



**Report from the High Court 2013
Te Pūrongo a Te Kōti Matua 2013**

**The Year in Review
He tau arotake**

I am pleased to present a short report on events of note in the High Court of New Zealand - Te Kōti Matua o Aotearoa - during 2013.

Hon Justice Helen Winkelmann
Chief Judge – Te Kaiwhakawā Matua
9 April 2014

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Overview

Two substantial changes to the procedural legislation that underpins the High Court's jurisdiction came into force: targeted civil case management rules and the commencement of the new criminal procedure provisions.

The trial landscape continues to change. In the criminal jurisdiction there are more guilty pleas before trial. Unrepresented litigants continue to have an effect on the Court's pre-trial and trial management in both the civil and criminal spheres. Because of the changing demographics in New Zealand¹ many trials require the use of interpreters. In civil litigation the Court is hearing about 9% of filings of general proceedings² and hearing them more promptly. There has been an improving trend in time to trial for civil cases since mid-2010. In 2013, the average age has dropped a further 75 days, the median age a further 51 days. In Christchurch, earthquake cases have increased general proceedings filings. Filing of all probate applications has been centralised in Wellington and case management of Whangarei cases has been centralised in the Auckland registry.

A representation of the Court, its complement and business as at 31 December 2013 is attached as appendix 1.

The judicial complement

As at 31 December 2013 the permanent sitting complement³ comprised 36 Judges and 7 Associate Judges. The equivalent figures in December 2012 were 35 Judges and 9 Associate Judges.

During the year:

- Four judges left the Court. There were three retirements (Allan J in June, Chisholm J in July and Priestley J in December). Miller J was appointed to the Court of Appeal in June.
- Allan J undertook a 6 month acting warrant from June.
- Two new judges were sworn in: Brown J in June and Mander J in December.
- Dunningham J's appointment was announced with a swearing in date of February 2014.
- Two associate judges were sworn in as High Court Judges: Gendall J in June and Faire J in December.

¹ 25% of New Zealanders are born overseas and 30% of that group come from Asia. Nationwide the most commonly spoken languages are English, Māori, Samoan and Hindi. Sign language usage has dropped from 24,087 people in 2006 to 20,235 in 2013: www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-about-national-highlights/cultural-diversity.aspx.

² General proceedings make up the vast bulk of civil proceedings. A 9% hearing rate is high compared to other common law jurisdictions.

³ This figure does not include the Chief High Court Judge who sits part time, Dunningham J whose appointment was announced in December but sworn in in February 2014 or Allan J who held an acting warrant for part of the year.

During the year, arrangements for appointing judges were formalised. In May, the Attorney-General issued a booklet describing the process he would follow in the appointment of higher court judges. In August, advertisements for expressions of interest for appointment to the bench in Auckland and Christchurch were published and in December, appointments were made to those locations.

List judges assist the Chief Judge by overseeing the workload in their circuit and providing advice and counsel on matters of policy for the Court. The list judges in 2013 were:

- Rodney Hansen J (Auckland civil) until July 2013 when Venning J took over the role.
- Brewer J (Auckland criminal).
- Lang J (Waikato/Bay of Plenty liaison).
- Heath J (Whangarei, New Plymouth and Gisborne liaison).
- Ronald Young J (Wellington/Central). (Ronald Young J also provides oversight of national roster matters).
- Fogarty J (Christchurch/Southern).
- Associate Judge Jeremy Doogue is the liaison judge for associate judge work.

The case management list judges in 2013 were:

- Commercial list (Auckland and Wellington): Winkelmann J (supervising judge), Rodney Hansen, Heath, Venning, MacKenzie, Courtney, Asher, Clifford and Gilbert JJ. During the year Heath, Courtney and Gilbert JJ were appointed to the list. Allan J left the list upon his retirement and Miller J upon his appointment to the Court of Appeal.
- Auckland appeals lists: Civil – Ellis J, Criminal – Woolford J.
- Auckland judicial review list: Cooper J.
- Christchurch earthquake list: Miller J until his appointment to the Court of Appeal then Wylie J with assistance from Kós J.
- Auckland leaky buildings list: Associate Judge Faire (as he then was).

