



**THE HIGH COURT OF NEW ZEALAND | TE KŌTI MATUA O AOTEAROA**

## **2020 - The Year in Review**

I am pleased to present a short report on events of note during 2020 in the High Court of New Zealand - Te Kōti Matua o Aotearoa.

**Hon Justice Susan Thomas**

**Chief High Court Judge | Te Kaiwhakawā Matua**

**25 June 2021**

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## Overview

COVID-19 was *the* story for 2020 and the Courts were not immune to its impact. This report details COVID-19 experience of Te Kōti Matua of Aotearoa, the High Court of New Zealand.

### Jury trials and rapid escalation of COVID-19 precautions

By 17 March 2020, disquiet within the profession about the health and safety risks of COVID-19 resulted in at least two applications for adjournment of High Court jury trials. On 18 March, the Chief Justice announced that new jury trials were suspended for two months.

Following the Prime Minister's announcement of the 4-tiered Alert Level system on Saturday 21 March, all vulnerable judges and staff were stood down. On Sunday 22 March, the Chief Justice issued a communication to the profession saying the courts were an essential public service and would continue to function through the pandemic.

On Monday 23 March, the Presidents of the New Zealand Law Society (NZLS), New Zealand Bar Association (NZBA), and the Criminal Bar Association (CBA) asked the Chief Justice to urgently close the courts until a clear and safe plan to operation was in place. The Chief Justice announced that, for the rest of the week, courts were to limit in person hearings to priority proceedings affecting the liberty of the individual, personal safety, and wellbeing, and/or in which resolution was time critical.

Alert Level 4 (lockdown) began at 11.59pm on Wednesday 25 March. Protocols were in place for each court, with remote participation predominately being used and documents being filed electronically.

On 8 April the Chief Justice announced the extension of the suspension of jury trials to 31 July 2020. This decision recognised the need to summons jurors well in advance of trial date, and the unavoidable uncertainty of changes in the Alert Level status in the short term.

### Planning for the resumption of High Court work

On 29 March the then Chief High Court Judge, Venning J, established the Criminal Works and Civil Works Committees to assist him and the registries with the practical issues facing the High Court. The Committees' remit was to address the operation of the High Court under COVID-19 Alert Levels, and how practically the Court would resume operations in a staged manner as Alert Levels reduced.

I chaired the Criminal Works Committee, with S France, Mander and Fitzgerald JJ as members. The Civil Works Committee was chaired by Lang J, with Mallon, Dunningham and Moore JJ as members.

The High Court COVID-19 response evolved rapidly. As High and District Courts were facing similar issues, the Criminal Works Committee merged with its District Court equivalent to form the Criminal Trials Committee. The Criminal Trials Committee first met on 16 April 2020. Its early remit was to consider what criminal work was possible at Alert Level 3. This Committee was instrumental in driving work to enable jury trials to resume at Alert Level 2.

The Criminal Trials Committee also held regular Zoom meetings with the Presidents of NZLS, NZBA and CBA. Other associations joined the group – the Auckland District Law Society,

Defence Lawyers Association New Zealand, Te Hunga Rōia Māori o Aotearoa, and the Pacific Lawyers Association.

This forum gave practitioners a channel to raise any concerns and provide feedback on the operation of the High Court at the various Alert Levels. It proved to be very constructive; the profession's support was vital to the High Court's ability to function as well as it did during COVID-19.

Significant work was undertaken to develop and test ways of working remotely. Katz J represented the High Court on the Remote Courts Sub-Committee which led this work. She also co-chaired the Pandemic Committee, which had oversight of the judicial and Ministry of Justice response to maintaining the operation of the courts during the pandemic.

