



Report from the High Court 2016

The Year in Review

I am pleased to present a short report on events of note during 2016 in the High Court of New Zealand - Te Kōti Matua o Aotearoa.

Hon Justice Geoffrey Venning
Chief High Court Judge – Te Kaiwhakawā Matua

29 May 2017

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Overview

While the national caseload of the Court remained steady overall in 2016, two case types showed significant rises in new filings. These were earthquake-related general proceedings in Christchurch and civil appeals in Auckland arising from the Auckland Unitary Plan.

The High Court continues to operate registries and sit in 18 locations but the move towards centralising case management continued. Cases filed in New Plymouth and Gisborne are now case managed from the Wellington registry and these registries now form part of the Wellington circuit for judges.

The Hurunui/Kaikōura earthquake on 14 November caused some damage to the High Court at Wellington. While the building was assessed and remediated, judges and staff had to be relocated. With the oversight of judges, hearings were rescheduled in a number of alternative venues.

The Senior Courts Act 2016 was passed in October 2016. The substantive provisions came into effect on 1 March 2017. The Act changed how the [High Court Rules](#) are to be published. They now form part of the Legislative Instrument series.

The judicial complement and their responsibilities

As at 31 December 2016 the complement remained unchanged at 46 judges made up of 39 judges and seven associate judges.

During the year:

- Four judges left the Court. There were two retirements: Keane J in June and Faire J in December. Two judges were appointed to the Court of Appeal: Asher J in July and Brown J in September.
- Four new judges were sworn in: Cull J in June, Downs J and Fitzgerald J in August and Gordon J in December. Three of the new judges are based in Auckland. Cull J is based in Wellington.

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 2016 were:

- Heath J (Auckland civil).
- Lang J (Auckland criminal).
- Brewer J (Waikato/Bay of Plenty liaison).
- Thomas J (Whangarei, New Plymouth and Gisborne liaison).
- Dobson J (Wellington circuit civil).
- Simon France J (Wellington circuit criminal).
- David Gendall J (Christchurch circuit civil).
- Mander J (Christchurch circuit criminal).

- Associate Judge Jeremy Doogue until April then Associate Judge Osborne (liaison judge for associate judge work).

The case management list judges in 2016 were:

- Christchurch earthquake list: Gendall J and Associate Judge Osborne.
- Auckland leaky buildings list: Fogarty and Faire JJ and Associate Judge Bell.
- Commercial list (Auckland and Wellington): Venning J (supervising judge), Heath, Courtney, Asher, Clifford and Gilbert JJ.
- Auckland appeals lists: Katz and Woodhouse JJ (civil) and Woolford J (criminal).
- Auckland summary judgments and caveats: Faire J.
- Probate lists: Mallon J (Wellington), Dunningham J (Christchurch) and Faire J (Auckland).
- Marine and Coastal Area (Takutai Moana) Act matters: Mallon J.

The Rules Committee¹ has a number of statutory and appointed members from the High Court. Asher J chaired the committee until his appointment to the Court of Appeal. He remains on the committee as a Chief Justice appointee for special purposes. Venning J, as Chief Judge, is an *ex officio* member and there are two appointed members from the High Court: Courtney and Gilbert JJ. Gilbert J now chairs the committee. The subcommittee of the Rules Committee charged with developing and overseeing the Criminal Procedure Rules 2012 completed its review of the operation of the rules and went into recess. The High Court members were Venning J and Simon France J (chair).

Workload

A representation of the Court, its complement and business as at 31 December 2016 is attached as [Appendix 1](#). Note Gisborne and New Plymouth are now part of the Wellington circuit. For selected statistics and commentary on work before the Court see [Appendix 2](#) to this report.

Judgment timeliness

The Court's judgment timeliness statistics remain at similar levels to previous years. The standard of 90% of judgments delivered within three months of the hearing or last submissions, was met.

¹ A statutory committee set up under s 51B Judicature Act 1908 charged with regulating the practice and procedure of the higher courts. See http://www.courtsofnz.govt.nz/about-the-judiciary/rules_committee

Civil

There were increased filings in two civil case types. General proceedings filings in Christchurch rose sharply in anticipation of the potential effect of the Limitation Act 2010 time limits as the sixth anniversaries of the two major Christchurch earthquakes approached. The second increase was a significant rise of civil appeals arising from the Auckland Unitary Plan. Both these case types are managed in separate case management lists. The lists provide for case management focused on the particular features of the case types. Early hearing dates are given to cases which will determine uncertain areas of the law. The decisions arising from precedential cases such as these provide other litigants with certainty about the law and assist settlement.

