



The Right Honourable Dame Helen Winkelmann

CHIEF JUSTICE OF NEW ZEALAND | TE TUMU WHAKAWĀ O AOTEAROA

Memorandum

TO Attorney-General
FROM Chief Justice
DATE 29 November 2023
SUBJECT Courts and the judiciary – 2023-2026

Contents

Introduction.....	3
Matters requiring early attention.....	4
Appointments to the courts consequent on retirements	4
Extension of the COVID 5 judges in the District Court	4
Appointment of the first tranche of Family Court Associates.....	5
Signalled budgetary proposals which may affect the operation of the courts	5
Matters in train with the government or Ministry of Justice	6
Publication of judicial terms and conditions	6
Changes to the Family Court rules to enable Family Court Associates and Te Au Reka (digital case and court management system)	6
Legislative change to improve access to civil justice.....	6
Keeping the statute book up to date.....	7
Work programmes to address delay and modernise the courts.....	8
Digital Strategy for Courts and Tribunals	8
District Court initiatives.....	8
Access to civil justice – clarifying the problems and monitoring progress.....	9
Courts approach to AI	9
Risks to court operations	10
Property portfolio failing and unfit for purpose	10
The legal aid system and sustainability of criminal and family bars	10
Appointments	11
Statutory cap on senior court judge numbers	11
Statutory cap and reliance upon acting warrants in the District Court.	12
Improvements to process for senior court appointments.....	12
Judicial wellbeing	13
Institutional matters	14
Judicial leadership of the courts	14

Relationships between the judiciary, executive and legislature	15
Remuneration Authority coverage	15
Annual reporting by the courts	15
Dual administration of courts	16
International connections and regional cooperation	17
Brief overview of each court.....	19
Judiciary and courts at a glance (November 2023)	19
Supreme Court Te Kōti Mana Nui	21
Court of Appeal Te Kōti Pira	21
High Court Te Kōti Matua.....	21
District Court Te Kōti-ā-Rohe.....	22
Māori Land Court and Waitangi Tribunal Te Kooti Whenua Māori	24
Employment Court of New Zealand Te Kōti Take Mahi o Aotearoa	25
Coroners Court Te Kōti Kaitirotiro Matewhawhati	25
Environment Court Te Kōti Taiao	26
Court Martial Te Kōti Whakawā Kaimahi o Te Ope Kātua.....	26
Appendices.....	27
Appendix 1 – Extract of material on Te Au Reka presented to the Justice Select Committee on 24 August 2023	27
Appendix 2 – Te Ao Mārama: enhancing justice for all.....	28
Appendix 3 - Principles observed by Judiciary and Ministry of Justice in the Administration of the Courts (29 November 2018).....	30
Appendix 4 – Heads of Bench Committee members	33
Appendix 5 – Matters considered by the Legislation and Law Reform Committee	34
Appendix 6 – Differing remuneration arrangements between tribunals	35

INTRODUCTION

1. Previous Attorneys-General have met monthly with me and my predecessor(s). This regular engagement allows discussion of appointments and other matters of joint interest such as discussion of legislation affecting the operation of the courts and addressing unfair or improper criticism.
2. I provide this briefing to outline what I see as falling within the span of matters of common interest between us in promoting access to justice and strengthening the rule of law through efficient and effective courts and a well-functioning judiciary.

MATTERS REQUIRING EARLY ATTENTION

3. Matters which require early attention are:

- Appointments to cover retirements in the courts
- Request for further extension of the COVID relief judges in the District Court
- Approval and appointments of the first tranche of Family Court Associates.
- Signalled budgetary and legislative proposals which may affect the operation of the courts.

Appointments to the courts consequent on retirements

Senior courts appointments

4. There are a number of appointments to the Senior Courts, consequent on retirements, which require our early attention. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. Where the appointments are to the Supreme Court or Court of Appeal there will typically also be consequent appointments - these need to be addressed at the same time. Some of these appointments are urgent as courts' work is scheduled assuming a full complement of judges.

6. [REDACTED]

7. As you will be aware, there is a protocol for judicial appointments to guide us through appointments. I propose that we agreed our process for this first tranche of appointments in light of that protocol.

Appointments to the District Court to July 2024

8. There are four District Court judge positions to be filled in the first half of 2024. The Chief District Court Judge intends to seek your approval to continue the recruitment processes that have already commenced to enable replacement judges to be appointed as the warrants of those retiring judges (and in one instance a seconded judge) become available.

Extension of the COVID 5 judges in the District Court

9. Five 'Covid Relief' judges were appointed in early 2021 to assist the District Court to reduce backlogs. Those Covid Relief judges were appointed in advance of judges who were due to retire over a period of three years from 1 July 2020 until 30 June 2023. Due to continuing difficulties with District Court backlogs, that period was extended for a further two years until 30 June 2025.
10. The District Court remains in an extremely difficult position in respect of backlogs. At the request of the Chief District Court Judge, the former Attorney-General approved an extension of the advance appointment period for a further two years until 30 June 2027. This extension is important to the ability of the District Court to make progress in addressing backlog.

Appointment of the first tranche of Family Court Associates

11. The Family Court (Family Court Associates) Legislation Act came fully into force on 7 October 2023. The recruitment of the first six Family Court Associates has been completed but appointments have been on hold pending approval from the incoming Attorney-General. Family Court judges have been taken out of the roster to run an induction programme for them in January. The Associates' warrants will need to be signed by the Governor-General by then.

Signalled budgetary proposals which may affect the operation of the courts

12. I understand that cost savings are being required of all Ministries other than those charged with providing front-line services. Police and Corrections have been identified as falling into the latter category, but to date I understand that the courts, supported as they are by the Ministry of Justice, have not been exempted from the budgetary reductions. Courts do of course provide essential front-line services. Fully staffed registries and judicial support are essential to the orderly and efficient conduct of court business. I am aware the Secretary for Justice will be making representations to the Minister of Justice about this and he has my full support in that regard.

MATTERS IN TRAIN WITH THE GOVERNMENT OR MINISTRY OF JUSTICE

13. Matters currently in train with the government or Ministry of Justice include

- Consideration of the public release of judicial terms and conditions
- Changes to the Family Court Rules to enable Family Court Associates and Te Au Reka
- Legislation to promote Rules Committee recommendations to improve access to civil justice
- Early work on a Justice Systems Stewardship Amendment Bill

Publication of judicial terms and conditions

14. Recently there has been public criticism regarding the failure to publish judicial terms and conditions. Publication of those terms and conditions is ultimately a decision for the Attorney-General, and when the issue was raised with your predecessor by the media and through parliamentary questions, he referred the issue to the judiciary for comment. In doing so he cited considerations of comity between the branches of government.

15. I can advise that the judiciary are agreeable to proactively publishing the terms and conditions. I suggest my office works with the Solicitor-General towards this end.

Changes to the Family Court rules to enable Family Court Associates and Te Au Reka (digital case and court management system)

16. The Family Court Rules need to be amended to include the role and responsibilities of Family Court Associates.

17. Changes to the Family Court Rules will also be necessary to enable Te Au Reka to be implemented in the court by 2025/26. The Family Court will be the first court in which Te Au Reka will be implemented.

Legislative change to improve access to civil justice

18. In 2019, the Rules Committee began a wide-ranging review of ways to simplify court procedures so civil disputes can be resolved more quickly and efficiently. Its *Improving Access to Civil Justice* report was released in November 2022. It included some recommendations for change beyond the scope of rules, and the responsibility of the Rules Committee. The committee made recommendations which went beyond rules with the knowledge and at the request of the then Attorney-General and Ministers for Courts and Justice. It was their view that there was no other forum for those matters to be discussed at a national level at the time.

19. To improve affordable and accessible civil justice, the committee recommended:

- Expanding the role of the Disputes Tribunal to be the primary court for a significant proportion of disputes by increasing its jurisdiction to \$70,000 as of right and \$100,000 if both parties agree. Expanded rights of appeal are recommended for higher value awards.
- Creating the role of Principal District Court Civil Judge, the appointment of specialist deputy judges (part-time judges appointed from the senior ranks of the profession) and a strengthened registry. Each of this group of reforms with the aim of strengthening and revitalising the District Courts civil jurisdiction.

These recommendations will require legislative change. I understand these proposals will form part of Ministry of Justice briefings to the Ministers of Justice and/or Courts. I can advise that the judiciary is supportive of these proposals, and we believe they have a wide level of support within the profession.

Keeping the statute book up to date

20. The judiciary supports regular reviews of Ministry of Justice-administered primary and secondary legislation to ensure that legislation properly supports the just and efficient administration of justice through courts and tribunals. The judiciary has appreciated being consulted by the Ministry of Justice as it prepares its first Justice Systems Stewardship Amendment Bill and commends its introduction.