Changes to procedural legislation and related matters

The High Court Amendment Rules (No 2) 2012 came into effect on 4 February 2013 and provide for targeted case management of general proceedings to address cost and delay. Across the board, there are fewer but more intensive case management conferences directed at identifying the issues and ensuring that the extent of interlocutories is proportionate to the subject matter of the proceedings. Complex cases are more intensively case managed. They are likely to have more than one case management conference and clarification of issues for adjudication occurs at issues conferences. A review of the efficacy of these Rules, along with the discovery rules implemented in 2012, will be undertaken by the Ministry of Justice on behalf of the High Court during 2014.

The Court runs two types of lists. The first enables the Court to gain efficiencies for litigants by case managing cases with similar fact situations and/or issues with the aim of ensuring that those with precedential value can be heard first as an aid to settlement of other cases with similar fact or issue situations. This is the reason why the earthquake and leaky building lists were established in 2012. The second type of list focuses on case managing categories of cases through to a prompt trial. The commercial list and appeals management lists have been running for some time in Auckland. In late 2013 a judicial review list was set up for this purpose in Auckland and a similar list will be run in Wellington in 2014.

A subcommittee of the Rules Committee has been set up to keep the Criminal Procedure Rules 2013 up to date. The members are Winkelmann J, Ronald Young J (chair), Judge Bruce Davidson, David Jones QC and Mark Harborow. An early task is a review of existing practice notes to determine whether the notes need revision, should be incorporated in the Rules, or be revoked.

Although the Criminal Procedure Act changes began in July, because of the statutory time frames for case management under the Criminal Procedure Act, the High Court saw few Criminal Procedure Act matters by year end. At that date the bulk of the criminal caseload remained cases begun under the Summary Proceedings Act 1957.

The list judges are hearing second appearances, case reviews and trial callovers of category 4 matters in the circuit courts by way of audio-visual link (AVL). A practical issue for case management in circuit courts is the quality of AV links. Both the lines that transmit the data and the equipment used are being progressively upgraded and it would appear that incompatibilities between new and old technology and equipment affected the quality during the changeover. The Ministry is urgently providing fixes where it can, as well as funding improvements to the links and the equipment.

Two practice notes were issued.⁴ In October, the Electronic Bundle Practice Note was issued by the Chief High Court Judge. It is designed to encourage the use of electronic bundles in document intensive trials (both civil and criminal). In December, the Chief Judges of the High and District Courts issued a Sentencing Practice Note to come into effect in February 2014.

⁴ Available at <www.courtsofnz.govt.nz/business/practice-directions>.

Making the work of the Court more understandable and accessible

The High Court bench agreed in 2012 that it should work to better reflect New Zealand's two founding cultures and its modern multicultural society. Joe Williams J oversaw a range of initiatives to achieve this goal. Courtroom ritual openings and closings have been agreed and openings in te Reo will begin in the home courts from February 2014. The Institute of Judicial Studies is developing revised education programmes for judges about te Reo and tikanga. As the opportunity arises, changes will be made to signage, letterhead and material on the Courts of New Zealand website to incorporate the Court's name in te Reo - Te Kōti Matua o Aotearoa.

Information about the Court can assist in maintaining public confidence in it. Such information comes from many sources.