As a result of the increase in earthquake-related general proceedings, general proceedings on hand rose markedly as the year drew to a close. This is not expected to have a major effect on the number of trials required in future as earthquake cases settle at very high rates. In 2016, 95% of disposed earthquake cases settled by agreement between the parties. The drop in the clearance rate for general proceedings from 101% to 88% is largely attributable to the Limitation Act-related filings of earthquake cases.

There were 104 general proceedings trials heard last year, down from 124 the previous year. This can be attributed in part to lower filings in previous years.

The 12 month average and median times to trial for general proceedings trial adjudications remain high influenced in part by the focus on disposing old files. As shown in [Appendix 2](#), the average disposal time for general proceedings disposed of by trial increased by 13 days (from 656 days to 669) but the median time to trial dropped by 32 days from 576 to 544 days.

Criminal

There were 124 cases on hand at 31 December 2016 compared to 150 at the same time in 2015. These numbers include cases awaiting sentence. Only 4 cases begun prior to the commencement of the Criminal Procedure Act on 1 July 2013 remain to be heard. Three of these had a Supreme Court hearing in November 2016 and a further hearing for these matters occurred in April 2017. The fourth is a retrial.

The statutory protocol regime

Protocol offences include serious sexual, violence and drug offending. The full list of offences can be found in the 2016 Court of Trial Protocol.²

The Protocol was introduced under s 66 of the Criminal Procedure Act 2011. It 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

² [2016 Court of Trial Protocol](#)

general catch-all class (Class 3). At any one time some 60% of the High Court criminal caseload is made up of protocol cases.

In practice, the initial identification of these cases by the Crown Solicitor and the processing of protocol cases in the District Court have proven to be problematic. The statutory requirements are administratively complex to operate. A recent audit revealed that a number of protocol cases have not been identified and/or processed correctly.³

Since the commencement of the Act, the High Court has consistently directed between 16% and 20% of protocol cases be tried in the High Court. If, as the audit suggests, cases are not being sent to the Court for determination, they obviously cannot be directed to be tried in the High Court which has workload implications for both the High and District Courts. With the concurrence of the Chief District Court Judge, I have raised this with the Deputy Solicitor-General and the Chief Operating Officer, Courts in the Ministry of Justice.

Monitoring the age of protocol cases

The age of protocol cases at disposal continues to be monitored. In addition to an in-built statutory delay in the Criminal Procedure Act for protocol cases,⁴ many protocol cases heard in the High Court are large or complex cases. The complexity of cases when there are multiple defendants, a large number of charges, or both, means the cases are likely to take longer to progress through to trial. They also take longer to be heard.

Revision of the Court of Trial Protocol

The annual review of the Court of Trial Protocol was delayed last year in part because of the Hurunui/Kaikōura earthquake on 14 November. A number of government departments were displaced in the aftermath of the earthquake and unable to respond in a timely way to the annual request for a list of recently enacted serious offences which may qualify for inclusion in the Protocol.

The Criminal Procedure Rules 2012

The Criminal Procedure Rules subcommittee of the Rules Committee completed its review of the operation of the 2012 Rules, recommended a set of amendments and is now in recess. The main change in the Criminal Procedure Amendment Rules 2016 was the insertion of Part 5A which sets out procedures for sentencing. This part replaced the 2014 Sentencing Practice Note which has been revoked.

³ 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.

⁴ A protocol case will be at least 14 weeks old before a High Court judge has the opportunity to direct it is to be heard in the High Court. Twelve weeks are required by statutory timeframes for early case management. A further two weeks is provided during which a District Court judge considers whether or not to make a recommendation and for the High Court judge to make the final decision.

Criminal appellate jurisdiction

Changes in the Criminal Procedure Act 2011 raised the jury trial threshold and changed the method of jury trial election.⁵ It was forecasted that the appellate case loads of both the High Court (which deals with appeals from judge-alone trials) and the Court of Appeal (which deals with appeals from jury trials) would change as it was expected there would be a significant move by defendants to elect judge-alone trials. This predicted change in behaviour has not yet occurred.