WORK PROGRAMMES TO ADDRESS DELAY AND MODERNISE THE COURTS

Digital Strategy for Courts and Tribunals

21. The *Digital Strategy for Courts and Tribunals*¹ published in March this year identifies four high priority initiatives for the next five years – introducing Te Au Reka, and improving remote hearing technology, physical infrastructure and training and support.

Te Au Reka

22. This flagship modernisation programme will progressively introduce throughout the courts, a digital case and court management system – Te Au Reka. The main features of the system were described to the Justice Select Committee in August 2023 and an extract is reproduced at **Appendix 1**.² Implementation is in three phases starting with the Family Court which is estimated for 2025/26, the rest of the District Court (bar the Disputes Tribunal) in 2026/27 and the senior courts, the Disputes Tribunal and the Environment and Coroners courts from 2027/28.³ At this stage of the development, judges are represented on the Steering Group and in various Scope and Define activities. Implementing Te Au Reka is in accordance with the *Strategy for a Digital Public Service*.

Remote participation in courts

23. The courts support greater use of remote hearings in appropriate cases. Used well, remote technology has the potential to enhance access to justice, and to support the efficient and timely determination of court proceedings. The courts also see value in properly resourced and supported community hubs to lower barriers to accessing the courts.
24. There are currently two barriers to greater use of remote hearings. The most significant is the availability and quality of infrastructure in the courts and justice sector (AV equipment, software/platforms). The second barrier is outdated and unsatisfactory legislation. Our advice to the Ministry is that their AV review and technology upgrade needs to proceed in tandem with legislative change.
25. The judiciary is currently developing principles to guide the operational and procedural arrangements that enable greater use of remote technology, whilst ensuring its use does not undermine just outcomes in individual cases. Nonetheless these principles cannot address the shortcomings in the Courts (Remote Participation) Act 2010. Our recommendation is that the Act be replaced with a short enabling statute at the earliest opportunity. [REDACTED]

District Court initiatives

26. This large and complex court has three workstream priorities. These are to increase
- *Efficiency in the conduct of court business* – A key component is the District Court Timeliness Programme which brings together several judicial-led and Ministry of Justice-led initiatives to improve timeliness. It includes a new priority-based rostering and scheduling approach which ensures judicial resource is applied where the backlog is the biggest, hearings in alternative court venues and implementation of the Criminal Process Improvement Programme (CPIP) which is focused on making every court appearance meaningful.

There is a significant focus on Auckland because 50 percent of the District Court criminal backlog is located in the six Auckland metro courts.⁴ Accordingly 55 judges are being rostered there on a daily basis at present. If the Auckland backlog is

¹ [2023 Digital-Strategy-Report.pdf \(courtsfnz.govt.nz\)](#)

² The full powerpoint briefing can be found at [Te-Au-Reka-At-a-glance.pdf \(justice.govt.nz\)](#)

³ The Māori Land Court has a bespoke system – Pātaka Whenua - rolled out this year. Rollout in the Employment Court may occur later.

⁴ Auckland, Manukau, North Shore, Waitakere, Papakura and Pukekohe District Courts.

addressed then the court will have made significant strides in addressing its overall backlog. There are early indications to suggest the measures that have been put in place are having a positive impact and the backlog is tracking down.

- *The capacity to conduct more business –*

[REDACTED]

[REDACTED] In the Family Court, once the appointments of Family Court Associates are approved, this will provide a significant addition to the capacity and efficiency of the court.

- *The quality of the work –* of which Te Ao Mārama is the flagship programme.

Te Ao Mārama

27. Te Ao Mārama is aimed at supporting both fair hearings (by ensuring full participation), and at supporting better long-term outcomes for the community. It is a response to more than four decades of concerted calls for transformative change to the way the District Court conducts its business. Those reports have found that people have left the court feeling that they have not been treated fairly. They perceive they have not been heard, understood or able to meaningfully participate in proceedings that related to them.
28. Te Ao Mārama is built on the court's long tradition of solution-focussed judging dating from 1989 with the introduction of Family Group Conferences in the Youth Court. Te Ao Mārama will affect everyone who participates in the criminal, youth and family jurisdictions (defendants, victims, whānau, judges and so on).
29. No new legislation is required. It will operate within the New Zealand Bill of Rights Act, the Bail Act and the Sentencing Act. The transformation comes from new behaviours, new information, new services and new processes. For a fuller summary see **Appendix 2**.

Access to civil justice – clarifying the problems and monitoring progress

30. There is a significant “justice gap” in civil justice. Many people are unaware they have a legal problem, and if they are, how to solve it. The Secretary for Justice and I hosted a civil access to justice hui in 2020 and established an Access to Justice Advisory Group to progress recommendations from participants. A national strategy to facilitate cooperation and coordination across those working in civil justice was developed by an independent working group. The next step will be to launch the strategy, *Wayfinding for Civil Justice*, and establish an Observatory to coordinate progress.
31. Another workstream of the Advisory Group is a survey to understand the extent of unmet legal need in the community and small business. Funded by the Ministry of Justice and the Ministry of Business Innovation and Employment, the report of findings is due in mid-2024.

Courts approach to AI

32. Earlier this year, the widespread availability of generative artificial intelligence tools and how AI might affect court operations became apparent. The heads of bench set up an Artificial Intelligence Advisory Group to develop guidelines for the use of AI in court. Three sets of tailored guidance were developed - for judges and their staff, for counsel, and for non-lawyers – and sent out for consultation in mid-September.⁵ The guidelines cover information on what AI is, risks inherent in its use, situations where it would be inappropriate or unhelpful to use it and situations when it may be helpful. The finalised guidance is expected to be posted on the Courts of New Zealand website in December.

⁵ [Draft best practice guidance for the use of generative AI](#)

RISKS TO COURT OPERATIONS

Property portfolio failing and unfit for purpose

33. A legacy of chronic underfunding of the Ministry of Justice's property portfolio means that a 2019 assessment of properties identified 43 of 96 sites with a fair to very poor rating. Recent examples of problems include flooding in the Auckland District Court which took four courtrooms out of circulation and black mould closing a courtroom in Hamilton. Weathertightness issues have required Papakura District Court to be wrapped in plastic for an extended period, impacting those who work or visit the court.
34. Projects or planning are underway to address 10 of the 12 most critical sites, which are generally the busiest courts. If they fail, this would cause serious disruption. Most of these projects are partially unfunded, with some needing substantial further investment. Essential repair work also has a significant impact where courtrooms have to be taken out of use, increasing the shortage.
35. As noted below at [90], limited availability of courtrooms in the circuit courts such as Whangārei and Rotorua affects the High Court's ability to schedule trials.

The legal aid system and sustainability of criminal and family bars

36. The sustainability of the criminal and family bars is of considerable concern to the judiciary. The retreat from legal aid by medium and large firms, and more counsel leaving the criminal and family bars are situations long in the making.
37. The adversarial system is designed on the assumption that parties will be legally represented. Judges see the effect of involuntary self-representation in their courtrooms. They also hear from increasing numbers of litigants who are eligible for legal aid but cannot find a lawyer despite strenuous efforts. Administrative judges receive correspondence from both counsel and those seeking aid about the inability of the system to service the need.
38. The Legal Services Act has been in force for more than 10 years. The effect of the changes it introduced, and how it is administered, has seen lawyers retreat from legal aid work. This is particularly so for law firms, meaning fewer lawyers are introduced to legal aid early in their careers. Many legal aid lawyers work at what is known as "low bono" rates. The New Zealand Law Society announced in October that it has partnered with KPMG to conduct research on the costs of operating a legal practice as well as the costs and effort associated with providing legal aid. This will provide valuable information.
39. It is of course accepted that there is a limit to the amount that can be spent on civil legal aid. The issue is to ensure that funds are applied, and claims are administered in a way that is efficient and equitable. I confirm my view, expressed elsewhere, that it is time for a review of the fundamentals to refocus on equitable access to justice.

APPOINTMENTS

40. Many of the interactions between the Attorney-General and the Chief Justice and between the Attorney-General and other heads of bench, concern appointments.⁶ There are three issues I would like to discuss with you in connection with judicial appointments in the future.

