

# **The High Court of New Zealand | Te Kōti Matua o Aotearoa Annual Report 2022**



## Foreword

### Tēnā koutou katoa

I am pleased to present a short report on events of note in the High Court of New Zealand | Te Kōti Matua o Aotearoa during 2022.

The amount of work undertaken by the High Court in 2022 was remarkable given the significant challenges we faced - COVID-19, the Wellington protester occupation of Parliament grounds and environs, justice sector workforce shortages and industrial action. Throughout, the Judges' paramount consideration was the High Court's role to protect the rule of law.

This achievement is thanks to all those involved – jurors, counsel, parties, Court staff, justice sector agencies and Judges. In 2022, the High Court:

- disposed of 126 criminal trials and 1,346 criminal appeals;
- disposed of 1,851 civil proceedings and 217 civil appeals; and
- delivered 3,583 judgments (1,695 criminal and 1,888 civil).

In addition to reporting on workload statistics, this report explains how the High Court operates as a whole and at a circuit level with individual reports from List Judges.

Despite being located within the protest site, Judges and staff continued to work at the High Court throughout the Wellington occupation in February and March 2022. Hearings were held either remotely with the Judge in the courthouse, or in person using the courtrooms in the nearby Supreme Court.

COVID-19 required intensive judicial management including in matters of technology, health and safety, legislative change, updates to Court protocols, and frequent engagement with the legal profession, the Ministry of Justice and other justice sector agencies.

As the Court sitting year began, proof of vaccination or a negative COVID test were required for all those entering the courthouse, except those whose presence was

required by law. Other protective measures included rapid antigen testing, jury trial “bubbles” to support the ongoing conduct of jury trials and the wearing of KN95 masks. These measures remained in place until mid-September.

The COVID-19 Response (Courts Safety) Legislation Act 2022 came into force on 21 April 2022. It temporarily extended the Chief High Court Judge's power to issue a protocol setting out additional requirements to manage jury trials.

COVID-19 affected counsel, defendants, witnesses, jurors, Court staff and Judges, and consequently all the Court's work. While the High Court conducted as much business as it could, it was not feasible to conduct all long criminal trials with multiple defendants and long civil hearings. Those cases have now been rescheduled in 2023 and 2024 with significant impact on the Court's roster.

Budget 2022 secured an extension of funding for four acting High Court Judges to assist with the workload impacts of COVID-19, including an anticipated increase in company insolvencies.

The Department of Corrections experienced challenges managing COVID-19 amongst its staff and those in custody. Trial preparation and the smooth running of criminal trials were impacted by the inability of counsel to meet in person with defendants, the transmission of COVID-19 within prisons and the difficulties associated with prisoners needing to be transferred to facilities across the country.

Delays in obtaining specialist health reports had a serious impact on the High Court, both to inform consideration of fitness to stand trial and sentences of preventive detention. The latter, along with delays associated with cultural reports, was the most common reason for sentence adjournments. The Ministry of Justice has been working with Te Whatu Ora and the Department of Corrections seeking to agree a Memorandum of Understanding for the provision of forensic health reports.

In 2023, the High Court will focus on case management in both the civil and criminal jurisdictions to address workload challenges exacerbated by the last three years.

### Ngā mihi

### Hon Justice Susan Thomas

Chief High Court Judge | Te Kaiwhakawā Matua o Te Kōti Matua o Aotearoa

## About the High Court | Te Kōti Matua o Aotearoa

The High Court is a single Court, comprising three home registries — Auckland, Wellington and Christchurch. It sits on circuit in combined registries shared with the District Court in 15 cities across Aotearoa New Zealand. This report includes commentary from the Circuit List Judges

High Court Judges, including the Chief High Court Judge, sit in both the civil and criminal jurisdictions, as do acting Judges (who are High Court Judges who have reached the mandatory retirement age). Associate Judges have a specialist jurisdiction, which is covered on page 5.

The High Court deals with the most serious criminal charges, including murder, manslaughter, attempted murder, serious sexual, drug and violent offending. It considers all sentencings in which preventive detention is a possible sentence.

Civil work includes judicial review, that is, where a Judge reviews an action or decision made under a legal power, as well as high value and complex civil/commercial disputes.

Senior High Court Judges sit on divisions of the Court of Appeal. In 2022, 23 High Court Judges sat on the Court of Appeal for a total of 80 sitting weeks.

### Administrative roles

The Chief High Court Judge is the administrative head of the Court, responsible for ensuring the orderly and efficient conduct of the Court's business. As Head of Bench, she sits on numerous strategic, governance and judicial administration committees.

List Judges oversee the workload in their circuits, assisted by the Court Managers, Judicial Resource Managers and the Civil and Criminal Caseflow Managers. The Chief High Court Judge and the List Judges oversee the operational management of the Court.

Case management List Judges oversee specific categories of civil cases, such as those in respect of the Christchurch Earthquake and leaky buildings, and types of cases such as judicial reviews.

Judges serve on a broad range of committees relating to the functioning of the Court including in respect of: legislation and law reform, Rules, information governance, property and courthouse design, technology, diversity, wellbeing, education and bench books.

Justice Whata was on secondment as a Law Commissioner throughout 2022. He led the Te Aka Matua o te Ture | New Zealand Law Commission work in relation to tikanga Māori, with a focus on the relationship with State law.

Justice Palmer is Board chair of the Institute of Judicial Studies |Te Kura Kaiwhakawā. Justice van Bohemen chairs its Pacific Justice Sector Programme. Guided by the Pacific Chief Justices Leadership Forum, the programme supports the needs and priorities identified to strengthen the rule of law in the Pacific.

High Court Judges are regularly part of the faculty for programmes offered by Te Kura Kaiwhakawā, which provides educational programmes to Judges of all jurisdictions.

### Complement

As at 31 December 2022 there were 41 High Court Judges (a work-share arrangement was in place for two 0.5 FTE Judges), three Judges with acting warrants, and seven Associate Judges.

### New appointments to the High Court in 2022:

Justice Tahana 23 May

Justice McQueen 26 August

Justice Andrew 21 November

Associate Judge Brittain 21 November.

### Appointments to the Court of Appeal

Justice Katz 26 April

Justice Simon France 26 August.

## How the High Court operates

The Court must balance the allocation of trial dates for both criminal and civil matters within the constraints of the number of Judges, counsel's other commitments, available courtrooms and registry staff. This process is called scheduling.

### Court of Trial protocol

Every person charged with a criminal offence makes their first appearance in the District Court, even if their charge will ultimately be heard in the High Court. The High Court hears all category four charges, which are mainly murder, manslaughter and attempted murder charges.

Category three offences are those punishable by imprisonment for two years or more, except those which are category four offences. The majority of category three charges are heard by the District Court. The Court of Trial Protocol, established under section 66 of the Criminal Procedure Act 2011, identifies cases and classes of category two and three offences which must be considered for transfer to the High Court.

In 2022, 364 cases required a protocol determination by the High Court, 27% fewer than in 2021 (498 cases). For these cases, 16 were directed to be heard in the High Court, down from 49 in 2021.

The Court of Trial Protocol was reviewed in 2022. The Chief High Court and Chief District Court Judges accepted the review committee's recommendation that no changes were required to the current protocol.

### Criminal trials

The Court allocates criminal trial dates on the first date available for the location and expected duration of a trial. The seriousness and complexity of the charges tried in the High Court means the prosecution and defence lawyers usually require a minimum of 12 months to be ready for trial.

### Adjournments/retrials

It is important for a criminal trial to proceed on its allocated date. This provides certainty for defendants, complainants, witnesses, victims and their whānau. Sometimes adjournments cannot be avoided for fair trial reasons, for example late disclosure of relevant information, unavailability of expert reports, issues concerning a defendant's fitness to stand trial, or the Crown and/or defence counsel not being ready to proceed.