Throughout 2020, [High Court COVID-19 protocols](#) were published on the Courts of New Zealand website to explain how the Court would operate at the current Alert Level. The High Court also released the following specific protocols:

- *Remote hearings – 28 May 2020*
- *Remote participation by witnesses in criminal hearings – 27 July 2020*
- *Persons in isolation and quarantine – 13 August 2020.*

### [The High Court \(COVID-19 Preparedness\) Amendment Rules 2020](#)

The High Court (COVID-19 Preparedness) Amendment Rules 2020 were drafted, promulgated and came into force on 9 April 2020 after an extremely truncated process, thanks to the work of the clerk of the Rules Committee, Judges and co-operation from the profession and the Ministry of Justice. These Rules:

- facilitated the electronic filing and service of documents
- removed impediments to swearing affidavits under lockdown conditions, and
- provided for flexibility in the conduct of hearings in circumstances where physical attendance at courthouses was impossible.

The Amendment Rules also provided a foundation for electronic filing generally which will remain in place following the end of the pandemic.

#### [File and pay](#)

The closure of registries to the public during lockdown required alternative methods of payment of filing fees. This helped pave the way for the development of a File and Pay service, which became available in the High Court from 28 October 2020.

### [Impact of COVID-19 on the High Court](#)

During the first lockdown, virtually all matters other than jury trials and civil witness actions continued using remote participation facilities, Virtual Meeting Room, Zoom and telephone.

#### [Civil jurisdiction](#)

One hundred civil fixtures were adjourned as a result of COVID-19. Ninety-three were rescheduled and heard in 2020 and five were rescheduled with dates in 2021. Two were rescheduled with dates in 2022, as those cases were not ready to proceed earlier.

## Criminal jurisdiction

The country moved to Alert Level 3 on Tuesday 28 April and to Alert Level 2 on Wednesday 13 May. On 9 June the country moved to Alert Level 1. High Court jury trials resumed in the first week of August, to provide the time required to summons jurors.

Jury trials had only just resumed when community transmission in Auckland resulted in that region moving back to Alert Level 3 on 12 August. Jury trials in Auckland were further suspended. One Auckland jury trial was vacated (and has since been heard). Another, which had reached the point of jury deliberations, was adjourned for a week. The jury later returned and delivered verdicts. Trials resumed on 7 September, a week after the Auckland region moved down to Alert Level 2 on 31 August.

The rest of the country returned to Alert Level 2 on 12 August. Jury trials were suspended for 24 hours to enable Alert Level 2 public safety measures to be re-established.

The country apart from the Auckland region returned to Alert Level 1 on Monday 28 September, and Auckland moved to Alert Level 1 on Thursday 8 October.

The Criminal Trials Committee led a significant body of work to prepare for jury trials under Alert Level 2. It commissioned a full stocktake of every courthouse to understand which courtrooms and jury rooms could accommodate the required physical distancing. For those that could not, it identified what work and alternative use of courthouse spaces was required. It also addressed issues around the management of large jury pools and empanelling of jurors.

As a result of this work, the High Court was able to hold jury trials from August 2020 at Alert Level 2, albeit with some dexterous and innovative approaches to jury management.

Forty-nine jury trials with trial dates scheduled between March and the end of July 2020 were vacated due to COVID-19. Subsequently, three of those cases did not require a trial. Forty-six cases were allocated new trial dates, either in the second half of 2020 or the first half of 2021.

Our Court Managers, John Richardson, Jane Penney and Sharon Graham, along with the National Roster Manager Graeme Pitt and the Judicial Resource Managers (JRMs), Corrina McDonald, Sarah MacFarlane and Rebecca Fahey, made an enormous contribution to continuing the work of the High Court at all Alert Levels. The JRMs have been nimble and constructive in scheduling, rescheduling and rescheduling again.

I also acknowledge our security officers and all court staff. Much was asked of everyone in a time of general anxiety, particularly in South Auckland. Staff have shown patience and considerable skill in the management of all court work and particularly jury trials.

