

Report of the Criminal Practice Committee

This is a report of the Criminal Practice Committee (CPC), chaired by Lang J. It covers the period from April 2018 to February 2019.

Reports under ss 26 and 27 of the Sentencing Act 2002

At its meeting in November 2018 the Committee considered the issue of reports under ss 26 and 27 of the Sentencing Act 2002. Darius Fagan from the Department of Corrections advised the Committee about current discussions between Probation Services and the Ministry of Justice in relation to cultural reports and assessments under the Sentencing Act. There are frequently issues with the request, delivery and funding of reports requested under s 27 of the Sentencing Act and the Ministry is investigating whether a standard approach should be adopted to include cultural background as part of a s 26 pre-sentence report. This would mean there was a single provider with trained staff who are able to prepare reports much more inexpensively than is currently the case with private providers.

The CPC will continue to discuss these issues in 2019.

Communications Assistance

Over the last 18 months there has been an increase in requests by defendants for communications assistance. The CPC discussed the commonality between these requests and issues with fitness to plead arising for defendants. There may be cases where communications assistance is used inappropriately and those persons assisting and providing advice beyond their expertise in certain cases. There are further issues with a lack of availability from the two main organisations providing this service.

If defence counsel receive a report saying that a defendant is fit to stand trial (following the procedures under the Criminal Procedure (Mentally Impaired Persons) Act 2003) but may require a communications assistant, then counsel are obliged to investigate the issue. The Hon Sir Douglas White QC advised the CPC that the Law Commission is looking at the use of communications assistance in relation to vulnerable people and it will form a part of the final report on the Evidence Act (to be published in late-February 2019).

Diversion of Judicial Resources

The Chief District Court Judge also advised the Committee of the diversion of District Court judicial resources from criminal work to cover the backlogs in the Family Court. As a result of this diversion, there are concerns about the flow-on effects for the disposal of criminal work because it may result in increased delays. These concerns have been alleviated to some extent by the recent re-appointment of several acting Judges in the Family Court.

Pathologists Reports

The CPC discussed ongoing issues with the lack of forensic pathologists and subsequent delays, vacation of fixtures and limited access for defence counsel. Further funding has been

recently provided and a recruitment process for forensic pathologists is in train. To that end, it appears the issue has been addressed to the extent that it can.

Use of AVL in the District Court

One of the central items for discussion in 2017 and 2018 related to issues that have arisen following the rapid growth in the use of AVL in the District Court. Concerns have been raised about participants feeling a lack of engagement when remote participation is used and counsel having insufficient access to their clients in prison. AVL use is increasing all the time, as the Courts (Remote Participation) Act 2010 requires all first appearances to be by way of AVL unless the Court directs otherwise.

In November 2018, the Committee discussed improvements made in Christchurch in relation to issues that had previously arisen for defendants appearing via AVL even though they were held in cells within the court precincts. These seem to have been resolved.

These issues will continue to be monitored by CPC throughout this year.

Law Commission

The Hon Sir Douglas White QC attended meetings in 2018 to update on Law Commission initiatives. These included a Ministerial Briefing Paper on Abortion Law Reform, a review of the Property (Relationships) Act 1976, the use of DNA in criminal investigations and the second review of the Evidence Act 2006.

The next meeting of the Committee is on 15 March 2019.