### Criminal appeals

Bail appeals are the predominant category of criminal appeals heard in the High Court. Bail and name suppression appeals are heard as a priority. Conviction and sentence appeals (whether against conviction, sentence or both) are the other main categories of appeal.

### Civil cases

Civil work includes general proceedings, judicial reviews, originating applications, civil and family appeals from the District and Family Courts, and applications for injunctions and freezing orders. The Court allocates civil hearings on the first available date. Priority is given to applications for injunctions and freezing orders, appeals from decisions of the Family Court, and some judicial reviews, particularly where interim orders are sought.

Civil trials can be complex, requiring considerable hearing time and, unlike most criminal trials, the decision is typically reserved. The written judgment is prepared and issued after the hearing has concluded.

### Originating applications

Certain proceedings in the High Court are commenced by an originating application, as determined by statute or permitted by the Court. For example, applications under the Habeas Corpus Act 2001, the Criminal Proceeds Recovery Act 2009 and sections 100 and 111 of the Marine and Coastal Area (Takutai Moana) Act 2011.

## Commercial panel

Clause 5 of the Senior Courts (High Court Commercial Panel) Order 2017 lists the types of commercial proceedings to which a commercial panel Judge may be assigned. These proceedings include high-value disputes (over \$2 million), complex matters of commercial law and proceedings brought by public authorities to enforce regulatory standards of commercial behaviour.

Either the plaintiff or defendant may apply for a case to be heard by a commercial panel Judge. The Chief High Court Judge considers these applications and, if they meet the criteria in the Commercial Panel Order, assigns a Judge from the commercial panel to manage and hear the case.

The Chief High Court Judge reviews the commercial panel membership periodically, as High Court Judges retire or are elevated to the Court of Appeal. As at 31 December 2022, the commercial panel comprised: Justices Thomas, Venning, Lang, Mallon, Wylie, Ellis, Peters, Muir, Fitzgerald, Jagose and Osborne.

## Associate Judges

Associate Judges have a specialist civil jurisdiction. There are seven Associate Judges.

Associate Judges determine a range of claims including:

- where summary judgment is sought;
- applications to sustain caveats; and
- applications to strike out claims or to stay proceedings on jurisdictional grounds.

Associate Judges' case management jurisdiction includes dealing with applications:

- concerning discovery;
- requiring more detailed claims or defences; and
- for security for costs.

Associate Judges conduct much of the day-to-day case management of files, often by telephone conference, and deal with without notice applications such as directions as to service and for substituted service.

Associate Judges also conduct Judicial Settlement Conferences. This involves the Judge convening a conference with the parties for the purpose of seeking to reach a settlement of the proceeding or of any issue.

### Insolvency jurisdiction

In their insolvency jurisdiction, Associate Judges hear applications for bankruptcy or to have bankruptcies annulled. They also deal with applications to liquidate companies and a number of other applications under the Insolvency Act 2000 and Companies Act 1993.

### Looking ahead

The impacts of COVID-19 on businesses have not resulted in the degree of increased company liquidations early modelling indicated. The impact has been reduced by Government financial support, coupled with the Department of Inland Revenue not actively pursuing actions.

The removal of these support measures, and the impacts of the Auckland Anniversary floods and Cyclone Gabrielle, may see an increase in company liquidation filings in 2023.

### Associate Judge Lester

Associate Judge National List Judge

## Auckland

Auckland is the largest of the three home registries. Its circuit comprises five registries being Auckland, Hamilton, Rotorua, Tauranga and Whangārei. The Hamilton-Rotorua-Tauranga circuit is the subject of a separate report. This report covers Auckland and Whangārei.

In 2022, the judicial complement of the Auckland common room consisted of 24 High Court Judges, one acting High Court Judge and four Associate Judges.

The proportion of criminal to civil cases varies considerably from registry to registry. For example, in Auckland, civil matters are estimated to require 2,000 hearing days as compared to criminal jury trials which are estimated to require 1,030 hearing days. In the Whangārei registry, the proportion of criminal work is greater.

The last twelve months have been witness to the declining restrictions imposed by COVID-19 and the Government's response. Auckland was the last to emerge from the "traffic light" settings and the consequences for the Court's work reflects that. For example, in 2022, 16 jury trial dates were vacated. Thirteen of these were re-listed to proceed in the first quarter of 2023. Despite that, over the last 12 months, the Auckland circuit has disposed of more criminal trials than new cases entering the work pipeline.

However, the nature of the new work is changing. The overwhelming majority of new work is category four offences. For example, in the Auckland registry, well over two thirds of the cases on hand are homicide (i.e. murder and manslaughter). The table below shows the increase in category four cases as a percentage of all criminal trials in the Auckland registry over five years.

	<b>Trials on hand</b>	<b>Category four cases</b>	<b>% of trials that are category four cases</b>
<b>31 January 2019</b>	<b>55</b>	<b>22</b>	<b>40%</b>
<b>31 January 2023</b>	<b>65</b>	<b>52</b>	<b>80%</b>

The finite nature of judicial resources means that, in order to get through the work which this Court is required by law to undertake (category four cases), there is a reduced capacity to accept protocol cases from the District Court.

In the Auckland registry civil jurisdiction, there are approximately 800 general proceedings on hand, an increase of 16% (bucking the national downwards trend). However, the last 12 months has also seen a significant reduction in judicial review filings (25%) which is believed to reflect a reduction in the number of proceedings brought against the Department of Corrections by inmates.

A reasonably substantial proportion of judicial review proceedings are brought by litigants in person, that is, people who conduct legal proceeding on their own behalf. Many are unfamiliar with court processes, which adds significantly to administrative and judicial workloads.

Civil appeals have increased, although the numbers are not significant.

Also notable is the continuing trend for criminal and civil trials to require more hearing time. The following is one example.

### *Body Corporate 366567 & Ors v Auckland Council and Ors*

The Gore Street weathertightness trial was a lengthy Auckland civil hearing in 2022. It required five months of hearing time, and a substantial period of time for judgment writing.

Lengthy civil trials not only occupy a Judge for the long period of trial itself. They also take the Judge out of the roster for the months required to write the judgment. They are, in this way, extremely resource intensive.

**Moore J**

Auckland Civil List Judge



## Hamilton-Rotorua-Tauranga

The Hamilton-Rotorua-Tauranga circuit comprises three registries in which Judges from Auckland sit regularly. Up to three Judges sit in Hamilton each week, hearing a mixture of civil and criminal matters. A Judge also sits each week in Rotorua, dealing principally with criminal matters. Judges sit in Tauranga approximately 15 weeks each year, dealing predominantly with civil matters.

The majority of the criminal trials in the Hamilton-Rotorua-Tauranga circuit are murder trials. These may be multi-defendant proceedings lasting six weeks or more. One notable example is Operation Silk.

### Operation Silk

The Operation Silk drugs trial ran for nearly four months in Hamilton between August and December 2022. Initially, 578 charges primarily related to drugs and firearms were laid against 18 defendants. In the pre-trial stage, nine defendants were dealt with through a combination of charges being withdrawn, dismissed and guilty pleas.

Nine defendants stood trial and eight were found guilty on the majority of charges. Sentences must be delivered on 304 charges.

The trial required a specific security plan, and significant support

In 2023 the Hamilton registry will run the trial of persons charged following the Waikeria prison riot. It begins in February 2023 with 12 defendants and is scheduled to conclude in April 2023. Guilty pleas entered during the trial have reduced the number of defendants to four.

The High Court does not have a dedicated courthouse in Hamilton, Tauranga or Rotorua. The High Court shares courtrooms with the District Court in these cities, which are known as combined registries.