## Tarrant sentencing

The challenges of 2020 included the complexities associated with the preparations for the trial and sentencing of the Christchurch mosque shooter, Brenton Tarrant, in Christchurch. While the guilty plea negated the need for a trial, the subsequent sentencing was a significant undertaking. It involved collaboration across the justice sector and with multiple agencies, as well as engagement with the media both in New Zealand and overseas. The extensive planning and preparation, particularly by Mander J, Cate Brett (Chief Advisor, Judicial Development and Communications) and Andrea King (General Manager Senior Courts), resulted in a smooth, well managed process.

## The judicial complement and their responsibilities

Venning J's tenure as Chief High Court Judge came to an end on 31 May 2020. His leadership and wisdom throughout the COVID-19 challenges was particularly valuable. I formally assumed the role on 1 June 2020 after a two-month period of progressive transfer of responsibilities.

As at 31 December 2020, the High Court complement was 47, made up of 40 judges and eight associate judges (pending Associate Judge Smith's retirement in April 2021). Dobson J was an acting judge from July to December.

During the year:

- two judges retired: Associate Judge Sargisson in May and Dobson J in July, and
- three judges were appointed: Campbell J in July, Associate Judge Gardiner in August and Associate Judge Sussock in October.

### Acting warrants

Funding for four Acting High Court Judges and one Acting Associate Judge for two years was allocated in Budget 2020 in anticipation of a significant increase in civil filings as a result of lockdown and COVID-19 related litigation. Three Acting Judges, Toogood, Gendall and Nation JJ, were appointed from 1 February 2021. As the predicted impact on our civil work has yet to materialise, some of the additional national resource will be utilised in the criminal jurisdiction.

### List judges

List judges oversee the workload in their circuit and provide advice and counsel to the Chief High Court Judge on matters of policy for the Court. The list judges in 2020 were:

- Moore J (Auckland - civil)
- Fitzgerald 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)
- Dunningham J (Christchurch circuit - civil)
- Mander J (Christchurch circuit - criminal)
- Associate Judge Bell (National Associate Judge liaison)

The case management list judges in 2020 were:

- Christchurch earthquake list: Osborne J and Associate Judge Lester
- Auckland judicial review list: Walker J
- Auckland appeal lists: Powell J (civil) and Downs J (criminal)
- Auckland summary judgments and caveats: Gault J
- Probate lists: Whata J (Auckland), Cull J (Wellington) and Dunningham J (Christchurch)
- Marine and Coastal Area (Takutai Moana) Act matters: Churchman J (Wellington)

## Commercial panel

Complex commercial cases may be heard by a specialist judge drawn from the commercial panel. These cases cover high-value disputes (over \$2 million), complex and difficult matters of commercial law, and proceedings brought by public authorities to enforce regulatory standards of commercial behaviour.

As at 31 December 2020 the commercial panel comprised: me, Venning, S France, Lang, Mallon, Wylie, Ellis, Peters, Katz, Muir, Fitzgerald, Jagose and Osborne JJ. Osborne J was appointed in December 2020, following Dobson J's retirement.

## Rules Committee

The Rules Committee was established by statute<sup>1</sup> to regulate the practice and procedure of the senior courts. It has several statutory and appointed High Court members. Dobson J was chair until his retirement in July (and remained as a special purposes appointee until December). Cooke J then assumed the chair. The second appointed High Court member was Muir J, from 14 December 2020. Venning J left the committee following his retirement as Chief High Court Judge but remained a special purposes appointee through to the end of 2020. As Chief Judge, I became an *ex officio* member from 1 June 2020.

## Court of Trial Protocol

Under s 66 of the Criminal Procedure Act 2011, the Chief Judges of the High and District Courts established the Court of Trial Protocol. The Protocol identifies cases and classes of case which must be considered for transfer to the High Court. Protocol offences include serious sexual, violence and drug offending.

The Protocol is ordinarily reviewed annually by a committee of High Court and District Court Judges. However, due to the impacts of COVID-19, the review was not completed in 2020. It will be published in 2021.