⁵ Under the Criminal Procedure Act, where the offence is “electable”, only the defendant may determine whether the case is heard as a jury trial. Previously the prosecutor could also determine the case be heard by a jury by laying a charge in such a manner to require that.

Practice and procedure

Effect of the Hurunui/Kaikōura earthquake

The earthquake on 14 November had the potential to cause considerable disruption to the operation of the court at Wellington. The interior of the building had obvious damage which meant it had to be closed to enable a full assessment of its structural integrity. A review by the Ministry's contractors concluded that the principal damage was caused by water ingress and was not structural in nature. A number of services in the building were badly affected and considerable remediation of lifts, ceiling tiles, carpet, air conditioning and lighting was required.

Although the building was unavailable, there was a quick response in reactivating court operations. An in-train jury trial re-started on 16 November and other scheduled hearings began on 21 November in alternative venues in the Wellington CBD area. Only one matter scheduled for hearing before the end of 2016 had to be vacated.

While the court building was unavailable, registry services were carried out from the 6th floor of the Wellington District Court building and the judges and their staff were located in the Old High Court Building which forms part of the Supreme Court complex.

Following considerable effort by the Ministry of Justice, judges and staff were able to return to the High Court building in time for the start of the 2017 court year. Courtroom 1 remained out of operation until 1 May 2017 awaiting the importation of new lighting. The Law Society library was badly affected but began providing limited services in the building from March 2017.

Passage of the Senior Courts Act 2016

The Senior Courts Act was passed in October 2016 replacing the Judicature Act 1908. The 1908 legislation had been under review since February 2012 when the Law Commission published its Issues Paper *Review of the Judicature Act 1908 – Towards a Consolidated Courts Act* in February 2012. In November 2013 the government introduced the Judicature Modernisation Bill covering all courts.

During its final stage in the House, the Bill was divided into various Acts including the Senior Courts Act 2016. The Act included provisions to improve access to the High Court Rules along with provisions which describe various forms of information about the courts and how they might be accessed. These came into effect the day after the Act gained assent. The [High Court Rules](#) are now found in the Legislative Instrument series.

The substantive provisions of the Senior Courts Act 2016 came into effect on 1 March 2017.

Centralisation of case management

The High Court sits in 18 locations in New Zealand. Since 2014, case management of cases filed in the circuit registries (other than Hamilton, Rotorua and Tauranga) has been progressively centralised in the three home registries. This stage of centralisation of case management was completed on 1 October.

New electronic document protocol and practice note

The Supreme Court, Court of Appeal and High Court revised the Civil Electronic Document Protocol⁶ in May following a series of seminars with the profession. Where a common electronic bundle is used in a High Court civil matter, that bundle will form the basis of the case on appeal in Court of Appeal or Supreme Court in the event of an appeal.

The High Court Practice Note which provides guidance about when an order should be made for a common bundle or case book in both the civil and criminal jurisdictions was revised and came into force on 25 July.⁷

⁶ [Higher Courts Electronic Document Protocol, May 2016](#)

⁷ [2016 Practice Note: the use of electronic common bundles and electronic casebooks in the High Court](#)

Making the work of the Court more understandable and accessible

The High Court bench agreed in 2012 that it should work to better reflect New Zealand's two founding cultures and its modern multicultural society.

Many judges continue to undertake Institute of Judicial Studies⁸ common room-delivered programmes developing te reo Māori and tikanga knowledge. The higher courts have agreed to include te reo Māori in the intituling of documents and judgments. This will require a technical amendment to the judgment template along with a Rules change for general documents. The change is expected to occur in 2017.

Web resources

The Courts of New Zealand website was refreshed in September with a new look, a revised site map and navigation tabs. The website can now be viewed easily on all devices – desktops, laptops, tablets and phones. Quick links to the most popular pages – the daily lists, judgments of public interest and court locations – were placed on the [front page](#). Items such as the Court's [judgment delivery expectations](#) were shifted and the [practice directions](#) materials were re-organised. Decisions of Public Interest were renamed [Judgments of Public Interest](#).

In July, the Ministry of Justice published a web-based resource for unrepresented litigants in the criminal jurisdiction. The resource was developed in consultation with the judiciary. [Representing yourself in a criminal case in the High Court](#) is found on the Ministry of Justice website along with [Representing yourself in a civil case in the High Court](#) which was published in 2014.