- The Court conducts its business in public. To assist the press and public to be aware of court business, daily lists of court business are published on the Courts of New Zealand website.⁵ In Auckland, Wellington and Christchurch, short explanations of the cases to be heard that day are posted outside the courtrooms and in the online daily list.
- The Court publishes its decisions electronically on Judicial Decisions Online.⁶ Since 2005, all decisions except bail matters, and decisions subject to suppression orders or statutory prohibitions upon publication, have been published. In addition, decisions of particular interest are posted to Decisions of Public Interest for a period of 30 days.⁷
- The Court operates a judgment enquiry system. The Court has set a performance standard that 90% of judgments will be issued within 3 months of the last day of hearing, or the receipt of the last submissions. Where a judgment has not been issued, enquiries by the parties and their counsel can be made of the court manager.⁸
- The Court speaks through its judgments which, because of the nature of High Court work, can be long and complex. To assist readers judges have begun to provide summaries within the judgment of the main points in lengthy and complex judgments.
- The media report upon court cases, particularly criminal cases. Their important role in providing information has been codified in the Criminal Procedure Act 2011.⁹ Journalists who are bound by a code of ethics, and subject to complaints procedures or otherwise authorised by a judge, may remain in court in all cases (except where the Court is satisfied it is necessary to exclude media to avoid prejudicing the security and defence of New Zealand). Journalists also have standing to initiate proceedings in relation to court-ordered suppression.

⁵ www.courtsofnz.govt.nz/business/calendar/daily-lists.

⁶ forms.justice.govt.nz/jdo/Introduction.jsp.

⁷ www.courtsofnz.govt.nz/from/decisions/judgments.

⁸ www.courtsofnz.govt.nz/from/decisions/high-court-judgment-delivery-expectations-inquiry-process-and-recent-judgment-timeliness.

⁹ Criminal Procedure Act 2011, ss 198 and 210.

As journalists work to deadlines and the media landscape is changing rapidly, assistance with prompt access to written decisions and understanding suppression and statutory prohibitions on publication is important. During the year, judges on the Media and Courts committee hosted meetings with journalists in Auckland and Wellington. The purpose of these meetings was to help improve the understanding of both the Court and the media of each other's role and needs. To assist the media in accurate reporting, the Court has provided an on-line document listing the main provisions in legislation which prohibit publication of court cases¹⁰ and is working to ensure easy access for the media to electronic versions of judgments. As more media are publishing online, a desirable development would be the provision of links to the full decision at the end of media reports of court cases.

Two High Court judges are involved in the Chief Justice's review of In-Court Media¹¹ — Ronald Young and Asher JJ. Television reporting of court proceedings was introduced by the judiciary in 1995 and currently operates under the In-Court Media Coverage Guidelines 2012. These Guidelines emphasise the need for a fair trial, the desirability of open justice, the importance of fair and balanced reporting of trials, and the interests of victims. There have been concerns expressed that some media coverage of high profile cases may have had a negative impact on the fair trial process, on the victims of crime and on those who participate in the court process. The review will consider how the Guidelines are operating, whether there are sufficient safeguards in place and whether there should be changes to the Guidelines.

In recognition of the important role jurors play deciding criminal cases, judges and the Ministry of Justice are undertaking a thorough review of the information jurors receive from receipt of the jury summons until after the verdict is given.

Cases run by litigants without counsel present challenges to the Court. They take longer to hear and, furthermore, judges must balance fairness to the unrepresented litigant unfamiliar with the law as well as procedure and practice of the Court, against being perceived to "descend into the arena" or showing favouritism to one party when explaining matters to the litigant that are well-known to counsel who appear regularly in the courts.¹²

In July 2013 the judiciary of England and Wales published *The Judicial Working Group on Litigants in Person: Report*.¹³ It described the challenge as follows:

2.5 Providing access to justice for litigants in person within the constraints of a system that has been developed on the basis that most litigants will be legally represented poses considerable and unique challenges for the judiciary. [...] However, litigants in person are not in themselves "a problem"; the problem lies with a system which has not developed with a focus on unrepresented litigants. We consider it vital that, despite the enormous challenge presented, judges are enabled and empowered to adapt the system to the needs of litigants in person, rather than vice versa.

¹⁰ www.courtsofnz.govt.nz/business/media-centre.

¹¹ www.courtsofnz.govt.nz/In-Court-Media-Review/?searchterm=%22in%20court%20media%20review%22.

