



Report from the High Court 2019

The Year in Review

I am pleased to present a short report on events of note during 2019 in the High Court of New Zealand - Te Kōti Matua o Aotearoa.

Hon Justice Geoffrey Venning
Chief High Court Judge
Te Kaiwhakawā Matua

27 May 2020

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Overview

2019 was notable for the considerable overseas interest in two high profile murder trials. The High Court had to address the accreditation of overseas media, consider the breach of suppression orders by overseas media, and explain how the New Zealand system of criminal justice works for a large victim group comprised of many nationalities.

Features of High Court civil work in 2019 were an increase in civil proceedings filed in Auckland and a significant reduction in filings of earthquake related proceedings in Christchurch.

In the criminal jurisdiction, the Court heard more homicide trials than previous years.

Administratively, the High Court improved its distribution of judgments this year.

- [High Court judgments of public interest landing page](#)

The judicial complement and their responsibilities

As at 31 December 2019 the complement was 47, made up of 40 judges and seven associate judges.

During the year:

- Four judges left the Court. Courtney J was appointed to the Court of Appeal in February and Collins J in March. Judge Matthews retired in April and Toogood J in August.
- Four judges were appointed this year: Walker J in April, Gwyn J, Doogue J and Judge Paulsen in August.

List judges assist the Chief Judge overseeing the workload in their circuit and providing advice and counsel on matters of policy for the Court. The list judges in 2019 were:

- Wylie J (Auckland civil).
- Moore J (Auckland criminal).
- Lang J (Waikato/Bay of Plenty liaison).
- Brewer J (Whangārei liaison).
- Mallon J (Wellington circuit civil).
- Simon France J (Wellington circuit criminal).
- Mander J (Christchurch circuit civil).
- Nation J (Christchurch circuit criminal).
- Associate Judge Bell (liaison judge for associate judge work).

The case management list judges in 2019 were:

- Christchurch earthquake list: Gendall and Osborne JJ, and Associate Judges Paulsen and Lester.
- Auckland leaky buildings list: Lang and Downs JJ and Associate Judge Bell.
- Auckland judicial review list: Fitzgerald J.
- Auckland appeals lists: Hinton J (civil) and Lang J (criminal).

- Auckland summary judgments and caveats: Edwards and Gault JJ.
- Probate lists: Whata J (Auckland), Dunningham J (Christchurch) and Cull J (Wellington).
- Marine and Coastal Area (Takutai Moana) Act matters: Churchman J (Wellington).

The Rules Committee¹ has a number of statutory and appointed members from the High Court. Courtney J was chair of the committee until her appointment to the Court of Appeal in February. Dobson J then took over as chair. The second appointed member from the High Court was Cooke J. Venning J, as Chief Judge, was an *ex officio* member.

The commercial panel as at December 2019 comprised Venning, Courtney, Lang, Mallon, Dobson, Wylie, Katz and Muir JJ. In April the panel was increased by six judges: Simon France, Ellis, Peters, Thomas, Fitzgerald and Jagose JJ.

Workload

A representation of the Court, its complement and business as at 31 December 2019 is attached as [Appendix 1](#). For selected statistics and commentary on work before the Court see [Appendix 2](#) to this report.

Judgment timeliness

In 2019 the Court delivered 3497 judgments. The Court has set a standard of 90% of civil judgments delivered within three months of the hearing or last submissions. In 2019 the actual result was 92.1%.

The High Court reports twice yearly on “judgments outstanding beyond a reasonable time” as required by section 170 of the Senior Courts Act 2016.² In the absence of extenuating circumstances, the Court considers judgments over six months old to be delayed beyond a reasonable time.

As at 31 March 2019, there were two judgments then outstanding beyond a reasonable time. During the period from 1 April 2019 to 30 September 2019, a further six judgments became outstanding beyond a reasonable time. Of the judgments that were outstanding beyond a reasonable time at the start of the period or became outstanding, six judgments were delivered by 30 September 2019. As at 30 September 2019, there were two judgments then outstanding beyond a reasonable time.