The public can receive notification of judgments of public interest either by [tweet](#) or subscribing to notifications at www.courtsofnz.govt.nz/@subscribe. There are over 1200 subscribers to the notification service provided via the Courts of NZ website.

Rules for litigants and other court participants

The Rules Committee's review of access to court documents rules concluded during the year. The revised rules were not made at that time as rule-making prior to the enactment and commencement of the Senior Courts Act 2016 was delayed so as not to complicate the deeming provisions of that Act.⁹ The revised access rules will be published as a standalone set of rules in 2017 as the Senior Courts (Access to Court Documents) Rules 2017.

⁸ 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

⁹ Section 147 of the Senior Courts Act 2016 provides the Rules set out in the Schedule 2 of the Judicature Act 1908 continue in force and that those continued rules are deemed to be part of the Senior Courts Act. From commencement of that Act, the rules are to be published separately from the Act in the Legislative Instrument series.

The Rules Committee approved rules to deal with statements of claim which are an abuse of the Court's process. A registrar may refer such statements of claim to a judge to consider whether they should be struck out before service. Like the Access to Court Document Rules, the promulgation of these rules was delayed awaiting passage of the Senior Courts Act.

The rules for intituling which will require the registry name to be in both English and te reo Māori will be made as part of the amendment rules to be made after the commencement of the Senior Courts Act.

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 the NZBA's annual conference in August. No significant matters of concern were raised in these meetings.

During the year, the Wellington and Christchurch list judges Dobson J and Gendall J had meetings in the circuit registries to discuss the transition to centralised case management. In October the Chief Judge, Gendall J and Osborne AJ took part in a seminar with Christchurch practitioners on the operation of the earthquake list.

Judges continue to actively participate in profession-led education.

Media matters

No-one, other than members of the media, may make a record in court, whether that record be in the form of notes or film or recording, unless given permission by the judge. All matters relating to in-court media coverage are at the discretion of the Court.

Revised guidelines for media coverage of court proceedings in the Court of Appeal, the High Court, the District Court and some statutory tribunals were published. The 2016 version of the In-Court Media Coverage Guidelines was issued after an in-depth review by a committee set up by the Chief Justice. Of particular note were new guidelines recommending restrictions on close ups and other methods for protecting vulnerable witnesses.

[In-court media coverage guidelines](#) (PDF, 413 KB)

The Courts of New Zealand website has more material on [reporting the courts](#).

Live streaming of an appeal took place in September. The streaming was subject to a 20 minute delay and conditions were imposed so that YouTube features which allow for comment and live chat were disabled.

Web posts and tweets this year

The High Court tweets about its daily lists, judgments of public interest and ceremonial proceedings. Following the Hurunui/Kaikōura earthquake, the Court tweeted updates about the situation with the Wellington High Court.

The Court continued to post materials about the 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

A new jury courtroom and conference room for civil matters were opened in the High Court at Auckland in July 2016. That courthouse now has 15 courtrooms and three conference rooms. It is one of the largest courthouses in the country. There are chambers for the 28 judges who are based there. These judges also sit in the busy circuit registries of Hamilton, Rotorua, Whangarei and Tauranga.

As a result of pressure on limited courtrooms and chambers in Tauranga, matters from Tauranga are regularly heard in Rotorua and, if necessary, Hamilton.

The strengthening of the historic Dunedin courthouse began in October and is expected to be complete in early 2018. Up to \$20 m is available to bring the historic building up to 60 – 70% new building standard. In the meantime, court business continues to be carried out from temporary facilities in High Street and John Wickliffe House.

The largest court building project is the Justice and Emergency Services Precinct in Christchurch. It was expected the High Court would move into the courthouse which forms part of that complex in mid 2017 but completion of the building has been delayed and the shift will likely occur in late 2017.

Protection of the security of those attending courthouses is an important feature of access to justice. The Wellington courthouse is now the only home High Court where scanning of all persons entering the courthouse does not occur. Scanning is carried out in Wellington for all criminal trials but only for civil matters where security concerns have been raised. Some property changes are required to create a single public entrance to the Wellington building.

Looking ahead in 2017

The substantive provisions of the Senior Courts Act 2016 came into effect on 1 March 2017. They required revision of current guidelines on recusal and extra-judicial conduct as well as the provision of additional information about judgment timeliness. These revised materials are published on the Courts of New Zealand website.