Statutory cap on senior court judge numbers

41. The statutory cap on senior court judge numbers was last raised almost 20 years ago to 55 judges. Since then the population has risen from 4.09m to 5.12m (25%) and the length of hearings and complexity of matters before the courts have increased very substantially. These changes to the workload for the High Court and Court of Appeal means it takes longer for matters to be heard and impacts judgment timeliness. It is causing worrying levels of judicial stress and fatigue.
42. The environment in which the senior courts operate has changed since the statutory cap was last lifted in 2004.
43. In the High Court, the effective cap is 40 judges. The length and complexity of criminal and civil cases has increased. Proceedings under the Marine and Coastal Area (Takutai Moana) Act 2011 require significant judicial resource.
44. The High Court currently has four full time acting judges and one part time acting judge. This unusual state of affairs arises from acting appointments made to address scheduled work disrupted during COVID-19 restrictions as well as increased workload arising from the impacts of COVID-19 such as judicial reviews and insolvency filings. The acting warrants expire on 31 December 2024.
45. The effective cap for the Court of Appeal was last adjusted in 2016 to 10 judges. Even with acting judges in 2019, 2020, 2022 and 2023, times to hearing and judgment have increased to undesirable levels.⁷ There is currently one acting judge in the Court of Appeal.
46. There are also significant calls on judges' time in connection with the important task of procuring and developing Te Au Reka (the digitisation of the courts operating model), and calls upon the time of judicial leaders, which inevitably reduces their ability to undertake a full sitting schedule – a significant consideration in small courts such as those within the senior courts.
47. I have raised a review of the statutory cap with the Secretary for Justice. This is a matter which probably falls within the purview of both the Attorney General and Minister of Justice.

⁶ There are some unique appointment processes. The appointment process for judges of the Environment Court is governed by s 250 Resource Management Act. Recommendations to the Governor-General for appointment to the Māori Land Court are made by the Minister of Māori Affairs and recommendations for appointments of Community Magistrates are made by the Minister of Justice ([Judicial Protocol \(crownlaw.govt.nz\)](https://www.crownlaw.govt.nz/judicial-protocol), p 3).

⁷ In November 2023, the median wait time to hearing for civil appeals was 408 days – an increase of 32% since 2019. The median time to judgment for civil appeals has also increased from 57 days in 2019 to 71 days in 2023.

Statutory cap and reliance upon acting warrants in the District Court.

48. [REDACTED]

50. Under the current cap, the District Court cannot operate without the services of acting judges. The current configuration of permanent and acting judges in the District Court is shown below.⁸

	Permanent judges	Acting warranted judges	Total
All warranted judges	180.5	40	220.5
Effective complement	169.5	38 ⁹ (Approx 23 FTE)	207.5 (Approx 192 FTE)

51. In my view, and the view of the Chief District Court Judge, a review of the statutory cap of District Court judges is long overdue. Again, this is a matter which probably falls within the purview of both the Attorney-General and Minister of Justice.

Improvements to process for senior court appointments

52. Criticisms of the current appointment process by interested parties focus on a lack of “transparency”. While the criteria for appointment are known, the process for selection is not. Some professional and judicial groups have told me this lack is one of the factors hindering applications from diverse candidates.

53. There are some changes I believe we could make on the judicial side of things to improve processes. However before making any changes to processes leading up to appointment, I wish to ensure you are happy with them.

54. Longer term I would like to work with you to ensure that we continue to appoint able candidates who are reflective of and knowledgeable about our society. [REDACTED]

⁸ The figure of 180.5 permanent judges includes 8 Environment Court judges, the Chief Coroner, the Chair of the Immigration Protection Tribunal and a judge seconded to Vanuatu. The figure of 40 acting judges includes 2 Environment Court judges.

⁹ Acting warranted judges are part-time – generally about 0.6 FTE.

JUDICIAL WELLBEING

55. A healthy and resilient judiciary is a top priority for heads of bench. Judges' work is inherently stressful - a high workload, decision-making that impacts people's lives and liberty, exposure to distressing material and high conflict situations - all of which have an impact on mental health and wellbeing.
56. [REDACTED] the judiciary has improved mentoring, introduced a wellness programme that includes expanded access to professional support with psychologists, and continued to provide wellbeing seminars through Te Kura Kaiwhakawā | the Institute of Judicial Studies. It has been assisted by [REDACTED] [REDACTED]¹⁰ the appointment of an expert advisor on wellbeing, Professor Ian Lambie ONZM¹¹ and a cross-court Judicial Wellbeing Steering Group. The professional support service has been well adopted. It includes the opportunity to debrief with a clinical psychologist after a "critical incident"¹² occurs.

¹⁰ [REDACTED]

¹¹ Registered Clinical Psychologist, Professor of Psychology at the University of Auckland | Waipapa Taumata Rau, and Chief Science Advisor for the Justice Sector.

¹² A critical incident is when a party to court case either dies or is seriously injured during the course of proceedings, or soon after proceedings have concluded. This commonly includes death by suicide of a case party, and the assault/murder of one case party by another.

INSTITUTIONAL MATTERS

Judicial leadership of the courts

57. Each head of bench operates under a statutory duty to ensure the orderly and efficient conduct of their court's business.¹³
58. The constitutional principle of separation of powers requires that the courts be independent of the Executive to ensure impartiality in judicial decisions. As well as requiring freedom from interference in individual judicial decisions, the constitutional principle also depends on institutional independence in organising and managing the work of the courts.¹⁴
59. The courts are administered jointly by the judges and the Ministry of Justice in accordance with the [Statement of Principles](#) settled in November 2018 (reproduced in **Appendix 3**). This mixed model of courts administration is working well and in accordance with the separation of powers.
60. Courts administration requires cooperation between the Ministry and the judiciary at the operating level of all courts. Almost all courts have management committees with the Ministry. The strategic direction for the courts is also set cooperatively between the judiciary and the Ministry. This is undertaken in the Courts Strategic Partnership Group (CSPG), co-chaired by the Secretary for Justice and Chief Justice. CSPG meets quarterly.
61. The administration of the judicial branch is undertaken by committees. The key governance committee is the Heads of Bench Committee which comprises the heads of all the general and specialist courts, the Chief Judge of the Court Martial¹⁵ and the principal judges and principal disputes referee of the District Court. The committee meets two-monthly. The heads of bench are listed in **Appendix 4**.
62. Significant committees relevant to your portfolio include
- the Rules Committee chaired by Justice Francis Cooke
 - the Legislation and Law Reform Committee chaired by Justice David Goddard.¹⁶
 - the Te Kura Kaiwhakawā | Institute of Judicial Studies Board chaired by Justice Matthew Palmer.
 - the Information and Digital Governance Committee is a shared committee with the Ministry of Justice. Its terms of reference cover ICT operational matters and information management principles, policy and practice in the administration of the courts. It will be chaired by Justice David Goddard.
63. The Statement of Principles confirms that domains of exclusive judicial responsibility include oversight of the scheduling of court sittings, the assignment of judges and judicial officers and the listing of cases and applications. Education and training of judges is a judicial responsibility. Judges direct and supervise Registry staff in relation to the business of the court. Judges also control and supervise the use of IT in the business of the courts, have custody and control of court records and control the measuring of court performance. I list these, as in times of emergency or stress, these areas of exclusive responsibility can be accidentally overlooked in Executive decision-making processes.

¹³ See, for example, [s 92 Senior Courts Act 2016](#) and [s 24 District Court Act 2016](#)

¹⁴ Paragraph 1.1 [Principles observed by Judiciary and Ministry of Justice in the Administration of the Courts \(Statement of Principles\)](#)

¹⁵ Judges of all these benches fall under the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004

¹⁶ A list of matters which this committee considers is found at **Appendix 5**

Relationships between the judiciary, executive and legislature

64. In addition to the formal relationship between the Attorney-General and Chief Justice, as head of the judicial branch the Chief Justice also meets with Ministers and Members of Parliament.
65. It has become customary for the Chief Justice to meet with the Ministers of Justice and the Minister for Courts up to several times a year and to meet with the Prime Minister once a year. The Attorney-General has facilitated and generally attended those meetings.
66. As to Members of Parliament, this relationship is developing. In 2022, after discussion with the then Attorney-General, I met with the Shadow Attorney-General and National Party Justice spokesperson at their request to discuss issues covered in my 2021 Annual Report. Later in 2022, with Cooper P, I addressed the Chairs of Select Committees on the relationship between the judiciary and the legislature. For the 54th Parliament, my office and the Office of the Clerk are developing a session for new MPs on legislative interpretation and judicial decision making. It will be hosted by me and some heads of bench in the Supreme Court building. A date is yet to be set. I would like to discuss with you whether you would wish to be involved in this in any way - otherwise we will certainly keep your office fully briefed.
67. The judiciary also engages directly with Crown Law. From time-to-time, issues such as those arising from judicial terms and conditions or other matters are referred or brought to the attention of the Solicitor-General, where this is considered appropriate.