- [Judgment delivery expectations and related material](#)

¹ A statutory committee set up under s 51B Judicature Act 1908 and continued by s 155 Senior Courts Act 2016 which is charged with regulating the practice and procedure of the senior courts. See [Rules Committee — Courts of New Zealand](#)

² [Section 170 Senior Courts Act 2016](#)

Civil

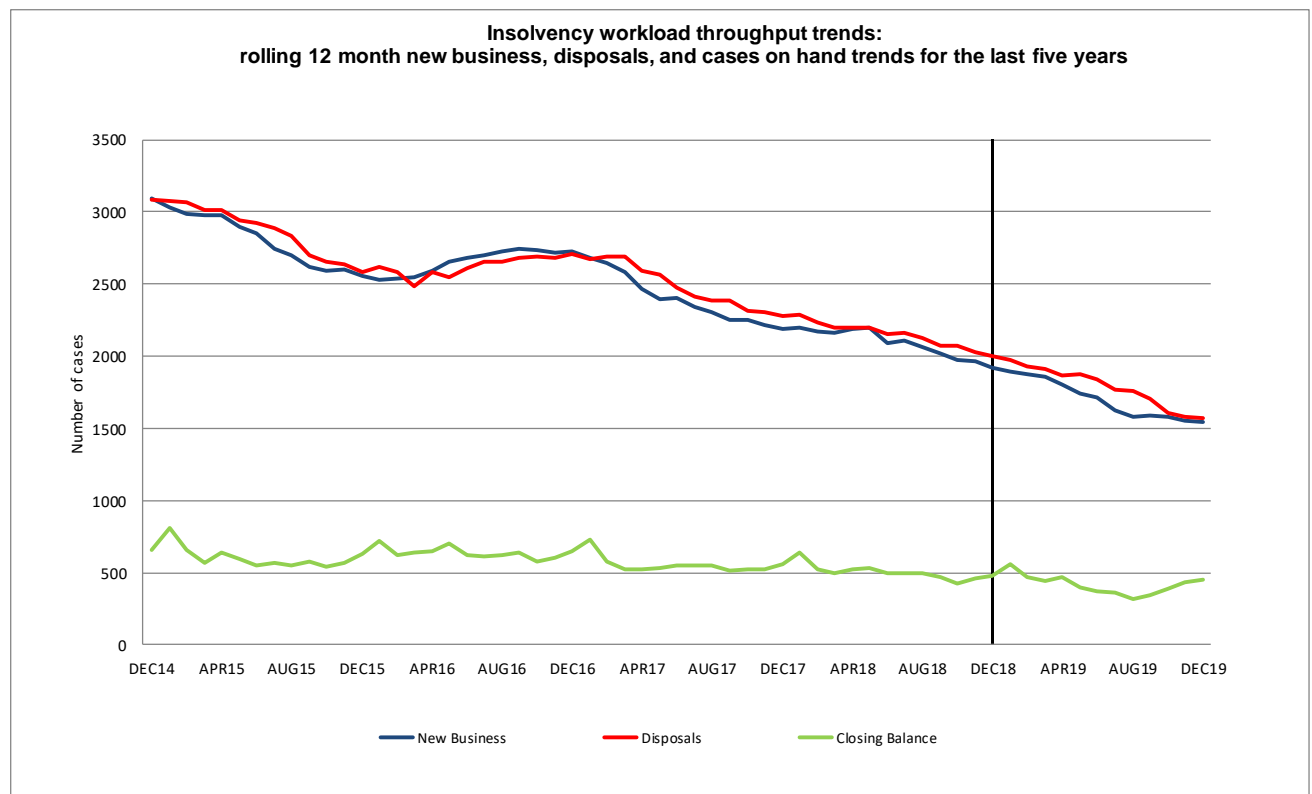
General proceedings - general

One hundred and thirty-one general proceedings were concluded by trial during the calendar year. This was up four cases on 2018. The percentage of general proceedings adjudicated by trial has previously been following a rising trend for some years. At the end of 2019 it was at 9.7% of general proceedings disposals.

The general proceedings clearance rate has increased to 123% from 100% in the previous year, which reflects the combination of a decrease in new business and a similar number of disposals compared to 2018.

Insolvency proceedings

Insolvency work reflects the state of the economy (with a slight lag). When the economy is buoyant, insolvency filings drop. Insolvency filings have been dropping consistently since the high in early 2009 during the GFC.



Criminal

There were 141 cases on hand at 31 December 2019 compared to 139 at the same time in 2018. These numbers include cases awaiting sentence.