One of the principal factors constraining the efficient and timely disposal of work in the region is the inability of the High Court to sit more regularly in Tauranga to conduct criminal jury trials. This is because of the lack of suitable and available jury trial courtrooms. This means that most trials from the Tauranga region must be heard in Hamilton or Rotorua, at considerable inconvenience to counsel and witnesses. It is also only possible for one Judge to sit in Rotorua at any given time due to the availability of courtrooms.

Plans are currently underway for the construction of new courthouses in both Tauranga and Rotorua. However, these are at an early stage and will not come to fruition for several years.

One attractive feature of circuit work in this region is the ability of the High Court Judges to mix with the District Court Judges based in the combined registries. It also provides the Judges with a very different mix of civil and criminal work from that undertaken in the Auckland home registry.

### Lang J

Hamilton-Rotorua-Tauranga List Judge 2022

## Wellington

The Wellington circuit serves Wellington, Gisborne, Napier, Palmerston North, New Plymouth, Whanganui, Nelson and Blenheim. Ten permanent Judges, one acting High Court Judge and one Associate Judge are based in Wellington. The Chief High Court Judge is also based in Wellington.

**A significant part of the work in Wellington comprises judicial reviews that challenge official action.**

In the early part of 2022, this work included two challenges by different workforce groups against the Government's COVID-19 vaccine mandates, as well as a challenge to the Government's requirement that all returning New Zealanders secure a place in an MIQ facility before entering New Zealand.

COVID-19 judicial review cases later in the year included those concerning vaccine mandates for other groups, approval of the use of the paediatric vaccine and limits imposed on gatherings in church settings.

Climate change-related judicial reviews were also prominent in 2022. These included challenges to advice to the Government, and decisions made by the Government, on the level of ambition in Government targets and actions. Additionally, judicial reviews of local council decisions included parking and level crossing decisions intended to improve safety for users of new cycleways and pedestrian walkways.

Waka Kotahi's national transport plan was judicially reviewed by a sustainable transport advocacy group. The decision to approve a renewable hydrogen facility under the COVID-19 recovery fast track process was also judicially reviewed.

Other challenges to official action in 2022 included:

- the Government's intended "Three Waters" reforms;
- Mātaihai reserves imposed on the lower reaches of three river catchment areas;

- Māori claims to tikanga-based rights in fresh water;
- a Māori claims settlement process before Parliament;
- the approval of the acquisition of sensitive land by an overseas person;
- telecommunications regulations;
- the transfer of women prisoners from Arohata prison to Christchurch due to staffing shortages; and
- the restrictions imposed on an Australian deportee returning to New Zealand.

In addition to the above, the work of the Wellington judges included the usual full suite of civil and criminal work. Jury trials heard in 2022 were for sexual offending, homicides and violence.

The High Court's work under the Marine and Coastal Area (Tukatai Moana) Act 2011 is managed from Wellington. Read more about this work on page 9.

The Wellington registry has 485 cases involving allegations of historic abuse in state institutions. These cases do not currently require management but could in the future. Currently the parties are not actively pursuing court adjudication as they seek to settle with the Government.

In August 2022, we celebrated the appointment to the Court of Appeal of the Hon Justice Simon France, a greatly respected and loved, long serving member of the Wellington Common Room and the criminal list judge for many years. We now mourn his untimely passing after a short illness in 2023.

### Mallon J

Wellington Civil List Judge 2022



## Marine and Coastal Area (Takutai Moana) Act 2011 cases

**Marine and Coastal Area (Takutai Moana) Act 2011 hearings relate to the recognition of Māori customary rights in the foreshore and seabed arising from exclusive use and occupancy of the relevant part of the takutai moana since 1840.**

The Act required applicants to file claims before 3 April 2017 and 193 applications were filed. An additional six applications were made under section 98 of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2017.

There are two ways of bringing an application for recognition orders under the Act—entering into direct engagement with the Crown or issuing proceedings in the High Court. Many applicants have initiated claims down both pathways.

The remainder of the list cases are applications filed under the previous legislation, the Foreshore and Seabed Act 2004.

The Court continues to make progress towards hearing the 202 outstanding applications for recognition orders under the Act.

The overlapping nature of many of the applications means that they are most efficiently heard in regional groupings.

A protocol, [Mapping guidelines for applications to the High Court under the Marine and Coastal Area \(Takutai Moana\) Act 2011](#), came into effect on 23 March 2022.

Hearings are conducted in accordance with Tikanga, with the involvement of Pūkenga (experts). The complexity of the overlapping claims requires significant hearing time and substantial time for judgment writing.

Over the past 12 months, the Court has been able to set down and make timetable directions in respect of substantial hearings in Te Tai Tokerau/Tāmaki Makaurau, Wairarapa and Kāpiti, as well as a number of smaller local hearings.

With the completion of the first two major Stage 2 hearings in 2022, the Court has issued two decisions on the technical issues arising in relation to the contents of recognition orders for customary marine title and protected customary rights:

*Re Edwards (Whakatōhea Stage two)* [2022] NZHC 2644; and *Re Ngāti Pāhauwera (Stage two)* [2023] NZHC 15.

These decisions have addressed, for the first time, important conceptual issues such as:

- a) what information is required to be provided about wāhi tapu areas, including restrictions on access to such areas;
- b) how areas of the takutai moana with freehold titles, or which contain a conservation or reserve areas or paper roads, are to be treated;
- c) the Court’s jurisdiction in relation to “accommodated infrastructure”; and
- d) the technical requirements in respect of mapping areas of Customary Marine Title where the boundaries of those areas are subject to change through erosion, accretion or avulsion.

These decisions provide clarity to successful applicants as to the information they need to put before the Court in order for their recognition orders to be finalised.

### Looking ahead

Over the next several years, significant blocks of hearing and judgment writing time will be required to dispose of the majority of claims.

### Churchman J

Marine and Coastal Area (Takutai Moana) Act List Judge

## Christchurch

Christchurch is the smallest of the three High Court circuits, with five High Court Judges and two Associate Judges. However, the geographical area we serve is large, comprising all the South Island, save for the Nelson and Marlborough regions.

For some time, a significant body of our workload has comprised insurance claims arising from the Christchurch earthquakes. To date 1,371 proceedings have been filed. Although filings tailed off from 2019 onwards, we continued to hear complex insurance claims in 2022. A smaller number of cases have also come through relating to defective repairs and repair schemes.

This litigation has, and continues to create, important insurance law precedents.

**We also expect that the lessons learned from the operation of the Christchurch Earthquake List will be useful in dealing with insurance law claims that will arise from the natural disasters experienced in the North Island in early 2023.**

### Earthquake List

The Earthquake List was established in the High Court to manage litigation resulting from the Canterbury earthquakes in 2010 and 2011.

As at 31 December 2022, there were 49 active earthquake cases, down from 77 at year end 2021.

The Court publishes a report to assist earthquake litigants, and those contemplating litigation, and to inform the public on the status of Earthquake proceedings at the High Court. The latest report, current as at 19 December 2022, is available on Courts of New Zealand [Christchurch High Court Earthquake Litigation List](#).

**Given the importance of tourism and agriculture to the South Island economy, it is unsurprising that a number of our cases deal with the appropriate protection of our natural landscapes, particularly in the Central Otago area, and the appropriate management and allocation of natural resources such as water.**

[Aotearoa Water Action Inc v Canterbury Regional Council \[2020\] NZHC 1625](#). The Highs Court's decision on whether an application for consent to use water required public notification when the water had already been allocated by a consent to take water went on appeal to the Court of Appeal, and was recently the subject of a hearing in the Supreme Court.

During March 2022 we heard three two-week jury trials under phase 3 of the Red setting of the COVID-19 Protection Framework. In addition to managing the health risk within the courthouse using existing methods (masks, social distancing and generally taking a precautionary approach), rapid antigen testing of all Court participants on scheduled days of the trial was introduced.