Remuneration Authority coverage

68. In 2022, Remuneration Authority coverage was extended to cover more judicial officers.¹⁷ This development has enabled the affected courts and tribunals to recruit well qualified individuals as vacancies arise. Tribunals which remain under the Cabinet Fees Framework report they face recruitment difficulties with some posts left unfilled. A list of Tribunals which fall under the Remuneration Authority and those which fall under the Cabinet Fees Framework is attached in **Appendix 6**. While ultimately a decision for the Minister of Justice, our recommendation is that all tribunal members exercising independent decision-making powers should fall under the Remuneration Authority.

Annual reporting by the courts

69. The judiciary prepares a variety of annual reports. I issue an all-courts calendar-year end report which I will provide to you prior to publication.¹⁸ In the general courts, the High Court produces a calendar-year end report and the District Court produces a financial year-end report.¹⁹ My report is distributed widely including to members of the Executive and Legislature: the Prime Minister, the Ministers of Justice and for Courts, the Justice Select Committee chair and party leaders represented in the House of Representatives. In 2024, the release of the 2023 report will be accompanied by the media conference which the Chief High Court Judge and Chief District Court will attend with me.

¹⁷ [Remuneration Authority Legislation Act 2022 No 74, Public Act 4 Schedule 4 amended – New Zealand Legislation](#)

¹⁸ [Chief Justice's 2022 Annual Report – Courts of New Zealand \(courtsofnz.govt.nz\)](#)

¹⁹ [High-Court-Annual-Review-2022.pdf \(courtsofnz.govt.nz\)](#) District Court Annual Reports | The District Court of New Zealand (districtcourts.govt.nz)

Dual administration of courts

70.

[REDACTED]

INTERNATIONAL CONNECTIONS AND REGIONAL COOPERATION

71. The courts have a number of international connections, many of which focus on Australia and the Pacific. I am a member of the Australasian Council of Chief Justices which meets twice a year. Recently, the new Chief Justice of Australia, Justice Stephen Gageler, identified regional cooperation as a priority to be explored through the Council. Alongside that, he and I are meeting with the Chief Justice of Singapore early in the new year to settle upon projects where it makes good sense to cooperate to address challenges or introduce innovations. I also meet regularly, if remotely, with the Chief Justices from a range of other jurisdictions.
72. Judges, Ministry staff and members of the profession form part of the Australasian Institute of Judicial Administration (AIJA).²⁰ The Chief High Court Judge Justice Susan Thomas represents the New Zealand judiciary on its Board and Council.
73. The apex courts of Australia, Canada, Singapore, Hong Kong and New Zealand meet biennially as the Asia-Pacific Judicial Colloquium on matters of interest. New Zealand hosted this meeting in March this year.
74. The Pacific Justice Sector Programme (PJSP) is hosted in my Office. The programme provides leadership development, training and tools and support for judicial officers, court staff and legal advocates across 15 Pacific nations.²¹ Financial support comes from the Ministry of Foreign Affairs and the Ministry of Justice. The United States State Department has recently agreed to provide additional funding for the programme.
75. New Zealand judges (serving and retired) sit throughout much of the Pacific.
- Four New Zealanders hold the office of Chief Justice. I am the Chief Justice of Tokelau and Judge Craig Coxhead of the Māori Land Court is Chief Justice of Niue. Retired High Court judges Patrick Keane and Paul Heath are the Chief Justices of the Cook Islands and Pitcairn Islands respectively.
 - A further 10 or so serving judges sit in the Cook Islands, Niue, Pitcairn, Tuvalu and Vanuatu courts. A District Court judge is seconded to Vanuatu on a full-time basis.
 - About 30 retired judges sit in the Cook Islands, Kiribati, Pitcairn Island, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Until last year, there was a lack of institutional support for these judges ranging from record keeping of appointments, suitable administrative assistance for hearings and decision making, and education in local law. The Ministry of Foreign Affairs and Trade has begun to supply pre-appointment briefings and enhanced consular support, my office is assisting with linking calls for judges with potential nominees, and the relevant members of the Pacific Chief Justices Leadership Forum will oversee the education packs.
 - In 2023, retired New Zealand judges began to sit again in Fiji. This had not occurred since 2007, following the 2006 coup d'état.

²⁰ [Home - Australasian Institute of Judicial Administration - Australasian Institute of Judicial Administration \(aija.org.au\)](https://www.aija.org.au). Its principal objectives include research into judicial administration and the development and conduct of educational programmes for judicial officers, court administrators and members of the legal profession in relation to court administration and judicial systems.

²¹ Cook Islands, Federated States of Micronesia, Republic of Fiji, Kiribati, Republic of Nauru, Niue, Republic of Palau, Papua New Guinea, Republic of Marshall Islands, Independent State of Samoa, Solomon Islands, Tokelau, Kingdom of Tonga, Tuvalu and Republic of Vanuatu

76. I am yet to visit Tokelau given COVID-19 travel restrictions and the general difficulty of access. I hope to make that journey in the next year or so, with the support of MFAT. There are important justice sector discussions underway.
77. You, the Solicitor-General and I have roles to play in the Permanent Court of Arbitration and when appointments are proposed to be made to the International Court of Justice. The Ministry of Foreign Affairs and Trade provides secretarial support as required.
78. Outside of the Pacific, the Family Court maintains connections with other courts making Hague Convention decisions, and the High Court maintains international insolvency connections through INSOL and is a member of the Standing International Forum of Commercial Courts (SIFoCC), a global forum of courts from all continents aimed at contributing to the rule of law through effective function of commercial dispute resolution.²²
79. Six retired judges sit on other international courts and tribunals ranging from the International Court of Justice to various commercial disputes courts and tribunals.

²² [SIFoCC | Standing International Forum of Commercial Courts](#)

BRIEF OVERVIEW OF EACH COURT

Judiciary and courts at a glance (November 2023)

	Court	Number of judges	Number of acting judges	Home registries	Circuit locations	Notes
Senior Courts	Supreme Court	6	1	Wellington	The court sits in Auckland and Christchurch once a year	
	Court of Appeal	10	1	Wellington	The court sits regularly in Auckland. It sits in Christchurch and Dunedin up to once a year	
	High Court	40 judges 7 associate judges		Auckland, Wellington Christchurch	15 combined courthouses nationwide	
District Court	District Court	180.5 FTE	40 acting warranted judges. These judges sit part time.	23 locations nationwide	46 courthouses and 12 hearing centres nationwide	A number of DC judges hold warrants but do not sit regularly in the DC.
		169.6 FTE (available sitting complement)	The effective FTE of acting warranted judges is 38.			There are 20 Community Magistrates
	- Family Court	67 judges				The District Court is also supported by Judicial Justices of the Peace (JJP's)
	- Youth Court	61 judges				
Specialist Courts	Māori Land Court and Māori Appellate Court	13 judges	1	Whangārei, Hamilton, Rotorua, Gisborne, Hastings, Whanganui and Christchurch	Also sits in District Court locations within each of its seven districts	Also has information offices in Auckland and Wellington
	Environment Court	8 judges 12 Commissioners 3 Deputy Commissioners	14 Alternate Judges made up of 2 retired Environment Court judges and 12 judges from other courts	Auckland, Wellington and Christchurch	Other locations nationwide as required (usually as close as possible to the land in question).	Environment Court judges also hold District Court warrants
	Employment Court	5 judges	1	Auckland, Wellington and Christchurch	Other locations nationwide as required	
	Coroners Court	21 FTE coroners 8 Relief Coroners 8 Associate Coroners	0	Whangārei, Auckland, Hamilton, Rotorua, Hastings, Palmerston North, Wellington, Christchurch and Dunedin.	Raoul Islands, Chatham Islands and Ross Dependency	Also has National Initial Investigation Office (NIIO) based in Auckland.

	Court	Number of judges	Number of acting judges	Home registries	Circuit locations	Notes
<i>Military Justice system</i>	Court Martial and Summary Appeal Court	11 judges		Wellington	Sits at military bases and other locations world-wide as required	Ten of these judges are also District Court judges.
	Court Martial Appeal Court	Four appointed judges		Wellington (High Court)	May sit at any location world-wide as required	All High Court judges are also judges of this court. The Chief High Court Judge is the head of bench.

Supreme Court | Te Kōti Mana Nui

80. The principal matter affecting the Supreme Court as 2023 draws to a close, is the appointment of a judge in light of the retirement of O'Regan J on [REDACTED]

81. [REDACTED]

Court of Appeal | Te Kōti Pira

Complement matters

82. The Court of Appeal will deliver over 600 judgments by the end of 2023. Around 54 per cent of judgments delivered relate to criminal matters. Most criminal work is done in the Divisional Court, where one permanent judge is joined by two High Court judges. The majority of this work is dealt with in accordance with the court's expectation that in the criminal jurisdiction, 90 per cent of all decisions are delivered within three months of hearing.