There were 152 new cases, compared to 177 in 2018. Despite the reduction in new cases, there was a greater number (and percentage) of category four cases than in 2018 (86 – 55% v 76 – 43%). Fewer protocol cases have been ordered to be heard in the High Court as a consequence.³

The statutory protocol regime

The Chief Judges of the High and District Courts established the Protocol in accordance with s 66 of the Criminal Procedure Act 2011. The Protocol identifies cases and classes of case which must be considered for transfer to the High Court. These are specific offences (Class 1), specific offences with certain characteristics (Class 2) and a general catch-all class (Class 3). Protocol offences include serious sexual, violence and drug offending. The full list of offences can be found in the 2020 Court of Trial Protocol. The latest revision added two offences under the Contempt of Court Act 2019 relating to the publication of criminal trial information and the disclosure of jury deliberations in proceedings held in the High Court.

- [Court of Trial Protocol 2020 Gazette Notice](#)

Last year I reported that some protocol cases have not been identified and/or processed correctly.⁴ During the year efforts to improve this situation were undertaken by the Courts, the Ministry of Justice and Crown Law Office.

Practice and procedure of the Court

Principal case management lists

Earthquake list

Earthquake claims are generally complex cases requiring expert evidence and are almost invariably concluded by settlement. The earthquake list processes provide a framework for parties to reach a determination of matters in dispute. In the past, cases have been selected for early hearing to provide legal precedent to assist with settlement discussions. As all the relevant information and expert reporting is complete before a case is set down, the parties can have meaningful settlement discussions at the point a hearing date is allocated. Despite the desirability of avoiding the costs of final trial preparation, it is apparent that a large number of cases do not settle until the last month before trial.

³ The term “protocol case” encompasses all non-Category 4 matters heard in the High Court which are protocol cases directed to be heard in the High Court, other category 2 and 3 cases transferred to the High Court under s 70 of the Criminal Procedure Act 2011, cases transferred to the High Court under s 86D of the Sentencing Act 2002 (3rd strike cases) and any remaining middle-band cases retained in the High Court (which are now re-trials).

⁴ Nonetheless cases which are not properly identified or processed are not invalid. [Section 69](#) of the Criminal Procedure Act 2011 provides that no proceeding that relates to a protocol offence is invalid only because it failed to be identified as a protocol offence and considered in accordance with sections 67 and 68.

As at 31 October 2019, the active EQ cases (both insurance and defective repairs) cases accounted for 300 of the 1637 active GPs on hand (18%). As at 29 February 2020, that number and percentage had decreased. There are now 229 active EQ cases in a caseload of 1547 active GPs (15%). New filings continue to decrease.

Marine and Coastal Area (Takutai Moana) Act list originating applications – applications for recognition orders

A relatively new area of civil work for the Court are applications under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA).

The 202 applications for recognition of protected customary rights and customary marine title are from throughout New Zealand and are managed by Churchman J. Generally, the filings are from groups seeking to preserve their position. Management of them is complicated as a number of applicants have sought recognition over the same areas of land.

Of the 202 total cases, nine are priority cases (per s 125 MACA). Three cases filed under the previous legislation (Foreshore and Seabed Act), are set down for hearing. Of the remaining 193 cases, most are seeking resolution outside the Court by engaging directly with the Crown.

Weathertight buildings list

The Court runs a Weathertight Buildings List in the Auckland registry. The types of buildings on the weathertight buildings list include commercial premises, apartment blocks and single dwelling homes.

Weathertight buildings cases are complex. The evidence of experts is often required to identify the cause of, and responsibility for the leaks. Experts also advise on the nature of damage and what needs to be done to remedy it. There are often several defendants, including the local authority which certified the building, the building contractor, architect and sub-contractors. The cases typically require several weeks to be heard. Fixtures are allocated on that basis, and on the basis that experience shows most cases on the list are settled rather than determined by trial.

- [Weathertight buildings landing page](#)

Rules Committee activity

On 1 July new rules came into effect. They introduced a default procedure for filing submissions after the end of the hearing, made provision for certain applications to be made by originating application, provided for the insertion of clauses in Schedule 5 case management checklist re expert evidence delivery and the use of electronic common bundles and casebooks, and made some changes to the daily rate.

Looking outside the court

Access to justice

Auckland bankruptcy pro bono pilot

The Auckland Community Law Centre continued to run a service in the Auckland High Court for litigants in person for insolvency matters which is reportedly well received by litigants and judges.

Using the courts website to host large scale litigation materials

For the purposes of the Marine and Coastal Area (Takutai Moana) Act list, the Court has used the Courts of New Zealand website to provide easy access to the list and text of applications for recognition orders, minutes issued by the list judge and transcripts of all case management conferences.