The judiciary and Court staff adapted to the often changing environment at the courthouse in challenging circumstances to ensure that Courts could still operate until the COVID-19 Protection Framework, which ended in mid-September 2022.

In October 2022, Justice Osborne presided over a Serious Fraud Office jury trial which ran for eight and a half weeks, despite the disruption of industrial action by Court staff at this time.

Overall, the Christchurch registry ended 2022 back to full capacity and doing a broad range of civil and criminal work.

### Dunningham J

Christchurch List Judge 2022

## 2022 High Court judgments

All High Court public judgments are available via the Courts of New Zealand website. High Court judgments are regularly uploaded to the Judgments of Public Interest page and remain for approximately three months.

Below are a cross-section of 2022 cases.

### Judge-alone criminal cases relating to political donations

[R v EF \[2022\] NZHC 1755](#) The defendants were found not guilty of fraudulently depositing money into a New Zealand First Foundation account in breach of the Electoral Act 1983. The charges arose from the Serious Fraud Office's investigation into fundraising activities intended to benefit the New Zealand First Party.

[R v Zhang \[2022\] NZHC 2540](#) Seven defendants were charged with obtaining by deception in connection with donations made to the Labour and National Parties in 2017 and 2018. Four defendants, including former MP Jamie-Lee-Ross, were found not guilty. Three defendants were found guilty of some of the charges.

### Judicial review and important civil cases

[Te Whatu Ora Health New Zealand, Te Toka Tumai v C and S \[2022\] NZHC 3283](#) An urgent application for order that Baby W be placed under the guardianship of the Court for the purpose of surgery and related medical issues. This included the administration of blood and blood products. Baby W's parents had refused consent for a blood transfusion due to concerns the blood would contain COVID-19 mRNA vaccine and spike proteins.

[Ngāti Whātua Ōrākei Trust v Attorney-General \(No 4\) \[2022\] NZHC 843](#) Ngāti Whātua Ōrākei sought a declaration that they have ahi kā and mana whenua in relation to land in central Auckland. The Court declined to make a declaration that Ngāti Whātua holds exclusive mana whenua status because the application of tikanga, including the nature and extent of mana whenua, was contested between different iwi.

[Lawyers for Climate Action NZ Inc v The Climate Change Commission \[2022\] NZHC 3064](#) Judicial review proceedings against the Climate Commission and Minister of Climate Change to challenge advice given by the Commission to the Minister under the Climate Change Response Act 2002.

[Yardley v Minister for Workplace Relations and Safety \[2022\] NZHC 291](#) Judicial review proceedings brought by three Police and Defence workers against the COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021. The Court upheld the challenge, finding the Order imposed an unjustified limitation on the applicants' rights and that the limit was not demonstrably justified.

[Grounded Kiwis Group Incorporated v Minister of Health \[2022\] NZHC 832](#) Challenge to restrictions on New Zealand citizens to enter the country under the MIQ voucher system. The Court determined that the MIQ system did not sufficiently allow individual circumstances to be considered and prioritised where necessary.

[Council for the Ongoing Government of Tokelau v AG \[2022\] NZHC 2991](#) Sitting as the High Court of Tokelau, the Court granted an urgent application by the Council for the Ongoing Government of Tokelau to make a child the ward of the Court. The decision, in the best interests of the child, ensured the parties had the time and space to resolve their dispute through Tokelauan custom and processes.

[Li & Ors v Green Land Investment Ltd & Ors \[2022\] NZHC 1906](#) Mortgagee sales of some 30 lots in a 120-lot development in Auckland's Flat Bush rendered void by both lack of evidence of security entitling sale on default and evidence of short notice under the Property Law Act 2007.

## 2022 High Court judgments continued

### Important commercial cases

[Simons v ANZ Bank Ltd & ASB Bank Ltd \[2022\] NZHC 1836](#) The High Court granted approval for a class action lawsuit against the ANZ and ASB banks to be taken as an opt-out claim. The lawsuit alleges the banks failed to provide customers with variation disclosure as required under s 22 of the Credit Contracts and Consumer Finance Act 2003. It is the first case since the Supreme Court confirmed the High Court has jurisdiction to grant leave for parties to bring a representative action on an opt-out basis in an appropriate case.

[Te Komihana Tauhokohoko/Commerce Commission v Mondiale Freight Services Ltd \[2022\] NZHC 1370](#) [Te Komihana Tauhokohoko/Commerce Commission v Oceanbridge Shipping Ltd \[2022\] NZHC 1371](#) In two contemporaneously released judgments, the Court imposed pecuniary penalties of \$4.9 and \$4.6 million respectively against Mondiale Freight Services Ltd and Oceanbridge Shipping Ltd for admitted breaches of the restrictive trade practice provisions contained in ss 27 and 30 of the Commerce Act 1986.

[Vector Ltd v H Ltd \[2022\] NZHC 569](#) Unsuccessful private prosecution by construction principal of contractor's alleged fraud. Contract plausibly only required contractor to show its claims' calculation as an estimate of its actual costs, for periodic reimbursement by principal, prior to final wash-up. Given the available contract construction and limited evidence from relevant witnesses, the Judge could not be certain the contractor lacked a genuine belief its claims were authorised and lawful under the contract, or had falsely represented them.

[Rongotai Investments Ltd and Anor v Wellington City Council and Ors \(2007 Rating Valuation Appeal\) \[2022\] NZHC 1665](#); [\[2022\] NZHC 1666 \[2012 Rating Valuation Appeal\]](#); [\[2022\] NZHC 1667 \[2015 Rating Valuation Appeal\]](#); [\[2022\] NZHC 1668 \[2018 Rating Valuation Appeal\]](#); [\[2022\] NZHC 1664 \[Mathematical Calculation Issue\]](#); and [\[2022\] NZHC 1669 \[Judicial Review\]](#)

A suite of six judgments addressed four appeals against the Land Valuation Tribunal's assessment of the rating values of commercial land in the Rongotai, Wellington area over the period 2007-2018.

### Judgment delivery

The following table show the total number of judgments delivered in 2022, by jurisdiction, and by comparison to 2021.

	Judgments total	Civil	Criminal
<b>2022</b>	<b>3,583</b>	<b>1,888</b>	<b>1,695</b>
<b>2021</b>	<b>3,591</b>	<b>1,954</b>	<b>1,637</b>

### Judgment timeliness

All Judges aim to deliver decisions as promptly as possible. The Court sets a standard of 90% of civil judgments delivered within three months of hearing. This period does not include court vacations.

**In 2022, the High Court delivered 91% of civil judgments within three months of hearing.** In 2021, this result was 91.6%.

For criminal jury trials, verdicts are given at the trial. Criminal judgments are issued for matters including Judge Alone Trials, pre-trial applications and criminal appeals.

**In 2022, 95.3% of criminal judgments were delivered within one month and 99% within three months.**

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

There were seven judgments outstanding beyond a reasonable time as at 31 March 2022 and 10 as at 30 September 2022.