The Senior Courts Act provides for the establishment of a panel to hear and determine commercial proceedings.¹⁰ The commencement date and types of proceedings to be heard by that panel will be set by an Order in Counsel recommended by the Attorney-General after consultation with the Chief Justice and Chief High Court Judge.

New rules will be promulgated for access to court records, the intituling of court papers in te reo Māori and English and dealing with striking out statements of claim that are an abuse of the court's processes.

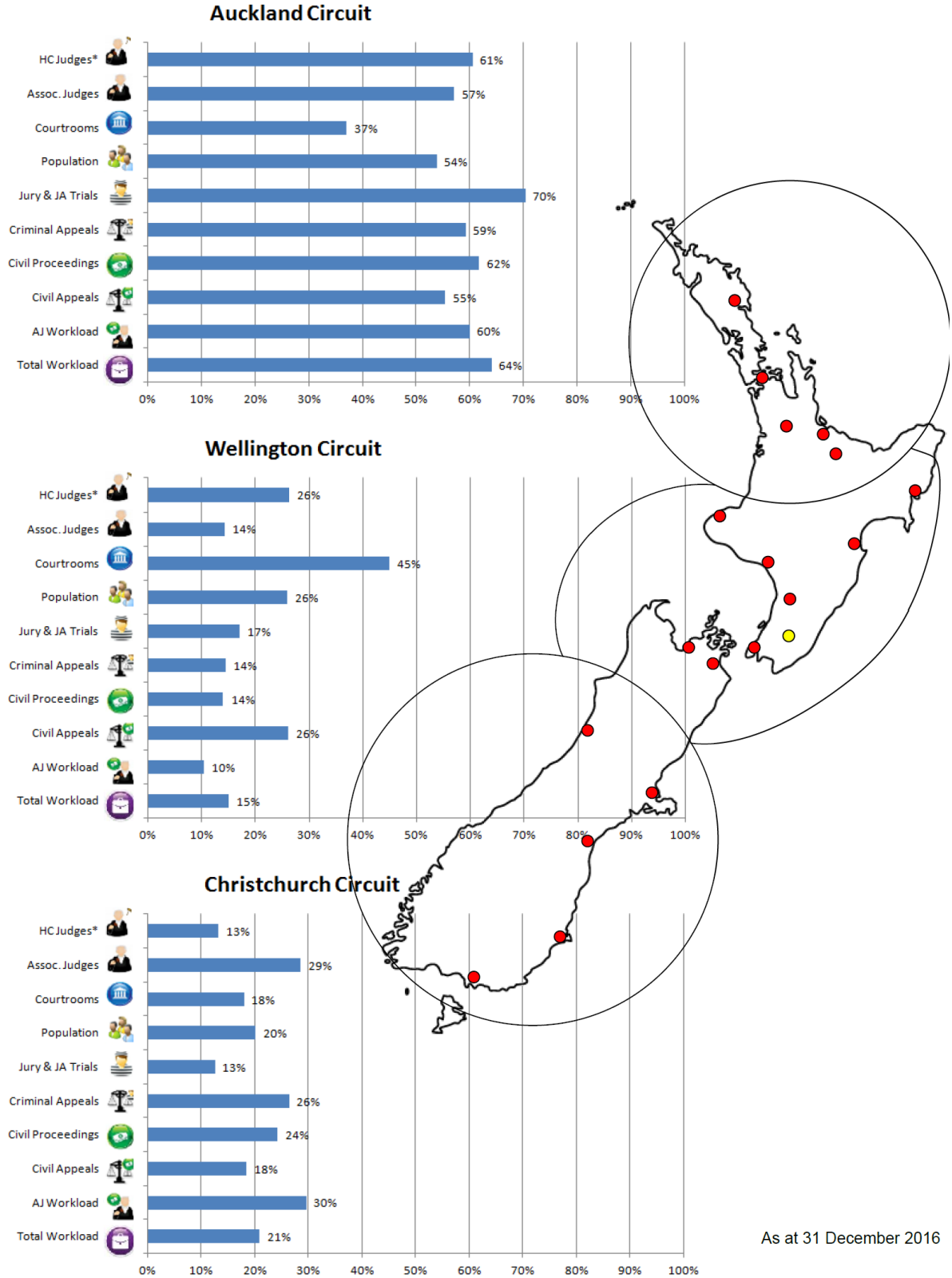
By year-end, the High Court will have moved into the new courthouse in Christchurch.