- [Applications](#)
- [Minutes](#)
- [Case management conference transcripts](#)

Tikanga and te reo Māori

Many judges continue to undertake Institute of Judicial Studies⁵ and common room delivered programmes developing Te Ao Māori and tikanga knowledge. Some of these programmes include a one-week immersion Te Reo Wānanga, Tikanga course, Noho Marae experience, and online Te Reo webinars.

Working with the profession

The Chief Judge continued to meet regularly with the profession at registry stakeholder meetings, NZ Law Society and NZ Bar Association events, visiting various local NZLS branch committees whilst on circuit, and taking part in various professional association annual conferences.

List judges meet with local representatives by way of regular court stakeholder meetings. The Chief Judge and earthquake list judges have met with the local bar since the list was set up. These are large, well-attended meetings where the performance of the list is discussed and proposals to improve the practice of counsel, experts and the court are discussed.

Judges have continued to present at profession-led education events such as Litigation Skills intensives, the Criminal Law Symposium and subject matter updates.

⁵ The Institute of Judicial Studies (IJS) is the professional development arm of the *New Zealand* judiciary and provides education programmes and resources for the judiciary. See www.ijs.govt.nz/home.asp

Web posts and tweets this year

The High Court tweets about its daily lists, judgments of public interest, reports such as this one and ceremonial proceedings.

Users can also receive alerts about judgments of public interest.

- [Subscribe to judicial decisions](#)

The Court also posts materials about the High Court and its practice and procedure on the Courts of New Zealand website. A full list of these materials can be found at [Appendix 3](#).

Property and security

The Ministry of Justice began refurbishments of the Auckland and Wellington courthouses during the year. The Auckland courthouse has seen the civil and criminal registries co-located on the ground floor. The refurbished historic No.1 courthouse was near completion by year end. It will provide chambers for Court of Appeal judges when sitting in Auckland.

Refurbishments of the Wellington court ground floor public areas with the provision of a single public point of entry with full-time screening and the dated Whangārei courthouse were completed mid-year.

Extended powers for Court Security Officers to deny entry to, remove or detain people to enable them to address low level offending and disruptive behaviour came into effect in April.

- [Courts Security Act 1999](#)

Looking ahead to 2020

Various property projects will be completed. In the Auckland High Court, refurbishment will be completed. The visiting Court of Appeal judges will have chambers in the historic part of the building. A new civil courtroom will be created in the lower ground area in the area previously occupied by the criminal registry team.

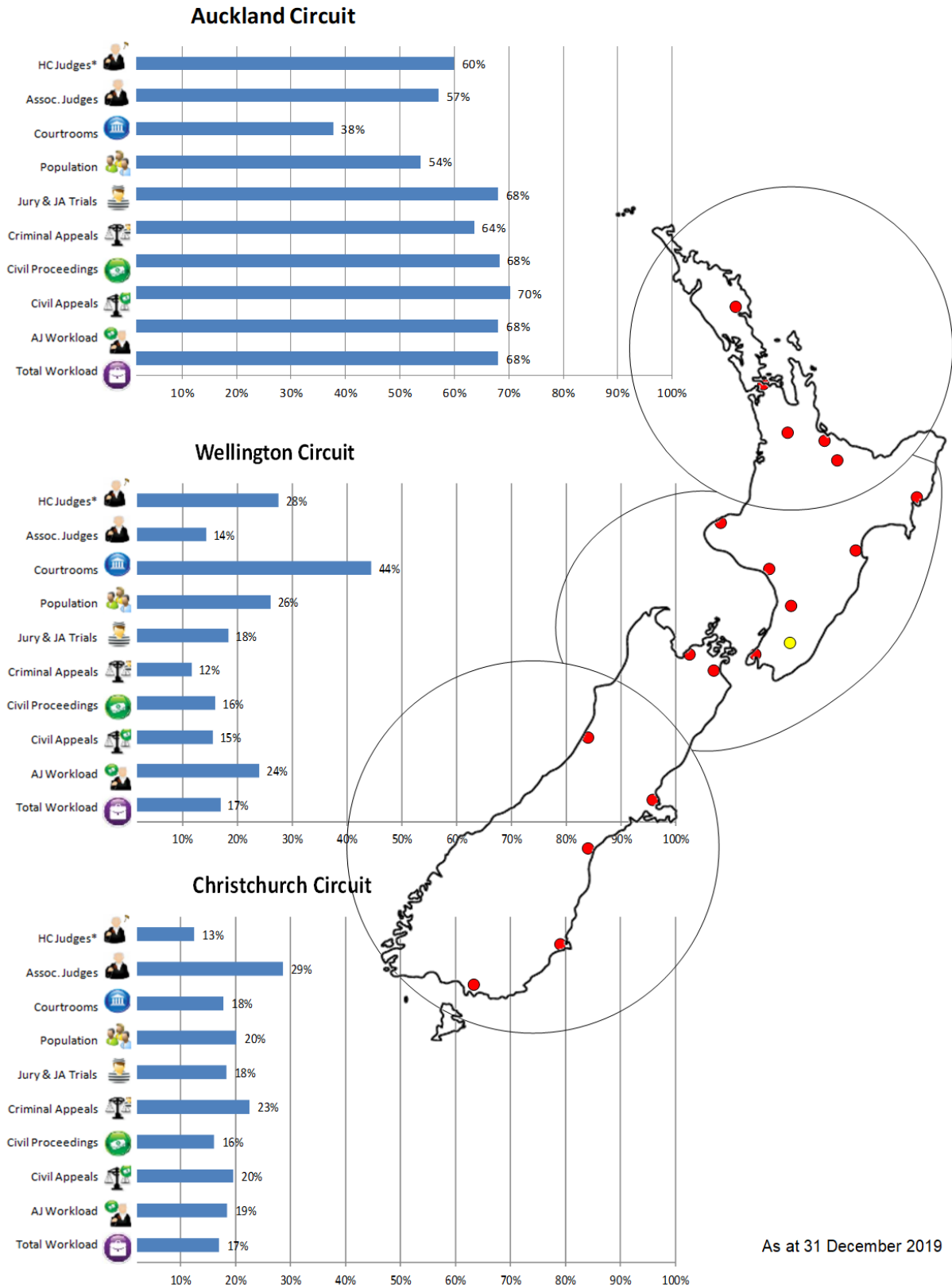
A decision on whether the Rotorua courthouse will be extended, including the provision of additional jury capable courtroom and additional High Court chambers, or whether there will be a complete new rebuild in a new location is expected in 2021.