## Workload at a glance

2022	New Work	2021
<b>2,000</b>	Civil proceedings	<b>2,015</b>
<b>228</b>	Civil appeals	<b>258</b>
<b>155</b>	Criminal trials	<b>171</b>
<b>1,366</b>	Criminal appeals	<b>1,368</b>

2022	Disposals	2021
<b>1,851</b>	Civil proceedings	<b>1,908</b>
<b>217</b>	Civil appeals	<b>239</b>
<b>126</b>	Criminal trials	<b>138</b>
<b>1,346</b>	Criminal appeals	<b>1,409</b>

2022	Active cases	2021
<b>2,786</b>	Civil proceedings	<b>2,702</b>
<b>152</b>	Civil appeals	<b>150</b>
<b>166</b>	Criminal trials	<b>170</b>
<b>194</b>	Criminal appeals	<b>168</b>

**High Court statistics are published on the Courts of New Zealand website annually\***

**For the year ending 31 December 2022, the following statistical reports are available:**

National workload statistics overview

Criminal trial workload by registry

Criminal trial waiting time for scheduled hearings by registry

Criminal trials held by registry

Civil proceedings workload—general proceedings, originating applications, judicial reviews & total civil cases by registry

General proceedings waiting time for scheduled hearings by registry

Insolvency workload by registry

Criminal appeals workload by registry

Civil appeals workload by registry

\*Figures published in these reports are as at 31 December and do not include any subsequent updates by the Ministry of Justice arising from late data entry or correction of errors.

### Median waiting time to trial general proceedings

**561 days (294 cases)**

**Up 116 days (26%) from 2021 (313 cases)**

### Median waiting time to criminal trial

**517 days (123 cases)**

**Up 30 days (6%) from 2021 (116 cases)**

# Civil jurisdiction

## General proceedings

Nationally, general proceedings awaiting hearing or judgment increased by 1% (28 cases) compared to 2021. New business decreased by 4% (39 cases) and disposals decreased by 5% (49 cases).

At a circuit level, cases on hand increased in the Auckland circuit and decreased in the Wellington and Christchurch circuits.

Cases on hand is a function of new business and disposals. The increasing length and complexity of civil cases contributes to a decrease in disposals.

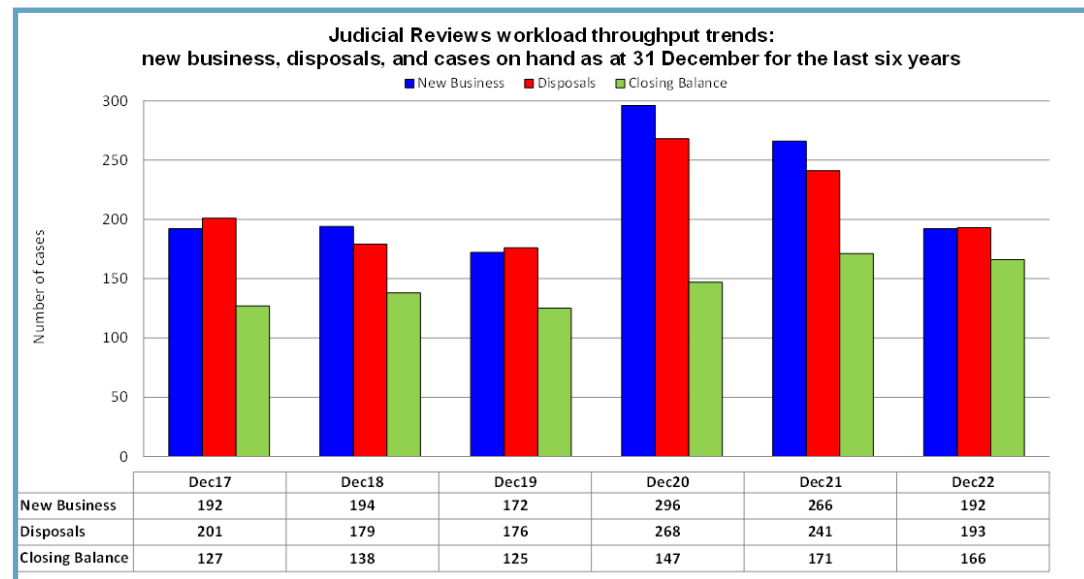
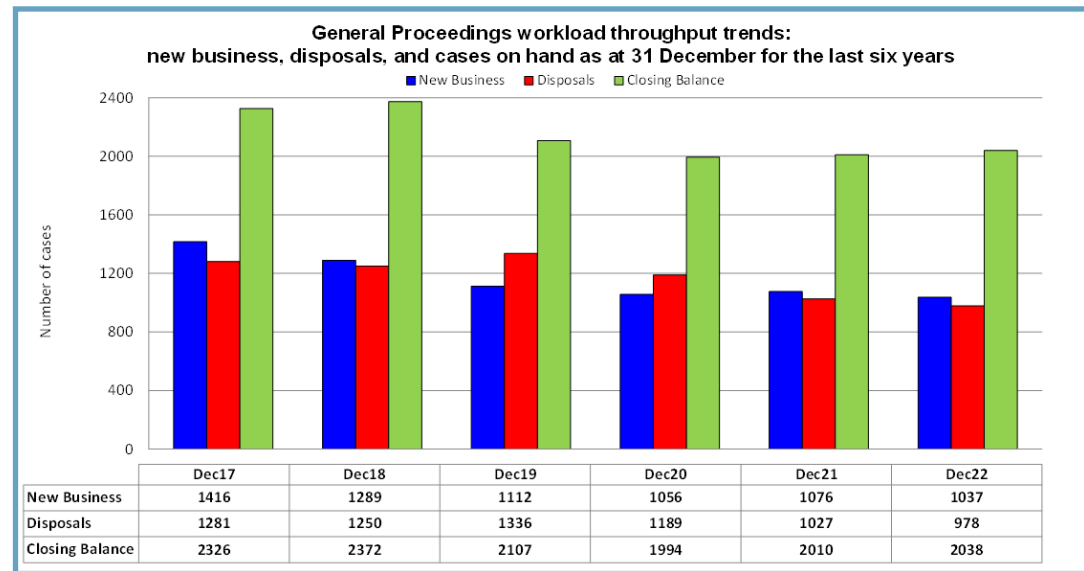
The Court schedules a fixture date for the earliest available date depending on the nature and expected duration of the trial. The 26% increase in median time to scheduled hearing (445 to 561 days) was largely due to factors outside the Court's control.

## Judicial reviews

New judicial review filings and rates of disposal are closely linked as applications are often matters that require urgent consideration.

Nationally, judicial reviews awaiting hearing or judgment decreased by 3% (5 cases) compared to 2021. New business reduced by 28% (74 cases) and disposals decreased by 20% (48 cases).

The Auckland registry had a 37% decrease in new business (52 cases) compared to 2021, and the Christchurch registry had a 50% decrease (9 v 18 cases). The Wellington registry had an 11% decrease (57 v 64 cases) .





## Civil jurisdiction

### Originating applications

Nationally, originating applications awaiting hearing or judgment increased by 12% (61 cases) compared to 2021. New business increased by 15% (98 cases) while disposals increased by 6% (40 cases).

The Christchurch registry had a 20% increase in new business (16 cases), the Auckland registry had a 15% increase (57 cases) and the Wellington registry had a 10% increase (10 cases).

As discussed on page 4, originating applications are determined by statute or permitted by the Court. The marked increase in new applications in 2017 was a result of the requirements of the Marine and Coastal Area (Tukutai Moana) Act, see page 9.