¹⁰ [Section 19 Senior Courts Act 2016](#)

Appendix 1 – High Court at a glance

This diagram differs from those previously published 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 2016

Appendix 2 – Selected workload figures for the year ended 31 December 2016

For the full range of statistics see the Annual Statistics on the Courts of New Zealand website.¹¹

Summary of new business and disposals for the year ended 31 December 2016

	Criminal trials ¹²	Civil proceedings ¹³	Criminal appeals	Civil appeals
New work				
2016	162	2602	1134	362
2015 ¹⁴	198	2516	1126	322
Disposals				
2016	171	2360	1160	278
2015	164	2519	1172	313
Disposals by trial adjudication				
2016		299		
2015		316		
Disposals by non trial adjudication				
2016		692		
2015		628		

General proceedings new business was dominated by filings arising from the Christchurch earthquake sequence. While new filings in the Auckland and Wellington circuits dropped, Christchurch new general proceedings natural disaster filings rose sharply. There were 295 new natural disaster claims which were almost 21% of new general proceeding filings nationally. The next most prevalent nature of claim were contractual disputes ((125 claims – 8%) and debt recovery (98 claims – 6%). Another feature is that filings are beginning for faulty earthquake damage repairs. There were 78 claims, some 5% of new general proceedings business.

The rise in new civil appeal filings is due to Auckland Unitary Plan (AUP) appeals.

As a result of the rise in earthquake claims and AUP appeals, general proceedings cases on hand and civil appeals on hand have risen markedly.

¹¹ [Annual statistics landing page](#)

¹² Includes New Trials plus Retrials directed (New Business definition from the Courts of NZ website).

¹³ ‘Civil proceedings’ includes general proceedings, originating applications and judicial reviews.

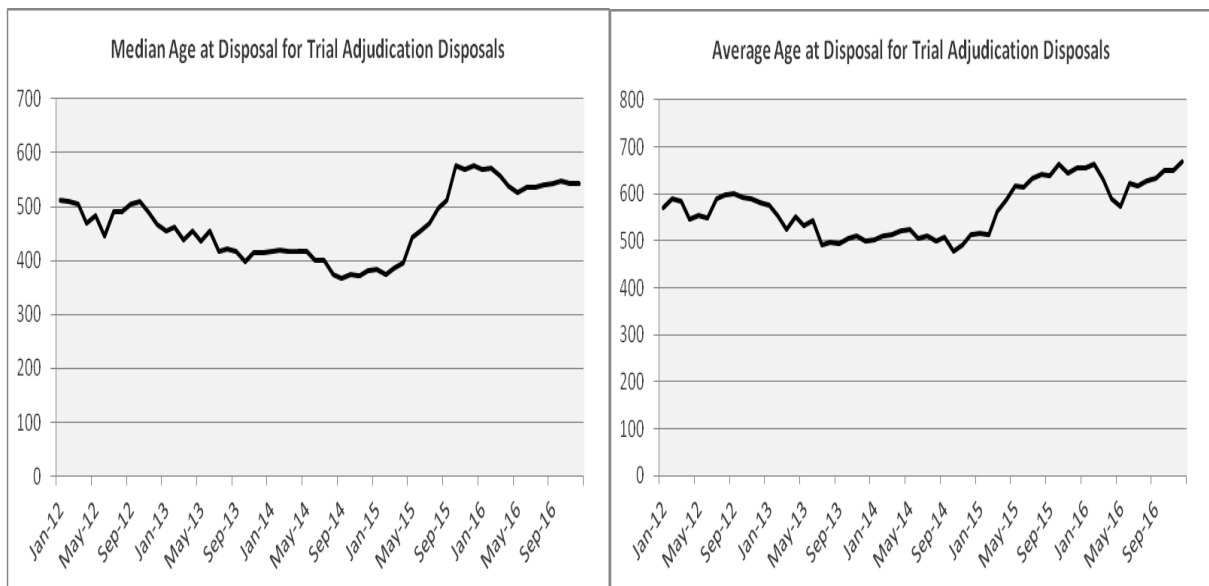
¹⁴ The 2015 figures presented here differ from those presented in this report last year. This is because the Ministry continues to update its figures for 12 months. Changes can occur following late data entry or error correction. In addition the Ministry now sources its data from one source rather than manual returns.

