

## **Report of the Criminal Practice Committee**

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This is a report of the Criminal Practice Committee (CPC), chaired by the Right Honourable Chief Justice Winkelmann. It covers the period from March 2021 to December 2022 (then chaired by Lang J).

The CPC was established in 1998. It brings together all those professionally involved in the criminal justice system at a senior level to progress matters of importance to the operation of the criminal justice system and to inform the Executive.

The Committee has two primary functions:

- to monitor and progress action of issues relevant to the operation of the criminal justice system; and
- to provide a forum for discussion and comment on legislative and policy developments.

Members of the CPC include judges, legal practitioners, registrars and Ministry of Justice policy advisers. It also includes representatives from the New Zealand Law Commission, Law Society, Crown Law and New Zealand Police (see *Appendix 1* for a list of current members as at March 2023).

### **Reports tendered under s 27 of the Sentencing Act 2002**

One of the central items for discussion in 2021 and 2022 was the issues of reports tendered under s 27 of the Sentencing Act 2002. The Committee was concerned about the variable quality, cost and delay caused by such reports. Some reports are excellent, while others contain a substantial amount of self-reporting and the extent to which the content can be challenged is unclear. Where the reports are late or long, it becomes much harder for the Judge and counsel to read and evaluate the impact the report should have on sentencing. The cost of s 27 reports is also increasing and can range from \$3,000 to \$9,000. Finally, unlike psychological reports, s 27 reports do not note how many reports have been written for one offender.

The Committee raised the need to bring the focus of s 27 back to the community. The original intention of ss 16 and 27 was to bring iwi, hapū and whānau into the courtroom. In the High Court, a written report is usually required where s 27 matters make a difference to the length of a term of imprisonment for very serious offending. The Committee agreed that more data on s 27 reports, improving pre-sentence reports and establishing a working group on s 27 reports would be helpful. The Committee also identified the need for a working group to improve the process.

### **Te Ao Mārama**

The Committee was kept abreast of the Te Ao Mārama updates. Te Ao Mārama is a judicially led Kaupapa that aims to improve the experience for all people who participate in the court system, including victims and whānau. It intends to partner with the community and better

serve each community's needs. The Committee was informed that Te Ao Mārama was in the scope refining stage with a focus on the "criminal justice highway", including care and protection and Family Court proceedings. There is also a focus on the role the judiciary will play in Te Ao Mārama in terms of being responsible for court processes and coordinating agencies. The Committee was informed that planning was underway for educating judges and training court staff and wider stakeholders (including the profession).

### **Criminal Process Improvement Programme**

The Criminal Process Improvement Programme (CPIP) is a judicially led, cross-agency effort to reduce backlog in the criminal jurisdiction of the District Court by establishing best practice in court procedure. There are several workstreams attempting to address the system inefficiencies.

In 2021 and 2022 the District Court reported a backlog due to Covid and other factors. CPIP is part of the strategy to deal with this backlog.

### **Workloads**

Related to CPIP, a regular issue for discussion in 2021 and 2022 was the workload of the various courts. As to the District Court, the Committee was advised of the significant case backlog, particularly in central Auckland and Manukau. As at June 2022, the backlog would take 600 days to clear. Some of the other current trends included increased jury election rate and an increased remand prisoner population, placing pressure on the use of AVL facilities.

The High Court was seeing an increase in category 4 cases. The Committee was advised that the wait time for s 88 reports (tendered under the Sentencing Act) was almost at crisis point. The Court was seeing increasing applications for these s 88 reports and s 38 reports (tendered under the Criminal Procedure (Mentally Impaired Persons) Act 2003). The Committee agreed to monitor this matter.

There was an increasing volume of work noted in the Appellate Courts. The permanent Court of Appeal was scheduling a year in advance. The Court of Appeal was considering more disciplined approach to pre-trial appeals.

The Committee was concerned that these pressures were also felt in the profession. Issues in the profession included the lack of avenues for juniors to gain experience in criminal work, an increase in serious cases, the wellbeing of the profession and recruitment issues.

### **Law Commission**

Mr Luke-Day attended in March 2022 to present a summary of the Law Commission's project reviewing the law applying to preventive detention, extended supervision orders (ESO) and public protection orders (PPO). The project—to last two years—would focus on the effectiveness of the regimes at meeting their objectives, human rights compliance, Māori aspirations, and analysis of how the law is working in practice. The Issues Paper will be published by May 2023, and the Preferred Approach Paper (final report) by May 2024. The

Committee noted that a coherent legislative scheme is desirable as the current scheme is difficult to apply. Of particular concern is how restrictive post-release conditions can be, including 24-hour monitoring.

## Corrections

Corrections advised the Committee of staffing difficulties. Covid-19 impacted the delivery of face-to-face programmes and the level of in-person contact counsel can have with their clients. Corrections noted that lawyers can now contact the Prisoner Contacts Team to arrange for meetings with their clients. Committee members were concerned about the impacts of prisoner movements, including an increased reliance on the use of AVL as prisoners are moved around the country. Such requests will be difficult to manage for trials involving significant disclosure. Corrections also advised that there is a long-term piece of work underway for access to electronic evidence in prisons.

The CPC has recently met in March 2023. It is due to meet again on 28 July 2023.

## Appendix one – Membership

Chair	Hon Justice Winkelmann, Chief Justice
	Hon Justice Gilbert, Court of Appeal
	Hon Justice Thomas, Chief High Court Judge
	His Honour Judge Heemi Taumaunu, Chief District Court Judge
	His Honour Judge Crosbie, District Court
	Amokura Kawharu, President of the Law Commission
	Madeleine Laracy, Deputy Solicitor-General, Crown Law
	Leigh Marsh, Acting National Commissioner, Department of Corrections
	Janine Bonifant, NZLS representative
	Nicholas Chisnall, NZLS representative
	Henry Steele, Meredith Connell
	Chris Wilkinson-Smith, Criminal Bar Association
	Sarah McKenzie, Director: Police Prosecution and Resolution Service
	John Richardson, Court Manager, Auckland High Court
	Richard Williams, District Courts Management representative (and Rebecca Parish, GM Sector Insights)
	Peter Hutchinson, Public Defence Service, Ministry of Justice
	Sam Kunowski, General Manager of Courts and Justice Services Policy
	Megan Noyce, Policy manager for Courts and Tribunals
Observer	Victoria Crawford, Office of Chief Justice Principal Advisor
Secretary	Aimee Cox, Judge's Clerk, Wellington High Court