The current list of offences can be found at [Court of Trial Protocol 2020 Gazette Notice](#)

In 2020, the High Court retained additional protocol cases to assist the District Court with its backlog of jury trials.

## Workload

### Civil

#### Judgment timeliness

In 2020 the Court delivered 3518 criminal and civil judgments. The Court has set a standard of 90% of civil judgments being delivered within three months of hearing or last submissions. In 2020 the result was 93.3%.

The High Court reports twice yearly on "judgments outstanding beyond a reasonable time" as required by s 170 of the Senior Courts Act 2016. In the absence of extenuating

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<sup>1</sup> Section 51 of the Judicature Act 1908 and continued by s 155 of the Senior Courts Act 2016.



circumstances, the Court considers judgments over six months old to be delayed beyond a reasonable time.

There were seven judgments then outstanding beyond a reasonable time as at 30 April, and none as at 30 September 2020.

The [High Court Delayed Judgment reports](#) for 30 April and 30 September 2020 are available on the Courts of New Zealand website.

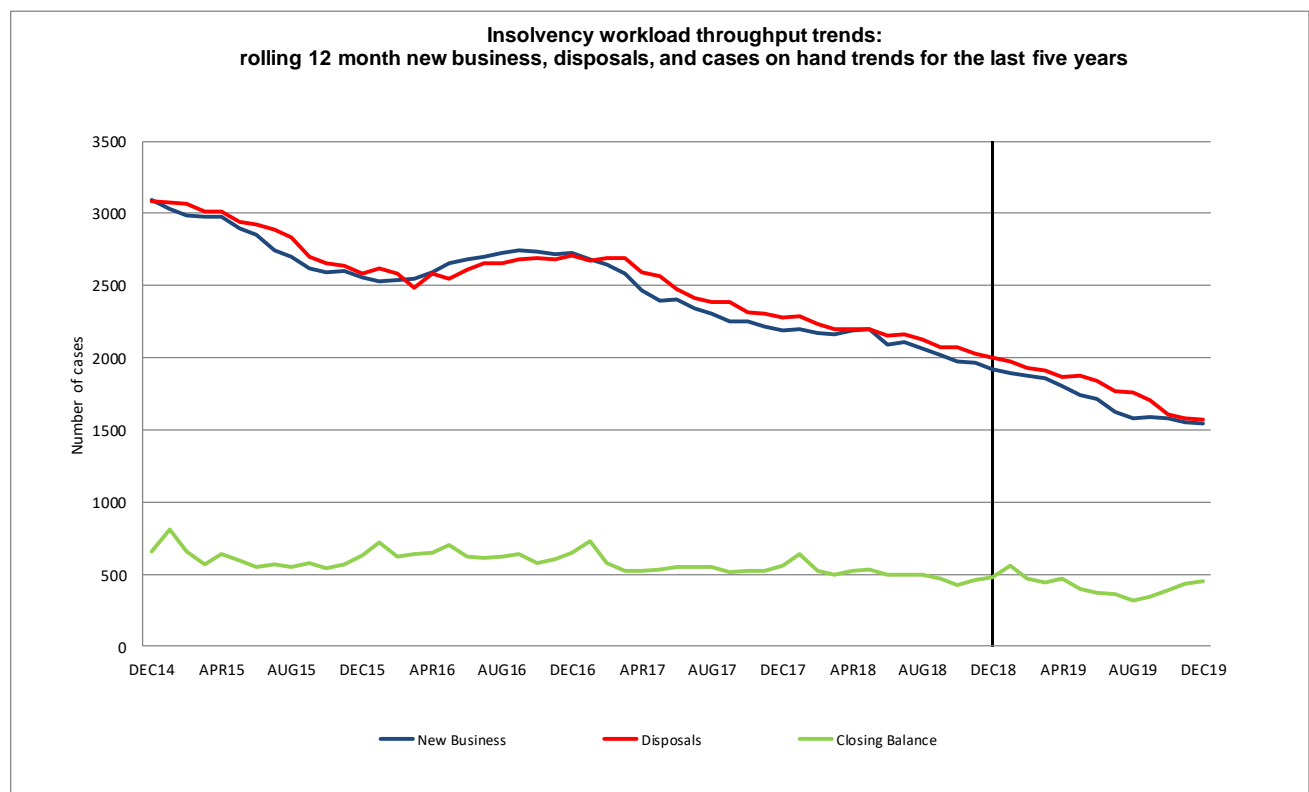
### General proceedings

Ninety-seven general proceedings were heard during the calendar year. This was down 29 cases on 2019, primarily due to civil fixtures with witnesses not able to be heard from late March to the end of July due to COVID-19. The percentage of general proceedings adjudicated by trial had been trending upwards for some years. However, in 2020 8.2% of general proceedings were disposed of, compared to 8.9% in 2019.

The general proceedings clearance rate has decreased to 113% from 126% in the previous year, which reflects the decrease of disposals due to COVID-19 (1190 from 1422). However, as new business also decreased (1056 from 1125), the number on hand as at 31 December 2020 was less than the number on hand at 31 December 2019.

### Insolvency proceedings

Insolvency work reflects the state of the economy (with a slight lag). Insolvency filings have been dropping consistently since the high in early 2009 following the 2007 - 2008 global financial crisis.



## Criminal

There were 170 cases on hand as at 31 December 2020, compared to 141 at the same time in 2019. This number includes 27 cases awaiting sentence.