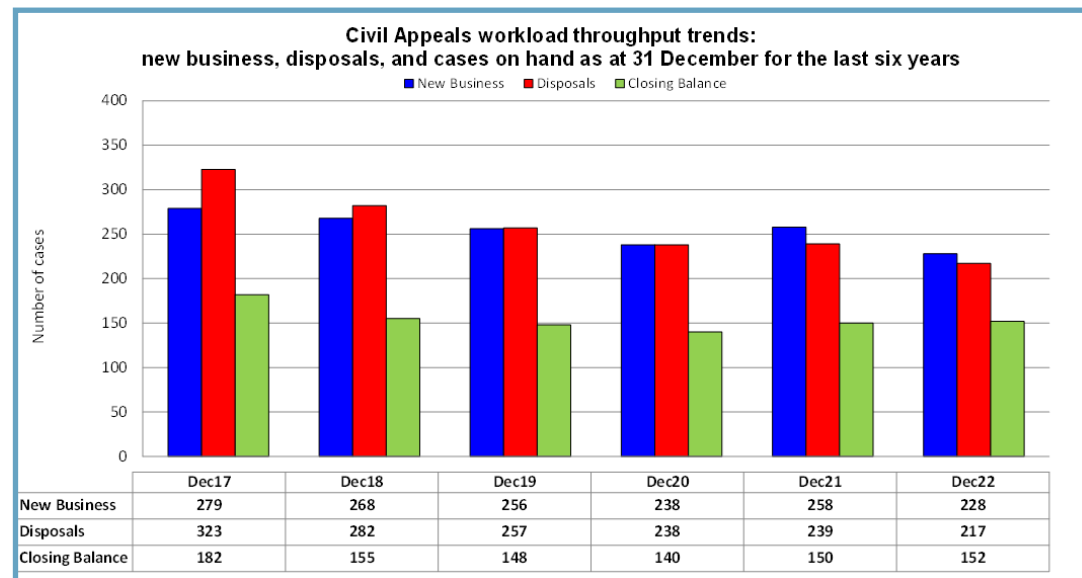
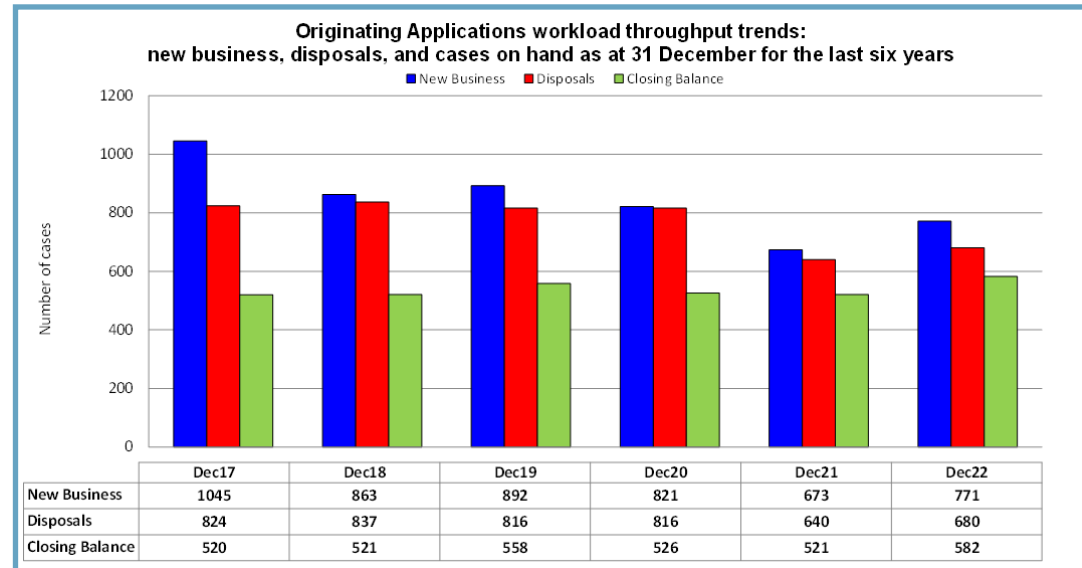
Proceeds of Crime (Recovery) Act applications are not heard unless and until criminal proceedings are determined by the Courts.

### Civil appeals

Nationally, civil appeals awaiting hearing or judgment increased by 2 cases compared to 2021. New filings decreased by 12% (30 cases) and disposals decreased by 9% (22 cases).

Civil appeals cover a range of matters; appeals arising from decisions of the Family Court are prioritised.

The last two years have seen a slight reversal of trends, with disposals dropping below the volume of new business.

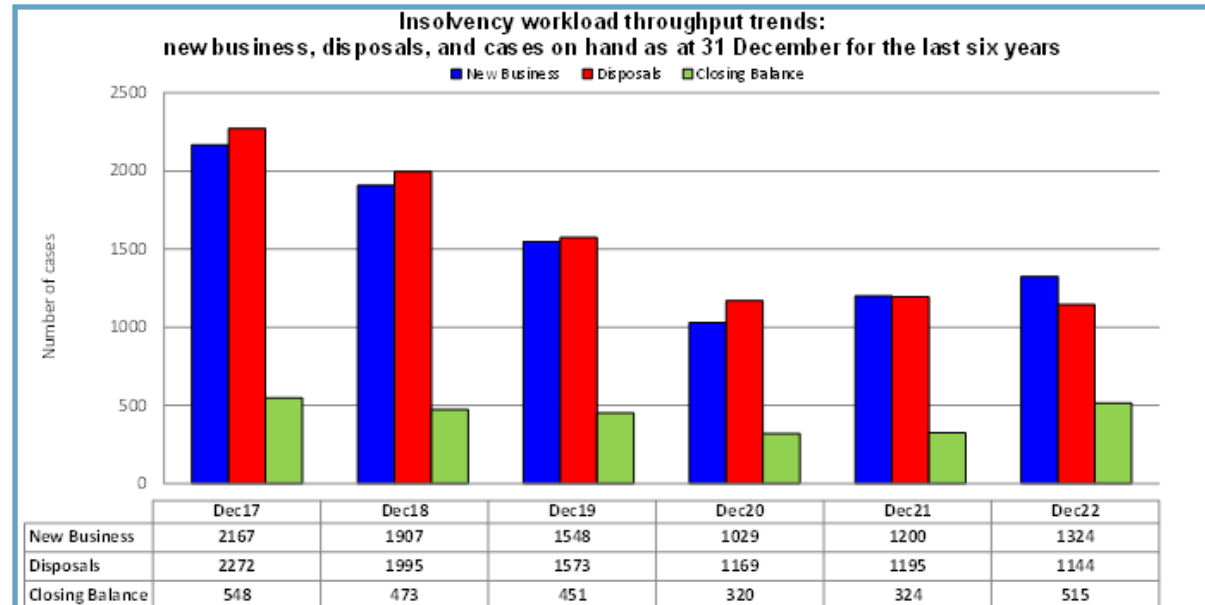


## Civil jurisdiction cont.

### Insolvency proceedings

Insolvency proceedings awaiting hearing or judgment increased 59% (191 cases) compared to 2021. New filings increased 10% (124 cases) while disposals decreased by 4% (51 cases).

Insolvency work reflects the state of the economy, with a slight lag. The removal of COVID-19 financial support, and a more active approach by the Department of Inland Revenue to pursue actions contributed to an increase in new company liquidation application filings during 2022. It is anticipated this upward trend in new filings may continue in 2023.