2016 was the fourth year “nature of claim” data was 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.

Top seven “nature of claim” categories for matters filed between 1 January 2013 and 31 December 2016

Nature of Claim type	Number of claims	% of total
Natural disasters (Chch EQ)	756	15%
Debt recovery	695	14%
Contractual disputes	586	11%
Estate litigation	304	6%
Other trust litigation	282	6%
Other	279	5%
Building defects	248	4%

Time to trial for general proceedings trial adjudications have stayed high after the marked increase in 2015 when some very aged cases were disposed. The graphs below show the median age at disposal has dropped by 32 days from 576 days in December 2015 to 544 days in December 2016. The average age has risen by 19 days from 650 days to 669 days over the same period.



Performance standards

Judgment timeliness statistics for the 12 months ending 31 December 2016

	Time from hearing to judgment delivery	Number of Cases	Percentage
Civil	≤1 Month	1372	77.3%
	≤3 Months	1633	92.0%
	≤6 Months	1748	98.5%
Criminal	Time from hearing to judgment delivery	Number of Cases	Percentage
	≤1 Month	1344	96.1%
	≤3 Months	1391	99.5%
	≤6 Months	1396	99.9%

The Court's judgment timeliness statistics have remained steady for a number of years. The standard of 90% of judgments delivered within three months of hearing or last submissions, was met.

Civil clearance rate

Clearance rate (target of 100% or higher)

	General proceedings	Originating applications	Judicial review	Civil appeals	Insolvency proceedings
2016	88%	96%	91%	77%	100%
2015	101%	96%	82%	94%	102%

To calculate the clearance rate, the number of disposals in a given period is expressed as a percentage of the new business in the same period. When the clearance rate is equal to 100% disposals are keeping up with new business. If the clearance rate is above 100%, disposals are exceeding new business and if the clearance rate is below 100% then disposals are not keeping up with new business.

The drops in clearance rate for general proceedings and civil appeals are due to rises in new business arising from Christchurch earthquake cases (over 20% of new general proceedings business in 2016 were earthquake cases) and Auckland Unitary Plan appeals.

Waiting time to trial

Waiting time to trial (target of 80% or higher)

	General proceedings – Short Cause	General proceedings – Long Cause	Originating applications	Judicial review	Civil appeals
Performance Standard	12 Months	18 Months	6 Months	6 Months	6 Months
2016	89%	92%	82%	66%	86%
2015	89%	95%	72%	56%	81%

Waiting time to trial measures the length of time that cases have spent within the court system from the time that the case was certified capable of being readied for hearing until the date of the scheduled substantive hearing for cases which have a scheduled date of hearing.

Criminal performance standards

The Court has not reported against criminal performance standards for a number of years. A basis for providing a meaningful report is presently under consideration.

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

1. 2016 Court of Trial Protocol – joint advisory with the Chief District Court Judge, February 2016
http://www.courtsofnz.govt.nz/publications/copy_of_announcements/160129CourtofTrialProtocolrev1.0.pdf
2. Higher Courts Electronic Documents Protocol 2016, various
<http://www.courtsofnz.govt.nz/going-to-court/practice-directions/practice-notes/all-benches>
3. 2015 High Court annual review, May 2016
<http://www.courtsofnz.govt.nz/publications/judicial-reports/2015HCAnnualReview.pdf>
4. 2016 Revised Practice Note for the use of electronic common bundles and casebooks in the High Court, 19 July 2016
<http://www.courtsofnz.govt.nz/going-to-court/practice-directions/practice-notes/high-court/2016PNHCebundlescbk.pdf>
5. Revocation of 2014 Practice Note: Sentencing in the High and District Courts – joint revocation with the Chief District Court Judge, 18 August 2016
<http://www.courtsofnz.govt.nz/going-to-court/practice-directions/practice-notes/high-court>
6. Christchurch Earthquake Litigation List Report as at 30 September 2016, November 2016
<http://www.courtsofnz.govt.nz/publications/judicial-reports/161104EQReport2016-1.pdf>
7. Various earthquake notices – 17, 18, 21 November and 20 December 2016
http://www.courtsofnz.govt.nz/publications/copy_of_announcements