There were 149 new cases in 2020, compared to 152 in 2019. Despite the reduction in new cases, there was a greater number (and percentage) of category four cases (such as murder and manslaughter) than in 2019 (87 – 58% compared with 84 – 55%). Cases coming to High Court for protocol determination have decreased slightly from 534 to 519. Cases retained in the High Court in the past 12 months have dropped from 50 to 46, reflecting a COVID-19 related drop in the first six months and an increase in the numbers retained in the second six months, given the availability of acting warranted judges to hear those cases in 2021.

## High Court statistics

A geographical representation of the Court, its complement and business as at 31 December 2020 is attached as [Appendix 1](#).

[Appendix 2](#) provides a summary of:

- new business and disposals for 2020 and 2019
- the top six nature of claim categories filed 2013 - 2020
- the median age at disposal for trial adjudicated cases 2015 - 2020, and
- average age at disposal for trial adjudicated cases 2015 - 2020.

The [Annual statistics for the High Court](#) are published twice yearly. The following reports are available on the Courts of New Zealand website:

- Year to 31 December 2019 – published 5 June 2020, and
- Year to 30 June 2020 – published 9 November 2020.

## Practice and procedure of the Court

### High Court Earthquake List

The Earthquake List was established in the High Court to manage litigation resulting from the Canterbury earthquakes in 2010 and 2011. Its purpose is to deal with earthquake related cases as swiftly as the Court's resources permit.

As at 31 December 2020 there were 123 active Earthquake cases (both insurance and defective repairs) down from 258 at the same time in 2019. Disposal of List cases by settlement continues to be the predominant outcome.

New filings continue to decrease, 16 in 2020 compared to 28 in 2019 and 218 in 2018. Cases raising issues over repairs now account for approximately one third of all active cases.

The [Christchurch Earthquake Litigation List](#) report as at 30 September 2020 is available on the Courts of New Zealand website.

### Marine and Coastal Area (Takutai Moana) Act list

Applications for recognition of protected customary rights and customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA) are a relatively new type of civil work.

Of the 202 total cases, nine are priority cases (per s 125 MACA). One case was struck out as a result of a successful strike out application in August, and two cases filed under the previous legislation (Foreshore and Seabed Act) had hearings in 2020 and are awaiting judgments. Two further cases have hearings allocated in 2021, one from 9 February and the other in April and September (involving two hearings). Of the remaining cases, most are seeking resolution outside the Court by engaging directly with the Crown.