¹² Anecdotally judges report a greater proportion of unrepresented litigants. The Ministry of Justice has begun to keep records of litigants' representation. This is not a simple task as the representational status of a litigant can, and does, change throughout the life of a case.

¹³ www.judiciary.gov.uk/Resources/JCO/Documents/Reports/lip_2013.pdf.

During 2013 the Court worked with the Ministry of Justice to provide web-based resources for unrepresented litigants in the civil jurisdiction, which will be published in 2014.¹⁴ The resources are broad ranging and, amongst other things, cover what is entailed in starting and defending proceedings, what to expect in the courtroom, what to do with documents and information about costs and disbursements.

¹⁴ The material was published in March 2014 at www.justice.govt.nz/courts/high-court/self-represented-litigants.

Workload

Overview

The Court remained busy. Jury trials new business for the year ended 31 December is down on the previous year but criminal disposals exceeded new business. With the commencement of the Criminal Procedure Act 2011 during the year, two counting systems are in play for criminal trials and a direct comparison of new business to 31 December 2012 cannot be made. The drop in new business may arise in part from a delay in identifying and processing of protocol cases. Previously under the Summary Proceedings Act, “middle-band cases” (the predecessor to protocol cases), made up about 50% of the Court’s criminal case load. A similar proportion of protocol cases are expected under the new Act.

In the civil jurisdiction, a high proportion of cases (compared to other common law jurisdictions) are heard by trial and these cases are being heard more quickly. Judgment delivery remains timely.

Summary of new business and disposals for the year ended 31 December 2013

	Criminal trials ¹⁵	Civil proceedings ¹⁶	Criminal appeals	Civil appeals
New business				
2013	215	2669	1043	317
2012	232	2827	1179	338
Disposals				
2013	222 ¹⁷	2598	1048	317
2012	212	3047	1213	320
Disposals by trial adjudication				
2013				
2012		365		
		386		
Disposals by non trial adjudication				
2013		789		
2012		1020		

¹⁵ Counting cases during the Criminal Procedure Act (CPA) cross over period in order to compare year on year figures is not a simple task. For the purposes of this set of statistics, post CPA cases have been counted only from the “trial stage” i.e. post the case review hearing. Choosing this point best aligns with receipt of trials post committal under the old system and means a better comparison of new business over the two years can be made. A similar approach has been taken to disposals, so that post-CPA for the purposes of this table, the only CPA disposals counted are from the trial stage.

¹⁶ Civil proceedings includes general proceedings, originating applications and judicial reviews.

¹⁷ There were 4 Category 4 cases which were disposed of in the High Court before they were deemed ready for trial. In the 12 months to 31 December 2013, there were 57 cases that had guilt established (by plea or verdict from a judge or jury) in the District Court which were transferred to the High Court for sentencing.

Understanding the civil case load

During the year, the Ministry re-orientated its reporting to better describe the work judges do. Previously the reports focused on the whole caseload, yet a very large proportion of filings are settled prior to trial by the parties, with little input from the judges or registry staff. Such an undifferentiated volume-based analysis gave a misleading view of how busy the Court was.

A stark example is that although filings and disposals have dropped, the number of *trials heard* in the Court has decreased at a lesser rate. This result occurs because a large proportion of filings settle prior to trial and so a drop in filings will affect settlements (disposals) and erroneously suggest the Court is less busy with its core business of trials.