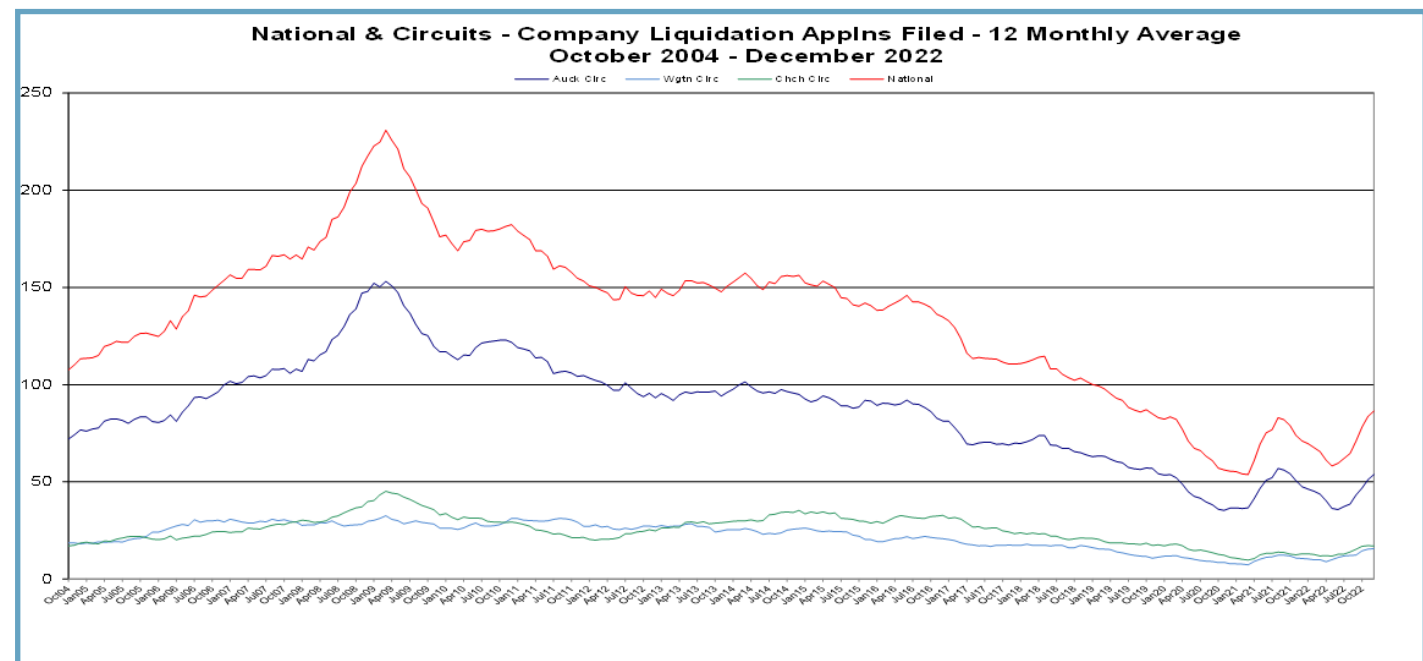


### Company liquidation applications filed

The graph opposite shows the 12 monthly average company liquidation application filings from October 2004 to December 2022.

The peak period, in 2008 and 2009, relates to the Global Financial Crisis.

Monthly new filings in 2022 remain substantially lower than during the GFC.



# Criminal jurisdiction

## Criminal trials

Nationally, criminal trials on hand decreased by 2% (4 cases) compared to 2021. Trials awaiting a hearing decreased (138 v 160 cases) while the trials awaiting sentencing increased (28 v 10 cases).

Nationally, new criminal trials decreased by 9% (16 cases). Disposals also decreased nationally by 9% (12 cases). More category four cases were received in 2022 compared to 2021 (98 v 82 cases). Category four cases were a higher percentage of all new criminal trials (63% v 48% cases) in the High Court.

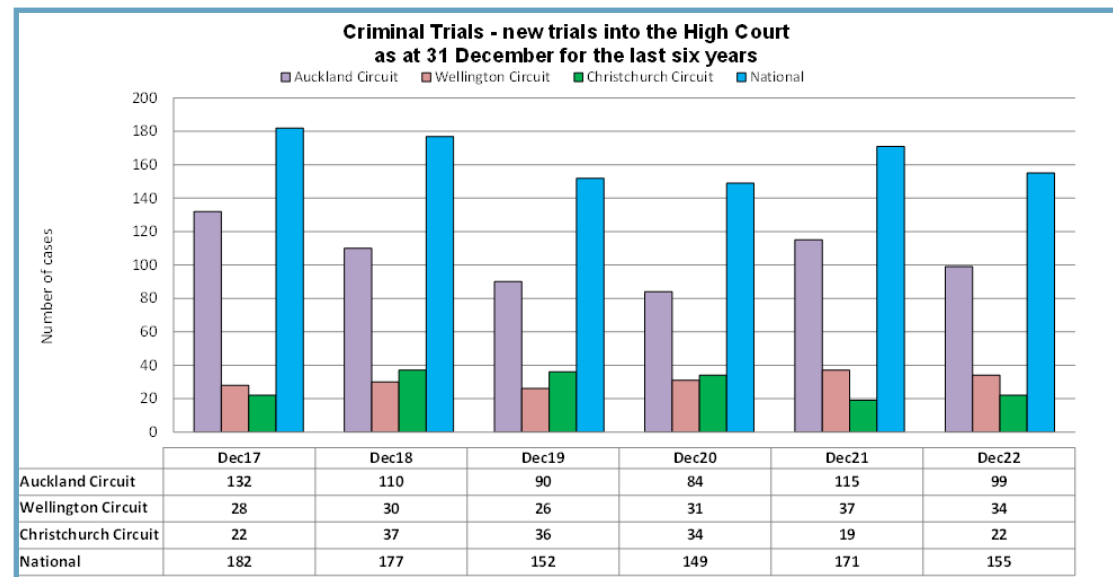
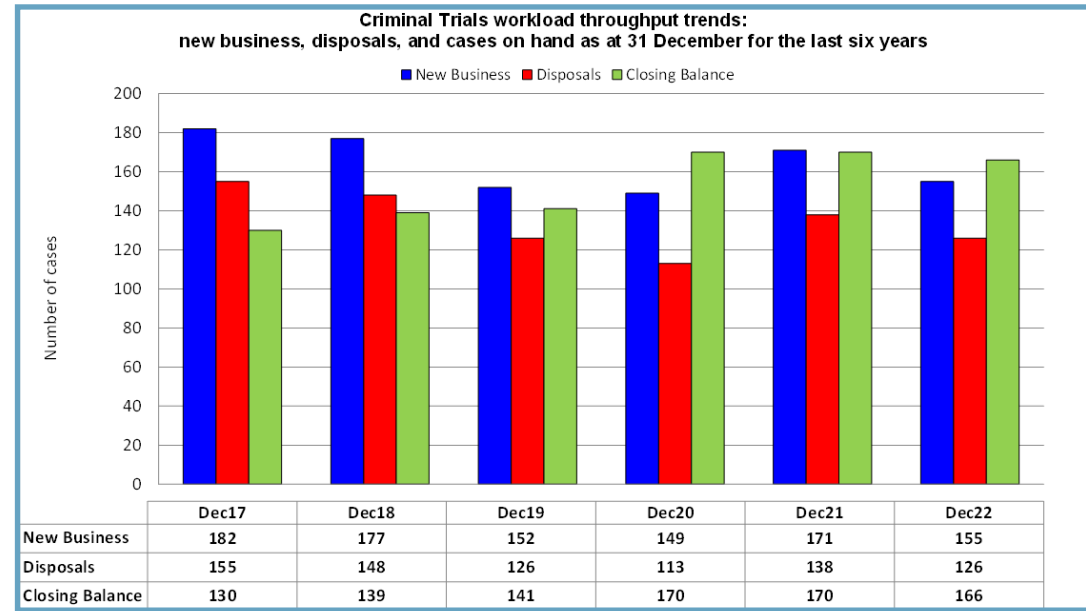
## Disposals

Criminal trials can be disposed of in several ways, trials held, guilty pleas or other disposals (for example s 147 discharge) before or on the first day of the trial, or during the trial before the verdict is to be considered. Criminal trials held is a subset of all criminal trials disposals.

Fewer criminal trials were held in 2022 (61 v 83 cases) compared to 2021. Cases disposed of by guilty plea on the first day of trial decreased (7 v 13 cases) compared to 2021. As a proportion of all cases, guilty pleas on the first day of trial decreased from 16% to 11% in 2022.

## Circuit breakdown of new criminal trials

At the circuit level, new criminal trials have fluctuated over the last five years. Of note, the Auckland circuit had its highest number of new trials in 2017 (132 cases) and lowest in 2020 (84 cases). The Wellington circuit has had a slight increase in the last three years. The Christchurch circuit has had a decrease in the last two years compared to the three previous years.