There are also plans to provide a new courthouse in Tauranga to allow High Court trials to be conducted with expected completion in 2025.

Appendix 1 – High Court at a glance

This diagram differs from those published prior to 2016 following the incorporation of New Plymouth and Gisborne in the Wellington circuit.

Breakdown of workload and factors affecting workload by circuit



As at 31 December 2019

Appendix 2 – Selected workload figures for the year ended 31 December 2019

For the full range of statistics see the Annual Statistics on the Courts of New Zealand website.

- [High Court annual statistics landing page](#)

Summary of new business and disposals for the year ended 31 December 2019

	Criminal trials ⁶	Civil proceedings ⁷	Criminal appeals	Civil appeals
New work				
2019	152	2176	1334	256
2018	177	2346	1075	268
Disposals				
2019	126	2360	1333	267
2018	148	2308	1039	282
Disposals by trial adjudication				
2019		294		
2018		338		
Disposals by non-trial adjudication				
2019		657		
2018		624		

Criminal disposals by trial fell from 92 to 64 trials.

2019 was the seventh year “nature of claim” data has been collected for new general proceedings. There are some 30 categories. The aim is to analyse whether different claim types behave differently. Once sufficient information is available, this analysis will form the basis of decisions about whether different claim types need to be managed differently to better secure the just, speedy and inexpensive determination of proceedings.

⁶ Includes New Trials plus Retrials directed (New Business definition from the Courts of NZ website).