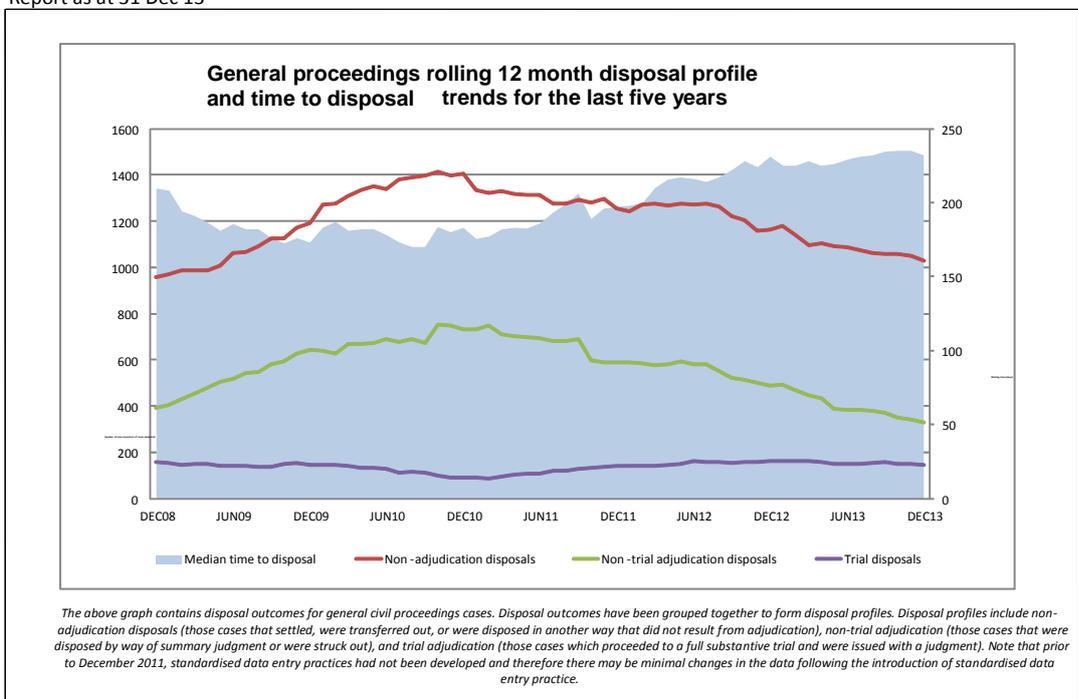
Another useful development in understanding disposals is the categorisation of disposals into three classes:

- Non-adjudication disposals, that is pre-trial settlements.
- Non-trial adjudication by judges, such as summary judgments and strike outs.
- Trial adjudication.

The adjudication streams are an indication of how busy the judges are. The graph below shows how non-adjudication and non-trial adjudication streams have waxed then waned over the last five years mirroring litigation arising from the global financial crisis. The bottom line shows trials which have remained relatively steady.