## Criminal jurisdiction continued

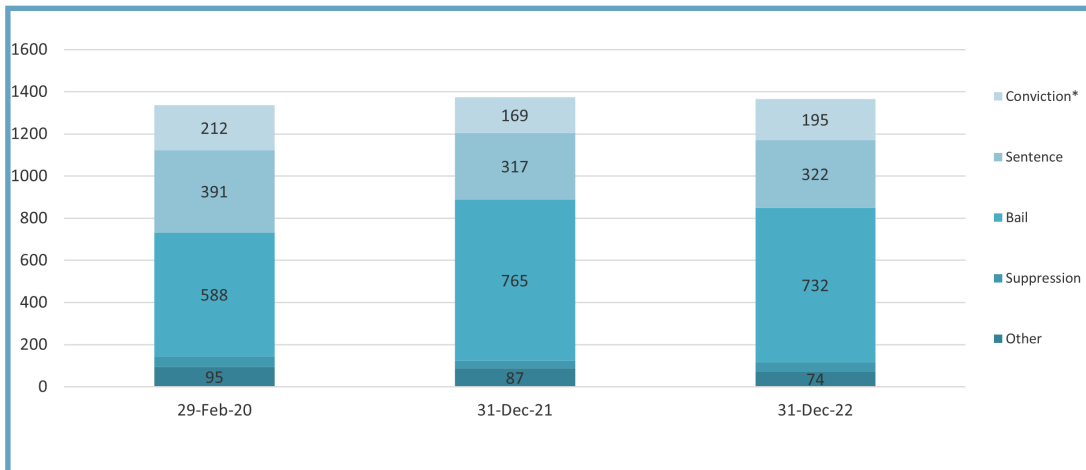
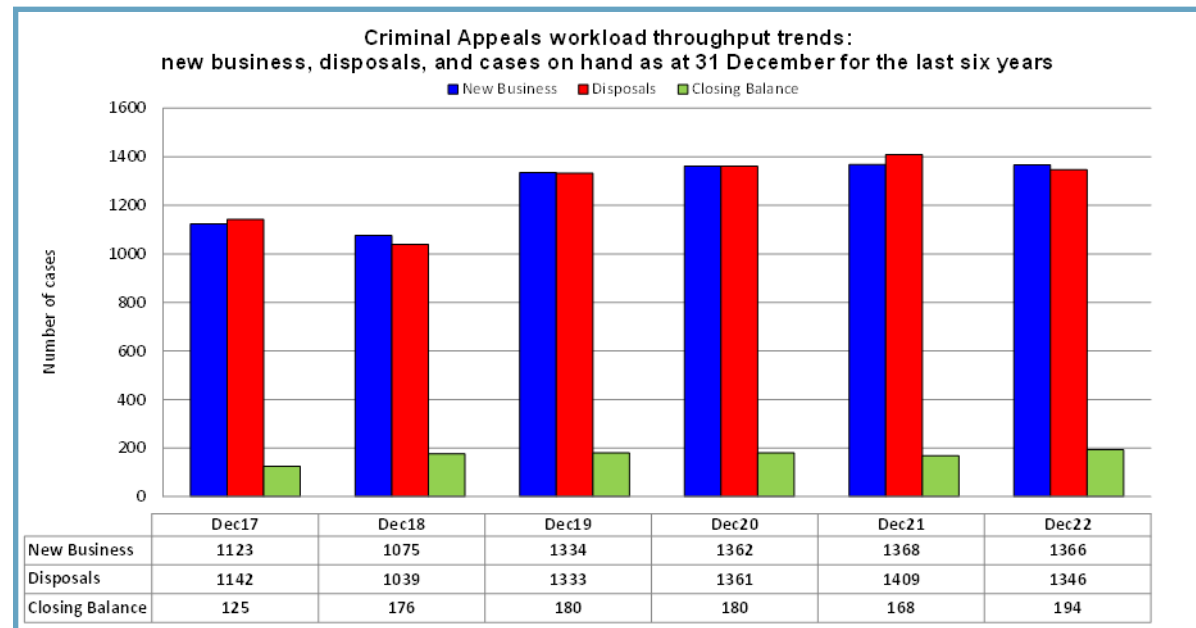
### Criminal appeals

Criminal appeals awaiting hearing or judgment increased 15% (26 cases) compared to 2021.

Two fewer new criminal appeals were filed. Disposals decreased 4% (63 cases) in the same period.

Criminal appeal new business and disposal rates are closely linked as bail and name suppression appeals are heard as a priority.

The table below shows the volume of new criminal appeals by case type for the past three years. While the overall number of appeals is fairly steady, the proportion of bail appeals increased significantly in 2021 and 2022 compared to pre-COVID-19 appeals as at 29 February 2020.



### Criminal trials are getting longer

The number of criminal trials in the High Court has returned to pre-COVID-19 levels, but the time required to hear criminal trials has increased.

	Cases	Estimated hearing days	Average days per trial
31 Dec 2021	160	2,601	16.3
31 Dec 2022	138	2,365	17.1

## Other developments

### **Rules Committee Report *Improving Access to Civil Justice***

Since late 2018, the Rules Committee has been engaged in a significant review of the rules of practice and procedure to improve access to civil justice. The Committee has several statutory and appointed High Court members, Justice Cooke (chair) and Justice Muir and the Chief High Court Judge, ex officio.

The Committee released its report on 23 November 2022.

In relation to the High Court, the report recommends changes to the High Court Rules to ensure effective and proportionate case management. These include the timing and scope of discovery, and emphasis on judicial issues conferences.

### **Improving High Court criminal disclosure**

The High Court Criminal Disclosure Working Group, chaired by Justice Brewer, was convened by the Chief High Court Judge with representatives from the New Zealand Police, Crown Prosecutors and the defence bar. The Working Group were asked to consider if there were systemic problems with timely disclosure and, if not, to identify the main causes of delay in disclosure. In either case, the Working Group was asked to identify the impacts of problems relating to timely disclosure in High Court criminal trials and to provide a report recommending practical solutions.

The Working Group provided its report in late 2022. It considered the statutory framework for criminal disclosure to be adequate. The issue was how to make it work in practice. It recommended that a Judicial Disclosure Conference be established, as a standard pre-trial step in every criminal trial. The purpose of the conference is to identify and record whether full disclosure has been made or to make such directions as are necessary to resolve any outstanding disclosure.

A Practice Note was issued in 2023 establishing a protocol for Judicial Disclosure Conferences. A disclosure checklist, appended to the Practice Note, goes beyond the categories of documents in ss 12 and 13 of the Criminal Procedure Act 2011.

### **Repeal of the Three Strikes legislation**

The Three Strikes Repeal Act 2022 came into force on 16 August 2022. Cases involving third strike offences (as they were defined by the Sentencing and Parole Reform Act 2010) ceased to be referred to the High Court for sentencing. The Repeal Act made no provision to re-sentence those already serving third strike sentences.

The cessation of these category three cases will have a small impact on the overall criminal work load mix for the High Court.

### **Criminal Cases Review Commission – first referral**

The Criminal Cases Review Commission was established under statute in 2019. It is an independent Crown entity whose function is to review potential miscarriages of justice cases and refer appropriate cases back to an appeal court.

The Commission's first referral was to the High Court in December 2022.

### **Sexual Violence Legislation Act 2021**

The Sexual Violence Legislation Act received Royal Assent on 21 December 2021. The Act's provisions to expand the entitlement for complainants to have their evidence, including cross examination, recorded in advance, came into effect on 22 December 2022.

In preparation for the implementation of new provisions, Justice Downs represented the High Court on a Judicial Working Group working on the evidential, procedural and resourcing applications of the Act.