

Criminal Practice Committee

Annual Report

For the year ended 28 February 2018

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About the Criminal Practice Committee

This is a report of the Criminal Practice Committee (CPC), chaired by the Hon Justice Lang. It covers the period from April 2017 to February 2018.

The 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 the 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).

Operational matters

Use of AVL

One of the central items for discussion in 2017 was the issues that have arisen as a result of the rapid growth in the use of AVL in the District Court. Concerns were raised about participants feeling a lack of engagement when remote participation is used and counsel having insufficient access to their clients in prison. AVL use is increasing all the time, as the Courts (Remote Participation) Act 2010 mandates that all first appearances are completed by way of AVL.

The Committee discussed the appropriateness of the technical and architectural features of AVL and the impact it has on participants, particularly defendants and victims. There is a need to ensure its use is appropriate and it replicates the reality of the courtroom experience. The lack of interview suites within court building also limits the ability for counsel to talk to their clients before and after hearings. It was originally envisaged that such facilities would be readily available where AVL was being used, but this has not eventuated. The ability for counsel to establish a relationship with their client, particularly at the first appearance, has also been raised as an issue where AVL is used. How proceedings are categorised for the use of AVL and the use of AVL at sentencing hearings are also highlighted as areas of concern. Chief Judge Doogue had provided guidance for the judiciary in the District Court but noted there is a need for education on this issue in the profession more broadly.

The District Court working group that has been established to monitor these issues has been making good progress so far.

Access to forensic pathologists and timing of ESR reports

The CPC continued to discuss concerns raised in 2016 about access to expert witnesses, especially forensic pathologists, and delays in disclosing ESR reports. These delays cause scheduling issues and fixtures being vacated at late notice.

The Chief High Court Judge has corresponded with the Chief Forensic Pathologist in Auckland regarding this issue and it appears to have arisen due to a shortage of pathologists and consequential workload pressures on pathology staff in Auckland. Steps are being taken to employ and train more forensic pathologists and to manage their workload, but this remains an ongoing issue.

ESR management has shown a willingness to prioritise ESR work where necessary, and suggested that having access to court schedules would enable them to do so more easily. The CPC discussed the appropriateness of the courts liaising with ESR and concluded the Crown should have that responsibility.

These issues were a major focus of the CPC throughout the year and will continue to be reviewed this year.

Requests by news media organisations for access to health assessors' reports

Concerns were raised about news media organisations seeking access to reports prepared by health assessors under s 88 of the Sentencing Act 2002 where preventive detention is considered at sentencing. The Committee discussed the appropriateness of allowing such applications, noting that privacy concerns, public policy and the need for offender cooperation in preparing these reports lean in favour of not allowing access to these reports.

Workload and filing issues

Trial workload issues at the District Court are being managed and the situation is generally improving nationally. There are, however, significant procedural delays in the Manukau District Court, partly due to a shortage in courtrooms. Courtroom constraints are also affecting provincial combined High/District courts. A “wellness matrix” has been developed to identify areas of workload pressure in the District Court and this has enabled judicial resources to be shifted more quickly to areas where issues have been identified.

The Case Management Memoranda pilot in the Auckland and Manukau District Courts, instigated by the Public Prosecution Service and Public Defence Service, was showing positive signs in terms of increasing the quality and reliability of information contained in case management memoranda. The Auckland pilot is now operating on a “business as usual” basis.

Use of Court resources for trial preparation

At the November 2017 meeting, the CPC discussed several incidents where defence counsel have encountered difficulties in being able to view evidential video recordings with custodial clients whilst preparing for trial. Corrections have not permitted counsel to take laptops into

prison for this purpose and on two occasions they had arranged for defendants to view the evidential material in the presence of counsel whilst in the court cells following an appearance. The Courts are concerned that the use of court facilities for this purpose is not satisfactory and it should not become a routine procedure. Inconsistencies in practice were identified around the country as to what Corrections were prepared to permit in this context. This issue will continue to be monitored.

Court of Appeal criminal rules reform

At the September 2017 meeting, Hon Justice Winkelmann provided the Committee with an update on the Court of Appeal's Criminal Rules Reform Project. The Court is seeking feedback from the profession on the proposed reforms. These remove the requirement that notices of appeal be signed by the appellant personally and alter the timelines for allocation of hearing dates and the filing of submissions. Those present at the meeting agreed that the proposed reforms were both timely and appropriate.

Law Commission

Hon Douglas White QC attended meetings in 2017 to update on Law Commission initiatives. These included a review of the Search and Surveillance Act, the second review of the Evidence Act, a review of the procedures for taking DNA samples for use as evidence in criminal proceedings and the law of contempt. Members of the CPC gave feedback and raised possible issues with the Law Commission's developing proposals.

The CPC has recently met in February 2018. It is due to meet again on 1 June 2018.

Appendix one - Membership

	Rt Hon Dame Sian Elias, Chief Justice
	Hon Justice French, Court of Appeal
	Hon Justice Venning, Chief High Court Judge
Chair	Hon Justice Lang, High Court
	Her Honour Judge Doogue, Chief District Court Judge
	His Honour Judge Barry, District Court
	Hon Douglas White QC, President of the Law Commission
	Steve Bonnar QC, NZ Law Society, Wellington
	Elizabeth Bulger, NZ Law Society, Wellington
	Brendan Horsley, Deputy Solicitor-General, Criminal, Crown Law
	Brett Crowley, Criminal Bar Association
	Superintendent Gary Allcock, Police Prosecution Service
	Andrea King, Ministry of Justice
	John Richardson, Court Manager, Auckland High Court
	John Houghton, Acting Southern Regional Manager, District Courts, Ministry of Justice
	Campbell Savage, Public Defence Service, Ministry of Justice
Observer	Debbie Iversen, Judicial Administrator to Chief High Court Judge
Secretary	Allanah Colley, Judges Clerk, Wellington High Court