General Proceedings: Disposals

Report as at 31 Dec 13

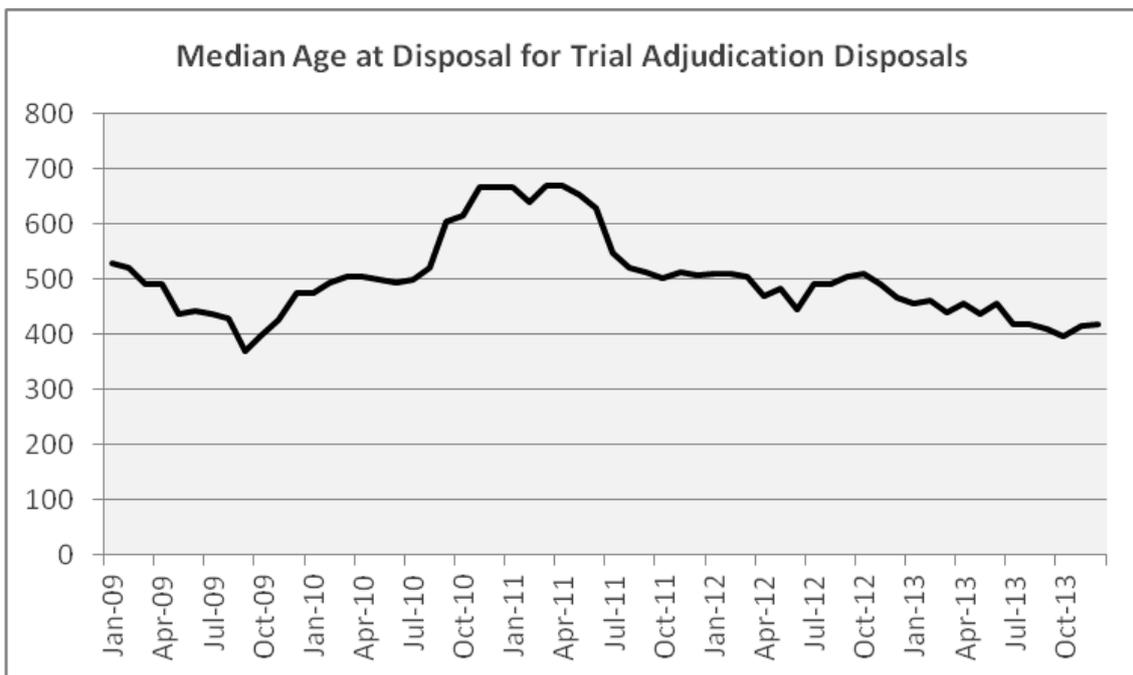


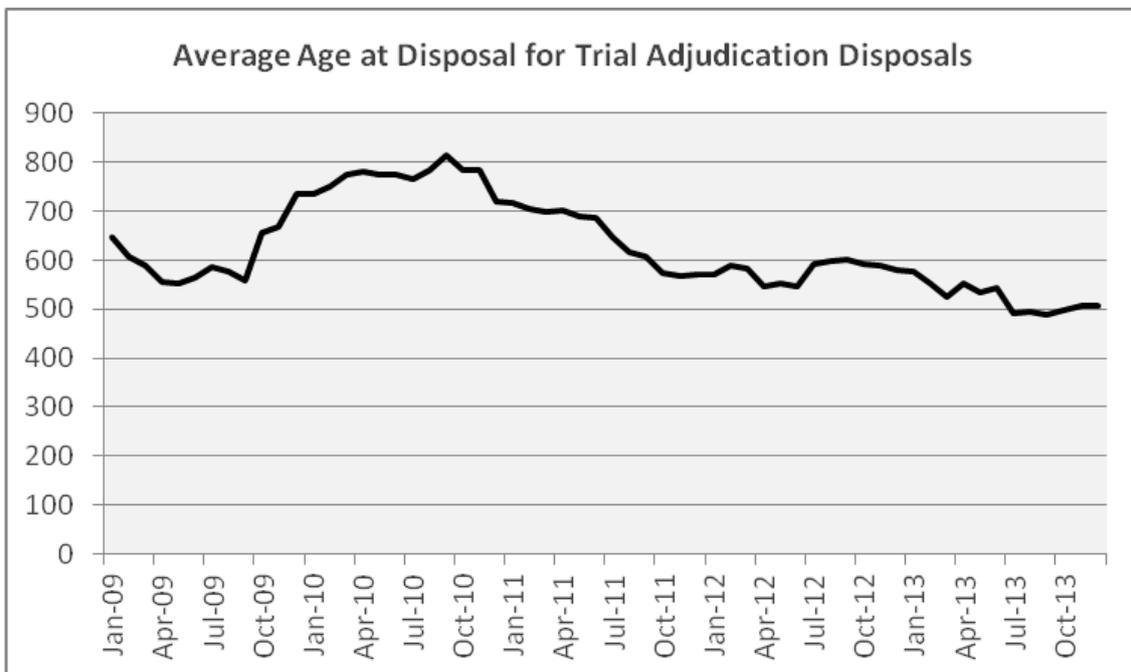
The vast bulk of civil business is made up of general proceedings. Filings of general proceedings are dropping everywhere except in Christchurch due to earthquake related litigation. As noted above, a consequence of a drop in filings is a drop in disposals by settlement because the majority of the caseload settles before trial.