83. In the civil jurisdiction, the court must balance the allocation of hearing dates with providing sufficient writing time in the sitting programme in order for judges to deliver judgments in a timely manner. As retirements become imminent, judges are taken out of the sitting programme to enable them to complete their judgments within the statutory timeframe.²³ This places pressure on other judges. This year there have also been problems with illness which have placed additional pressure on available sitting and judgment writing time. Along with other courts, an increase in self-represented litigants in the civil jurisdiction has added to judges' case management workload.

84. While there has been some increase in the time taken for civil cases to be set down, this is not attributable to any reduction in the overall number of hours that the court sits: this year, total hearing hours increased by 12 per cent. It is not possible to schedule more civil work without adding to pressures which are already pronounced and having an effect on judgment delivery timeframes. Last year, 80 per cent of judgments were delivered within three months, which is the court's expectation in the civil jurisdiction.

85. It is likely that between now and November 2024, five appointments will need to be made to the court. With a 50% turnover in 12 months, this will slow the work of the court as new judges become familiar with the court's methods and the newly-composed court settles into its way of working.

High Court | Te Kōti Matua

86. The High Court has in large part addressed the impacts of COVID-19 on scheduled work.

87. All but one COVID-rescheduled jury trial has been completed. Jury trials have returned to pre-COVID numbers, but the nature of charges has changed. There is a much higher proportion of category 4 charges, which must be heard by the High Court. This impacts the court's ability to retain category 3 protocol cases, meaning those cases are heard in the District Court. Furthermore trials are longer – for example, a recent drugs trial ran for nearly 4 months, with initially 578 charges laid against 18 defendants.

88. The civil jurisdiction was adversely impacted by COVID-19 as hearing dates for longer trials were limited. Hearing time is increasing – for example, one recent weathertightness trial required five months of hearing time and considerable judgment writing time.

²³ Section 177(3) Senior Courts Act 2016

Proceedings under the Marine and Coastal Area (Takutai Moana) Act 2011 also require significant judicial resource.

89. The rise in severely disaffected litigants is impacting case management and increasing hearing time. It also has a significant impact on registry staff and judges.
90. Limited availability of courtrooms in the circuit affects the High Court's ability to schedule trials. For example, a 15 day plus High Court criminal trial cannot be offered a trial date in Whangārei until September 2025 or in Rotorua until October 2025. This is almost 12 months later than dates in the main centres, and is solely as a result of the lack of courtroom availability.
91. The High Court has instituted new processes to improve the effective operation of its civil and criminal jurisdictions, such as the High Court Criminal Disclosure Practice Note and increased case management of civil cases.

District Court | Te Kōti-ā-Rohe

92. In the year to end of June 2023, there were over 922,000 court events across all jurisdictions of the District Court. Almost 69,000 of these were by AVL (Audio-Visual Link). Overall, the number of active cases in the District Court has risen in the past year. This is as a result of new work coming in at a higher rate than cases resolved, and the growing length of time it takes for a criminal case to progress through the courts.
93. The District Court is managing a significant case backlog, particularly in the criminal and family jurisdictions. A case is defined as 'backlog' if the time it takes to hear and determine it exceeds the relevant policy or legislative timeframe. The backlog has been growing since 2015, and was exacerbated during COVID-19, by industrial action in late 2022, and by extreme weather events in early 2023. Those weather events caused significant short-term disruption to court operations, but of most concern, required many months of courtroom closure in the Auckland District Court – one of the busiest courts in New Zealand). In 2015, 26 per cent of all cases in the criminal, family and civil jurisdictions were considered backlogged, compared to 41 per cent of all cases in December 2021 and 37 per cent in December 2022.
94. Improving timeliness in the District Court is a priority to ensure public confidence in the justice system. With the Ministry of Justice, and in association with others working in the justice sector, we have put in place a range of measures for improving timeliness in the District Court across New Zealand. [See para [26].
95. Since 1 May 2023, the number of criminal backlog cases has stopped increasing and begun to reduce. Family backlog cases have also reduced. Although it is early days, these results are significant achievements and provide grounds for cautious optimism about the new approach.

Family Court | Te Kōti Whānau

96. The reach and breadth of the Family Court is significant. The Family Court hears matters under more than 30 statutes and deals with more than 60,000 applications annually. Overall, active applications before the Family Court are at a lower level than in 2019-20 (pre-COVID-19), despite a recent rise in new applications.
97. The number of applications that are defended has also increased, requiring more court time and effort. Care of Children Act applications make up over half of all applications, of which a high proportion (70%) are defended.
98. The establishment of the Family Court Associate role is expected to allow more effective use of judge time and reduce delay. Family Court Associates will take on some of a Family Court judges' workload, including decisions made at the early stages of proceedings and

interlocutory hearings. In addition, the Associate will be able to exercise all of the powers of a court registrar.

99. New Zealand is not a signatory to 1996 Child Protection Convention which allows for orders to be made to protect children when they move between countries. As a non-signatory, New Zealand is unable to make orders either for children leaving New Zealand to reside elsewhere, or for children returning to New Zealand with regard to child support and accommodation arrangements, for example. This means we are out of step with signatory countries in terms of the protection we can provide. The Principal Family Court Judge has raised this issue with the Ministry of Justice [REDACTED]

Youth Court | Te Kōti Taiohi

100. The Youth Court is a solution-focused court set up in 1989 under the Oranga Tamariki Act. There are 61 designated Youth Court judges.
101. The Act addresses offending by children and young people from both preventive and rehabilitative standpoints. These approaches have been very successful. The number of children and young people appearing in the Youth Court, as well as the proportion of children and young people who offend, have both been on a steady decline for the past thirty years.
102. In the year before the introduction of the Oranga Tamariki Act 1989, there were 10,000 children and young people in the youth justice system in New Zealand, with about 1,000 in custody. The year after the Act came into force, the number of young people in the Youth Court was 2,000. Although figures have ebbed and flowed – including, in common with other countries, increasing slightly since COVID-19 – the overall trend has been maintained. As at the end of October 2023, there were 1,111 young people in the Youth Court.
103. Most young people who offend are dealt with through the Police diversion scheme. The young people who end up in the Youth Court are those who have committed serious (and often repeated) offences. The Act has a focus on restorative and community-linked justice based around the family group conference. It envisages a therapeutic judicial response, with a focus on holding young people accountable while also restoring the lives of the young person, their victims, and their whānau. A team of dedicated specialists assist young people to actively engage and participate in proceedings.
104. Youth before the court will often have a neuro-disability and almost always have high levels of childhood trauma. Flowing on from this are high rates of early onset mental health difficulties and substance addiction. Truancy, suspension or expulsion from school and other forms of educational disengagement are common too.

Civil division

105. In its civil jurisdiction, the District Court resolves disputes between individuals or organisations. A person who feels they have been wronged may bring a claim and, if successful, be awarded a remedy such as compensation. The civil jurisdiction in the District Court has seen an increase in new work and resolutions in the last financial year, with debt collection cases prominent among the new work.

Disputes Tribunal

106. The Disputes Tribunal is a division of the District Court. The Disputes Tribunal hears and determines small claims of up to \$30,000. Hearings are conducted in a less-formal manner than a court, and are held in almost every District Court in the country.

Māori Land Court and Waitangi Tribunal | Te Kooti Whenua Māori

Particular features

107. The Chief Judge of the Māori Land Court is responsible for the leadership of both the Māori Land Court, and Māori Appellate Court and the Waitangi Tribunal. The legislation for both jurisdictions is administered by Te Puni Kokiri. Chief Judge Caren Fox will (as has been the case for previous governments) prepare a detailed memorandum for the incoming Minister for Māori Development setting out the current state and priorities of the Māori Land Court and Waitangi Tribunal. Copies will be provided to the Attorney-General, the Minister of Justice and the Minister for Courts. The Chief Judge would be happy to meet with you to discuss should you wish to do so.
108. The court has seen a steady rise in applications since the enactment of Te Ture Whenua Māori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2020 and the introduction of the court's new digital platform discussed below. The court has 10,320 active registered applications on hand as of September 2023,²⁴ an increase of 28% from the same month in 2022, with in excess of 1300 applications still to be registered.
109. The 2020 Amendment Act introduced significant changes to the court's jurisdiction, including making tikanga-based mediation available to all Māori landowners seeking to resolve disputes between one another without requiring court adjudication. The Amendment Act introduced these mediation provisions in two stages. Judge-led mediation was available immediately upon the Act coming into force, with mediation from trained non-judicial mediators to be available at a later date to be set by order in council. The Māori Land Court judiciary has been assisting staff and the Ministry of Justice to establish a structure and guidelines for a pool of such expert mediators once this order in council comes into force. However, the Ministry have recently advised that they have ceased work on this requirement in the legislation due to resourcing constraints.
110. A new digital system for accessing Māori land information and case managing Māori Land Court applications, Pātaka Whenua, was developed alongside the legislative amendments to the court's legislation. This system, which can be seen as a precursor to Te Au Reka (digital case and court management system) currently being developed for the general courts, went live on 29 May 2023. Since that date judges and court staff have been working to embed the system in their management of court applications, and to ensure that it informs and assists Māori landowners in understanding their land and bringing cases to Court. A number of necessary enhancements to improve the system and the service it provides to landowners (as well as to judges and court staff) have been identified. Work is progressing between the judges, court staff and the Ministry of Justice on this.