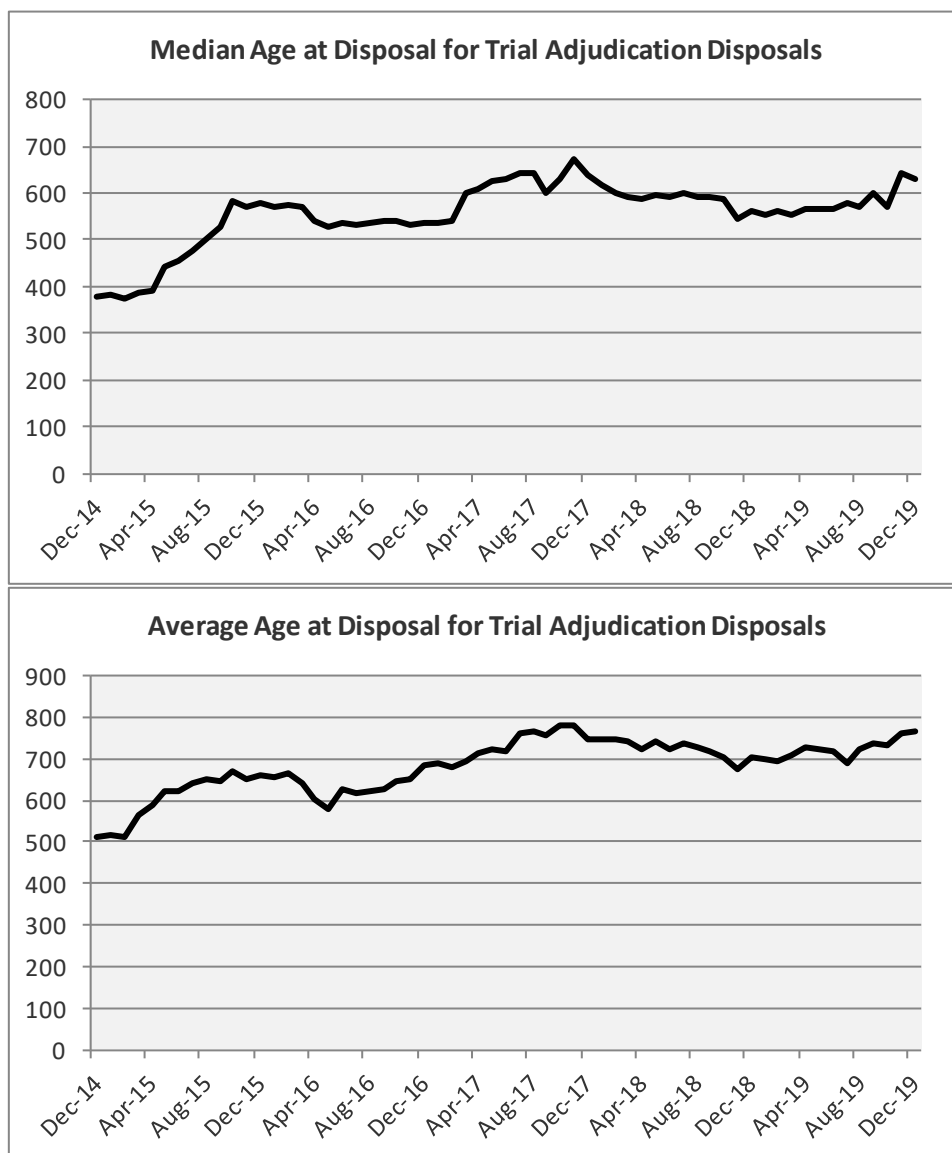
⁷ ‘Civil proceedings’ includes general proceedings, originating applications and judicial reviews.

Top seven “nature of claim” categories for matters filed between 1 January 2013 and 31 December 2019

Nature of Claim type	Number of claims	% of total
Contractual disputes	1184	13%
Natural disasters (Chch EQ)	1141	12%
Debt Recovery	1065	12%
Estate litigation	655	7%
Other trust litigation	590	6%
Other	431	5%
Other real property disputes	386	4%

The median time to trial for general proceedings trial adjudications has increased from 350 days as at 31 December 2018 to 406 days as at 31 December 2019.

The graphs below show the median and average ages of cases at disposal has increased.



The median age at disposal for trial adjudication disposals was 630 days compared to the previous year where the median age at disposal was 561 days.

The average age at disposal for trial adjudication disposals was 764 days compared to the previous year where the average age at disposal was 699 days.

Appendix 3 – Press releases, reports and practice notes from the High Court

Topic	Date
Notification of 2019 Court of Trial Protocol	14 January 2019
Practice Note revision – electronic bundles in the High Court	14 March 2019
Notification of new assignments to the commercial panel	8 April 2019
Delayed judgment report for 6 months ended 31 March 2019	11 April 2019
CONZ Annual Statistics 1 January 2018 – 31 December 2018	26 April 2019
2018 High Court Annual Review	12 June 2019
Practice Note – transfer of cases to Canterbury EQ Insurance Tribunal	1 July 2019
Notification of changes to judgment distribution (publishers' sheet, 3-hour delay, subscribing to notifications)	1 July 2019
CONZ Annual Statistics 1 July 2018 – 30 June 2019	2 October 2019
Delayed judgment report for 6 months ended 30 September 2019	15 October 2019
Earthquake List Report for the year end 30 September 2019	14 November 2019
Notification of 2020 Court of Trial Protocol	17 December 2019