## Review of the High Court Rules

Since late 2018, the Rules Committee has been engaged in a significant review of the rules of practice and procedure in order to improve access to civil justice. This process began in September 2018, when the Attorney-General expressed concern at reports that it is uneconomic to bring a claim in the District Court for less than \$100,000. At the urging of the Chief Justice, the Committee took a wider view of the issue, seeking to review the position in both the District and High Courts.

In early 2020, the Committee released two consultation papers seeking information on the barriers to accessing civil justice in the Courts, and outlining potential rules-based responses. That consultation was extended through to late 2020, owing to the impact of COVID-19. The Committee appointed a judicial subcommittee, comprised of the Chief Justice, Kós P, me and Cooke JJ, Chief District Court Judge Taumaunu and Judge Kellar, to consider the submissions received and formulate the Committee's response. The subcommittee will report back in December 2021, and its recommendations will be the subject of further consultation in 2021.

## Open justice

In 2020 there was live and recorded streaming of cases of significant public interest. Of note:

- remote viewing of the *R v Tarrant* sentencing
- wide-spread use of VMR in the Marine and Coastal Area cases
- live streaming of *Borrowdale v the Director of Health* to law schools.

## Web posts and tweets

The High Court tweets its daily lists, judgments of public interest, reports and ceremonial proceedings.

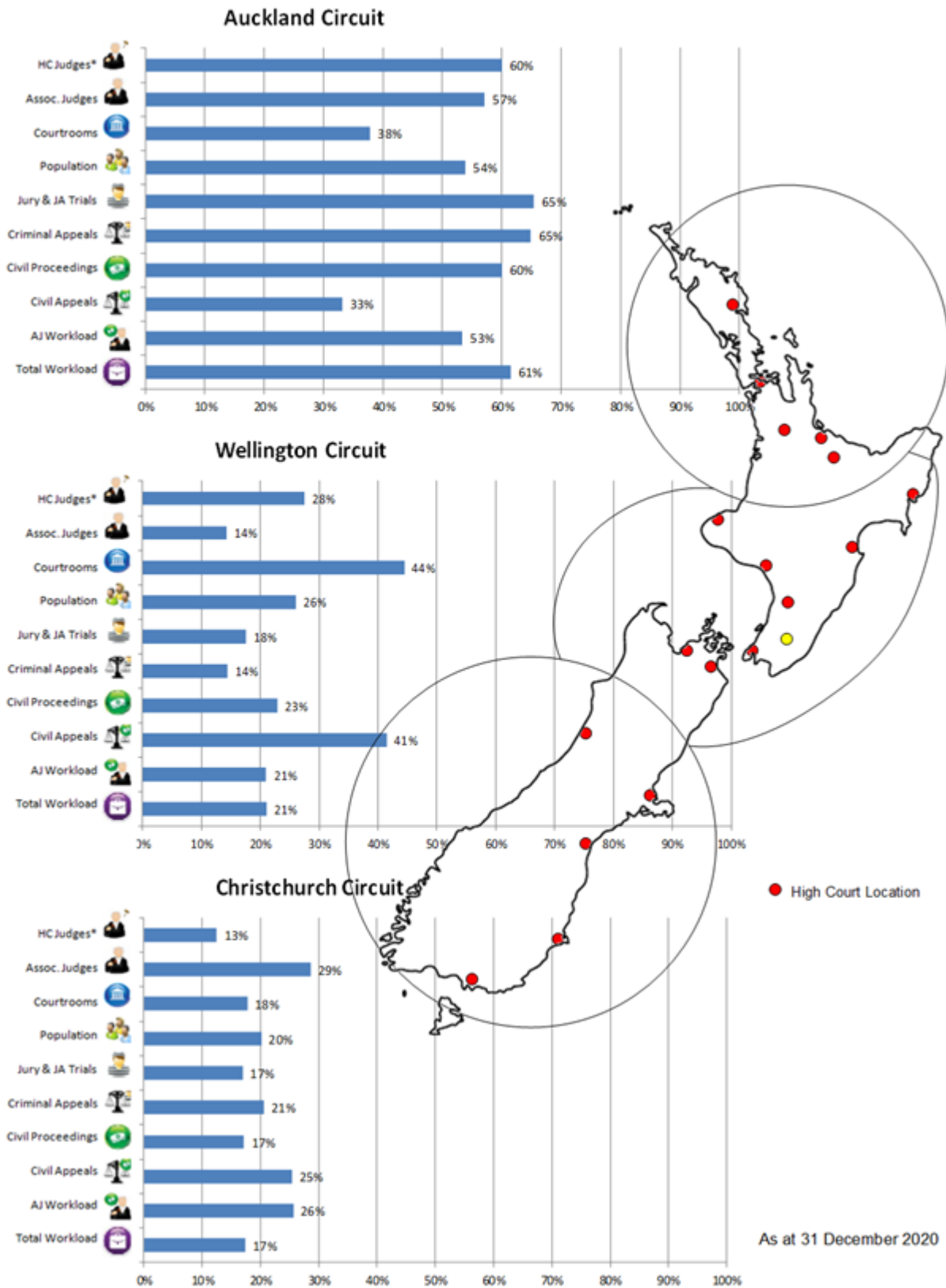
Users can also receive alerts about judgments of public interest. [Subscribe to judicial decisions](#)