Waitangi Tribunal

111. In the Waitangi Tribunal, there are two major streams of work. The Tribunal's hearing programme has focused on completing the hearing of district-based Treaty claims. The Tribunal has completed inquiry into 30 districts, covering 83% of Aotearoa's land area, with four district inquiry hearings still underway.
112. In the second stream, the Tribunal is progressing inquiries into Treaty claims concerning Crown policy and actions that are alleged to have affected Māori nationally. These claims concern issues such as Crown policies affecting Māori military veterans and mana wāhine, and the provision of health services and housing to Māori.
113. There are currently 13 Waitangi Tribunal inquiries in hearing or preparation for hearing. These collectively encompass 1299 claims filed with the Tribunal. As a part of planning for

²⁴ The number of active applications across each of the Māori Land Court districts is as follows – Aotearoa: 1,168; Tairāwhiti: 640; Taitokerau: 2,117; Tākitimu: 681; Te Waipounamu: 1,055; Waiariki: 2,546; Waikato-Maniapoto: 1,651. The balance of the active applications (452) is made up of appeals to the Māori Appellate Court, applications to the Chief Judge, and other specialist applications.

these inquiries, Tribunal presiding officers are working on inquiry design innovations to increase direct claimant participation and reduce claimant reliance on lawyers.

114. The Waitangi Tribunal has published its inaugural annual report this month.

Employment Court of New Zealand | Te Kōti Take Mahi o Aotearoa

Jurisdiction

115. The court has exclusive jurisdiction to hear and determine proceedings founded on an employment agreement. In many respects it is a court of final instance – with very limited exceptions, parties require leave to appeal against a judgment of the court to the Court of Appeal. Parties may not appeal a question relating to the court's construction of an individual or collective employment agreement. The Employment Court has both an appellate jurisdiction to hear appeals against the Employment Relations Authority (called challenges), questions of law (and other matters) removed from the Authority, declarations of employment status, matters of contractual interpretation, judicial review applications, applications for search, freezing and compliance orders, and injunctions in respect of strikes and lockouts.

Current state

116. The workload and flow of the court has remained fairly stable over the last few years. It was largely able to manage its caseload through the pandemic by adopting a flexible range of case management tools, much assisted by support from employment practitioners. The Employment Court has continued to deal with significant cases involving the status of workers entitled to employee protection; the correct interpretation and application of various provisions of the Holidays Act 2003; the rights and obligations of employers during the COVID-19 pandemic; equal pay; and employer obligations in respect of health and safety. We anticipate a continued (and possibly increased) flow of cases involving the exploitation of workers, particularly migrant workers, and minimum code breaches more generally.

Tripartite relationship

117. The Chief Judge has regular tripartite meetings with the Council of Trade Unions (Richard Wagstaff) and Business New Zealand (Paul McKay), to build an understanding of what issues employees, unions and employers face.

Access to justice and quality of non-legal advocates

118. Self representation by litigants (both employees and employers) often presents challenges. It is not uncommon for litigants to have very limited financial resources by the time they get to the court, having been through mediation and the Employment Relations Authority. The professional standards of some advocates (who are permitted to appear in the court under the Employment Relations Act and who are unregulated) remains an issue.

Coroners Court | Te Kōti Kaitirotiro Matewhawhati

Complement and workload

119. The Coroners Court bench is comprised of 22 permanent coroners (21 FTE), and 16 relief and associate coroners (these latter groups hold fixed term warrants).²⁵ Increases in the coronial complement occurred following Budget 2022 and the Coroners Amendment Act 2023 (which created the associate coroner role).
120. Demand on the court has increased significantly in recent years. Approximately eight coroners FTEs are required to service the 24/7 national duty roster which ensures the efficient progress of matters through the first stages of the coronial process and to enable prompt release of the tūpāpaku to whānau. There are a number of extremely resource

²⁵ The last of those appointments will be in place in January 2024.

intensive matters currently before the court, including the Christchurch Masjidain inquiry, the Samsudeen inquiry (Lyn Mall attack) and the Whakaari/White Island inquiry.

121. The increased bench of 38 will allow the court to significantly reduce the backlog of cases, and the consequent delays experienced by whānau. Coroners will spend less time on national duty and be more able to progress existing files. Since the appointment of the first tranche of new associate and relief coroners in October this year, several hundred aged cases previously unable to be progressed due to a lack of coroner capacity have been transferred to them and good progress is being made on those cases.

Recruitment and retention

122. The court is rarely at full strength and retention is an issue at times. Seven permanent coroners have elected to leave the bench in recent years. The appointment process for coroners takes an average of 5 months, so each resignation or retirement significantly affects the capacity of the court.
123. The next 3 years will see two retirements and the expiry of eight relief warrants. A reduction of that magnitude in the number of coroners will seriously impact the ability of the bench to clear aged files and progress matters entering the jurisdiction in a timely way. Permanent appointments, or warrant extensions, will be required to enable the court to continue to provide the level of service the community requires.

Access to justice issues

124. Unlike comparable Australian jurisdictions, the court does not have staff dedicated to support families as they navigate the coronial process, or to ensure cultural needs are identified and accommodated to the greatest extent possible.
125. Families are frequently the only unrepresented parties in court when a matter progresses to inquest, making it difficult for them to participate meaningfully.

Property

126. The Ministry of Justice has been unable to provide suitable accommodation for coroners. Recently, coroners in multiple locations have had to share chambers. Shared accommodation exacerbates the stress of the intense and difficult work of coroners. The distressing content they are required to view and discuss also requires a private space.

Environment Court | Te Kōti Taiao

127. The court will be affected by signalled substantive and procedural changes to environmental law outlined in the Coalition Agreements.

Court Martial | Te Kōti Whakawā Kaimahi o Te Ope Kātua

128. The Court Martial has jurisdiction to hear charges alleging offences against both military and criminal law committed anywhere in the world. Its powers of punishment are equivalent to those of the High Court but include unique sentences, such as detention in the Services Corrective Establishment or dismissal from His Majesty's Service. The Court Martial has adopted the principles of Te Ao Mārama in its proceedings. Appeals from the Court Martial are heard by the Court Martial Appeal Court, which is part of the civilian courts system, and above that by leave to the Court of Appeal or Supreme Court.
129. Less serious offending is tried before disciplinary officers (who are not judicial officers). Appeals against the findings, punishment, or orders of disciplinary officers are heard in another military court – the Summary Appeal Court | Te Kōti Whakawā Pira Whakaraupapa Kaimahi o Te Ope Kātua. All judges of the Court Martial are also Judges of the Summary Appeal Court. Cases are heard by a single judge sitting alone. There is no further right of appeal from the Summary Appeal Court.

APPENDICES

Appendix 1 – Extract of material on Te Au Reka presented to the Justice Select Committee on 24 August 2023

What Te Au Reka will mean to

New Zealanders

- will file, pay and track their case online
- will have a single source of trusted information
- will receive consistent, timely responses about their cases
- will have greater certainty their case will progress on the day
- will experience less stress and uncertainty.

Courts

- will have systems and processes that support them to manage cases
- will be able to focus on the activities that help progress cases and support participants and communities
- will reduce risks to privacy, security and the integrity of the official court record
- will have improved resilience in the event of an emergency
- will have greater transparency of where the blockages are occurring.

Judiciary

- will have greater confidence that their decisions and requests are actioned correctly and without delay
- will have all available information and can intervene if it's not provided
- will have access to the court file and the ability to work anywhere in the country
- will have increased transparency of the courts and the actions of participants, holding people to account for non-compliance.