While new business and disposals of general proceedings courtwide is down overall, the proportion of cases going to trial is staying steady, and cases going to trial are being heard more quickly. In summary:

- Disposals of general proceedings *by trial* remain high. 9% of general proceedings were disposed of by trial over the last year.
- 161 trials were held in the year ended December 2012 and 143 in the year ended December 2013
- The average age of general proceedings disposed by trial improved markedly dropping 75 days from 581 days in December 2012 to 506 day in December 2013. Over the same period the median age at trial disposal has dropped by 51 days from 468 days to 417 days.

The graphs below show the improving trends for age at disposal for litigation.





In 2013 associate judges began to identify the “nature of claim” for new general proceedings so that the Ministry can keep more detailed records about aspects of civil proceedings. Nature of claim information will ultimately enable the Court to understand disposal patterns for different types of case such as natural disasters, building defects, estate litigation etc. In the meantime it is interesting to see how general proceedings filings for this year break down. The most common claims are shown below.

**Nature of claim for matters filed between
1 January and 31 December 2013 as at 3 February 2014**

Nature of Claim type	Number of claims	% of total
Debt recovery	211	19%
Natural disasters (Chch EQ)	152	14%
Contractual disputes	116	10%
Other (not covered by the 31 other categories)	81	7%
Building defects – leaky buildings	71	6%
Other trust litigation	62	6%
Estate litigation	61	5%

Judgment timeliness statistics remain similar to last year's figures. The standard is 90% of judgments delivered within 3 months of hearing, or receipt of final submissions.

**Judgment timeliness statistics
for the 12 months ending 31 December 2013**

	Time from hearing to judgment delivery	Number of judgments	Percentage
Civil	≤1 Month	1594	79.4%
	≤3 Months	1863	92.5%
	≤6 Months	1983	98.8%
	≤9 Months	2003	99.6%
	≤12 Months	2010	99.9%
	Time from hearing to judgment delivery	Number of judgments	Percentage
Criminal	≤1 Month	1485	96.2%
	≤3 Months	1534	99.4%
	≤6 Months	1543	100.00%
	≤9 Months	1543	100.00%
	≤12 Months	1543	100.00%

Other workload statistics for the year ending 31 December 2013 can be found at www.courtsofnz.govt.nz/from/statistics/annual-statistics/december-2013.

Performance standards for civil proceedings

The Court set performance standards for civil proceedings in 2012 for clearance rates, waiting time to trial, time to judgment¹⁸ and earliest available date. The second report against those standards will be published at www.courtsofnz.govt.nz/from/statistics/annual-statistics/december-2013.

In summary:

Clearance rates

	General Proceedings	Originating Applications	Judicial Reviews	Appeals	Insolvency	Probates
Target compliance			100%			
Actual Compliance (12 month rolling)	98%	98%	91%	100%	102%	101%

Filings for each case type reported decreased over the last year. For appeals, insolvency proceedings, and probates the number of disposals over the past year either matched or exceeded new filings. In the case of general proceedings and originating applications the drop in disposals over the past year slightly exceeded the drop in new filings. While the number of judicial reviews disposed over the past year did increase (and the number of new filings did fall), disposals of judicial reviews have not yet caught up with the substantial increase in new filings of judicial reviews between 31 October 2011 and 31 July 2013.

Waiting time to trial

	General Proceedings – Short Cause	General Proceedings – Long Cause	Originating Applications	Judicial Reviews	Appeals
Performance Standard	≤12 months	≤18 months		≤6 months	
Target compliance			80%		
Actual compliance	86%	91%	76%	65%	71%

Targets for waiting time to trial are being exceeded for both long and short cause general proceedings. The waiting time to trial for originating applications is slightly below the target. The waiting time to trial for judicial reviews and appeals are below the target. The Court is working on identifying the causes of this and addressing them.

¹⁸ Reported above.

Earliest available date for trial

	Time to earliest available date (at the end of the queue)
Performance Standard	≤9 months
Target Compliance	80%
Actual	69%

The target for earliest available dates was not able to be met as at 31 December 2013. However it needs to be noted the measure for earliest available dates is for those at the end of the queue. The Court often does give earlier dates (than those at the end of the queue) by booking multiple trials for the same date in the anticipation that many matters set down for hearing will not go to hearing. In Auckland short trials are set down when the parties advise they will be ready.

