC, New Zealand Law Society, Wellington

Mr Cameron Mander, Crown Law Office, Wellington

Hon Sir Grant Hammond, New Zealand Law Commission

Mr Noel Sainsbury, Criminal Bar Association, Wellington

Mr Aaron Perkins, Crown Solicitor, Auckland

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

Mr Malcolm Luey, General Manager, Criminal Justice, Ministry of Justice (will be replaced in 2013 by Ms Sarah Turner, General Manager, Courts and Justice Services Policy)

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

Mr Brendan Horsley, Director, Public Defence Service, Wellington

Ms Susan Howan, Service Design Manager, District Courts, Ministry of Justice (was replaced in 2012 by Ms Sue Little, Acting Service Design Manager, District Courts, Ministry of Justice)

Ms Astrid Kalders, Chief Probation Officer, Department of Corrections

Non-member attendees included:

Superintendent B Searle, New Zealand Police
Inspector C Griffiths, New Zealand Police (as alternative to Superintendent C Tweedie)
Inspector A Fitchett, New Zealand Police
Ms R Leota, Department of Corrections (as alternative to Ms A Kalders)
Ms M Laracy, Crown Law (as alternative to Mr C Mander)
Ms C Dodd, Ministry of Justice (as alternative to Ms S Howan and Ms S Little)
Ms R Jamieson, Ministry of Justice
Ms M Anderson, Ministry of Justice
Ms A Green, Ministry of Justice (as alternative to Mr M Luey)
Ms C Murray-Brown, Ministry of Justice (as alternative to Mr G Astle)
Mr S White, Ministry of Justice
Mr K Emery, Ministry of Justice
Ms M McCreadie, Ministry of Justice
Dr J Vintiner, ESR
Dr K Bedford, ESR
Mr D Sheppard, ESR
Mr K McCarron, Judicial Administrator to the Chief Justice
Ms D Iversen, Judicial Administrator to the Chief High Court Judge
Mr Rhyn Visser, Secretariat, New Zealand Law Society

Secretarial services were provided by:

Ms M Hammer, Judge's Clerk, High Court of Wellington
Ms A Thomson, Advisor II, Criminal Law, Ministry of Justice
Ms C Hickey, Advisor I, Family Court Review, Ministry of Justice