What Te Au Reka includes

Te Au Reka delivers modern capability in five key areas:

- **Online portals** - supporting participants to file, pay and track progress.
- **Logistics management** - supporting the right things to occur at the right time.
- **Content management** - supporting management, privacy and access to information
- **Procedural management** - supporting procedural processes, including judicial decisions
- **Administration management** - supporting the activities that underpin court processes

Implementation

Te Au Reka will be implemented in 3 phases

Phase 1

Phase 1

Family Court

Plus: Proof of concepts for District Court Criminal and High Court Civil

Scope and define of Phase 1 is planned for September 2023—June 2024.

*Estimated completion: FY 2025/2026**

Phase 2

Phase 2

District Court Criminal, including Youth Court and District Court Civil

*Estimated completion: FY 2026/2027**

Phase 3

Phase 3

Senior Courts (High Court, Supreme Court, Court of Appeal), Environment Court, Coroners Court, Disputes Tribunal

*Estimated completion: FY 2027/2028**

**Following scope and define for Phase 1 we will finalise the timeline.*

Each phase comprises 5 stages: Scope, Define, Build, Acceptance and Deploy. The initial Statement of Work is focused on the first two stages: Scope and Define.

- **Scope** aims to achieve greater accuracy of scope. This phase defines the outcomes and requirements the Ministry and judiciary are seeking and what the vendor's priorities need to be. The vendor will also access the requirements against the out-of-the-box ("OOB") functionality.
- **Define** formalises the planning from the Scope stage and establishes the solution foundation and design in preparation for the Build stage. This stage aims to define how requirements will be implemented, including the foundational configuration of the solution and the design of specific modifications.
- **Build** involves the iterative build and verification of the complete set of configuration and functional testing.
- **Accept** is where all the efforts of the previous phases culminate in a solution that is ready for acceptance testing. Key activities in this phase include training, user acceptance testing, and preparing for go-live.
- **Deploy** involves final Go-Live Cutover activities to the production system, Go-Live support and transition to support. Deploy is the first step of rolling out the solution.

Appendix 2 – Te Ao Mārama: enhancing justice for all

Te Ao Mārama is the new operating model being developed for the District Court which responds to longstanding calls for transformative change to the administration of justice.

It builds on a long tradition of solution-focused judging in the District Court. In the past, specialist courts within that court have provided wrap-around support for people going through the court process to ensure that they can participate fully in hearings and have enabled defendants to access support in order to address the root causes of their offending. Currently, solution-focused courts are only supported to operate in particular areas – for example, the Young Adult List Court in Porirua, Gisborne and Hamilton, the Matariki Court in Kaikohe, the Court of Special Circumstances in Wellington, and the Alcohol and Other Drug Treatment Courts in Auckland, Waitakere and Hamilton. This leads to postcode justice.

The best practice from these courts is being drawn upon for Te Ao Mārama to promote principles of restoration and healing and to enhance community well being. The changed operating model will be inclusive of all people affected by the business of the court, regardless of culture, language, ethnicity, means or abilities. That said, Te Ao Mārama needs to be effective for Māori given the disproportionate representation of Māori in the criminal justice, care and protection, and family violence jurisdictions of the District Court.

Te Ao Mārama was announced in Hamilton and Gisborne in 2021 followed by Kaitiaki in 2022. The plan for ongoing implementation for other courts is below.

Te Ao Mārama operates within the existing frameworks of the law, including the New Zealand Bill of Rights Act and the Sentencing and Bail Acts. It does not compromise the independent roles of the judiciary, state agencies or community groups. However it does call for new behaviours, new information, new services and new processes.

The Te Ao Mārama model is being progressively implemented in the family, criminal and youth jurisdictions. Relevant justice agencies have been encouraged to work together with local community providers and local iwi. In the Family Court, the primary focus will be on care and protection and family violence proceedings. In youth and adult criminal proceedings, the primary focus will be on a defendant's early appearances (including bail and sentencing).

Te Ao Mārama has the potential to help address two pressing problems – high rates of recidivism and overrepresentation of Māori in the criminal and family justice systems. It can do this by addressing the root causes of the offending, and by using community, including whānau, hapū and iwi, to help the defendant and other parties to reintegrate through structures that protect against reoffending and family dysfunction.

There are two main focuses in the criminal jurisdiction

- Creating hearing environments and processes that support engagement and comprehension for the people who are the subject of the proceeding. This can be as simple as using plain language or ensuring that communication assistance is available for those who are neurologically or linguistically impaired.
- Utilising the court process as an opportunity to address the conflict or the harm that underlies the court proceeding. This is sometimes referred to as therapeutic justice – where the court facilitates community engagement and government support for defendants to address the causes of offending.

The plan for implementation



Current state

Current funding will enable the programme to be implemented initially in 13 District Courts. It is underway in

- Hamilton District Court
- Gisborne District Court
- Kaitiāia District Court.

Active engagement with courts, the justice sector and communities is underway in

- Napier
- Hastings
- Kaikohe
- Whangārei
- Tauranga.

The next locations are

- [REDACTED]
- [REDACTED]
- [REDACTED]

These locations have been selected using the following criteria

- Court and sector readiness
- Judicial readiness
- Community readiness
- Iwi readiness.

Regardless of whether they are a Te Ao Mārama location provided with support to build broad ranging connections with justice sector, community and iwi groupings, other District Courts are encouraged to implement elements of best practice approaches including

- Solution-focused judging practices
- Enhanced connections between the courts and their communities
- Use plain language
- Toning down formalities
- Alternative courtroom layouts
- People encouraged to feel heard in the courtroom
- Improved quality of information provided to court.

A *Best Practice Framework* which covers these points will be available to all judges and judicial officers, registry staff, counsel and wider stakeholders.

Appendix 3 - Principles observed by Judiciary and Ministry of Justice in the Administration of the Courts (29 November 2018)

1. Purpose of statement

1.1 The constitutional principle of separation of powers requires that the courts be independent of the Executive to ensure impartiality in judicial decisions. As well as requiring freedom from interference in individual judicial decisions, the constitutional principle also depends on institutional independence in organising and managing the work of the courts.

1.2 The legislation under which the courts of New Zealand operate places on the judiciary the responsibility for the orderly and efficient conduct of the business of the courts. One of the purposes of the legislation is to improve the transparency of court arrangements “in a manner consistent with judicial independence”.

1.3 The judiciary is responsible for the work of the courts, but is supported by the Ministry of Justice, a department of the Executive government. The Secretary for Justice (through the Minister for Courts) is accountable to Parliament for the expenditure of the public funds needed to administer justice in the courts.

1.4 The judiciary and the Ministry of Justice therefore share responsibility for delivering justice through the courts. Both have interests in developing and maintaining a system of justice that is just, fair, accessible, modern, and effective, and which delivers timely, impartial, and open justice. The effective and efficient functioning of courts is assisted by the Ministry and the judges maintaining a constructive relationship involving open communication and respect for their respective responsibilities and institutional constraints.

1.5 The purpose of this statement of principles is to recognise the respective separate responsibilities of the judiciary and the Ministry, and responsibilities that are shared between the judiciary and the Ministry.

2. The roles of the Ministry and the judiciary

2.1. The Secretary for Justice, as Chief Executive of the Ministry of Justice, is responsible to the Minister for Courts. The Minister is responsible to Parliament for the proper use of the public resources used to support and run the courts, and for ensuring that sufficient resources are available to provide an accessible and effective justice system. The Secretary for Justice is formally responsible under the State Sector Act 1988 for employing staff who support the judiciary, including the Registry staff of the courts. Registrars, Deputy Registrars and other officers may be appointed under the State Sector Act 1988 to support the conduct of the business of each court, but act under judicial direction in doing so.

2.2. The Chief Justice is head of the judiciary in New Zealand and is also ultimately responsible under the Senior Courts Act 2016 for the orderly and efficient conduct of the Senior Courts’ business. The Chief Judge of the District Court is ultimately responsible under the District Court Act 2016 for the orderly and efficient conduct of the business of the District Court. The Chief Judges of the Employment Court and Māori Land Court, and the Principal Judge of the Environment Court similarly have statutory responsibilities for the orderly and expeditious discharge of the business of their courts.

2.3. In conducting the business of the courts, it is necessary for the judiciary to engage with the Ministry of Justice on matters of overlapping responsibility, including in the assessment of need and in the provision of facilities and resources to support the courts. Where the engagement is in relation to matters affecting all courts, the Chief Justice and the Secretary for Justice need to lead the engagement. This statement addresses the basis for the necessary engagement to ensure that it does not compromise the constitutional principle of judicial independence and is similarly respectful of the Executive’s different statutory and constitutional responsibilities.