## Looking ahead to 2021

The High Court started 2021 well-equipped to deal with any change of COVID-19 Alert Levels: we have protocols, file and pay, and much greater capacity to work remotely, as well as experience doing so. We are, however, facing a year in which the significant workload has been exacerbated by 2020's pandemic related delays.

## Appendix 1 – High Court at a glance

### Breakdown of workload and factors affecting workload by circuit



## Appendix 2 – Selected workload figures for the year ended 31 December 2020

For the full range of statistics see the [Annual Statistics](#) on the Courts of New Zealand website.

Summary of new business and disposals for the year ended 31 December 2020

	Criminal trials <sup>2</sup>	Civil proceedings <sup>3</sup>	Criminal appeals	Civil appeals
<b>New work</b>				
2020	149	2173	1362	238
2019	152	2176	1334	256
<b>Disposals</b>				
2020	113	2273	1361	238
2019	126	2328	1333	257
<b>Disposals by trial adjudication</b>				
2020		310		
2019		312		
<b>Disposals by non-trial adjudication</b>				
2020		609		
2019		681		

Criminal disposals by trial fell from 64 to 55 trials.

### Nature of claim

2020 was the eighth year “nature of claim” data has been collected for new general proceedings. There are some 30 categories. This information provides a watching brief to ascertain whether different claim types behave differently over time. Analysis of this data informs decisions about whether different claim types need to be managed differently to better secure the just, speedy and inexpensive determination of proceedings.

<sup>2</sup> Includes New Trials plus Retrials directed (New Business definition from the Courts of NZ website).

<sup>3</sup> “Civil proceedings” includes general proceedings, originating applications and judicial reviews.

Top six “nature of claim” categories for matters filed between 1 January 2013 and 31 December 2020

