

Criminal Practice Committee

Annual Report

For the year ended 31 March 2016

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About the criminal practice committee

This is a report of the Criminal Procedure Committee (CPC), chaired by the Hon Justice Lang. It covers the period from February 2015 to March 2016.

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 judges, legal practitioners, registrars and Ministry of Justice policy advisers. It also includes representatives from the New Zealand Law Commission, Law Society, Crown Law and New Zealand Police (see *Appendix 1* for a list of current members).

Justice Young retired from his position as chairperson of the CPC. Justice Lang assumed the role of chairperson in June 2014.

Operational matters

Law Commission

Justice Hammond and Judge Boshier attended meetings of the Committee during 2015 to update the Committee on Law Commission initiatives. These included the report into alternative trial processes for sexual offending. Members of the CPC gave feedback and raised possible issues with the Law Commission's developing proposals. The CPC's relationship with the Law Commission is important. The Commission updates the CPC not as a formal consultation, but as a matter of courtesy. It views the Committee as an important conduit for the dissemination of its initiatives to the profession and the judiciary. It also uses the feedback it receives from the Committee to gauge the reaction of those bodies to its proposals.

Pre-sentence reports

There was some concern that pre-sentence reports were taking too long to prepare, particularly in the case of murder sentencings when the sentence was likely to be life imprisonment. From 1 July 2015, Corrections agreed to prepare all pre-sentence reports for both the District Court and the High Court within 15 working days. It will review its ability to comply with those deadlines in order to determine whether it can prepare reports for murder sentencings within 10 days. This

initiative is ongoing. The CPC also canvassed the possibility that shorter form reports could be prepared in murder cases, but Corrections prefers to prepare standard reports in part for the benefit of Corrections monitoring and the Parole Board.

AVL

The High Court is falling behind the District Court in its access to AVL. The High Court now routinely uses AVL for short interlocutory hearings in circuit courts. Many District Courts have specialist AVL suites that can be connected to local prisons. There was general support for the High Court having those facilities. They could be used for interlocutory hearings, including applications for bail. The Committee did not support sentencing hearings being conducted by AVL other than in cases where a sentence indication hearing had already been held. The interests of victims also needed to be taken into consideration. Members of the Committee raised concerns about counsel not being able to easily converse in private with clients during AVL hearings because the AVL link is booked for a certain time only. It is essential that AVL courtrooms have adequate facilities to enable counsel to take instructions from clients in soundproof booths outside the courtroom.

The Ministry of Justice proposes a system where first calls and sentencings are undertaken in person, but callovers and bail applications are done via AVL. Some people in prison are reported to prefer appearing by AVL, as appearing in person means a long trip (for example from Christchurch to Nelson, or Dunedin to Timaru), often ending up in a different prison or losing their former cell on return.

Self-represented defendants

In February, there was some discussion on developing a chapter in the Bench Book about self-represented defendants at trial, and publishing a formal document to be provided to self-represented defendants. It would not contain advice, only information. One member suggested the Bench Book chapter be published online.

Lawyers' access to prisoners

Difficulties encountered by lawyers when they attempt to contact clients at Auckland Central Remand Prison in Mt Eden were discussed at several meetings. Lawyers were not able to get through to their clients, and clients were only allowed limited access to phones. There were also issues of privilege as all calls to mobile numbers were screened by the prisons. The CPC considered it would be useful to have someone from SERCO attend a Committee meeting, and a representative of SERCO appeared by audio link. Committee members acknowledged steps taken to date had improved access, but said that further improvements could be made.

After the cancellation of SERCO's contract, Corrections stated it was monitoring and endeavouring to resolve the problem.

These issues were a major focus of the CPC throughout the year.

Criminal Procedure Act 2011

At each meeting, the CPC monitored the trends that were becoming apparent with the implementation of the case management system prescribed in the Criminal Procedure Act 2011. It will continue this monitoring process over the coming year.

Role of the CPC

Members were asked to reflect on their perception of the role of the CPC. The key task is to identify areas of concern within the criminal justice system. It was felt it was a good way for members of the judiciary to engage with representatives of the legal profession and other sectors of the criminal justice system on such issues, in part so the judiciary are not wholly reliant on information provided by the Ministry of Justice. The Ministry of Justice will reflect on its role in, and the support it gives to, the CPC.

The CPC has not yet met in 2016. It is due to meet next on 15 April 2016.

Appendix one – Membership

	Rt Hon Dame Sian Elias, Chief Justice
	Hon Justice Wild, Court of Appeal
	Hon Justice Winkelmann, Chief High Court Judge (until June 2015)
	Hon Justice Venning, Chief High Court Judge (from June 2015)
Chair	Hon Justice Lang, High Court
	Her Honour Judge Jan-Marie Doogue, Chief District Court Judge
	His Honour Judge Barry, District Court
	Sir Grant Hammond, President of the Law Commission
	Robert Lithgow QC, NZ Law Society, Wellington (until November 2015)
	Judith Ablett-Kerr QC, NZ Law Society, Wellington (until November 2015)
	Steve Bonnar QC, NZ Law Society, Wellington (from November 2015)
	Elizabeth Bulger, NZ Law Society, Wellington (from November 2015)
	Brendan Horsley, Deputy Solicitor-General, Criminal, Crown Law
	Superintendent Mike Johnson, Police Prosecution Service
	Megan Anderson, Ministry of Justice
	John Richardson, Criminal Caseflow Manager, Auckland High Court
	Madeleine Laracy, Public Defence Service
	Noel Sainsbury, Criminal Bar Association
	Brian Trott, General Manager, Performance and Improvement, Ministry of Justice
	Darius Fagan, Chief Probation Officer, Department of Corrections
	Aaron Perkins, Partner, Meredith Connell
Observer	Debbie Iversen, Judicial Administrator to Chief High Court Judge
Secretary	Helen Bennett, Judges Clerk, Wellington High Court