3. Judicial responsibilities

3.1. The judiciary's responsibilities in relation to conducting the business of the courts include:

- a) the scheduling of sittings of the court, the assignment of judges and judicial officers, and the listing of cases and applications (including those for alternative dispute resolution);
- b) the use to be made of courts and their precincts;
- c) the direction and supervision of Registry staff in relation to the business of the court;
- d) the selection and supervision of immediate judicial support staff such as personal assistants, clerks and other similar staff (subject to paragraph 4.2(d));
- e) the management of staff to support the Chief Justice and heads of bench;
- f) the provision of judicial education and training;
- g) the control and supervision of the use of information technology for the business of the court;
- h) the custody and control of court records, whether or not held electronically, and control over access to them;
- i) measuring court performance.

4. Ministry of Justice responsibility for court support

4.1. The Secretary for Justice is solely responsible for decisions on all matters of expenditure of public money. The Secretary is accountable to the responsible Minister for the financial management, financial performance, and financial sustainability of the department.

4.2. Ministry of Justice responsibilities in relation to the business of the courts include:

- a) providing the judiciary with support to enable heads of bench to discharge their responsibility for the orderly and efficient conduct of court business, including those responsibilities in paragraph 3 above;
- b) supporting the judiciary in improving access to justice and best practice in the courts;
- c) the provision, maintenance and operation of technology and buildings for the operation of the courts;
- d) discharging its responsibilities with respect to staff in accordance with the State Sector Act 1988;
- e) the maintenance of court registries;
- f) ensuring security and safety in court buildings;
- g) measuring and reporting on the use of the resources for which it is responsible;
- h) supporting the offices of the Chief Justice and the offices of the heads of the other courts to enable them to discharge their responsibilities.

5. Shared responsibilities

- 5.1. Because the work of the courts draws on public resources, it is necessary for the judiciary and the Ministry of Justice to cooperate so that those resources are used efficiently and effectively.
- 5.2. The Secretary for Justice is responsible for ensuring there is appropriate and timely consultation through the Chief Justice about how its responsibilities for court administration will be provided, including the structuring of staff support and other resources required. Such consultation also includes the design and provision of appropriate court facilities and information technology strategies and initiatives.
- 5.3. The Secretary for Justice will consult the Chief Justice annually about the operating budgets for the courts.
- 5.4. The Secretary for Justice and the judiciary will cooperate in the collection and sharing of information necessary to assist each in their functions consistently with the principle of judicial independence and executive accountability for the expenditure of public funds.
- 5.5. The maintenance of court records is a shared responsibility between the Secretary for Justice and the Chief Justice. The judiciary has the responsibility for the custody and control of records of court proceedings and associated court administration, whether or not held electronically, and control over access to them (subject to any legislative requirements and any policies developed by the judiciary). The Ministry is responsible for the collection and storage of records relating to the use of Ministry resources, including the archiving of court and judicial records on the basis agreed between the Chief Justice and the Secretary for Justice from time to time.

6. Standing committees for engagement between the Ministry and the judiciary

Following enactment of the 2016 legislation and restructuring of responsibilities for operations in the Ministry of Justice, restructuring of the processes of engagement is necessary. Courts administration requires cooperation between the Ministry and the judiciary at the operating level for the Senior Courts, District Court and specialist courts. It is also necessary to ensure that strategic direction for the courts be set by cooperation between the judiciary and the Ministry. The Chief Justice and the Secretary for Justice are to agree on a new structure for engagement between the Ministry and the judiciary at both the operational and at a strategic level (through separate joint committees for the Senior Courts, District Court and specialist courts) and it is agreed that any such means of engagement will be kept under review.

Appendix 4 – Heads of Bench Committee members

The membership includes all statutory heads of bench (as per the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004), plus the Supreme Court senior puisne judge (who may be required to perform the duties of Acting Chief Justice at short notice), along with the heads of the District Court divisions: the Principal Judges of the Family Court and Youth Court and the Principal Disputes Tribunal Referee.



Helen Winkelmann
Chief Justice and
head of the judiciary



Susan Glazebrook
Supreme Court Judge
(Senior Puisne Judge)



Mark Cooper
President of the Court of Appeal



Susan Thomas
Chief High Court Judge



Heemi Taumaunu
Chief District Court Judge



Jackie Moran
Principal Family Court Judge



Ida Malosi
Principal Youth Court Judge



Janet Robertshawe
Principal Disputes Referee



Caren Fox
Chief Māori Land Court Judge and
Chairperson of the Waitangi
Tribunal



Christina Inglis
Chief Judge of the Employment
Court



David Kirkpatrick
Chief Environment Court Judge



Anna Tutton
Chief Coroner



Kevin Riordan
Chief Judge of the Court Martial
and Judge Advocate General of the
Armed Forces

Appendix 5 – Matters considered by the Legislation and Law Reform Committee

It is a well-established convention that the judiciary should not interfere, or be seen to seek to interfere, with executive policy-making or parliamentary law-making. It is consistent with that convention for the judiciary to comment on proposed legislation affecting the operation of the courts, the independence of the judiciary, the rule of law, or the administration of justice.

The Chief Justice and heads of bench receive advice from the cross-court Legislation and Law Reform Committee about Bills and other law reform proposals on which it may be appropriate for the judiciary to comment. Matters that the committee considers, and may bring to the attention of the Chief Justice, include:

- restrictions on accessing the courts, including in particular restrictions on judicial review;
- provisions affecting access to justice, including matters such as legal aid and court fees;
- changes to any existing role, function, jurisdiction, or power of all courts of general and specialised jurisdiction, including proposals for new roles, functions, jurisdiction or powers of these courts;
- measures with implications for the inherent jurisdiction of the High Court;
- measures affecting the scope and enforcement of the law of contempt;
- proposals affecting the reporting of or commentary on court proceedings;
- proposals affecting court procedure, including proposals for separate rules of procedure for a court;
- proposals involving the disclosure of court record information;
- proposals affecting the role and powers of court registrars;
- creation of new offences and penalties and use of the civil jurisdiction to enforce criminal penalties;
- creation of new powers of arrest and detention;
- proposals affecting the law of evidence, including self-incrimination and privilege;
- creation of new powers of investigation, including compulsory provision or sharing of information;
- implications for the courts of changes in sentencing laws, without comment on government policy motivating proposed changes;
- proposals involving the status and terms and conditions of appointment of judges;
- proposals with implications for fundamental rights and freedoms or the rule of law;
- proposals that would extend a court's workload and require additional resources; and
- proposals concerning cross-border legal co-operation, and in particular cross-border judicial cooperation.

The Ministry of Justice proactively consults with the Legislation and Law Reform Committee in relation to proposed courts legislation and related policy issues. The committee also engages with other government departments that are responsible for law reform proposal affecting the operations of the courts and related issues.

The Chief Justice will on occasion make a submission to a Select Committee on a Bill where it is appropriate to do so consistent with the conventions above.

Appendix 6 – Differing remuneration arrangements between tribunals

Tribunal members paid under the Remuneration Authority:

Tribunal	Role
Tenancy Tribunal	All members
Disputes Tribunal	All members
Immigration and Protection Tribunal	All members
Employment Relations Authority	All members
Motor Vehicle Disputes Tribunal	All members
Sports Tribunal	All members
Human Rights Review Tribunal	Chairperson and Deputies
Victim's Special Claims Tribunal	Chairperson
Weathertight Homes Tribunal	Chairperson
Alcohol Regulatory and Licensing Authority	Chairperson
Land Valuation Tribunal	Chairpersons

Tribunal members paid under the Cabinet Fees Framework:

Tribunal	Role
Alcohol Regulatory and Licensing Authority	Members
Canterbury Earthquake Insurance Tribunal	Chairperson and Members
Copyright Tribunal	Chairperson and Members
Customs Appeal Authority	Chairperson
Human Rights Review Tribunal	Members
Immigration Advisors Complaints and Disciplinary Tribunal	Chairperson
Land Valuation Tribunal	Registered Valuers
Lawyers and Conveyancers Disciplinary Tribunal	Chairperson and members
Legal Aid Tribunal	Chairperson and members
Legal Aid Review Authority	Chairperson
Legal Complaints Review Officer	Legal Complaints Review Officer and Deputy
Licensing Authority of Secondhand Dealers and Pawnbrokers	The Authority
Motor Vehicle Disputes Tribunal	Assessors
Private Security Personnel Licensing Authority	Chairperson and Deputy
Real Estate Agents Disciplinary Tribunal	Chair, Deputy and Members
Social Security Appeal Authority	Chair and Members
Student Allowance Appeal Authority	The Authority
Taxation Review Authority	Chairperson
Trans-Tasman Occupations Tribunal	Chairperson and Members
Weathertight Homes Tribunal	Members