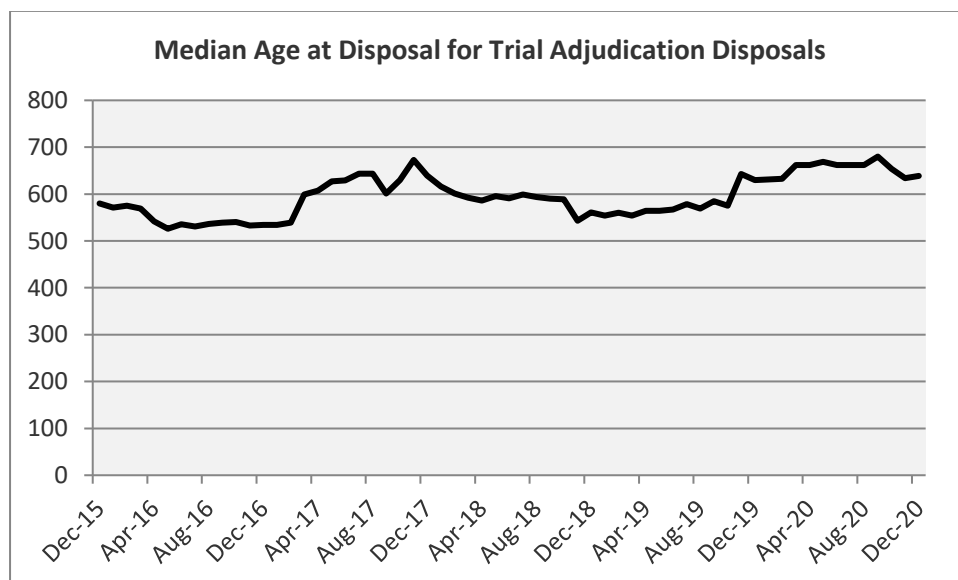
Nature of Claim type	Number of claims	% of total
Contractual disputes	1359	13%
Natural disasters (Chch EQ)	1142	11%
Debt Recovery	1123	11%
Estate litigation	775	8%
Other trust litigation	703	7%
Other	469	5%

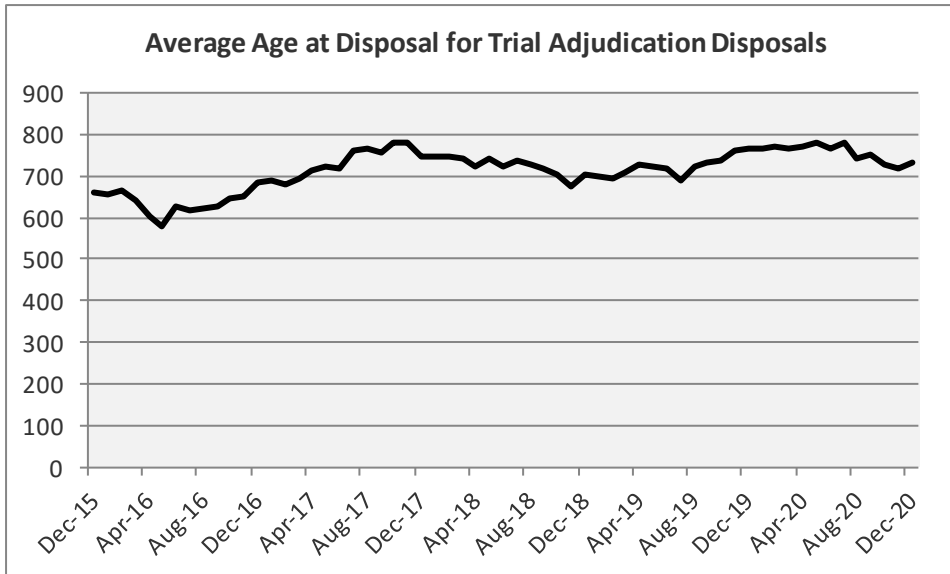
Time to trial

The median time to trial for general proceedings trial adjudications has decreased from 406 days as at 31 December 2019 to 391 days as at 31 December 2020.

Age at Disposal for trial adjudication disposals

The graphs below show the median and average age of cases at disposal has increased over the period 2015 -2020.





The median age at disposal for general proceedings trial adjudication disposals was 639 days compared to the previous year where the median age at disposal was 630 days.

The average age at disposal for general proceedings trial adjudication disposals was 735 days compared to the previous year where the average age at disposal was 765 days.