Performance standards for criminal trials and appeals

The Court set performance standards for criminal trials and appeals in 2013 for clearance rates, waiting time to trial and earliest available date.

Clearance Rate

	Criminal Trials	Criminal Appeals
Performance Standard	100%	100%
Actual Compliance (12 month data)	103%	101%

There have been more disposals than new business for both criminal trials and criminal appeals, so that the target for clearance rates has been exceeded.

Waiting time to trial

	Criminal Trials		Criminal Appeals
	Short trial (≤ 10 days)	Long trial (> 10 days)	
Performance Standard	<12 months	<18 months	< 6 months
Target Compliance	80%	80%	80%
Actual Compliance (12 month data)	60%	83%	92%

The target for waiting time to hearing is being exceeded for criminal appeals target. For long criminal trials, the target compliance of 80% was exceeded.

The target for short trials was not met. Cases are allocated dates when they are expected to be ready for trial. Although the Court reports against this standard, the reasons for delay are often beyond the Court's control. During the last year, common reasons beyond the control of the Court include: delays in the delivery of reports about defendant capacity under

Criminal (Mentally Impaired Persons) Act 2003 and delays in obtaining expert evidence. The following information as to the availability of hearing dates shows that the delay is not due to the unavailability of hearing time.

Earliest available date

	Short trial (≤ 10 days)	Long trial (> 10 days)	Appeals
Performance Standard	< 9 months	<9 months	<6 months
Target Compliance	80%	80%	80%
Actual Compliance	82%	76%	82%

More than 80% of the time, registries are able to provide a fixture date for a short criminal trial within 9 months, and for a criminal appeal within 6 months, in all High Court registries.

Christchurch

Hearings returned to the Christchurch courthouse at the start of 2012 although High Court registry staff remained in courtroom 2 until June 2013 when work on strengthening the registry areas was completed. At that time courtroom 2 became available for hearings once more.

Wylie J (chair, Courthouse Design Committee) and Whata J have been part of planning for the courthouse element of the Justice and Emergency Services Precinct to be located between Lichfield and Tuam St at Durham St. The expected completion date for the courthouse element of the precinct is mid 2017.

Figure 1: Architect's impression of Precinct

The courthouse is shown at the centre and on the right hand side, the police station is on the far left



Property

The availability of courtrooms in some areas remains a constraint upon the hearing of cases. In Auckland and Waikato/Bay of Plenty this need has been long identified but there has been no progress on planning or delivering new courtrooms to these areas in 2013.

With the continuing relocation of the complement to Auckland to match the work in that circuit, more judges' chambers are needed in the Auckland High Court for both the short and medium term. Although there has been a pressing need for this for a number of years, there was no progress on this in 2013.

At year end, some "fit for purpose" works commenced in the Auckland High Court to increase the size of docks and improve safety in some courtrooms. During the year the space in the common room was re-configured and it is now is large enough for the larger number of judges sitting in Auckland.

The building in which the High Court in Dunedin is located was found to be "seismically affected" in 2012 following a nationwide review of courthouse safety. While repairs are undertaken, criminal trials are to be held in an interim jury trial facility opened in High St in late August and civil matters are heard in John Wickliffe House. Repairs to the category one heritage building are expected to take two years to complete.

Looking ahead to 2014

After the introduction of new procedural provisions in both jurisdictions in 2013, 2014 will be a period of consolidation. A greater proportion of the criminal caseload will be heard in accordance with the Criminal Procedure Act provisions.

In addition to these operational changes, the Court will continue to work on improving public understanding of the Court and its role and to work with the Ministry of Justice on improving information available to court users both before they come to court, and at court.

Appendix 1

Breakdown of workload and factors affecting workload by circuit

